

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

- AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing; or C for first Continuation.)

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

Banking Department

EMERGENCY RULE MAKING

Changes in the Regulations Governing Credit Unions

I.D. No. BNK-19-04-00005-E

Filing No. 465

Filing date: April 27, 2004

Effective date: April 27, 2004

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

Action taken: Repeal of sections 95.2, 96.1 and Part 113; addition of section 96.1 and Parts 326 and 327; and amendment of sections 96.3 and 97.5 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 14(1), 453(5), 454, 454(9), (14), (19), 458(9) and 458-a

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

Specific reasons underlying the finding of necessity: Required to conform the regulations to changes in the Banking Law that have already become effective.

Subject: Changes in the regulations governing credit unions.

Purpose: To conform the regulations to the provisions of L. 2003, ch. 679 which are intended to provide New York chartered credit unions with powers comparable to, and competitive with, federally chartered credit

unions. Provides for prior notice of the proposed exercise of new credit union investment powers.

Text of emergency rule: Section 95.2 is REPEALED.

Section 96.1 is REPEALED.

A new Section 96.1 is added to read:

96.1 Definitions

For purposes of this Part:

(a) *The term net worth shall have the same meaning as set forth in Section 702.2 of Part 702 of the Regulations of the National Credit Union Administration. In the event that a different definition of net worth is contained in that section, or in any successor section, or in any amendment to the Federal Credit Union Act, Part 96.1(a) shall be deemed to define net worth as set forth in such section or such law, as the case may be.*

(b) *The term loan shall mean any loan made to or guaranteed or endorsed by a member of a credit union.*

Section 96.3 is amended to read:

96.3 Fully secured loans.

A credit union may make loans to a member which are secured by the borrower's unencumbered shares or by shares pledged by another member or members subject to the limitations contained in sections [453(5)] 454(6) and [454(2)] 456(2) of the Banking Law.

Section 97.5 is amended to read:

97.5 Aggregate limitation

The aggregate amount of a credit union's investment in the stock, capital notes and debentures of credit union organizations, together with the aggregate amount of loans to such organizations, shall not exceed [one] three percent of the amount due to the members of the credit union on shares and deposits. For the purposes of this section, a loan shall include any loan or advance made directly or indirectly to a credit union organization (excluding accounts payable incurred in the ordinary course of business and paid within 60 days).

Part 113 is REPEALED.

A new Part 326 is added to read:

PART 326

MAINTENANCE OF RESERVES BY CREDIT UNIONS

(Statutory Authority: Banking Law Section 458-a)

326.1 Applicability.

The provisions of this Part shall apply to all net worth reserve accounts required to be established and maintained by credit unions.

326.2 Reserve Accounts.

Credit unions shall establish and maintain such net worth reserve accounts as are required for Federally chartered credit unions pursuant to Title 12 U.S.C. 1790d and any regulations promulgated thereunder by the National Credit Union Administration, as such law and regulations may be amended from time to time.

326.3 Definition.

(a) *The term net worth shall mean the retained earnings balance of the credit union at the end of a quarterly period as determined under generally accepted accounting principles. Retained earnings consists of undivided earnings, regular reserves, and any other appropriations designated by the management of a credit union or regulatory authorities. Only undivided earnings and appropriations of undivided earnings shall be included in net worth. Net Worth shall not include the allowance for loan and lease losses account. In the case of a credit union that qualifies to be designated as a low income credit union, net worth shall also include secondary capital accounts that are uninsured and subordinate to all other claims of creditors, shareholders and the National Credit Union Share Insurance Fund.*

(b) In the event that a different definition of net worth is contained in 12 CFR 702.2 or any successor section, or in any amendment to the Federal Credit Union Act, this section shall be deemed to define net worth as set forth in such section.

A new Part 327 is added to the Superintendent's Regulations to read:
Part 327

INVESTMENTS BY CREDIT UNIONS IN THE SHARES OF CORPORATE CREDIT UNIONS LOCATED IN THIS STATE
(Statutory authority: Banking Law Sections 454, 454(14))

Any credit union that seeks to invest in the shares of a state or Federal corporate credit union located in this state in an amount that exceeds fifty percent of its total capital or the insured limit, whichever is greater, shall give the Superintendent prior written notice of its intent to make such investment. If the Superintendent shall find that the proposed investment is consistent with the declaration of policy set forth in Section 10 of the Banking Law, he or she shall, within thirty days after receipt of such notice, notify the credit union in writing that such investment may be made or that an additional period of time, not to exceed sixty days, is required to properly make a determination.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire July 25, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Christine M. Tomczak, Secretary to the Banking Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1642, e-mail: christine.tomczak@banking.state.ny.us

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis and Rural Area Flexibility Analysis are not submitted, but will be published in the Register within 30 days of the rule's effective date.

Job Impact Statement

A Job Impact Statement is not attached because the amendments to Part 95, 96 and 97, the repeal of Part 113, and the adoption of Parts 326 and 327 will not have any appreciable and/or substantial adverse impact on jobs and employment opportunities.

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

Regulation of Licensed Mortgage Bankers and Registered Mortgage Brokers

I.D. No. BNK-19-04-00006-P

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

Proposed action: Amendment of Part 410 of Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D, section 589 *et seq.*

Subject: Regulation of licensed mortgage bankers and registered mortgage brokers pursuant to art. 12-D of the Banking Law.

Purpose: To set forth the regulatory requirements and standards of operation for entities licensed and registered under art. 12-D of the Banking Law to conduct the business of budget planning.

Substance of proposed rule (Full text is posted at the following State website: www.state.bnk.state.ny.us): Summary of proposed amendments to Part 410:

Section 410.1(b)(3) is amended to reflect certain changes with regard to the surety bond requirement for mortgage bankers.

Section 410.1(e) is repealed.

Section 410.8(a) is amended to require that mortgage brokers establish and maintain the records required in Section 8 of Part 410.

Section 410.8(4)(1) is amended to require that mortgage bankers and brokers maintain a centralized application log for the principal office and all branch offices, to be updated daily.

Section 410.8(2) is added to require branches to report their activity to the principal office on a daily basis.

Section 410.8(f) is added to require mortgage bankers to maintain loan files containing documents relating to credit underwriting and pricing decisions.

Section 410.8(g) is added to set forth the documentation mortgage bankers are required to establish and maintain with regard to pricing and credit.

Section 410.8(h) is added to set forth additional documentation that mortgage bankers are required to establish and maintain with regard to pricing and credit.

Section 410.8(i) is added to set forth the information to be maintained by mortgage brokers with regard to mortgage loan pipelines.

Section 410.8(j) is added to set forth the information to be maintained by mortgage bankers for mortgage loans subject to a lock-in agreement.

Section 410.8(k) is added to set forth the information to be maintained by mortgage bankers for lines of credit.

Section 410.8(l) is added to require that mortgage bankers maintain a list of their closing agents.

Section 410.8(m) is added to require that mortgage bankers file quarterly reports containing certain information.

Section 410.8(n) is added to require that mortgage bankers employ an in-house compliance officer.

Section 410.8(o) is added to set forth the information that FNMA or FHLMC certified lenders are required to provide to the Department.

Section 410.8(p) is added to require mortgage bankers to provide the Department with third party audit reports.

Section 410.8(q) is added to set forth the requirements for maintenance of mortgage loan data by mortgage bankers exempt from the mortgage data requirements of Section 203.3(2) of Regulation C, issued by the Board of Governors of the Federal Reserve.

Section 410.9 is amended to set forth the corporate surety bond requirements for mortgage bankers.

Section 410.10 is amended to change the value of assets on deposit allowed for mortgage bankers and to provide that mortgage brokers may also deposit assets in lieu of filing a surety bond.

Section 410.11 is amended to include mortgage brokers.

Section 410.13 is amended to include mortgage brokers.

Section 410.14 is amended to include mortgage brokers.

Section 410.15 is amended by deleting the existing paragraph and adding new subdivisions (a) and (b) to set forth the surety bond requirements for mortgage brokers.

Section 410.16 is amended to clarify when a corporate surety bond or deposit of assets will be released.

Section 410.18(a), (b), and (c) are added to define the terms consultant, employee and independent contractor.

Section 410.18(d) is added to require that mortgage bankers and brokers provide the Superintendent with the names of their consultants.

Section 410.18(e) is added to require that undertakings of accountability for independent contractors be filed with the Superintendent and that notifications of termination of independent contractors also be filed with the Superintendent.

Section 410.19 is added to allow filings under Part 410 to be submitted electronically in a format acceptable to the Superintendent.

Section 410.20 is added to indicate compliance dates.

Text of proposed rule and any required statements and analyses may be obtained from: Christine M. Tomczak, Secretary to the Banking Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1642, e-mail: christine.tomczak@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.

Regulatory Impact Statement

1. Statutory authority:

Banking Law Section 589 of Article 12-D provides that the activities of lenders and their agents offering financing for residential real property have a direct and immediate impact upon the housing industry, the neighborhoods and communities of this state, its homeowners and potential homeowners. The obligations of lenders and their agents to consumers in connection with making, soliciting, processing, placing or negotiating of mortgage loans are such as to warrant the uniform regulation of the residential mortgage lending process, including the application, solicitation, making and servicing of mortgage loans. Part 410 of the Superintendent's Regulations was adopted pursuant to Article 12-D and is intended to provide uniform regulation of the mortgage banking industry. Recent amendments to Article 12-D require that Part 410 be amended.

Subdivision 4 of Section 591 of the Banking Law provides that as a condition for the issuance and retention of a mortgage banker's license, and subject to such regulations as the Superintendent shall prescribe, applicants for a license shall file with the Superintendent a surety bond in form satisfactory to him or her issued by a bonding company or insurance company authorized to do business in this state. Recent amendments to subdivision 4 of Section 591 of the Banking Law provide that the principal

amount of such bond shall be in an amount and form prescribed by regulations of the Superintendent. Such regulations provide for a varying bond amount based upon a licensee's volume of business and any other relevant factors as determined by the Superintendent, but in no case may such bond be less than fifty thousand dollars nor more than five hundred thousand dollars; provided, however, that if the Superintendent determines, in his or her sole discretion, that a licensee has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct, the Superintendent may require such licensee to post a surety bond, or keep on deposit as provided, twice the amount of such bond or deposit as is required consistent with such regulations.

Amendments to subdivision 3 of Section 591-a require as a condition for the issuance and retention of a mortgage broker's registration, and subject to such regulations as the Superintendent shall prescribe, applicants for a registration to file with the Superintendent a surety bond or make a deposit, as described in subdivision four of section five hundred ninety-one. The amendments require that such regulations provide for a varying bond amount based upon a registrant's volume of business and any other relevant factors as determined by the Superintendent, but in no case may such bond be less than ten thousand dollars nor more than one hundred thousand dollars; provided however that if the Superintendent determines, in his or her sole discretion that a registrant has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct, the Superintendent may require such registrant to post a surety bond, or keep on deposit as provided in this subdivision, twice the amount of such bond or deposit as is required consistent with such regulations.

Part 410 is also being amended to impose additional recordkeeping and reporting requirements on mortgage bankers and brokers. In accordance with Section 590.2(a) of the Banking Law, no person, partnership, association, corporation or other entity may engage in the business of making five or more mortgage loans in any one calendar year without first obtaining a license from the Superintendent in accordance with the licensing procedures provided in Article 12-D and such regulations as may be promulgated by the banking board or prescribed by the Superintendent. Similarly, pursuant to Section 590.2(b), no person, partnership, association, corporation or other entity may engage in the business of soliciting, processing, placing or negotiating a mortgage loan or offering to solicit, process, place or negotiate a mortgage loan in this state without first being registered with the Superintendent as a mortgage broker in accordance with the procedures of Article 12-D and regulations promulgated by the banking board or prescribed by the Superintendent. Further, Section 590.5 of the Banking Law requires mortgage bankers to make mortgage loans and mortgage brokers to solicit, process, place and negotiate mortgage loans only in conformity with the provisions of Article 12-D and such rules and regulations as may be promulgated by the banking board or prescribed by the Superintendent pursuant to Article 12-D.

2. Legislative objectives:

Part 410 is intended to provide uniform regulation of mortgage bankers and brokers and protect consumers by establishing certain requirements to ensure these lenders and brokers operate properly. Part 410 governs the licensing of mortgage bankers, and registration of mortgage brokers and imposes various recordkeeping and reporting requirements for both mortgage bankers and brokers. Recent amendments to Article 12-D require the Superintendent to issue regulations providing for varying bond requirements for mortgage bankers and mortgage brokers based on volume of business. Therefore, Part 410 is being amended to provide the surety bond requirements for mortgage bankers and brokers based on a sliding scale determined by the volume of business.

Amendments to Article 12-D also authorize the Superintendent to deny an application for or suspend or revoke the license of a mortgage banker or the registration of a mortgage broker if the person or entity maintains a relationship with a "consultant," or a person operating in a similar capacity, who the Superintendent determines, based on certain prescribed conditions, does not possess the necessary character and fitness to be associated with the applicant, licensee or registrant. Therefore Part 410 is being amended to include a definition of "consultant."

Also, Part 410 is being amended to impose additional recordkeeping and reporting requirements on mortgage bankers and brokers.

3. Needs and benefits:

The bonding requirements for mortgage bankers and brokers will protect consumers' financial interests if a licensee or registrant ceases to operate and does not have sufficient assets to reimburse money owed to customers. The bond proceeds shall constitute a trust fund to be used exclusively to reimburse consumer fees or other charges determined by the Superintendent to be improperly charged or collected and to pay past due

Banking Department examination costs and assessments charged to the licensee or registrant, unpaid penalties, or other obligations of the licensee or registrant. For mortgage bankers the bond requirement in Part 410 is being increased and is based on a sliding scale according to the banker's volume of business. For mortgage brokers, previously the Superintendent could only impose a bonding requirement upon confirmation of misconduct. The amendments to Part 410 establish a bond requirement for all registered brokers according to a sliding scale based on the broker's volume of business. The clarification and expansion of the purposes for which the bond proceeds or designated assets can be used is intended to cover consumer refunds as well as expenses, penalties and other charges incurred by the Department that may arise out of investigation and enforcement actions.

With regard to the amendments concerning "consultants," previously the Superintendent's authority to revoke a license or registration or deny a license or registration application, as a result of a felony conviction or maintaining an inappropriate relationship extended expressly to officer, employees or owners of the licensee, registrant, or potential registrant or licensee. However, in certain instances, individuals who had been removed as officers, employees or owners of a licensee or registrant continued to maintain a relationship with the licensee or registrant as a "consultant." Therefore, the statutory amendment closes the loophole that allows certain persons and licensees or registrants to avoid the criminal record and character standards established by law for mortgage bankers and brokers. Accordingly, Part 410 is being amended to include a definition of "consultant."

The additional recordkeeping and reporting requirements being added to Part 410 will help the Banking Department to better monitor the activities of mortgage bankers and brokers.

4. Costs:

The amendments to Part 410 relating to the bonding requirements will impose additional costs on mortgage bankers and brokers. Previously, mortgage bankers were required to obtain a bond in the amount of \$50,000. The amended bond requirements for mortgage bankers range from \$50,000 to \$500,000. Previously, mortgage brokers were not required to obtain bonds at all. In addition, mortgage bankers and brokers may incur costs in order to comply with the additional recordkeeping and reporting requirements being added to Part 410.

The amendments to Part 410 will require additional work by the Department in order to ensure that mortgage bankers and brokers are complying with the bonding requirements, as well as the additional reporting and recordkeeping requirements.

5. Local government mandates:

The amendments to Part 410 do not impose any requirements or burdens upon any units of local government.

6. Paperwork:

The amendments to Part 410 require mortgage bankers to establish and maintain additional reports relating to applications, pricing and credit, mortgage loan pipelines, loans subject to lock-in agreements, lines of credit, and closing agents. Mortgage bankers and brokers will also have to provide evidence of compliance with the surety bond requirements. The Department will be required to monitor compliance with the various reporting, recording keeping and bonding requirements.

7. Duplication:

None.

8. Alternatives:

(a) Proposal – During the drafting of the proposed amendments to Part 410, the Banking Department met with representatives of the Mortgage Bankers Association, the Mortgage Brokers Association and the New York State Governor's Office of Regulatory Reform. These groups were given the opportunity to comment on the proposed amendments. The representatives were generally pleased with the proposal. To the extent that they had comments or suggestions, the Banking Department carefully reviewed the comments and considered the suggestions. Where appropriate, the Banking Department made changes to the proposed amendments to address the suggestions and comments.

As was previously discussed in the Legislative Objective section contained herein, recent amendments to Article 12-D of New York's Banking Law require the Superintendent to issue regulations providing for varying bond requirements for New York State licensed mortgage bankers and registered mortgage brokers based on volume of business. The bonding requirements for mortgage bankers and brokers will protect consumers' financial interests if a licensee or registrant ceases to operate and does not have sufficient assets to reimburse money owed to customers. The bond proceeds shall constitute a trust fund to be used exclusively to reimburse

consumer fees or other charges determined by the superintendent to be improperly charged or collected and to pay past due Banking Department examination costs and assessments charged to the licensee or registrant, unpaid penalties, or other obligations of the licensee or registrant. Some representatives expressed concern as to the cost of obtaining a bond, or in the alternative, to place assets on deposit. While this issue exists, the requirement to obtain the bond, or place assets on deposit, is not imposed by the rule, but rather is a statutory requirement.

(b) Do not propose the amendments to Part 410.

If this alternative were considered, failure to amend the regulation would mean that the additional requirements that are being proposed in order to help protect consumers would not exist. From a regulatory and supervisory perspective, it would be irresponsible for the Superintendent of Banks, as the State financial regulator to do this. This is true, particularly, since the new reporting, recordkeeping and bonding requirements were formulated in furtherance of the legislative intent to provide increased consumer protection for consumers in connection with the making, soliciting, processing, placing or negotiating of mortgage loans, as reflected in recent amendments to Article 12-D.

9. Federal standards:

None.

10. Compliance schedule:

With regard to the surety bond requirements, the amendments to Article 12-D provide that persons and entities licensed or registered prior to the effective date of any regulations of the Superintendent prescribing the bonding requirements shall file such bond or establish such deposit within six months of the effective date of such regulations.

In addition, compliance with the Amendments to Sections 410.1 and 410.8 shall not be required until six months after the effective date of the amendments.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Government is not submitted, based on the Department's conclusion that the amendments to Part 410 will not impose any special adverse economic or technological impact upon small businesses beyond those imposed in general as set forth in the Regulatory Impact Statement. The amendments will not impose any adverse economic or technological impact upon local governments. The proposed amendments will not impose any special adverse reporting, recordkeeping or compliance requirements on small businesses other than those imposed in general as set forth in the Regulatory Impact Statement. The proposed amendments will not impose any adverse reporting, recordkeeping or compliance requirements on local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility analysis is not submitted because the proposed amendments to Part 410 do not result in any hardship to a regulated party in a rural area. Specifically, the proposed amendments contain certain reporting, recordkeeping and compliance requirements currently imposed on licensed mortgage bankers and registered mortgage brokers, as well as new reporting, recordkeeping and compliance requirements due to recent amendments to legislation in this area enacted in response to the need for increased consumer protection for the clients of licensed mortgage bankers and registered mortgage brokers. However, there is nothing about the character and nature of the amendment's requirements that would make it difficult for, or prevent, licensed mortgage bankers or registered mortgage brokers from complying with the rule based on a particular office location. Therefore, it is unlikely that the proposed amendments 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 proposed amendments, if adopted, may have any impact on rural areas, they have the ability to provide increased consumer protection to residents in rural areas who do business with licensed mortgage bankers or registered mortgage brokers.

Job Impact Statement

Job Impact Statement

The purpose of Article 12-D of the New York Banking Law, which provides for the licensing and regulation of mortgage bankers, mortgage brokers and other entities engaged in financing for residential real property, is to ensure that such entities operate in accordance with rigorous standards. Recent amendments to Article 12-D were adopted in connection with the business of brokering, originating and funding of residential mortgage loans in order to increase the regulatory tools available to the

Superintendent to properly supervise the mortgage banking industry and increase protections for consumers.

In particular, for mortgage bankers the surety bond requirement in Part 410 has been increased and is based on a sliding scale according to the banker's volume of business. A surety bond requirement has been imposed for all registered mortgage brokers according to a sliding scale based on the broker's volume of business. In addition, mortgage bankers and brokers will have to comply with the additional reporting, recordkeeping and compliance requirements set forth in the proposed amendments.

It is possible that new jobs will be created in New York State if licensed mortgage bankers or registered mortgage brokers hire additional staff to perform the tasks necessary to comply with the additional reporting, recordkeeping and surety bond requirements under the proposed amendments.

Department of Civil Service

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Civil Service publishes a new notice of proposed rule making in the *NYS Register*.

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVD-43-03-00012-P	October 29, 2003	April 26, 2004

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Recreational Harvest and Possession of Marine Fish Species

I.D. No. ENV-19-04-00003-EP

Filing No. 464

Filing date: April 23, 2004

Effective date: April 23, 2004

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0340-b, 13-0340-e and 13-0340-f

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

Specific reasons underlying the finding of necessity: Pursuant to § 13-0371 of the ECL, New York State participates in the Atlantic States Marine Fisheries Compact administered through the Atlantic States Marine Fisheries Commission (ASMFC) to promote cooperative utilization of marine fish species. The principal mechanism for implementation of cooperative management of migratory fish are the ASMFC's Interstate Fisheries Management Plans for individual species or groups of fish. The Fisheries Management Plans (FMPs) are designed to promote the long term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers. Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have timely implemented provisions of FMPs with which they are required to comply. If ASMFC determines a state to be in non-compliance with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject

species in the waters of the non-compliant state until the state comes into compliance with the FMP.

ECL Sections 13-0340-b, 13-0340-e and 13-040-f, which authorize the adoption of regulations for the management of summer flounder, scup, and black sea bass, provide that such regulations must be consistent with the FMPs for these species adopted by the Atlantic States Marine Fisheries Commission. ASMFC recently amended the FMPs for summer flounder, scup, and black sea bass by adopting annual quota changes and recreational harvest projections. In order to maintain compliance with the FMPs and ACFCMA, states are required to immediately implement these changes by amending their recreational fishing regulations for each of these species.

Under the FMP for summer flounder and scup, ASMFC assigns each state an annual harvest target or quota. In addition, a projection is made for each state as to its expected harvest, assuming its regulations are unchanged and that harvest patterns and rates remain the same as the previous year. If the projected harvest for a state exceeds that state's assigned quota, the state is required to amend its harvest regulations so that they are sufficiently restrictive to prevent the state from exceeding of its assigned quota. ASMFC reviews each state's regulations and must determine that they are compliant with the FMP. Accordingly, failure to timely adopt revised 2004 regulations may result in a non-compliance determination by ASMFC and the Secretary of Commerce, and the imposition of a total closure of fishing for summer flounder, scup and/or black sea bass in New York State, with significant adverse impacts to the state's economy.

New York's projected harvests for summer flounder and scup in 2004 exceed the state's assigned quotas by 48.5% and 58%, respectively. The regulatory changes in this emergency rule are calculated, and have been approved by ASMFC, to achieve a 58% reduction for scup. The regulatory changes in the emergency rule are calculated to achieve a 20% reduction for summer flounder. The Department is proposing to ASMFC that the New York 2004 recreational harvest projection for summer flounder be based on an average of the estimated harvest for 2001-2003, rather than on 2003 alone. New York's summer flounder regulations were essentially unchanged over this three year period, and the recreational harvest estimate, which is derived from a federal survey that is not statistically reliable at the individual state level, has fluctuated significantly over the period. For this reason, the Department has chosen to comply with the FMP by basing its harvest projection on a more reliable and stable three year average of harvest estimates, resulting in a 20% reduction requirement for 2004.

The FMP for black sea bass calls for annual adjustments to common coastwide regulations that are calculated to hold coastwide harvest within the allowed annual quota. For 2004, a two-week closure between September 1 and October 31 is required, with a recommended closure of September 6 through September 21. The emergency rule changes New York's closure period from September 1 through September 16 to September 23 through Oct. 7. This change is required to minimize the economic impact that would otherwise occur due to concurrent summer flounder and black sea bass closures on and immediately following September 6.

The promulgation of this regulation on an emergency basis is necessary in order for the Department to maintain compliance with the FMPs for summer flounder, scup, and black sea bass and to avoid closure of these fisheries and the economic hardship that would be associated with such closure.

Subject: Regulation of the recreational harvest and possession of marine fish species (summer flounder, scup, and black sea bass) in New York's marine district.

Purpose: To control the recreational harvest and possession of marine fish species (summer flounder, scup, and black sea bass) consistent with conservation requirements identified in regional FMPs.

Text of emergency/proposed rule: Part 40 of Title 6 of the Official Compilation of New York Codes, Rules and Regulations, entitled Marine Fish, is amended to read as follows:

Section 40.1 (f) is amended as follows:

40.1 (f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Striped Bass (except the Hudson River north of the George Washington Bridge)	April 15 - Dec. 15	28" TL (Total Length) *	1
Red Drum	All year	No minimum size limit	No limit for fish less than 27" TL Fish greater than 27" TL shall not be possessed
Tautog	Oct. 1 - May 31	14" TL	10
American Eel	All year	6" TL	50
Pollock	All year	19" TL	No limit
Haddock	All year	23" TL	10
Atlantic cod	All year	23" TL	10
Summer Flounder	[All year] May 15 - Sept. 6	17" TL	[7] 3
Yellowtail Flounder	All year	13" TL	No limit
Atlantic Sturgeon	No possession allowed		
Spanish Mackerel	All year	14" TL	15
King Mackerel	All year	23" TL	3
Cobia	All year	37" TL	2
Monkfish (Goosefish)	All year	21" TL 14" Tail Length #	No limit
Weakfish	All year	16" TL 10" Fillet length + 12" Dressed length**	6
Bluefish	All year	No minimum size limit	10
Winter Flounder	Third Saturday in March to June 30 and Sept. 15 to Nov. 30	11" TL	15
Scup (porgy)	[All year] June 16 - Oct. 17 and Nov. 1 - Nov. 30	[10"] 11" TL	[50] 20
Black Sea Bass	[Jan. 1 - Sept. 1 and Sept. 16 - Nov. 30] Oct. 8 - Sept. 23	12"	25
American Shad	All year	No minimum size limit	5
Hickory Shad	All year	No minimum	5
Large & Small Coastal Sharks	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Pelagic Sharks	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Prohibited Sharks***,###	No possession allowed		

* Total length is the longest straight line measurement from the tip of the snout, with the mouth closed, to the longest lobe of the caudal fin (tail), with the lobes squeezed together, laid flat on the measuring device.

The tail length is the longest straight line measurement from the tip of the caudal fin (tail) to the fourth cephalic dorsal spine (all dorsal spines must be intact), laid flat on the measuring device.

+ The fillet length is the longest straight line measurement from end to end of any fleshy side portion of the fish cut lengthwise away from the backbone, which must have the skin intact, laid flat on the measuring device.

** Dressed length is the longest straight line measurement from the most anterior portion of the fish, with the head removed, to the longest lobe

of the caudal fin (tail), with the caudal fin intact and with the lobes squeezed together, laid flat on the measuring device.

Large and Small Coastal Sharks include those shark species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations.

++ Pelagic sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

*** Prohibited sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations.

Applicable provisions of the following are incorporated herein by reference: 50 CFR Part 635-Atlantic Highly Migratory Species, final rule as adopted by U.S. Department of Commerce as published in the Federal Register, Volume 64, Number 103, pages 29135-29160, May 28, 1999. A copy of the federal rule incorporated by reference herein may be viewed at: New York State Department of Environmental Conservation, Bureau of Marine Resources, 205-S North Bellemeade Road, East Setauket, New York, 11733.

This notice is intended to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 21, 2004.

Text of rule and any required statements and analyses may be obtained from: Alice Weber, Department of Environmental Conservation, 205-S North Bellemeade Rd., East Setauket, NY 11733, (631) 444-0435, e-mail: amweber@gw.dec.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.

Additional matter required by statute: Pursuant to the requirements of art. 8 of the Environmental Conservation Law, a negative declaration is on file with the department.

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the *Register* within 30 days of the rule's effective date.

Department of Health

NOTICE OF ADOPTION

Certification for Physical Therapist Assistants

I.D. No. HLT-51-03-00011-A

Filing No. 462

Filing date: April 23, 2004

Effective date: May 12, 2004

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

Action taken: Amendment of section 700.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2); and L. 2002, ch. 404

Subject: Requirements of certification for physical therapist assistants and update of provisions relating to limited permits for physical therapists.

Purpose: To conform the requirements for physical therapists and physical therapy assistants in a manner that is consistent with L. 2002, ch. 404.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-51-03-00011-P, Issue of December 24, 2003.

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

Text of rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Hematopoietic Progenitor Cell Banks

I.D. No. HLT-46-03-00001-C

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

The notice of proposed rule making, I.D. No. HLT-46-03-00001-P was published in the *State Register* on November 19, 2003.

Subject: Hematopoietic progenitor cell banks.

Purpose: To reflect changes in current operating procedures, update terminology and clarify intent.

Substance of rule: Continuing advances in hematopoietic progenitor cell (HPC) harvesting and transportation medicine necessitate modification of the existing regulation. The Department's cumulative experience in this new and burgeoning field compels changes in the HPC donor informed consent process and imposition of a requirement for validation of HPC transport protocols. A concomitant accumulation of experience by practitioners in HPC banking calls for modifications in requisites for collection and transport of HPCs. The amendment facilitates expansion of the HPC supply without compromising the safety of cells or endangering donors.

Changes to rule: No substantive changes.

Expiration date: November 18, 2004.

Text of proposed rule and changes, if any, may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

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

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Blood Banks

I.D. No. HLT-46-03-00002-C

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

The notice of proposed rule making, I.D. No. HLT-46-03-00002-P was published in the *State Register* on November 19, 2003.

Subject: Blood banks.

Purpose: To clarify terminology, address advances in technology and expand and protect the blood supply.

Substance of rule: The proposed revision of Subpart 58-2 clarifies terminology whose application is essential for oversight of the blood supply. Several requirements rendered unnecessary by recent advances in technology are also deleted without compromising the safety of the blood supply. The proposal also effectively expands the blood supply by relaxing donor qualification requirements without endangering the health of donors or recipients.

Changes to rule: No substantive changes.

Expiration date: November 18, 2004.

Text of proposed rule and changes, if any, may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Children's Camps

I.D. No. HLT-19-04-00004-P

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

Proposed action: Amendment of Subpart 7-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 1394(1)

Subject: Children's camps.

Purpose: To add standards for camp trips, swimming, incidental water immersion, on-site activities and bunk bed guardrails; clarify potable water standards; and update and clarify obsolete wording and standards.

Substance of proposed rule (Full text is not posted on a State website): The proposed code amendment contains the following provisions:

The existing code sections for on-site and off-site swimming are consolidated into the same subdivision.

Outdated terminology and standards have been updated and clarified.

New standards for camp trip swimming, wilderness swimming and incidental water immersion (non-swimming entry of water) are established.

A definition for "camp trip" is added and frequencies for reviewing trip procedures are specified. Camp trip leader qualifications are amended.

A new staff position of activity leader is established and additional staff requirements for remote on-site activities are specified.

Current code standards and language is made consistent with the New York State Penal and Vehicle and Traffic Laws for riflery and horseback riding activities, respectively.

Potable water supply sampling requirements and maximum contaminant levels have been clarified and references to specific sections in the Public Water Supply regulations (Part 5 New York State Sanitary Code) have been updated. Waivers from disinfection are no longer allowed and annual start up procedures are established. A bacteriological sample analysis of each on-site water supply is now required prior to operation each season and each month of operation thereafter.

Camper immunization records requirements are updated and made consistent with the New York State Department of Health Immunization Program recommendations.

Epinephrine administration and potential rabies exposure have been added as required reportable incidents.

Additional prohibitions against transporting passengers in portions of a vehicle that are not designed for passenger occupancy are included.

Specific requirements for food preparation are removed and replaced with a general requirement to comply with Subpart 14-1 (Food Service Code) of the State Sanitary Code.

Bunk beds must have adequate guardrails.

The requirement for camp operators to obtain the permit-issuing official's approval of plans prior to modifying camp facilities is clarified.

Text of proposed rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsna@health.state.ny.us

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

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

Regulatory Impact Statement

Statutory Authority:

The Public Health Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be, known as the State Sanitary Code (the Code) subject to the approval of the Commissioner of Health. PHL Section 225(5)(a) provides that the Code may deal with any matter affecting the security of life and health of the people of the State of New York. Section 225(6) requires the Public Health Council to establish regulations and prescribe standards for summer day and children's camps. Article 13-B of the PHL, regulating children's overnight camps, summer day and traveling summer day camps, requires all camps to be in compliance with the PHL and the Code.

Legislative Objectives:

By authorizing the adoption and enforcement of the Code to deal with matters affecting the life and health of the people of the State of New York, the Legislature has established protection of the public health and safety as the state's public policy. In particular, in enacting Article 13-B of the PHL to regulate children's camps operating within the state, the Legislature declared the protection of the health, safety and welfare of children attending those camps to be a matter of public policy (PHL §§ 1390, 1395 and 1399-a). The enactment and enforcement of specific regulations within the Code mandating operating standards for children's camps fosters those legislative objectives. Periodic reevaluation of those standards ensures that the regulations remain current and appropriate to protect the campers.

Needs and Benefits:

Many of the proposed amendments directly relate to a 1998 camper drowning which occurred during a non-swimming camp trip activity.

Based on fifty-nine (59) reported camper injuries between 1998-2002 at New York State children's camps, an amendment is proposed to require guardrails on bunk beds.

Additionally, the amended code provides the following benefits:

Swimming and Incidental immersion (non-swimming entry of water)

The existing code sections for on-site and off-site swimming are consolidated into the same subdivision. Outdated terminology is updated.

Policies/guidance used for Off-Site and Unauthorized Site Swimming by Health Department staff and the camping industry since 1996 are modified and incorporated into the regulation. The prohibition against the use of "unauthorized" swimming sites is removed from the children's camp code and replaced with standards for camp trip swimming and wilderness swimming.

The minimum age of camp employed lifeguards supervising wilderness swimming activities has been increased to 18 years old to be responsive to the increased potential risk associated with swimming at remote locations.

The supervision ratios during camp trip swimming activities have been increased to be consistent with ratios for other similar risk activities already specified in the code. Counselors' responsibility to directly supervise campers during swimming activities has been clarified and added.

A distinction is made between swimming and incidental water immersion (non-swimming entry of water) and requirements for incidental water immersion are established and must now be included in the required written plan. Certain swimming and incidental water immersion violations have been defined as Public Health Hazards.

The maximum size swimming area each camp lifeguard can supervise during on-site swimming activities is specified and is consistent with requirements contained in Part 6 (Swimming Pool and Bathing Beach Codes).

Maximum distances from shore that swimming is allowed are established for camp trip swimming activities at bathing beaches that are not supervised by the facility's lifeguards.

Camp Trips

A definition for "camp trip" has been included in the amended regulation. This addition clarifies the applicability of requirements for activities that occur off camp property versus on camp property.

The minimum experience to qualify as a camp trip leader is amended to allow the permit-issuing official discretion to accept a leader with experience in an activity but who has not participated in three previous camp trips as is required by the existing regulation. Requirements for first aid certification are amended and in some cases lessened to commensurate with an activity's risk of injury. Trip leader (or assistants) of a trip with an itinerary that includes an activity where emergency medical care is not readily available, and/or an activity such as horseback riding, wilderness hiking, camping, rock climbing, bicycling, swimming and/or boating must now have certification in American Red Cross (ARC) "CPR for the Professional Rescuer" (or an adequate level determined by Commissioner). These changes will allow more qualified individuals to lead trips and ensure that appropriately certified people are available to perform first aid and CPR should it be necessary. Camp trips in which emergency medical care is not readily available but are considered to have a low risk of injury (ie. trips to a bowling alley, movie theater or store) no longer require first aid certified staff and do not require CPR certified staff to accompany the trip.

Staff supervising a camp trip must review the applicable component of the required written plan for each trip within 24 hours prior to departure for the trip except when participation in an identical trip or the pre-camp training has occurred within a one-week period of the intended trip. This will assure that trip leaders are familiar with the safety provisions and supervision responsibilities for each trip.

Activity Leaders

The proposed amendment establishes the new staff designation of activity leader and requires each on-site activity to be supervised by an activity leader who is competent in the activity. Leaders for higher risk activities must be a minimum of 18 years old. Additionally, the individual for high and medium injury risk activities* must possess, or be accompanied by someone who possesses certification in first aid and CPR that is acceptable to the Commissioner of Health (based on an injury risk assessment) when other required camp First Aid and CPR staff are not readily available. This proposal provides for the same level of supervision and safety for activities conducted on camp property as for those conducted off camp property. Activities with low risk of injury* do not require first aid and CPR staff.

*Examples of high-risk activities include horseback riding, rock climbing and wilderness camping. Medium risk activities include boating on non-flowing water bodies, field sports such as softball and soccer, and roller-skating. Activities with low risk of injury include bowling, passive activities such as watching a movie or using a computer, cooking, dancing/acting and arts and crafts (with no power tools).

The proposed amendment requires a minimum of two staff to supervise an on-site activity when other camp staff are not readily available to respond in the event of an emergency. Minimum supervision ratios for high-risk activities are increased.

Other Activities

To be consistent with a 1996 change in the Penal Law, the amended Code no longer specifies a minimum age for campers to participate in riflery activities. The proposed amendment requires the age to be consistent with the New York State Penal law. In addition the terminology related to riflery instructor qualifications has been made consistent with current penal law language.

The standard specified for horseback riding headgear has been revised to be consistent with current standards specified in the New York State Vehicle and Traffic Law (American Society for Testing and Materials standard, ASTM F1163).

Water Supply

Potable water supply sampling requirements and maximum contaminant levels have been clarified. References to specific sections in the Public Water Supply regulations (Part 5 New York State Sanitary Code) contained in the existing children's camp regulations have been updated as have the violations categorized as Public Health Hazards to be consistent with current Part 5 code sections. Standards are included for water supplies that serve camps that do not meet the definition of a public water system contained in Part 5 and therefore are not regulated under Part 5. Requirements for camps that are served by off-site public water systems are clarified.

Waivers from disinfection are no longer permitted and annual start-up procedures are established for on-site water supplies; these changes are to ensure satisfactory water quality. Due to the seasonal operation of camps, the water supply systems are shut down for a portion of the year which increases the potential for contamination of the water system. Additionally, in a camp setting it is difficult to fully implement "boil-water" provisions resulting from unacceptable water sample results. Because contamination may be introduced into a camp potable water distribution system when it is not subject to continuous use, a provision has been added which allows a permit-issuing official to require camps served by off-site public water systems to implement start-up procedures when it is necessary to ensure satisfactory water quality.

A bacteriological sample analysis of each on-site water supply is now required prior to operation each season and monthly during the camp's operation.

Medical

The requirement for camper immunization records is updated to be consistent with the New York State Department of Health Immunization Program recommendations.

Epinephrine administration and potential rabies exposure have been added as required reportable incidents.

Transportation

Prohibitions against transporting passengers in the bed of a trailer and in other portions of a vehicle that are not designed for passenger occupancy are added to the existing prohibition against transporting passengers in the bed of a truck. The requirement for vehicles to bear a New York State inspection sticker is removed. This change is to allow vehicles, which are registered and inspected in other states to be used by camps. Additionally, because vehicle inspection requirements are contained in the Department of Motor Vehicle and Department of Transportation regulations, removal of the requirement from the Code will not jeopardize camper safety and will eliminate duplication of another agency's regulation.

Food

Specific requirements for food preparation are removed and replaced with a general requirement to comply with Subpart 14-1 (Food Service Code) of the State Sanitary Code.

Miscellaneous

The amendment will require the upper bed of bunk beds to have adequate guardrails. Since June 19, 2000 in accordance with Federal requirements, beds that are 30 inches above the floor sold in the U.S. must be equipped with guardrails. The proposed amendments will have an impact on beds purchased before June 19, 2000 that do not have guardrails.

The requirement for submitting an application for a permit has been increased from 30 to 60 days prior to the first day operation.

The amendment clarifies the requirement that the permit-issuing official must approve plans prior to construction or modification of camp facilities and increases the amount of time, from 30 to 60 days, that a camp operator must notify the permit-issuing official about proposed construction and modifications.

COSTS:

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

Many of the proposed amendments clarify existing code requirements or incorporate policies and procedures that have already been implemented by regulated parties.

Swimming and Incidental Water Immersion

Amendments pertaining to swimming and incidental water immersion are not expected to increase cost to regulated parties because they do not require camps to employ additional staff or obtain additional equipment and only require camps to comply with specified standards and procedures to ensure camper safety.

Camp Trips

Most of the amendments pertaining to camp trips do not result in a cost change. Expanding the qualification for trip leader may result in a cost reduction, as the operator may not be required to send both a skilled and senior staff on each trip. (One qualified in the activity and one having attended 3 previous camp trips.) The cost reduction associated with the expanded trip leader qualification cannot be estimated due to the varied salary range of staff and the extent to which the change will be used to reduce staff. Additionally, for trips with activities with high risk of injuries that are conducted where emergency medical services are readily available (less than 8 minutes) and for trips with activities that have a medium risk of injuries and occur at a location where emergency medical service response is between 9 and 20 minutes, a cost reduction of between \$100.00 and \$150.00 will occur as a result of requiring a lower level of first aid training. Trips with activities considered to have a low risk of injury but are conducted where emergency medical services are not readily available no longer require staff with first aid training and will result in a cost reduction of between \$140.00 and \$190.00. First Aid certifications are valid for three years. Requiring Trip leaders to possess or be accompanied by someone who possesses an acceptable level of CPR training may result in a small cost increase if trip leaders are not already certified and if the camp trip activity requires CPR based on an injury risk assessment. In most instances, it is believed that Trip leaders, of high or medium risk activities who are required to possess an acceptable level of first aid training are already certified in the appropriate CPR. CPR training costs range from \$60.00 to \$100.00 per individual for an ARC CPR for the Professional Rescuer course and between \$40.00 and \$75.00 for ARC Community CPR. CPR certification must be renewed annually.

The camp trip amendments generally will only decrease the cost (as described above) to state agencies and municipalities that operate camps because these types of camps typically do not offer activities associated with the cost increase described above.

Activity Leader

The cost to a regulated party, if any will be dependent on the location in camp that an activity is held. Activities that occur at a location where the camp's first aid and CPR certified staff is readily available will result in no additional cost. Activities that are considered to have high and medium risk of injuries and occur at remote camp locations where the Camp's First Aid and CPR staff are not readily available will require an individual certified in an acceptable first-aid and an acceptable CPR courses (based on the activities risk assessment) to be present. It is believed that camp staff, who already possess the required first aid and CPR certifications, can be strategically positioned throughout the camp to fulfill the requirement. First aid training fees are between \$140.00 and \$190.00 for ARC Responding to Emergencies (RTE) First Aid courses and between \$40.00 and \$80.00 for ARC Community First Aid. CPR training fees are between \$60.00 and \$100.00 per individual for ARC CPR for the Professional Rescuer while ARC Community CPR cost between \$40.00 and \$75.00 per individual. CPR certification must be renewed annually.

Amendments pertaining to activity leaders generally will not increase cost to state agencies or municipalities that operate camps because cost increases are associated with activities that have a higher risk of injury, which are conducted at locations where the first aid and CPR personnel are not readily available. These activities are typically not offered at these types of camps.

Other Activities

Modifying the Code pertaining to riflery activities to reflect current penal law language will have no additional cost to regulated parties.

Including New York State Vehicle and Traffic Law standard (ASTM F1163) for horseback riding headgear into the Code will have no cost increase. The standard referenced in the Vehicle and Traffic Law has been used by the Department and distributed to Local Health Departments (LHD) and regulated parties in guidance documents since 1991. The standard referenced in the existing code no longer exists.

Activity Safety — requiring additional staff for more hazardous activities and activities that take place in remote areas of the camp property should not result in a cost increase to the regulated parties. Camps should be able to re-assign existing staff when needed to comply with the revised supervision ratio.

Water Supply

Prohibiting disinfection waivers will result in a cost increase for 120 camps that currently do not disinfect their water supplies. The cost increase will include a one-time expense estimated to be \$3,200 per system for engineering design and installation of equipment. There will be an additional cost of approximately \$150.00 per season for operation and maintenance expenses. Some camps may need more than one disinfection system.

Annual start-up procedure costs for on-site systems are included in the above operation and maintenance estimate. The number of camps that are served by off-site public water systems that may be required to implement start-up procedures cannot be estimated because the need is based on site-specific conditions. However, the cost associated with a start-up procedure that is acceptable to the Department is estimated between \$50.00 and \$100.00 per distribution system.

The proposed regulation requires six camps with “non-public” on-site surface water or groundwater under the influence of surface water sources to provide filtration or develop a groundwater source such as a drilled well. Engineering, equipment and installation expenses for a filtration system are estimated to range between \$5,000 and \$25,000 (averaging \$10,000) depending on the type and size of the system. A drilled well, including the pump and appurtenances, is estimated to cost between \$3,500 and \$10,000.

Requiring bacterial analysis prior to operation will result in an annual cost increase of between \$20.00 and \$40.00 per sample per distribution system for camps with on-site water supplies. Four hundred and fifty (450) camps have on-site water supplies. A few camps may have more than one water supply distribution system. The increase in the total number of annual samples (pre-operational and operational) per distribution system will be dependent on the length of a camp’s operating season and the camp’s current sampling requirements (monthly or quarterly). Most camps operate within a two-month period and will therefore have an increase between 1 and 2 samples per distribution system per year.

All SUNY operated camps that are located on college campuses are served by existing public water systems and will have no cost increase associated with water supply amendments. All four DEC camps own and operate on-site water systems. One camp does not disinfect its water supply and will require the installation of disinfection equipment. These four camps may also have additional costs associated with the proposed sampling requirements (described above) depending on their current sampling schedule.

Municipal camps are generally located in urban areas, which are served by public water supplies. Sixteen camps located in rural areas have on-site water supplies that will have additional cost for sampling requirements. Approximately, ten camps currently do not disinfect their on-site water supply and will need to install disinfection equipment. All associated costs are described above.

Medical

There will be no cost associated with maintaining additional camper immunization records or reporting epinephrine administration and possible rabies exposures to local health departments.

Transportation

There will be no cost increase associated with prohibiting transportation of passengers in the bed of a trailer or in portions of a vehicle that are not designed for passenger occupancy. The removal of the requirement for vehicles to bear a New York State inspection sticker will not result in a cost increase.

Food

There will be no cost associated with the proposed amendments to the food service code language. Local Health Departments have always enforced Subpart 14-1 at children’s camps.

Miscellaneous

There will be a cost increase to those overnight camps using bunk beds that are not currently equipped with guardrails on the upper beds. The cost

of installation will vary dependent on type of material selected, the number of rails needed, and whether the camp staff can complete the work vs. hiring a contractor. Cost estimates range from \$15.00 to \$100.00 per bed. It is unknown how many of the 650 overnight camps utilize bunk beds without guardrails or the number of bunk beds requiring retrofitting.

State agency and municipally operated camps that utilize bunk beds without acceptable guardrails will have a cost increase to add the rails. There are fewer than 5 municipal overnight camps.

Costs to State and Local Governments:

The cost to the state will include expenses associated with printing and distributing the new Code and the corresponding revised inspection report form. Additionally, there may be expenses to state agencies that operate children’s camps. Currently, fewer than fifty camps are operated by the State University of New York (SUNY) and four camps are operated by the Department of Environmental Conservation (DEC). See the section entitled “Cost to Regulated Parties” for estimated costs and cost reductions.

The cost to local governments will be limited to those municipalities that operate Children’s camps. Currently, 500 camps are estimated to be operated by municipalities. See the section entitled “Cost to Regulated Parties” for details of possible costs and cost reductions.

Costs to the Department of Health:

The cost to the state will include expenses associated with printing and distributing the new Code and the corresponding revised inspection report form.

Local Government Mandates:

The proposed amendments do not impose a new program duty or responsibility to any county, city, town, village, school district, fire district or special district. Municipalities that operate a children’s camp will be affected as described in the needs and benefits section of this document. City and county health departments continue to be responsible for enforcing the amended regulations as part of their existing program responsibilities.

Paperwork:

A children’s camp operator must report to the permit-issuing official within 24 hours of occurrence, epinephrine administration and potential rabies exposure.

Camps that previously were issued a waiver from disinfection of their potable water supply will now need to keep daily records of the water system and submit copies of such records to the permit-issuing official monthly on forms provided by the permit-issuing official.

Duplication:

This regulation does not duplicate any existing federal, state or local regulations.

Alternatives Considered:

One alternative considered is to continue to allow issuance of waivers from disinfection for children’s camp water supplies. This alternative was not chosen based on hazards associated with seasonally operated water systems which include the increased likelihood of the introduction of contaminants each time the system is drained or recharged. Additionally, considering the vulnerability of children being served by the water supply and the practical difficulties to effectively implement boil/bottle water procedures when an unsatisfactory water sample occurs during a camp’s operation, requiring continuous disinfection is the most appropriate choice for ensuring the safety of the drinking water.

Other alternatives considered were to either not require the installation of guardrails on the upper bed of bunk beds or to allow a longer time period for installing the rails. These alternatives were rejected based on a review of the number (59) and seriousness of injuries (concussions, fractures and a ruptured spleen) from falls from bunk beds between 1998-2002. Additionally, consideration was given to prioritizing guardrail usage/installation based on the age of the campers that are likely to fall from the beds; however, analysis of the injuries from 1998 and 2002 found that the group’s age distribution is proportional to the age distribution of the overall camper population and that no age specific consideration could be justified.

The Department also considered allowing 17-year-old lifeguards to supervise wilderness swimming activities. Due to the remoteness of the locations where these swimming activities are conducted and the increased potential risk associated with such swim areas, older and experienced individuals are needed to supervise wilderness swimming activities.

Federal Standards:

Federal standards may be applicable to certain on-site water supplies, but no federal law regulates the operation of children’s camps.

Compliance Schedule:

The proposed amendments are to be effective upon publication of a notice of adoption in the *State Register*. Most amendments can be complied with immediately. Those camps that will need to install disinfection or filtration equipment on their water supplies should complete the installations prior to opening in the year following that of the regulation's adoption; however, some camps may establish a compliance schedule acceptable to the permit-issuing official. Plans and specifications must be submitted to the permit-issuing official for approval prior to installation. The time allowed for compliance will vary and be based on the quality and historical results of bacteriological sampling and installation details.

Camps needing to install guardrails on upper bunks will have one-year from the date of the regulation's adoption. If the compliance date is a time when the camp is not in operation, the camp will have until it opens to comply. Although it is anticipated that the amendments will be effective by May 15, 2004, the effective date of May 25, 2005 for bunk bed guardrails will be adjusted accordingly prior to going to the Public Health Council for adoption.

Regulatory Flexibility Analysis

Effect on Small Business and Local Government:

There are approximately 2,600 regulated children's camps operating in New York State, all which will be affected by the proposed rule. Approximately 650 are overnight children's camps and the remainder are summer day or traveling day camps. Approximately 500 of the day camps are operated by municipalities (towns, villages, cities and school districts). Typical regulated children's camps representing small business include those owned/operated by corporations, hotels, motels and bungalow colonies, non-profit organizations (Girl/Boy Scouts of America, Cooperative Extension, YMCA, etc.) and others. Most of the proposed amendments result in no cost increase to any regulated party and those proposed amendments that do result in a cost increase are expected to affect municipalities to a lesser extent than others because of their general characteristics including offering limited and low risk of injury activities and being served by public water supplies. None of the proposed amendments will apply solely to small business or municipal camp operation.

Reporting and Recordkeeping:

The proposed regulation requires the reporting of incidents to the permit-issuing official where there has been exposure to animals potentially infected with rabies and the administration of epinephrine. These two categories are in addition to the already required reporting of other specified injury and illness incidents.

Children's camps that previously did not disinfect their water supply will now be required to complete daily operation records and submit copies of such records to the permit-issuing official monthly during operation, on forms provided by the permit-issuing official.

The proposed regulations adds three records of immunization against disease to the records that camps are already required to maintain for campers. These records can be obtained at the same time as other required camper immunization records and kept on file at camp with other already required health history information. The proposed regulation does not mandate immunization against disease only that a record of immunization status be maintained.

Professional Services:

Camps with water supplies that are currently not disinfected and camps that have an unfiltered surface water source will require a New York State licensed Professional Engineer to develop a plan for the installation of disinfection and filtration equipment, respectively, for the camp's water system(s). Following approval, installation of the disinfection equipment will be required which may require professional services dependent on the ability of the camp owner/operator and/or staff to perform the necessary work.

Other Compliance Requirements:

Many of the proposed amendments clarify existing code requirements or incorporate policies and procedures that have already been implemented by regulated parties. The amendments will require camp operators to:

- Implement procedures for incidental water immersion (non-swimming entry of water) when camps engage in such activities during camp trips.
- Comply with staff training and camper supervision standards for camp trip and wilderness swimming.
- Install disinfection equipment for on-site potable water supplies that are not already so equipped.
- Install guardrails for the upper bed of bunk beds if the beds do not already have them.

Costs:

Swimming and Incident Water Immersion

Amendments pertaining to swimming and incidental water immersion are not expected to increase cost to regulated parties because they do not require camps to employ additional staff or obtain additional equipment and only require camps to comply with specified standards and procedures to ensure camper safety.

Camp Trips

Most of the amendments pertaining to camp trips do not result in a cost change. Expanding the qualification for trip leader may result in a cost reduction, as the operator may not be required to send both a skilled and senior staff on each trip. (One qualified in the activity and one having attended 3 previous camp trips.) The cost reduction associated with the expanded trip leader qualification cannot be estimated due to the varied salary range of staff and the extent to which the change will be used to reduce staff. Additionally, for trips with activities with high risk of injuries* that are conducted where emergency medical services are readily available (less than 8 minutes) and for trips with activities that have a medium risk of injuries* and occur at a location where emergency medical service response is between 9 and 20 minutes, a cost reduction of between \$100.00 and \$150.00 will occur as a result of requiring a lower level of first aid training. Trips with activities considered to have a low risk of injury* but are conducted where emergency medical services are not readily available no longer require staff with first aid training and will result in a cost reduction of between \$140.00 and \$190.00. First Aid certifications are valid for three years. Requiring Trip leaders to possess or be accompanied by someone who possesses an acceptable level of CPR training may result in a small cost increase if trip leaders are not already certified and if the camp trip activity requires CPR based on an injury risk assessment. In most instances, it is believed that Trip leaders, of high or medium risk activities who are required to possess an acceptable level of first aid training are already certified in the appropriate CPR. CPR training costs range from \$60.00 to \$100.00 per individual for an ARC CPR for the Professional Rescuer course and between \$40.00 and \$75.00 for ARC Community CPR. CPR certification must be renewed annually.

*Examples of high-risk activities include horseback riding, rock climbing and wilderness camping. Medium risk activities include boating on non-flowing water bodies, field sports such as softball and soccer, and roller-skating. Activities with low risk of injury include bowling, passive activities such as watching a movie or using a computer, cooking, dancing/acting and arts and crafts (with no power tools).

Activity Leader

The cost to a regulated party, if any will be dependent on the location in camp that an activity is held. Activities that occur at a location where the camp's first aid and CPR certified staff is readily available will result in no additional cost. Activities that are considered to have high and medium risk of injuries and occur at remote camp locations where the Camp's First Aid and CPR staff are not readily available will require an individual certified in an acceptable first-aid and an acceptable CPR courses (based on the activities risk assessment) to be present. It is believed that camp staff, who already possess the required first aid and CPR certifications, can be strategically positioned throughout the camp to fulfill the requirement. First aid training fees are between \$140.00 and \$190.00 for ARC Responding to Emergencies (RTE) First Aid courses and between \$40.00 and \$80.00 for ARC Community First Aid. CPR training fees are between \$60.00 and \$100.00 per individual for ARC CPR for the Professional Rescuer while ARC Community CPR cost between \$40.00 and \$75.00 per individual. CPR certification must be renewed annually.

Other Activities

Modifying the Code pertaining to riflery activities to reflect current penal law language will have no additional cost to regulated parties.

Including New York State Vehicle and Traffic Law standard (American Society for Testing and Materials standard, ASTM F1163) for horseback riding headgear into the Code will have no cost increase. The standard referenced in the Vehicle and Traffic Law has been used by the Department and distributed to Local Health Departments (LHD) and regulated parties in guidance documents since 1991. The standard referenced in the existing code no longer exists.

Activity Safety — requiring additional staff for more hazardous activities and activities that take place in remote areas of the camp property will not result in a cost increase to the regulated parties. Camps should be able to re-assign existing staff when needed to comply with the revised supervision ratio.

Water Supply

Prohibiting disinfection waivers will result in a cost increase for 120 camps that currently do not disinfect their water supplies. The cost increase will include a one-time expense estimated to be \$3,200 per system for

engineering design and installation of equipment. There will be an additional cost of approximately \$100 per season for operation and maintenance expenses. Some camps may need more than one disinfection system.

Annual start-up procedure costs for on-site systems are included in the above operation and maintenance estimate. The number of camps that are served by off-site public water systems that may be required to implement start-up procedures cannot be estimated because the need is based on site-specific conditions. However, the cost associated with a start-up procedure that is acceptable to the Department is estimated between \$50.00 and \$100.00 per distribution system.

The proposed regulation requires six camps with "non-public" on-site surface water or groundwater under the influence of surface water sources to provide filtration or develop a groundwater source such as a drilled well. Engineering, equipment and installation expenses for a filtration system estimated to range between \$5,000 and \$25,000 (averaging \$10,000) depending on the type and size of the system. A drilled well including the pump and appurtenances is estimated to cost between \$3,500 and \$10,000.

Requiring bacterial analysis prior to operation will result in an annual cost increase of between \$20.00 and \$40.00 per sample per distribution system for camps with on-site water supplies. Four hundred and fifty (450) camps have on-site water supplies. A few camps may have more than one water supply distribution system. The increase in the total number of annual samples (pre-operational and operational) per distribution system will be dependent on the length of a camp's operating season and the camp's current sampling requirements (monthly or quarterly). Most camps operate within a two month period and will therefore have an increase between 1 and 2 samples per distribution system per year.

Medical

There will be no cost associated with maintaining additional camper immunization records or reporting epinephrine administration and possible rabies exposures to local health departments.

Transportation

There will be no cost increase associated with prohibiting transportation of passengers in the bed of a trailer or in portions of a vehicle that are not designed for passenger occupancy. The removal of the requirement for vehicles to bear a New York State inspection sticker will not result in a cost increase.

Food

There will be no cost associated with the proposed amendments to the food service code language. Local Health Departments have always enforced Subpart 14-1 at children's camps.

Miscellaneous

There will be a cost increase to those overnight camps using bunk beds that are not currently equipped with guardrails on the upper beds. The cost of installation will vary dependent on type of material selected, the number of rails needed, and whether the camp staff can complete the work vs. hiring a contractor. Cost estimates range from \$15.00 to \$100.00 per bed. It is unknown how many of the 650 overnight camps utilize bunk beds without guardrails or the number of bunk beds requiring retrofitting.

Economic and Technological Feasibility:

The proposal is technologically feasible, because it requires the use of existing technology. The overall economic feasibility cannot be predicted at this time because the economic feasibility for each regulated children's camp is dependent upon the financial condition of that camp and the extent to which that camp must undertake additional actions to comply with the requirements of this regulation.

Minimizing Adverse Economic Impact:

When possible, performance based standards were considered or used to change and provide flexibility in requirements. Should this rule have a substantial adverse impact on a particular facility, a waiver of one or more requirements, other than water supply disinfection, is permitted so long as alternative arrangements protect public health and safety. Alternatively, a variance allowing additional time to comply with one or more requirements, can be granted if the health and safety of the public is not prejudiced by the variance.

Additionally, camps needing to install guardrails on bunk beds will have one-year from the date of the regulation's adoption, to complete the work. If the compliance date is a time when the camp is not in operation, the camp will have until it opens to comply.

Small Business and Local Government Participation:

The proposed amendments are based in part on the recommendations received from the New York State Camp Safety Advisory Council and as a result of the Department's outreach efforts to parties interested in children's camps (parents, camper operators, directors, camping organizations, etc.) and regulators. Six Council meetings were held to discuss the

amendment process and what revisions were necessary. Comments were sought from the NYC and 36 county health departments and 8 camping organizations including:

- American Camping Association (Upstate New York Section)
- American Camping Association (New York Section)
- Association of Jewish Camp Operators
- Boy Scouts of America
- Girl Scouts of America
- New York State Camp Directors Association
- NYS Parks and Recreation Society
- YMCA

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

There are approximately 2,600 regulated children's camps operating in New York State, all which will be affected by the proposed rule. Children's camps exist in all of the state's counties and of the 650 overnight children's camps, the majority are located in the rural Adirondacks and Catskills. 650 summer day or traveling day camps are also located in rural areas, while approximately 1,300 day are either located in New York City and its surrounding metropolitan counties, or in large urban cities.

Reporting and Recordkeeping:

The proposed regulation requires the reporting of incidents to the permit-issuing official where there has been exposure to animals potentially infected with rabies and the administration of epinephrine. These two categories are in addition to the already required reporting of other specified injury and illness incidents.

Children's camps that previously did not disinfect their water supply will now be required to complete daily operation records and submit copies of such records to the permit-issuing official monthly during operation, on forms provided by the permit-issuing official.

The proposed regulations adds three records of immunization against disease to the records that camps are already required to maintain for campers. These records can be obtained at the same time as other required camper immunization records and kept on file at camp with other already required health history information.

Professional Services:

Camps with water supplies that are currently not disinfected and camps that have an unfiltered surface water source will require a New York State licensed Professional Engineer to develop a plan for the installation of disinfection and filtration equipment, respectively, for the camp's water system(s). Following approval, installation of the disinfection equipment will be required which may require professional services dependent on the ability of the camp owner/operator and/or staff to perform the necessary work.

Other Compliance Requirements:

Many of the proposed amendments clarify existing code requirements or incorporate policies and procedures that have already been implemented by regulated parties. The amendments will require camp operators to:

- Implement procedures for incidental water immersion (non-swimming entry of water) when camps engage in such activities during camp trips.
- Comply with staff training and camper supervision standards for camp trip and wilderness swimming.
- Install disinfection equipment for on-site potable water supplies that are not already so equipped.
- Install guardrails for the upper bed of bunk beds if the beds do not already have them.

Costs:

Swimming and Incident Water Immersion

Amendments pertaining to swimming and incidental water immersion are not expected to increase cost to regulated parties because they do not require camps to employ additional staff or obtain additional equipment and only require camps to comply with specified standards and procedures to ensure camper safety.

Camp Trips

Most of the amendments pertaining to camp trips do not result in a cost change. Expanding the qualification for trip leader may result in a cost reduction, as the operator may not be required to send both a skilled and senior staff on each trip. (One qualified in the activity and one having attended 3 previous camp trips.) The cost reduction associated with the expanded trip leader qualification cannot be estimated due to the varied salary range of staff and the extent to which the change will be used to reduce staff. Additionally, for trips with activities with high risk* of injuries that are conducted where emergency medical services are readily available (less than 8 minutes) and for trips with activities that have a

medium risk of injuries* and occur at a location where emergency medical service response is between 9 and 20 minutes, a cost reduction of between \$100.00 and \$150.00 will occur as a result of requiring a lower level of first aid training. Trips with activities considered to have a low risk of injury* but are conducted where emergency medical services are not readily available no longer require staff with first aid training and will result in a cost reduction of between \$140.00 and \$190.00. First Aid certifications are valid for three years. Requiring Trip leaders to possess or be accompanied by someone who possesses an acceptable level of CPR training may result in a small cost increase if trip leaders are not already certified and if the camp trip activity requires CPR based on an injury risk assessment. In most instances, it is believed that Trip leaders, of high or medium risk activities who are required to possess an acceptable level of first aid training are already certified in the appropriate CPR. CPR training costs range from \$60.00 to \$100.00 per individual for an ARC CPR for the Professional Rescuer course and between \$40.00 and \$75.00 for ARC Community CPR. CPR certification must be renewed annually.

*Examples of high-risk activities include horseback riding, rock climbing and wilderness camping. Medium risk activities include boating on non-flowing water bodies, field sports such as softball and soccer, and roller-skating. Activities with low risk of injury include bowling, passive activities such as watching a movie or using a computer, cooking, dancing/acting and arts and crafts (with no power tools).

Activity Leader

The cost to a regulated party, if any will be dependent on the location in camp that an activity is held. Activities that occur at a location where the camp's first aid and CPR certified staff is readily available will result in no additional cost. Activities that are considered to have high and medium risk of injuries and occur at remote camp locations where the Camp's First Aid and CPR staff are not readily available will require an individual certified in an acceptable first-aid and an acceptable CPR courses (based on the activities risk assessment) to be present. It is believed that camp staff, who already possess the required first aid and CPR certifications, can be strategically positioned throughout the camp to fulfill the requirement. First aid training fees are between \$140.00 and \$190.00 for ARC Responding to Emergencies (RTE) First Aid courses and between \$40.00 and \$80.00 for ARC Community First Aid. CPR training fees are between \$60.00 and \$100.00 per individual for ARC CPR for the Professional Rescuer while ARC Community CPR cost between \$40.00 and \$75.00 per individual. CPR certification must be renewed annually.

Other Activities

Modifying the Code pertaining to riflery activities to reflect current penal law language will have no additional cost to regulated parties.

Including New York State Vehicle and Traffic Law standard (American Society for Testing and Materials standard, ASTM F1163) for horseback riding headgear into the Code will have no cost increase. The standard referenced in the Vehicle and Traffic Law has been used by the Department and distributed to Local Health Departments (LHD) and regulated parties in guidance documents since 1991. The standard referenced in the existing code no longer exists.

Activity Safety — requiring additional staff for more hazardous activities and activities that take place in remote areas of the camp property will not result in a cost increase to the regulated parties. Camps should be able to re-assign existing staff when needed to comply with the revised supervision ratio.

Water Supply

Prohibiting disinfection waivers will result in a cost increase for 120 camps that currently do not disinfect their water supplies. The cost increase will include a one-time expense estimated to be \$3,200 per system for engineering design and installation of equipment. There will be an additional cost of approximately \$150 per season for operation and maintenance expenses. Some camps may need more than one disinfection system.

Annual start-up procedure costs for on-site systems are included in the above operation and maintenance estimate. The number of camps that are served by off-site public water systems that may be required to implement start-up procedures cannot be estimated because the need is based on site-specific conditions. However, the cost associated with a start-up procedure that is acceptable to the Department is estimated between \$50.00 and \$100.00 per distribution system.

The proposed regulation requires six camps with "non-public" on-site surface water or groundwater under the influence of surface water sources to provide filtration or develop a groundwater source such as a drilled well. Engineering, equipment and installation expenses for a filtration system are estimated to range between \$5,000 and \$25,000 (averaging \$10,000)

depending on the type and size of the system. A drilled well including the pump and appurtenances is estimated to cost between \$3,500 and \$10,000.

Requiring bacterial analysis prior to operation will result in an annual cost increase of between \$20.00 and \$40.00 per sample per distribution system for camps with on-site water supplies. Four hundred and fifty (450) camps have on-site water supplies. A few camps may have more than one water supply distribution system. The increase in the total number of annual samples (pre-operational and operational) per distribution system will be dependent on the length of a camp's operating season and the camp's current sampling requirements (monthly or quarterly). Most camps operate within a two month period and will therefore have an increase between 1 and 2 samples per distribution system per year.

Medical

There will be no cost associated with maintaining additional camper immunization records or reporting epinephrine administration and possible rabies exposures to local health departments.

Transportation

There will be no cost increase associated with prohibiting transportation of passengers in the bed of a trailer or in portions of a vehicle that are not designed for passenger occupancy. The removal of the requirement for vehicles to bear a New York State inspection sticker will not result in a cost increase.

Food

There will be no cost associated with the proposed amendments to the food service code language. Local Health Departments have always enforced Subpart 14-1 at children's camps.

Miscellaneous

There will be a cost increase to those overnight camps using bunk beds that are not currently equipped with guardrails on the upper beds. The cost of installation will vary dependent on type of material selected, the number of rails needed, and whether the camp staff can complete the work vs. hiring a contractor. Cost estimates range from \$15.00 to \$100.00 per bed. It is unknown how many of the 650 overnight camps utilize bunk beds without guardrails or the number of bunk beds requiring retrofitting.

Minimizing Adverse Economic Impact on Rural Areas:

When possible, performance based standards were considered or used to change and provide flexibility in requirements. Should this rule have a substantial adverse impact on a particular facility, a waiver of one or more requirements, other than water supply disinfection, is permitted so long as alternative arrangements protect public health and safety. Alternatively, a variance allowing additional time to comply with one or more requirements, can be granted if the health and safety of the public is not prejudiced by the variance.

Additionally, the proposed amendments are to be effective upon publication of a notice of adoption in the *State Register*. Most amendments can be complied with immediately. Those camps that will need to install disinfection or filtration equipment on their water supplies should complete the installations prior to opening in the year following that of the regulation's adoption. Camps needing to install guardrails on upper bunks will have one-year from the date of the regulation's adoption. If the compliance date is a time when the camp is not in operation, the camp will have until it opens to comply.

Rural Area Participation:

The proposed amendments are based in part on the recommendations received from the New York State Camp Safety Advisory Council and as a result of the Department's outreach efforts to parties interested in children's camps (parents, camper operators, directors, camping organizations, etc.) and regulators. Six Council meetings were held to discuss the amendment process and what revisions were necessary. Comments were sought from the NYC and 36 county health departments and 8 camping organizations including:

- American Camping Association (Upstate New York Section)
- American Camping Association (New York Section)
- Association of Jewish Camp Operators
- Boy Scouts of America
- Girl Scouts of America
- New York State Camp Directors Association
- NYS Parks and Recreation Society
- YMCA

Job Impact Statement

The amendment will have no substantial adverse impact on jobs and employment opportunities, as it does not result in an increase or decrease in current staffing level requirements. The amendments may require some additional staff training and realignment of use of personnel at some camps; however, it is anticipated that current staffing levels of camps will

be relatively unchanged. Therefore, no Job Impact Statement is being filed pursuant to section 201-a(2)(a) of the State Administrative Procedure Act.

Department of Motor Vehicles

NOTICE OF ADOPTION

Enforcement of Motor Vehicle Liability Insurance Law

I.D. No. MTV-09-04-00006-A
Filing No. 466
Filing date: April 27, 2004
Effective date: May 12, 2004

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

Action taken: Amendment of section 35.11 of Title 15 NYCRR.
Statutory authority: Vehicle and Traffic Law, sections 215(a) and 318(1)(e)
Subject: Enforcement of Motor Vehicle Liability Insurance Law.
Purpose: To clarify exemption from insurance lapse provision.
Text or summary was published in the notice of proposed rule making, I.D. No. MTV-09-04-00006-P, Issue of March 3, 2004.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Michele Welch, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Special Number Plates

I.D. No. MTV-19-04-00007-P

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

Proposed action: This is a consensus rule making to amend sections 16.6 and 16.7 of Title 15 NYCRR.
Statutory authority: Vehicle and Traffic Law, sections 215(a) and 404(1)
Subject: Special number plates.
Purpose: Issuance of special plates.
Text of proposed rule: Subdivision (b) of section 16.6 is amended to read as follows:
(b) Except as provided in subdivision (b) of Section 16.7 of this Part, a [A] special number plate which has been surrendered to or replaced by the department shall not be reissued until one year from [its last stated expiration date, except that]:
(1) the expiration of the first year of the two-year registration period if the plate is surrendered or replaced within the first year; or,
(2) the expiration of the second year of the two-year registration period if the plate is surrendered or replaced during the second year.
However, if the plate is requested by the person who had such plate replaced by the Department or who surrendered the same, such plate may be reissued immediately, provided that plate is available for issuance. This [provision] subdivision shall not apply to plates in reserved series, which may be reassigned immediately.
 Subdivision (b) of section 16.7 is amended to read as follows:
(b) If both plates of a set of special number plates are lost, stolen, mutilated or destroyed, [the provisions of section 16.6 of this Part shall apply] such plates shall not be reissued until one year from their last stated expiration date.
Text of proposed rule and any required statements and analyses may be obtained from: Michele Welch, Counsel's Office, Department of Mo-

tor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

Data, views or arguments may be submitted to: Ida L. Traschen, Assistant Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

Consensus Rule Making Determination

Part 16.6 currently provides that a special number (*i.e.*, "custom") plate that is surrendered to the Department of Motor Vehicles shall not be reissued until one year after the plates' last expiration date. Although this made sense when the law provided for a one-year registration period, this is counterproductive in the two-year registration system.

Depending upon when the plate is surrendered, the current regulation prevents us from reissuing a plate for up to three years. For example, if the plate is surrendered in the first days/weeks/months of the two-year registration cycle, the plate cannot be reissued for the remainder of the first year, the full second year, plus one year after expiration. Thus, a plate that may be in demand by a member of the public is simply inactive for unnecessarily long period of time. The same logic applies to plates that are replaced by the Department. The regulation exempts stolen plates from this revision, because there are often prolonged law enforcement issues associated with stolen plates.

This amendment would allow the Department to reissue plates sooner, but still provide a safety net to clear up registration activities, *e.g.*, avoid the problems that arise when the former plate holder may receive notices of liability for parking tickets even though he/she surrendered the plate.

Since this proposed amendment would benefit consumers by permitting the timely reissuance of custom plates, we anticipate no objection to this rule making.

Job Impact Statement

A job impact statement is not submitted with this consensus rule making because it will have no impact on job development in the State. This rule concerns the reissuance of special (*i.e.*, custom) plates.

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy by Oneida-Madison Cooperative, Inc.

I.D. No. PAS-10-04-00002-A
Filing date: April 27, 2004
Effective date: April 27, 2004

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

Action taken: Revisions in rates for the sale of power and energy to Oneida-Madison Electric Cooperative.
Statutory authority: Public Authorities Law, section 1005(5)
Subject: Rates for the sale of power and energy.
Purpose: To maintain the system's fiscal integrity.
Text or summary was published in the notice of proposed rule making, I.D. No. PAS-10-04-00002-P, Issue of March 10, 2004.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Angela D. Graves, Power, Authority, 123 Main St., 15-M, White Plains, NY 10601, (914) 287-3092, e-mail: angela.graves@nypa.gov
Assessment of Public Comment:
 An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

2003 Reliability Report by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-19-04-00008-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 Consolidated Edison Company of New York, Inc.'s (Con Edison or the company) report on 2003 performance under Electric Service Reliability Performance Mechanism (2003 Reliability Report). Specifically, the commission will consider whether to grant, in whole or in part, or reject, Con Edison's request to exclude certain outage events from the calculation of its electric system performance during 2003, as prescribed by the commission in the company's current rate plan.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Con Edison's 2003 Reliability Report.

Purpose: To consider Con Edison's 2003 Reliability Report.

Substance of proposed rule: The Public Service Commission (Commission) is considering Consolidated Edison Company of New York, Inc.'s (Con Edison or the company) Report on 2003 Performance under Electric Service Reliability Performance Mechanism (2003 Reliability Report). Specifically, the Commission will consider, among the issues associated with Con Edison's electric reliability performance, whether to grant, in whole or in part, or reject, Con Edison's request to exclude certain electric outage events from the calculation of its electric system performance during 2003, as prescribed by the Commission in the company's current rate plan. Con Edison seeks to exclude electric outage events for six periods in 2003, which it experienced high levels of customer interruptions as a result of ice, snowfall, salt spreading and water runoff.

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, Acting 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.

(00-M-0095SA5)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Lease of Real Property by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and Consolidated Edison Company of New York, Inc.

I.D. No. PSC-19-04-00009-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 filed by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan) and Consolidated Edison Company of New York, Inc. (Con Edison) for: (1) approval under section 70 of the Public Service Law of a lease renewal of a portion of a KeySpan building to Con Edison; (2) approval of the proposed accounting and rate treatment for the transaction; and (3) related relief.

Statutory authority: Public Service Law, sections 5(b), (c), 65(1), 66(1), (2), (5), (8), (9), (10), (11), (12) and (70)

Subject: Consideration of the lease of real property, accounting and rate treatment for the transaction, and related matters.

Purpose: To consider the proposed lease of a portion of a building, the proposed accounting and rate treatment (associated with the transaction), and related matters.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, the lease renewal of a portion of a building located in Jamaica, New York, used by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York (KeySpan) as a customer service center, to Consolidated Edison Company of New York, Inc. (Con Edison). Con Edison has collocated its customer service office in the leased premises, thereby facilitating the ability of customers to transact business with the two companies. By this petition, the parties seek to extend the term of the lease that permits Con Edison to occupy the premises. The Commission is also considering KeySpan's proposed accounting and rate treatment for the transaction, including the company's proposal to use the revenues generated from this transaction to defray operation and maintenance expenses, and other related issues.

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, Acting 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-M-0411SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Abandonment of Water System by Antlers of Raquette Lake, Inc.

I.D. No. PSC-19-04-00010-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 petition filed by Antlers of Raquette Lake, Inc. to abandon its water system.

Statutory authority: Public Service Law, section 89-h

Subject: Abandonment of water system.

Purpose: To allow Antlers of Raquette Lake, Inc. to abandon its water system.

Substance of proposed rule: On April 19, 2004, Antlers of Raquette Lake, Inc. (Antlers) requested Commission approval to abandon its water system due to the excessive cost to comply with the New York State Department of Health's surface water treatment rule. Antlers currently provides water service to 40 seasonal customers, however, 19 previous customers have already abandoned the system. Antlers is located in the Town of Long Lake, Hamilton County. The Commission may approve or reject, in whole or in part, or modify the company's request.

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, Acting 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-W-0502SA1)

Racing and Wagering Board

EMERGENCY RULE MAKING

Video Lottery Gaming Occupational Licensing

I.D. No. RWB-19-04-00002-E

Filing No. 463

Filing date: April 23, 2004

Effective date: April 23, 2004

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

Action taken: Amendment of sections 4002.1 and 4101.24 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 101; and Tax Law, section 1617-a(a)

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

Specific reasons underlying the finding of necessity: To immediately permit occupational licensing of video lottery gaming employees and not delay the implementation of video lottery gaming by the Division of the Lottery. An emergency rule making is necessary because the board has determined that emergency adoption is necessary for the preservation of the general welfare and that standard rule making procedures would be contrary to the public interest.

Subject: Video lottery gaming occupational licensing.

Purpose: To permit the occupational licensing of video lottery gaming employees.

Substance of emergency rule: This rule establishes a new category of New York State Racing and Wagering Board license. The rule provides that the Board shall deem an individual licensed as a video lottery gaming employee upon written notification from the Division of the Lottery that said individual will be issued a video lottery gaming license pursuant to Part 2836 of Title 21 of the New York Code of Rules and Regulations if licensed as a video lottery gaming employee by the Board. The Board will grant such license unless information existing and immediately available in Board records indicate that the applicant's financial responsibility, experience, character and general fitness are such that the participation of such person will not be consistent with the public interest, convenience or necessity and with the best interests of racing. The rule is limited to those engaged exclusively in the employ of a video lottery gaming operation, provided however no employee engaged in the preparation, service and handling of food and beverages in the operation of a restaurant or a food or beverage dispensing facility at a track will be required to hold an independent racing license for employment outside the video lottery gaming operation unless employed in the backstretch, stable area, paddock, racing strip, infield, mutuel area of a track, or other restricted area of the racetrack as designated by the Board.

Each such video lottery gaming employee license granted by the board, unless revoked for cause, shall be effective for a period equal to that of the license issued by the Division of the Lottery. Such license shall also terminate upon the end of a licensee's video lottery gaming employment.

No annual license or renewal fee will be charged applicants for a video lottery gaming employee license.

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 July 21, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Robert A. Feuerstein, Counsel, Racing and Wagering Board, One Watervliet Ave. Ext., Suite 2, Albany, NY 12206-1668, (518) 453-8460, e-mail: info@racing.state.ny.us

Regulatory Impact Statement

1. Statutory Authority: Section 1617-a of Article 34 of the Tax Law provides that the Division of the Lottery is authorized to license, pursuant to rules and regulations to be promulgated by the Division of the Lottery, the operation of video lottery gaming at Aqueduct, Monticello, Yonkers, Finger Lakes and Vernon Downs racetracks, or at any other racetrack licensed pursuant to article three of the racing, pari-mutuel wagering and breeding law that are located in a county or counties in which video lottery

gaming has been authorized pursuant to local law, excluding the licensed racetrack commonly referred to in article three of the racing, pari-mutuel wagering and breeding law as the "New York State Exposition" held in Onondaga county and the racetracks of the non-profit racing association known as Belmont Park racetrack and the Saratoga thoroughbred racetrack. The statute requires that the Division's rules and regulations shall provide, as a condition of licensure, inter alia, that racetrack employees involved in the operation of video lottery gaming are licensed by the Racing and Wagering Board. Pursuant to Racing, Pari-Mutuel Wagering and Breeding Law Section 101, the New York State Racing and Wagering Board has general jurisdiction over pari-mutuel horse racing and requires the licensing of all individuals who work at a racetrack.

2. Legislative Objective: This regulation meets the legislative objective of ensuring that racetrack employees involved in the operation of video lottery gaming are licensed by the Board.

3. Needs and Benefits: This regulation is needed to enable the Division of the Lottery to carry out its responsibilities with respect to chapter 383 of the laws of 2001, as amended by chapters 85 of the laws of 2002 and 62 of the laws of 2003. These laws require that racetrack employees involved in the operation of video lottery gaming are licensed by the Board.

The Board does not currently have occupational license categories for video lottery gaming employees. This proposed rule would establish a category for video lottery gaming employees. It is the Board's belief that the proposed rule will eliminate duplicative applications and procedures.

4. Costs: This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming. No local mandates are imposed by rule upon any county, city, village, etc. There are no fees imposed by this rule.

(a) Costs to the Racing and Wagering Board: The costs to the New York State Racing and Wagering Board are expected to be minimal. An overwhelming majority of the Board's responsibilities in executing the provisions of this rule will be automated.

(b) Costs to other State Agencies: None.

(c) Costs to Local Government: None.

(d) Costs to Regulated Entities: None.

5. Local Government Mandates: The proposed rule imposes no burdens on local government.

6. Paperwork: Under the proposed rule, applicants for a video lottery gaming employee license need only execute a single release form as the Board will be utilizing the applicant's existing filings with the Division of the Lottery.

7. Duplication: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules. Currently, the Division of the Lottery must license the operation of video lottery gaming at the racetracks as well as licensing video lottery gaming employees. Because the operation of video lottery gaming is separate and distinct from pari-mutuel wagering, and further because only the Lottery may license the operation of video lottery gaming, dual licensing of the racetracks is not duplicative. Pursuant to a Memorandum of Understanding between the Board and that agency, potential duplicative licensing requirements for the racetrack employees have been eliminated.

8. Alternatives: No other alternatives are available.

9. Federal Standards: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules.

10. Compliance Schedule: These regulatory amendments will be effective upon their adoption and compliance can be achieved immediately.

Regulatory Flexibility Analysis

1. Effect of Rule: The Board finds that the rule will not adversely affect local government. The rule will impact a number of types of businesses:

(a) Licensed racetracks. It is expected that the racetracks will employ greater than 100 employees at their facilities and, therefore, are not "small businesses" as that term is defined in New York State Administrative Procedure Act § 102.

(b) Gaming vendors. Vendors wishing to supply gaming products and services must be licensed by the Lottery. These include the supplier of the central computer system that will support the video lottery games; and the companies supplying the games and terminals. Employees of those vendors who will conduct their business on-site within the property of licensed racetracks will have to be licensed by the Board.

(c) Non-Gaming Vendors. Vendors wishing to supply goods and services not directly related to gaming will be required to complete a registration process or licensing process by the Lottery. Employees of those vendors who will conduct their business on-site within the property of licensed racetracks will have to be licensed by the Board.

2. Compliance Requirements: This rule will not require small businesses to complete burdensome forms or reports. To the extent that any small businesses have employees who will conduct their business on-site and thus require a Board license, the applicants need only execute a single release form as the Board will be utilizing the applicant's existing filings with the Division of the Lottery.

3. Professional Services: It is not anticipated that any professional services by a small business or local government will be needed to comply with these proposed rules.

4. Compliance Costs: This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming. There are no fees associated with this rule amendment.

5. Economic and Technological Feasibility: The economic and technological impact of these rules on local government is minimal. There are no expected adverse economic or technological impact on small businesses in complying with these regulations.

6. Minimizing Adverse Impacts: None.

7. Small Business and Local Government Participation: None.

Rural Area Flexibility Analysis

Many of the racetracks eligible for video lottery gaming licenses are located within "rural areas" as that term is defined in New York State Executive Law Section 481(7): Batavia Downs in Genesee County, Finger Lakes Racetrack in Ontario County, Saratoga Harness Track in Saratoga County, and Monticello Racetrack in Sullivan County.

However, the Board has determined that these regulations will impose no adverse impact on these rural areas. The rule places no additional requirements on racetracks, other businesses or communities located within the rural areas than it does on racetracks, businesses or communities located outside rural areas.

The Board believes that there will be positive impact on these rural areas, as this new industry brings increased levels of business and employment to the communities.

Job Impact Statement

The Board has determined that the rule will not have a substantial adverse impact on jobs and employment opportunities. To the contrary, the agency has determined the rule will have a positive impact on jobs and employment opportunities. This rule will facilitate the license application process by eliminating duplicative detailed license applications.

According to estimates provided by the racetracks, it is anticipated that racetracks, or gaming agents, throughout the state are expected to employ upwards of 1,900 people. Individual gaming agents will be employing between approximately 70 to 700 people. The average number of employees at each gaming facility (incremental over current operations) is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual salaries between \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

In addition to added employment from gaming operations, needed construction to the racetrack facilities will generate many new jobs at prevailing labor rates. Undoubtedly, employment in the surrounding communities will increase to service the increased labor population and influx of patrons to the racetracks.

Statutory authority: Real Property Tax Law, sections 202(1)(1), 575, 1200 and 1314(2)

Subject: Assessors' reports and State equalization rates.

Purpose: To revise the assessors' reports requirements, the definition of isolated properties for equalization studies and the standard for establishing special segment equalization rates.

Text of final rule: Section 1. Paragraph 126 of subdivision a of section 185-1.1 is amended to read as follows:

(126) Isolated property means [special franchise property, railroad ceiling property and taxable State land with the exception of special assessing units, beginning with the State equalization rates for the 1997 assessment roll of cities, towns and village assessing units whose boundaries are coterminous with the boundaries of a union free school district, and beginning with the State equalization rates for the 1998 assessment roll of all other villages, special franchise and ceiling railroad property shall not be isolated properties, and all additional] properties to be isolated [shall be] in the particular market value surveys as provided in the procedures established for the market value survey or surveys used for the calculation of State equalization rates, class equalization rates or class ratios.

Section 2. Subdivision a of section 186-5.5 is amended to read as follows:

§ 186-5.5 Limitations. (a) A segment special equalization rate shall not be established for the purposes of this Subpart if there would not be at least a 10 percent change in the share of the levy of at least one segment of the taxing jurisdiction as the result of the use of the segment special equalization rate in place of the equalization rate which would otherwise be used for purposes of apportionment. The change in shares will be determined by comparing the shares computed using the prior year assessed values and State equalization rates against the shares computed by substituting the segment special equalization rate at the prior year's level of assessment. Provided, however, this limitation shall not apply where a special equalization rate is determined for another segment within the same assessing unit or taxing jurisdiction pursuant to this subpart or where a special equalization rate was established for that segment in the prior year and a change of 5 percent would occur for any segment in the taxing jurisdiction.

Section 3. Section 193-4.1 is amended to read as follows:

Parts of the assessor's report.

- (a) Part 1. Report of Total Assessed Value of Locally Assessed Properties and Taxable State Land
- (b) Part 2. Detail List of Changes
- (c) [Part 4. Report of Local Options Adopted for Various Exemptions
- (d)] Part 6. List of Court-ordered (other than Small Claims Court) Adjustments in Assessments
- [(e)] (d) Part 7. List of Corrections of Errors and Small Claims Court Adjustments
- [(f) Part 9. Special Report for Solvay School District].

Section 4. Section 193-4.2 is amended to read as follows:

Filing of the assessor's report. (a) Each assessing unit shall annually file the assessor's report with the State Office using:

- (1) forms prescribed by the State Office;
- (2) computer [tape] files (RPS210T1 and RPS220T1) and accompanying paper reports (RPS215P1 and RPS220P2) of the New York State Real Property System (RPS).
- (3) [upon written approval of the, an alternate reporting method. No approval shall be granted unless:
 - (i) the request to use an alternate reporting method is made at least 30 days prior to the filing of the tentative assessment roll; and
 - (ii) such other alternative reporting method provides for the satisfaction of all the requirements of section 193-4.4 of this Subpart.] for assessing units, other than special assessing units, not using RPS, computer files in the most recent RPS format. These files must meet all the requirements of section 193-4.4 of this Subpart.

(4) Computer files must be transmitted by Internet, CD, DVD, diskette, zip disk or such other format which has received prior annual approval of the State Office.

(b) The assessor's report shall be filed:

- (1) by the [Commission] Commissioner of Finance for the City of New York, who shall file a separate report for each borough;
- (2) by the Chairman of the Nassau County Board of Assessors, who shall file a separate report for each city, town and village for which the county assesses;
- (3) by the Tompkins County Director of Assessment, who shall file a separate report for each city, town and village for which the county assesses;

Office of Real Property Services

NOTICE OF ADOPTION

Assessors' Reports and State Equalization Rates

I.D. No. RPS-05-04-00005-A

Filing No. 473

Filing date: April 27, 2004

Effective date: May 12, 2004

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

Action taken: Amendment of Parts 186 and 193 of Title 9 NYCRR.

(4) by the town assessor for each village within such town that has adopted a local law as provided in subdivision 3 of section 1402 of the Real Property Tax Law; provided, however, that such report shall be submitted as part of the assessor's report for the town, and no separate report for the village will be required;

(5) by the assessor for each consolidated or coordinated assessing unit, who shall file a separate report for each assessing unit;

(6) in all other cities, towns and villages by the sole assessor of the city, town or village, or the chairman of the board of assessors or other member of the board of assessors designated by a majority of such board to file the assessor's report [except that Part 4 may be filed by the County Director where the assessing unit has granted permission for such filing in accordance with subdivision (c) of this section]; or

(7) the chief executive officer of the assessing unit or chairperson of the Board of Directors of a consolidated assessing unit in the event there is no assessor.

(c) For each assessing unit located in a county which has a real property tax services agency, a copy of the assessor's report shall be filed with the county director of real property tax services at the time that it is filed with the State Office.

[(d) An assessing unit located in a county which has a real property tax service agency may authorize the county director of the county in which the assessing unit is located to provide the data required on part 4 of the assessor's report (as set forth in section 193-4.4(d) of this Subpart) by filing a written authorization with the State Board signed by both the assessor and the county director. The authorization to file part 4 shall be made in writing, signed by both the assessor (or a majority of the board of assessors) and the county director, and shall be filed with the State Board on or before the first day of December. In any subsequent year, either the assessor, or county director, or a successor in office, may file a written statement with the other officer and the State Board withdrawing the authorization. Where such authorization is withdrawn, the assessor shall resume the responsibility for filing part 4 as provided in this Subpart.]

Section 5. Section 193-4.3 is amended to read as follows:

Time of filing of the assessor's report, (a) Parts 1 and 2 of the assessor's report shall be filed annually not later than 30 days following the receipt by the assessor(s) of the verified statement of changes in assessments made by the county, city or town board of assessment review pursuant to section 525 of the Real Property Tax Law or by the village board of assessment review pursuant to section 1408 of the Real Property Tax Law; provided, however, for the City of New York, Parts 1 and 2 shall be filed annually not later than 30 days following the receipt by the Commissioner of Finance of the notice of corrections in assessments made by the Tax Commission. Where a supplemental roll is filed pursuant to section 1335 of the Real Property Tax Law, a Part 1 and Part 2 shall be filed not later than [30] 15 days following the receipt by the assessor(s) of the verified statement of changes in assessments made by the county, city or town board of assessment review pursuant to subdivision 5 of section 1335 of the Real Property Tax Law. Such report shall provide the data required in section 193-4.4(a)-(c) of this Subpart using as the prior roll the final assessment roll completed prior to the filing of the supplemental assessment roll and using as the current roll the supplemental assessment roll.

(b) [Part 4 of the assessor's report shall be filed annually not later than December 1 when either of the following conditions is met.

(1) the assessing unit was not an assessing unit for the prior year's assessment roll; or

(2) a change to any of the information required to be filed pursuant to paragraph (4) of section 193-4.4(d) of this Title has occurred subsequent to the last filing of Part 4.

(c) Parts 6 and 7 of the assessor's report are to be filed for each affected parcel within 30 days of the receipt of such court order, correction of error or small claim court by the assessor(s).

[(d) For all assessing units containing a piece of the Solway School District, Part 9, if necessary, shall be filed annually not later than December 1.]

[(e)] (c) Failure to file any part of the assessor's report completed in satisfactory compliance with the provisions of this Subpart and within the times prescribed herein may be deemed a refusal or neglect to perform a duty or to do an act required of an assessing official by the Real Property Tax Law as to subject the assessing official to the penalty provided by section 216 of such law, as well as any other penalties prescribed by law. Such a decision may be reached only after a hearing as prescribed in Part 187 of this Chapter.

Section 6. Subdivisions d and g of section 193-4 are repealed and subdivisions e and f are renumbered as d and e respectively.

Section 7. Paragraph 2 of subdivision e, renumbered subdivision d by section 6 of these amendments, of section 193-4, is amended as follows:

(2) a signed and dated [written] statement: "I (We) certify that the information contained in part 6 of this report constitutes a true statement of fact."

Section 8. Paragraph 2 of subdivision f of section 193-4, renumbered subdivision e by section 6 of these amendments, is amended to read as follows:

(2) a signed and dated [written] statement: "I (We) certify that the above changes were ordered by the Board of Assessment Review or Small Claims Court and that the changes so ordered were made to the final assessment roll."

Section 9. Section 193-4.5 is amended to read as follows:

Applicability. The provisions of this Subpart shall apply to all assessor's reports filed for assessment rolls completed on or after January 1, 1996. *The provisions of this Subpart, as revised by amendments approved by the State Board in 2003, shall apply to all assessment rolls completed on or after January 1, 2004.*

Final rule as compared with last published rule: Nonsubstantive changes were made in section 193-4.3(c).

Text of rule and any required statements and analyses may be obtained from: James J. O'Keefe, General Counsel, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: internet.legal@orps.state.ny.us

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

Although changes were made to this proposal, no Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact are necessary. The only changes renumber section 193-4.3(d) as section 193-4.3(c).

Assessment of Public Comment:

This proposal addressed three areas of the State equalization program - the definition of isolated properties in equalization surveys, the standard for special segment equalization rates and assessors' annual reports. The only comment received concerned special segment rates.

Section 186-5.5(a) contains a standard of a 10% change in tax share for any portion of a school tax levy before the State Board establish a special rate for any segment. In recent years there have been several instances where segments fall above and below this standard in successive years. The failure to furnish rates in one year after establishing a rate in the prior year will exacerbate tax shifts if a rate is established in a subsequent year. In order to avoid this see-saw effect, the proposal lowers the standard to 5% if a special rate was established in the preceding year.

A public hearing was held on March 3, 2004. There was one appearance at that hearing.

Michael J. Fogarty, Assessor, Town of Newburgh, Orange County, addressed only the amendment to § 186-5.5 in section 2 of the proposal that lowers the threshold for establishing special segment rates from 10% to 5% if such a rate was established in the prior year. Mr. Fogarty characterizes the establishment of segment rates as shifting taxes to assessing units with larger nonresidential components. He notes that there is no reason given for using a 5% threshold rather than some other number less than 10. He considers it "disingenuous" to premise issuance of a segment rate in one year on a prior year. He sees the proposal as perpetuating imbalances brought about by the failure of the agency to accurately measure the real estate market.

The proposal was drafted to address a particular situation. For the last several years, the City of Rye has requested a segment rate for the portion of the Town of Rye in the Rye-Neck School District. The analysis of the Office of Real Property Services has shown that the tax shifts involved hover around the 10% threshold. In 2003 the threshold was met. In 2004 the threshold is not met. Taxes would thus shift from the Town to the City solely because of the standard in the rule. In drafting the proposal, staff of the Office of Real Property Services considered the need for stability in tax apportionment to outweigh the types of concerns raised by Mr. Fogarty. That continues to be the position of the State Board of Real Property Services.

No written comments were received.

NOTICE OF ADOPTION

Annual License Fees

I.D. No. RPS-06-04-00003-A

Filing No. 467

Filing date: April 27, 2004

Effective date: May 12, 2004

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

Action taken: Amendment of Part 190 of Title 9 NYCRR.

Statutory authority: Real Property Tax Law, section 202(1)(l); and State Finance Law, section 99-kk

Subject: Annual license fee for users of the Real Property System (RPS).

Purpose: To revise the annual license fee schedule for users of RPS.

Text or summary was published in the notice of proposed rule making, I.D. No. RPS-06-04-00003-P, Issue of February 11, 2004.

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

Text of rule and any required statements and analyses may be obtained from: James J. O'Keeffe, General Counsel, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: internet.legal@orps.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

State Advisory Appraisals

I.D. No. RPS-06-04-00004-A

Filing No. 472

Filing date: April 27, 2004

Effective date: May 12, 2004

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

Action taken: Amendment of Subpart 195-2 of Title 9 NYCRR.

Statutory authority: Real Property Tax Law, sections 202(1)(l) and 1544

Subject: State advisory appraisals.

Purpose: To simplify the existing program of State advisory appraisals.

Text or summary was published in the notice of proposed rule making, I.D. No. RPS-06-04-00004-P, Issue of February 11, 2004.

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

Text of rule and any required statements and analyses may be obtained from: James J. O'Keeffe, General Counsel, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: internet.legal@orps.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Calculation of Railroad Ceilings

I.D. No. RPS-09-04-00005-A

Filing No. 471

Filing date: April 27, 2004

Effective date: May 12, 2004

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

Action taken: Addition of Subpart 200-3 to Title 9 NYCRR.

Statutory authority: Real Property Tax Law, sections 202(1)(l), 489-g(8) and 489-ii(9)

Subject: Increased depreciation of track in the calculation of railroad ceilings.

Purpose: To establish standards for railroads to receive increased depreciation in the calculation of their ceilings for local real property taxation.

Text or summary was published in the notice of proposed rule making, I.D. No. RPS-09-04-00005-P, Issue of March 3, 2004.

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

Text of rule and any required statements and analyses may be obtained from: James J. O'Keeffe, General Counsel, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: internet.legal@orps.state.ny.us

Assessment of Public Comment

There was one appearance at the public hearing of March 23, 2004. There was also one written comment submitted.

The testimony of Eugene H. Blabby, II at the hearing, the submission by Mr. Blabby on behalf of Railroads of New York (RONY), and the submission of Barbara Guzman, Esq. all address a single issue: the proposal (§ 200-3.1[a]) does not use the same classification of track as the Federal Railroad Administration. The four classes of track in the rules are those contained in sections 489-g and 489-ii of the Real Property Tax Law, the statutory basis. The proposal specifies what track constitutes each class. The rules could not simply reproduce the Federal standards, which contain six classifications of track, since those standards in turn would have to be redesignated to fit the statutory four classifications. Staff of the Office of Real Property Services, in consultation with staff of the New York State Department of Transportation, developed the classifications in section 200-3.1(a) to incorporate the Federal classification into the classifications contained in the Real Property Tax Law. The classifications in the proposal are sufficient for the administration of the program. Staff of both ORPS and NYSDOT are ready to provide any necessary assistance to dispel any confusion by the companies. The State Board thus adopted the proposal without change.

Department of State

EMERGENCY RULE MAKING

Cease and Desist Zone for Real Estate Brokers and Salespersons

I.D. No. DOS-19-04-00001-E

Filing No. 461

Filing date: April 21, 2004

Effective date: April 21, 2004

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

Action taken: Amendment of section 175.17(c)(2) of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-h(3)(a) and (c)

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

Specific reasons underlying the finding of necessity: Based on testimony received at a public hearing, the Secretary of State has determined that some owners of residential property in the Brooklyn community of Canarsie are subject to intense and repeated solicitation by real estate brokers and real estate salespersons and that such solicitations seek to have the owners place their home for sale with the real estate brokers and real estate salespersons. The Secretary of State has further determined that the homeowners have no practical means of stopping the unwanted and intrusive solicitations and that those homeowners need immediate relief. Therefore, compliance with section 201(1) of the State Administrative Procedure Act would be contrary to the public interest of providing for the general welfare of those homeowners who seek immediate relief from the continuation of the unwanted and unwelcomed solicitations by real estate brokers and salespersons.

Subject: Cease and desist zone for real estate brokers and salespersons.

Purpose: To establish a cease and desist zone in the Brooklyn community of Canarsie.

Text of emergency rule: Paragraph (c)(2) of section 175.17 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to add the following designated cease and desist zone:

*Cease and Desist Zone
(Canarsie)*

<i>Zone</i>	<i>Expiration Date</i>
<i>County of Kings (Brooklyn)</i>	<i>November 30, 2007</i>

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, bounded and described as follows:

Beginning at a point at the intersection of Ralph Avenue and the Long Island Railroad right-of-way (between Chase Court and Ditmas Avenue); thence northeasterly along the Long Island Railroad right-of-way to the northern prolongation of Bank Street; thence southeasterly along Bank Street to a point at the intersection of Bank Street and Foster Avenue; thence northeasterly continuing to a point at the intersection to Stanley Street and East 108 Street; thence southeasterly along East 108 Street to Flatlands Avenue; thence northeasterly along Flatlands Avenue to the northern prolongation of Fresh Creek Basin; thence southeasterly along Fresh Creek Basin to Short (Belt) Parkway; thence southwesterly along Shore (Belt) Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin, and the northern prolongation of Paerdegat Basin to Flatlands Avenue; thence southwesterly along Flatlands Avenue to Ralph Avenue; thence northwesterly along Ralph Avenue to the Long Island Railroad right-of-way and the point of beginning.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire July 19, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Bruce Stuart, Department of State, Division of Licensing Services, 84 Holland Ave., Albany, NY 12208, (518) 473-2728

Regulatory Impact Statement

1. Statutory authority:

Section 442-h(3) (a) of the Real Property Law (“RPL”) provides that the Secretary of State may adopt a rule establishing a cease-and-desist zone if the Secretary determines that some homeowners within a defined area are subject to intense and repeated solicitation by real estate brokers and salespersons to list their homes for sale. Upon the establishment of such a zone, a homeowner may file with the Secretary a statement of desire not to be solicited. Thereafter, the Secretary will publish a list of the names and addresses of the persons who have filed the statement, and brokers and salespersons are then prohibited from soliciting persons on that list. That list is commonly referred to as a “cease-and-desist list.”

Section 442-h(3)(a) of the RPL provides that no rule establishing a cease and desist zone shall be effective for more than five years; provided, however, that the Department of State may re-adopt the rule to continue a cease and desist zone for additional periods not to exceed five years.

Based testimony received at a public hearing on December 14, 2000, the Secretary of State has determined that some homeowners within the Brooklyn community of Canarsie are subject to intense and repeated solicitations from real estate brokers and salespersons. As a result, the Secretary has express statutory authority to propose and adopt a cease-and-desist zone for that community.

2. Legislative objectives:

According to the Statement of Legislative Findings for section 442-h of the Real Property Law, the Legislature has found that, from time to time, homeowners in some neighborhoods have been subject to intense and repeated solicitation by real estate brokers and salespersons to place their homes for sale, with the implication that property values would be decreasing because persons of different ethnic, social or religious backgrounds were moving into the neighborhood in greater numbers. The Statement of Legislative Findings also concluded that this type of solicitation technique constitutes a churning of the market and generated panic selling in the neighborhood. By enacting § 442-h, the Legislature sought to provide a means by homeowners could effectively express their wish not to be solicited by real estate brokers or salespersons. The Secretary has found that some homeowners in the Brooklyn community of Canarsie are subject to intense and repeated solicitations to list their homes for sale. Therefore, this rule accords with the public policy objectives which the Legislature sought to advance by enacting § 442-h of the Real Property Law.

3. Needs and benefits:

A public hearing was held in the Brooklyn Community of Canarsie on December 14, 2000. At the public hearing testimony was given by community leaders who spoke on behalf of their constituents. Speakers included two State Senators, a Member of the Assembly, the Deputy Borough President, members of Community Board 18, representatives of homeowners associations and representatives of civic associations. Each of the speakers spoke in support of the proposed cease-and-desist zone citing the need to curb the aggressive solicitation practices of real estate agents in the Canarsie community. The speakers cited frequent telephone calls, unwanted mail and flyers, as well as door-to-door solicitations, as intrusive and unwanted solicitation practices by real estate brokers and salespersons. Accordingly, the Secretary of State has determined that homeowners in the Brooklyn community of Canarsie have no practical means of stopping the unwanted and intrusive solicitations and that the homeowners need immediate relief.

This rule will provide those homeowners who do not wish to be solicited with an effective and practical means of so notifying real estate brokers and salespersons. One thousand sixty-eight homeowner’s statements were filed for the previous cease-and-desist list, which expired on February 27, 2001.

On June 29, 2001, the United States District Court for the Eastern District of New York issued a decision and judgement in the matter of *Anderson, et al. v. Treadwell, as Secretary of State of the State of New York* declaring the cease-and-desist rules of the Department of State to be invalid as an unconstitutional restriction of free speech. That decision was appealed by the Department of State, and on June 25, 2002, the United State Court of Appeals for the Second Circuit issued a decision reversing the District Court’s decision and judgement, and ordering the District Court to enter judgement in favor of the Secretary of State. See *Anderson et al. v. Treadwell*, 294 F. 3rd 453 (2d Circuit 2002). On October 8, 2002, the District Court entered judgement in favor of the Secretary of State. The entry of judgement by the District Court effectively reinstated the cease-and-desist rule, which had been invalidated by the District Court’s previous decision and judgement.

4. Costs:

a. Costs to regulated parties:

Regulated parties include licensed real estate brokers and salespersons who do residential sales in the Brooklyn community of Canarsie. There are approximately 1,200 real estate brokers and approximately 1,800 real estate salespersons with offices in Brooklyn.

The Department of State will have the cease-and-desist list available, at no cost, on its web site, www.dos.state.ny.us. The cease-and-desist list will also be sold to the public, including real estate brokers and salespersons, for \$10 per copy, in accordance with existing 19 NYRR Section 175.17 (c) (5). Copies will also be made available for inspection and copying at Department of State offices.

We expect that most licensees who do business in Canarsie will access the list, at no cost, on the Department’s web site. We expect that some licensees will purchase one or more copies. Some will share the expense by sharing a copy. Others will not access or purchase a copy because they do not solicit residential listings in Canarsie.

In addition, some real estate brokers may use commercial mailing lists to solicit. For those brokers, the cease-and-desist list may increase the cost of using a commercial mailing list. The list will have to be checked against the addresses in the cease-and-desist list, and the broker will have to delete the addresses that appear in the homeowner list. The Department of State is not able to estimate the cost to those brokers because the cost will depend on a number of factors, such as the number of names on the mailing list, the number of addresses in the cease-and-desist list, the technology to the licensee, and the licensee’s cost for technology and labor. On the other hand, there may be some reductions in the total cost of the mailing when the “unproductive addresses” are eliminated from the list.

Also, if a licensee uses the telephone, delivery services and personal contact to solicit residential listings, the licensee may have to spend time checking the cease-and-desist list to avoid contact with any person at an address listed. There is, of course, an expense associated with that expenditure of time. On the other hand, there may be savings associated with elimination of unproductive calls or deliveries. Whether there is a net cost or savings will depend on the circumstances and practices of each licensee. Therefore, the Department of State is not able to estimate those costs.

b. Costs to the Department of State:

The estimated costs for preparing the cease-and-desist list are as follows:

Printing owners statements	\$2,200
Mailing owners statements	640
Processing statements:	
Staff: SG-14 @ \$29,110	
10 weeks	5,600
Data entry:	
Staff: SG-6 (NYC) @ \$23,385	
10 days	900
Fringe benefits @ 36.5%	2,372
Total:	<u>\$11,712</u>

The costs for printing and mailing are unknown. The Department anticipates that most licensees will access the list, at no cost, on the Department’s website. For those few who want to purchase a paper copy, the Department will likely print a copy, on an order-by-order basis, on existing equipment. The mailing costs will be dependent on the number of

copies that are ordered. However, the Department expects that the costs for printing and mailing will be incidental to the costs of preparing the list.

The Department of State expects that revenues from the sale of the list will be incidental to the costs of preparing, printing and mailing.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

Homeowners who do not want to be solicited will have to file an "owner's statement" with the Department of State. The owner's statement will indicate the owner's desire not to be solicited and will set forth the owner's name and the address of the property within the cease-and-desist zone. The Department of State will provide homeowners with a standard form although use of the form is not mandatory. Owner's statements will be provided to community leaders for distribution to their constituents. In addition, owner's statements will be available from the Department of State on request, as well as available on the Department's web site. The Department of State will prepare a cease-and-desist list containing the names and addresses of all of the homeowners who filed an owner's statement. The list will be available, at no cost, on the Department's website. The publication will also be sold to the public, including real estate brokers and salespersons. The price will be \$10 per copy. Except for orders submitted by mail, real estate brokers and salespersons will not have to complete any paperwork or file any paperwork as a result of this rule.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department of State did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities of real estate brokers and salespersons. Consideration was given to the adoption of a non-solicitation order pursuant to § 442-h(2) of the Real Property Law. However, the Department concluded that a cease-and-desist order could provide homeowners with relief from intense and repeated solicitation without imposing the more restrictive and more burdensome regulation of a non-solicitation order, which would prohibit all direct solicitation activities within the non-solicitation zone. Consequently, the Secretary of State decided to adopt the cease-and-desist order rather than a non-solicitation order. The Department of State did not consider any other alternatives.

9. Federal standards:

There are no federal standards regulating the frequency or intensity of solicitations by real estate brokers or salespersons. Consequently, this rule does not exceed any existing federal standard.

10. Compliance schedule:

Real estate brokers and salespersons can comply with the cease-and-desist order immediately upon publication of the list.

Regulatory Flexibility Analysis

1. Effect of rule:

This cease-and-desist rule applies to an area generally known as Canarsie in the Borough of Brooklyn. There are approximately 1,170 real estate brokers and approximately 1,852 real estate salespersons in Brooklyn. Most of those licensees are small businesses, or they work for a small business. This rule will apply to most of the licensees. The exceptions will be those who do not deal in residential properties, and those who do not deal in properties located within the cease-and-desist zone.

The cease-and-desist rule will also apply to licensed real estate brokers and salespersons who are located outside of Brooklyn but who solicit residential properties within the designated area. The Department of State does not have a practical way of estimating how many brokers and salespersons fall within this category.

The rule does not apply to local governments.

2. Compliance requirements:

The rule does not impose any reporting or recordkeeping requirements on the licensees. The rule does prohibit each licensee from soliciting the sale, rental or listing from any homeowner whose name appears on a cease-and-desist list published by the Department of State.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

A licensee will not need professional services in order to comply with the rule.

The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

The cost of compliance and the variations in the costs of compliance are detailed in section 4(c) of the Regulatory Impact Statement.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

Since the names and addresses of the homeowners who do not want to be solicited will be published by the Department of State and since the cost of the publication is \$10 per copy or free if accessed on the Department's website, it will be economically and technologically feasible for real estate brokers and salespersons to comply with the rule.

6. Minimizing adverse economic impact:

The Department of State did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities of real estate brokers and salespersons. Consideration was given to the adoption of a non-solicitation order pursuant to § 442-h(2) of the Real Property Law. However, the Department concluded that a cease-and-desist order could provide homeowners with relief from intense and repeated solicitation without imposing the more restrictive and more burdensome regulation of a non-solicitation order, which would prohibit all direct solicitation activities within the non-solicitation zone. Consequently, the Secretary of State decided to adopt the cease-and-desist order rather than a non-solicitation order.

To provide homeowners in the designated area with relief from intense and repeated solicitations from real estate brokers and salespersons, the rule must apply equally to all licensees regardless of the size of their business or the size of their employer's business. Consequently, the rule does not make special accommodations for different classes of licensees.

7. Small business participation:

The Department of State conducted an open public hearing on December 14, 2000, at School 211, Avenue J, Brooklyn, New York. The time, date and place of the public hearing was well advertised within the Canarsie community. Testifying at the hearing on behalf of their constituents in Canarsie were two State Senators, a Member of the Assembly, the Deputy President of the Borough of Brooklyn, members of Community Board 18, representatives of homeowners associations and representatives of civic associations.

There were no real estate brokers or real estate salespersons who identified themselves at the public hearing, and no real estate broker or salesperson spoke at the hearing. In addition, no real estate broker or salesperson submitted any written testimony regarding the proposed re-adoption of the cease-and-desist zone.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required because this rule does not impose any adverse impact on rural areas, and the rule does not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

This rule establishes a cease-and-desist zone in the Brooklyn community of Canarsie, and this rule only affects those real estate brokers and salespersons who do business in that community.

Canarsie is not a rural area and, therefore, a rural area flexibility analysis is not required for this rule.

Job Impact Statement

A job impact statement is not required because this rule will not have any substantial impact on jobs or employment opportunities for real estate brokers or real estate salespersons.

The rule provides a means by which homeowners in the designated community can notify real estate brokers and real estate salespersons that the homeowners do not want to be solicited for the purchase, sale or rental of their homes.

Since the homeowners who file a homeowner's statement with the Department of State are not interested in receiving solicitations from real estate brokers or real estate salespersons, publication of names and addresses of those homeowners and the resulting notification to real estate brokers and salespersons will not have any substantial impact on jobs or employment opportunities for real estate brokers or salespersons.