1. Statutory authority: Banking Law (or “BL”) Sections 10, 14, 75-g, 75-n, and Article II-AA; Financial Services Law (or “FSL”) Sections 102, 201, 202, 301, and 302.

BL § 10 sets forth a declaration of policy, including that banking institutions will be regulated in a manner to insure safe and sound conduct and maintain public confidence.

BL § 14 references, without limitation, the policy of BL § 10 and sets forth certain powers of the Superintendent under the Banking Law, including the power to “make, alter and amend orders, rules and regulations not inconsistent with law” and, under certain enumerated circumstances, to “make variations from the requirements” of the Banking Law, provided such variations are “in harmony with the spirit of the law.”

BL Article II-AA is the ATM Safety Act, which was enacted to ensure safety of automated teller machine use by establishing security and reporting requirements for automated teller machine facilities.

BL § 75-g establishes a report of compliance with the requirements of Article II-AA.

BL § 75-n provides that the Superintendent is empowered to promulgate any rules and regulations necessary to define and implement the provisions of Article II-AA of the BL.

FSL § 102 sets forth the purpose and goals of the Financial Services Law including, as relevant, to “establish a modern system of regulation, rule making and adjudication” and to ensure “the prudent conduct of the providers of financial products and services, through responsible regulation and supervision.”

FSL § 201 sets forth a declaration of policy for the Department of Financial Services (the “Department”) and states, as relevant, that the Superintendent shall take such actions as the Superintendent believes necessary to “foster the growth of the financial industry in New York and spur state economic development through judicious regulation and vigilant supervision.”
FSL § 202 establishes the Superintendent of Financial Services and provides the Superintendent with broad rights, powers, duties and discretion with respect to matters under the Financial Services Law, the Banking Law, and the Insurance Law.

FSL § 301 sets forth the powers of the Superintendent under relevant law.

FSL § 302 sets forth the power of the Superintendent to prescribe, withdraw or amend rules and regulations involving financial products and services, including in effectuating and interpreting the provisions of the Financial Services Law, the Banking Law, and the Insurance Law, and in governing the procedures to be followed in the practice of the Department.

2. Legislative objectives: The proposed amendment merely removes the obsolete language contained in current 3 NYCRR Section 301.6; it does not change the requirement to make the report, which is contained in Banking Law Section 75-g. The proposed amendment will ensure that the goals of accurate and timely reporting of compliance with Article II-AA, as anticipated by Section 75-g, are more fully realized.

3. Needs and benefits: Without this amendment the language contained in current 3 NYCRR Section 301.6, which is obsolete language, will continue to be required when fulfilling the report requirements of BL Section 75-g. The proposed amendment will allow the Department to ensure that language required in reporting under Article II-AA of the Banking Law will be current at all times.

4. Costs: The amendment will impose no cost to the Department, as the rule does not change the total amount of submissions required to be made to the Department. The Department does not anticipate that the proposed amendment will have any impact because the statute and not the rule requires the reporting, and the amendment merely removes obsolete language and allows the Department to ensure all future form language remains current.

5. Local government mandates: This amendment would impose no new mandates on any county, city, town, village, school district, fire district or other special district.
6. Paperwork: The rule does not require any additional reporting requirements or paperwork. The statute and not the rule requires the reporting, and the amendment merely removes obsolete language and allows the Department to ensure form language remains current.

7. Duplication: This rule does not duplicate or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: There are no viable alternatives to this regulation. The Department considered not proposing the amendment; however, without the amendment the obsolete language of the current regulation will continue to be required, and the Department would not be able to ensure that the language of the reporting remains current.

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

10. Compliance schedule: As the statute and not the rule requires the reporting, and the amendment merely removes obsolete language and allows the Department to ensure form language remains current, there should be no time needed to come into compliance with the regulation.
Statement setting forth the basis for the finding that a Regulatory Flexibility Analysis is not required for the Proposed Amendment to 3 NYCRR 301.6.

The Department finds that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments in New York State. The proposed amendment merely eliminates obsolete language from the regulation and ensures that the Department is able to keep reporting forms up to date with current language. The statute, not the regulation – either as it is currently composed or as it would be if the proposed amendment was adopted – creates the reporting requirement; the proposed amendment would not affect this requirement or create any new obligation.
Statement setting forth the basis for the finding that a Rural Area Flexibility Analysis is not required for the Proposed Amendment to 3 NYCRR 301.6.

The Department finds that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas in New York State. The proposed amendment merely eliminates obsolete language from the regulation and ensures that the Department is able to keep reporting forms up to date with current language. The statute, not the regulation – either as it is currently composed or as it would be if the proposed amendment was adopted – creates the reporting requirement; the proposed amendment would not affect this requirement or create any new obligation.
Statement setting forth the basis for the finding that a Job Impact Statement is not required for the Proposed Amendment to 3 NYCRR 301.6.

The Department finds that the rule will not have a substantial adverse impact on jobs and employment opportunities as apparent from its nature and purpose in New York State. The proposed amendment merely eliminates obsolete language from the regulation and ensures that the Department is able to keep reporting forms up to date with current language. The statute, not the regulation – either as it is currently composed or as it would be if the proposed amendment was adopted – creates the reporting requirement; the proposed amendment would not affect this requirement or create any new obligation.