

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 Corrections and Community Supervision

NOTICE OF WITHDRAWAL

Shock Incarceration Program

I.D. No. CCS-53-13-00002-W

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

Action taken: Notice of proposed rule making, I.D. No. CCS-53-13-00002-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on December 31, 2013.

Subject: Shock Incarceration Program.

Reason(s) for withdrawal of the proposed rule: Substantive changes necessary to eligibility requirements.

Department of Economic Development

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-16-14-00006-E

Filing No. 278

Filing Date: 2014-04-07

Effective Date: 2014-04-07

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

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

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

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

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

Subject: Empire Zones reform.

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

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

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

1. The emergency rule, tracking the requirements of Chapter 63 of the Laws of 2005, requires placement of zone acreage into "distinct and separate contiguous areas."

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

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

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

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

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

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

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

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

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

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

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

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its

application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

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

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

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

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

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

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

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

protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 5, 2014.

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

Regulatory Impact Statement
STATUTORY AUTHORITY:

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

COSTS:

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

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

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

LOCAL GOVERNMENT MANDATES:

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

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

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

1. Effect of rule

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

2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business’s application for entry into the Empire Zone program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

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

4. Compliance costs

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

5. Economic and technological feasibility

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

6. Minimizing adverse impact

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

7. Small business and local government participation

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

Rural Area Flexibility Analysis

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

Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

NOTICE OF ADOPTION

Taking of Free-Ranging Eurasian Boars and Interference with Department Authorized Eradication Efforts

I.D. No. ENV-50-13-00004-A

Filing No. 271

Filing Date: 2014-04-03

Effective Date: 2014-04-23

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

Action taken: Addition of section 180.12 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0514 and 11-0303

Subject: Taking of Free-Ranging Eurasian Boars and interference with department authorized eradication efforts.

Purpose: Prohibit the taking of Eurasian boars by hunting or trapping in order to support eradication efforts of USDA and DEC.

Text or summary was published in the December 11, 2013 issue of the Register, I.D. No. ENV-50-13-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Kelly Stang, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8862, email: kjestang@gw.dec.state.ny.us

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The Department of Environmental Conservation (DEC or department) received comments from approximately 50 individuals on the proposed Eurasian boar regulation during the 45-day public comment period (December 11, 2013 – January 27, 2014). The proposed regulation would prohibit the taking of Eurasian boars by hunting or trapping in order to support eradication efforts of the DEC and the United States Department of Agriculture Wildlife Services (USDA). Some of the comments simply offered support or opposition to the proposed regulation, while others offered more detailed arguments for or against the proposal. A summary of the comments received during the comment period, along with the Department's response, follows.

Most of the individuals submitting comments agreed that Eurasian boar are a harmful and destructive invasive species and support the DEC's objective of not letting these animals get established in New York. However, many do not believe that the method of control proposed in the regulation is the best way to eradicate Eurasian boars.

Comment: Many of those opposed to the proposed regulation believe that public hunting is the best way to eradicate boars or public hunting used in conjunction with DEC/USDA shooting and trapping. Some stated that Eurasian boars are a cheap source of food for hunters and their families. A few do not believe that public hunting disrupts DEC/USDA eradication efforts or they suggested that simply marking the location of traps would prevent hunters from disrupting eradication efforts.

Response: While the DEC does recognize that many hunters enjoy the challenge of hunting Eurasian boar and some families rely on wild game to feed their families, the following are reasons why the DEC has adopted the proposed regulation to prohibit the hunting of Eurasian boars:

1. DEC wants to eradicate all Eurasian boars in the wild. The most efficient way to eradicate them is by trapping the whole sounder (the name for a group of pigs) at one time. Trapping takes a lot of time, effort and money because boars are very wary and need to be slowly baited in and accustomed to the trap. When a hunter shoots at a boar, the animals in the sounder run off in all directions and rarely come back together again. So the hunter prevented us from trapping all those animals, made the boars harder to trap the next time (they learn to avoid traps if they are shot at around a trap), and instead of one large sounder we must now locate and eradicate two or more smaller sounders.

2. Hunting is an inefficient and ineffective way to control or eradicate a

population of Eurasian boars. Because of the boar's high survival and reproductive rate, hunters must take at least 67% of the population just to stabilize the population. That is nearly impossible to do. Even in Texas where wild boar hunting is big business, hunters take less than 40% of the population each year.

3. The leading contributing factor in the spread of wild boars in the U.S. is the illegal release of these animals by those who want to establish a boar population in areas where wild boars previously did not exist. In other words, they want their own local boar population so they can hunt them closer to home. If hunting is banned in New York it greatly decreases the incentive to illegally release boars into the state.

Prior to proposing this regulation DEC staff consulted biologists in a number of other states to help determine the most effective ways to eradicate free roaming Eurasian boars from New York. Biologists in Tennessee informed us that from 1949-1999, hunting of wild hogs was only allowed in the two areas of the state known to have wild hogs. In 1999, the Tennessee Wildlife Resources Agency made an attempt to control the wild hog population by opening a statewide wild hog season with no bag limit. During this period of unlimited hunting disjointed populations of hogs began to appear in areas of Tennessee where they had never existed before as the result of illegal stocking by individuals whose goal was to establish local hunting opportunities. Prior to the statewide open season wild hogs were present in 15 counties in Tennessee. Wild hogs are now present in nearly 80 of their 95 counties. In order to remove the incentive to relocate wild hogs, Tennessee enacted new regulations in 2011 that changed the classification of wild hogs from big game animal to a destructive species to be controlled by methods other than sport hunting.

In his letter of support for the proposed regulation, a biologist from the Kentucky Department of Fish and Wildlife Resources Captive Wildlife and Wild Pig Program stated: "I am providing comments in support of NYDEC's proposed rule regarding Eurasian boar. This foundation of effective regulation to eliminate incentive for the presence of free-ranging swine on New York's landscape follows in the footsteps of Kansas, Nebraska, and Tennessee implementing similar laws in recent years, and will provide further supporting precedence for the many states yet contending with controlling free-ranging swine in the presence of swine hunting. The sporting take of free-ranging swine is certainly an undermining force in the presence of coordinated eradication efforts, and may entrench the desire to maintain this invasive species on the landscape by those who come to enjoy pursuing them. I have read the proposed regulations pertaining to the ban on taking and hunting wild boar and support the regulation in its entirety as written. The regulation will have the effect of eliminating any incentive for someone to illegally import and release wild boar for the purpose of hunting."

Lastly, the Missouri Department of Conservation has stated "When implementing feral swine management, the objective is to capture the greatest number of individuals as quickly as possible. Swine are a gregarious species and tend to form sounders or family groups. When hunters shoot at them, individual swine in sounders disperse (Missouri Dept. of Conservation 2012). Not only are these large groups of swine then scattered across the landscape, they become more elusive and associate human presence with danger making it more difficult to manage them."

Comment: Several supported the proposed regulation in its entirety but felt it should also prohibit the harassment of Eurasian boars to further aid in eradication efforts.

Response: The proposed regulation states "No person shall hunt, trap, take or engage in any activity...that is likely to result in the taking of any free-ranging Eurasian boar..." The legal definition of "take" in ECL 11-0103 (13) includes "pursuing, shooting, hunting, killing, capturing, trapping, snaring and netting fish, wildlife, game... and all lesser acts such as disturbing, harrying or worrying..." Therefore, it is not necessary to add harassment to the proposed regulation.

Comment: A number of individuals opposed the proposed regulation because they felt a landowner or farmer suffering damage from Eurasian boars should be able to shoot the offending animals.

Response: There are provisions in the proposed regulation that would allow the taking of Eurasian boars that are a nuisance or damaging property or crops. The proposed regulation states "Exceptions. This section shall not apply... to any other person permitted to take Eurasian boar pursuant to Environmental Conservation Law section 11-0521 or section 11-0523." Environmental Conservation Law (ECL) 11-0521 allows the DEC to issue a permit to a landowner to take a Eurasian boar whenever it becomes a nuisance, destructive to public or private property or a threat to public health or welfare. ECL 11-0523 allows farmers to take Eurasian boars without a permit when the animals are a nuisance or injuring their property.

Comment: A few people opposed the regulation because they believe the DEC should offer a bounty on Eurasian boar to encourage and reward hunters to shoot these animals.

Response: The DEC cannot pay for hunters to take wildlife since boun-

ties, except in cases where the Health Department recognizes an immediate health hazard, are unlawful in New York. ECL § 11-0531 (Bounties prohibited) states that it is unlawful to pay bounties on the taking of wildlife. If bounties were legal, there would be no way to prove that a Eurasian boar was taken in the wild in New York and the State could end up paying bounties on boars shot at enclosed shooting facilities or in another state. Paying bounties would also increase the incentive for someone to release boars into the wild.

Comment: Others opposed the regulation because they believed it would make it illegal to shoot boars at an enclosed shooting facility.

Response: The proposed regulation would have no impact on the shooting of Eurasian boars inside the fence of an enclosed shooting facility. The regulation only pertains to the taking of free-ranging Eurasian boar. "Free-ranging" means any Eurasian boar that is not lawfully possessed within a completely enclosed or fenced facility from which the animal cannot escape to the wild. Furthermore, ECL 11-0514 prohibits the possession of Eurasian boars on or after September 1, 2015. Shooting boars at an enclosed shooting facility will be prohibited after that date.

Comment: Some opposition was because of a concern that DEC does not have the staff or resources to support an eradication effort due to budget and staffing cuts in recent years or they do not want their state tax dollars used to eradicate Eurasian boars. At least one stated DEC should hire specialists or consultants to eradicate Eurasian boar.

Response: DEC has had budget and staff cuts in recent years. However, the Eurasian boar eradication program is a joint effort between the DEC and USDA. USDA is working under a contract with DEC funded by the Environmental Protection Fund (Invasive Species Control). DEC is also working with funds provided by the U.S. Fish and Wildlife Service (USFWS) under the Federal Aid in Wildlife Restoration Act. USFWS funds are used to eradicate Eurasian boar to minimize the impacts of these animals on native birds and mammals in New York.

Comment: Some people providing comments expressed concern that this proposed regulation was an attempt to restrict people's rights to own/use guns or to hunt and/or there were already too many regulations and they oppose all new regulations regardless of the subject.

Response: The proposed regulation would prohibit hunting and trapping of one species, the Eurasian boar. It does not affect the hunting of any other species in New York. The regulation does not prohibit the ownership or use of guns. This regulation is necessary to ensure that Eurasian boars do not become established in the wild in New York, as a complementary measure to the recently enacted Eurasian boar law.

Some people submitted questions about the proposed regulation and did not state support or opposition to the proposed regulation.

Comment: One questioned how regulations can be proposed that could offer protection for unprotected wildlife.

Response: Under ECL 11-0103, free ranging Eurasian boars are considered "unprotected wildlife." Unprotected wildlife can be taken at any time in any manner. However, allowing the unrestricted take of Eurasian boars is in direct conflict with eradication and prevention strategies. Therefore, the DEC is prohibiting the taking of free-ranging Eurasian boars using the "general powers" authority provided by ECL 11-0303(2).

Comment: Another asked if the proposed regulation prohibited hunting of free-ranging pigs other than Eurasian boars.

Response: This regulation only prohibits the hunting and trapping of free-ranging Eurasian boars. However, this does not mean hunters can shoot free-ranging domestic, farm pigs and pot-bellied pigs. These animals are regulated by the NYS Department of Agriculture and Markets (DAM) and there are no legal provisions that allow the hunting of them.

Three organizations provided comments on the proposed regulation. The Farm Bureau of New York, The Nature Conservancy in New York (TNC) and the New York City Department of Environmental Protection, Bureau of Water Supply (NYC DEP) all supported the proposed regulation.

Department of Financial Services

EMERGENCY RULE MAKING

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

I.D. No. DFS-16-14-00001-E

Filing No. 267

Filing Date: 2014-04-02

Effective Date: 2014-04-07

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

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

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

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

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

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

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

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

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

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

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

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

Text of emergency rule: Superintendent's Regulations
Part 501

§ 501.1 Background.

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

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

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

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

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

§ 501.2 Definitions.

The following definitions apply in this Part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) "Financial Basis" for an individual institution is that institution's portion of the measurement tool used in Section 501.2(g) to develop the

Industry Financial Basis. (For example, in the case of the Depository Institutions Group, an entity's Financial Basis would be its total assets.)

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

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

§ 501.3 Billing and Assessment Process.

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

§ 501.4 Computation of Assessment.

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

§ 501.5 Penalties/Enforcement Actions.

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

§ 501.6 Effective Date.

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 30, 2014.

Text of rule and any required statements and analyses may be obtained from: Gene C. Brooks, First Assistant Counsel, Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1641, email: gene.brooks@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

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

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

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

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

2. Legislative Objectives.

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

This reflects a long-standing State policy that the regulated industries are the appropriate parties to pay for their supervision in light of the financial benefits it provides to them to engage in banking and other regulated businesses in New York. The statute specifically provides that

these costs are to be allocated among such institutions in the proportions deemed just and reasonable by the Superintendent.

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

3. Needs and Benefits.

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

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

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

4. Costs.

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

5. Local Government Mandates.

None.

6. Paperwork.

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

7. Duplication.

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

8. Alternatives.

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

9. Federal Standards.

Not applicable.

10. Compliance Schedule.

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

The regulation does not have any impact on local governments.

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

Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the

entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities. It is expected that the effect of this change will be that larger members of the mortgage banking industry will pay an increased proportion of the total cost of regulating that industry, while the relative assessments paid by smaller industry members will be reduced.

2. Compliance Requirements:

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

3. Professional Services:

None.

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

7. Small Business and Local Government Participation:

This regulation does not impact local governments.

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

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

Rural Area Flexibility Analysis

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

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

Costs: While the regulation formalizes the assessment process, it does

not change the amounts assessed to regulated entities, including those located in rural areas.

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

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

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

Job Impact Statement

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

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

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

EMERGENCY RULE MAKING

Mandatory Reporting of ATM Safety Act Compliance by Banking Institutions

I.D. No. DFS-16-14-00003-E

Filing No. 268

Filing Date: 2014-04-02

Effective Date: 2014-04-03

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

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

Statutory authority: Banking Law, art. II-AA ATM Safety Act

Finding of necessity for emergency rule: Preservation of public safety and general welfare.

Specific reasons underlying the finding of necessity: Changes reporting requirements in Part 301.6 of the Superintendent's Regulations to be consistent with changes in the ATM Safety Act (Article II-AA of the Banking Law) made by Chapter 27 of the Laws of 2013. Emergency adoption is necessary in order to implement the changed reporting requirements prior to the first report under the amended statute, which is due January, 2014.

Subject: Mandatory reporting of ATM Safety Act Compliance by banking institutions.

Purpose: Amends Part 301.6 of the Superintendent's Regulations to be consistent with changes in the ATM Safety Act (Article II-A of the Banking Law) made by chapter 27 of the Laws of 2013.

Text of emergency rule: PART 301. SECURITY AT AUTOMATED TELLER FACILITIES

Section 301.6. Report of compliance.

(a)

(1) The *semi*-annual report of compliance required to be filed pursuant to the provisions of section 75-g of the Banking Law shall be filed [within 75 days after the close of each calendar year covering the preced-

ing calendar year] with the Department of Financial Services no later than the fifteenth day of January and July of each year or the following business day if that day is not a business day. This report shall be certified, under the penalties of perjury, and shall contain language substantially similar to the following:

I, _____, (person at the institution charged with enforcing compliance with article II-AA of the Banking Law) hereby certify, under the penalties of perjury, that all answers contained herein are true, accurate and complete.

[(2)] (A) All of the automated teller machine facilities operated by _____ (name of institution) which are subject to the provisions of article II-AA of the Banking Law (choose one or more of the following, as applicable):

(i) _____ are in full compliance with the provisions of that article; and/or

(ii) _____ are in full compliance with the variance or exemption (as the case may be) granted by the superintendent for the automated teller machine facility (or facilities) located at _____ (specific address); and/or

(iii) _____ are not in compliance with the provisions of article II-AA.

[(3)](B) _____ (name of institution) uses and maintains only T-120 (commercial/industrial) grade video tapes, or better, in accordance with the provisions of section 301.5 of this Part.

[(i)](2) In cases in which some or all of a banking institution's automated teller machine facilities are not in compliance with the provisions of article II-AA, the *semi*-annual report shall indicate the following additional information:

[(a)](A) the specific address of each such facility;

[(b)](B) the manner in which each such facility fails to meet the requirements of that article and the reasons for such non-compliance; and

[(c)](C) a plan to remedy such non-compliance at each such facility, including the expected correction date.

(b) [Upon notification] After notice of any violation of the provisions of section 75-c of the Banking Law is provided to the Department in any *semi*-annual report or such banking institution is notified of any violation of section 75-c of the Banking Law, such banking institution shall file a report of corrective action [required] pursuant to section 75-[j]g(2) of the Banking Law [shall be filed within] no later than 10 business days [from] following the filing of the *semi*-annual report or receipt of such notification of violation. That report shall be certified, under the penalties of perjury, and shall contain language substantially similar to the following:

I, _____, (person at the institution charged with enforcing compliance with article II-AA of the Banking Law) hereby certify, under the penalties of perjury, that all answers contained herein are true, accurate and complete. The automated teller machine facility operated by _____ (name of institution) located at _____ (specific address) which is the subject of one or more violations of the provisions of section 75-c of the Banking Law, is (choose one of the following):

(1) _____ in full compliance with the provisions of section 75-c as of _____ (date); or

(2) _____ not presently in compliance with the provisions of section 75-c and the annexed remedial plan has been implemented and shall be completed by _____ [(date no later than 30 days after initial notification of violation from the Department of Financial Services)]; upon the date of completion of the remedial plan, _____ (name of institution) shall file a certified report of compliance with the Department of Financial Services stating that the location meets the requirements of section 75-c. Annexed hereto is a description of the remedial plan.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 30, 2014.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, Assistant Counsel, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 709-1658, email: sam.abram@dfs.ny.gov

Regulatory Impact Statement

I. Statutory Authority.

Section 227 of the laws of 2013 became effective on July 31, 2013. It made amendments to Banking Law Sections 75-g and 75-j. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation consistent with the changes made to Section 75-g.

The ATM Safety Act (the "Act"), Article II-A of the Banking Law, is intended to protect members of the public by imposing lighting, security camera and other requirements on bank controlled ATM facilities operating in New York State. Section 75-n of the Banking Law grants the Superintendent with authority to adopt implementing regulations. Part 301 of the Superintendent's Regulations implements the Act.

Subsection 301(6) of Part 301 relates to periodic reporting obligations

by banking institutions with respect to the compliance of their ATM facilities with the requirements of the Act. The changes made herein are intended to make the reporting process for banking institutions more efficient and less expensive. Changes are also made to make the regulation consistent with the newly amended law.

Chapter 227 made amendments to Subdivision 1 of Section 75-g of the Banking Law. It also added a new Subdivision 2 to the statute. The amendments to Subdivision 1 make clear that the reporting is to be on a semi-annual basis. It also made clear that all such reporting is to be done on an electronic basis. New Section 75-g(2) provides that any institution filing a semi-annual compliance report that shows noncompliance shall thereafter submit an additional report to the Department indicating whether the failure has been corrected, the reason for any failure that has not been corrected and the expected date of correction. Finally, for any violation not corrected within ten business days after the filing of the applicable compliance report, the institution also must report the date of completion of the corrective action.

2. Legislative Objectives.

As noted, the Act is intended to protect members of the public by imposing lighting, security camera and other requirements on bank controlled ATM facilities operating in New York State. The recent amendments are intended to automate the reporting of violations, thus enhancing the efficiency of the reporting process.

Part 301 implements the Act. The following is a summary of the major changes to Section 301(6) to implement Chapter 227:

1. The numbering of the section is changed to make the regulation consistent with the intent of the statute. Individuals who originate loans on manufactured homes will be subject to the regulation for the first time.

2. Paragraph (a) has been changed to make clear that compliance reporting is to be done on a semi-annual basis.

3. Clause (C) of subparagraph (2) of paragraph (a) has been changed to add a requirement that the banking institution indicate the expected date of completion of the corrective action.

4. Paragraph (b) has been modified to clarify that any banking institution that submitted a notice of violation in any semi-annual report or has otherwise been notified of any violation must file a report of corrective action no later than 10 business days following the filing of the semi-annual report or receipt of notice of a violation. This report must state whether the violation has been corrected or, if not, the expected date of completion. When the corrective action has been completed, Paragraph (b) also requires the banking institution to report the date of completion.

5. All reports must be certified.

3. Needs and Benefits.

Prior to the amendments described above, the Act required banking institutions to make annual reports to the Department regarding their ATM compliance with the Act. This reporting was supported by on-site examinations by employees of the Department. This reporting obligation has been changed to a semi-annual reporting process. The statute also was amended to allow the reporting to be done electronically. In effect, while the Department retains its examination authority, the compliance emphasis has been changed from a primarily examination-based system handled by the Department to a more comprehensive self-reporting system. Since banking institutions will have primary responsibility for monitoring and reporting, it is anticipated that the costs of compliance for both banks with ATMs and for the Department will be reduced.

The changes described herein are expected to simplify reporting and the cost of reporting for banking institutions. In addition, it is expected that the changes to the regulation will facilitate reporting by making the process somewhat more straight forward. They will also conform the regulation to the statute.

4. Costs.

As under the existing Part 301, banking institutions remain primarily responsible for ensuring that their ATMs are in compliance with the Act. Nevertheless, the cost of demonstrating their compliance with Act in writing will be significantly simplified as all such reporting will now be done electronically. The Department is developing an online system to provide for such reporting. This system is expected to be in place for the first scheduled semi-annual reporting now set for January of 2014.

5. Local Government Mandates.

None.

6. Paperwork.

Going forward, reporting will be done electronically.

7. Duplication.

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

8. Alternatives.

The purpose of the regulation is to conform the regulation to changes in the statute and to carry out the statutory mandate to regulate bank controlled ATM facilities pursuant to the Act. Failure to act would result in regulations that are inconsistent with the statute.

9. Federal Standards.

None applicable.

10. Compliance Schedule.

Chapter 227 became effective on July 31, 2013. The first semi-annual report is due in January. The proposed emergency regulation would be effective immediately.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The revised regulation will not have any impact on local governments. However, a number of the banking institutions that maintain automatic teller facilities ("ATMs") and will be affected by revised regulation are considered small businesses. Overall, there are in excess of 5000ATMs regulated by the Department of Financial Services (the "Department") (formerly, the Banking Department).

2. Compliance Requirements:

As noted, the Department regulates over 5000ATMs in the state. Chapter 227 of the laws of 2013 became effective on July 31, 2013. It made amendments to Section 75-g and 75-j of the Banking Law. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation more consistent with the statute and also make compliance easier.

The ATM Safety Act (the "Act") is intended to protect members of the public by imposing lighting, security camera and other requirements on bank controlled ATMs operating in New York State. Subsection 301(6) of Part 301 relates to periodic reporting obligations by banking institutions with respect to the compliance of their ATMs with the requirements of the Act. The changes made herein are intended to make the filing process for banking institutions more efficient and less expensive. Changes are also made to make the regulation more consistent with law and easier to follow.

3. Professional Services:

None.

4. Compliance Costs:

As under the existing Part 301, banking institutions remain primarily responsible for ensuring that their ATMs are in compliance with the Act. Nevertheless, the cost of demonstrating their compliance with Act will be significantly simplified as all such reporting will now be done electronically. The Department is developing an online system to provide for such reporting. This system is expected to be in place for the first scheduled semi-annual reporting now required for January of 2014.

5. Economic and Technological Feasibility:

The rule-making should impose no adverse economic or technological burden on small businesses. Indeed, banking institutions should benefit from new electronic systems for reporting.

6. Minimizing Adverse Impacts:

It is expected that electronic reporting will significantly reduce overall compliance costs for industry. Also, the cost to the Department of its supervision of compliance with the Act should similarly be reduced. Since the Department assesses industry for these costs, the changes contemplated by these regulations should assist in further reducing industry costs.

7. Small Business and Local Government Participation:

The Department is in regular contact with banking institutions, including those that are small businesses, and industry associations regarding compliance with the Act. Banking institutions are interested in both improving their compliance and reducing the costs of compliance. The proposed adoption should facilitate banking institutions in attaining both goals. This regulation does not impact local governments.

Rural Area Flexibility Analysis

Types and Estimated Numbers. The New York State Department of Financial Services (the "Department") (formerly the Banking Department) regulates over 5000 bank controlled automatic teller machines facilities ("ATMs") in the state, including numerous ATMs in rural area. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation consistent with the changes made to Section 75-g.

The ATM Safety Act (the "Act"), Article II-A of the Banking Law, is intended to protect members of the public by imposing lighting, security camera and other requirements on ATMs operating in New York State. Section 75-n of the Banking Law grants the Superintendent with authority to adopt implementing regulations. Part 301 of the Superintendent's Regulations implements the Act.

Subsection 301(6) of Part 301 relates to periodic reporting obligations by banking institutions with respect to the compliance of their ATMs with the requirements of the Act. The changes made herein are intended to make the filing process for banking institutions more efficient and less expensive. Changes are also made to make the regulation more consistent with law and easier to follow.

Chapter 227 made amendments to Subdivision 1 of Section 75-g of the Banking law. It also added a new Subdivision 2 to the statute. The amendments to Subdivision 1 make clear that the reporting was to be on a semi-annual basis. It also made clear that all such reporting was to be done on

an electronic basis. New Section 75-g(2) provides that any institution filing a semi-annual compliance report that shows noncompliance shall thereafter submit an additional report to the Department indicating whether the failure has been corrected, the reason for any failure that has not been corrected and the expected date of correction. Finally, for any violation not corrected within ten business days after the filing of the applicable compliance report, the institution also must report the date of completion of the corrective action.

Compliance Requirements. Prior to the amendments described above, the Act required banking institutions to make annual reports to the Department regarding their ATMs' compliance with the Act. This reporting was supported by on-site examinations by employees of the Department. In effect, while the Department retains its examination authority, the compliance emphasis has been changed from a primarily examination-based system handled by the Department to a more comprehensive self-reporting system. This reporting obligation has been changed to a semi-annual reporting process. The statute also was amended to allow the reporting to be done electronically. Since banking institutions will have primary responsibility for monitoring and reporting, it is anticipated that the costs of compliance for both banks with ATMs and for the Department will be reduced.

Costs. Banking institutions in rural areas should experience a more efficient compliance reporting system going forward. Indeed, expenses for compliance will remain the same as banking institutions will continue to have the primary responsibility for ensuring that their ATMs comply with Act. However, ongoing reporting costs should be reduced as banks will have both a more streamlined reporting system and the ability to report electronically.

Minimizing Adverse Impacts. It is expected that electronic reporting will significantly reduce overall compliance costs for industry. Also, the cost to the Department of its supervision of compliance with the Act should similarly be reduced. Since the Department assesses industry for these costs, the changes contemplated by these regulations should assist in further reducing industry costs.

Rural Area Participation. The Department is in regular contact with banking institutions, including those that are small businesses, and industry associations regarding compliance with the Act. Banking institutions are interested in both improving their compliance and reducing the costs of compliance. The proposed adoption should facilitate banking institutions in attaining both goals. This regulation does not impact local governments.

Job Impact Statement

The requirement to comply with this regulation is not expected to have a significant adverse effect on jobs or employment. Section 227 of the laws of 2013 became effective on July 31, 2013. It made amendments to Banking Law Sections 75-g and 75-j. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation consistent with the changes made to Section 75-g.

The ATM Safety Act (the "Act"), Article II-A of the Banking Law, is intended to protect members of the public by imposing lighting, security camera and other requirements on ATMs operating in New York State. Section 75-n of the Banking Law grants the Superintendent with authority to adopt implementing regulations. Part 301 of the Superintendent's Regulations implements the Act.

Subsection 301(6) of Part 301 relates to periodic reporting obligations by banking institutions with respect to the compliance of their ATMs with the requirements of the Act. The changes made herein are intended to make the filing process for banking institutions more efficient and less expensive. Changes are also made to make the regulation more consistent with law and easier to follow.

Chapter 227 made amendments to Subdivision 1 of Section 75-g of the Banking law. It also added a new Subdivision 2 to the statute. The amendments to Subdivision 1 make clear that the reporting was to be on a semi-annual basis. It also made clear that all such reporting was to be done on an electronic basis. New Section 75-g(2) provides that any institution filing a semi-annual compliance report that shows noncompliance shall thereafter submit an additional report to the Department indicating whether the failure has been corrected, the reason for any failure that has not been corrected and the expected date of correction. Finally, for any violation not corrected within ten business days after the filing of the applicable compliance report, the institution also must report the date of completion of the corrective action.

Banking institutions have and will continue to have primary responsibility for ensuring compliance with the Act. Indeed, the associated costs of reporting should be reduced as all reporting going forward is to be completed electronically. This compliance with the amended regulation is not expected to have an adverse effect on employment.

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

Market Value Separate Accounts Funding Guaranteed Benefits; Separate Account Operations and Reserve Requirements

I.D. No. DFS-16-14-00002-P

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

Proposed Action: Amendment of Part 97 (Regulation 128) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 1403, 1405, 1414, 4217 and 4240

Subject: Market Value Separate Accounts Funding Guaranteed Benefits; Separate Account Operations and Reserve Requirements.

Purpose: To revise the discount rate used to determine guaranteed contract liabilities and the filing due date of actuarial memoranda.

Text of proposed rule: Section 97.2(b) is amended to read as follows:

(b) For separate accounts otherwise subject to this Part and established prior to the effective date of this Part:

(1) Those [which] that were required in writing by the superintendent as a condition for approval [fo] to comply with the requirements of this Part shall comply immediately to the extent so required.

(2) Those [which] that are used to fund contracts issued after such effective date shall comply immediately.

(3) All others shall comply immediately with all sections other than section 97.4 of this Part.

Section 97.2(d) is amended to read as follows:

(d) Where the funding of the applicable contracts or agreements in subdivision (a) of this section is by a combination of general account assets (other than those referred to in section 97.5(c) of this Part) and of separate account assets valued at market, then effective January 1, 1993 this Part applies to the appropriate portion of the benefits [which are] that is funded by the separate account. However, the requirement for the separate account may require integration of the reserve and asset valuation procedures with the general account portion and be based on combined procedures no less conservative than as required by this Part if the contract were considered to be subject in full to this Part.

Section 97.3(j) is amended to read as follows:

(j) Duration matched means, with respect to a separate account or a subportfolio thereof funding specified guaranteed contract liabilities as described in the plan of operations pursuant to section 97.4(b)(11) of this Part, that at least 80 percent of the market value of the separate account assets or the subportfolio thereof [consist] consists solely of cash and/or one or more of the following securities (and hedging instruments purchased in connection therewith): short-term debt, United States government obligations, investment grade obligations and investment grade commercial mortgage loans; and, after taking into account any prepayment provisions of such securities and the provisions of such hedging instruments, payments to be made from the separate account assets (or the subportfolio thereof) are in the aggregate substantially certain both in amount and timing and the duration of the separate account assets (or the subportfolio thereof) differs from the duration of the guaranteed contract liabilities (or, in the case of a subportfolio of assets, the duration of such specified guaranteed contract liabilities) by less than one-half year; provided that, to the extent that guaranteed contract liabilities are denominated in the currency of a foreign country rated in one of the two highest rating categories by an independent nationally recognized United States rating agency acceptable to the superintendent and are supported by investments denominated in the currency of such foreign country, duration matching may be determined by utilizing spot rates of substantially similar securities denominated in the currency of such foreign country.

Section 97.3(r) is amended to read as follows:

(r) Macaulay duration means, with respect to a sequence of anticipated payments A 1, A 2, ...A n occurring at times t 1, t 2, ... [A] t n from the valuation date (whether such payments represent anticipated benefits payable consistent with the minimum value of guaranteed contract liabilities under section 97.5(k) of this Part or whether such payments represent anticipated asset cash flows consistent with actual or assumed market values) the quotient of (a) divided by (b) where

$$(a) = \sum_{j=1}^n t_j A_j V_j^{t_j}$$

$$(b) = \sum_{j=1}^n A_j V_j^{t_j}$$

$$[V_j^{ij} = (1 + i_j)^{-ij}] V_j^{ij} = (1 + i_j)^{-ij}, \text{ and}$$

ij is the discount rate used under section 97.5(k) of this Part.

Thus, for benefits payments corresponding to guaranteed contract liabilities referred to in section 97.5(k) of this Part, the denominator, i.e., (b) above, is identical to the value P, the base amount of guaranteed contract liabilities described in that section.

Section 97.4(b)(3) is amended to read as follows:

(3) a description of how the guaranteed contract liabilities are to be valued, including with respect to fixed or guaranteed minimum benefits, a description of the methodology for calculating spot rates and the rates proposed to be used to discount guaranteed contract liabilities if higher than the applicable spot rates, provided that the rate or rates used shall not exceed [104.5 percent of the spot rate, except that if the expected time of payment of a contract benefit is more than 30 years, it shall be discounted from the expected time of payment to year 30 at a rate of no more than the lesser of six percent and of 80 percent of the 30-year spot rate and for 30 additional years at a rate not greater than 104.5 percent of the 30-year spot rate,] *the maximum rates allowed to be used to calculate the minimum value of guaranteed contract liabilities described in section 97.5(k) of this Part, and must conservatively reflect expected investment returns (taking into account foreign exchange risks);*

Section 97.4(d) is amended to read as follows:

(d) Notwithstanding the descriptions in the plan of operations, the insurance company may change the rate used pursuant to section 97.5(k) of this Part to discount guaranteed contract liabilities and other items applicable to the separate account, such as if the investment portfolio is different from that anticipated by the plan of operations, provided that the rate or rates used shall not exceed [104.5 percent of the spot rate (except that if the expected time of payment of a contract benefit is more than 30 years, it shall be discounted from the expected date of payment to year 30 at a rate of no more than the lesser of six percent and of 80 percent of the 30-year spot rate and for 30 additional years at a rate not greater than 104.5 percent of the 30-year spot rate)] *the maximum rates allowed to be used to calculate the minimum value of guaranteed contract liabilities described in section 97.5(k) of this Part, and must conservatively reflect expected investment returns (taking into account any foreign-exchange risks).* Any such change must be disclosed and justified in the actuary's opinion and memorandum submitted pursuant to section 97.6 of this Part.

Section 97.5(g)(1)(iii) is amended to read as follows:

(iii) Any separate account assets that do not comply with the limitations of this paragraph shall, to the extent that such assets exceed such limitations, be subject to an additional deduction of 10 percent of the market value thereof in determining the *asset* maintenance and reserve requirements in subdivisions (b) and (c) of this section.

Section 97.5(j) is amended to read as follows:

(j) The account contracts may provide for the allocation to one or more supplemental accounts of all or any portion of the amount needed to meet the [minimum] *asset maintenance* requirement. If the account contract provides that the assets in the separate account shall not be chargeable with liabilities arising out of any other business of the insurer, the insurance company shall maintain in a supplemental account the amount of any separate account assets in excess of the amounts contributed by the contract holder and the earnings thereon in accordance with the contract.

Section 97.5(k) is amended to read as follows:

(k) For purposes of this Section, the minimum value of guaranteed contract liabilities is defined to be an amount equal to the product of P and $(1 + x)$, where P is the base amount of guaranteed contract liabilities, and x is the contract risk factor determined at least annually in accordance with subdivision (l) of this section. The base amount of guaranteed contract liabilities, P, shall be the sum of the expected guaranteed contract benefits, each discounted at a rate corresponding to the expected time of payment of the contract benefit that is not greater than the maximum multiple of the spot rate supportable by the expected return from the separate account assets [(and in no event greater than 104.5 percent of the spot rate)] as described in the plan of operations or the actuary's opinion and memorandum (pursuant to [the]section 97.4(d) of this Part) [, except that if the expected time of payment of a contract benefit is more than 30 years, it shall be discounted from the expected date of payment to year 30 at a rate of no more than the lesser of six percent and 80 percent of the 30 year spot rate and for 30 additional years at a rate not greater than 104.5 percent of the 30-year spot rate]. *In no event shall the discount rates exceed the rates given in the following table:*

<i>Years from Valuation Date to Payment Date</i>	<i>Maximum Discount Rate</i>
$0 \leq t \leq 10$	<i>Max (105% x St, Min(St + 1%, 2%))</i>
$10 < t \leq 30$	<i>Min (9%, Max(105% x St, Min(St + 1%, 3%)))</i>

$30 < t$

Min (6%, 80% x St) for discounting from duration t to duration 30

where t is the length of time in years between the valuation date and the expected date of the cashflow payment, and St is the spot rate for time t. In projecting cash flows for annuity and life insurance benefits, the mortality tables for such benefits prescribed or authorized by section 4217 of the Insurance Law shall be used.

Section 97.5(l)(2)(ii)(a)(2) is amended to read as follows:

(2) the number of years from the valuation date for which interest rates provided in the contract are guaranteed to exceed the last published calendar year statutory valuation interest rate for life insurance policies (other than single premium policies of the kind referred to in section 4217(c)(4)(B)(vi) of the Insurance Law) with guarantee durations in excess of 20 years; and

Section 97.5(m)(1) is amended to read as follows:

(1) Where any guarantee (whether for fixed benefits or guaranteed minimum benefits) is provided under a separate account valued at market, the amount accumulated from risk charges deducted from considerations received or from the separate account, net of losses and the amount of losses, shall be shown in the annual statement. This may be shown as a footnote to the appropriate line in the analysis of operations by line of business pertaining to net transfers to [or (from)] (or from) the separate account. The footnote should include the amounts for the current year and the cumulative amounts from inception to date.

Section 97.5(n) is amended to read as follows:

(n) The superintendent may modify the application of any provision of this section upon application of the insurance company, if the company can demonstrate to the satisfaction of the superintendent that it has provided other appropriate and equally effective safeguards against the risks and uncertainties addressed in this section.

Section 97.6(a) is amended to read as follows:

(a) An insurance company that maintains one or more separate accounts subject to this Part shall submit to the superintendent annually an actuarial opinion by March 1st and an actuarial memorandum by March 15th [to the superintendent annually by March 1st] following the December 31st valuation date showing the status of such accounts as of December 31st. The actuarial opinion and memorandum must be in form and substance satisfactory to the superintendent.

Section 97.6(b) is amended to read as follows:

(b) The actuarial opinion shall state that, after taking into account any risk charge payable from the separate account assets and the amount of any reserve liability of the general account with respect to the asset maintenance requirement, the account assets make good and sufficient provision for contract liabilities. The opinion shall be accompanied by a certificate of an officer of the company responsible for the daily monitoring of compliance with the asset maintenance and reserve requirements for such separate accounts, describing the extent to and manner in which during the preceding year:

Section 97.6(c) is amended to read as follows:

(c) The actuarial opinion shall cover the applicable points set forth in section [95.7] 95.8 of Part 95 of this Title.

Section 97.7 is amended to read as follows:

§ 97.7 Mandatory securities valuation reserve.

When the insurance company values separate account assets at market and complies with the asset maintenance requirements of section 97.5 of this Part, it need not maintain [a mandatory securities] *an asset* valuation reserve or an *interest maintenance reserve* with respect to such assets.

Text of proposed rule and any required statements and analyses may be obtained from: Frederick Andersen, New York State Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 474-7929, email: frederick.andersen@dfs.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.

Five-Year Review of Existing Rules An assessment of public comments is not attached because no comments were received.

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate the First Amendment to Insurance Regulation 128 (11 NYCRR 97) derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 1403, 1405, 1414, 4217, and 4240 of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent as the head of the Department of Financial Services.

FSL section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state

and to prescribe regulations interpreting the Insurance Law, among other things.

Insurance Law section 1403 identifies the types of investments that an insurer may make, and provides, subject to limited exceptions, that investments made for separate accounts are not subject to the investment limitations set forth in section 1403.

Insurance Law section 1405 identifies additional types of investments that a life insurer may make.

Insurance Law section 1414 provides for the valuation of investments.

Insurance Law section 4217(a)(1) requires the Superintendent annually to value, or cause to be valued, the reserve liabilities ("reserves") for all outstanding policies and contracts of every life insurer doing business in New York, except that with respect to an alien insurer the valuation is limited to its U.S. business. The Superintendent may certify the amount of reserves, specifying the mortality table or tables, rate or rates of interest, and methods used in the calculation of the reserves.

Insurance Law section 4217(c)(6)(D) authorizes the Superintendent to issue, by regulation, guidelines for the application of the reserve valuation provisions of section 4217 to such policies and contracts as the Superintendent deems appropriate.

Insurance Law section 4240(a)(5)(iii) requires a life insurer to submit an actuarial opinion and memorandum related to assets held in a separate account. Section 4240(d)(6) prohibits a life insurer from discriminating unfairly between separate accounts or between separate and other accounts, but does not require a life insurer to follow uniform investment policies for all of its accounts.

2. Legislative objectives: Maintaining the solvency of insurers doing business in New York is a principal focus of the Insurance Law. One fundamental way in which the Insurance Law seeks to ensure insurer solvency is by requiring all insurers authorized to do business in New York State to hold reserve funds in an amount sufficient to meet the obligations made to policyholders. The Insurance Law prescribes the mortality tables and interest rates that should be used for calculating such reserves.

3. Needs and benefits: This amendment prescribes minimum and maximum rates for discounting guaranteed benefit cashflows, which are based on the Treasury discount rate, to ensure that prudent levels of reserves are maintained by life insurers. A minimum discount rate, applicable when Treasury discount rates are exceptionally low, provides insurers with a moderate relief from reserve requirements. A maximum discount rate, to be applied if Treasury discount rates are significantly increased, will prevent an over-release of reserves.

This amendment also changes the filing due date of the actuarial memorandum that life insurers are required to file with the Department, pursuant to Section 97.6 of this rule, from March 1 to March 15. The Department has provided a filing extension date to several insurers that requested additional time to file the actuarial memorandum. This amendment will allow all life insurers adequate time to prepare their filings after submitting to the Department several other statutory filings that are due by March 1.

4. Costs: Insurers may have to make minor modifications to existing computer software to change the discount rate in accordance with this amendment. The costs to insurers that are affected by this amendment to make such changes will likely vary from insurer to insurer but are expected to be minimal. Once initial modifications to the software have been made, no additional costs should be incurred.

The Department anticipates little if any additional costs to the Department as a result of this rule. There are no costs to other government agencies or local governments.

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

6. Paperwork: The amendment imposes no new reporting requirement.

7. Duplication: The regulation does not duplicate any existing law or regulation.

8. Alternatives: The Department deliberated the use of a discount rate based on a 65/35 weighting of Treasuries and a corporate bond index. After lengthy consideration, the Department decided against this approach, mainly due to the belief that the theoretically "correct" discount rate for liabilities is actually no higher than the risk-free rate. The Department also considered not amending the regulation. However, not amending the rule would mean that insurers would be unable to obtain reserve relief during periods of extremely low Treasury discount rates, which insurers specifically requested.

9. Federal standards: There are no federal standards in this subject area.

10. Compliance schedule: This amendment applies to financial statements filed on or after December 31, 2013. The Life Insurance Council of New York, Inc., the trade association for insurers affected by this rule, was involved in the process of developing the changes to the discount rate that are included in this amendment and the change of the filing due date of the Actuarial Memorandum from March 1 to March 15. Insurers will

have ample time to revise their computer software systems to update the usable discount rates in accordance with this amendment.

Regulatory Flexibility Analysis

1. Small businesses: The Department finds that this amendment will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all life insurers that are authorized to do business in New York State, none of which comes within the definition of "small business" provided in section 102(8) of the State Administrative Procedure Act. The Department reviewed filed reports on examination and annual statements of authorized life insurers and concludes that none of these entities comes within the definition of "small business," because there are none that are both independently owned and have fewer than one hundred employees.

2. Local governments: The amendment does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers covered by this amendment do business in every county in this state, including rural areas as defined in State Administrative Procedure Act ("SAPA") section 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This amendment does not impose any new reporting, recordkeeping, or other compliance requirements, and is not likely to require the use of professional services of outside contractors. The revisions insurers will need to make to their computer software are most likely to be handled by the insurers' own staffs.

3. Costs: All insurers subject to this rule will likely have to make minor modifications to existing computer software to change the discount rate in accordance with this amendment. The costs to insurers that are affected by this amendment to make such changes will likely vary from insurer to insurer but are expected to be minimal, whether the insurer is located in a rural or non-rural area. Once initial modifications to the software have been made, no additional costs should be incurred.

4. Minimizing adverse impact: This amendment does not impose any adverse impact on rural areas.

5. Rural area participation: The Life Insurance Council of New York, Inc. ("LICONY"), the trade association for insurers affected by this rule, was involved in the process of developing the changes to the discount rate that are included in this amendment and the change of the filing due date of the Actuarial Memorandum from March 1 to March 15. Additionally, interested parties will have the opportunity to comment on the proposed rule for 45 days following publication in the State Register.

Job Impact Statement

The Department finds that this amendment should have no impact on jobs and employment opportunities. This amendment prescribes minimum and maximum rates for discounting guaranteed benefit cashflows to ensure that prudent levels of reserves are maintained by life insurers. The amendment also changes the filing due date of the actuarial memorandum that life insurers are required to file with the Department, pursuant to section 97.6 of this rule, from March 1 to March 15. Insurers should not need to hire additional employees or independent contractors to comply with these new standards.

Department of Health

NOTICE OF ADOPTION

Presumptive Eligibility for Family Planning Benefit Program

I.D. No. HLT-51-13-00004-A

Filing No. 283

Filing Date: 2014-04-08

Effective Date: 2014-04-23

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

Action taken: Amendment of section 360-3.7 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 363-a

Subject: Presumptive Eligibility for Family Planning Benefit Program.

Purpose: To set criteria for the Presumptive Eligibility for Family Planning Benefit Program.

Text or summary was published in the December 18, 2013 issue of the Register, I.D. No. HLT-51-13-00004-P.

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

Revised Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State’s medical assistance (“Medicaid”) program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State’s Medicaid program.

Legislative Objectives:

Chapter 59 of the Laws of 2011 amended the Social Services Law to authorize the Commissioner of Health to establish criteria for presumptive eligibility for the Family Planning Benefit Program. The legislative objective is to expand access to family planning services by easing the application process.

Needs and Benefits:

New York included in Chapter 59 of the Laws of 2011, the option afforded by the federal Medicaid statute, of providing individuals with a period of presumptive eligibility for family planning-only services. This regulation will provide the necessary criteria to implement presumptive eligibility for the Family Planning Benefit Program.

COSTS:

Costs for the Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

This amendment will not increase costs to the regulated parties.

Costs to State and Local Government:

This amendment will not increase costs to the State or local governments.

Costs to the Department of Health:

Any costs associated with this amendment will be offset by administrative savings.

Local Government Mandates:

This amendment will not impose any program, service, duty, additional cost, or responsibility on any county, city, town, village, school district, fire district, or other special district.

Paperwork:

Any provider choosing to act as a “qualified provider” will be required to notify the local social services district when a presumptive eligibility determination has been made.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

Establishing criteria for presumptive eligibility for the Family Planning Benefit Program was expressly authorized by Chapter 59 of the Laws of 2011. Processing through a statewide vendor was chosen over processing through local districts to centralize administration of eligibility determinations.

Federal Standards:

Section 1920C of the Social Security Act gives States that adopt the new family planning group the option of also providing a period of presumptive eligibility based on preliminary information that an individual meets the applicable eligibility.

Compliance Schedule:

Social services districts should be able to comply with the proposed regulations when they become effective.

Assessment of Public Comment

The agency received no public comment.

Proposed Action: Amendment of sections 11.1(d), 11.14(a), 11.15; repeal of sections 11.7, 11.13(a)(6) and 11.16 of Title 13 NYCRR.

Statutory authority: General Business Law, section 359, art. 23-A

Subject: Registration and conduct of investment advisors.

Purpose: To provide investors with information to reduce possibility of fraud; clarify current rules; and conform them with Federal law.

Text of proposed rule: Section 11.1(d) of title 13 is amended to read as follows:

(d) Designation. The Attorney General may by regulation, rule or order designate the web-based Investment Adviser Registration Depository (“IARD”) operated by [NASD] FINRA to receive and store filings and collect related fees from the investment advisers on behalf of the Attorney General.

Section 11.14(a) of title 13 is amended to read as follows:

(a) Financial statements of an investment adviser shall be prepared in accordance with generally accepted accounting principles including reserves or liabilities for unfulfilled subscriptions. Where financial statements are unaudited by an independent public accountant, a certification by management is required attesting to the accuracy of such statements. *Nothing in this regulation shall abrogate the requirement, set forth in Form ADV: Part 2A, Item 18 A.1., that investment advisers charging certain fees six months or more in advance must submit audited financial statements.*

Section 11.15 of title 13 is amended to read as follows:

Distribution of investment adviser statement. Each [New York client of an] investment adviser registered in the State of New York *must:*

(a) *deliver to a client or prospective client* [shall annually be sent a statement indicating that New York State clients may obtain from the investment adviser] either a copy of the investment adviser statement Form ADV, or a [publication] *brochure* containing all of the information set forth therein[.Such documentation must be furnished to clients who request it in writing within seven (7) days of the receipt of the request. A charge may be made for such copy.], *before or at the time of entering into an investment advisory contract with that client; and*

(b) *deliver to each client, annually within 120 days after the end of the fiscal year of such adviser, and without charge, if there are material changes in such statement or brochure since any annual updating amendment:*

(i) *a current statement or brochure, or*

(ii) *the summary of material changes to any statement or brochure as required by Item 2 of Form ADV, Part 2A that offers to provide your current brochure without charge, accompanied by the Web site address (if available) and an e-mail address (if available) and telephone number by which a client may obtain the current statement or brochure from you, and the Web site address for obtaining information about you through the Investment Adviser Public Disclosure (IAPD) system.*

Sections 11.7(a), 11.13(a)(6) and 11.16 of title 13 are hereby repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Gregory Krakower, Department of Law, 120 Broadway, New York, NY 12071, (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.

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

Regulatory Impact Statement

1. Statutory Authority. Section 359-eee of the General Business Law requires investment advisers to register with the Attorney General. Section 359-eee grants the Attorney General authority to promulgate rules and regulations governing the registration of investment advisers. See, e.g., General Business Law section 359-eee(2)(B), (4)(B), (5), (6), (9), (10).

2. Legislative Objectives. The objectives of the rule are to: (1) ensure that all investors are provided with information to reduce the possibility of fraud and to empower them to make sound decisions in connection with doing business with an investment adviser; (2) clarify current rules; and (3) update current rules that have become outdated or moot because of changes to federal law or other reasons.

3. Needs and Benefits. Clients and prospective clients of investment advisers need to be provided with, or have access to, certain information about an investment adviser’s business to better enable them to make sound investment decisions and to reduce the risk that they will be victimized by fraud. The proposed rule will further these objectives by increasing the amount of information that must be delivered to clients of certain investment advisers, and by clarifying current rules to improve the financial statements that certain investment advisers must file when they register with the Attorney General. Specifically, the rule does the following:

Department of Law

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Registration and Conduct of Investment Advisors

I.D. No. LAW-16-14-00008-P

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

(a) Requires investment advisers that register with the Attorney General to deliver a statement or brochure describing their business to clients and prospective clients, along with any material changes to those statements or brochures. This requirement fills in the gap created by the current interaction of federal and state law whereby investment advisers with over \$25 million of assets under management have to deliver (as opposed to offer to deliver) such statements and brochures, but those with less than \$25 million of assets under management only have to offer to deliver such statements and brochures. The gap is created because federal law mandates that all investment advisers registered with the Securities and Exchange Commission (SEC) actually deliver such statements and brochures to clients and prospective clients, but it does not require New York investment advisers with less than \$25 million of assets under management to register with the SEC. New York rules, meanwhile, require investment advisers with less than \$25 million of assets under management to register with the Attorney General but only requires them to offer to deliver the statements and brochures. Accordingly, the proposed rule will result in investment advisers with less than \$25 million of assets under management having to deliver (as opposed to merely offer to deliver) such statements and brochures to their clients and prospective clients;

(b) Clarifies existing requirements that registered investment advisers who charge fees in advance must provide audited financial statements (as opposed to unaudited financial statements) when they register with the Attorney General; and

(c) Updates current rules that have become outdated or moot by deleting references to registration exemption requirements that no longer exist, expired provisions, and a regulatory organization that no longer exists. The proposed rule will eliminate confusion that may be caused by the outdated provisions.

4. Costs. (A) The rule will result in costs on investment advisers with less than \$25 million of assets under management by requiring them to deliver (as opposed to offer to deliver) a statement or brochure describing their business to prospective clients and any material changes to those statements or brochures, and preventing them from charging a specific fee for such delivery. Accordingly, such investment advisers might have to bear additional costs of delivering additional statements and brochures because of the rule. However, while the rule prevents covered investment advisers from charging a specific fee for delivering such brochures, it does not prevent them from passing on the costs to their clients through increased fees. (B) Although current rules clearly require investment advisers that charge fees six months or more in advance to provide audited statements when they register with the Attorney General by using Form ADV, see 13 N.Y.C.R.R. § 11.4, there may be some confusion as to whether language in 13 N.Y.C.R.R. § 11.14 contradicts this requirement by referencing unaudited financial statements. The proposed rule simply clarifies that investment advisers who charge fees six months or more in advance from their clients must provide audited financial statements. The rule may result in some registered investment advisers bearing additional costs of providing audited financial statements with their registration, although the rule does not impose any additional requirement that results in such costs: those affected will merely be formerly non-compliant regulated advisers brought into compliance with the rule. (C) There will be no additional costs imposed on any state agency because of the rule.

5. Paperwork. The rule will require investment advisers with less than \$25 million dollars of assets under management to create and deliver additional statements and brochures to their clients and prospective clients.

6. Local Government Mandates. None.

7. Duplications. Federal law requires New York investment advisers doing business in New York with over \$25 million of assets under management to register with the SEC and notice file in New York. New York law requires New York investment advisers with less than \$25 million of assets under management to register with the Attorney General. The provision of the proposed rule requiring that investment advisers registered with the Attorney General actually deliver (as opposed to offer to deliver) brochures and statements to clients and prospective clients conforms with federal rules regarding investment advisers registered with the SEC. The rule thus creates a single uniform standard for all investment advisers with respect to such deliveries, regardless of whether they are registered with the Attorney General, the SEC, or both agencies.

8. Alternatives. The Attorney General considered keeping the current rules in respect to the delivery of statements and brochures for investment advisers with less than \$5 million of assets under management to avoid imposing any added costs on relatively small investment advisers. However, this alternative was rejected because it would result in New York investors who were clients or prospective clients of such advisers not having necessary information to make sound investment choices, and being more vulnerable to fraud.

9. Federal Standards. The proposed rule adopts the federal standards with respect to investment advisers registered with the SEC by requiring them to deliver (as opposed to offer to deliver) a statement or brochure

describing their business to prospective clients and any material changes to those statements or brochures, and preventing them from charging a specific fee for such delivery. The proposed rule thus creates a single uniform standard for all investment advisers with respect to such deliveries, regardless of whether they are registered with the Attorney General, the SEC, or both agencies. The proposed rule also eliminates an exception to when an investment adviser must register with the Attorney General that is based on a provision of federal law addressing so-called "private advisers" that no longer exists, thus conforming OAG regulations with federal law in this regard.

10. Compliance Schedule. Regulated persons should be able to comply with this rule immediately.

Regulatory Flexibility Analysis

1. Effect of rule on small businesses and local governments: (A) Small businesses. The rule is expected to apply to approximately 1,234 investment advisers. Some, but not all, of these investment advisers will be small businesses or employed by small businesses. (B) Local governments. By virtue of its subject matter, the rule does not apply to local governments.

2. Compliance requirements: The rule will result in a small amount of paperwork to small businesses that are New York investment advisers with less than \$25 million of assets under management and registered with the Attorney General. Such businesses will be required to deliver (as opposed to merely offer to deliver) a statement or brochure describing their business to prospective clients and any material changes to those statements or brochures, and prevents them from charging a specific fee for such delivery. Accordingly, such investment advisers might have to engage in additional reporting requirements as a result of delivering additional statements and brochures.

3. Compliance costs: (A) The rule may result in some costs to small businesses that are investment advisers with less than \$25 million of assets under management and registered with the Attorney General. Such small businesses will be required to deliver (as opposed to merely offer to deliver) a statement or brochure describing their business to prospective clients and any material changes to those statements or brochures, and preventing them from charging a specific fee for such delivery. Accordingly, such investment advisers might have to bear additional costs of delivering additional statements and brochures because of the rule. However, while the rule prevents covered investment advisers from charging a specific fee for such delivery, it does not prevent businesses from passing on the costs to clients through increased fees. Since investment advisers under current rules have to deliver such statements and brochures to clients upon request, the rule is not expected to require small businesses to have to use additional professional services in order to comply with the rule. (B) Although current rules clearly require investment advisers that charge certain fees six months or more in advance to provide audited statements when they register with the Attorney General by using Form ADV, see 13 N.Y.C.R.R. § 11.4, there may be some confusion as to whether language in 13 N.Y.C.R.R. § 11.14 contradicts this requirement by referencing unaudited financial statements. The proposed rule clarifies that investment advisers who charge fees six months or more in advance from their clients or more must provide audited financial statements. Accordingly, the rule may result in some registered investment advisers that are small businesses bearing additional costs of providing audited financial statements with their registration, although the rule does not impose any additional requirement that results in such costs: those affected will merely be formerly non-compliant regulated advisers brought into compliance with the rule.

4. Feasibility of compliance: Small businesses that are covered by the rule will easily be able to comply with the rule. The costs and additional paperwork required by the rule are small. Furthermore, current law already mandates that businesses covered by the rule offer to deliver such statements and brochures to clients and prospective clients, and deliver them upon request. Accordingly, small businesses covered by the rule are expected to have little trouble complying with the rule.

5. Minimizing adverse impact: The rule will not have a significant adverse impact on small businesses or local governments. The Department of Law minimized any impact on such businesses by refraining from requiring them to include any information in their reports or brochures that is not currently required to be included under current law. Indeed, small business and local governments will benefit from the rule if they contract with an investment adviser covered by the rule because the adviser will be required to deliver investment statements and brochures as opposed to just offer to deliver them.

6. Economic and technological feasibility: The rule imposes no additional technological requirements on small businesses.

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, the Chamber of Commerce, the

New York State Business Counsel, and the Business Law Section of the New York Bar Association. A copy of the proposed rules will also be posted on the web site of the Attorney General.

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 is expected to apply to approximately 1,234 New York investment advisers. Some, but not all, all of these investment advisers will be small businesses, or employed by small businesses, and a small portion of these may be located in rural areas.

2. Compliance requirements. The rule will result in a small amount of paperwork to those small businesses in rural areas that are New York investment advisers with less than \$25 million of assets under management and registered with the Attorney General. Such businesses will be required to deliver (as opposed to merely offer to deliver) a statement or brochure describing their business to prospective clients and any material changes to those statements or brochures, and prevented them from charging a specific fee for such delivery. Accordingly, such investment advisers might have to engage in additional reporting requirements as a result of delivering additional statements and brochures. Since investment advisers under current rules have to deliver such statements and brochures to clients upon request, the rule is not expected to require small businesses in rural areas to have to use additional professional services in order to comply with the rule.

3. Compliance costs. (A) The rule may result in some costs to investment advisers in rural areas with less than \$25 million of assets under management and registered with the Attorney General. Such small businesses will be required to deliver (as opposed to merely offer to deliver) a statement or brochure describing their business to prospective clients and any material changes to those statements or brochures, and preventing them from charging a specific fee for such delivery. Accordingly, such investment advisers might have to bear additional costs of delivering additional statements and brochures because of the rule. However, while the rule prevents such investment advisers from charging a specific fee for such delivery, it does not prevent businesses from passing on the costs to its clients through increased fees. (B) Although current rules clearly require investment advisers that charge certain fees six months or more in advance to provide audited statements when they register with the Attorney General by using Form ADV, see 13 N.Y.C.R.R. § 11.4, there may be some confusion as to whether language in 13 N.Y.C.R.R. § 11.14 contradicts this requirement by referencing unaudited financial statements. The proposed rule clarifies that investment advisers who charge fees six months or more in advance from their clients must provide audited financial statements. Accordingly, the rule may result in some registered investment advisers that are located in rural areas bearing additional costs of providing audited financial statements with their registration, although the rule does not impose any additional requirement that results in such costs: those affected will merely be formerly non-compliant regulated advisers brought into compliance with the rule.

4. Minimizing adverse impact. The rule will not specifically impact rural areas in any way, and relatively few investment advisers located in rural areas will be affected by the rule. The Department of Law minimized any impact on any covered businesses in rural areas by refraining from requiring them to include any information in their reports or brochures that is not currently required to be included under current law. Indeed, businesses and investors in rural areas will benefit from the rule when they contract with an investment adviser covered by the rule because the adviser will be required to deliver investment statements and brochures as opposed to just offer to deliver them.

5. Rural participation. In order to ensure that interested parties in rural areas have an opportunity to participate in the rule making process, a copy of the proposed rule will be given to the New York State Business Counsel and the Business Law Section of the New York Bar Association. A copy of the rule will be posted on the Attorney General's website.

Department of Motor Vehicles

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Temporary License Plates

I.D. No. MTV-16-14-00004-EP

Filing No. 272

Filing Date: 2014-04-03

Effective Date: 2014-04-03

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

Proposed Action: Amendment of section 21.2 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 404(3)

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: It is necessary to adopt this amendment on an emergency basis, to protect the health, safety and general welfare of the citizens of New York State, effective immediately upon filing with the Department of State.

This amendment is adopted as an emergency measure to authorize the issuance of a temporary plate to vehicles registered to State agencies or to political subdivisions. On April 3, 2014, the Department of Motor Vehicles will institute a new process for the manufacture of State and political subdivision license plates that will, in part, enhance law enforcement's ability to identify State and official vehicles used for emergency management purposes.

This rule permits the Commissioner to authorize the issuance of a temporary plate for use by State agencies and political subdivisions while the permanent plate is manufactured. An integral part of the new plate manufacturing process is to clearly identify Emergency Management (EM) designated vehicles that are used during emergency situations. The Department of Homeland Security and Emergency Services has established the criteria governing eligibility to receive an Emergency Management (EM) indicator on the new style license plate. The purpose of the EM indicator is to ensure that local government and State agency personnel who serve a critical role in emergency response and management (as outline in Executive Law, Article 2B) have access to incident locations as well as reserved assets such as emergency fuel supplies. Although most first responder vehicles are clearly identifiable, this program ensures that official vehicles not clearly marked for emergency purposes are appropriately identified.

The new manufacturing process requires that the new plates be produced after the registration application is received, therefore requiring the issuance of a temporary plate for use pending the production of the permanent plate.

Subject: Temporary License Plates.

Purpose: To permit the issuance of Emergency plates to State and Local Governments.

Text of emergency/proposed rule: A new subdivision (c) is added to section 21.2 to read as follows:

(c) *New or replaced official registration plates(s). A motorist operating a motor vehicle registered by any political subdivision or state agency eligible for official registration plates may operate or park the motor vehicle or trailer upon the public highways after the subdivision or agency has applied for, or is waiting for the issuance of, an original or duplicate plate(s), if the motorist places a temporary substitute plate issued by the Department of Motor Vehicles in the rear window, and provided all the requirements of section 21.5 of this Part are met. Such motorist must be able to produce the registration document issued at the time of registration. Temporary substitute plates shall be valid for a period not to exceed 30 days from the date issued.*

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 July 1, 2014.

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

Data, views or arguments may be submitted to: Ida L. Traschen, Depart-

ment of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: ida.traschen@dmv.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. Section 404(3) of the VTL provides that the Commissioner may issue plates for the identification of State and municipal vehicles and that such plates are exempt from the payment of fees.

2. Legislative objectives: Section 404(3) of the VTL authorizes the Commissioner to issue "official" plates to State agencies and local governments. The Department of Motor Vehicles is initiating a new program whereby the Department will issue "Emergency Management" (EM) official plates to State agencies and political subdivisions. Although most first responder vehicles are clearly identifiable, this program ensures that official vehicles not clearly marked for emergency purposes are appropriately identified.

The new manufacturing process requires that the new plates be produced after the registration application is received, therefore requiring the issuance of a temporary plate for use pending the production of the permanent plate. Therefore, this rule is necessary to comply with the legislative objective of issuing official plates in an effective manner.

3. Needs and benefits: The proposed rule would permit the Commissioner to authorize the issuance of a temporary plate for use by State agencies or political subdivisions while the permanent plate is being manufactured.

Currently, the Commissioner issues license plates, which have no expiration date and which are fee exempt, to State agencies and political subdivisions. Such plates are stocked in Department of Motor Vehicles' issuing offices and are issued randomly as registration applications are submitted.

Effective April 3, 2014, the Commissioner will issue a limited number of plates to clearly identify Emergency Management (EM) designated vehicles for use during an emergency situation. The Department of Homeland Security and Emergency Services has established the criteria governing eligibility to receive an Emergency Management (EM) license plate. The purpose of the EM plate is to ensure that local government and State agency personnel who serve a critical role in emergency response and management (as outlined in Executive Law, Article 2B) have access to incident locations as well as reserved assets such as emergency fuel supplies. Although most first responder vehicles are clearly identifiable, this program ensures that official vehicles not clearly marked for emergency purposes are appropriately identified.

The new manufacturing process requires that the new plates be produced after the registration application is received, therefore requiring the issuance of a temporary plate for use pending the production of the permanent plate.

4. Costs: a. Cost to regulated parties and customers: There is no cost to regulated parties or customers.

b. Costs to the agency and local governments: There is no cost to local governments because there is no charge for the license plates. The cost to the State for producing the EM plate is nominal.

5. Local government mandates: The DMV is notifying all political subdivisions of their eligibility for the EM plates. The political subdivisions have the option to apply for such plates, but such plates are not mandatory.

6. Paperwork: If a political subdivision wishes to obtain the EM plates, it will need to submit only one application for all of its EM vehicles.

7. Duplication: This proposal does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: The EM plate initiative is part of a broader Governor's Office emergency management program and the Department consulted with the Department of Homeland Security and Emergency Services on the implementation of the initiative. The Department did not consider other alternatives. A no action alternative was not considered.

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

10. Compliance schedule: The Department believes all affected parties will be able to achieve compliance immediately.

Regulatory Flexibility Analysis

1. Effect of rule: The proposed rule would have no effect on small business. This proposed rule would affect approximately 1,550 local governments.

2. Compliance requirements: The DMV is notifying all political

subdivisions of their eligibility for the EM plates. The political subdivisions have the option to apply for such plates, but such plates are not mandatory. If a political subdivision wishes to obtain the EM plates, it will need to submit only one application for all of its EM vehicles.

3. Professional services: This regulation would not require local governments to obtain professional services.

4. Compliance costs: There would be no compliance costs for local governments. The Department of Motor Vehicles issues official plates for no fee.

5. Economic and technological feasibility: The proposed rule imposes no economic burden on local governments because official plates are issued for no fee, and there are no technological requirements resulting from this rule.

6. Minimizing adverse impact: This proposal has no adverse impact on local governments because official plates are issued for no fee.

7. Small business and local government participation: Because of the sensitive nature of the emergency management program, the Department did not consult with local governments.

Rural Area Flexibility Analysis

A RAFA is not attached because this rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Dealer Plate Program

I.D. No. MTV-16-14-00005-P

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

Proposed Action: This is a consensus rule making to amend section 78.23(a) of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 420-a

Subject: Dealer Plate Program.

Purpose: Waives one year waiting period for new dealers to enter the Dealer Plate Issuance Program.

Text of proposed rule: Subdivision (a) of section 78.23 is amended to read as follows:

(a) Eligibility of dealers. Any dealer who has been a registered retail dealer in *New York State or any other state* for at least one year may make application to the Commissioner on a form provided by the Commissioner for authorization to issue temporary registrations pursuant to Section 420-a of the Vehicle and Traffic Law. The Commissioner may waive the one year waiting period for a dealer adding another dealership [or for a new dealer] if the person or persons operating the business have a history of satisfactory participation in the dealer issued plate program within the last five years or for a newly licensed dealer who sells new vehicles.

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

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

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

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

Consensus Rule Making Determination

The Department of Motor Vehicles' Dealer Plate Program allows auto dealers to stock and distribute license plates from their business locations. By contrast, when a customer buys a vehicle from a dealer that is not in the Dealer Plate Program, a license plate must be obtained from a local DMV office before the buyer can drive the vehicle off the lot. This can be done, for example, using a "runner" working for the dealership. Thus, the Dealer Plate Program is of great convenience for both dealerships and vehicle purchasers."

This amendment would make franchised new car dealers eligible to enter into the Dealer Plate Issuance Program immediately upon being licensed in New York and eliminate the current one year in business requirement for new car dealers. The amendment would also clarify that

the applicant otherwise must have been a registered retail dealer, in NYS or any other state, for at least one year.

By eliminating the one year waiting period, this proposal would be beneficial to both franchised new car dealers and their customers, because these dealers would be able to assign plates and issue temporary registrations for their customers on site as opposed to having to wait to deliver applications to a motor vehicle office for processing and assignment of plates, thus making it possible for virtually immediate delivery of vehicles to their customers.

Job Impact Statement

A JIS is not submitted because this rule will have no adverse impact on job creation or job development in New York State.

Office of Parks, Recreation and Historic Preservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Vehicle Use Fees at OPRHP Facilities

I.D. No. PKR-16-14-00007-P

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

Proposed Action: Addition of section 381.10 to Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, sections 3.09(8), 13.15, 13.16, 13.18 and 13.20

Subject: Vehicle use fees at OPRHP facilities.

Purpose: To establish 3-year, 5-year and lifetime vehicle use passes in regulation.

Text of proposed rule: A new section 381.10 is added to part 381 of 9 NYCRR as follows:

Section 381.10 Multi-year vehicle use passes to state parks and historic sites

(a) *The following multi-year vehicle use passes are established:*

(1) *Three-year passes allowing free vehicle use: \$165;*

(2) *Five-year passes allowing free vehicle use: \$260; and*

(3) *Lifetime passes allowing free vehicle use for the lifetime of the purchasing individual: \$750.*

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Associate Attorney, Office of Parks, Recreation and Historic Preservation, Albany, NY 12238 (USPS), 625 Broadway, Albany, NY 12207 (courier delivery), (518) 486-2921, email: rule.making@parks.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

Statutory authority: Sections 3.09, 13.15, 13.16, 13.18 and 13.20 of the Parks, Recreation and Historic Preservation Law provide the statutory authority for the rule.

Section 3.09(8) authorizes the Office of Parks, Recreation and Historic Preservation (State Parks) to “[a]dopt, amend or rescind such rules, regulations and orders as may be necessary or convenient for the performance or exercise of the functions, powers and duties of the office.”

Section 13.15(1) and (3) authorize State Parks to establish fees or other charges for the use of state parks, parkways, recreational facilities, and historic sites, and to decrease fees with the approval of the director of budget.

Section 13.16 authorizes State Parks to establish an annual vehicle access fee (commonly known as a “vehicle use fee”) running from April 1 through March 31 that is approved by the director of the budget.

Section 13.18 authorizes State Parks to establish a 3-year vehicle use fee that is approved by the director of the budget.

Section 13.20 authorizes State Parks to establish a 5-year vehicle use fee that is approved by the director of the budget.

Legislative objectives: This rulemaking is consistent with the Legislature’s objective in providing broad authority to State Parks to establish fees and other charges for the use of state parks and historic sites, and with recent legislation directing State Parks to establish 3-year and 5-year vehicle use fees. This rule would allow State Parks to provide patrons the op-

tion of purchasing an annual, 3-year, 5-year or Lifetime vehicle use pass, currently known as an Empire Passport (Passport) in lieu of paying a daily parking use fee each time they visit a state park, day use area, or historic site that charges such a fee.

Needs and benefits: Creating multi-year Passports provides several benefits to consumers, including: a) providing a convenient option for people who regularly visit state parks and want to avoid the need to pay the daily vehicle use fee; and b) providing a discount for the purchase of multi-year Passports. Moreover, establishment of the Lifetime Passport provides a mechanism for individuals to demonstrate their support for New York’s diverse and unique parks system. All revenues from Passport sales are used by State Parks to support State Parks’ facility operations and maintenance costs.

The establishment of Lifetime, 3-year, and 5-year Passports creates no new cost for New York residents or visitors. Consumers who are not interested in purchasing a multi-year Passport will continue to have the option of paying the daily vehicle use fee every time they visit a state park, day use area or historic site that charges such a fee, or purchasing a 1-year Passport.

Costs: (a) Costs to purchasers and rationale for pricing.

The daily vehicle use fee ranges from \$6 to \$10 per vehicle for parking at state parks, DEC day use areas, and historic sites. Alternatively, patrons may purchase a 1-year, 3-year, 5-year, or Lifetime Passport that applies for the respective timeframes.

The 1-year Passport costs \$65; the 3-year costs \$165; and the 5-year costs \$260. The 1-year Passport has been available for several decades and State Parks sells approximately 85,000 1-year Passports annually. State legislation was enacted in 2012 directing State Parks to offer 3-year and 5-year Passports. They were first made available for sale in the spring of 2013 on a pilot basis.

The proposed rule: a) establishes the 3-year and 5-year Passports and fees in regulation; and b) introduces a new Lifetime Passport option.

The following issues were considered in setting the prices:

1. Existing 1-year, 3-year and 5-year Passports. Daily vehicle use fees range from \$6 to \$10 per vehicle, depending on the types of amenities offered at each facility. The cost of the 1-year Passport (\$65) is approximately eight times the \$8 mid-point cost of the daily vehicle use fee. The 3- and 5-year Passports are priced at a discount to purchasing annual Passports for the same periods. The 3-year Passport costs \$165, which is a 15 percent discount, equaling a \$29 savings compared to purchasing three 1-year Passports. The 5-year Passport costs \$260, which is a 20 percent discount, equaling a \$65 savings compared to purchasing five 1-year Passports.

2. Lifetime Passport. State Parks has determined that a Lifetime Passport should be priced at approximately three times the cost of the 5-year Passport, which equates to \$750 ($\$260 \times 2.9 = \750). The agency has concluded that \$750 is an appropriate cost given the long term benefit provided by the pass. The \$750 cost, which is approximately 11.5 times the \$65 cost of a 1-year Passport, is consistent with the multipliers New York State has established for the cost of lifetime hunting, fishing, and sportsmen licenses, which provide a similar type of long term outdoor recreation benefit.

(b) Costs to agency including best estimate for revenue analysis and information and methodology for estimates.

Creation and sale of the Lifetime, 3-year, and 5-year Passports create no new administrative costs for State Parks.

Relevant facts considered in State Parks’ revenue estimates for the proposed rule:

1. State Parks currently sells approximately 85,000 1-year Passports annually. The agency estimates that 2 percent of Passport holders will opt each year to purchase a multi-year Passport rather than continuing to purchase an annual Passport. This would equate to the sale of approximately 1,700 multi-year Passports each year.

2. Assuming 1,700 Passports are sold each year, with sales distributed among Lifetime, 3-year, and 5-year Passports, this initiative is projected to generate roughly \$340,000 annual revenue to support the operation and maintenance of state parks and historic sites. The agency anticipates ongoing interest in multi-year Passports by park visitors and supporters, meaning this program should create a recurring source of new revenue for State Parks.

3. State Parks will undertake marketing efforts to promote the availability of Lifetime, 3-Year, and 5-Year Passports. Outreach efforts could result in sales above the current projection of 1,700 multi-year Passports annually.

Local government mandates: This rule would impose no program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

Paperwork: This rule would impose no reporting or other paperwork requirements. Individuals wishing to purchase a multi-year or Lifetime Passport would be provided with a variety of purchase options, including on-line sales, telephone sales, and mailing of paper forms.

Duplication: This rule would not duplicate any other state or federal legal requirements.

Alternatives: While other fee schedules may have also been appropriate, as discussed above under Costs, State Parks considered what would be the most appropriate discounted fee schedule for multi-year and Lifetime passes based on the existing fees for the daily vehicle use fee. No consumer is required to pay these fees, as the purchase of a multi-year or Lifetime Passport is optional.

Federal standards: There are no federal standards applicable to this rule.

Compliance schedule: Since parks visitors are not required to purchase the multi-year or Lifetime Passports there is no compliance period associated with this rule. Parks visitors continue to have the options of paying the daily vehicle use fee or purchasing the 1-year Passport. The rule would take effect immediately on publication of the Notice of Adoption in the State Register and the Passports would be available for the use by the public for the 2014 park operating season (individual parks begin charging vehicle use fees in April and May).

Regulatory Flexibility Analysis

The proposed rule adds a new Section 381.10 to 9 NYCRR that authorizes the Office of Parks, Recreation and Historic Preservation (OPRHP) to provide 3-year, 5-year and lifetime vehicle use passes for parking at OPRHP facilities. The rule involves internal operation and management and, therefore, will not affect small businesses or local governments or recordkeeping requirements.

Rural Area Flexibility Analysis

The proposed rule adds a new Section 381.10 to 9 NYCRR that authorizes the Office of Parks, Recreation and Historic Preservation (OPRHP) to provide 3-year, 5-year and lifetime vehicle use passes for parking at OPRHP. The rule involves internal operation and management and, therefore, will not affect small businesses or local governments or recordkeeping requirements.

Job Impact Statement

The proposed rule at 9 NYCRR Section 381.10 authorizes fees for 3-year, 5-year and lifetime vehicle passes to use the Office of Parks, Recreation and Historic Preservation's parking facilities. It involves operation and management and would not affect jobs or employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Authorizing Central Hudson to Defer Incremental Expenses Related to Tropical Storm Sandy

I.D. No. PSC-11-13-00014-A

Filing Date: 2014-04-02

Effective Date: 2014-04-02

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

Action taken: On 3/27/14, the PSC adopted an order authorizing Central Hudson Gas & Electric Corporation (Central Hudson) to defer incremental electric storm restoration expenses related to Tropical Storm Sandy.

Statutory authority: Public Service Law, section 66(9)

Subject: Authorizing Central Hudson to defer incremental expenses related to Tropical Storm Sandy.

Purpose: To authorize Central Hudson to defer incremental expenses related to Tropical Storm Sandy.

Substance of final rule: The Commission, on March 27, 2014, adopted an order authorizing Central Hudson Gas & Electric Corporation to defer \$9,965,836 of incremental electric storm restoration expenses related to Tropical Storm Sandy on October 29, 2012, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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.

(13-E-0048SA1)

NOTICE OF ADOPTION

Approval of Petition of 93 Worth, LLC to Submeter Electricity at 93 Worth Street, New York, NY

I.D. No. PSC-50-13-00007-A

Filing Date: 2014-04-03

Effective Date: 2014-04-03

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

Action taken: On 3/27/14, the PSC adopted an order approving the petition of 93 Worth, LLC to submeter electricity at 93 Worth Street, New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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: Approval of petition of 93 Worth, LLC to submeter electricity at 93 Worth Street, New York, NY.

Purpose: To approve the petition of 93 Worth, LLC to submeter electricity at 93 Worth Street, New York, NY.

Substance of final rule: The Commission, on March 27, 2014, adopted an order approving the petition of 93 Worth, LLC to submeter electricity at 93 Worth Street, New York, NY, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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.

(13-E-0508SA1)

NOTICE OF ADOPTION

Approval of Petition of Riverview Commons I, LLC to Submeter Electricity at 168-176 North Water Street, Rochester

I.D. No. PSC-52-13-00011-A

Filing Date: 2014-04-03

Effective Date: 2014-04-03

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

Action taken: On 3/27/14, the PSC adopted an order approving the petition of Riverview Commons I, LLC to submeter electricity at 168-176 North Water Street, Rochester, NY, located in the territory of Rochester Gas and Electric Corporation.

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: Approval of petition of Riverview Commons I, LLC to submeter electricity at 168-176 North Water Street, Rochester.

Purpose: To approve the petition of Riverview Commons I, LLC to submeter electricity at 168-176 North Water Street, Rochester.

Substance of final rule: The Commission, on March 27, 2014, adopted an order approving the petition of Riverview Commons I, LLC to submeter electricity at 168-176 North Water Street, Rochester, NY, located in the territory of Rochester Gas and Electric Corporation, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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.
(13-E-0522SA1)

NOTICE OF ADOPTION**Approving a Waiver of 16 NYCRR Sections 894.1 Through 894.4**

I.D. No. PSC-01-14-00021-A

Filing Date: 2014-04-04

Effective Date: 2014-04-04

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

Action taken: On 3/27/14, the PSC adopted an order approving the petition of the Town of Long Lake to waive 16 NYCRR, sections 894.1 through 894.4 pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Approving a waiver of 16 NYCRR sections 894.1 through 894.4.

Purpose: To approve a waiver of 16 NYCRR sections 894.1 through 894.4.

Substance of final rule: The Commission, on March 27, 2014, adopted an order approving a petition of Town of Long Lake, Hamilton County to waive the requirements of sections 894.1, 894.2, 894.3 and 894.4 to expedite the franchising process, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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.
(13-V-0552SA1)

NOTICE OF ADOPTION**Approving a Waiver of 16 NYCRR Sections 894.1 Through 894.4**

I.D. No. PSC-02-14-00006-A

Filing Date: 2014-04-04

Effective Date: 2014-04-04

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

Action taken: On 3/27/14, the PSC adopted an order approving the petition of the Town of Hardenburgh to waive 16 NYCRR, sections 894.1 through 894.4 pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Approving a waiver of 16 NYCRR sections 894.1 through 894.4.

Purpose: To approve a waiver of 16 NYCRR sections 894.1 through 894.4.

Substance of final rule: The Commission, on March 27, 2014, adopted an order approving a petition of Town of Hardenburgh, Ulster County to waive the requirements of sections 894.1, 894.2, 894.3 and 894.4 to expedite the franchising process, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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.
(13-V-0576SA1)

NOTICE OF ADOPTION**Approval of the Emergency Action on a Permanent Basis**

I.D. No. PSC-05-14-00001-A

Filing Date: 2014-04-02

Effective Date: 2014-04-02

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

Action taken: On 3/27/14, the PSC adopted an order approving on a permanent basis, an emergency action clarifying the requirements of a prior order issued on 11/29/12.

Statutory authority: Public Service Law, sections 89-f and 110

Subject: Approval of the emergency action on a permanent basis.

Purpose: To approve the emergency action on a permanent basis.

Substance of final rule: The Commission, on March 27, 2014, adopted an order approving the emergency action on a permanent basis clarifying the requirements of a prior Order issued on November 29, 2012 to allow for the timely release of funds to be used for the reconstruction of the West Valley Crystal Water Company, Inc.'s water system, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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.
(11-W-0059EA1)

NOTICE OF ADOPTION**Approval of Petition of Two Cooper Square, LLC to Submeter Electricity at 37 East 4th Street, New York, NY**

I.D. No. PSC-05-14-00013-A

Filing Date: 2014-04-03

Effective Date: 2014-04-03

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

Action taken: On 3/27/14, the PSC adopted an order approving the petition of Two Cooper Square, LLC to submeter electricity at 37 East 4th Street, New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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: Approval of petition of Two Cooper Square, LLC to submeter electricity at 37 East 4th Street, New York, NY.

Purpose: To approve the petition of Two Cooper Square, LLC to submeter electricity at 37 East 4th Street, New York, NY.

Substance of final rule: The Commission, on March 27, 2014, adopted an order approving the petition of Two Cooper Square, LLC to submeter electricity at 37 East 4th Street, New York, NY, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

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.
(14-E-0005SA1)

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

Rider L — Direct Load Control Program (DLC)

I.D. No. PSC-16-14-00009-P

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

Proposed Action: The Commission is considering a tariff filing by Consolidated Edison Company of New York, Inc. to modify Rider L — Direct Load Control Program contained in P.S.C. No. 10 — Electricity.

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

Subject: Rider L — Direct Load Control Program (DLC).

Purpose: To allow customers participating in the DLC program to install and connect their own Control Devices.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. to modify Rider L — Direct Load Control Program contained in P.S.C. No. 10 — Electricity. The Company proposes to increase the number of customers participating in the DLC program by allowing customers to install and connect their own control devices and enroll in the DLC program through a company-approved Service Provider. The proposed filing has an effective date of July 1, 2014.

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.

(14-E-0121SP1)

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

Temporary Annual Assessment

I.D. No. PSC-16-14-00010-P

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

Proposed Action: The Commission is considering the implementation of Chapter 57 Part S of the Laws of 2014, reducing the amount of the surcharge to be collected pursuant to Public Service Law section 18-a(6).

Statutory authority: Public Service Law, sections 66(1), 80(1), (10), 89-c(1) and (10)

Subject: Temporary Annual Assessment.

Purpose: To implement reductions in the percentage of the assessment to be collected.

Substance of proposed rule: The Commission is considering the adoption of a rule implementing Chapter 57 Part S of the Laws of 2014 reducing the amount to be collected via the Temporary Annual Assessment, pursuant to Public Service Law § 18-a(6). That section imposes upon public utility companies an Assessment equal to two per centum of the utility's gross intrastate operating revenues, less the amount assessed to pay the costs and expenses of the Commission and the Department of Public Service, as a credit to the state general fund. The revenues subject to the Assessment include revenues derived from sales of electricity and natural gas commodities by third parties. The issues under consideration include how the Commission implement reductions in the amount to be collected via the Assessment, how a phase down of the assessment from two per centum to seventy three one hundredths of one per centum will be implemented, and how the Commission will determine the final collection date to be used by the utilities subject to the assessment.

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.

(09-M-0311SP7)

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

Service Classification No. 7—Seasonal Off-Peak Services

I.D. No. PSC-16-14-00011-P

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

Proposed Action: The Commission is considering a tariff filing by The Brooklyn Union Gas Company d/b/a National Grid NY to revise Service Classification No. 7 Seasonal Off-Peak Services contained in P.S.C. No. 12—Gas to become effective September 1, 2014.

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

Subject: Service Classification No. 7—Seasonal Off-Peak Services.

Purpose: To approve the removal of the gas service option during the winter months and related pricing provisions.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing submitted by The Brooklyn Union Gas Company d/b/a National Grid NY (the Company) to revise Service Classification No. 7—Seasonal Off-Peak Services contained in P.S.C. No. 12—Gas. The Company proposes to remove the offer of gas service from the winter months of December through March and related pricing provisions. The proposed filing has an effective date of September 1, 2014.

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.

(14-G-0119SP1)

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

Approval of the Transfer of Ownership and Operational Interests in the Danskammer Generation Facility

I.D. No. PSC-16-14-00012-P

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

Proposed Action: The Commission is considering a petition from Helios Power Capital LLC (Helios) and others requesting approval of the transfer of ownership and operational interests in the Danskammer Generation Facility located in Newburgh.

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

Subject: Approval of the transfer of ownership and operational interests in the Danskammer Generation Facility.

Purpose: Consideration of the transfer of ownership and operational interests the Danskammer Generation Facility.

Substance of proposed rule: The Public Service Commission is considering a petition filed on April 1, 2014 by Helios Power Capital, LLC (Helios), Danskammer Energy, LLC (Danskammer Energy) and Mercuria Energy America, Inc. (Mercuria) requesting authorization and approval under Public Service Law § 70 regulation for a transaction whereby Helios, as owner of the Danskammer Generation Facility (Facility) located in the Town of Newburgh, will sell and ground lease the Facility to Danskammer Energy and Mercuria will acquire a majority of the ownership interests in Danskammer Energy, for the purpose of returning the Facility to operation in conformance with lightened ratemaking regulation. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: 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.

(14-E-0117SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Main Tier of the RPS Program

I.D. No. PSC-16-14-00013-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 the request of Battenkill Hydro Associates to provide financial support for its hydroelectric facility in Greenwich, NY, under the ‘‘Maintenance Tier’’, in the Renewable Portfolio Standard (RPS) Program.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Main Tier of the RPS Program.

Purpose: To allocate funding from the Main Tier to an eligible hydroelectric facility.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, Staff’s recommendation to provide financial support, under the Renewable Portfolio Standard (RPS) Maintenance Tier, to Battenkill Hydro Associates for its 0.9MW hydroelectric facilities located in Greenwich, NY.¹

On October 3, 2013, Battenkill Hydro Associates submitted a filing to the Department of Public Service seeking a 10-year Maintenance Tier contract in the amount of \$17/MWh for a total of \$41,700 annually (based on an average annual generation level of 2,453 MWh) for its hydroelectric facilities located in Greenwich, NY.

By Order issued September 24, 2004, the Commission established a maintenance resource category as a subset of the Main Tier of the RPS program, to provide financial support to certain existing renewable resource energy facilities to remain financially viable and avoid attrition of baseline resources (Maintenance Tier). A later Order, issued April 14, 2005, established a process for a case-by-case review and analysis to determine the level of funding for a maintenance resource. A further Order, issued October 31, 2005, clarified that the level of support offered through the Maintenance Tier would at least be adequate to allow the facility to cover its future operating costs and any necessary future capital costs, but need not cover all sunk costs.

Department of Public Service Staff performed a comprehensive review of the filing of Battenkill Hydro Associates Power Company and recommends a level of support at \$2.80/MWh for the first 2,453 MWh of annual

generation up to \$6,855 annually. Staff also recommends the following conditions if the company were to accept the terms of support:

RPS-eligible Attributes:

In order to enter into an RPS Maintenance Tier contract with New York State Energy Research and Development Authority (NYSERDA), Battenkill Hydro Associates must possess, for the entire contract term, the rights to assign the RPS-eligible attributes to NYSERDA. The RPS-eligible attributes associated with the energy delivered under a PURPA contract, or purchase power agreement, and claimed by the party to that contract, are not eligible for RPS support. The definition of an RPS-eligible attributes will be subject to the contract executed with NYSERDA, but generally refers to any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the generation of the facility. One RPS-eligible attribute shall be created upon the generation of one MWh of production. RPS-eligible attributes generally include, but are not limited to any avoided emissions of pollutants to the air, soil or water and any set-aside allowances from emissions trading programs.

Contract Term:

The award will be offered for a term of 10-years. The contract term will become effective July 1, 2014 and expire on June 30, 2024.

Energy Deliverability:

Energy must be deliverable into a market controlled by the New York Independent Systems Operator.

RPS Production Incentive:

Battenkill Hydro Associates will be paid a fixed RPS production incentive of \$2.80/MWh, on up to 2,453 MWh per year, for energy actually delivered to the New York energy market in conformance with RPS Program requirements. Generation, in any year, in excess of 2,453 MWh will not be subject to a production incentive.

Contract Revision:

The New York Public Service Commission reserves the right to revise the term of this award, including the production incentive amount, if a review of the books and records of Battenkill Hydro Associates indicate that the level of support provided here is no longer necessary for the continued operation of the project.

¹ Battenkill Hydro Associates operates two hydro facilities in Greenwich NY. The capacity of the Upper Greenwich facility is 0.6 MW; the capacity of the Middle Greenwich facility is 0.3 MW.

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) 408-1978, 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.

(03-E-0188SP47)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Order NYSEG to Provide Gas Service to Customers When an Expanded CPCN Is Approved and Impose PSL 25-a Penalties

I.D. No. PSC-16-14-00014-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 will decide whether to require New York State Gas & Electric Corporation (NYSEG) to provide service to gas customers in the Town of Plattsburgh, New York upon approval of a town wide CPCN and whether Public Service Law section 25-a applies.

Statutory authority: Public Service Law, sections 65, 66 and 25-a

Subject: Whether to order NYSEG to provide gas service to customers

when an expanded CPCN is approved and impose Public Service Law section 25-a penalties.

Purpose: To order gas service to customers in the Town of Plattsburgh after approval of a town wide CPCN and to impose penalties.

Substance of proposed rule: The Public Service Commission is considering, when it acts on the Petition of New York State Electric & Gas Corporation for Authority to Exercise a Gas Franchise in the Town of Plattsburgh, whether or not to order NYSEG to provide service to customers in the areas within the newly adopted CPCN. The Commission will also consider whether to require NYSEG to comply with other provision of service and record-keeping requirements as allowed by law.

The Commission is also considering whether application of Public Service Law § 25 and 25-a is warranted due to NYSEG's provision of service to customers outside its current CPCN in the Town of Plattsburgh.

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-G-0499SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether Central Hudson Should be Permitted to Defer Obligations of the Order Issued on October 18, 2013 in Case 13-G-0336

I.D. No. PSC-16-14-00015-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 a petition filed on December 31, 2013, and supplemented on March 14, 2014, by Central Hudson regarding amendment of compliance filing requirements for the Athens Franchise Expansion Case 13-G-0336 from an Order.

Statutory authority: Public Service Law, section 68

Subject: Whether Central Hudson should be permitted to defer obligations of the Order issued on October 18, 2013 in Case 13-G-0336.

Purpose: Consideration of the petition by Central Hudson to defer reporting obligations of the October 18, 2013 Order in Case 13-G-0336.

Substance of proposed rule: The Public Service Commission is considering a petition filed on December 31, 2013, and supplemented on March 14, 2014 by Central Hudson Gas and Electric Corporation (Central Hudson) regarding amendment of compliance filing requirements for the Athens Franchise Expansion case 13-G-0336. Central Hudson is seeking to defer previous obligations specified by the Commission in the October 18, 2013 Order (the Order); which includes the submitting of specific requirements (detailed engineering, permitting, land surveying, coordination with the NYS Natural Heritage Program and the state Historic preservation Office and an Environmental Impact Statement). The petition also requests an extension of the 120-day deadline specified in the Order to include the April 21, 2014 filing, with that filing to address the results of the customer survey and calculations pertaining to the Commission's gas expansion revenues and Rate of Return criteria.

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-0336SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of Commission Regulations Governing Termination of Service

I.D. No. PSC-16-14-00016-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 a proposal by United Water New York Inc. for a waiver of the Commission's regulations (16 NYCRR) to allow it to terminate customer service in circumstances in addition to those provided for in 16 NYCRR 14.17.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-b(1) and 89-c(1)

Subject: Waiver of Commission regulations governing termination of service.

Purpose: Consider United Water New York Inc.'s proposal to expand termination of service provisions.

Substance of proposed rule: The Public Service Commission is considering the request of United Water New York, Inc. (UWNY) for a waiver of the Commission's regulations (16 NYCRR Part 14) to allow it to terminate water service to a customer where a customer 1) has more than three consecutive meter estimates and the customer has not responded to UWNY "no access" notifications, or 2) despite UWNY written notification, has not provided it with access to its equipment for R/F meter change outs due to testing regulations, faulty equipment or suspected tampering. The Commission may accept, reject or modify UWNY's proposal in whole or part.

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-W-0295SP2)

State University of New York

NOTICE OF ADOPTION

State University of New York Appointment of Employees

I.D. No. SUN-45-13-00001-A

Filing No. 270

Filing Date: 2014-04-03

Effective Date: 2014-04-23

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

Action taken: Amendment of sections 335.8(a)(1), (2) and 335.11(b) of Title 8 NYCRR.

Statutory authority: Education Law, sections 353, 355 and 355-a

Subject: State University of New York Appointment of Employees.

Purpose: To amend the eligibility for initial permanent appointment and eligibility for term appointment for professional class employees.

Text or summary was published in the November 6, 2013 issue of the Register, I.D. No. SUN-45-13-00001-P.

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

Text of rule and any required statements and analyses may be obtained

from: Lisa S. Campo, State University of New York, State University Plaza, 353 Broadway, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Assessment of Public Comment

The agency received no public comment.