

# RULE MAKING ACTIVITIES

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

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

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

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## Banking Department

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### EMERGENCY RULE MAKING

#### High Cost Home Loans

**I.D. No.** BNK-37-04-00002-E

**Filing No.** 951

**Filing date:** Aug. 27, 2004

**Effective date:** Aug. 30, 2004

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

**Action taken:** Amendment of Part 41 of Title 3 NYCRR.

**Statutory authority:** Banking Law, sections 6-i and 6-l

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

**Specific reasons underlying the finding of necessity:** Chapter 626 of the Laws of 2002 became effective on April 1, 2003. Provisions of chapter 626, by the enactment of section 6-l of the Banking Law, affect the making of certain home mortgage loans, known as high cost home loans, on after the effective date. Part 41 of Title 3 NYCRR has governed the making of such loans prior to the effective date and is not in conformity with certain provisions of the chapter 626. Also, in certain limited instances, the proposed amendments to Part 41 will clarify certain provisions enacted by chapter 626. The revised Part 41 provides a comprehensive regulatory

scheme under which mortgage lenders and brokers will be able to make high cost home loans.

**Subject:** High cost home loans.

**Purpose:** To conform the provisions of Part 41 of Title 3 NYCRR to various provisions of section 6-l of the Banking Law, and also clarify certain provisions of such section 6-l.

**Substance of emergency rule:** Section 41.1(a) is amended to revise the definition of a lender subject to Part 41.

Section 41.1(b) is amended to revise the definition of an affiliate.

Section 41.1(c) is amended to make technical revisions.

Section 41.1(d) is amended to revise the definition of a bona fide loan discount point.

Section 41.1(e) is amended to revise the definition of a high cost home loan in regard to the points and fees threshold for determining such loans and limiting the exclusion of certain discount points in the computation of points and fees.

Section 41.1(f) is amended to revise the definition of loan amount.

Section 41.1(g) is amended to substitute a definition of “borrower” for “obligor”.

Section 41.1(h) is amended to revise the definition of points and fees.

Section 41.1(j) is amended to make certain technical revisions.

Section 41.2(a) is amended to clarify the exceptions to the prohibition upon accelerating the indebtedness of high cost home loans.

Section 41.2(b) is amended to increase the term of a balloon mortgage payment to fifteen years.

Section 41.2(e) is amended to make certain technical revisions.

Section 41.2(g), relating to modification and deferral fees, is repealed and then added as a new paragraph 2 to section 41.3(d), relating to refinancing of high cost home loans.

Section 41.3(a) is amended by adding a new disclosure requirement and revising the time limits pertaining to an existing disclosure requirement.

Section 41.3(b) is amended to revise requirements relating to the residual income guidelines and the presumption of affordability; to add certain conditions in order to determine that repayment ability has been “corroborated by independent verification”; and to substitute “borrower(s)” for “obligor(s)” where the term appears in the text.

Section 41.3(c) is amended to revise the percentage of points and fees that may be financed in making a high cost home loan, and to revise the charges that may be excluded from such financed points and fees.

Section 41.3(d) is re-titled and amended to revise the limitations upon points and fees that may be charged by any lender when refinancing high cost home loans and to add a previously repealed paragraph (see revisions to section 41.2(g)) relating to modification of an existing high cost home loan.

Section 41.3(f) is added to prohibit the refinancing of special mortgages, except under certain conditions.

Section 41.3(g) is amended to delete a reference to median family income and to revise certain references.

Section 41.4(a) is amended to revise certain time limits applicable to a disclosure requirement.

Section 41.4(b) is amended to make a technical revision.

Section 41.4(d) is amended to revise certain time limits applicable to a disclosure requirement and to clarify the location of the disclosure upon certain mortgage loan application forms.

Section 41.5(a) is amended to clarify deceptive acts relating to splitting or dividing loan transactions.

Section 41.5(b)(2) is amended to clarify retention of fees by lenders and brokers in relation to unfair, deceptive or unconscionable practices.

Section 41.5(b)(4) is amended to revise the definition of loan flipping, as an unfair or deceptive practice, and to add revised conditions to determine whether a loan has a "net tangible benefit" to the borrower.

Section 41.5(b)(5) is amended to revise the definition of packing to make it consistent with other revisions to Part 41 and to revise certain time limits applicable to a disclosure requirement.

Section 41.5(b)(6) is amended to clarify the standards to determine that recommending or encouraging default of a home loan or other debt is an unfair or deceptive practice.

Section 41.7 is amended to revise the legend that appears on a high cost home loan mortgage.

Section 41.8 is amended to delete VA and FHA mortgage loans from the definition of exempt products.

Section 41.9 is amended to repeal the current provisions relating to correction of errors and to add new provisions.

Section 41.11, relating to prohibiting the financing of single premium insurance, is re-titled and amended to include other insurance premiums or payments for any cancellation or suspension contract or agreement.

**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 November 24, 2004.

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

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

Banking Law section 14(1) authorizes the Banking Board to adopt regulations not inconsistent with the law. Section 6-i of the Banking Law specifically states that no banking organization, partnership, corporation exempt organization, or other entity (hereafter "lenders") can make a mortgage loan in New York State unless those entities conform to Banking Law requirements pertaining to mortgage bankers (Article 12-D of the Banking Law) and rules and regulations promulgated by the Banking Board. Section 6-l of the Banking Law imposes new requirements upon the making of certain mortgage loans. Part 41 of the rules and regulations of the Banking Board was adopted pursuant to section 6-i of the Banking Law, and prior to approval of chapter 626 of the Laws of 2002, which enacted section 6-l. Provisions of section 6-l, which are inconsistent with certain provisions of Part 41, supersede such regulatory provisions, and the Banking Board, in promulgating the amendments to Part 41, makes Part 41 consistent with section 6-l.

##### 2. Legislative objectives:

Part 41 is intended to provide consumer protections by establishing important consumer disclosure requirements and prohibiting contractual terms and practices that are unfair in the making of residential mortgage loans that are offered on a high-cost basis. Section 6-l is intended to have the same objectives. Since Part 41 provides the broad regulatory scheme under which high cost mortgage loans are made, it is necessary that its provisions be in conformity with section 6-l and also, in limited instances, clarify certain provisions of such section in order that lenders and brokers appropriately make high cost loans in conformity with the intended legislative objectives.

##### 3. Needs and benefits:

Part 41 was intended to regulate the making of residential mortgage loans within a certain segment of the mortgage loan market, referred to as the sub-prime, or non-conventional, mortgage loan market. The regulatory scheme defined by Part 41, by requiring certain disclosures and practices to be followed in the making of such loans, sought to prevent occurrences of predatory lending. Predatory lending occurs when the borrower or debtor does not have sufficient income or other financial resources to pay the monthly principal and interest payments or when equity in a residential property is stripped by repeated re-financings, primarily by the charging of excessive points and fees, when the borrower realizes no economic benefit.

Since the Legislature established a number of different standards regarding disclosures and practices in the making of such residential mortgage loans by enactment of section 6-l of the Banking Law, it is necessary that the comparative standards in Part 41 be made consistent with section 6-l.

Further, it is also necessary that certain provisions of section 6-l be clarified by the amendments to Part 41 in order that lenders and brokers may be in compliance with the requirements section 6-l when making such

loans, given that such provisions are not otherwise defined by section 6-l nor has the Legislature provided any other guidance which would clarify the intended meaning of those provisions. The clarifying provisions of the amendments to Part 41 address determining "corroboration by independent verification" of a borrower's repayment ability and "net tangible benefit" to a borrower, both of which are critical standards in assessing whether instances of predatory lending have occurred.

##### 4. Costs:

The amendments to Part 41 should impose no additional cost upon mortgage lenders or brokers not otherwise imposed by the enactment of the comparative provisions of section 6-l of the Banking Law to which the amendments conform Part 41. The amendments impose no additional cost upon the Banking Department or any other state agency, or any unit of local government.

##### 5. Local government mandates:

The amendments to Part 41 do not impose any requirements or burdens upon any units of local government.

##### 6. Paperwork:

The amendments to Part 41 do not impose any new paperwork requirements.

##### 7. Duplication:

None.

##### 8. Alternatives:

The Banking Department considered whether to forego amending Part 41 or to repeal Part 41 in light of the enactment of section 6-l of the Banking Law, given that section 6-l may be viewed legally as occupying the field of regulation of high cost home loans in the state of New York. It was determined that Part 41 provides a more extensive regulatory scheme than section 6-l for the making of such mortgage loans, and therefore it is appropriate to make the non-conforming provisions of Part 41 consistent with the comparative statutory provisions of section 6-l. In addition, the provisions of section 6-l that are clarified by the amendments will eliminate uncertainty among mortgage lenders and brokers in the making of such loans by articulating appropriate conditions, which such lenders and brokers must meet in order to be in compliance with certain non-defined statutory standards established by section 6-l.

##### 9. Federal standards:

In the initial promulgation of Part 41, the Banking Department stated the regulations established thresholds that were lower than the thresholds set by the Home Ownership Equity Protection Act (HOEPA). Subsequently, federal regulators modified the annual percentage rate threshold for first mortgages under HOEPA by making it identical to the corresponding threshold in Part 41. Section 6-l of the Banking Law establishes modified points and fees thresholds in certain instances that are more lenient for brokers and lenders than the comparable threshold in HOEPA. The definition of points and fees, in part, established by section 6-l refers to certain—but not all—provisions of HOEPA that define points and fees. The amendments would adopt the thresholds and definition established by section 6-l.

##### 10. Compliance schedule:

None. Any modification of existing disclosures or practices by lenders or brokers in regard to any cost home loans made on or after April 1, 2003 are the result of standards established by section 6-l of the Banking Law. Chapter 626, which enacted section 6-l, was approved on October 3, 2002, and brokers and lenders have had sufficient time to familiarize themselves with these standards and subsequently modify their disclosures and practices, if necessary, to comply with the standards of section 6-l. The revised provisions of Part 41 will assist brokers and lenders in complying with the section 6-l requirements.

#### **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 41 will not impose any adverse economic or technological impact upon small business beyond any such effects that may be caused by the requirements established by section 6-l of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41. The amendments will not impose any adverse economic or technological impact upon local governments. The proposed amendments will impose no adverse reporting, recordkeeping or compliance requirements on small businesses or local governments.

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

A Rural Area Flexibility Analysis for Small Business and Local Government is not submitted, based on the Department's conclusion that the amendments to Part 41 will not impose any adverse economic impact upon private entities in rural areas beyond any such effects that may be caused

by the requirements established by section 6-l of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41. The amendments will not impose any adverse economic impact upon public entities in rural areas. The proposed amendments will impose no adverse reporting, recordkeeping or compliance requirements private on public entities in rural areas.

**Job Impact Statement**

A Job Impact Statement is not attached because the proposed amendments to Part 41 will not have any appreciable and/or substantial adverse impact on jobs and employment opportunities beyond any such effects that may be caused by the requirements established by section 6-l of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41.

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## Department of Civil Service

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### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-21-04-00001-A  
**Filing No.** 956  
**Filing date:** Aug. 30, 2004  
**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class in the Council on the Arts.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-21-04-00001-P, Issue of May 26, 2004.

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

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-21-04-00002-A  
**Filing No.** 954  
**Filing date:** Aug. 30, 2004  
**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

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

**Text was published in the notice of proposed rule making,** I.D. No. CVS-21-04-00002-P, Issue of May 26, 2004.

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

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-21-04-00003-A  
**Filing No.** 958  
**Filing date:** Aug. 30, 2004  
**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

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

**Text was published in the notice of proposed rule making,** I.D. No. CVS-21-04-00003-P, Issue of May 26, 2004.

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

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-21-04-00004-A  
**Filing No.** 959  
**Filing date:** Aug. 30, 2004  
**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class in the Department of Family Assistance.

**Text was published in the notice of proposed rule making,** I.D. No. CVS-21-04-00004-P, Issue of May 26, 2004.

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

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-21-04-00005-A  
**Filing No.** 961  
**Filing date:** Aug. 30, 2004  
**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

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

**Text was published in the notice of proposed rule making,** I.D. No. CVS-21-04-00005-P, Issue of May 26, 2004.

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

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

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-21-04-00006-A  
**Filing No.** 963  
**Filing date:** Aug. 30, 2004  
**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

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

**Text was published in the notice of proposed rule making,** I.D. No. CVS-21-04-00006-P, Issue of May 26, 2004.

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

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

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-21-04-00007-A  
**Filing No.** 955  
**Filing date:** Aug. 30, 2004  
**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

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

**Text was published in the notice of proposed rule making,** I.D. No. CVS-21-04-00007-P, Issue of May 26, 2004.

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

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

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-21-04-00008-A  
**Filing No.** 962  
**Filing date:** Aug. 30, 2004  
**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of Appendix(es) 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

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

**Text was published in the notice of proposed rule making,** I.D. No. CVS-21-04-00008-P, Issue of May 26, 2004.

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

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

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-21-04-00009-A  
**Filing No.** 957  
**Filing date:** Aug. 30, 2004  
**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

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

**Text was published in the notice of proposed rule making,** I.D. No. CVS-21-04-00009-P, Issue of May 26, 2004.

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

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

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Jurisdictional Classification**

**I.D. No.** CVS-21-04-00010-A  
**Filing No.** 960  
**Filing date:** Aug. 30, 2004  
**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

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

**Text was published in the notice of proposed rule making,** I.D. No. CVS-21-04-00010-P, Issue of May 26, 2004.

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

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

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Environmental Conservation

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### PROPOSED RULE MAKING HEARING(S) SCHEDULED

**Bear Hunting in the Southern Zone**

**I.D. No.** ENV-37-04-00003-P

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

**Proposed action:** Amendment of section 1.31 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, section 11-0903

**Subject:** Bear hunting in the southern zone.

**Purpose:** To expand the areas open for black bear hunting in an effort to better manage New York's black bear population, and provide additional opportunities for hunters to harvest black bears.

**Public hearing(s) will be held at:** 7:00 p.m., on Oct. 5, 2004 at Cornell Cooperative Extension, 34570 State Hwy. 10, Hamden, NY.

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

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

**Text of proposed rule:** Section 1.31 of Title 6 NYCRR, "Hunting black bear," is amended as follows:

Paragraph 1.31(a)(4) is amended to read as follows:

(4) Allegany bear range means WMUs 8T, 8W, 8X, 8Y, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X, and 9Y [and that part of 9P lying south of State Route 17] (as defined in Section 4.1 of this Title) [, except Allegany State Park].

Paragraph 1.31(a)(5) is amended to read as follows:

(5) Catskill bear range means WMUs 3A, 3C, 3H, 3J, 3K, 3M, 3P, 4O, 4P, 4R, 4S, 4X and 4W (as defined in section 4.1 of this Title), except those areas specifically closed to big game hunting by the Environmental Conservation Law.

Paragraph 1.31(a)(6) through end of Section 1.31 remains unchanged.

**Text of proposed rule and any required statements and analyses may be obtained from:** Chuck Dente, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8868, e-mail: cxdente@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:** State Environmental Quality Review Act (SEQR; ECL art. 8). Establishment of regulations for hunting of game species is covered by a final programmatic impact statement (FPIS) on wildlife game species management (DEC 1980) and supplemental findings (DEC 1994). The proposed action does not involve any significant departure from established and accepted practices as described in the FPIS and is therefore classified as a "type II" action pursuant to the department's SEQR regulations (6 NYCRR § 618.2[d][5]).

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

#### **Regulatory Impact Statement**

##### **1. Statutory Authority**

Section 11-0303 of the Environmental Conservation Law (ECL) directs the Department of Environmental Conservation (Department) to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to: ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. ECL Section 11-0903 authorizes the Department to establish by regulation open seasons and open areas for the hunting of black bear.

##### **2. Legislative Objectives**

The legislative objective behind the statutory provisions listed above is to establish, or authorize the Department to establish by regulation, certain basic wildlife management tools, including the setting of open seasons and areas, and restrictions on methods of take and possession. These tools are used by the Department to maintain desirable wildlife species in ecological balance, while observing sound management practices.

##### **3. Needs and Benefits**

The Department proposes to amend the black bear hunting regulations by opening Wildlife Management Units (WMUs) 4O and 4P in the Catskill bear range and 9J, 9K, 9M, 9N, 9P, 9S and 9W in the Allegany bear range for the archery, regular and muzzleloading hunting seasons. The proposed change would also remove the language that excepts Allegany State Park, which is located within WMU 9S. This change would provide Allegany State Park with the option of allowing bear hunting if and when they determine it to be desirable. The Department will work in cooperation with Allegany State Park in maintaining the long-term population viability of black bears within the park boundaries at levels consistent with park policies and practices.

In recent years, black bear numbers have been increasing and expanding their range across the state. Their opportunistic behavior has contributed to a growing number of interactions between bears and people, and resulted in an increasing number of complaints concerning crop and property damage and public safety. This has been especially problematic for some WMUs in the upper Catskills and western New York.

Over the past several years, the Department has conducted a series of meetings in the Catskills and, more recently, in western New York to discuss the black bear management issues that have resulted from increas-

ing numbers of bear/human interactions. Project teams were initiated to develop a Statewide Black Bear Management Plan. Part of the planning framework addressed bear management in areas currently occupied by bears and in areas that may be occupied in the future.

The most recent component of the Black Bear Management Plan was the creation and use of Stakeholder Input Groups (SIGs) that were asked to identify and prioritize bear impacts and to help Department staff articulate black bear management objectives. Three SIGs were established during the fall and winter of 2003-04 to prioritize bear impacts and recommend actions which might enhance positive impacts and lessen negative impacts in the northern and southern Catskill and Allegany portions of New York's bear range.

One of the primary management actions suggested by both the upper Catskills group and the western New York group was interest in the expansion of bear hunting opportunities in WMUs 4O, 4P, 9J, 9K, 9M, 9N, 9P, 9S and 9W. These units have experienced an increase in negative interactions in both the agricultural and residential communities. Opening these units is intended to stabilize or decrease the number of bears and thereby reduce negative interactions between bears and people. These actions would result in expanded opportunities for bear hunting and increase hunter satisfaction, while concurrently reducing the amount of damage and economic loss that bears impose on crop and apiary production.

##### **4. Costs**

There are no costs associated with these regulatory changes beyond normal administrative costs.

##### **5. Local Government Mandates**

This rulemaking does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

##### **6. Paperwork**

The proposed revisions do not require any new or additional paperwork from any regulated party.

##### **7. Duplication**

There are no other local, state or federal regulations concerning hunting season structure and license use. The Department is the primary government agency with regulatory authority for the managed harvest of game species in New York.

##### **8. Alternatives**

As an alternative, the Department has considered and rejected the option of not pursuing this proposal, leaving the subject Wildlife Management Units closed. Failure to implement actions to control the number and distribution of bears could result in an increase in the number of negative bear/human contacts, as well as an increase in the number of destruction permits issued outside of the normal hunting seasons to address threats to safety and property.

##### **9. Federal Standards**

There are no federal standards affecting this regulatory proposal.

##### **10. Compliance Schedule**

Hunters will be required to comply with the new regulations beginning with the 2004-2005 license year, which commences on October 1, 2004.

#### **Regulatory Flexibility Analysis**

The proposed rulemaking will revise regulations concerning the extension of areas open to black bear hunting in the Catskill range and Allegany range of the Southern Zone. The Department of Environmental Conservation (Department) has historically made revisions to areas open to bear hunting in an effort to maintain the long-term population viability of black bears while observing sound management practices. Based on the Department's experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rulemaking, the Department has determined that this rulemaking will not impose an adverse economic impact on small businesses or local governments. The proposed revisions will increase the areas open to bear hunting and could increase the number of participants or the frequency of participation in the bear hunting season.

The Department has also determined that these amendments will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. All reporting or recordkeeping requirements associated with hunting are administered by the Department.

Therefore, the Department has concluded that a regulatory flexibility analysis is not required.

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

The proposed rulemaking will revise regulations concerning the extension of areas open to black bear hunting in the Catskill range and Allegany range of the Southern Zone. The Department of Environmental Conservation (Department) has historically made revisions to areas open to bear

hunting in an effort to maintain the long-term population viability of black bears while observing sound management practices. Based on the Department's experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rulemaking, the Department has determined that this rulemaking will not impose an adverse economic impact on rural areas. The proposed revisions will increase the areas open to bear hunting and could increase the number of participants or the frequency of participation in the bear hunting season.

The Department has also determined that this rule will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. All reporting or recordkeeping requirements associated with hunting are administered by the Department.

Therefore, the Department has concluded that a rural area flexibility analysis is not required.

**Job Impact Statement**

The proposed rulemaking will revise regulations concerning the extension of areas open to black bear hunting in the Catskill range and Allegheny range of the Southern Zone. The Department of Environmental Conservation (Department) has historically made revisions to areas open to bear hunting in an effort to maintain the long-term population viability of black bears while observing sound management practices. Based on the Department's experience in promulgating those revisions and the familiarity of regional Department staff with the specific areas of the state impacted by this proposed rulemaking, the Department has determined that this rulemaking will not impose a substantial adverse impact on jobs and employment opportunities.

Few, if any, persons actually hunt as a means of employment. Those few for whom hunting is an income source (e.g., professional guides) will not suffer any substantial adverse impact as a result of this proposed rulemaking because it increases the areas open to bear hunting and could increase the number of participants or the frequency of participation in the bear hunting season. For this reason, the Department anticipates that this rulemaking will have no impact on jobs and employment opportunities. Therefore, the Department has concluded that a job impact statement is not required.

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

**Beaver Trapping Regulations**

**I.D. No.** ENV-37-04-00008-P

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

**Proposed action:** Amendment of sections 6.2 and 6.3 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 11-1101 and 11-1103

**Subject:** Trapping regulations for beaver trapping in areas closed to river otter trapping within the southern zone.

**Purpose:** To reduce the accidental taking of river otter in body-gripping traps set for beaver in areas closed to river otter trapping.

**Text of proposed rule:** Paragraph 6.2(a)(1) is amended to read as follows:

(1) Mink and muskrat.

Open season December 15th to February 25th November 25th to March 15th [(or the close of the beaver trapping season, including any extension, whichever is later)]	Wildlife management units 1A, 1C and 2A  3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 3R, 3S, 4A, 4B, 4C, 4F, 4G, 4H, 4J, 4K, 4L, 4M, 4N, 4O, 4P, 4R, 4S, 4T, 4U, 4W, 4X, 4Y, 4Z, 5K, 5N, 5P, 5R, 6R, and 6S
November 25th to February 15th [(or the close of the beaver trapping season, including any extension, whichever is later)]	6P, 7F, 7H, 7J, 7M, 7R, 7S, 8A, 8C, 8F, 8G, 8H, 8J, 8K, 8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9A, 9C, 9F, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X and 9Y
October 25th to April 10th	5C, 5F, 5H, 6F and 6J

October 25th to April 15th 5A, 5G, 5J, 6A, 6C, 6G, 6H, 6K, 6N and 7A

Paragraph 6.2 (a)(2) through the end of Section 6.2 remains unchanged. 6 NYCRR Section 6.3, "General regulations for trapping beaver, otter, mink, muskrat, raccoon, opossum, weasel, red fox, gray fox, skunk, coyote, fisher, bobcat and pine marten" is amended as follows:

A new paragraph 6.3 (a)(12) is adopted to read as follows:

(12) Trigger specifications for body gripping traps in the Southern Zone.

*In the Southern Zone, no person shall possess afield, use, or set a body gripping trap with a dimension of more than nine inches in any wildlife management unit where the river otter trapping season is closed, unless the trap has only one triggering device and such device is a "tension adjustable/parallel trigger" possessing all of the following design features:*

(a) the trigger is equipped with a tensioning device that allows for manual adjustment of the tension required to move the trigger and fire the trap; and

(b) the sides of the trigger notch are perpendicular to the side of the frame to which the trigger is attached; and

(c) the trigger only moves along an axis at right angles to the side of the frame to which the trigger is attached; and

(d) the trigger wires are joined together to form a fixed set of closely parallel or twisted wires operating as a single vertical trigger assembly; and

(e) the trigger assembly is no longer than 6½ inches, measured from the inside edge of the frame of the trap where the trigger is attached to the end of the trigger wires; and

(f) the distance between the inside edge of one side of the trap and the nearest trigger wire shall be no less than 8 inches; and

(g) a fixed stop is attached to the frame, preventing the trigger from sliding along the frame.

Subdivision 6.3(b) through end of Section 6.3 remains unchanged.

**Text of proposed rule and any required statements and analyses may be obtained from:** Gordon R. Batcheller, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8885, e-mail: grbatc@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:** State Environmental Quality Review Act (SEQR; ECL art. 8). Establishment of trapping regulations are covered by a final programmatic impact statement (FPIS) on wildlife game species management (DEC 1980) and supplemental findings (DEC 1994). The proposed action does not involve significant departure from established and accepted practices as described in the FPIS and is therefore classified as a "type II" action under DEC's SEQR regulations (6 NYCRR § 618.2[d][5]).

**Regulatory Impact Statement**

1. Statutory Authority

Sections 11-1101 and 11-1103 of the Environmental Conservation Law state that the Department of Environmental Conservation (Department) may by regulation permit the trapping of beaver, and may regulate the taking, possession and disposition of beaver. This proposed regulation addresses the taking of beaver in areas closed to river otter trapping within the Southern Zone.

2. Legislative Objectives

The legislative objective behind the statutory provisions listed above is to authorize the Department to establish the methods by which beaver may be taken by trapping. This authority may be used by the Department to provide for effective beaver trapping techniques that are also selective in reducing the catch of species other than beaver.

3. Needs and Benefits

The Department proposes to establish a new trapping regulation to protect river otter in areas of the Southern Zone closed to the trapping of river otter. The regulation would increase the selectivity of beaver traps in order to reduce the accidental taking of otter. The regulation will apply to beaver trappers setting body-gripping traps in water when the river otter season is closed. It will apply only to the Southern Zone, as defined in the Environmental Conservation Law Section 11-0103. The proposed regulation will also discontinue the extension of muskrat and mink trapping when beaver seasons are extended.

The proposed regulation will require beaver trappers to change the type of trigger used on body-gripping traps set in water (i.e., "30-size" body-gripping traps). A "tension adjustable/parallel trigger" will be required.

The regulation would apply only to locations or times when the river otter season is closed in areas within the Southern Zone. It would primarily affect beaver trappers in most of DEC's Regions 7, 8, and 9; parts of Regions 3, 4; and small sections of Regions 5 and 6 within the Southern Zone.

The objective of the regulation is to reduce the incidental taking of river otter, and thereby enhance river otter populations in those portions of the Southern Zone where the river otter season is presently closed. It will also enable the Department to manage river otter separately from beaver. Currently, wherever river otter trapping seasons are held, the season dates for river otter are the same as beaver trapping dates because they live in the same or similar habitats, and traps without the modified triggers are capable of catching both species. By requiring the use of modified triggers, the Department will have the flexibility to establish shorter river otter trapping seasons "within" a longer beaver trapping season. This is a necessary capability in view of the high price (and related high trapping activity) currently being paid for otter pelts compared to the low prices paid for beaver. (Relatively longer beaver trapping seasons are required to maintain beaver populations at acceptable levels, given the damage they may cause.)

During a beaver season extension, otter seasons are not open. This means that the tension adjustable/parallel trigger will need to be used in areas of the Southern Zone where the beaver season is extended. The closure of mink and muskrat trapping during a beaver extension is needed to further protect river otter, by reducing the use of smaller body-gripping traps in which river otter may be caught. This change will enhance the selectivity of beaver trapping and reduce the accidental take of river otter.

#### 4. Costs

Trappers will be required to modify their existing supply of body-gripping traps for beaver to comply with the new regulation. The Department estimates that these modifications will require spending less than \$20 per trapper (approximately \$2.50 for materials per trap).

#### 5. Local Government Mandates

This rulemaking does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district.

#### 6. Paperwork

The proposed rules do not impose additional reporting requirements upon the regulated public (trappers).

#### 7. Duplication

There are no other local, state or federal regulations concerning the taking of beaver.

#### 8. Alternatives

An alternative to making the proposed changes is to leave the regulations intact. However, this would reduce the Department's ability to effectively manage beaver, and to ensure that accidental taking of river otter is minimized.

#### 9. Federal Standards

There are no federal government standards for the taking of beaver.

#### 10. Compliance Schedule

Trappers will be expected to comply with the new rule as soon as it takes effect.

### **Regulatory Flexibility Analysis**

This proposed rulemaking will revise regulations concerning the trapping of beaver by trappers in the Southern Zone. The proposed regulation will require that beaver trappers use body-gripping traps equipped with the modified triggers designed to avoid the catch of river otter. While river otter are currently the most valuable New York furbearer, any otter taken in an area closed to otter trapping may not lawfully be kept and sold. The intent of this regulation is to reduce the incidental take of river otter in these closed areas.

The proposed regulations do not apply directly to local governments. Few, if any, persons actually trap as a means of employment; therefore the regulations do not directly apply to small businesses. Even if a trapper does pursue trapping as a means of income, the proposed revisions are intended to ensure that the beaver and otter populations remain healthy while offering trappers an opportunity to engage in their chosen activity. The regulation has been written to specifically allow trappers to modify existing triggers with commonly available or inexpensively purchased materials. The modified traps have been shown through research to effectively catch beaver (while excluding most river otter), and, consequently, the use of the new triggers is not expected to significantly change the number of trappers or the frequency of trapping. The Department has determined that this rulemaking will not impose an adverse economic impact on small businesses or local governments.

The Department has also determined that this amendment will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. Beaver trappers are currently required to report the harvest of beaver to the Department. The proposed rulemaking does not affect this requirement. All other reporting or recordkeeping requirements associated with beaver trapping are administered by the Department. Therefore, the Department has concluded that a regulatory flexibility analysis is not required.

### **Rural Area Flexibility Analysis**

This proposed rulemaking will revise regulations concerning the trapping of beaver in the Southern Zone in areas closed to the trapping of river otter. Although some beaver trapping occurs in suburban and urban areas of the Southern Zone, trapping is primarily an activity occurring in rural areas associated with wetland, wooded, and agriculturally dominated habitats. The proposed regulation will require that beaver trappers use body-gripping traps equipped with the modified triggers designed to avoid the catch of river otter. The regulation has been written to specifically allow trappers to modify existing triggers with commonly available or inexpensively purchased materials. The Department estimates that each trapper will spend less than \$20 modifying traps.

The modified traps have been shown through research to effectively catch beaver (while excluding most river otter), and, consequently, the use of the new triggers is not expected to significantly change the number of trappers or the frequency of trapping in rural areas. Therefore, the benefits associated with trapping beaver in rural areas (*e.g.*, reduction of nuisance problems, and economic activity associated with trapping) are not expected to be reduced following the adoption of this regulation. The Department has determined that this rulemaking will not impose an adverse economic impact on rural areas.

Beaver trappers are currently required to report the harvest of beaver to the Department. The proposed rulemaking does not affect this requirement. All other reporting or recordkeeping requirements associated with beaver trapping are administered by the Department. Therefore, the Department has determined that these amendments will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, and that a rural area flexibility analysis is not required.

### **Job Impact Statement**

The purpose of this rulemaking is to amend the beaver trapping regulations to require the use of a modified trigger design to lower the incidental taking of river otter in areas of the Southern Zone where the otter season is closed. Beaver trapping in all of Regions 7, 8, and 9, parts of Regions 3 and 4, and small sections of Regions 5 and 6, will be affected by this regulation.

Few, if any, trappers in New York are fully dependent upon trapping as a source of annual income. However, a majority of trappers derive a portion of their annual income from the sale of animals taken by trapping. This regulation will affect the trapping of beaver, and intentionally reduce the accidental trapping of river otter. While river otter are currently the most valuable New York furbearer, any otter taken in an area closed to otter trapping may not lawfully be kept and sold. The intent of this regulation is to reduce the incidental take of river otter in these closed areas.

Based on trials conducted by the Department, the regulation will not reduce the take of beaver. The use of the "tension adjustable/parallel trigger" as specified in the regulation will mean that beaver less than approximately 15 pounds will be caught at a lower rate than larger beaver. The Department found that the use of these modified triggers does not reduce the overall catch rate of beaver. Instead, it reduces the catch rate of small beaver, thereby increasing the opportunity to catch larger, more valuable beaver. Since small beaver are less valuable than larger beaver (approximately \$5 for a small beaver versus \$20 or more for a large beaver), the Department does not expect that there will be a reduction in the overall value of the beaver harvest associated with the new trigger regulation.

This rulemaking will not have a substantial adverse impact jobs or employment opportunities because it is not expected to significantly change the number of participants (trappers) or the frequency of participation in the regulated activities. For this reason, the Department anticipates that this rulemaking will actually have no impact on jobs and employment opportunities. Therefore, the Department has concluded that a job impact statement is not required.

## Department of Health

### EMERGENCY RULE MAKING

#### Self-Attestation of Resources for Medicaid Applicants and Recipients

**I.D. No.** HLT-37-04-00005-E

**Filing No.** 974

**Filing date:** Aug. 31, 2004

**Effective date:** Sept. 20, 2004

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

**Action taken:** Amendment of section 360-2.3(c)(3) of Title 18 NYCRR.

**Statutory authority:** Social Services Law, section 366-a(2)

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

**Specific reasons underlying the finding of necessity:** The specific reasons underlying the finding of necessity to adopt as an emergency rule: Chapter 1 of the Laws of 2002 provides that Medicaid applicants and recipients seeking coverage of long-term care services, other than short-term rehabilitation, must provide adequate documentation to verify the amount of their accumulated resources. Persons who are not seeking coverage of long-term care services, or who are seeking coverage of short-term rehabilitation services, as defined by the Commissioner of Health, are allowed to attest to the amount of their resources.

The proposed regulation would provide the definition of the term "short-term rehabilitation" required by Chapter 1 of the Laws of 2002 and necessary to implement the provisions of such Chapter. The sooner the provisions of the statute can be implemented, the sooner the statutory goal of simplifying Medicaid enrollment and recertification will be achieved, with a consequent benefit to public health in terms of easier access to necessary health care. Therefore, complying with the normal rulemaking requirements would be contrary to the public interest, and the immediate adoption of the rule is necessary.

**Subject:** Self-attestation of resources for Medicaid applicants and recipients.

**Purpose:** To allow an applicant or recipient to attest to the amount of his or her resources unless the applicant or recipient is seeking Medicaid payment for long-term care services.

**Text of emergency rule:** Paragraph (3) of subdivision (c) of Section 360-2.3 is amended to read as follows:

(3) Verification of resources. (i) *The applicant may attest to the amount of his or her resources, unless the applicant is seeking coverage for long-term care services. For purposes of this paragraph, long-term care services shall include those services defined in subparagraph (ii) of this paragraph, with the exception of short-term rehabilitation as defined in subparagraph (iii) of this paragraph.* The applicant must provide documentation of all available or potentially available resources when applying for long-term care services. The social services district must record the documentation provided and determine the availability of such resources.

(ii) *Long-term care services shall include, but not be limited to care, treatment, maintenance, and services: provided in a nursing facility licensed under article twenty-eight of the public health law; provided in an intermediate care facility certified under article sixteen of the mental hygiene law; provided in a residential treatment facility certified by the Commissioner of Mental Health pursuant to Section 31.02(a)(4) of mental hygiene law; provided in a developmental center operated by the Office of Mental Retardation and Developmental Disabilities; provided by a home care services agency, certified home health agency or long-term home health care program as defined in section thirty-six hundred two of the public health law; provided by an adult day health care program in accordance with regulations of the department of health; provided by a personal care provider licensed or regulated by any other state or local agency; provided in a hospital that is equivalent to the level of care provided in a nursing facility; and provided by an assisted living program in accordance with regulations of the department of health. Long-term care services also shall include: private duty nursing; limited licensed home care services; hospice services including services provided by the hospice residence program in accordance with the regulations of the*

*department of health; services provided in accordance with the consumer directed personal assistance program; services provided by the managed long-term care program; personal emergency response services; and care, services or supplies provided by the Care at Home Waiver program, Traumatic Brain Injury Waiver program, or Office of Mental Retardation and Developmental Disabilities Home and Community-Based Waiver program.*

(iii) *Short-term rehabilitation means one period of certified home health care, up to a maximum of 29 consecutive days, and/or one period of nursing home care, up to a maximum of 29 consecutive days, commenced within a twelve-month period.*

**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 November 28, 2004.

**Text of emergency 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: regsqa@health.state.ny.us

#### Regulatory Impact Statement

Statutory Authority:

Section 206(1)(f) of the Public Health Law requires the Department of Health (Department) to enforce the provisions of the Medical Assistance program, pursuant to titles eleven, eleven-A, and eleven-B of the Social Services Law (SSL). Section 363-a(2) of the SSL requires the Department to establish such regulations as may be necessary to implement the program of medical assistance for needy persons (Medicaid). Section 366-a(2)(a) of the SSL provides that a Medicaid applicant must provide information and documentation necessary for the determination of initial and ongoing eligibility. A new section 366-a(2)(b) of the SSL, as enacted by the Health Care Reform Act of 2002, provides that an applicant may attest to the amount of his or her resources, unless the applicant is seeking Medicaid coverage of long-term care services. An exception is made for short-term rehabilitation. For purposes of this provision, section 366-a(2)(b) of the SSL references the long-term care services described in paragraph (b) of section 367-f(1) of the SSL and authorizes the Commissioner of the Department to define the term "short-term rehabilitation".

Legislative Objectives:

Section 363-a of the SSL designates the Department as the single State agency responsible for implementing the Medicaid program in this State, and requires the Department to promulgate any necessary regulations which are consistent with federal and State law. The proposed regulatory amendment is necessary to define long-term care services and short-term rehabilitation for purposes of attestation of resources.

Needs and Benefits:

The purpose of the proposed regulatory amendment is to revise section 360-2.3(c)(3) of the Medicaid regulations concerning verification of resources. Currently, in determining whether an applicant is financially eligible for Medicaid, the applicant must provide documentation of all available or potentially available resources. A new subdivision (2) of section 366-a of the SSL, as enacted by the Health Care Reform Act of 2002, allows an applicant to attest to the amount of his or her resources, unless the applicant is seeking Medicaid coverage of long-term services. The section also allows an applicant to attest to the amount of his or her resources if Medicaid coverage is needed for short-term rehabilitation. The proposed regulatory amendment to section 360-2.3(c)(3) allows certain applicants to attest to the amount of their resources and to define the long-term care services for which resource documentation will still be required. Short-term rehabilitation means one period of certified home health care, up to a maximum of 29 consecutive days, and/or one period of nursing home care, up to a maximum of 29 consecutive days, commenced within a twelve-month period.

As required by section 366-a(2)(b) of the SSL, the proposed regulatory amendment includes in the definition of long-term care services, those services described in section 367-f(1)(b) of the SSL. These services include care, treatment, maintenance and services: provided in a nursing facility licensed under article twenty-eight of the public health law; provided by a home care services agency, certified home health agency or long term home health care program, as defined in section thirty-six hundred two of the public health law; provided by an adult day health care program in accordance with regulations of the Department of Health; or provided by a personal care provider licensed or regulated by any other state or local agency. In addition, the proposed regulatory amendment designates as long-term care services, for purposes of resource attestation,

the following: a level of care provided in a hospital which is equivalent to the level of care provided in a nursing facility ("alternate level of care"); services provided in an intermediate care facility certified under article sixteen of the mental hygiene law; services provided in a residential treatment facility certified by the Commissioner of Mental Health pursuant to Section 31.02(a)(4) of the mental hygiene law; services provided in a developmental center operated by the Office of Mental Retardation and Developmental Disabilities; services provided by an assisted living program; private duty nursing; limited licensed home care services; hospice care including the hospice residence program; services provided in accordance with the consumer directed personal assistance program; services provided by the managed long-term care program; personal emergency response services; and care, services or supplies provided by the Care at Home Waiver program, Traumatic Brain Injury Waiver program, or Office of Mental Retardation and Developmental Disabilities Home and Community-Based Waiver program.

Section 366-a(2)(b) of the SSL allows attestation of resources by applicants seeking Medicaid coverage of short-term rehabilitation as defined by the Commissioner of the Department. Short-term rehabilitation means one period of certified home health care, up to a maximum of 29 consecutive days, and/or one period of nursing home care, up to a maximum of 29 consecutive days, commenced within a twelve-month period.

#### Costs:

There should be no additional costs associated with this regulatory amendment. An analysis of several eligibility simplification proposals was performed in 2001 and it was concluded that while a fiscal impact could occur if applicants provided inaccurate information about their resources, this was unlikely. Since neither the Child Health Plus (CHP) nor the Family Health Plus (FHP) program have resource tests, it was determined that those Medicaid applicants who had excess resources would most likely still be eligible for either CHP or FHP. Therefore, this proposal has been considered to be cost neutral.

#### Local Government Mandates:

The proposed regulatory amendment does not impose any new mandates. The amendment would remove the requirement that a Medicaid applicant submit proof of his or her resources for purposes of determining Medicaid eligibility, if the applicant is not seeking Medicaid coverage of long-term care services. The change simplifies the documentation requirements for local departments of social services administering the Medicaid program at the county level.

#### Paperwork:

No reporting requirements, forms, or other paperwork are necessitated by this proposed regulatory amendment. Currently, in determining Medicaid eligibility for long-term care services, social services districts must review resource documentation.

#### Duplication:

The proposed regulatory amendment does not duplicate any existing State or federal requirements.

#### Alternatives:

Section 366-a(2)(b) of the SSL requires that the services specifically listed in Section 367-f(1)(b) of the SSL be included in the definition of long-term care services. No alternatives were considered to the inclusion of these services in the definition.

In addition, in accordance with the authority granted in Section 367-f(1)(b) of the SSL, the proposed regulatory amendment designates a number of services as long-term care services for purposes of resource attestation: hospice care; private duty nursing; alternate level of care in a hospital; assisted living program; intermediate care facility; residential treatment facility; developmental center; the Care at Home Waiver program; the Traumatic Brain Injury Waiver program; the Office of Mental Retardation and Developmental Disabilities Home and Community-Based Waiver program; limited licensed home care services; personal emergency response services; and the consumer directed personal assistance program. Alternatives were considered with respect to the inclusion or exclusion of particular services in this list. However, given the nature, duration, and cost of these services, as well as the fact that many of these services are delivered by the same providers who furnish the long-term care services specifically listed in SSL Section 367-f(1)(b), the Department determined that the best alternative was to require documentation of resources by applicants seeking coverage of these services.

For purposes of defining short-term rehabilitation, the Department formed a work group with representatives from local social services districts and solicited feedback from the local social services districts' provider community. It was reported that there is no durational difference

between inpatient and community-based short-term rehabilitation. Therefore, the workgroup recommended that short-term rehabilitation not be defined solely by type of service. The workgroup recommended defining short-term rehabilitation as receipt of one annual episode of services lasting less than 30 days, because 30 days was the median length of stay for rehabilitation purposes according to information gathered from providers, and because this would eliminate cases that are subject to spousal impoverishment budgeting, which is not viewed as short-term care.

The workgroup recommended that alternate level of care in a hospital not be included in the definition, because the average alternate level of care stay extends beyond 30 days and because none of the providers viewed this as a short-term rehabilitation situation. Similarly, investigation by Department staff indicated that personal care services are provided to individuals who are chronically ill and require care on a long-term basis. Consequently, these services were not included in the definition of short-term rehabilitation.

#### Federal Standards:

The proposed regulatory amendment complies with federal statute.

#### Compliance Schedule:

Social services districts will be advised of the change when the amendment becomes effective.

#### Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required. The proposed amendment would not impose any adverse impact on businesses, either large or small, nor will the proposal impose any new reporting, recordkeeping or other compliance requirements on a business.

#### Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for this proposed action is not required. As mentioned in the regulatory impact statement, the proposed amendment would allow certain Medicaid applicants to attest to the amount of their resources for purposes of determining Medicaid eligibility. This provision would not affect rural areas any more than non-rural areas. The proposed amendment does not impose any new reporting, recordkeeping or any other new compliance requirements on rural or non-rural areas.

#### Job Impact Statement

A Job Impact Statement is not required. The proposal will not have an adverse impact on jobs and employment opportunities. The proposed rule is required to allow certain Medicaid applicants to attest to the amount of their resources for purposes of determining eligibility for Medicaid.

## Industrial Board of Appeals

### NOTICE OF ADOPTION

#### Subpoenas

**I.D. No.** IBA-27-04-00001-A

**Filing No.** 965

**Filing date:** Aug. 31, 2004

**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of section 65.20 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Subpoenas.

**Purpose:** To extend the time period, from 5 to 10 days, in which a person served with a subpoena may move to revoke or modify the subpoena.

**Text or summary was published** in the notice of proposed rule making, I.D. No. IBS-27-04-00001-P, Issue of July 7, 2004.

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

**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

## NOTICE OF ADOPTION

**Motions Addressed to Pleading; Time for Filing****I.D. No.** IBA-27-04-00002-A**Filing No.** 969**Filing date:** Aug. 31, 2004**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of section 65.13 of Title 12 NYCRR.**Statutory authority:** Labor Law, section 101**Subject:** Motions addressed to pleading; time for filing with the board.**Purpose:** To simplify the wording of the rule, making it easier to read and understand.**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-27-04-00002-P, Issue of July 7, 2004.**Final rule as compared with last published rule:** No changes.**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Settlement****I.D. No.** IBA-27-04-00003-A**Filing No.** 968**Filing date:** Aug. 31, 2004**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of section 65.42 of Title 12 NYCRR.**Statutory authority:** Labor Law, section 101**Subject:** Settlement.**Purpose:** To amend the rule so that the board will be notified of a settlement agreement, either in writing or on the record of the hearing, instead of the current requirement that the parties submit proposed settlement agreements to the board.**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-27-04-00003-P, Issue of July 7, 2004.**Final rule as compared with last published rule:** No changes.**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Application****I.D. No.** IBA-27-04-00004-A**Filing No.** 964**Filing date:** Aug. 31, 2004**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of section 66.1 of Title 12 NYCRR.**Statutory authority:** Labor Labor, section 101**Subject:** Application of the board's rules to appeals filed with the board pursuant to Labor Law, section 101.**Purpose:** To delete an obsolete notation which was added over 20 years ago to explain a then recent statutory amendment.**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-27-04-00004-P, Issue of July 7, 2004.**Final rule as compared with last published rule:** No changes.**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Advanced Notice for Administrative Hearings****I.D. No.** IBA-27-04-00005-A**Filing No.** 966**Filing date:** Aug. 31, 2004**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of section 65.21 of Title 12 NYCRR.**Statutory authority:** Labor Law, section 101**Subject:** Notice.**Purpose:** To extend the time period, from 8 to 10 days in advance, in which a party shall be given notice of the time, place and nature of an administrative hearing conducted by the board.**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-27-04-00005-P, Issue of July 7, 2004.**Final rule as compared with last published rule:** No changes.**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

**Rules of Evidence****I.D. No.** IBA-27-04-00006-A**Filing No.** 967**Filing date:** Aug. 31, 2004**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of section 65.29 of Title 12 NYCRR.**Statutory authority:** Labor Law, section 101**Subject:** Rules of evidence.**Purpose:** To amend the heading of the rule to include the work "procedure" to more accurately reflect the contents of the rule.**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-27-04-00006-P, Issue of July 7, 2004.**Final rule as compared with last published rule:** No changes.**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us**Assessment of Public Comment**

The agency received no public comment.

## Insurance Department

### EMERGENCY RULE MAKING

#### Rules for Key Person Corporate-Owned Life Insurance

**I.D. No.** INS-37-04-00004-E

**Filing No.** 971

**Filing date:** Aug. 31, 2004

**Effective date:** Aug. 31, 2004

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

**Action taken:** Addition of Part 48 (Regulation 180) to Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301 and 3205

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

**Specific reasons underlying the finding of necessity:** Corporate-owned life insurance covering rank-and-file employees, also called "janitors insurance" or "dead peasant insurance," has been the focus of numerous negative press articles and public commentaries over the last several years. In many cases, the covered employees were not notified and did not consent to such insurance. In addition, the Internal Revenue Service has pursued litigation against some companies using corporate-owned life insurance as a means of evading taxes.

Most recently in response to criticism concerning COLI, the United States Senate has drafted legislation that provides for the taxation of death proceeds of corporate-owned life insurance under certain circumstances. The Senate's proposal addresses the abuses of "janitor insurance" and recognizes the legitimate business need for COLI to serve as a funding vehicle for employee benefit plans. As a result, the Senate's legislative proposal provides that death benefit under corporate-owned life insurance policies will not be taxable if the employee is a key employee as defined in the proposed legislation.

The potential for abuse in the corporate-owned life insurance market has long been a concern of the New York Legislature. Chapter 491 of the Laws of 1996 added a new subsection (d) to Section 3205 to provide notice, consent and termination rights to employees, including rank-and-file employees, whose lives were insured under corporate-owned life insurance programs designed to fund employee benefit plans. Such notice, consent and termination rights were designed to reduce the potential for abuse in the COLI market.

Since the notice, consent and termination rights only apply in the case of Section 3205(d) COLI and not key person COLI under Section 3205(a)(1)(B), it is imperative that insurers only insure key employees under Section 3205(a)(1)(B). This will also ensure that rank and file employees and other non-key employees receive the notice, consent and termination rights prescribed by Section 3205(d) and to curb some of the reported abuses associated with COLI on rank-and-file employees. This will serve to ensure that employees insured pursuant to the insurable interest provisions of Section 3205(a)(1)(B) are key employees.

The establishment of a key employee standard based on the proposed federal legislation will aid in curbing abuse in the corporate-owned life insurance market. Therefore, for the reasons stated above, this rule must be promulgated on an emergency basis for the preservation of the general welfare.

**Subject:** Rules for key person corporate-owned life insurance.

**Purpose:** To provide guidance to insurers in defining the term key person for the purpose of compliance with the requirements of section 3205(a)(1)(B) and (d) of the Insurance Law.

**Text of emergency rule:** A new Part 48 of Title 11 NYCRR (Regulation No. 180) is adopted to read as follows:

§ 48.0 Preamble and Purpose.

(a) Section 3205(b)(2) of the Insurance Law provides in part that "No person shall procure or cause to be procured, directly or by assignment or otherwise any contract of insurance upon the person of another unless the benefits under such contract are payable . . . to a person having, at the time when such contract is made, an insurable interest in the person insured."

(b) Section 3205(a)(1)(B) of the Insurance Law defines the term "insurable interest", for the purposes of life and accident and health insurance, to include ". . . a lawful and substantial economic interest in the

continued life, health or bodily safety of the person insured, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the insured."

(c) Under Section 3205(a)(1)(B), an employer has an insurable interest in the lives of certain employees and other persons, commonly referred to as "key employees" or "key persons", whose services and qualifications are of such nature that their death or disability would cause the employer to incur a substantial pecuniary loss.

(d) The purpose of this Part is to establish standards for life insurers and fraternal benefit societies issuing key person company-owned life insurance to ensure that the employees or other persons on whose lives coverage is being written pursuant to Section 3205(a)(1)(B) of the Insurance Law are actually key persons.

§ 48.1 Underwriting Guidelines.

An insurer using key person company-owned life insurance shall establish and apply appropriate underwriting guidelines to ensure that the employees or other persons on whose lives policies are written pursuant to Section 3205(a)(1)(B) are actually key persons.

§ 48.2 Standards.

For purposes of this Part and for establishing whether there exists an insurable interest under Section 3205(a)(1)(B) at the time the policy is issued, the term key person shall include the following persons:

(a) An employee who is one of the five highest paid officers of the employer;

(b) An employee who is a five-percent owner of the employer. A "five-percent owner" shall mean:

(1) If the employer is a corporation, any person who owns or controls more than five percent of the outstanding stock of the corporation or stock possessing more than five percent of the total combined voting power of all stock of the corporation; or

(2) If the employer is not a corporation, any person who owns more than five percent of the capital or profits interest in the employer;

(c) An employee who had compensation from the employer in excess of \$90,000 in the preceding year;

(d) An employee who is among the highest paid 35 percent of all employees; or

(e) An employee or other person who makes a significant economic contribution to the company, including but not limited to, an employee who is responsible for management decisions, has a significant impact on sales or a special rapport with customers and creditors, possesses special skills, or would be difficult to replace. Criteria for the employer's determination shall be included in the insurer's underwriting guidelines.

**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 November 28, 2004.

**Text of emergency rule and any required statements and analyses may be obtained from:** Eric Mangan, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2280, e-mail: emangan@ins.state.ny.us

#### Regulatory Impact Statement

1. Statutory authority:

The superintendent's authority for the adoption of Regulation 180 (11 NYCRR 48) is derived from Sections 201, 301, and 3205 of the Insurance Law.

Sections 201 and 301 of the Insurance Law authorize the superintendent to prescribe regulations accomplishing, among other concerns, interpretation of the provisions of the Insurance Law, as well as effectuating any power given to him (under the provisions of the Insurance Law) to prescribe forms or otherwise to make regulations.

Section 3205 of the Insurance Law defines the term "insurable interest" and sets forth insurable interest requirements for any policy of life insurance and accident and health insurance.

2. Legislative objectives:

The insurable interest requirements contained in Section 3205 reflect the state's public policy against contracts wagering on human life. Section 3205(b)(1)(2) prohibits the issuance of any policy upon the life of another person unless the beneficiary is the insured, personal representative of the insured, or a person having an insurable interest in the insured at the time the policy is issued.

Section 3205(a)(1)(B), applicable when policies are purchased by persons not closely related to the insured by blood or by law, defines "insurable interest" to include a lawful and substantial economic interest in the continued, life, health or bodily safety of the person insured, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disablement or injury of the insured. Employers and

insurers have historically relied upon Section 3205(a)(1)(B) to satisfy the insurable interest requirement for the purchase of insurance on the lives of "key persons" or "key employees."

In 1996, the Legislature added new subsections (d) and (e) to Section 3205 of the Insurance Law (L. 1996 c. 491) to specifically grant employers an insurable interest in any employee or retiree who is eligible to participate in an employee benefit plan. The Legislature enacted Section 3205(d) in order to assist employers with the financing of employee benefit plans through the use of corporate-owned life insurance ("COLI") purchased on the lives of employees.

The purpose of the proposed regulation is to establish standards for life insurers issuing key employee COLI, pursuant to Section 3205(a) rather than Section 3205(d) COLI, to ensure that the employees on whose lives coverage is being written pursuant to Section 3205(a)(1)(B) of the Insurance Law are actually key employees.

### 3. Needs and benefits:

As noted in the Federal standards section below, the definition of key employee in this proposed regulation is based on the definition of key employee set forth in a draft bill pending in the United States Senate which provides for the taxation of death proceeds of COLI under certain circumstances. The Senate's proposal is intended to eliminate well-publicized abuses of COLI. The proposal also recognizes the legitimate business need for employers to use corporate owned policies as a funding vehicle for employee benefits, and specifically provides that COLI death benefits would not be taxable if the covered employee meets the definition of a key employee.

The potential for abuse in the COLI market has historically been a concern of the New York legislature as evidenced by the enactment of notice, consent and termination rights in Section 3205(d) and (e) of the Insurance Law in 1996, establishing an insurable interest for the purchase of life insurance used to fund employee benefit plans. Since the employee notice, consent and termination rights are not required when company-owned life insurance is purchased under Section 3205(a)(1)(B), it is imperative that insurers be provided with standards for key employees to ensure that such employees are key employees and to avoid the potential for any further abuses in the market. The establishment of a key employee standard would provide such guidance.

In addition, a key employee standard would enhance the Department's market conduct exams by providing field examiners with a reference point. Field examiners currently lack statutory or regulatory standards for determining the proper application of Section 3205(a) and, specifically, whether COLI insurance issued pursuant to Section 3205(a) is on key employees.

The key employee standard is particularly important in the bank-owned life insurance market, in which employees do not receive Section 3205(d) protections. Currently, banks do not purchase coverage under Section 3205(d) because the employee's ability to terminate coverage makes the policy an unreliable mechanism for funding plan liabilities and results in adverse tax consequences to the bank. When bank-owned life insurance is issued as key employee coverage under Section 3205(a)(1)(B), the key employee standard created by this proposed regulation will help ensure that the covered employees will in fact be key employees.

### 4. Costs:

Life insurers licensed in New York that sell key employee COLI are required to establish and apply appropriate underwriting guidelines to ensure that the employees on whose lives policies are written under Section 3205(a)(1)(B) are key employees. It is expected that most insurers in the key employee COLI market already have established key person underwriting guidelines and therefore will not incur any costs with the promulgation of the proposed regulation. Any insurers in the key employee COLI market that lack established key person underwriting guidelines would incur costs associated with the development of such guidelines. Insurers that do not participate in the key person COLI market should incur no costs in connection with the proposed regulation.

Costs to the Insurance Department will be minimal. There are no costs to other government agencies or local governments.

### 5. Local government mandates:

The proposed regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

### 6. Paperwork:

The proposed regulation imposes no new reporting requirements.

### 7. Duplication:

The proposed regulation does not duplicate any existing law or regulation.

### 8. Alternatives:

The Department considered but rejected the prospect of issuing a Circular Letter to establish the standard for key person. The Department was concerned that the Circular Letter proposal would not have the same force and effect of a regulation, and would therefore be an inadequate mechanism to apply and enforce the insurable interest requirements of Section 3205.

### 9. Federal standards:

The definition of key employee in this proposed regulation is based on the definition of key employee set forth in a draft COLI bill pending in the United States Senate which provides for the taxation of death proceeds of COLI under certain circumstances. The Senate bill, which was approved by the Senate Finance Committee in February, 2004, provides that a key employee may be either a "highly compensated employee" under Section 414(q) of the Internal Revenue Code or a "highly compensated individual" under Section 105(h)(5) of the Internal Revenue Code (except that '35 percent' shall be substituted for '25 percent' in subparagraph (C) thereof). The purpose of the definition of key employee in the Senate bill is to create an exemption from tax for death proceeds paid to employers in connection with COLI, and does not relate to state insurable interest laws. There is no Federal standard that defines key employee in the context of insurable interest for life insurance.

### 10. Compliance schedule:

The proposed regulation establishes a standard for all key employee life insurance policies issued before and after the effective date of the Regulation.

### **Regulatory Flexibility Analysis**

#### 1. Small businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all life insurance companies licensed to do business in New York State, none of which fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and believes that none of them fall within the definition of "small business", because there are none which are both independently owned and have under one hundred employees.

#### 2. Local governments:

The regulation does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

### **Rural Area Flexibility Analysis**

#### 1. Types and estimated number of rural areas:

Insurers covered by the regulation do business in every county in this state, including rural areas as defined under SAPA 102(10).

#### 2. Reporting, recordkeeping and other compliance requirements; and professional services:

The regulation provides guidance to insurers in defining the term key person.

#### 3. Costs:

Life insurers that sell key person COLI to fund broad-based employee benefit plans are required to establish and apply appropriate underwriting guidelines to ensure that the employees on whose lives policies are written under Section 3205(a)(1)(B) are key employees. It is expected that most insurers in the key person COLI market already have established key person underwriting guidelines and therefore will not incur any costs with the promulgation of the Regulation. Any insurers in the key person COLI market that lack established key person underwriting guidelines will incur costs associated with the development of such guidelines. Insurers that do not participate in the key person COLI market should incur no costs in connection with the Regulation.

Costs to the Insurance Department will be minimal. There are no costs to other government agencies or local governments.

#### 4. Minimizing adverse impact:

It does not impose any adverse impact on rural areas.

#### 5. Rural area participation:

The regulation was drafted after consultation with the Life Insurance Council of New York, a trade organization representing life insurers in New York.

### **Job Impact Statement**

Nature of impact: The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This regulation provides guidance to insurers in defining the term key person

for the purpose of compliance with the requirements of section 3205(a)(1)(B) of the Insurance Law.

Categories and number affected: No categories of jobs or number of jobs will be affected.

Regions of adverse impact: This rule applies to all insurers licensed to do business in New York State. There would be no region in New York which would experience an adverse impact on jobs and employment opportunities.

Minimizing adverse impact: No measures would need to be taken by the Department to minimize adverse impacts.

Self-employment opportunities: This rule would not have a measurable impact on self-employment opportunities.

### NOTICE OF ADOPTION

#### Financial Statement Filings and Accounting Practices and Procedures

**I.D. No.** INS-22-04-00005-A

**Filing No.** 949

**Filing date:** Aug. 25, 2004

**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of section 83.2(c) (Regulation 172) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403(c)(12) and 4408-a; and L. 2002, ch. 599

**Subject:** Financial statement filings and accounting practices and procedures.

**Purpose:** To refer to the accounting manual entitled *Accounting Practices and Procedures Manual as of March 2004* (instead of 2003).

**Text or summary was published** in the notice of proposed rule making, I.D. No. INS-22-04-00005-P, Issue of June 2, 2004.

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

**Text of rule and any required statements and analyses may be obtained from:** Eric Mangan, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5262, e-mail: emangan@ins.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

plates affixed to the vehicle, or to the New York Department of Motor Vehicles, if there were no number plates affixed. Such inquiry shall be made on form [MV-905 (Lien Record/Vehicle Information Request Form) *MV-15 (Request for Driving and/or Vehicle Record Information)*], or on a list specifying vehicle identification number, year of vehicle and make of vehicle or by automated interface with the visual display system of this department or on such other form as may be required by the jurisdiction which issued the number plates. Forms [MV-905] *MV-15* shall be sent to the Department of Motor Vehicles, [Division of Data Preparation and Control] *MV-15 Processing*, 6 Empire State Plaza, Albany, New York 12228. Lists of vehicle identification numbers shall be sent to the Department of Motor Vehicles, Title Bureau, 6 Empire State Plaza, Albany, New York 12228.

(b) Inquiry concerning the last owner of record shall not be required when the abandoned vehicle is one which was left without number plates affixed and which is of a wholesale value, taking into consideration the condition of the vehicle, of [\$750] \$1,250 or less.

Subdivision (a) of Section 18.6 is amended to read as follows:

(a) How to transfer an abandoned vehicle. An abandoned vehicle may be transferred according to the directions in either paragraph (1) or (2) of this subdivision, except that a 1972 or older vehicle, and any other vehicle not subject to the certificate of title law, may be transferred according to the directions in paragraph (1) only.

(1)(i) The local authority shall prepare and give to the purchaser a bill of sale as described in subdivision (b) of this section; and

(ii) An affidavit stating that the last owner and known lienholder(s) have been contacted in accordance with section 1224 of the Vehicle and Traffic Law, and that ownership is acquired under subdivision (3)(c) of that section, or if the vehicle is worth [\$750] \$1,250 or less and had no number plates affixed at the time of abandonment, an affidavit that ownership was acquired immediately under subdivision (2) of that section. Form MV-906A (*Certification of Abandoned Vehicle Acquisition*) may be used as the affidavit.

(2) In lieu of the items in paragraph (1) of this subdivision, the local authority may prepare and give to the purchaser:

(i) Form MV-907A (*Salvage Certificate*); and

(ii) an affidavit stating that the last owner and known lienholder(s) have been contacted in accordance with section 1224 of the Vehicle and Traffic Law, and that ownership is acquired under subdivision (3)(c) of that section, or if the vehicle is worth [\$750] \$1,250 or less and had no number plates affixed at the time of abandonment, an affidavit that ownership was acquired immediately under subdivision (2) of that section. Form MV-906A may be used as the affidavit.

Section 18.8 is amended to read as follows:

18.8 Forms. Forms [MV-905] *MV-15* and MV-272.1 (*Application for Vehicle Identification Number*) may be obtained from any issuing office or from the Department of Motor Vehicles, [Forms Control Unit] *Forms Inventory Control Unit*, 6 Empire State Plaza, (DMV Warehouse), Albany, New York 12228. The local authority must supply all other forms. If a local government agency handles only abandoned vehicles worth [\$750] \$1,250 or less, specially marked forms MV-907A may be given to that agency.

**Text of proposed 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

**Data, views or arguments may be submitted to:** Deborah V. Dugan, 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

Effective September 17, 2002, Vehicle and Traffic Law section 1224(2) was revised by Chapter 540 of the Laws of 2002 to provide that if an abandoned vehicle has a wholesale value of \$1,250 or less at the time of abandonment and no number plates, ownership of such vehicle shall immediately vest in the local authority having jurisdiction of such vehicle. The legislation raised the threshold value of such vehicles from \$750 to \$1,250. The purpose of the rulemaking is to effectuate the provisions of section 1224(2) of the Vehicle and Traffic Law and to update existing regulations to delete references to obsolete forms. The rulemaking also updates Departmental form numbers and makes other minor clarifying revisions.

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## Department of Motor Vehicles

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

#### Abandoned Vehicles

**I.D. No.** MTV-37-04-00001-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 Part 18 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 1224(2)

**Subject:** Abandoned vehicles.

**Purpose:** To raise the threshold value of abandoned vehicles from \$750 to \$1,250 as revised by L. 2002, ch. 540; delete references to obsolete forms; update departmental form numbers; and make other minor clarifying revisions.

**Text of proposed rule:** Subdivisions (a) and (b) of Section 18.3 are amended to read as follows:

(a) Except as provided in subdivision (b) of this section, a local authority which obtains custody of an abandoned vehicle shall make an inquiry concerning the last owner to the jurisdiction which issued the number

The Department has determined that no person is likely to object to this rulemaking. Since this proposed rulemaking merely reflects recent statutory revision, it is submitted as a consensus rulemaking.

#### Job Impact Statement

No job impact statement is submitted because the Department has determined that the proposed rule will not have a substantial adverse impact on jobs and employment opportunities.

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## New York State 911 Board

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### INFORMATION NOTICE NOTICE OF ADOPTION OF MINIMUM STANDARDS

The New York State 911 Board is established pursuant to County Law § 326. The Board is charged with assisting local governments, service suppliers, wireless telephone service suppliers and appropriate state agencies by facilitating the most efficient and effective routing of wireless 911 emergency calls; developing minimum standards for public safety answering points; promoting the exchange of information, including emerging technologies; and encouraging the use of best practice standards among the public safety answering point community. The Board is exempt from the requirements of the New York State Administrative Procedure Act, but is required to publish its proposed and final standards pursuant to the provisions of County Law § 327. This Notice is published pursuant to those provisions.

Amendment to Minimum Standards Relating to Expedited Deployment Funding. Summary. At its meeting of June 23, 2004, the Board proposed amendments to 21 NYCRR § 5204.6 ("Standards Governing Reasonable Eligible Wireless 911 Service Costs"). The amendments clarify and provide further detail regarding particular categories of items for which funding will be allowed or prohibited, and express the requirement that associated costs are eligible for funding to the extent that they are integrally related to the acquisition and installation of eligible items, including first-year training of instructional personnel. The Notice of Proposed Amendment was published in the July 7, 2004 issue of the *Register*. Following a period of public comment, the Board at its meeting of August 25, 2004, adopted the amended final standard which appears in this Notice. The amended final standard is identical to the amendment as originally proposed.

For further information, contact Thomas J. Wutz, Chief, Fire Service Bureau, New York State Department of State, Office of Fire Prevention and Control, 41 State Street, Albany NY 12231, phone: 518-474-6746.

The Amendment is as follows:

§ 5204.6 Standards Governing Reasonable Eligible Wireless 911 Service Costs.

[Items are eligible only insofar as they] *Eligible wireless 911 service costs may be paid or reimbursed for the eligible items set forth in paragraph (a) below to the extent such items relate to the provision of enhanced wireless service. For purposes of this section, "eligible wireless 911 service costs" shall mean the actual costs incurred by the governmental entity seeking payment or reimbursement which are related to the acquisition, design, installation, customization and delivery of eligible items, including shipping and handling fees, site-surveying and engineering costs, construction and renovation costs incidental to the installation of eligible items, and non-recurring costs incurred for the modification or customization of eligible items to enable such eligible items to be operational for their intended purpose and to ensure functionality and compatibility with the software and equipment of and services provided by wireless telephone service suppliers, provided, however, that any such costs for consultant services for software improvements and training of those personnel of the local governmental entity primarily responsible for the instruction of local government employees in the proper use of eligible items of equipment or software are an integral part of a hardware/software procurement package and are incurred not later than one year after the later of the date the eligible items to which such costs relate is delivered or accepted.*

(a) Eligible items:

(1) [computer] equipment, including, but not limited to, computers, connection equipment providing automatic number identification (ANI) and automatic location information (ALI) operations, and uninterruptible power systems (UPS);

(2) consoles and furniture for additional positions and/or required for new equipment;

[(2)] (3) software, including software licensing fees.;

(3) connection equipment (ANI & ALI);

(4) on-site equipment.]

(b) Funding shall not be awarded for any items purchased prior to May 15, 2003.

(c) *Except to the extent otherwise provided above, [Funding] funding shall not be awarded for:*

(1) [capital] construction and renovation costs, other than costs incidental to the installation of eligible items;

(2) personal services; [or]

(3) training of personnel; or

(4) ordinary or recurring maintenance charges.

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## Niagara Frontier Transportation Authority

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### NOTICE OF ADOPTION

#### Procurement Guidelines

**I.D. No.** NFT-22-04-00001-A

**Filing No.** 952

**Filing date:** Aug. 27, 2004

**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of Part 1159 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, sections 1299-e(5) and 1299-t

**Subject:** Procurement guidelines.

**Purpose:** To amend the procurement guidelines to make technical corrections, conform to changes in State law and update references.

**Text or summary was published** in the notice of proposed rule making, I.D. No. NFT-22-04-00001-P, Issue of June 2, 2004.

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

**Text of rule and any required statements and analyses may be obtained from:** Ruth Keating, Niagara Frontier Transportation Authority, 181 Ellicott St., Buffalo, NY 14203, (716) 855-7398, e-mail: Ruth\_Keating@nfta.com

**Assessment of Public Comment**

The agency received no public comment.

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## Office of Parks, Recreation and Historic Preservation

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### NOTICE OF ADOPTION

#### Fees and Charges for the Use of Facilities

**I.D. No.** PKR-25-04-00021-A

**Filing No.** 970

**Filing date:** Aug. 31, 2004

**Effective date:** Sept. 15, 2004

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

**Action taken:** Amendment of section 381.1 of Title 9 NYCRR.

**Statutory authority:** Parks, Recreation and Historic Preservation Law, sections 3.09(8) and 13.15(1)

**Subject:** Fees and charges for the use of facilities.

**Purpose:** To establish and/or increase fees for the use of certain facilities, to continue and expand current level of support for park operations, maintenance and infrastructure improvement necessary due to increased public demand.

**Text or summary was published** in the notice of emergency/proposed rule making, I.D. No. PKR-25-04-00021-EP, Issue of June 23, 2004.

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

**Text of rule and any required statements and analyses may be obtained from:** Elaine H. Bartley, Associate Counsel, Office of Parks, Recreation and Historic Preservation, One Empire State Plaza, 19th Fl., Albany, NY 12238, (518) 473-7889, e-mail: elaine.bartley@oprhp.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## Public Service Commission

### NOTICE OF ADOPTION

**Hot-Cuts by Verizon New York Inc.**

**I.D. No.** PSC-34-03-00010-A

**Filing date:** Aug. 26, 2004

**Effective date:** Aug. 26, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 02-C-1425 directing Verizon New York Inc. (Verizon) to file tariff amendments regarding new permanent rates for three different hot cut migration processes.

**Statutory authority:** Public Service Law, sections 92(2) and 94(2)

**Subject:** Hot cuts of Verizon New York Inc.

**Purpose:** To establish a process for development of performance metrics, standards, and incentive mechanisms to ensure high quality delivery of hot cuts.

**Substance of final rule:** The Commission directed Verizon New York Inc. to file tariff amendments to institute new permanent rates for three different hot cut migration processes, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (02-C-1425SA1)

### NOTICE OF ADOPTION

**Future Role of Regulated Gas and Electric Utilities in Developing Energy Markets**

**I.D. No.** PSC-05-04-00007-A

**Filing date:** Aug. 26, 2004

**Effective date:** Aug. 26, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 00-M-0504 directing utilities to file embedded cost studies with new rate proceeding filings or filings to extend existing rate plans.

**Statutory authority:** Public Service Law, sections 4, 5; art. 4, sections 65, 65a, 65b, 66, 66a-66g, 69, 69a, 71-72a, 75-76; art. 6, sections 106-108, 117-118

**Subject:** Future role of the regulated gas and electric utilities.

**Purpose:** To establish a fully unbundled competitive rate for a variety of competitive services currently provided by the utilities.

**Substance of final rule:** The exceptions to the Recommended Decision in this proceeding are denied, except to the extent specifically granted herein and the Recommended Decision is adopted, except to the extent otherwise discussed herein. The Commission directed Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, KeySpan Energy Delivery New York and Long Island, National Fuel Gas Distribution Company, Niagara Mohawk Power Corporation, Rochester Gas and Electric Corporation and New York State Electric and Gas Corporation to file embedded cost studies with new rate proceeding filings or filings to extend existing rate plans. Furthermore, the above utilities are required to include with their filings proposed competitive service rates based on those studies and a mechanism to recover lost revenues, subject to the terms and conditions set forth in the Order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (00-M-0504SA6)

### NOTICE OF ADOPTION

**Transfer of Certain Electrical Substation Facilities by Niagara Mohawk Power Corporation**

**I.D. No.** PSC-15-04-00023-A

**Filing date:** Aug. 30, 2004

**Effective date:** Aug. 30, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 04-E-0309 authorizing Niagara Mohawk Power Corporation (Niagara Mohawk) to transfer certain electric substation facilities to the Oneida Indian Nation.

**Statutory authority:** Public Service Law, section 70

**Subject:** Transfer of certain electric substation facilities.

**Purpose:** To transfer certain electric substation facilities to the Oneida Indian Nation.

**Substance of final rule:** The Commission approved a joint proposal by Niagara Mohawk Power Corporation (Niagara Mohawk) and the Oneida Indian Nation (Nation) for authorization pursuant to New York Public Service Law § 70 for Niagara Mohawk to transfer a 115 kV and 13.2 kV substation to the Nation, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-0309SA1)

## NOTICE OF ADOPTION

**Curtailement Penalty Charges by Central Hudson Gas & Electric Corporation**

**I.D. No.** PSC-16-04-00007-A  
**Filing date:** Aug. 26, 2004  
**Effective date:** Aug. 26, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 04-G-0435 authorizing revisions to Central Hudson Gas & Electric Corporation's (Central Hudson) schedule for gas service—P.S.C. No. 12.

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

**Subject:** Tariff filing.

**Purpose:** To modify the curtailment charge provisions under Central Hudson's Service Classification Nos. 8 and 9.

**Substance of final rule:** The Commission approved tariff amendments by Central Hudson Gas & Electric Corporation to modify the curtailment charge provisions, applicable to customers under S.C. No. 8—Interruptible Rate, S.C. No. 9—Interruptible Transportation/Standby Sales Service and S.C. No. 11—Firm Transportation—Core, during a curtailment period and to modify the underdelivery charges contained in its Retail Access Program that are imposed on retail energy suppliers during operational flow order conditions.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-G-0435SA1)

## NOTICE OF ADOPTION

**Automated Meter Recording Equipment Requirements by Central Hudson Gas & Electric Corporation**

**I.D. No.** PSC-17-04-00020-A  
**Filing date:** Aug. 27, 2004  
**Effective date:** Aug. 27, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 04-G-0463 authorizing revisions to Central Hudson Gas & Electric Corporation's (Central Hudson) schedule for gas service—P.S.C. No. 12.

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

**Subject:** Tariff filing.

**Purpose:** To incorporate language requiring automated meter recording equipment for all new customers opting for service under Service Classification Nos. 8 and 9.

**Substance of final rule:** The Commission approved Central Hudson Gas & Electric Corporation's tariff amendments to require that all new customers opting for service under S.C. No. 8—Interruptible Rate and S.C. No. 9—Interruptible Transportation/Standby Sales Service have automated meter recording (AMR) equipment and to modify its current automated meter recording equipment tariff under S.C. No. 11—Firm Transportation—Core to require that customers prepay the cost of the AMR equipment, subject to the terms and conditions set forth in the Order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-G-0463SA1)

## NOTICE OF ADOPTION

**Surcharge by Aquarian Water Company of New York**

**I.D. No.** PSC-18-04-00009-A  
**Filing date:** Aug. 27, 2004  
**Effective date:** Aug. 27, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 04-W-0464 allowing Aquarian Water Company of New York (Aquarian) to establish a surcharge to recover the increase in the cost of purchased water.

**Statutory authority:** Public Service Law, section 89-c(10)

**Subject:** Implementation of a surcharge.

**Purpose:** To implement a customer bill surcharge of 1.78 percent for the recovery of increased purchased water prices.

**Substance of final rule:** The Commission approved a request by Aquarian Water Company of New York to implement a customer bill surcharge of 1.78% to prospectively recover \$164,715 per year of increased purchased water costs from Westchester Joint Water Works, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-W-0464SA1)

## NOTICE OF ADOPTION

**Submetering of Electricity by Walnut Hill Preservation, L.P.**

**I.D. No.** PSC-22-04-00009-A  
**Filing date:** Aug. 30, 2004  
**Effective date:** Aug. 30, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 04-E-0593 allowing Walnut Hill Preservation, L.P. (Walnut Hill) to submeter electricity at Walnut Hill Apartments in the Town of Haverstraw, NY.

**Statutory authority:** Public Service Law, sections 65(1), 66(1), (2), (3), (4), (5), (12) and (14)

**Subject:** Petition for the submetering of electricity.

**Purpose:** To submeter electricity.

**Substance of final rule:** The Commission approved Walnut Hill Preservation, L.P.'s request to submeter electricity to residential tenants at Walnut Hill Apartments in the Town of Haverstraw, New York, located in the territory of Orange & Rockland Utilities, Inc.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-0593SA1)

## NOTICE OF ADOPTION

## Transmission and Distribution of Gas by Empire State Pipeline

I.D. No. PSC-23-04-00005-A

Filing date: Aug. 27, 2004

Effective date: Aug. 27, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 04-G-0610 granting the Empire State Pipeline a waiver of the requirements of 16 NYCRR section 255.611(b).

**Statutory authority:** Public Service Law, section 66(2)

**Subject:** Waiver of the commission's requirements under 16 NYCRR section 255.611(b).

**Purpose:** To allow alternative inspection and testing methods to demonstrate the integrity of pipeline safety.

**Substance of final rule:** The Commission approved a request by Empire State Pipeline for a waiver of the requirements of 16 NYCRR § 255.611(b) to permit an alternate inspection and testing methods in the three affected areas identified in the waiver application in lieu of pipe replacement, subject to the terms and conditions set forth in the Order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(04-G-0610SA1)

## NOTICE OF ADOPTION

## Intercarrier Telephone Service Quality Standards and Metrics

I.D. No. PSC-24-04-00006-A

Filing date: Aug. 27, 2004

Effective date: Aug. 27, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 97-C-0139 approving modifications to the existing intercarrier telephone service quality measures and standards.

**Statutory authority:** Public Service Law, section 94(2)

**Subject:** Intercarrier telephone service quality measures and standards.

**Purpose:** To establish modifications to the intercarrier service quality guidelines.

**Substance of final rule:** The Commission adopted modifications to the Inter-Carrier Service Quality Guidelines. The process affecting changes include: certain provisioning metrics to remove the exclusion of SNPs (suspension for non-payment); revisions to PR 9 (Hot-Cut Loops); updates to certain maintenance metrics; a new Appendix N (Metrics Change Control Notification); revisions to several metrics that remove references to VADI (Verizon Advanced Data, Inc.); format changes to the C2C Report and a schedule for implementing process-affecting revisions to the guidelines, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(97-C-0139SA20)

## NOTICE OF ADOPTION

## Capacity Release Service by Orange and Rockland Utilities, Inc.

I.D. No. PSC-26-04-00007-A

Filing date: Aug. 26, 2004

Effective date: Aug. 26, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 04-G-0682 approving revisions to Orange and Rockland Utilities, Inc.'s (O&R) schedule for gas service—P.S.C. No. 4.

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

**Subject:** Service Classification Nos. 6 and 11—transportation services.

**Purpose:** To extend the current three-year Capacity Release Service Program for an additional year.

**Substance of final rule:** The Commission approved a request by Orange and Rockland Utilities, Inc. to extend its current three-year Capacity Release Service program for an additional 12 month period commencing November 1, 2004 and ending on October 31, 2005.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(04-G-0682SA1)

## NOTICE OF ADOPTION

## Capacity Release Service by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-26-04-00008-A

Filing date: Aug. 26, 2004

Effective date: Aug. 26, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 04-G-0688 approving revisions to Consolidated Edison Company of New York, Inc.'s (Con Edison) schedule for gas service—P.S.C. No. 9.

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

**Subject:** Service Classification No. 9—transportation services.

**Purpose:** To extend the current three-year Capacity Release Service Program for an additional year.

**Substance of final rule:** The Commission approved a request by Consolidated Edison Company New York, Inc. to extend its current three-year Capacity Release Service program for an additional 12 month period commencing November 1, 2004 and ending on October 31, 2005.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(04-G-0688SA1)

## NOTICE OF ADOPTION

**Delivery Rates by New York State Electric & Gas Corporation****I.D. No.** PSC-27-04-00017-A**Filing date:** Aug. 26, 2004**Effective date:** Aug. 26, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 01-E-0359 approving revisions to New York State Electric & Gas Corporation's (NYSEG) tariff schedule, P.S.C. No. 120—Electricity.

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

**Subject:** Tariff filing.

**Purpose:** To establish new delivery rates for Service Classification Nos. 1 and 2.

**Substance of final rule:** The Commission approved New York State Electric & Gas Corporation's tariff amendments to establish new fixed delivery rates for Service Classification No. 1 (Residential) and No. 2 (Small General Service with Demand) in compliance with Commission's Order Directing Rate Design and Revenue Allocation issued November 22, 2002.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(01-E-0359SA15)

## NOTICE OF ADOPTION

**Rate Enrollment Rules and Procedures by New York State Electric & Gas Corporation****I.D. No.** PSC-27-04-00018-A**Filing date:** Aug. 26, 2004**Effective date:** Aug. 26, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 01-E-0359 approving revisions to New York State Electric & Gas Corporation's (NYSEG) tariff schedule, P.S.C. No. 120—Electricity.

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

**Subject:** Tariff filing.

**Purpose:** To establish rate enrollment period rules and procedures.

**Substance of final rule:** The Commission approved New York State Electric & Gas Corporation's tariff amendments to establish rate enrollment period procedures effective October 1, 2004 through December 31, 2004 and during the second two-year commodity period of January 1, 2005 through December 31, 2006.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(01-E-0359SA14)

## NOTICE OF ADOPTION

**Surcharge to Collect Revenues Lost by Rochester Gas and Electric Corporation****I.D. No.** PSC-27-04-00020-A**Filing date:** Aug. 30, 2004**Effective date:** Aug. 30, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 03-E-0765 authorizing Rochester Gas and Electric Corporation (RG&E) to implement a retail access surcharge to collect lost revenues.

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

**Subject:** Electric service revenue shortfall.

**Purpose:** To collect revenues lost as a result of delaying the implementation of the retail access surcharge from May 1, 2004 to May 28, 2004.

**Substance of final rule:** The Commission approved Rochester Gas and Electric Corporation's request to implement a surcharge to collect lost revenues as a result of delaying the implementation of the retail access surcharge from May 1, 2004 to May 28, 2004.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(03-E-0765SA2)

## NOTICE OF ADOPTION

**Project Financing, Transfer of Ownership Interest, Waiver of Filing Requirements and Lightened Regulation by Pinelawn Power LLC****I.D. No.** PSC-27-04-00022-A**Filing date:** Aug. 26, 2004**Effective date:** Aug. 26, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 04-E-0734 approving Pinelawn Power LLC's (Pinelawn) request for lightened regulation and financing.

**Statutory authority:** Public Service Law, sections 4(1), 69, 70 and 110

**Subject:** Order for regulatory regime.

**Purpose:** To provide lightened regulation and financing for the construction and operation of the proposed 79.9 megawatt electric generating facility.

**Substance of final rule:** The Commission authorized Pinelawn Power LLC (Pinelawn) to borrow up to \$140 million to finance the construction of its generation facility located in the Town of Babylon, Suffolk County and granted Pinelawn's request to be lightly regulated as an electric corporation operating in the competitive wholesale market, subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(04-E-0734SA1)

## NOTICE OF ADOPTION

**Proposed Methodology by Rochester Gas and Electric Corporation****I.D. No.** PSC-27-04-00027-A**Filing date:** Aug. 26, 2004**Effective date:** Aug. 26, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 03-G-0766 approving and modifying Rochester Gas and Electric Corporation's (RG&E) proposed method to surcharge or refund revenue and approving RG&E's method for recovering the change in calculated gas expense.

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

**Subject:** Commission's order adopting provisions of joint proposals with condition.

**Purpose:** To surcharge or refund revenue changes and recover the change in calculated gas expense.

**Substance of final rule:** The Commission approved with modifications Rochester Gas and Electric's (RG&E) proposed methodology to surcharge or refund revenue changes resulting from delaying the implementation of tariff amendments from the Commission's May 20, 2004 Order and approved RG&E's proposed methodology for recovering the change in calculated gas expense resulting from its updated gas Factor of Adjustment, subject to the terms and conditions set forth in the Order.

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

**Text of rule may be obtained from:** Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-G-0766SA2)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Interconnection of Networks by Citizens Telecommunications of New York, Inc. d/b/a Frontier Citizens Communications of New York and Time Warner Telecom-NY, L.P.****I.D. No.** PSC-37-04-00009-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 modification filed by Citizens Telecommunications of New York, Inc. d/b/a Frontier Citizens Communications of New York and Time Warner Telecom-NY, L.P. to revise the mutual traffic exchange agreement effective on July 11, 2001.

**Statutory authority:** Public Service Law, section 94(2)

**Subject:** Interconnection of networks at mutually agreed upon points of interconnection to exchange local traffic.

**Purpose:** To amend the mutual traffic exchange agreement.

**Substance of proposed rule:** The Commission approved a Mutual Traffic Exchange Agreement between Citizens Telecommunications of New York, Inc. d/b/a Frontier Citizens Communications of New York and Time Warner Telecom-NY, L.P. in April 2001. The companies subsequently have jointly filed amendments to clarify the Local/EAS Interconnection Network Arrangements Table. The Commission is considering these changes.

**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:** Jaelyn A. Brillig, 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. (03-C-1273SA2)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Interconnection of Networks by Citizens Telecommunications of New York, Inc. and KMC Telecom V, Inc.****I.D. No.** PSC-37-04-00010-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, a modification filed by Citizens Telecommunications of New York, Inc. and KMC Telecom V, Inc. to revise the mutual traffic exchange agreement effective on April 9, 2004.

**Statutory authority:** Public Service Law, section 94(2)

**Subject:** Interconnection of networks at mutually agreed upon points of interconnection to exchange local traffic.

**Purpose:** To amend the mutual traffic exchange agreement.

**Substance of proposed rule:** The Commission approved a Mutual Traffic Exchange Agreement between Citizens Telecommunications of New York, Inc. and KMC Telecom V, Inc. in April 2004. The companies subsequently have jointly filed amendments to clarify the Local/EAS Interconnection Network Arrangements Table. The Commission is considering these changes.

**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:** Jaelyn A. Brillig, 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-C-0240SA2)

**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Interconnection of Networks by Sprint Communications Company L.P. and Pattersonville Telephone Company, et al. (Independent Local Exchange Carriers)****I.D. No.** PSC-37-04-00011-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Sprint Communications Company L.P. and Pattersonville Telephone Company; Dunkirk & Fredonia Telephone Company; Casadaga Telephone Corporation; State Telephone Company; Ontario Telephone Company, Inc.; Trumansburg Telephone Company, Inc.; and Berkshire Telephone Corporation (independent local exchange carriers) for approval of a mutual traffic exchange agreement executed on July 23, 2004.

**Statutory authority:** Public Service Law, section 94(2)

**Subject:** Interconnection of networks for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement.

**Substance of proposed rule:** Sprint Communications Company L.P. and Independent Local Exchange Carriers have reached a negotiated agreement whereby Sprint Communications Company L.P. and Independent

Local Exchange Carriers will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(04-C-0971SA1)

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

**Interconnection of Networks by Citizens Telecommunications of New York, Inc. and Choice One Communications of New York, Inc.**

**I.D. No.** PSC-37-04-00012-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposed filed by Citizens Telecommunications Company of New York, Inc. and Choice One Communications of New York, Inc. for approval of a mutual traffic exchange agreement executed on July 12, 2004.

**Statutory authority:** Public Service Law, section 94(2)

**Subject:** Interconnection of networks for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement.

**Substance of proposed rule:** Citizens Telecommunications Company of New York, Inc. and Choice One Communications of New York, Inc. have reached a negotiated agreement whereby Citizens Telecommunications Company of New York, Inc. and Choice One Communications of New York, Inc. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(04-C-0972SA1)

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

**Interconnection of Networks by Frontier Communications of New York, Inc. and Global NAPs, Inc.**

**I.D. No.** PSC-37-04-00013-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Frontier Communications of New York, Inc. and Global NAPs, Inc. for approval of an interconnection agreement executed on May 27, 2003.

**Statutory authority:** Public Service Law, section 94(2)

**Subject:** Interconnection of networks for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement.

**Substance of proposed rule:** Frontier Communications of New York, Inc. and Global NAPs, Inc. have reached a negotiated agreement whereby Frontier Communications of New York, Inc. and Global NAPs, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until May 27, 2005, or as extended.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(04-C-0974SA1)

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

**Interconnection of Networks by Supra Telecommunications and Information Systems, Inc. and Verizon New York Inc.**

**I.D. No.** PSC-37-04-00014-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Supra Telecommunications and Information Systems, Inc. and Verizon New York Inc. for approval of an interconnection agreement executed on July 9, 2004.

**Statutory authority:** Public Service Law, section 94(2)

**Subject:** Interconnection of networks for local exchange service and exchange access.

**Purpose:** To review the terms and conditions of the negotiated agreement.

**Substance of proposed rule:** Supra Telecommunications and Information Systems, Inc. and Verizon New York Inc. have reached a negotiated agreement whereby Supra Telecommunications and Information Systems, Inc. and Verizon New York Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 23, 2005, or as extended.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(04-C-0988SA1)

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

**Correction of Tariff Errors by the Village of Silver Springs**

**I.D. No.** PSC-37-04-00015-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by the Village of Silver Springs to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 1.

**Statutory authority:** Public Service Law, sections 65, 66(1), (12), (12-a)

**Subject:** Correction of tariff errors contained in the Village of Silver Springs' minor rate case filing approved by the commission in an order issued July 7, 2004 in Case 04-E-0269.

**Purpose:** To correct tariff errors.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, modify, or reject, in whole or in part, a petition filed by the Village of Silver Springs to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service—P.S.C. No. 1.

**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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(04-E-0269SA2)

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

**Working Capital Facility Financing by AES Eastern Energy, L.P.**

I.D. No. PSC-37-04-00016-P

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

**Proposed action:** The Public Service Commission is considering whether to grant the petition of AES Eastern Energy, L.P. for approval of a financing in the form of a \$75,000,000 working capital facility.

**Statutory authority:** Public Service Law, section 69

**Subject:** Working capital facility financing under lightened regulation.

**Purpose:** To approve a working capital facility financing under lightened regulation.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant the petition of AES Eastern Energy, L.P. for approval of a financing in the form of \$75,000,000 working capital facility. The Commission may grant, deny or modify the relief requested.

**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. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(04-E-1009SA1)

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

**Liquefied Natural Gas (LNG)**

I.D. No. PSC-37-04-00017-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 Parts 10 and 259 of Title 16 NYCRR.

**Statutory authority:** Public Service Law, section 66(1)

**Subject:** Liquefied natural gas (LNG).

**Purpose:** To bring the safety standards for LNG facilities into conformance with recent amendments to the counterpart Federal regulations contained in 49 CFR 193, and update certain codes and standards that are incorporated by reference to the current editions.

**Text of proposed rule:** Title 16, NYCRR, Chapter III, Gas Utilities, Subchapter C, Safety, Part 259 and Chapter I, Rules of Procedure, Part 10, Referenced Material, Sections 10.2 and 10.3 are revised as follows:

259.1 Scope.

This Part prescribes *minimum* safety standards for all LNG facilities within the State of New York, except those facilities subject to the jurisdiction of the Federal Energy Regulatory Commission, or otherwise exempted under 49 CFR 193.2001(b).

259.2 Compliance with standard code.

All LNG facilities within the State of New York shall, except as otherwise provided in this Part, conform to title 49, Code of Federal Regulations, part 193, Liquefied Natural Gas Facilities; Federal Safety Standard (*as described in Section 10.2 of the Title*). [as it is currently in effect and as it may hereafter be amended.]

259.3 Notification of proposed construction.

(a) Initial report. At least 90 days prior to the start of construction or reconstruction of any LNG facility, each gas corporation shall file with the [Albany Office of the gas division of this] *Office of Gas and Water of the* [New York State] Department of Public Service, a letter of intent, together with the design data and the specifications for the proposed facility. The [gas division] *Office of Gas and Water* staff shall also be promptly notified of any significant change affecting the initial filing, which may occur after the submission of the initial filing.

(b) Final report. Before any LNG facility is placed in operation, a report shall be filed with the [Albany Office of the gas division] *Office of Gas and Water of the* [New York State] Department of Public Service certifying that the facility has been constructed and tested in accordance with the requirements of this Part. A summary of the results of all tests shall accompany the final report.

259.4 Procedures.

Each gas corporation shall file with the [Albany Office of the gas division] *Office of Gas and Water of the* [New York State] Department of Public Service its written procedures established in compliance with 49 CFR part 193.2503, 2509, 2513, and 2605. Revisions to these written procedures shall be submitted to the [gas division in Albany] *Office of Gas and Water*.

259.5 Reports of accidents or leaks.

(a) Each gas corporation shall report all accidents that may involve LNG facilities as a causal factor that involve injury or death to any person, any damage to the property of others, significant damage to plant property, or would cause public concern if reported by the communications media. All such accidents shall be immediately reported by telephone to the [gas division] *Office of Gas and Water of the* [New York State] Department of Public Service through its emergency notification system. A written report shall detail, in chronological sequence, all events related to the accident, including a description of the accident itself, the cause, and the type of response by the gas corporation to the accident as well as all proposed remedial action to be taken to the prevent recurrence.

(b) Each corporation shall immediately report all unplanned spills or leaks that:

- (1) require taking any segment of pipeline or process area out of service;
- (2) result in ignition injury or death;
- (3) cause failure of a structural support; or
- (4) in the judgment of the operator, could cause public concern because of coverage by the news media.

(c) Each gas corporation shall file with the [Albany office of the gas division] *Office of Gas and Water* and the municipality within which its LNG facilities are located, the names, addresses, and telephone numbers of responsible corporate officials who may be contacted in the event of an emergency. Said filing is required by January 31st of each year. In the vent of any changes during the year, immediate notification shall be given to the [gas division] *Office of Gas and Water* and the effected municipality.

259.6 Internal shut off valves.

Notwithstanding section 259.1 of this part, any LNG tank temporarily taken out of service and purged to atmosphere shall [meet] *be fitted with an internal shutoff valve meeting the requirements of NFPA 59A Section 6.3.3.3 (as described in Section 10.3 of this Title)*. [paragraphs 193.21959(c) and (d) of 49 CFR part 193] prior to being put back into service.

§ 10.2 Federal Regulations.

(a) The regulations referred to in this subdivision are available from the U.S. Department of Transportation, Information Service Division, 400 Seventh Street SW, Washington, DC 20590. They are available for inspection and copying at the Public Service Commission's Office, Empire State Plaza, Building 3, Albany, NY 12223-1350. The regulations referred to in this Title are:

(4) 49 CFR part 193, Liquefied Natural Gas Facilities: Federal Safety Standards (Revised as of October 1, [1997] 2004).

§ 10.3 Other Information.

(b) The standards referred to in this subdivision are published by and available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. They are available for inspection and copying at the Public Service Commission's Office, Empire State Plaza, Building 3, Albany, NY 12223-1350. The standards referenced in this Title are:

(5) NFPA 59A, Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG) ([1996] 2001 edition)

**Text of proposed rule and any required statements and analyses may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (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.

**Consensus Rule Making Determination**

This rule is being proposed as a Consensus Rule Making because Staff discussed the changes with the affected parties who stated they would have no objections to the amendments. The affected parties are aware that the amendments to Part 259 will conform to the current Federal Regulations contained in Title 49, Code of Federal Regulations (CFR), Part 193, Liquefied Natural Gas Facilities.

**Job Impact Statement**

This agency finds that the proposed amendments will bring Part 259 into conformance with recent amendments to the counterpart Federal Regulations contained in 49 CFR Part 193, and the amendments should not have any impact on job and employment opportunities.

(04-G-0544SA1)

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

**Waiver of the Commission's Regulations Governing Gas Cost Adjustment Clauses by Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York, et al.**

**I.D. No.** PSC-37-04-00018-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by the Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KeySpan) seeking waiver of the commission's regulations governing gas cost adjustment clauses with regard to a gas purchase agreement between KeySpan Energy Delivery Long Island and an affiliate, KeySpan Ravenswood, LLC.

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

**Subject:** Waiver of the commission's regulations governing gas cost adjustment clauses.

**Purpose:** To approve the waiver.

**Substance of proposed rule:** 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 and KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KeySpan) seeking a waiver of the Commission's regulations governing gas cost adjustment clauses with regard to a gas purchase

agreement between KeySpan Energy Delivery Long Island and an affiliate, KeySpan Ravenswood, LLC.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(04-G-1010SA1)

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

**Submetering of Natural Gas Service to Industrial and Commercial Customers by Syska Hennessy Group**

**I.D. No.** PSC-37-04-00019-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 Syska Hennessy Group on behalf of The Economic Development Corporation of New York City, for permission to submeter gas service to commercial and industrial gas customers at the Bush Terminal Bldg. 57, Brooklyn, NY.

**Statutory authority:** Public Service Law, section 65(1)-(5), (8)-(10), (12) and (14)

**Subject:** Submetering of natural gas service to industrial and commercial customers.

**Purpose:** To submeter natural gas service to commercial and industrial customers.

**Substance of proposed rule:** Syska Hennessy Group has filed a petition on behalf of The Economic Development Corporation of New York City to submeter gas to industrial and commercial tenants located at Bush Terminal Building No. 57, Brooklyn, New York. The Commission may approve, reject, or modify, in whole or in part, this 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, 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-G-1011SA1)

**Racing and Wagering Board**

**NOTICE OF EXPIRATION**

The following notice has expired and cannot be reconsidered unless the Racing and Wagering Board publishes a new notice of proposed rule making in the *NYS Register*.

**Submission of Veterinarian Treatment Records**

I.D. No.	Proposed	Expiration Date
RWB-34-03-00004-P	August 27, 2003	August 26, 2004

## Department of State

### EMERGENCY RULE MAKING

#### Cease and Desist Zone for Real Estate Brokers and Salespersons

**I.D. No.** DOS-37-04-00006-E

**Filing No.** 975

**Filing date:** Aug. 31, 2004

**Effective date:** Aug. 31, 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 Community Districts 9, 10, 11 and 12 of the Bronx 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 Community Districts 9, 10, 11 and 12 of the Bronx.

**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:

<i>Zone</i>	<i>Expiration Date</i>
<i>County of Bronx</i>	<i>August 1, 2009</i>

*Within the County of Bronx as follows:*

*All that area of land in the County of Bronx, City of New York, otherwise known as Community Districts 9, 10, 11 and 12, and bounded and described as follows: Beginning at a point at the intersection of Bronx County and Westchester County boundary and Long Island Sound; thence southerly along Long Island Sound while including City Island to East River; thence westerly and northwesterly along East River to Bronx River; thence northwesterly and northerly along Bronx River to Sheridan Expressway; thence northeasterly along Sheridan Expressway to Cross Bronx Expressway; thence southeasterly and easterly along Cross Bronx Expressway to Bronx River Parkway; thence northerly and northeasterly along Bronx River Parkway to East 233rd Street; thence westerly along East 233rd Street to Van Cortlandt Park East; thence northerly along Van Cortlandt Park East to the boundary of Westchester County and Bronx County; thence easterly along the boundary of Westchester County and Bronx County to Long Island Sound 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 November 28, 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)(c) 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 June 10, 2004, the Secretary of State has determined that some homeowners within Community Districts 9, 10, 11 and 12 of the Bronx 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 generates 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 Community Districts 9, 10, 11 and 12 of the Bronx 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 at P.S. 14, 3041 Bruckner Blvd. in the Bronx on June 10, 2004. At the public hearing testimony was given by community leaders who spoke on behalf of their constituents. Speakers included Assemblyman Stephen Kaufman, James Vacca of Community Board 10, representatives of homeowners associations and representatives of civic associations within the affected areas of the proposed zone. 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 proposed zone. 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 Community Districts 9, 10, 11 and 12 of the Bronx 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-four homeowner's statements were filed for the previous cease-and-desist list, which expired on September 1, 2004.

##### 4. Costs:

###### a. Costs to regulated parties:

Regulated parties include licensed real estate brokers and salespersons who do residential sales in Community Districts 9, 10, 11 and 12 of the Bronx. There are approximately 1,350 real estate brokers and approximately 2,100 real estate salespersons with offices in the Bronx.

The Department of State will have the cease-and-desist list available, at no cost, on its web site, [www.dos.state.ny.us](http://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 NYCRR Section 175.17(c)(5). Copies will also be made available for inspection and copying at Department of State offices.

The Department of State expects that most licensees will access the list, at no cost, on the Department's web site. However, some licensees may 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 the Bronx.

Some real estate brokers may use commercial mailing lists to solicit, and, for those brokers, the cease-and-desist list may increase the cost of using a commercial mailing list because the broker will have to invest time and expense to delete the addresses that appear in the cease-and-desist list. The Department of State is not, however, 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 available to the broker, and the broker's cost for technology and labor. On the other hand, there may be some savings resulting from the elimination of "unproductive addresses" from the list.

If a broker uses the telephone, delivery services or 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 who may be on the list. There is, of course, a cost associated with that expenditure of the time taken to check the list. On the other hand, there may be some savings resulting from the elimination of unproductive calls or deliveries. Whether there is a net cost or savings will depend on the circumstances and practices of each broker. Accordingly, 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 section 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 commonly known as Community Districts 9, 10, 11 and 12 of the Bronx. There are approximately 1,350 real estate brokers and approximately 2,100 real estate salespersons in the Bronx. 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 deal only with commercial properties, and those who do not deal in residential 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 the Bronx 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 June 10, 2004, at P.S. 14, 3041 Bruckner Blvd. in the Bronx. The time, date and place of the public hearing was well advertised within the affected communities. Testifying at the hearing on behalf of their constituents were Assemblyman Stephen Kaufman, James Vacca of Community Board 10, representatives of homeowners associations and representatives of civic associations from within the affected communities.

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 Community Districts 9, 10, 11 and 12 of the Bronx, and this rule only affects those real estate brokers and salespersons who do business in that community.

Community Districts 9, 10, 11 and 12 of the Bronx are not rural 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 Community Districts 9, 10, 11 and 12 of the Bronx 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.

**EMERGENCY  
RULE MAKING**

**Cease and Desist Zone for Real Estate Brokers and Salespersons**

**I.D. No.** DOS-37-04-00007-E

**Filing No.** 976

**Filing date:** Aug. 31, 2004

**Effective date:** Aug. 31, 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 two public hearings, the Secretary of State has determined that some owners of residential property in the Borough of Queens 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 Borough of Queens.

**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:

<i>Zone</i>	<i>Expiration Date</i>
<i>County of Queens</i>	<i>August 1, 2009</i>

**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 November 28, 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)(c) 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 hearings on May 20, 2004, and on May 27, 2004, the Secretary of State has determined that some homeowners within the Borough of Queens 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 generates 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 Borough of Queens 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:

Public hearings were held in the Borough of Queens at P.S. 18, 86-35 235th Court, Bellrose, on May 20, 2004, and at P.S. 63, 90-15 Sutter Avenue, Ozone Park on May 27, 2004. At the public hearings testimony was given by community leaders who spoke on behalf of their constituents. Speakers included State Senator Frank Padavan, State Senator Serphin Maltese, Assemblywoman Audrey Pheffer, and Alexandra Rosa, Chief of Staff for Borough President, as well as representatives of homeowners associations and representatives of civic associations from within the Borough of Queens. 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 proposed zone. 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 Borough of Queens 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. Approximately 12,000 homeowner’s statements were filed for the previous cease-and-desist list, which expired on September 1, 2004.

4. Costs:

a. Costs to regulated parties:

Regulated parties include licensed real estate brokers and salespersons who do residential sales in the Borough of Queens. There are approximately 4,800 real estate brokers and approximately 10,000 real estate salespersons with offices in the Borough of Queens.

The Department of State will have the cease-and-desist list available, at no cost, on its web site, [www.dos.state.ny.us](http://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 NYCRR Section 175.17(c)(5). Copies will also be made available for inspection and copying at Department of State offices.

The Department of State expects that most licensees will access the list, at no cost, on the Department’s web site. However, some licensees may 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 the Borough of Queens.

Some real estate brokers may use commercial mailing lists to solicit, and, for those brokers, the cease-and-desist list may increase the cost of using a commercial mailing list because the broker will have to invest time

and expense to delete the addresses that appear in the cease-and-desist list. The Department of State is not, however, 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 available to the broker, and the broker's cost for technology and labor. On the other hand, there may be some savings resulting from the elimination of "unproductive addresses" from the list.

If a broker uses the telephone, delivery services or 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 who may be on the list. There is, of course, a cost associated with that expenditure of the time taken to check the list. On the other hand, there may be some savings resulting from the elimination of unproductive calls or deliveries. Whether there is a net cost or savings will depend on the circumstances and practices of each broker. Accordingly, 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		
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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 throughout the Borough of Queens. There are approximately 4,800 real estate brokers and approximately 10,000 real estate salespersons in the Borough of Queens. 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 deal only with commercial properties, and those who do not deal in residential 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 the Borough of Queens 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 open public hearings in the Borough of Queens on May 20, 2004, and on May 27, 2004. The time, date and place of the public hearing was well advertised within the affected communities. At the public hearings testimony was given by community leaders who spoke on behalf of their constituents. Speakers included State Senator Frank Padavan, State Senator Serphin Maltese, Assemblywoman Audrey Pheffer, and Alexandra Rosa, Chief of Staff for Borough President, as well as representatives of homeowners associations and representatives of civic associations from within the Borough of Queens.

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 Borough of Queens, and this rule only affects those real estate brokers and salespersons who do business in that community.

The Borough of Queens is not rural 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 Borough of Queens 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.