

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 Audit and Control

NOTICE OF ADOPTION

Abandoned Property Location Agreements

I.D. No. AAC-48-14-00001-A

Filing No. 93

Filing Date: 2015-02-02

Effective Date: 2015-02-18

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

Action taken: Amendment of section 129.1 of Title 2 NYCRR.

Statutory authority: Abandoned Property Law, section 1414

Subject: Abandoned Property Location Agreements.

Purpose: To conform terminology and to reflect an amendment made to EPTL section 13-2.3.

Text or summary was published in the December 3, 2014 issue of the Register, I.D. No. AAC-48-14-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Department of Audit and Control, 110 State Street, Albany, New York 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Economic Development

EMERGENCY RULE MAKING

Empire State Music and Theatrical Production Tax Credit Program

I.D. No. EDV-07-15-00001-E

Filing No. 87

Filing Date: 2015-01-28

Effective Date: 2015-01-28

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

Action taken: Addition of Part 240 to Title 5 NYCRR.

Statutory authority: L. 2014, ch. 59

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

Specific reasons underlying the finding of necessity: Chapter 59 of the Laws of 2014 created the Empire State Musical and Theatrical Production Tax Credit Program. The Program provides for the allocation of tax credits to qualified musical and theatrical production companies that complete qualifying touring productions. These benefits are designed to encourage musical and theatrical productions to perform shows in Upstate New York theatrical facilities.

Chapter 59 of the Laws of 2014 authorized the New York State Department of Economic Development to adopt regulations establishing procedures for the allocation of credits under the Program on an emergency basis by October 31, 2014. Without regulatory action by the Department of Economic Development, procedures will not be in place to accept applications from musical and theatrical production companies desiring to participate in the Program.

Adoption of this rule will allow the Department of Economic Development to begin accepting applications from musical and theatrical production companies, and will assist in stimulating spending on musical and theatrical productions in areas of the State that would otherwise not benefit from such expenditures.

Subject: Empire State Music and Theatrical Production Tax Credit Program.

Purpose: Establish application procedures for the Empire State Musical and Theatrical Production Tax Credit Program.

Substance of emergency rule: The Empire State Musical and Theatrical Production Tax Credit Program (the "Program") provides Empire State Musical and Theatrical Production Tax Credits ("Credits") to qualified musical and theatrical production companies that complete qualifying touring productions of eight or more shows in three or more localities.

1) The rule defines numerous important terms, including, but not limited to, "authorized applicant," "qualified production expenditure," and "qualified touring production."

2) The rule indicates that only authorized applicants, qualified musical and theatrical production companies scheduled to begin production of qualified musical and theatrical productions after submitting an initial application to the New York State Department of Economic Development (the "Department"), may apply to participate in the Program.

3) The rule describes the application process for a musical and theatrical production company pursuing a Credit, including that an authorized

applicant must submit an initial application prior to commencing a qualified touring production and submit a final application subsequent to completion of a qualified touring production.

4) The rule states that Credits shall be issued in the amount of twenty-five (25) percent and the sum of the qualified production expenditures and the transportation expenditures incurred by an applicant.

5) The rule provides that an application shall not be approved unless the Department determines that the application is complete, the applicant completed a qualified touring production, and the applicant did not knowingly submit false or misleading information to the Department.

6) The rule requires an applicant to retain records of any qualified musical and theatrical production costs used to calculate their potential or actual benefit(s) under the Program for a minimum of three years from the date the applicant claims a Credit.

7) The rule provides for an appeal process by which an applicant may appeal the disapproval of its final application by the Department, or the amount of a Credit granted by the Department, before an independent hearing officer.

8) The rule describes information sharing to take place between the Department and the New York State Department of Taxation and Finance relating to Credits applied for, allowed, or claimed under the Program, as well as information regarding taxpayers seeking Credits.

9) The rule describes the annual Program report to be submitted by the Department to the governor, the temporary president of the senate, and the speaker of the assembly. The annual report is to include information on the Credit-eligible man hours and total wages for such credit-eligible man hours for each project, the identify of applicants for Credits, and the amount of each Credit allocated to each taxpayer.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires April 27, 2015.

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:

Chapter 59 of the Laws of 2014 requires the Commissioner of the Department of Economic Development (the "Department") to promulgate regulations establishing the application process for the Empire State Musical and Theatrical Production Tax Credit Program (the "Program"). These procedures include the process for applying for tax credits under the Program, standards for the assessment of applications, and other provisions deemed necessary and appropriate. This regulatory impact statement is submitted in conjunction with the submission of a permanent regulation.

LEGISLATIVE OBJECTIVES:

The proposed rule gives effect to the intention of the legislature in adopting the Empire State Musical and Theatrical Production Tax Credit Program to encourage the production of musical and theatrical shows in venues outside of New York City. The proposed rule furthers this objective by establishing the application process for Empire State Musical and Theatrical Production Tax Credits ("Credits"), and clarifying certain requirements as to which touring productions are qualified to receive Credits under the Program.

NEEDS AND BENEFITS:

The rulemaking is necessary in order to implement the statute contained in Section 24-A of Article 1 of the Tax Law, creating the Empire State Musical and Theatrical Production Tax Credit Program. The statute authorizing the Program directs the Commissioner of the Department of Economic Development to establish procedures for the implementation and execution of the program.

Upstate New York, in particular, is home to some of the premier regional venues in which to produce musical and theatrical productions. In order to induce musical and theatrical production companies to undertake production activities in these non-New York City venues, referred to in the statute as qualified production facilities, the Program will allow musical and theatrical production companies to apply for a Credit against their qualifying production expenditures. To become eligible for a Credit, musical and theatrical production companies must undertake the pre-tour production activities comprising the technical period for the qualified touring production in a qualified production facility. Provided that musical and theatrical production companies meet this qualification requirement, they will be eligible for a Credit equal to twenty-five (25) percent of their qualified production expenditures associated with the show. In addition to pre-tour production costs, qualified production expenditures also include expenditures associated with performing a show before a paying audience in a qualified production facility if the show in question has not been previously performed in any venue other than a qualified production facility.

This incentive will allow musical and theatrical venues located outside of New York City to more fully actualize their potential for attracting

musical and theatrical productions, as well as provide these venues with competitive balance against competing venues located in northeastern states that offer tax incentives to musical and theatrical productions which conduct technical rehearsals and other pre-tour production activities in their venues.

The Program is premised upon using touring musical and theatrical productions, and the expenditures associated with these productions, as tools for economic development. Program incentives will be used to increase the number of musical and theatrical productions that launch tours from venues outside of New York City. This goal will not be achieved without first establishing procedures for the acceptance and evaluation of applications for Program Credits.

The proposed rule establishes the necessary application procedures for the Department to receive applications by musical and theatrical production companies for Program Credits. These rules allow for the prompt and efficient commencement of the Empire State Musical and Theatrical Production Tax Credit Program, clarify which touring productions will be eligible for Program Credits, and promote the general welfare of New Yorkers.

COSTS:

I. Costs to private regulated parties (the business applicants): None. The proposed rule will not impose any additional costs to eligible business applicants.

II. Costs to the regulating agency for the implementation and continued administration of the rule: None.

III. Costs to the State government: None.

IV. Costs to local governments: None. The proposed rule will not impose any costs on local governments.

LOCAL GOVERNMENT MANDATES:

None. There are no local government mandates associated with the Program.

PAPERWORK:

The rule establishes qualification rules and application procedures for the Program. The rule entails certain paperwork burdens including materials to be submitted as part of applications for Program Credits, additional documents the Commissioner may request from applicants as part of his evaluation of applications, and certain records that must be maintained by program participants for auditing purposes.

DUPLICATION:

The proposed rule will create a new section of the existing regulations of the Commissioner of the Department of Economic Development, Part 240 of 5 NYCRR. Accordingly, there is no risk of duplication in the adoption of the proposed rule.

ALTERNATIVES:

No alternatives were considered with regard to creating a new rule in response to the statutory requirement. The rule interprets the Empire State Musical and Theatrical Production Tax Credit Program requirements as to the application process for tax credits under the Program. This action is necessary in order to clarify how qualifying musical and theatrical production companies may obtain tax benefits under the Program, and is required by the legislation establishing the Program.

FEDERAL STANDARDS:

There are no federal standards applicable to the Program; it is purely a state program that offers tax benefits to musical and theatrical production companies with qualifying expenses. Therefore, the proposed rule does not exceed any federal standard.

COMPLIANCE SCHEDULE:

The affected agency (Department of Economic Development) and any musical and theatrical production company applicants will be able to achieve compliance with the regulation as soon as it is implemented.

Regulatory Flexibility Analysis

Participation in the Empire State Musical and Theatrical Production Tax Credit Program is entirely at the discretion of qualifying musical and theatrical production companies. Neither statute nor the proposed rule impose any obligation on any local government or business entity to participate in the program. The proposed rule does not impose any adverse economic impact or compliance requirements on small businesses or local governments. In fact, the proposed rule may have a positive economic impact on small businesses. Small businesses may enjoy increased business if the Empire State Musical and Theatrical Production Tax Credit Program induces applicant musical and theatrical production companies to procure products or services from small businesses in Upstate New York regions that the musical and theatrical production companies would not have included as destinations in their touring productions without the tax credit benefits.

Because it is evident from the nature of the proposed rule that it will have either no impact or a positive impact on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small business and local government is not required and one has not been prepared.

Rural Area Flexibility Analysis

The Empire State Musical and Theatrical Production Tax Credit Program provides tax benefits to participating musical and theatrical production companies, and does not distinguish between venues located in rural and urban areas of Upstate New York. Furthermore, the rule does not impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, except for any rural musical and theatrical production companies which voluntarily choose to participate in the Program. Therefore, the rule will not have a substantial adverse economic impact on rural areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed rule establishes application procedures for musical and theatrical production companies to apply for benefits under the Empire State Musical and Theatrical Production Tax Credit Program, as well as standards for the assessment of applications by the Commissioner of the Department of Economic Development. The Empire State Musical and Theatrical Production Tax Credit Program provides tax incentives to musical and theatrical production companies that incur qualifying expenditures in association with qualified touring productions. The program aims to attract musical and theatrical productions to Upstate New York musical and theatrical venues so as to stimulate economic activity and create jobs. The rule will not have a substantial adverse impact on jobs and employment opportunities; rather, the program is intended to create jobs. Because it is evident from the nature of the rulemaking that it 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

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Revised Closed Season for the Harvest and Landing of Lobster from Lobster Management Area 4 and Repeal of Mandatory V-Notch Rule

I.D. No. ENV-07-15-00002-EP

Filing No. 91

Filing Date: 2015-01-30

Effective Date: 2015-01-30

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

Proposed Action: Amendment of section 44.1(h) of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 13-0105 and 13-0329

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

Specific reasons underlying the finding of necessity: This rule must be promulgated as an emergency rule to ensure that Lobster Management Area (LMA) 4 lobster harvesters are not burdened by two seasonal closures during 2015. The proposed rule will repeal the current lobster closure in LMA 4 (February 1 – March 31) and adopt a new closure (April 30 – May 31). The rule will also repeal the mandatory V-notch requirement for LMA 4. Lobster harvesters will no longer be required to snip a V on the carapace of egg bearing female lobsters they catch in LMA 4.

Addendum XVII of the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan (FMP) for American Lobster requires a ten percent reduction in lobster harvest in LMA 4. In 2013, LMA 4 did not meet its required ten percent reduction. In October 2014, the ASMFC American Lobster Management Board revised the closed season dates in LMA 4 from February 1 through March 31 to April 30 through May 31 to ensure the ten percent reduction in harvest. This revised closed season must be implemented in 2015 for New York State to remain in compliance with the ASMFC lobster FMP.

The new closed season must be adopted before February 1 to ensure

that permit holders are only required to comply with the new closed season. If the rule is not adopted in a timely manner, LMA 4 lobster harvesters will be required to stop harvesting and remove their gear by February 1, resume fishing April 1, and then stop harvesting and remove their gear again by April 30.

Subject: Revised closed season for the harvest and landing of lobster from Lobster Management Area 4 and repeal of mandatory V-notch rule.

Purpose: To implement ASMFC American Lobster Fishery Management Plan Addendum XVII and allow the lobster stock to rebuild.

Text of emergency/proposed rule: Part 44 of 6 NYCRR is amended read as follows:

Existing paragraph 44.1(g)(1) of 6 NYCRR is repealed.

Existing paragraphs 44.1(g)(2) and 44.1(g)(3) are renumbered 44.1(g)(1) and 44.1(g)(2).

Existing paragraphs 44.1(h)(1) and 44.1(h)(2) are amended to read as follows:

(1) The harvest and landing of lobsters from LMA 4 is prohibited from [February 1] *April 30* through [March] *May 31*.

(2) During the [February 1] *April 30* through [March] *May 31* closure, lobster permit holders who use lobster traps or pots [will have a two week period to remove lobster pots from the water after the closed season begins] *may set un-baited lobster traps or pots one week prior to the end of the closed season*. No lobster trap or pot may be in the water from [February 15] *April 30* to [March] *May 24*, unless the lobster permit holder also holds the appropriate license(s) to harvest other species from [their] *his or her* traps or pots. [Lobster permit holders may set un-baited lobster traps or pots one week prior to the end of the closed season.]

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 April 29, 2015.

Text of rule and any required statements and analyses may be obtained from: Kim McKown, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0454, email: kim.mckown@dec.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.

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the department.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 3-0301, 13-0105 and 13-0329 authorize the Department of Environmental Conservation (DEC) to establish by regulation closed season regulations for Lobster Management Areas (LMA) 1, 2, 3, 4, 5, and Outer Cape Cod (OCC) for American lobsters.

2. Legislative objectives:

It is the objective of the above cited statutory provisions that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies, and interstate fishery management plans.

3. Needs and benefits:

Recent stock assessment reports have indicated that the Southern New England (SNE) American lobster population is depleted and recruitment is low. In February 2012, the Atlantic States Marine Fisheries Commission's (ASMFC) American Lobster Management Board (Lobster Board) approved an addendum to the American Lobster Fishery Management Plan (FMP) to decrease lobster harvest in SNE by ten percent and to initiate stock rebuilding (see Addendum XVII to Amendment 3 to the Interstate Fishery Management Plan for American Lobster). Each LMA in SNE adopted management measures to meet this objective. All other LMAs, except LMA 4, met the required ten percent reduction in 2013. The Lobster Board requires that alternative measures be enacted to ensure that harvest from LMA 4 meet the ten percent reduction. In October 2014, the ASMFC Lobster Board revised the closed season dates from February 1 through March 31 to April 30 through May 31 to ensure the ten percent reduction in harvest.

DEC's Division of Fish, Wildlife and Marine Resources proposes amendments to 6 NYCRR Part 44 to meet the ten percent harvest reduction in LMA 4. The proposed rule will repeal the original lobster closure in LMA 4 (February 1 – March 31) and adopt a new closure (April 30 – May 31). The rule will also repeal the mandatory V-notch regulations for LMA 4. Lobster harvesters will no longer be required to snip a V on the carapace of egg bearing female lobsters that they caught in LMA 4.

The closed season must be implemented during 2015 for New York State to remain in compliance with the ASMFC lobster FMP. The rule must be in effect before February 1 to ensure that LMA 4 lobster permit holders are not unnecessarily burdened with two closed seasons.

4. Costs:

The proposed closed season rule will not impose any costs on local governments, but may increase the workload of DEC enforcement. It is estimated that the proposed season closure may cost LMA 4 permit holders in total approximately \$27,000 more annually than the current season closure, based on 2013 lobster harvest data.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any State or Federal requirement.

8. Alternatives:

Ten percent trap reduction alternative: The Lobster Conservation Management Team for LMA 4 proposed to reduce the number of traps fishing for lobsters in LMA 4 by ten percent as an alternative management option to the ASMFC Lobster Board. The Lobster Board rejected this alternative because it found it was unlikely to meet the required ten percent harvest reduction. Trap reductions do not necessarily translate into an equal reduction in harvest.

No action alternative: The ASMFC Interstate FMP for Lobster requires that states adopt management measure to reduce harvest in LMA 4 by ten percent. If DEC does not adopt this proposed rule, a determination of delayed implementation by ASMFC may be imposed. Upon such a finding, the lobster fishery could be shut down in 2016 for an equal number of days the implementation of the management measures was delayed this year. New York could also be judged out of compliance with the ASMFC American Lobster FMP. This could lead to a total closure of the New York commercial and recreational lobster fisheries. The total closure of the lobster fishery in New York would cause a more significant impact on commercial and recreational harvesters than the proposed rule. Any closure of the lobster fishery would cause significant hardship on lobster harvesters and the associated fishing industries. The estimated dollar value of New York's commercial lobster harvest was approximately \$1 million in 2013.

9. Federal standards:

The amendments to Part 44 are in compliance with the ASMFC FMP for American lobster.

10. Compliance schedule:

The rule making must be implemented before February 1, 2015 to ensure that New York LMA 4 lobster harvesters are not unduly burdened by two closed seasons in 2015. Regulated parties will be notified of the changes to the regulations by mail, through appropriate news releases, and via DEC website and electronic mailing list.

Regulatory Flexibility Analysis

1. Effect of rule:

The amendment of 6 NYCRR Part 44 revises the closed season dates for lobster harvesters in Lobster Management Area (LMA) 4, as required by the Atlantic States Marine Fisheries Commission (ASMFC). The rule will affect both commercial and recreational lobster harvesters. The regulations do not apply directly to local governments, and will not have any direct effects on local governments.

The objective of Addendum XVII to ASMFC American Lobster Fishery Management Plan (FMP) is to reduce harvest of lobster in Southern New England (SNE) by 10 percent to initiate stock rebuilding. Management measures implemented in 2013 did not meet the required reduction in LMA 4; therefore, the Lobster Conservation Management Team (LCMT) met and developed revised measures. The amended management approach calls for revised closed season dates for LMA 4 (waters off the south shore of Long Island). The 2013 management measures included a closed season from February 1 through March 31, while the revised closed season is from April 30 through May 31. An emergency rule is necessary to ensure that New York's LMA 4 lobster harvesters are not burdened with two closed seasons during 2015. In 2013, there were 326 licensed resident commercial lobster fishers in New York; most were self-employed. The objective of Addendum XVII is to decrease harvest by 10 percent. We estimate the proposed closure may cost New York's lobster harvesters \$27,000 annually, using 2013 lobster harvest data. Lobster harvesters who fish in both LMAs 4 and 6 may incur additional costs due to implementation of the most restrictive rule which requires them to observe the closed season rules for both of the LMAs. The regulatory changes also apply to non-commercial harvesters. There were 750 non-commercial lobster harvesters in 2013. In 2013, approximately sixty-five percent of the non-commercial permit holders fished in areas that would be impacted by the rule.

In the long-term, the maintenance of sustainable fisheries will have a positive effect on small businesses in the lobster fishery. Any short-term losses in participation, harvest, and sales will be offset by the restoration of lobster stocks and an increase in yield from well-managed resources.

Protection of the lobster resource is essential to the survival of the commercial and recreational lobster fisheries. These regulations are designed to protect stocks while allowing appropriate harvest, to prevent over-harvest and to continue to rebuild lobster stocks for future utilization.

2. Compliance requirements:

Lobster harvesters who fish in LMA 4 must observe the April 30 through May 31 season closure. Harvesters may set un-baited lobster traps or pots one week prior to the end of the closed season. Harvesters who designate multiple LMAs on their permit must abide by the closed season rules for all the LMAs listed on their permit.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule. Lobster industry costs involve the potential loss of harvest due to the closed season (details in section 1). Lobster harvesters who fish in multiple LMAs may incur additional costs due to implementation of the most restrictive rule.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The changes required by this proposed rule will be economically feasible for the majority of the affected parties.

There is no additional technology required for small businesses, and this action does not apply to local governments.

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for New York to remain in compliance with the FMP for lobster. The regulations are intended to protect the lobster resource and avoid the adverse impacts that would be associated with closure of the fishery due to non-compliance with the FMP.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment in the lobster fishery, as well as wholesale and retail outlets and other support industries. Failure to comply with the FMP and to take required actions to protect the lobster fishery could hinder the rebuilding of the SNE lobster stock and have an adverse impact on the commercial and recreational lobster fisheries, as well as supporting industries. These regulations are being adopted in order to initiate stock rebuilding while allowing for some harvest.

7. Small business and local government participation:

ASMFC had public hearings on Addendum XVII to which all resident commercial lobster license holders were invited. In addition, the LMA 4 LCCMT met to decide on revised implementation measures for this Addendum.

There was no special effort to contact local governments because the proposed rule does not affect them.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b (1-a)(b), no such cure period is included in the rule because of the potential adverse impact on the lobster resource. Cure periods for the illegal taking of lobster are neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and that the resource is protected.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. The lobster fisheries directly affected by the proposed rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the State. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 44, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

The amendment of 6 NYCRR Part 44 will revise the closed season for lobster harvesters in Lobster Management Area (LMA) 4 (waters off the south shore of Long Island). This closed season is an alternative management measure to meet the objective of the Atlantic States Marine Fisheries Commission (ASMFC) American Lobster Fishery Management Plan (FMP) Addendum XVII. The objective of this addendum is to reduce the harvest of lobster in Southern New England (SNE) by ten percent to initiate stock rebuilding. In 2013, LMA 4 did not meet the ten percent harvest reduction goal; therefore, the current management measures are being revised at the direction of ASMFC. The proposed rule repeals the current closed season in LMA 4, from February 1 through March 31, and adopts a new closure from April 30 through May 31. The harvest and landing of lobsters from LMA 4 during April 30 through May 31 will be prohibited. Lobster harvesters who use lobster traps or pots may set un-baited lobster traps or pots one week prior to the end of the closed season.

Failure by New York to adopt this measure could result in a determination of non-compliance by ASMFC and the Secretary of Commerce, as well as the imposition of a lobster fishery closure - a complete ban on fishing for lobster in New York. These rules will affect both commercial and recreational permit holders.

2. Categories and numbers affected:

In 2013, there were 326 resident commercial lobster permit holders in New York; most are self-employed. Approximately 90 of these permit holders have trap tag allocations in LMA 4. These permit holders may incur additional impacts due to implementation of the most restrictive rule, which requires them to observe the most restrictive rules in all LMAs in which they fish. The regulatory changes also apply to non-commercial harvesters. There were 750 non-commercial lobster permit holders in 2013. In 2013, approximately sixty-five percent of the non-commercial permit holders fished in areas that would be impacted by the rule.

3. Regions of adverse impact:

This rule making will impact lobster harvesters fishing in LMA 4 which is located in the near shore Atlantic Ocean off the south shore of Long Island.

4. Minimizing adverse impact:

Should New York fail to adopt this measure, ASMFC may find determination of non-compliance and the Secretary of Commerce may impose a lobster fishery closure for the State of New York. This rule making will prevent this punitive closure of the lobster fishery in New York. If the fishery were to close, it would reduce harvest by one hundred percent rather than the ten percent reduction objective of the addendum. During 2013, New York's 326 resident commercial lobster permit holders harvested almost 250,000 pounds of lobsters for a value of approximately \$1 million. In addition, there were 750 non-commercial lobster permit holders who harvested approximately 2,300 pounds.

Thus, the proposed season closure minimizes the potential for loss of existing jobs due to a closure of the fishery. In the long-term, the maintenance of sustainable fisheries will have a positive effect on lobster harvesters. Any short-term losses in participation, harvest, and sales are anticipated to be offset by the rebuilding of fishery stocks. Protection of the lobster resource is important to the survival of the lobster industry and the businesses that support it.

5. Self-employment opportunities:

The lobster industry as a whole is self-employed. This rule is not expected to result in additional opportunities for self-employment.

Section 67.4(e)(1)(i) and (ii) are amended to read as follows:

(i) immediately require the named insured to sign the ACKNOWLEDGEMENT OF REQUIREMENT FOR PHOTO INSPECTION (NYS APD form D), contained in section [67.13] 67.12 of this Part, or a substantially equivalent form, and retain a copy of the signed acknowledgement in the named insured's policy record; or

(ii) mail, deliver or otherwise transmit the CONFIRMATION OF PHYSICAL DAMAGE COVERAGE - NOTICE OF MANDATORY PHOTO INSPECTION REQUIREMENT (NYS APD form B), contained in section [67.13] 67.12 of this Part, or a substantially equivalent form, to the named insured and the producer of record and retain a copy of the confirmation notice and proof of mailing thereof in the named insured's policy record.

Section 67.5(c) is amended to read as follows:

(c) The inspection shall be recorded on the prescribed AUTOMOBILE INSURANCE INSPECTION REPORT (NYS APD form A) contained in section [67.13] 67.12 of this Part.

Section 67.6(a) is amended to read as follows:

(a) If the named insured fails to make the insured automobile available for the mandatory inspection prior to expiration of the deferral period specified in section 67.4(b) of this Part, then automobile physical damage insurance on the insured automobile shall be suspended at 12:01 a.m. of the day following the [tenth] *fourteenth* calendar day after the effective date of coverage.

Section 67.6(c) is amended to read as follows:

(c) After an insurer suspends a named insured's automobile physical damage insurance, the insurer shall mail, deliver or transmit [-]the prescribed CONFIRMATION OF SUSPENSION OF PHYSICAL DAMAGE COVERAGE (NYS APD form C) contained in section [67.13] 67.12 of this Part, or a substantially equivalent form, to the named insured, with a copy to the producer of record and any lienholders, no later than 20 calendar days after the effective date of automobile physical damage insurance suspension.

Section 67.7(c)(1)(i)(b) is amended to read as follows:

(b) if the named insured fails to make the insured automobile available for inspection, then the insurer shall suspend the automobile physical damage insurance at 12:01 a.m. on the [30th] *thirty-first* day after the annual policy renewal date;

Section 67.7(e) is amended to read as follows:

(e) If the named insured fails to make the insured automobile available for the renewal inspection prior to expiration of the deferral period specified in subdivision (c) of this section, then the insurer shall suspend the automobile physical damage insurance [pursuant to] *effective at 12:01 a.m. on the day following the last day of the deferral period and in accordance with the requirements of section 67.6 of this Part.* If the named insured makes the insured automobile available for the renewal inspection after the insurer suspends the automobile physical damage insurance, then the insurer shall accept the inspection and reinstate the automobile physical damage insurance effective as of the date and time of the renewal inspection pursuant to section 67.6 of this Part.

Section 67.8(a)(1) is amended to read as follows:

(1) the [ten-calendar-day] *fourteen-calendar-day* deferral period for new business provided by section 67.4 of this Part shall be mandatory; and ***Text of proposed rule and any required statements and analyses may be obtained from:*** Camielle Barclay, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5299, email: camielle.barclay@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.

Consensus Rule Making Determination

This amendment deletes duplicative language that exists in another provision of the regulation, and makes technical corrections and amendments in order to comport with other provisions in the regulation. Therefore, no person or entity is likely to object.

Accordingly, this rulemaking is determined to be a consensus rulemaking, as defined in State Administrative Procedure Act ("SAPA") § 102(11), and is proposed pursuant to SAPA § 202(1)(b)(i). Therefore, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, and Rural Area Flexibility Analysis.

Job Impact Statement

This amendment deletes duplicative language that exists in another provision of the regulation, and makes technical corrections and amendments in order to comport with other provisions in the regulation. Amendment of the rule will not adversely impact job or employment opportunities in New York State, or have any adverse impact on self-employment opportunities, because the revision imposes no new or additional requirements on any entity subject to the rule.

Department of Financial Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Mandatory Underwriting Inspection Requirement for Private Passenger Automobiles

I.D. No. DFS-07-15-00004-P

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

Proposed Action: This is a consensus rulemaking to amend Part 67 of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 3411, 5303 and art. 53

Subject: Mandatory Underwriting Inspection Requirement for Private Passenger Automobiles.

Purpose: Revise requirements regarding the inspection of private passenger automobiles for physical damage coverage.

Text of proposed rule: The heading of Section 67.2 is amended to read as follows:

§ 67.2 Mandatory inspection [requirements] *requirement* for private passenger automobiles.

Section 67.3(d)(1) is amended to read as follows:

(d)(1) When an insurer waives an inspection pursuant to subdivision (a)(2) of this section[:

(i)], the insurer shall request that the named insured submit a copy of the lease agreement that sets forth a full description of the automobile at the time of lease or rental[; and

(ii) condition payment of any physical damage loss upon the insurer's receipt of the relevant documents set forth in subparagraph (i) of this paragraph].

Long Island Power Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rates and Charges Set Forth in LIPA's Tariff for Electric Service

I.D. No. LPA-07-15-00003-P

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

Proposed Action: The Authority is considering a proposal to adopt a 3-year rate plan prepared by PSEG-LI and the Authority's staff, subject to Department of Public Service review and recommendations, and consideration by the Authority's board of trustees.

Statutory authority: Public Authorities Law, section 1020-f(u) and (z); Public Service Law, section 3-b(3)(a)

Subject: Rates and charges set forth in LIPA's Tariff for Electric Service.

Purpose: To set rates and charges at the lowest level consistent with sound fiscal and operating practices and safe and adequate service.

Substance of proposed rule: The Long Island Power Authority ("the Authority") is considering, pursuant to section 1020-f(u) of the New York Public Authorities Law ("PAL"), the adoption of a three-year rate plan (the "Rate Plan"), proposed by PSEG-LI and the staff of the Authority, for an increase in the rates and charges for the delivery of electric power at the lowest level consistent with sound fiscal and operating practices of the Authority and which provide for safe and adequate service. The Rate Plan proposes increases in delivery charges equal to approximately 2% per year of total electric rates (based on increases of approximately 3.9% per year of estimated annual delivery revenues) and various current cost recovery mechanisms.¹ The rate adjustments, which would not become effective until January 1, 2016, will follow a three-year freeze of delivery rates that began January 1, 2013. In addition, the Rate Plan proposes changes to the existing monthly service charge, low income rates, and back-up rates.²

Pursuant to section 1020-f(u) of PAL and section 3-b(3)(a) of the New York Public Service Law ("PSL"), the Department of Public Service ("DPS") will review and make recommendations to the Authority's board of trustees (the "Trustees") respecting the Rate Plan. In undertaking such review and recommendations, DPS will provide for public statement and evidentiary hearings and participation of intervenors and other parties. PSL § 3-b.³ DPS is expected to make its recommendation by September 30, 2015. DPS may recommend that the Trustees adopt, in whole or in part, modify, or reject the terms set forth in the Rate Plan or in other proposals submitted by other parties or intervenors. Unless the Trustees determine that any particular recommendation made by DPS is inconsistent with the Authority's sound fiscal operating practices, any existing contractual or operating obligations, or the provision of safe and adequate service, the Trustees will implement such recommendations as part of their final rate plan. PAL § 1020-f(u). If the Trustees make a preliminary determination of inconsistency with respect to any DPS recommendation, they will, upon due notice to DPS and the public, hold a public hearing with respect to such preliminary determination. Id. Within thirty days after such public hearing, the Trustees shall announce their final determination.

¹ In a separate Notice of Proposed Rulemaking, published in the New York State Register on January 14, 2015 (I.D. No. LPA-02-15-00006-P), LIPA and PSEG-LI proposed several rate adjustment clauses so as to more closely align rates with the actual costs of operating LIPA's system. In addition to these proposed rate adjustment clauses, LIPA's tariff presently contains several adjustment clauses, including a fuel and purchased power adjustment clause and an energy efficiency adjustment clause, both of which will be continued.

² The full text of the Rate Plan and all related filings are available on the website of the Department of Public Service, under DPS Matter Number 15-00262.

³ Advance notice of public hearings and any deadlines for public comment will be posted on the websites of DPS and LIPA.

Text of proposed rule and any required statements and analyses may be obtained from: Justin H. Bell, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 719-9886, email: jbell@lipower.org

Data, views or arguments may be submitted to: Secretary to the Commis-

sion, Attn: DPS Matter No. 15-00262, New York State Public Service Commission, Empire State Plaza, Agency Building 3, Albany, NY 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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.

Public Service Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Major Electric Rate Increase Filing

I.D. No. PSC-07-15-00005-P

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

Proposed Action: The Commission is considering a proposal filed by Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 3 — Electricity.

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

Subject: Major electric rate increase filing.

Purpose: To establish rates and practices for electric service.

Public hearing(s) will be held at: 10:00 a.m. (Evidentiary Hearing)*, May 4, 2015 and continuing daily as needed at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

*On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Cases 14-E-0493 and 14-G-0494.

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

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

Substance of proposed rule: The Commission is considering a proposal filed by Orange and Rockland Utilities, Inc. (Orange and Rockland or the Company) to increase the Company's electric delivery revenues for the rate year ending October 31, 2016 by \$33.4 million, which is approximately an 11.5% increase in delivery revenues (or about a 6.0% increase in an average residential customers' total monthly bill). In its proposed filing, Orange and Rockland states the three primary drivers for the rate filing are increased property taxes, additional infrastructure investments, and the costs associated with Superstorm Sandy. The statutory suspension period for the proposed filing runs through October 30, 2015, however, Orange and Rockland requests that the rates become effective on November 1, 2015. The Commission may adopt, in whole or in part, modify, or reject terms set forth in Orange and Rockland's proposal or other negotiated proposals.

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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@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-0493SP1)

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED****Major Gas Rate Increase Filing****I.D. No.** PSC-07-15-00007-P

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

Proposed Action: The Commission is considering a proposal filed by Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its Schedule for Gas Service, P.S.C. No. 4 — Gas.

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

Subject: Major gas rate increase filing.

Purpose: To establish rates and practices for gas service.

Public hearing(s) will be held at: 10:00 a.m. (Evidentiary Hearing)*, May 4, 2015 and continuing daily as needed at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

*On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Cases 14-E-0493 and 14-G-0494.

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

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

Substance of proposed rule: The Commission is considering a proposal filed by Orange and Rockland Utilities, Inc. (Orange and Rockland or the Company) to increase the Company's gas delivery revenues for the rate year ending October 31, 2016 by \$40.7 million, which is approximately a 35.1% increase in delivery revenues (or about a 19.1% increase in an average residential customers' total monthly bill). In its proposed filing, Orange and Rockland states the primary drivers for the rate filing are increased property taxes and additional gas infrastructure investment. The statutory suspension period for the proposed filing runs through October 30, 2015, however, Orange and Rockland requests that the rates become effective on November 1, 2015. The Commission may adopt, in whole or in part, modify or reject terms set forth in Orange and Rockland's proposal or other negotiated proposals.

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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@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-0494SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Whether to Order a Remand Regarding Payphone Rates****I.D. No.** PSC-07-15-00006-P

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

Proposed Action: The Commission is considering whether to approve, modify or reject, in whole or in part a Petition to Initiate Remand filed by Independent Payphone Association of N.Y., Inc. and Individual Independent Payphone Providers regarding payphone rates.

Statutory authority: Public Service Law, sections 92 and 97

Subject: Whether to order a remand regarding payphone rates.

Purpose: Whether to order a remand regarding payphone rates and award refunds.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, a Petition to Initiate Remand filed by Independent Payphone Association of N.Y., Inc. and Individual Independent Payphone Providers regarding payphone access line rates charged by Verizon New York, Inc. The Commission may also approve or reject, in whole or in part, the relief sought on remand or provide such other and further relief as it deems just and reasonable and/or required by law. In making its determination the Commission expects to consider the decisions of the New York Supreme Court Albany County in *In the Matter of Indep. Payphone Ass'n of N.Y., Inc. v. PSC*, 2002 N.Y. Misc. LEXIS 2090 (N.Y. Sup. Ct. July 31, 2002) and the New York Appellate Division Third Department in *IPANY v. PSC*, 5 A.D.3d 960 (2004) as well as the decision of the Federal Communications Commission in CC Docket No. 96-128, *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Declaratory Ruling and Order, 28 FCC Rcd. 2615.

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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@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.

(15-C-0029SP1)

**Department of Taxation and
Finance**

NOTICE OF ADOPTION**Filing Requirements for Farm Distilleries Under Article 18 of the Tax Law****I.D. No.** TAF-48-14-00003-A**Filing No.** 92**Filing Date:** 2015-01-30**Effective Date:** 2015-02-18

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

Action taken: Amendment of section 60.1 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 429(1) and 436 (not subdivided)

Subject: Filing requirements for farm distilleries under article 18 of the Tax Law.

Purpose: To allow farm distilleries to file annual rather than monthly alcoholic beverage tax returns.

Text or summary was published in the December 3, 2014 issue of the Register, I.D. No. TAF-48-14-00003-A.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen O'Connell, Department of Taxation and Finance, Office of Counsel, Building 9, WA Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.