

# RULE MAKING ACTIVITIES

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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; or C for first Continuation.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

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## Banking Department

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### EMERGENCY RULE MAKING

#### Regulation of Budget Planning Activities

**I.D. No.** BNK-51-04-00010-E

**Filing No.** 1371

**Filing date:** Dec. 7, 2004

**Effective date:** Dec. 9, 2004

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

**Action taken:** Addition of Part 404 to Title 3 NYCRR.

**Statutory authority:** Banking Law, art. 12-C, section 587

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

**Specific reasons underlying the finding of necessity:** Chapter 629 of the laws of 2002, which became effective on April 7, 2003, made substantial changes to the conduct of the business of budget planning in this state. Amendments made to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law necessitated the emergency adoption of Part 402 of the Superintendent's Regulations on that date.

It has come to the attention of the Banking Department that many licensed budget planners utilize third party entities to assist them in distributing the monies of debtors to their creditors. Likewise, many applicants

for a budget planning license have indicated in their application that they intend to conduct their budget planning activities in a similar fashion. This type of "outsourcing", in which an entity other than the licensee which has a contract for budget planning services with a debtor has access to or controls the monies of debtors, raises the possibility that those monies will not be sufficiently protected, as intended by the Legislature. The rule is necessary in order to provide protection to debtors when a third party "outsourcer" is used in the process of paying debtor funds to creditors of the debtors. Specifically, if the third party "outsourcer" is another budget planner licensed under Article 12-C of the New York Banking Law, the amount of that licensee's bond or assets placed on deposit, as the case may be, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not been properly distributed to their creditors, must be increased to reflect the additional amount of debtors' funds that it has access to or controls as a result of its "outsourcing" activities. However, if the licensed budget planner which utilizes another licensed budget planner as an "outsourcer" places assets on deposit pursuant to Section 580(4) of the Banking Law in an amount sufficient to cover the debtors' funds that the licensed "outsourcer" has access to or controls, then the licensed "outsourcer" would not be required to obtain a surety bond in a greater amount, or place additional assets on deposit to cover the additional amount of debtors' funds that it has access to or controls, as a result of its outsourcing activities. In such case, the monies of debtors would be fully protected by the original licensee's asset deposit.

If the third party "outsourcer" is not a licensed budget planner in New York State, the issue of the safety of the monies of the debtors becomes more paramount as an entity unregulated by and probably unknown to the Banking Department will have access to or control of the monies of debtors. In such case, unless the licensed budget planner places assets on deposit sufficient to cover the debtors' funds that the non-licensed "outsourcer" has access to or controls, the non-licensed "outsourcer" would be required to place assets on deposit sufficient to protect the monies of the debtors that it has access to or controls as a result of its "outsourcing" activities.

The rule also contains provisions relating to the contractual relationship between the licensed budget planner and the service provider, which give protection to debtors who may be adversely affected if the contract between the licensee and the service provider is terminated.

The primary legislative objective of Chapter 629 is to provide greater consumer protection to New York residents who contract with licensed budget planners for budget planning services. Accordingly, considering the foregoing, emergency adoption of this rule is necessary and appropriate.

**Subject:** Regulation of budget planning activities conducted by entities licensed under art. 12-C of the Banking Law.

**Purpose:** To set forth the regulatory requirements and standards of operation for entities licensed under art. 12-C of the Banking Law to conduct the business of budget planning when the licensees use the services of third party entities in making payments of debtor funds to creditors of the debtors.

#### **Text of emergency rule: PART 404**

##### **BUDGET PLANNERS/DELEGATION OF CERTAIN ACTIVITIES**

(Statutory authority: Banking Law, § 587)

##### **§ 404.1 Definitions.**

*For purposes of this Part:*

(a) *The term "debtor" shall mean an individual who enters into a contract with a licensee and is at that time a New York resident.*

(b) The term "licensee" shall mean an entity licensed pursuant to Article 12-C of the New York Banking Law.

(c) The term "licensee service provider" shall mean an entity licensed pursuant to Article 12-C of the New York Banking Law that holds, or has access to, or can effectuate possession of, by any means, the monies of another licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(d) The term "non-licensee service provider" shall mean an entity that holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(e) The term "control party" shall mean with respect to a licensee, any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a licensee. With respect to a non-licensee service provider it shall mean any individual or entity that has a 10% or more ownership interest in the non-licensee service provider and/or any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a non-licensee service provider.

#### § 404.2 Explanatory note.

Section 580.4 of Article 12-C of the New York Banking Law requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, maintain certain assets on deposit, which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed by the licensee to the creditors of the debtors. In circumstances in which a licensee uses a licensee service provider or a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of a licensee's debtors, the services of such service providers shall be subject to the terms and conditions set forth in sections 404.3, 404.4, 404.5 and 404.6 of this Part, in order to provide the consumer protections afforded to licensees' debtors as mandated under Article 12-C of the New York Banking Law.

In complying with these terms and conditions, a licensee that obtains a surety bond pursuant to Section 580.4 of the Banking Law and uses the services of a licensee service provider as described, is required to use a licensee service provider that either obtains a surety bond or maintains assets on deposit, in accordance with the provisions of Banking Law Section 580.4. Similarly, if the licensee obtains a surety bond and uses the services of a non-licensee service provider as described, the licensee is required to use a non-licensee service provider that maintains assets on deposit, in accordance with the provisions of Section 404.4(c)(2) of this Part.

If, however, a licensee elects to maintain assets on deposit pursuant to Banking Law Section 580.4 and uses the services of a licensee service provider or a non-licensee service provider as described, there is no requirement that the licensee service provider or the non-licensee service provider obtain a surety bond or maintain assets on deposit. The licensee service provider would, of course, be required to obtain a surety bond or maintain assets on deposit with respect to its own contracts with debtors for budget planning services, pursuant to Banking Law Section 580.4.

#### § 404.3 Servicing By a Licensee Service Provider.

(a) If a licensee seeks to utilize a licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of another licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies to creditors of the licensee's debtors, the licensee shall give the Superintendent ten days written notice of its intention to do so.

(b) Notice to the Superintendent shall contain the following information:

- (1) Name and address of the licensee service provider.
- (2) A description of the services to be provided by the licensee service provider.

(3) A copy of the agreement or contract between the licensee and the licensee service provider with respect to the provision of any or all of the services described in section 404.3(a) of this Part.

(4) The highest daily amount of debtor funds of the licensee to be held by the licensee service provider, or to which access is given to the licensee service provider, or to which possession can be effectuated, by any means, by the licensee service provider, or which are distributed by

the licensee service provider, or are in the chain of distribution, to the creditors of the licensee's debtors.

(c) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law Section 580.4, the Superintendent, in his/her discretion, may require the licensee service provider to obtain a larger surety bond or maintain a greater amount of assets on deposit for the protection of debtors in accordance with the terms and conditions as set forth in Superintendent's Regulation Parts 402.5, 402.6 and 402.7 in connection with the services being provided by the licensee service provider to the licensee as described in section 404.3(a) of this Part.

(d) A licensee shall not use a licensee service provider until the licensee receives written notice from the Superintendent confirming that the Superintendent has received a copy of the licensee service provider's bond or asset deposit agreement, if required under Section 404.3(c) of this Part.

(e) Notwithstanding the provisions of Section 404.3(c) of this Part, if a licensee maintains a surety bond and seeks to utilize a licensee service provider, as defined in section 404.1(c) of this Part, the Superintendent, in his/her sole discretion, may permit the use of an alternate mechanism to the licensee service provider obtaining a larger surety bond or maintaining a greater amount of assets on deposit, consistent with the purposes of Section 580.4 of Article 12-C of New York's Banking Law and the requirements of this Part.

(f) If the use of an alternate mechanism pursuant to Section 404.3(e) of this Part is proposed by a licensee, the licensee must provide a description of the alternate mechanism and a copy of all applicable documents and records, as well as any other information requested by the Superintendent, in connection with obtaining and/or using the alternate mechanism, including all contracts/agreements pertaining or related thereto.

(g) If a licensee proposes the use of an alternate mechanism to a licensee service provider obtaining a larger surety bond or maintaining a greater amount of assets on deposit, pursuant to Section 404.3(e) of this Part, use of the alternate mechanism shall not be permitted until the licensee receives written notice from the Superintendent that he/she has no objection to such alternate mechanism.

#### § 404.4 Servicing By A Non-Licensee Service Provider.

(a) If a licensee seeks to utilize a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or to be in the chain of distribution of such monies, to the creditors of the licensee's debtors, the licensee shall give the Superintendent ten days written notice of its intention to do so.

(b) Notice to the Superintendent shall contain the following information:

- (1) Name and address of the non-licensee service provider.
- (2) Name, address, social security number and resume of the officers and directors of the non-licensee service provider, any other individual(s) who supervises the daily operations of the non-licensee service provider and any persons having a 10% or more ownership interest, directly or indirectly, in the non-licensee service provider. If an individual(s) has a 10% or more ownership interest in the non-licensee service provider and such individual is not a control party of the licensee with whom the non-licensee service provider is in contract to provide the services described in section 404.4(a) of this Part, such individual shall provide an affidavit attesting to that fact.

(3) A description of the services to be provided to the licensee by the non-licensee service provider.

(4) A copy of the agreement or contract between the licensee and the non-licensee service provider with respect to the provision of any or all of the services described in section 404.4(a) of this Part.

(5) The highest daily amount of debtor funds to be held by the non-licensee service provider, or to which access is given to the non-licensee service provider, or to which possession can be effectuated, by any means, by the non-licensee service provider, or which are distributed by the non-licensee service provider, or are in the chain of distribution, to the creditors of the debtors.

(c) A licensee shall not use a non-licensee service provider for the services described in section 404.4(a) of this Part until:

- (1) The non-licensee service provider gives the Superintendent or his/her authorized representative written authorization to examine all books, records, documents and materials, including those maintained in electronic form, as they relate to the debtors monies held by, or distributed by the non-licensee service provider to the creditors of the debtors, as the superintendent in his/her discretion deems necessary to protect the interests of the debtors. The cost of such examination shall be borne by the licensee in contract with the non-licensee service provider; and

(2) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law Section 580.4, the non-licensee service provider shall maintain assets on deposit for the protection of the debtors whose monies it holds, or has access to, or can effectuate possession of, by any means, or which are distributed, or are in the chain of distribution, by the non-licensee service provider, to the creditors of the debtors. The maintenance of such assets shall be in accordance with the terms and conditions as set forth in Superintendent's Regulation Parts 402.6 and 402.7; and

(3) All information required in subdivision (b) of this section and a copy of the non-licensee service provider's asset deposit agreement, if required under Section 404.4(c)(2) of this Part, have been provided to the Superintendent, and the licensee receives written notice from the Superintendent confirming that the Superintendent has received all such information.

(d) Notwithstanding the provisions of Section 404.4(c)(2) of this Part, if a licensee maintains a surety bond and seeks to utilize a non-licensee service provider, as defined in Section 404.1(d) of this Part, the Superintendent, in his/her sole discretion, may permit the use of an alternate mechanism to the non-licensee service provider maintaining assets on deposit, consistent with the purposes of Section 580.4 of Article 12-C of New York's Banking Law and the requirements of this Part.

(e) If the use of an alternate mechanism pursuant to Section 404.4(d) of this Part is proposed by a licensee, the licensee must provide a description of the alternate mechanism and a copy of all applicable documents and records, as well as any other information requested by the Superintendent, in connection with obtaining and/or using the alternate mechanism, including all contracts/agreements pertaining or related thereto.

(f) If a licensee proposes the use of an alternate mechanism to a non-licensee service provider maintaining assets on deposit pursuant to Section 404.4(d) of this Part, use of the alternate mechanism shall not be permitted until the licensee receives written notice from the Superintendent that he/she has no objection to such alternate mechanism.

#### § 404.5 Termination of Agreements or Contracts.

(a) Every agreement or contract between a licensee and a licensee service provider, or a non-licensee service provider, to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies, to creditors of such debtors, shall provide that the agreement or contract shall not be terminated without at least 30 days written notice to the party against whom termination is being sought.

(b) A licensee shall immediately notify the Superintendent, in writing, of such termination, upon the sending of by the licensee, or upon the receipt by the licensee, of the notice of termination.

#### § 404.6 Compliance.

Compliance with this Part shall be required on or before May 18, 2004.

**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 March 6, 2005.

**Text of emergency rule and any required statements and analyses may be obtained from:** Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

#### Regulatory Impact Statement

##### 1. Statutory Authority:

Section 587 of Article 12-C of the New York Banking Law, as amended by chapter 629 of the laws of 2002, provides the statutory authority for the Superintendent to propose this rule with respect to entities licensed under Article 12-C of the Banking Law to conduct the business of budget planning. Provisions of chapter 629 include the enactment of amendments to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law that relate to the business of budget planning. Article 12-C of the New York Banking Law provides for the licensing and regulation of entities engaged in the business of budget planning. The business of budget planning is defined in Section 455 of Article 28-B of New York's General Business Law.

##### 2. Legislative Objective:

Entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning are authorized to enter into contracts with individuals ("Debtors") who seek to pay off their debts. The Debtors agree to pay sums of money periodically to the licensed budget planner. The licensed budget planner in turn uses the money received from the Debtors to pay the creditor(s) of the Debtors based on payment terms

set forth in the contracts between the licensed budget planner and the Debtors. Debtors pay a fee to licensed budget planners for this service.

Typically, Debtors who enter into such contracts with licensed budget planners have incurred significant amounts of consumer debt primarily through credit-card financed purchases. The expansion of unsecured consumer credit to the general public has resulted in an explosion of consumer debt. This has created situations where credit has been extended to, and utilized by, individuals who, if not for the available credit, would have been unable to engage in such consumer spending based on their disposable income. Individuals who have no funds to repay such debts may only possibly resolve their financial problems by either seeking out personal bankruptcy or by looking to the services provided by credit counselors or licensed budget planners. Debtors often have little ability to satisfy their creditors without the use of a structured payment plan negotiated with the creditors that may include some modification of the outstanding debt due to the creditor. Licensed budget planners perform an intermediary role between the Debtors and the creditors in negotiating a payment plan and in insuring that periodic payments are made to the creditors.

Under these circumstances the individuals in debt are often in dire economic circumstances. Consequently, they are potential targets of persons or entities that may seek to take advantage of them by accepting fees for the promise of services or programs that may not actually eliminate the debt.

The Legislature in amending various sections of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of entities engaged in the business of budget planning, did so generally to establish a more rigorous regulatory environment within which entities licensed under New York law may engage in the business of budget planning. The Legislature addressed, among other things, the inherent risks associated with the payment of Debtor funds to creditors when Debtors choose to have such payments made via the services of a licensed budget planner instead of paying their creditors directly. Specifically, as one way of increasing consumer protections for the Debtors who contract with licensed budget planners in order to pay the debts they owe to creditors, Article 12-C was amended to require licensed budget planners to obtain a surety bond or place assets on deposit, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not properly been paid to their creditors.

In addition to the amendments to Article 12-C of the New York Banking Law, amendments were also made to Article 28-B of the New York General Business Law in connection with the business of budget planning. Specifically, Section 455 of Article 28-B of the New York General Business Law requires a person or entity, wherever located, that enters into a contract for budget planning with an individual then resident in New York State, to first obtain a license from the Superintendent of Banks to conduct the business of budget planning. Such a license is obtained pursuant to Article 12-C of the New York Banking Law. Because of the requirement that out-of-state entities that contract with New York residents for budget planning services be licensed under the Banking Law, New York residents who partake of the budget planning services offered by the out-of-state entities will also be afforded the consumer protections that have been put in place under Article 12-C of the Banking Law.

The proposed New Part 404 sets forth a framework for the regulation of entities licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning, when such licensees use third party entities in distributing the monies of Debtors to creditors. New Part 404 was drafted in furtherance of the public policy objectives that the Legislature sought to advance in enacting the amendments to Article 12-C of the New York Banking Law, in particular, Section 580(4), by providing protection when third party entities are used in distributing Debtor monies to creditors.

##### 3. Needs and Benefits:

Proposed New Part 404 is needed to enable the Banking Department to carry out its existing supervisory and regulatory responsibilities with respect to entities licensed under Article 12-C of New York's Banking Law to conduct the business of budget planning. Specifically, when Banking Law Section 580(4) was recently enacted, it placed the requirement upon licensed budget planners to obtain a surety bond or place assets on deposit, the proceeds of which constitute a trust fund to reimburse payments made by Debtors that have not been properly paid to their creditors. Since the enactment of the legislation, members of the Banking Department staff have received numerous applications from prospective licensees. Extensive discussions were had at meetings and in telephone conversations with a number of the prospective licensees, as well as with current licensees, regarding the operations of their budget planning businesses. This was

done in order to assess whether the business practices of the budget planning industry conformed to the consumer protections standards set forth in the new laws. The Department learned from many of the prospective and current licensees that with respect to the Debtors that they are in contract with for budget planning services, it is their practice to use third party entities in distributing the Debtors' monies to creditors. The third party entities that they contract with for such services are generally for-profit entities that are not, themselves, licensed to conduct the business of budget planning. However, one current licensee indicated that it uses the services of another New York State licensed budget planner in order to distribute Debtors' monies to creditors. The current and prospective licensees explained that it is necessary for them to use the services of third party entities in this way primarily because they do not have the computerized technology, staffing, and budgetary resources to provide the critical services performed by the third party entities.

Nevertheless, this type of "outsourcing" to a third party entity, in which an entity other than the licensee which has a contract for budget planning services with a Debtor, holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's Debtors, or distribute, or is in the chain of distribution of such monies, to the creditors of such Debtors, raises the possibility that those monies will not be sufficiently protected, as intended by the Legislature when it put into law the bond/asset deposit requirement as set forth in Section 580(4) of New York's Banking Law.

The rule is proposed in order to accommodate the budget planning industry's operational need to use the third party entities in distributing Debtor funds to creditors. At the same time, the rule provides the consumer protections afforded by the recently enacted budget planning legislation as set forth in Banking Law Section 580(4). In particular, if the licensee uses a third party entity in distributing Debtor funds to creditors, and the licensee elects to place assets on deposit, which assets constitute a trust fund to reimburse payments made by Debtors if not properly paid to their creditors, the rule allows for the use of such a third party entity and places no additional bond/asset deposit requirements on the third party entity. If, on the other hand, the licensee elects to obtain a surety bond rather than place assets on deposit, the licensee may only use a third party entity in distributing Debtor funds if the third party entity places assets on deposit or obtains a surety bond, as the case may be.

Budget Planning is a regulated financial service in New York State. Therefore, it is the obligation of the Superintendent of Banks, as the State financial regulator, to establish a rule as proposed in accordance with the legislative intent to protect vulnerable consumers from entities that may operate without the necessary business standards required to appropriately provide budget planning services. It is the Banking Department's belief that the rule as proposed is necessary. It provides the mechanism by which the budget planning entities that are currently licensed, as well as those seeking to obtain such a license, can continue to operate using the services of third party entities in distributing Debtor funds to creditors. At the same time, the rule satisfies the legislative requirement as set forth in Banking Law Section 580(4) to provide certain protection to Debtors in contract with licensees, in cases where third party entities are used by the licensees in distributing Debtor funds to creditors.

#### 4. Costs:

(a) Costs to State Government: None.

Any and all additional examination costs that may be incurred by the Banking Department, as a result of the requirements of the rule imposed on the licensees that use third party entities in the distributing Debtor funds to creditors, will be borne by the licensees.

(b) Costs to Local Government: None.

(c) Costs to Regulated Entities:

The proposed rule allows licensees to use third party entities in distributing Debtor funds to creditors. In summary, Part 404 provides the following. If a licensee elects to maintain assets on deposit and utilizes the services of a third party entity in distributing Debtor funds to creditors, (whether or not the third party entity is, or is not, another budget planner licensed in New York) there is no requirement that the third party entity obtain a surety bond or place assets on deposit with respect to the business of the licensee that it is servicing. If a licensee elects to obtain a surety bond and utilizes the services of a third party entity in distributing Debtor funds, which entity is also a licensed budget planner in New York, the third party entity must either obtain a surety bond or maintain assets on deposit with respect to the business of the licensee that it is servicing. If the licensee elects to obtain a surety bond and utilizes the services of a third party entity in distributing Debtor funds, which entity is not a New York licensed budget planner, the third party entity must maintain assets on deposit with respect to the business of the licensee that it is servicing.

A licensee is likely to incur no costs if it uses a third party entity in distributing Debtor funds and elects to maintain assets on deposit, rather than a surety bond. The reason being, that a licensee has to purchase a surety bond, whereas, by placing assets on deposit, the licensee does not have to make such a purchase. Moreover, when assets are placed on deposit, the licensee has the ability to earn interest on the deposited funds.

It is possible, however, that in circumstances where a licensee may not have all, or part of, the necessary funds to place on deposit, that it could incur some costs in connection with borrowing funds for its required deposit. The Banking Department is unable to determine what the costs to the licensees would be under those circumstances since the cost of borrowing funds is typically dependent upon factors such as, the amount of the borrowing and the financial condition of the entity doing the borrowing. Therefore, it is not possible to estimate, even in a general way, such borrowing costs. However, should costs be incurred to make the asset deposit, those costs will not outweigh the benefits derived by maintaining the assets on deposit should Debtor funds not be properly paid to creditors.

(d) Costs to the Banking Department for Implementation and Continued Administration of the Rule: The rule requires Banking Department staff to review contracts or agreements that licensees have entered into, or plan to enter into, regarding the licensees use of third party entities in distributing Debtor funds to creditors. This review is done in order to assess compliance with rule to ensure, that where third party entities are involved, the Debtors in contract with the licensees are afforded the consumer protections provided by the bond/asset deposit requirements of Section 580(4) of the New York Banking Law. The Banking Department expects that its costs to implement and administer the rule will be minimal.

#### 5. Local Government Mandates:

The proposed rule imposes no burdens on local governments.

#### 6. Paperwork:

The reporting requirements as set forth in the rule will enable the Banking Department to provide the necessary supervisory oversight of the licensees, in furtherance of the legislative objective to provide more consumer protections for debtors in contract with licensees for budget planning services.

Under the proposed rule, licensed budget planners will have to provide the Banking Department with the following information: a) the name and address of the third party entity used in distributing Debtor funds to creditors, b) a description of the services being provided by the third party entity, c) a copy of the agreement or contract entered into with the third party entity, d) information regarding the highest daily amount of Debtor funds that the third party entity will be providing services for under the contract or agreement, and e) information with respect to the termination of any such agreement or contract. All of this information is of the type that licensees using third party entities in distributing Debtor funds will have readily available to provide to the Banking Department.

#### 7. Duplication:

None.

#### 8. Alternatives:

(a) Proposal — As is previously discussed in the Legislative Objective Section contained herein, the recent amendments to Article 12-C, Section 580(4) of New York's Banking Law include the requirement that New York State licensed budget planners obtain a surety bond, or in lieu of such bond, place certain assets on deposit to be used to reimburse payments made by Debtors that have not been properly distributed to creditors.

Since the enactment of the legislation, Banking Department staff met with current and prospective licensees and learned that these businesses require the use of the services provided by third party entities in distributing Debtor funds. The rule was proposed keeping in mind both the legislative intent in enacting the bond/asset deposit requirements to provide increased consumer protection to New York residents in contract with licensees should their payments not be properly distributed to creditors, and the need that current and prospective licensees have in using the services of third party entities in distributing such payments. The rule allows licensees to use the services of third party entities in this way, and also provides the Debtors in contract with the licensee the consumer protections afforded under Section 580(4) of the Banking Law, as mandated by the Legislature.

(b) Do not propose the rule.

If this alternative were considered, the Banking Department would have to require that licensees not use the services of third party entities in distributing Debtor funds to creditors, in order to provide Debtors the consumer protections afforded under Section 580(4) of the Banking Law. This alternative is not feasible because, as many current and prospective licensees explained to the Banking Department, they need to use the

services of the third party providers in distributing Debtor funds. The need results primarily because they do not have the computerized technology, staffing and budgetary resources to provide the critical services that they perform.

Under these circumstances, the Banking Department believes that if the rule was not proposed, licensed budget planners would have to be prohibited from using third party entities in distributing Debtor funds. This could be severely harmful to the budget planning industry, particularly since, the inability to use the third party entities may prevent the licensees from continuing to operate their businesses. Moreover, the inability to use the third party entities may prevent many prospective licensees from seeking a budget planning license in New York because they may not be able to operate without the services of the third party entities. Accordingly, the proposed rule is needed not only to provide consumer protection to Debtors as mandated by Section 580(4) of the Banking Law, but also to prevent putting certain current licensees out of business, and to enable certain prospective licensees the opportunity to conduct the business of budget planning in New York.

9. Federal Standards:

None.

10. Compliance Schedule:

Compliance with the rule is required on or before September 13, 2004.

### **Regulatory Flexibility Analysis**

The rule affects entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning. Section 579 of Article 12-C requires entities that conduct the business of budget planning to be Type B not-for-profit corporations under New York's Not-For-Profit Corporation Law. Under New York's Not-For-Profit Corporation Law, there can be no ownership interest in Type B not-for-profit corporations. Accordingly, there can be no ownership interest in budget planners licensed in New York.

No local governments are licensed to conduct the business of budget planning, and all of the budget planners currently licensed under Article 12-C of the New York Banking Law have less than 100 employees.

When the Legislature enacted the recent amendments to Article 12-C of the New York Banking Law, it established a more rigorous regulatory environment within which entities licensed under New York Law were to engage in the business of budget planning. This was done in order to provide increased consumer protection to New York residents that contract for budget planning services with licensees.

The recent amendments to Article 12-C of the New York Banking Law include the bonding/asset deposit requirements set forth under Section 580(4) of Article 12-C. In particular, Section 580(4) requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, maintain certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed to creditors.

In response to the legislation, members of the Banking Department staff met with and/or had conversations with current and prospective licensees. As is more fully described in the Regulatory Impact Statement, the Banking Department learned that many of the current and prospective licensees require the services of certain third party entities in distributing debtor funds to creditors. Accordingly, the rule was proposed in response to the industry need to use third party entities in this way. The rule is flexible in that it allows licensees to use the services of third party entities, who may be small business, in distributing debtor funds to creditors. At the same time, it provides the consumer protections afforded under Section 580(4) of the Banking Law, as mandated by the Legislature, to the debtors in contract with the licensees for budget planning services. The rule ensures that debtors' funds will be protected, as mandated by the statute, irrespective of which entity has control over and/or access to the funds.

Specifically, due to the servicing relationship between the licensee and the third party entities, when a licensee elects to use a third party entity in distributing debtors funds to creditors, under the proposed rule, the licensee can choose to either place assets on deposit, or obtain a surety bond. If the licensee places assets on deposit, there are no bond/asset deposit requirements placed on the third party entity. If the licensee elects to obtain a bond, the third party entity can either place assets on deposit or obtain a surety bond, as the case may be, with respect to the budget planning business of the licensee that it services.

Based on the dialogue that the Banking Department had with current and prospective licensees regarding their need to use third party entities in distributing debtor funds to creditors, it is not apparent, thus far, that the rule will impose any appreciable or substantial adverse impact on entities licensed under New York Law to conduct the business of budget planning.

### **Rural Area Flexibility Analysis**

A Rural Area Flexibility analysis is not submitted because the rule does not result in any hardship to a regulated party in a rural area. The legislature mandated under Section 580(4) of the New York Banking Law, that licensees obtain a surety bond or place certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly paid to creditors. In order to provide debtors with the consumer protections afforded under Section 580(4), the proposed rule allows licensees that use third party entities in distributing debtor funds to creditors to either place assets on deposit or obtain a surety bond. If the licensee elects to obtain the surety bond, it must only use the services of a third party entity that also places assets on deposit or obtains a surety bond, as the case may be, in connection with the licensee's business that it is servicing. If the licensee elects to place assets on deposit, no bond/asset deposit requirements are placed on the third party entity.

There is nothing about the character and nature of the rules requirements that would make it difficult for, or prevent, licensed budget planners from complying with the rule based on a particular office location. Accordingly, it is unlikely that the rule would cause regulated parties to seek flexibility with respect to any part, or parts thereof, even if the regulated parties were located in a designated rural area as defined in New York State Executive Law Section 481(7).

To the extent that the rule, if adopted, may have any impact on rural areas, it has the ability to provide increased consumer protection to debtors residing in rural areas who enter into contracts with licensees for budget planning services, when such licensees use the services of third party entities in distributing debtors funds to creditors.

### **Job Impact Statement**

The purpose of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of persons or entities engaged in the business of budget planning, is to ensure that budget planners operate in accordance with rigorous standards. Recent amendments to Article 12-C of New York Banking Law and Article 28-B of New York's General Business Law were adopted in connection with the business of budget planning to increase consumer protections for the clients of licensed budget planners.

In particular, Section 580(4) of Article 12-C of the New York Banking Law was recently amended in connection with budget planning in New York State. It requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, to maintain certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed to creditors.

As is explained in the Regulatory Impact Statement, it has come to the attention of the Banking Department that both current and prospective licensees require the services of third party entities in distributing debtors to creditors. The rule has been proposed in order to allow the licensees to continue using such third party entities in the operations of their businesses. At the same time, the rule provides the consumer protections afforded under Section 580(4) to debtors that contract with licensees for budget planning services when the licensees use third party entities in distributing the funds of the debtors to creditors.

Under the rule, if a licensee elects to use a third party entity in distributing debtor funds to creditors, a licensee can choose to either place certain assets on deposit or obtain a surety bond, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not been properly paid to creditors. If a licensee places assets on deposit, there is no bond/asset deposit requirement placed on the third party entity. If a licensee, instead, chooses to obtain a surety bond, the rule requires that the third party entity place certain assets on deposit, or obtain a surety bond, as the case may be, with respect to licensee's business that it services.

Accordingly, based on the rule's requirements, it will have no impact on jobs in New York State.

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

### **Regulations Governing Lending by Credit Unions**

**I.D. No.** BNK-51-04-00009-P

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

**Proposed action:** Amendment of section 96.6 of Title 3 NYCRR.

**Statutory authority:** Banking Law, sections 14(1), 454 and 454(6)

**Subject:** Change in the regulations governing lending by credit unions.

**Purpose:** To permit a credit union to make loans to a single member exceeding \$1,000,000 with the prior approval of the superintendent.

**Text of proposed rule:** It is proposed to amend Part 96.6 of the General Regulations of the Banking Board, NYCRR Title 3, as follows:

#### PART 96

#### LENDING LIMITS FOR CREDIT UNIONS

##### Section 96.6 Maximum amount of loan.

(a) No credit union shall make a loan to a member in accordance with the provisions of section 96.4 of this Part, if upon the making of that loan, the member would be indebted to the credit union upon loans directly or indirectly made to such member under such section in an aggregate amount exceeding \$500,000. No credit union shall make a loan to a member in accordance with the provisions of section 96.5 of this Part if, upon the making of that loan, the member would be indebted to the credit union upon loans directly or indirectly made to such member under that section and section 96.4 in an aggregate amount exceeding \$650,000. For the period March 1, 1996 to February 28, 1997 such aggregate amount shall be \$800,000. Commencing March 1, 1997 such aggregate amount shall be \$1,000,000 *unless it has made a prior written (including electronic) request to, and received the prior written approval of, the Superintendent.*

(b) No credit union shall make a loan to a member in accordance with the provisions of section 96.4 or 96.5 of this Part if, upon making of that loan, the member would be indebted to the credit union upon loans directly or indirectly made to such member under such sections in an aggregate amount exceeding 25 percent of net worth of the credit union; provided, however, that a credit union may, in any event, make a loan to a member for the minimum amounts specified in such sections.

**Text of proposed rule and any required statements and analyses may be obtained from:** Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

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

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

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

#### Regulatory Impact Statement

##### 1. Statutory authority:

Banking Law Section 14(1) gives the Banking Board the power "to make, alter and amend rules and regulations not inconsistent with law." Banking Law Section 454 states that a credit union shall have certain enumerated powers, subject to restrictions and limitations contained in "any regulations of the Banking Board as may be specifically authorized under this section." Banking Law Section 454(6) gives credit unions the power to lend money to their members "subject to such regulations and restrictions as the banking board finds necessary and proper."

##### 2. Legislative objectives:

Banking Law Sections 14(1), 454 and 454(6) were intended to give the Banking Board the flexibility to develop and alter the state's regulatory structure for financial institutions so as to conform to the continuing evolution of financial services and so as to respond to the ongoing development of financial services regulation by regulatory authorities outside the state.

##### 3. Needs and benefits:

Present subsection (a) of Section 96.6 of the General Regulations of the Banking Board prohibits a credit union from making a secured or unsecured loan to a member (other than a loan fully secured by shares in the credit union) if, upon making that loan, the member would be indebted to the credit union upon loans directly or indirectly made to such member in an aggregate amount exceeding \$1,000,000.

Subsection (b) of Section 96.6 prohibits a credit union from making any such a loan if the member would thereupon be indebted to the credit union in an aggregate amount exceeding 25% of its net worth. Sections 96.4 and 96.5 of the General Regulations of the Banking Board prohibit a credit union from making loans to a member that are unsecured or that are secured by collateral other than shares in the credit union, in amounts which exceed 15% (or \$5,000, if greater) and 25% (or \$15,000, if greater), respectively, of the net worth of the credit union.

The proposal will amend Section 96.6(a) to permit a credit union, with the prior written approval of the Superintendent, to make loans to a single member exceeding the \$1,000,000 cap. However, any such loans would still be subject to the limitations based on a percentage of net worth in Sections 96.4, 96.5 and 96.6(b). In the case of smaller credit unions, it is these latter provisions that provide the operative limit. For larger credit unions, however, the \$1,000,000 cap can prevent the institution from

making sound loans which would be within the permitted percentage thresholds.

While other types of financial institution are also subject to lending limits, these limits are typically based on a percentage of the institution's net worth rather than a fixed dollar amount. In addition to retaining the other existing lending limits for credit unions, which are based on net worth, the proposal would require a credit union seeking to make loans to a single member aggregating more than \$1,000,000 to obtain the prior written approval of the Superintendent. In contrast, federal credit unions are not subject to a dollar limit on aggregate loans to a single member. (Both federal and state credit unions are, however, limited to the lesser of 2.5% of net worth or \$100,000 in exercising their recently obtained authority to make unsecured member business loans.) In addition, of course, the \$1,000,000 cap in Section 96.6(a) has become more restrictive since its inception in 1997.

Considering the foregoing, amending Part 96.6(a) to permit loans in excess of the \$1,000,000 cap when approved by the Superintendent is desirable in order to ensure that the State charter remains attractive.

##### 4. Costs:

The modification of subsection (a) of Section 96.6 of the General Regulations of the Banking Board is not projected to impose any costs on regulated parties, the Banking Department or the state and local governments.

##### 5. Local government mandates:

The modification of subsection (a) of Section 96.6 of the General Regulations of the Banking Board will not impose any program, service, duty or responsibility on any county, city, town, village, school district, fire district or other special district.

##### 6. Paperwork:

The modification of subsection (a) of Section 96.6 of the General Regulations of the Banking Board will require an institution to make a prior written request to, and receive prior written approval from, the Superintendent in order to make a loan which would cause it to exceed the \$1,000,000 limit on aggregate loans to a single member.

##### 7. Duplication:

There are no relevant rules or other legal requirements of the state and federal governments that will duplicate, overlap or conflict with the modification of subsection (a) of Section 96.6 of the General Regulations of the Banking Board.

##### 8. Alternatives:

One alternative considered was maintaining the existing rule. See "Needs and Benefits" above for a discussion of why it was decided to propose changing the existing rule. Another alternative considered was total elimination of the \$1,000,000 cap. While this would have made the loan limits for state chartered credit unions more consistent with those for federal credit unions, it was felt that requiring prior approval of large loans by the Superintendent is desirable in order to ensure that credit unions exercise this new lending authority in a safe and sound manner.

##### 9. Federal standards:

Although NCUA regulations applicable to all federally insured credit unions, federal and state, impose limits on business loans to a single member, there are no federal standards generally limiting loans to a single member by a state-chartered credit union. The rules of the National Credit Union Administration limit loans by federal credit unions to a single member to 10% of capital (i.e., shares) and surplus, while the Banking Law limits on loans by a credit union to a single member of 15% of net worth (with a minimum of \$5,000) for unsecured loans, and 25% of net worth (with a minimum of \$15,000) for secured and unsecured loans combined. In addition to the foregoing limitations, none of which would be affected by this proposal, subsection (a) of Section 96.6 of the General Regulations of the Banking Board imposes a \$1 million cap on loans to a single member. This proposal would remove the \$1 million cap and replace it with a prior approval requirement. The proposal would make the state's regulations more consistent with the regulations governing federal credit unions, which do not impose an overall dollar amount limitation on loans to a single member. The reasons for not eliminating the dollar amount threshold entirely are set forth in Paragraph 8 "Alternatives" above.

##### 10. Compliance schedule:

No time will be necessary to enable regulated persons to achieve compliance with the modified subsection (a) of Section 96.6 of the General Regulations of the Banking Board.

#### Regulatory Flexibility Analysis

The modification of the \$1,000,000 limit on aggregate loans by a credit union to a single member involves the easing of an existing regulatory restriction and therefore will not impose any adverse impact or reporting,

recordkeeping or other compliance requirements on small businesses or local governments. An institution must make a prior written request to, and receive prior written approval from, the Superintendent to make a loan which would cause it to exceed the \$1,000,000 limit on aggregate loans to a single member.

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

The modification of the \$1,000,000 limit on aggregate loans by a credit union to a single member involves the easing of an existing regulatory restriction and therefore will not impose any adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

#### **Job Impact Statement**

The modification of the \$1,000,000 limit on aggregate loans by a credit union to a single member involves the easing of an existing regulatory restriction and therefore will have no impact or a positive impact on jobs or employment opportunities.

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## Department of Civil Service

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-51-04-00001-P

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

**Proposed action:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class in the Executive Department.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "State Consumer Protection Board," by increasing the number of positions of Special Assistant from 1 to 2.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-51-04-00002-P

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

**Proposed action:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class in the Executive Department.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Human Rights," by increasing the number of positions of Special Assistant from 3 to 4.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-51-04-00003-P

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

**Proposed action:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the exempt class in the Executive Department.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department, by adding thereto the subheading "Office of Homeland Security," and the positions of Counsel and Secretary.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-51-04-00004-P

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

**Proposed action:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the exempt class in the Department of Audit and Control.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Audit and Control, by increasing the number of positions of Investigative Auditor from 4 to 10.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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



The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

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

#### Jurisdictional Classification

I.D. No. CVS-51-04-00005-P

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

**Proposed action:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete positions from and classify positions in the exempt class in the Department of Audit and Control.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Audit and Control, by deleting therefrom the positions of Real Estate Investment Officer (16) and by increasing the number of positions of Special Investment Officer from 7 to 23.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

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

#### Jurisdictional Classification

I.D. No. CVS-51-04-00006-P

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

**Proposed action:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the non-competitive class in the Department of Transportation.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Transportation, by adding thereto the position of Executive Director, New York Metropolitan Transportation Council.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

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

#### Jurisdictional Classification

I.D. No. CVS-51-04-00007-P

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

**Proposed action:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a position from the non-competitive class in the Department of Transportation.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Transportation, by deleting therefrom the position of Director of Transportation Employee Health and Safety (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

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

#### Jurisdictional Classification

I.D. No. CVS-51-04-00008-P

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

**Proposed action:** Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class and delete a position from the non-competitive class in the Department of Mental Hygiene.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by increasing the number of positions of Secretary from 1 to 2; and

Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by deleting therefrom the position of Advocacy Specialist 2 (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.



## Office of Mental Retardation and Developmental Disabilities

### NOTICE OF ADOPTION

#### Rate Setting for Intermediate Care Facilities for Persons with Developmental Disabilities

**I.D. No.** MRD-42-04-00010-A

**Filing No.** 1370

**Filing date:** Dec. 2, 2004

**Effective date:** Jan. 1, 2005

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

**Action taken:** Amendment of section 681.14 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.07, 13.09 and 43.02

**Subject:** Rate setting for intermediate care facilities for persons with developmental disabilities (ICF/DD).

**Purpose:** To implement and efficiency adjustment applicable to under 31-bed ICF/DD facilities.

**Text or summary was published** in the notice of proposed rule making, I.D. No. MRD-42-04-00010-P, Issue of October 20, 2004.

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

**Text of rule and any required statements and analyses may be obtained from:** Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

**Additional matter required by statute:** Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

#### Assessment of Public Comment

The agency received no public comment.

from Bath Television & Service Co., Inc. (Bath Television) to Time Warner Entertainment-Advance/Newhouse Partnership (TWEAN).

**Statutory authority:** Public Service Law, section 222

**Subject:** Transfer of cable system assets.

**Purpose:** To permit TWEAN to acquire certain cable franchises from Bath Television.

**Substance of final rule:** The Commission authorized the transfer of Bath Television & Service Co., Inc.'s cable system, franchises, facilities and State Certificates of Confirmation to Time Warner Entertainment-Advance/Newhouse Partnership, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. 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.

(04-V-0465SA1)

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### Major Electric Rate Increase by Consolidated Edison Company of New York, Inc.

**I.D. No.** PSC-51-04-00011-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes to the rates, charges, rules and regulations contained in its tariff schedules, P.S.C. No. 9—Electric and No. 2—Retail Access, PASNY No. 4 and Economic Development Delivery Service No. 2. The effective date of the filing has been suspended through March 26, 2005.

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

**Subject:** Major electric rate increase.

**Purpose:** To increase electric revenues by about \$550 million or 6.7 percent.

**Public hearing(s) will be held at:** 5:00 p.m., Jan. 5, 2005 at One Penn Plaza, Board Rm., 8th Fl., New York, NY; 7:30 p.m., Jan. 6, 2005 at Queens Borough Hall, Rm. 213, Parts 1 and 2, 120-55 Queens Blvd., Kew Gardens, NY; 7:30 p.m., Jan. 10, 2005 at Brooklyn Borough Hall, Courtroom, Second Fl., 209 Joralemon St., Brooklyn, NY; 1:30 p.m., Jan. 11, 2005 at Bronx Borough Hall, Veterans' Memorial Hall, First Fl., 815 Grand Concourse, Bronx, NY; and 7:30 p.m. Jan. 11, 2005 at Greenburgh Town Hall, Auditorium, First Fl., 177 Hillside Ave., Elmsford, NY.

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

**Interpreter Service:** Interpreter services will be made available to deaf 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.

**Substance of proposed rule:** On April 30, 2004, Consolidated Edison Company of New York, Inc. made a tariff filing to increase its electric delivery rates by about \$550 million or 6.7 percent to become effective April 1, 2005, and included a proposal for a three-year plan that called for an additional increase of \$175 million in the second year and \$290 million in the third year. The effective date of the filing is currently suspended through March 26, 2005 in Case 04-E-0572 and the company has agreed to extend that suspension period through March 31, 2005.

Parties to the case have reviewed and analyzed the Con Edison's filing and on December 2, 2004 some of those parties entered into an agreement for a three-year rate plan. Under the proposed plan, electric delivery service revenue would increase by \$104.6 million on April 1, 2005 and by an additional \$220.4 million on April 1, 2007. The larger third-year increase is in lieu of smaller increases in each of the second and third rate years. The specific revenue increases would cumulatively yield substantially less revenue than the company had sought initially or at the time of

## Public Service Commission

### NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-24-00-00010-P	June 14, 2000
PSC-34-04-00028-P	August 25, 2004
PSC-46-04-00010-P	November 17, 2004
PSC-47-04-00011-P	November 24, 2004

### NOTICE OF ADOPTION

#### Transfer of Certain Cable Franchises by Bath Television & Service Co., Inc.

**I.D. No.** PSC-18-04-00008-A

**Filing date:** Dec. 7, 2004

**Effective date:** Dec. 7, 2004

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

**Action taken:** The commission, on July 28, 2004, adopted an order in Case 04-V-0465 approving the transfer of certain cable system facilities

its rebuttal and update filing. Major factors contributing to the difference include a lower allowed rate of return, reduced depreciation, a higher sales forecast, and the inclusion in base rates of a lower amount of projected investment in distribution, substation, and transmission plant.

The proposed electric delivery revenue increases would be significantly lower than they would otherwise be because of the proposed use of a total of \$729.3 million of net credits available and expected to become available for the benefit of customers. Of the total, \$226.7 million of credits are estimated and would be subject to reconciliation.

Other issues addressed by the parties' proposal include demand management initiatives expected to cost more than \$224 million over three years, a low income program, reconciliation of various amounts underlying the revenue increases, a retail access program, reliability and customer service performance mechanisms, revenue allocation, rate design, the initiation of future collaborative proceedings, and numerous other issues.

The Commission may adopt, reject, or otherwise depart from the terms of the parties' proposal. The Commission may also change the rates for electric and related services other than as set forth in the Joint Proposal.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

**Data, views or argument may be submitted to:** Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(04-E-0572SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Pole Attachment Rates by Bath Electric, Gas & Water Systems

**I.D. No.** PSC-51-04-00012-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Bath Electric, Gas & Water Systems to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 1—Electricity to become effective Feb. 15, 2005.

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

**Subject:** Pole attachment rates.

**Purpose:** To establish pole attachment rates.

**Substance of proposed rule:** On November 23, 2004, Bath Electric, Gas & Water (Bath) filed proposed tariff revisions to modify its electric tariff schedule, P.S.C. No. 1—Electricity, to establish pole attachment rates to become effective February 15, 2005. The Commission may approve, modify, or reject, in whole or in part, Bath's filing.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(04-E-1471SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Lightened Regulation by Calpine Bethpage 3, LLC

**I.D. No.** PSC-51-04-00013-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, reject or modify a request by Calpine Bethpage 3, LLC ("Calpine Bethpage") for an order providing for lightened regulation.

**Statutory authority:** Public Service Law, sections 4(1), 66(1), 70 and 110

**Subject:** Request by Calpine Bethpage for lightened regulation as an electric corporation.

**Purpose:** To consider Calpine Bethpage's request in connection with the construction of an electric generating facility.

**Substance of proposed rule:** By petition filed December 7, 2004, Calpine Bethpage 3, LLC seeks an order providing for lightened regulation of it as an electric corporation operating in the wholesale electric market.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(04-E-1549SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Customer Satisfaction Index Target by St. Lawrence Gas Company, Inc.

**I.D. No.** PSC-51-04-00014-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 is considering a proposal by St. Lawrence Gas Company, Inc. regarding the implementation of an overall customer satisfaction index target for its service quality performance mechanism as provided for in the joint proposal that was adopted by commission order in Case 02-G-1275 and issued Aug. 4, 2003.

**Statutory authority:** Public Service Law, sections 4(1), 65(1), 66(1) and (2)

**Subject:** Customer satisfaction index target.

**Purpose:** To implement a customer satisfaction index target for St. Lawrence Gas Company, Inc.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a proposal by St. Lawrence Gas Company, Inc. regarding the implementation of an overall customer satisfaction index target for its Service Quality Performance Mechanism as provided for in the Joint Proposal adopted by Commission Order in Case 02-G-1275 and issued August 4, 2003.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(02-G-1275SA2)

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

#### Franchising Process by the Village of Tarrytown

I.D. No. PSC-51-04-00015-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Village of Tarrytown (Westchester County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

**Subject:** Franchising process.

**Purpose:** To allow the Village of Tarrytown to waive certain preliminary franchising procedures to expedite the franchising process.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Village of Tarrytown (Westchester County) for a waiver of 9 NYCRR Part 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(04-V-1462SA1)

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

#### Franchising Process by the Village of Cedarhurst

I.D. No. PSC-51-04-00016-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Village of Cedarhurst (Nassau County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

**Subject:** Franchising process.

**Purpose:** To allow the Village of Cedarhurst to waive certain preliminary franchising procedures to expedite the franchising process.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Village of Cedarhurst (Nassau County) for a waiver of 9 NYCRR Part 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(04-V-1465SA1)

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

#### Franchising Process by the Town of Kent

I.D. No. PSC-51-04-00017-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Kent (Putnam County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

**Subject:** Franchising process.

**Purpose:** To allow the Town of Kent to waive certain preliminary franchising procedures to expedite the franchising process.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Kent (Putnam County) for a waiver of 9 NYCRR Part 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process. Cable television service will be provided by Cablevision Systems of Wappingers Falls, Inc.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(04-V-1476SA1)

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

#### Franchising Process by the Town of Greenburgh

I.D. No. PSC-51-04-00018-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Greenburgh (Westchester County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

**Subject:** Franchising process.

**Purpose:** To allow the Town of Greenburgh to waive certain preliminary franchising procedures to expedite the franchising process.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Greenburgh (Westchester County) for a waiver of 9 NYCRR Part 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

**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.

(04-V-1479SA1)