

# 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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## Department of Agriculture and Markets

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

**Ammonium Nitrate and Regulated Ammonium Nitrate Materials**  
I.D. No. AAM-33-06-00017-P

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

**Proposed action:** Addition of Part 154 to Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 18(6) and 146-f

**Subject:** Ammonium nitrate and regulated ammonium nitrate materials.

**Purpose:** To implement L. 2005, ch. 620 relating to ammonium nitrate and regulated ammonium nitrate materials.

**Text of proposed rule:** A new Part 154 is added to Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York to read as follows:

#### Part 154

##### Ammonium Nitrate Security

154.1 Definitions. For the purposes of this Part the following terms shall have the following meanings:

a. "Ammonium nitrate" means chiefly the ammonium salt of nitric acid. It shall not contain less than thirty-three percent nitrogen, one-half of which is the ammonium form and one-half of which is the nitrate form.

b. "Regulated ammonium nitrate materials" shall mean fertilizer product in solid form, comprising a mixture of components, one of which is ammonium nitrate, in circumstances where the nitrogen content derived from ammonium nitrate is more than twenty-eight percent of the material by weight.

c. "Ammonium nitrate retailer" means any person or entity in this state that sells, offers for sale, or otherwise makes available, ammonium nitrate or regulated ammonium nitrate materials.

154.2 Registration. (a) No person or entity in this state shall sell, offer for sale or otherwise make available ammonium nitrate or ammonium nitrate materials unless registered annually with the commissioner. Application for registration shall be made by completing and submitting the following form to the commissioner, together with an annual registration fee of fifty dollars, provided, however, that retailers who pay fees under this article shall be exempt from such fee:

See Appendix.

(b) Every person or entity selling, offering for sale or otherwise making available ammonium nitrate or ammonium nitrate materials shall post and display at all times their registration certificate in a conspicuous place in the room where such business is carried on so that all persons visiting such place may readily see the same.

154.3 Security measures. Ammonium nitrate and regulated ammonium nitrate materials, while at all facilities whose owners and/or operators are required to be registered, shall be secured to provide reasonable protection against vandalism, theft or other unauthorized access. Such measures shall include, but not be limited to, ensuring that storage facilities are fenced or otherwise enclosed and locked when unattended and are inspected daily for signs of attempted entry, vandalism and structural integrity. An ongoing process of inventory control for ammonium nitrate and regulated ammonium nitrate materials stored at the facility shall be established and maintained.

154.4 Records. (a) Persons and entities required to be registered shall make and maintain, for a minimum of two years, a record in the following format for every sale of ammonium nitrate and regulated ammonium nitrate materials:

See Appendix.

(b) Forms of identification. Acceptable forms of identification are a valid driver's license or non-driver identification card issued by the New York State Commissioner of Motor Vehicles, the Federal Government, a state government, commonwealth, possession or territory of the United States or a provincial government of Canada; a valid passport of the United States or any other country; or valid United States military identification.

(c) Access to records. Persons and entities selling ammonium nitrate and regulated ammonium nitrate materials shall provide officers and employees of the New York State Department of Agriculture and Markets and the New York State Office of Homeland Security with access to records of such sales.

**Text of proposed rule and any required statements and analyses may be obtained from:** Robert Mungari, Director of Plant Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-2087

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

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

#### Regulatory Impact Statement

1. Statutory authority:

Section 18(6) of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and the performance of the duties of the Department.

Section 146-f of the Agriculture and Markets Law provides that the Commissioner, in consultation with or upon the recommendation of, the Director of Homeland Security, may: set forth criteria for the registration of sellers of ammonium nitrate; suggest security measures; specify picture identification cards for purchaser identification; set forth additional records that must be maintained; and determine what regulated ammonium nitrate materials warrant regulation based on the potential explosive capacity of its ammonium nitrate content.

Section "3" of Chapter 620 of the Laws of 2005, by which Agriculture and Markets Law section 146-f was enacted, provides that any rules and regulations necessary to implement the provisions of the Act on its effective date are authorized and directed to be promulgated on or before such effective date.

#### 2. Legislative objectives:

The rule accords with the public policy objectives the Legislature sought to advance by enacting the above statutory authority in that it was developed in consultation with the State Office of Homeland Security and: sets forth criteria for the registration of sellers of ammonium nitrate; suggests security measures; specifies picture identification cards for purchaser identification; sets forth additional records that must be maintained; and determines what regulated ammonium nitrate materials warrant regulation based on the potential explosive capacity of its ammonium nitrate content.

#### 3. Needs and benefits:

This rule is necessary for the preservation of the public health, public safety and general welfare because it implements Chapter 620 of the Laws of 2005, effective November 28, 2005 which requires the registration of persons and entities in New York State that sell, offer for sale or otherwise make available ammonium nitrate or regulated ammonium nitrate materials. Ammonium nitrate is a common chemical compound used in fertilizer, but which is also an explosive chemical used to make bombs such as those used in the 1993 World Trade Center and 1995 Oklahoma City bombings.

This rule, which has been developed in consultation with the State Office of Homeland Security, establishes the form for registering as a seller of ammonium nitrate and regulated ammonium nitrate materials, as defined in the rule. It also establishes the security measures that must be taken by those required to register and the format for making and maintaining records of the sale of ammonium nitrate and regulated ammonium nitrate materials.

It is imperative that the requirements of Chapter 620 of the Laws of 2005 for the registration, security measures and recordkeeping be implemented immediately. The adoption of this rule will make this possible.

#### 4. Costs:

##### (a) Costs to regulated parties:

The costs to regulated parties of completing and submitting the registration form are expected to be minimal. The form is similar to that of the application for a license to distribute commercial fertilizer. As a result, the format of the ammonium nitrate registration form will be familiar to the registrants who already hold commercial fertilizer licenses. Those licensees, since they already pay fees under Agriculture and Markets Law Article 10, are exempt from the fifty dollar annual ammonium nitrate registration fee.

The costs to regulated parties of completing and maintaining the record for the sale of ammonium nitrate and ammonium nitrate materials, as required by Chapter 620 of the Laws of 2005, is also expected to be minimal, given the fact that it can be executed as part of the sales transaction. The format for the record is designed to permit sellers of ammonium nitrate to record sale information by using check boxes where possible. It also organizes the information to be recorded in a sequence that will facilitate its use by sellers. By listing the permissible types of identification on the sale record, the rule is designed to assist sellers in meeting the requirements of Chapter 620 of the Laws of 2005.

It is anticipated that the cost of the security measures that must be taken by those required to be registered will vary with the size of the business and the extent of the security measures currently being taken. If a seller does not have its premises secured to provide reasonable protection against vandalism, theft or other unauthorized access, it could cost several thousand dollars, depending upon the size of the premises, to fence or otherwise enclose or lock storage facilities when they are unattended. Daily inspection for signs of attempted entry, vandalism and structural integrity and an ongoing process of inventory control are anticipated to be minimal

and to already to be part of the business management practices of most sellers.

##### (b) Cost to the agency, state and local governments:

There will be no costs to local government or to the State, other than the cost to the Department. The cost to the Department, in addition to processing the registration forms and inspecting sellers for compliance with the recordkeeping and security measure requirements will depend upon the number of sellers required to be registered pursuant to Chapter 620 of the Laws of 2005. That number is currently unknown.

##### (c) Source:

Costs are based upon the Department's experience with similar registration and inspection programs.

#### 5. Local government mandates:

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

#### 6. Paperwork:

The rule establishes the form for persons who sell, offer for sale, or otherwise make available ammonium nitrate or regulated ammonium nitrate materials to use to register annually with the Department as required by Chapter 620 of the Laws of 2005.

The rule also establishes the format for the record of the sale of ammonium nitrate and regulated ammonium nitrate materials sellers are required to make and maintain for two years pursuant to Chapter 620 of the Laws of 2005.

#### 7. Duplication:

The rule does not duplicate, overlap or conflict with any other rule or other legal requirements of the State and federal governments.

#### 8. Alternatives:

The only alternative considered was to not establish the registration form and sales record format by regulation. That alternative was rejected in favor of establishing them by this rule so that the form could be formally adopted, published in the *State Register* and codified in 1 NYCRR. The remainder of the rule relates to security measures, types of identification cards, additional records and what type of regulated ammonium nitrate materials warrant regulation based on the potential explosive capacity of its ammonium nitrate content. These requirements were developed in consultation with the State Office of Homeland Security and were based on best practices in the industry and consultation with federal agencies knowledgeable about explosive materials.

#### 9. Federal standards:

The rule does not exceed any minimum standards of the federal government for the same or similar subject areas.

#### 10. Compliance schedule:

The rule establishes a form for immediate use by those who sell, offer for sale or otherwise make available ammonium nitrate or regulated ammonium nitrate materials to register with the Department, as required by Chapter 620 of the Laws of 2005.

It also establishes the format for the record of the sale of ammonium nitrate and regulated ammonium nitrate materials.

It is anticipated that sellers of these materials will be able to immediately register and begin making and maintaining records of sale. The Department has made mailings advising fertilizer dealers of the requirements of Chapter 620 of the Laws of 2005. Some of these dealers may sell ammonium nitrate and regulated ammonium nitrate materials. The majority of these sales will take place during the next growing season. It is also anticipated that sellers of these materials will be able to implement security measures to protect the inventories of ammonium nitrate they will acquire prior to the next growing season.

#### **Regulatory Flexibility Analysis**

##### 1. Effect of the rule:

There are 9 persons or entities in New York State known to sell ammonium nitrate, the majority of which are small businesses. Since such sellers are not currently subject to registration, the actual number of small businesses that sell ammonium nitrate is not known.

##### 2. Compliance requirements:

Persons and entities in New York State that sell, offer for sale or otherwise make available ammonium nitrate or regulated ammonium nitrate materials are required by Chapter 620 of the Laws of 2005 to register annually with the Department for a fee of not more than \$50.00. Said Chapter also requires such persons and entities to make and maintain, for a minimum of two years, a record of those purchasing ammonium nitrate. This rule establishes the form and format for such registration and recordkeeping. In addition, the rule requires that those selling ammonium nitrate display their registration certificate and take security measures to provide

reasonable protection against vandalism, theft or other unauthorized access. They are also required to provide officers and employees of the New York State Department of Agriculture and Markets and the New York State Office of Homeland Security with access to the records of ammonium nitrate sales.

3. Professional services:

None.

4. Compliance costs:

The costs to regulated parties of completing and submitting the registration form are expected to be minimal. The form is similar to that of the application for a license to distribute commercial fertilizer. As a result, the format of the ammonium nitrate registration form will be familiar to the registrants who already hold commercial fertilizer licenses. Those licensees, since they already pay fees under Agriculture and Markets Law Article 10, are exempt from the fifty dollar annual ammonium nitrate registration fee.

The costs to regulated parties of completing and maintaining the record for the sale of ammonium nitrate and ammonium nitrate materials, as required by Chapter 620 of the Laws of 2005, is also expected to be minimal, given the fact that it can be executed as part of the sales transaction. The format for the record is designed to permit sellers of ammonium nitrate to record sale information by using check boxes where possible. It also organizes the information to be recorded in a sequence that will facilitate its use by sellers. By listing the permissible types of identification on the sale record, the rule is designed to assist sellers in meeting the requirements of Chapter 620 of the Laws of 2005.

It is anticipated that the cost of the security measures that must be taken by those required to register will vary with the size of the business and the extent of the security measures currently being taken. If a seller does not have its premises secured to provide reasonable protection against vandalism, theft or other unauthorized access, it could cost several thousand dollars, depending upon the size of the premises, to fence or otherwise enclose or lock storage facilities when they are unattended. The cost of daily inspection for signs of attempted entry, vandalism and structural integrity and an ongoing process of inventory control are anticipated to be minimal and to already be part of the business management practices of most sellers.

5. Economic and technological feasibility:

Compliance with the rule is both economically and technologically feasible for the small businesses who sell, offer for sale, or otherwise make available ammonium nitrate materials. As discussed in "4" above, the registration and sale forms have been designed for ease of use by sellers of ammonium nitrate. The security measure that are required are similar to those that are anticipated to already to a part of the business management practices of most sellers.

6. Minimizing adverse impact:

The rule is designed to minimize any adverse economic impact the rule may have on small businesses by closely following the requirements of Chapter 286 of the Laws of 2005 establishing registration forms that are designed for ease of use by sellers of ammonium nitrate. The registration form is similar to the form currently used in the licensing of commercial fertilizer dealers. The sales record form is designed for ease of use in the course of sales transactions involving ammonium nitrate. The approaches for minimizing adverse impact suggest in SAPA § 202b(1) and other similar approaches were considered.

7. Small business and local government participation:

The Department has conducted outreach via mailings to the approximately 300 licensed commercial fertilizer distributors in New York State to advise them of Chapter 620 of the Laws of 2005 and of the fact that regulations would be proposed pursuant to that Chapter. The Department has also followed up by telephone with those known to handle ammonium nitrate.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers in rural areas:

The 9 persons or entities in New York State known to sell ammonium nitrate are located throughout the rural areas of the State.

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

Persons and entities in New York State that sell, offer for sale or otherwise make available ammonium nitrate or regulated ammonium nitrate materials that are small businesses are not likely to need professional services to comply with the rule. The rule establishes the form to use to register with the Department as required by Chapter 620 of the Laws of 2005. The form is similar to that of the application for a license to distribute commercial fertilizer. As a result, the format of the ammonium

nitrate registration form will be familiar to registrants who already hold commercial fertilizer licenses. Those licensees, since they already pay fees under Agriculture and Markets Law Article 10, are exempt from the fifty dollar annual ammonium nitrate registration fee.

The rule also establishes the format for the record of the sale of ammonium nitrate and ammonium nitrate materials required by Chapter 620 of the Laws of 2005. The format for this record is designed to permit sellers of ammonium nitrate to record sale information by using check boxes where possible. It also organizes the information to be recorded in a sequence that will facilitate its use by such sellers. By listing the permissible type of identification on the sale record, the rule is designed to assist sellers in meeting the requirements of Chapter 620 of the Laws of 2005 that the identity of those purchasing ammonium nitrate and regulated ammonium nitrate materials be verified and recorded.

The requirements in the rule requiring security measures be taken to provide reasonable protection against vandalism, theft or other unauthorized access are those commonly in use by small businesses to protect their inventory.

It is not anticipated that professional services are likely to be needed in a rural area to comply with the proposed rule.

3. Costs:

The costs to regulated parties of completing and submitting the registration form are expected to be minimal. The form is similar to that of the application for a license to distribute commercial fertilizer. As a result, the format of the ammonium nitrate registration form will be familiar to the registrants who already hold commercial fertilizer licenses. These licensees, since they already pay fees under Agriculture and Markets Law Article 10, are exempt from the fifty dollar annual ammonium nitrate registration fee. It is not anticipated there will be a variation in the cost for different types of public and private entities in rural areas.

The cost to regulated parties of completing and maintaining the record for the sale of ammonium nitrate and ammonium nitrate materials, as required by Chapter 620 of the Laws of 2005, is also expected to be minimal, given the fact that it can be executed as part of the sales transaction. The format of the record is designed to permit sellers of ammonium nitrate to record sale information by using check boxes where possible. It also organizes the information to be recorded in a sequence that will facilitate its use by sellers. By listing the permissible types of identification on the sale record, the rule is designed to assist sellers in meeting the requirements of Chapter 620 of the Laws of 2005. It is not anticipated that there will be a variation in such costs for different types of public and private entities in rural areas.

It is anticipated that the cost of the security measures that must be taken by those required to register will vary with the size of the business and the extent of the security measures currently being taken. If a seller does not have its premises secured to provide reasonable protection against vandalism, theft or other unauthorized access, it could cost several thousand dollars, depending upon the size of the premises, to fence or otherwise enclose or lock storage facilities when they are unattended. Daily inspection for signs of attempted entry, vandalism and structural integrity and an ongoing process of inventory control are anticipated to be minimal and to already be part of the business management practices of most sellers.

4. Minimizing adverse impact:

As set forth in "2" and "3" above, the rule is designed to minimize any adverse impact on rural areas, by making the forms established by the rule user friendly and directed and limited to that which is necessary to implement Chapter 620 of the Laws of 2005. The approaches suggested by SAPA § 202-bb(2) and other similar approaches were considered.

5. Rural area participation:

The Department has conducted an outreach by mail to 300 licensed fertilizer dealers trying to determine those that sell ammonium nitrate. The Department will be proposing this emergency rule for permanent adoption. Through the notice and comment process of the Administrative Procedure Act, regulated parties will have the opportunity to participate in the rule making process. The adoption of the rule on an emergency basis was necessary to implement Chapter 620 of the Laws of 2005 by the effective date of November 28, 2005.

**Job Impact Statement**

1. Nature of impact:

By providing for the protection of ammonium nitrate, while permitting its continued use as a fertilizer for agricultural and horticultural purposes, the rule will help preserve jobs and employment opportunities in those important economic sectors.

2. Categories and numbers affected:

The number of persons employed by the 9 known sellers of ammonium nitrate is not known.

3. Regions of adverse impact:

The sellers of ammonium nitrate and the agricultural and horticultural businesses that utilize ammonium nitrate as a fertilizer are located in the rural areas of the State. As noted in "1" above, the rule would have a positive impact on jobs and employment opportunities.

4. Minimizing adverse impact:

The rule was designed to minimize any unnecessary adverse impacts on existing jobs and to promote the development of new employment opportunities in that it will help keep fertilizer dealers that sell ammonium nitrate and their agricultural and horticultural customers in business. The rule was designed to minimize any adverse impact on sellers and customers by making the forms established by the rule easy to use and by limiting the rule to that which is necessary to implement Chapter 620 of the Laws of 2005.

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## Banking Department

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### EMERGENCY RULE MAKING

#### Overdraft Protection Fee Disclosure

**I.D. No.** BNK-33-06-00014-E

**Filing No.** 925

**Filing date:** Aug. 1, 2006

**Effective date:** Aug. 3, 2006

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

**Action taken:** Amendment of section 6.8 of Title 3 NYCRR.

**Statutory authority:** Banking Law, sections 14-h and 14-g

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

**Specific reasons underlying the finding of necessity:** Newly adopted Section 6.8 permits state chartered banks, trust companies and thrift institutions to provide overdraft protection programs, and charge fees related thereto, to the same extent as permitted for federally chartered banks and thrift institutions. The emergency rule is necessary to ensure that consumers receive a separate, clear and conspicuous notice regarding any such fees that will apply to a new or existing account.

**Subject:** Overdraft protection fee disclosure.

**Purpose:** To require a separate clear and conspicuous notice to an account holder if the account is or will be subject to newly permitted overdraft protection fees.

**Text of emergency rule:**

ADDITIONAL AUTHORITY OF BANKS, TRUST COMPANIES,  
SAVINGS BANKS AND SAVINGS AND LOAN ASSOCIATIONS

PURSUANT TO BANKING LAW, SECTIONS 14-g and 14-h

(Statutory Authority: Banking Law Sections 14-g, 14-h)

Section 6.8 of Part 6 of 3 NYCRR is amended to read as follows:

§ 6.8 Overdraft Protection Charges.

a. The Banking Board hereby finds that the promulgation of this section is consistent with the policy of the State of New York as declared in section 10 of the New York Banking Law and thereby protects the public interest, including the interests of depositors, creditors, shareholders, stockholders and consumers and is necessary to achieve or maintain parity between banks and trust companies and national banks, and between savings banks and savings and loan associations and federal savings associations, with respect to rights, powers, privileges, benefits, activities, loans, investments or transactions.

b. The Banking Board hereby finds that title 12, United States Code, section 24 (Seventh) permits national banks to lend money. Title 12, United States Code, section 1464 permits federal savings associations to accept deposits.

c. The Banking Board hereby finds that title 12, Code of Federal Regulations, Section 7.4002 provides that national banks may impose charges and fees on their customers, and title 12, Code of Federal Regulations, Section 557.12(f) allows federal savings associations to impose

charges and fees regardless of any state laws. The Office of the Comptroller of the Currency and the Office of Thrift Supervision, in interpreting these sections, permit national banks and federal savings associations, respectively, to impose greater daily charges in connection with overdraft protection programs than is otherwise allowed under New York Banking Law for banks and trust companies, savings banks and savings and loan associations. (See Joint Guidance on Overdraft Protection Programs, 70 Federal Register 9127 (February 24, 2005), applicable to banks and trust companies and Guidance on Overdraft Protection Programs, 70 Federal Register 8428 (February 18, 2005), applicable to savings banks and savings and loan associations.)

d. Notwithstanding any other provision of law or regulation, State-chartered banks and trust companies, and savings banks and savings and loan associations may impose charges, in addition to the charge provided for in Part 32.1(a), for paying or accepting checks or other written orders drawn on, or effectuating electronic transactions from, accounts containing insufficient funds in cases in which the drawer of the check or other written order, or the account holder seeking to effectuate the electronic transaction, does not have a written agreement for an overdraft line of credit pursuant to Sections 108(5), 235(8-b) or 380(2) of the Banking Law to the same extent, and subject to the same conditions, as national banks and federal savings associations, respectively.

e. *Commencing no later than May 3 2006, state-chartered banks and trust companies, savings banks, and savings and loan associations shall provide a separate clear and conspicuous notice to a customer at the time he or she opens an account or to a current account holder at least once if such account will be subject to charges for covering overdrafts as described in subsection (d) of this section. Such notice shall provide clear disclosure and explanation of the parameters, costs and limitations of overdraft protection, including the charges which may be incurred by the customer and how such charges would be calculated.*

**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 October 29, 2006.

**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. Sections 14-g and 14-h of the Banking Law authorize the Banking Board to adopt a rule or regulation permitting, respectively, banks and trust companies, and savings banks and savings and loan associations (hereafter "banking institutions"), to exercise the same rights and powers and engage in the same activities as, respectively, national banks and federal savings associations on substantively the same terms and conditions, to the extent that the Banking Law or other state law does not so authorize such rights, powers and activities for such banking institutions. However, sections 14-g and 14-h also authorize the Banking Board, in authorizing such rights, powers and activities, to impose by rule or regulation conditions or limitations in addition to those that imposed pursuant to federal law to the extent the Board determines necessary or appropriate.

2. Legislative objectives. The Legislature intended that sections 14-g and 14-h of the Banking Law allow State-chartered banking institutions, by Banking Board adoption of rules and regulation, to exercise the same rights and powers, and engage in the same activities as federally chartered banking institutions without requiring that the Legislature enact additional amendments to the Banking Law. Presumably, if other provisions of the Banking Law or other state law did not empower State chartered banking institutions to do the same things or to the same extent as federally chartered banking institutions, or even conflicted with the authorizations granted federally chartered banking institutions to do so, sections 14-g and 14-h were intended to permit the Banking Board by rule or regulation to enable State chartered banking institutions to so operate in the same fashion as federally chartered institutions.

3. Needs and benefits. In order that the account disclosures and required information therein addressed by the federal Guidances on Overdraft Protection Programs (Joint Guidance on Overdraft Protection Programs, 70 Federal Register 9127 (February 23, 2005), and Guidance on Overdraft Protection Programs, 70 Federal Register 8428 (February 18, 2005) and the federal regulations pertaining to the Truth in Savings Act (Regulation DD, 12 CFR Part 230)) be clearly set forth to customers and account holders, the emergency rule requires State chartered banking institutions to provide a separate disclosure regarding any bounce protection

that will apply to a new or existing account, beyond the one-time fee previously permitted by the Department's regulations. The information contained in the disclosure will need to conform to the standards specified by the federal Guidances and the TISA regulations. The purpose of this requirement is to ensure that particulars of bounce protection are not solely described within an account agreement's terms and conditions or a periodic statement, though banking institutions presumably will continue to also set forth those particulars in the account agreements. Bounce protection programs may cause consumers to incur significant costs if the bounce protection feature is used extensively. The information contained in the required notice that is the subject of this rule making may well be overlooked by customers due to scope of other information contained in the account agreement and the statement, if it is not disclosed through a separate format.

4. Costs. There will be additional cost imposed on banking institutions by the giving of the separate notice, but the industry has indicated to the Department it does not object to the requirement.

5. Local government mandates. None.

6. Paperwork. This requirement will increase paperwork for banking institutions but this cannot be avoided as it is the objective of the rule making.

7. Duplication. The information contained in the required notice will be identical to the information contained in the account agreement's terms and conditions, or would otherwise be disclosed in a periodic account statement if the bounce protection program were applied to the account after it was opened.

8. Alternatives. There are no alternatives if the objective of the rule is to require a separate distinct and clear notice. Presumably, if banking institutions apply the product to accounts after being opened, they will not also disclose such information in the periodic account statements.

9. Federal standards. The content of the disclosures and the requirements of when such disclosures must be given are specified in the federal Guidances and Regulation DD, as cited above, and apply to all insured accounts.

10. Compliance schedule. Banking institutions must commence giving such notices not later than May 3, 2006, a date 90 days after the publication date of the initial emergency rule. Thereafter, pursuant to Regulation DD, banking institutions are required to give the notice when an account is initially opened and 30 days prior to applying a bounce protection program to an existing account. If the fees related to such program change following this required notice as they apply to existing accounts, then Regulation DD requires that notice be given 30 days prior the fees becoming effective, though such notice need not be a separate notice.

#### **Regulatory Flexibility Analysis**

1. Effect of rule: The emergency rule will require State-chartered banking institutions to provide a separate disclosure if a customer's bank account will be subject to bounce protection charges which go beyond the one-time fee previously permitted by the Department's regulations. This notice must be given either at the time the account is opened if bounce protection is one of the features of the account or if and when applied to an account after it has been opened. The content of such notice is prescribed pursuant to federal Guidances related to overdraft protection programs and federal Regulation DD, Truth in Savings, which applies to all deposit accounts. The information disclosed by banking institutions, absent the emergency rule, would be made either in the account agreement's terms and conditions when the account is opened, or in a periodic statement of account transactions if bounce protection were added as a feature of the account thereafter.

2. Compliance requirements: Banking institutions must provide such notice within 90 days after the effective date of this rule to accounts that have a bounce protection feature presently, to new accounts opened thereafter that have a bounce protection feature, or to existing accounts to which bounce protection is applied after such ninety day period.

3. Professional services: Banking institutions will not need additional professional services in order to execute this requirement.

4. Compliance costs: There will be additional costs associated with providing a separate disclosure notice, but such costs should be minimal for all institutions.

5. Economic and technological feasibility: There are no economic or technological feasibility issues posed by this rule making or the resulting regulatory requirement.

6. Minimizing adverse economic impact: This rule is the sole provision imposed by the Banking Board that goes beyond the federal regulatory requirements and standards that otherwise pertain to the bounce protection programs banking institutions provide to account holders.

7. Small business and local government participation: No local government participation was necessary as the rule has no effect upon local governments. The banking industry trade associations were advised of the rule requirement prior to adoption by the Banking Board and did not object. A member of the Board, who is a CEO of a small banking institution, advised during the discussion of the proposed emergency rule, that it poses no compliance problems for banking institutions.

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

A rural area flexibility analysis is not submitted with this rule making. The emergency rule will affect only banking institutions and such institutions in rural areas will not be held to any standards that differ from the standards applicable to banking institutions elsewhere in the state. Further, the regulatory requirement will not impose any adverse technological or economic burden upon such institutions. Presumably, the rule will benefit consumers located in rural areas, who are accountholders of banking institutions, by helping to ensure the accountholders are aware when bounce protection may be applied to their accounts, and thereby causes them to be knowledgeable of both the benefits and costs of such programs.

#### **Job Impact Statement**

A job impact statement is not submitted with this rule making. The emergency rule will not affect adversely employment opportunities in banking institutions and will have no adverse effect upon other businesses. It is expected that the emergency rule will neither increase nor decrease job opportunities and employment in all areas of the state.

## **EMERGENCY RULE MAKING**

### **High Cost Home Loans**

**I.D. No.** BNK-33-06-00015-E

**Filing No.** 926

**Filing date:** Aug. 1, 2006

**Effective date:** Aug. 3, 2006

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:** The making of certain residential mortgage loans, referred to as 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 to 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 October 29, 2006.

**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, supercede 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 6-1 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 6-1 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 6-1.

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 6-1 of the Banking Law. Chapter 626, which enacted section 6-1, 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 6-1. The revised provisions of Part 41 will assist brokers and lenders in complying with the section 6-1 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 6-1 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 6-1 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 6-1 of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41.

**EMERGENCY  
RULE MAKING**

**Supervision of Article XII Investment Company Holding Companies and Their Subsidiaries**

**I.D. No.** BNK-33-06-00016-E

**Filing No.** 927

**Filing date:** Aug. 1, 2006

**Effective date:** Aug. 3, 2006

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

**Action taken:** Addition of Part 114 to Title 3 NYCRR.

**Statutory authority:** Banking Law, sections 14(1), 14(1)(k) and art. XII

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

**Specific reasons underlying the finding of necessity:** Need to meet European Commission timetable for being designated as providing equivalent supervision for certain U.S. headquartered financial groups with business activities in the European Economic Community.

**Subject:** Supervision of art. XII Investment company holding companies and their subsidiaries for purposes of the European Union Financial Conglomerates Directive.

**Purpose:** To clarify the examination, supervision, regulation and enforcement authority of the Superintendent of Banks over financial conglomer-

ates for purposes of carrying out equivalent supervision under the European Union Financial Conglomerates Directive.

**Text of emergency rule:**

*Part 114*

**SUPERVISION AND REGULATION OF ARTICLE XII INVESTMENT COMPANY HOLDING COMPANIES AND THEIR SUBSIDIARIES FOR PURPOSES OF THE EUROPEAN UNION FINANCIAL CONGLOMERATES DIRECTIVE**

*(Statutory Authority: Banking Law §§ 14[1], 14[1][k], Article XII)*

**§ 114.1 Purpose and Scope.**

Article XV of the Banking Law authorizes the formation of investment companies and Article XII of the Banking Law sets forth the rights and obligations of such investment companies. The purpose of this Part is to clarify the Superintendent's examination, supervision, regulation, and enforcement authority over financial conglomerates for purposes of carrying out equivalent supervision under the European Union Financial Conglomerates Directive.

**§ 114.2 Definitions.**

For purposes of this Part:

"Banking Law" means the New York Banking Law.

"Banking organization" means all banks, trust companies, private bankers, savings banks, safe deposit companies, savings and loan associations, credit unions and investment companies organized under the Banking Law.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of an investment company, whether by means of the ownership of the voting stock or equity interests of such investment company or of one or more persons controlling such investment company, by means of a contractual arrangement or otherwise. Control shall be presumed to exist if any company, directly or indirectly, owns, controls or holds with the power to vote ten per centum or more of the voting stock or other equity interests of any investment company or of any company which owns, controls or holds with power to vote ten per centum or more of the voting stock or other equity interests of such investment company.

"Equivalent supervision" means a supervisory and regulatory regime meeting the standards required under the Financial Conglomerates Directive.

"Financial conglomerate" means a group meeting the definition of financial conglomerate under the Financial Conglomerates Directive and having an investment company within its structure.

"Financial Conglomerates Directive" means the European Union Financial Conglomerates Directive 2002/87/EC, as it may be amended from time to time.

"Investment company" means a banking organization organized pursuant to the Banking Law and subject to the provisions of Article XII of the Banking Law.

"Investment company holding company" means the top tier corporation or other entity that controls an investment company.

"Subsidiary" means a corporation or other entity at least 10 per centum of the voting stock or other equity interests of which is controlled directly or indirectly by an investment company holding company.

"Supervision Agreement" means an individual agreement entered into between a financial conglomerate and the Superintendent which provides for a detailed plan of supervision by the Superintendent over the financial conglomerate, including specific regulatory requirements applicable to the investment company holding company and its subsidiaries.

**§ 114.3 Examination, Supervision, Regulation, and Enforcement Authority of the Superintendent over Investment Company Holding Companies and their Subsidiaries for Purposes of the European Union Financial Conglomerates Directive.**

To assist the Banking Department in carrying out equivalent supervision of a financial conglomerate for purposes of carrying out the requirements of the Financial Conglomerates Directive, the Superintendent shall have examination, supervision, regulation, and enforcement authority over an investment company holding company and any of its subsidiaries to the same extent as he or she has examination, supervision, regulation, and enforcement authority over any banking organization under the Banking Law.

This authority includes, but is not limited to, the authority to:

(1) apply Banking Law Section 36 relating to examinations and confidentiality of information to an investment company holding company and its subsidiaries, as if such entities were banking organizations;

(2) issue orders to an investment company holding company and its subsidiaries as provided in Banking Law Section 39, as if such entities were banking organizations;

(3) impose monetary penalties for violation of law or regulation, as provided in Banking Law Section 44, as if such entities were banking organizations;

(4) impose capital requirements on an investment company holding company and its subsidiaries, as appropriate or required in the judgment of the Superintendent;

(5) prescribe requirements for the keeping of books and records by the investment company holding company and its subsidiaries;

(6) require filing by the investment company holding company and its subsidiaries with the Superintendent of periodic reports of condition, reports of income, risk profiles, large exposures and such other reports as may be required by the Superintendent;

(7) levy assessments on the investment company holding company and its subsidiaries, as provided in Banking Law Section 17, as if such entities were banking organizations;

(8) issue such general or specific rules or regulations as may be necessary to effectuate the examination, supervision, regulation, and enforcement authority over investment company holding companies and their subsidiaries for purposes of meeting the requirements of equivalent supervision under the Financial Conglomerates Directive.

#### § 114.4 Supervision Agreements with Financial Conglomerates.

The Superintendent may enter into one or more Supervision Agreements with each financial conglomerate. Such Supervision Agreements will set forth the specific plan of supervision and detailed regulatory requirements applicable to an investment company holding company and its affiliates (e.g. capital requirements, reporting requirements, transactional limitations, etc.). The Superintendent may exercise enforcement authority under Banking Law Sections 39 and 44 for breaches or violations of such Supervision Agreements.

Such Supervision Agreements shall be in addition to, and shall not serve as a limitation on, the Superintendent's examination, supervision, regulation and enforcement authority provided under this Part over investment holding companies and their subsidiaries to the same extent as the Superintendent has examination, supervision, regulation, and enforcement authority over any banking organization under the Banking Law.

#### § 114.5 Limitations.

The Superintendent's examination, supervision, regulation, and enforcement authority over investment company holding companies and their subsidiaries as provided in this Part is limited to those cases in which the Banking Department needs to provide equivalent supervision for a specific financial conglomerate under the Financial Conglomerates Directive.

The provisions of Banking Law Article XIII governing voluntary and involuntary liquidations of banking organizations shall not be applicable to investment company holding companies, although they are applicable to investment companies.

**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 October 29, 2006.

**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:

Section 14(1) of the Banking Law empowers the Banking Board to make, alter and amend rules and regulations not inconsistent with law. In addition, Section 14(1)(k) permits the Banking Board to prescribe the methods and standards to be used in examinations and valuations of assets of banking organizations. Article XII sets forth the powers as well as the duties and responsibilities of Article XII investment companies.

##### 2. Legislative objective:

The rule promotes the legislative objective of maintaining the safety and soundness of banking organizations through effective examination and supervision. Banking Law Section 10 declares it to be the policy of New York that all banking organizations shall be supervised and regulated by the Banking Department in such manner as to ensure the safe and sound conduct of such business and to protect the public interest. Article XII sets forth the powers as well as the duties and responsibilities of Article XII companies. Such duties include recordkeeping and the provision of reports to the Superintendent. As banking organizations, Article XII companies

are subject to examination by the Superintendent (B.L. Section 36) as well as to enforcement actions by the Superintendent (e.g. enforcement actions under B.L. 39; monetary penalties under B.L. 44).

The new rule clarifies the Superintendent's ability to carry out this supervision in those cases where equivalent supervision is required under the European Union Financial Conglomerates Directive (2002/87/EC) (the "Financial Conglomerates Directive" or "Directive") recently passed by the European Parliament.

##### 3. Needs and benefits:

The purpose of the new rule is to clarify the Superintendent's examination, supervision, regulation and enforcement authority over Article XII investment companies (i.e. banking organizations formed pursuant to Article XII of the Banking Law) and their affiliates in situations where the Banking Department is responsible for providing "equivalent supervision" (as defined in the rule) for such banking organizations and their affiliates, under the Financial Conglomerates Directive.

The Directive will require supervisors in non-European countries to provide so-called "equivalent supervision" over a financial conglomerate to that which would be required in Europe. Under the Directive, groups or conglomerates that have activities in one or more financial business areas, including banking, insurance and securities, will be required to demonstrate that a financial regulator in their home country provides adequate supervision for the conglomerate on a consolidated basis.

The Banking Department currently has several conglomerates or financial groups with operations in Europe that will become subject to the supervision requirements of the Financial Conglomerates Directive in January 2005. These are large organizations which own Article XII banking corporations in New York and, as a result thereof, it is possible that the Banking Department would be required or requested to provide the required equivalent supervision for these organizations.

The ability of a U.S. supervisor fulfilling the role of equivalent supervisor to effectively examine and supervise a financial conglomerate must be clear. The requirements of the so-called "equivalent supervision" are broader than the supervision currently exercised by the Superintendent over Article XII investment companies owned by such entities, in that the Directive requires that the U.S. regulators effectively supervise the broader organization (i.e. from the parent level down) on a consolidated basis.

While this does not necessarily require that one supervisor functionally supervise and regulate each entity within a conglomerate, one supervisor will be relied upon to provide a coordinating role, and that supervisor must have a demonstrable ability to supervise, examine and regulate and take enforcement action against, if necessary, the organization as a whole. The Directive recognizes that many countries, including the U.S., regulate diverse financial conglomerates on a "functional" basis (i.e. insurance regulators regulate the insurance entities, securities regulators regulate the securities entities, etc.).

The Department has significant experience in providing consolidated supervision to large banking organizations, both in its role as supervisor of banks within a holding company structure and in its role as a consolidated supervisor for several Article XII companies owned by large financial institutions that have operations in Europe and abroad. The Department is also very accustomed to coordinating supervision among various regulators, including the banking, insurance and securities regulators in the U.S., as well as banking and other financial regulators in Europe and in other countries abroad.

The new rule is necessary to demonstrate and set forth unambiguously the Superintendent's powers and duties vis-à-vis the larger conglomerate organization in a situation where comprehensive equivalent supervision is required to be provided by the Superintendent. The regulation therefore serves the purpose of making it clear to both the European Union regulators and to the conglomerate organization the authority of the Superintendent in this regard. Specifically, the regulation makes explicit that the parent company of an Article XII organization within a financial conglomerate is an Article XII holding company and that, to carry out the required equivalent supervision, the Superintendent has the authority to exercise examination, supervision, regulation and enforcement authority over the Article XII holding company and any of its subsidiaries in the same manner as over any banking organization. In this way, the Superintendent can exercise the supervisory tools necessary to provide effective consolidated supervision. The regulation makes clear that this authority to supervise and regulate the Article XII holding company and its subsidiaries in the same manner as a banking organization only is necessary and therefore only will be employed when the Superintendent is required to provide equivalent supervision under the Financial Conglomerates Directive.

Thus, the applicability of the rule is limited to such situations involving these financial conglomerates.

The Superintendent's authority to examine and exercise certain control over affiliates (e.g. parent, sister companies) of any banking organization is already quite broad (see e.g. Banking Law Section 36). However, in order for a U.S. supervisor to be deemed capable of equivalent supervision, the authority to both regulate and take enforcement action against the affiliates of a banking organization must be apparent. The new rule provides that clarification. The financial conglomerate organizations themselves favor such clarification since they wish to demonstrate that their home country supervisors can provide the required equivalent supervision.

If the European Union determines that the supervision in the organization's home country is not "equivalent" to that provided to an entity headquartered in the European Economic Community, the organization will be forced to restructure its European operations so that equivalent supervision may be provided by a European regulator from a top tier entity located in Europe. For most U.S. organizations, this is a highly undesirable result that would involve costly restructuring in Europe and added layers of regulatory oversight.

Accordingly, the new rule demonstrating the Superintendent's authority and ability to carry out supervision in a manner deemed acceptable under the Directive serves the public need for U.S. financial conglomerate organizations to demonstrate consolidated supervision by a home country regulator.

#### 4. Costs:

No significant new costs are imposed as a result of this rule. Banking organizations are already subject to monitoring and reporting requirements. This reporting would now be required at a consolidated level within the organization, which in many cases, is already being done. Any additional reporting or compliance requirements are a direct result of European Union Financial Conglomerates Directive itself. As noted in Section 3, "Needs and Benefits" above, U.S. organizations that are deemed to be financial conglomerates are in favor of the Superintendent's regulatory authority since, without such clarification, heavy costs of restructuring operations or duplicative regulation might be required to satisfy the European Union Directive.

#### 5. Local government mandates:

The regulation imposes no burdens on local governments.

#### 6. Paperwork:

Banking organizations, including Article XII companies, are currently subject to monitoring and reporting requirements. These requirements will continue and may need to be supplemented by reporting at the consolidated organizational level, which, in many cases is already done. Any such additional paperwork requirements, however, are a direct result, not of the new rule, but of new requirements imposed on the organizations under the European Union Directive which imposes new requirements on these organizations as a result of their European operations. These organizations favor reporting to a U.S. supervisor as a less costly alternative to direct reporting to European supervisors.

#### 7. Duplication:

None. Various other U.S. supervisors, such as the Federal Reserve, the U.S. Securities and Exchange Commission, the Office of the Comptroller of the Currency and the Office of Thrift Supervision may be required to provide equivalent supervision to institutions under their jurisdiction that have European operations. However, supervision by federal regulators and the Banking Department would not be conflicting or duplicative, as an organization would only have one designated "equivalent supervisor" for purposes of the European Union Directive.

#### 8. Alternatives:

a. Rely on Existing Authority. Consideration was given to relying on the Superintendent's existing authority to examine banking organizations and their affiliates, including the authority of the Superintendent to enter into quasi-contractual Supervision Agreements with an organization, such as a financial conglomerate. Although it was thought that it might be possible to demonstrate to the European Union that the Superintendent could carry out equivalent supervision based on existing authority, it was ultimately determined, in part based upon outreach to the European Commission ("Commission") and one organization that will be required to have consolidated equivalent supervision (see Section 11, "Outreach" below), that a regulation was necessary to clarify the extent of the Superintendent's examination, supervision, regulation and enforcement authority.

Banking Law Section 36 clearly grants the Superintendent the authority to examine banking organizations (which includes Article XII investment companies) as well as affiliates of banking organizations when necessary to determine the financial condition of a banking organization. The

Superintendent can also issue enforcement orders against banking organizations under B.L. Section 39, and it is possible that certain activities of affiliates (e.g. ordering cease and desist, etc.) might be reachable through such orders. However, based on discussions with the Commission and European supervisors, it was clear to Department staff that the Commission, in order to make a determination that a supervisor could effectively provide equivalent supervision, strongly preferred, and would likely require, demonstrable express statutory or regulatory authority of the supervisor to carry out examination, supervision, regulation and enforcement over the conglomerate.

In the absence of the proposed rule, the Superintendent's authority to supervise the conglomerate in the manner required would be less clear. While the Superintendent has clear examination authority over affiliates when necessary to determine the financial condition of a banking organization, it is not clear that the Superintendent's authority to issue regulations applicable to, or enforcement orders or monetary penalties against, the financial conglomerate, extends to the banking organization's affiliates or parent company directly. The European Union as well as the financial conglomerate organizations for which the Banking Department may serve as equivalent supervisor both desire clarification to this effect. The proposed rule therefore would clarify that, for those organizations for which the Department is equivalent supervisor, the Superintendent's examination, supervision, regulation and enforcement authority extends to the Article XII company's top tier parent organization and other affiliates to the same extent as to any other banking organization.

A second approach utilizing the Department's existing authority would be to rely on the Superintendent's authority to enter into formal "Supervision Agreements" which set forth the Superintendent's plan of supervision, as well as the Superintendent's authority over the organization, and the organization's responsibilities as a supervised entity. Such agreements have been used in the past where consolidated supervision is required, and the uniqueness of each organization requires a tailored agreement. In fact, the new rule still calls for the use of such agreements with individualized supervision plans as part of the equivalent supervision framework. While in the past such comprehensive Supervision Agreements alone would be sufficient to demonstrate to European regulators that the U.S. regulator has a comprehensive plan of supervision for the organization, the new European Directive appears to require a firm statutory or regulatory expression of a U.S. supervisor's authority.

b. Promulgate a Regulation to Further Define Superintendent's Examination Authority Under Banking Law Section 36.

Another alternative that was considered was to adopt a general regulation of the Banking Board which would further define the scope of the Superintendent's examination authority under Banking Law Section 36. Such a regulation would also have been limited in nature and would have sought to define what is meant by "examination" of a banking organization in a situation where the banking organization is part of a group or conglomerate that requires equivalent supervision in the U.S. under the European Union Financial Conglomerates Directive.

This alternative was rejected by Department staff as less clear and less effective than the approach decided upon. For example, to accomplish the required end, the regulation would have needed to very broadly define the term "examination" to encompass the ability of the Superintendent to issue regulations and enforcement actions against both the banking organization and its affiliates.

Rather than demonstrate the Superintendent's authority as based solely on the examination authority described in B.L. Section 36, Department staff believes it is more appropriate to demonstrate the Superintendent's authority as arising out of her overall ability to supervise and regulate Article XII banking organizations and their affiliates.

The new rule is therefore a general Banking Board regulation based on Banking Law Section 14(1), 14(1)(k) and Article XII defining the Superintendent's specific expanded supervisory powers over the entities in a conglomerate whose top tier company is defined as an Article XII holding company in those cases in which the Banking Department needs to provide equivalent supervision as required under the Financial Conglomerates Directive.

#### 9. Federal standards:

Not applicable. As noted above, various federal financial supervisors may also demonstrate their authority to provide consolidated equivalent supervision, but there are no specific standards which can be compared to those the Banking Department would apply to organizations under its supervision. While the supervisory regimes would likely be similar in order to accommodate the requirements of the European Union Directive,

the specific requirements applicable to any given organization are individualized and part of a unique supervision plan.

#### 10. Compliance schedule:

Not applicable. Organizations under the Department's supervision do not need to take affirmative steps to comply with the rule. Based upon the decision of European regulators whether the Banking Department will be required to provide equivalent supervision, the rule will either be applicable to such organizations or it will not. An individualized Supervision Agreement will then be worked out between the Banking Department and the organization, in consultation with European regulators.

#### 11. Outreach:

In March 2004, a delegation of the Banking Department traveled to Brussels, Belgium and London, England to meet with staff of the Commission and the U.K.'s Financial Services Authority ("FSA"), respectively. The Commission is responsible for providing guidance to the various European financial supervisors on the supervisory regimes in other countries, including the U.S. Therefore, this body (including its technical committees) has the responsibility and the authority to determine whether the supervisory regimes in other countries are sufficiently "equivalent" to European regimes as required by the Directive. The Commission is therefore analyzing other supervisors' laws and regulations and practical approaches to supervision.

The FSA is one of the European financial supervisors with a major role in carrying out the Directive, particularly with respect to several of the U.S.-based financial conglomerates. This is because significant decision-making about which U.S. supervisor is best qualified to provide equivalent supervision to a particular organization rests with the European financial supervisor where the majority of the conglomerate organization's operations reside.

The Banking Department delegation explained to both the Commission and the FSA how the Banking Department conducts supervision of banking organizations, the authority of the Superintendent, and the legal and regulatory framework for supervision. The FSA has worked extensively with the Department over the years and was already quite familiar with the Department as a supervisor. In addition, in March, the delegation shared with both these entities a draft of the new rule and explained how it would clarify the Superintendent's authority over conglomerates for purposes of the Financial Conglomerates Directive. The Commission staff indicated that it would provide comments as this body has the primary responsibility for evaluating equivalence. In May 2004, the Commission staff commented favorably on the proposed rule and indicated its belief that the rule would be found sufficient for the purposes of the Directive. The staff suggested only a few minor wording changes to more closely conform certain terminology to that of the Directive.

The draft regulation was also shared with one of the organizations under the Department's supervision that will require equivalent supervision and for which it is most likely that the Department might be required to be the supervisor to provide such supervision.

The organization in general found the draft rule to be helpful and acceptable in form. After consideration of the organization's comments the Department determined to adopt the rule on an emergency basis in its present form.

The organization also questioned whether the language in the rule stating that the Superintendent has authority over an Article XII holding company and its subsidiaries "to the same extent" as over banking organizations implied that all such affiliates of an Article XII must therefore be regulated as if they were banking organizations. The Banking Department advised that is that this is clearly not the intent of the rule or of the European Union Directive. Rather, this language reflects the Department's understanding that the European Commission wishes to see the equivalent authority available to the Superintendent for the supervision of the conglomerate as it would have over banking organizations.

The organization also had some inquiries about the technical terminology employed in the rule vis-à-vis the European Union Directive. These questions were cleared up to the organization's satisfaction based upon further discussions between the Department and the Commission staff to clarify this terminology.

#### **Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis is not submitted because the proposed rule will not impose any adverse economic impact, or reporting, or record-keeping or other compliance requirements on small businesses or local governments. The proposed rule relates to supervision of the parents and affiliates of Article XII investment companies having financial business operations within the European Union. These entities are large financial

conglomerates, which do not qualify as small businesses in New York State and are not local governments.

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

A Rural Area Flexibility Analysis is not submitted because the rule does not result in any hardship to a rural area based on the character and nature of a rural area. The rule relates to supervision of large financial conglomerates. It is apparent from the nature and purpose of the rule that it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

#### **Job Impact Statement**

A Job Impact Statement is not submitted because the proposed rule has no effect on the creation or elimination of jobs. The rule clarifies the Superintendent's examination, supervision, regulation and enforcement authority over Article XII companies and their affiliates in situations where the Banking Department needs to provide equivalent supervision for purposes of the European Union Financial Conglomerates Directive. Accordingly, it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

## Department of Civil Service

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-33-06-00006-P

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

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

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

**Subject:** Jurisdictional classification.

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

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by adding thereto the position of Native American Program Aide (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-33-06-00007-P

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

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

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

**Subject:** Jurisdictional classification.

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

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of General Services," adding thereto the position of Insurance Analyst (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-33-06-00008-P

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

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

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

**Subject:** Jurisdictional classification.

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

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Transportation, by adding thereto the position of Supervisor of Transportation Audiovisual Training and Production (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-33-06-00009-P

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

**Proposed action:** Amendment of 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 Family Assistance.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by adding thereto the position of Housing Services Program Analyst (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-33-06-00010-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a position from and classify a position in the non-competitive class in the Department of Environmental Conservation.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Environmental Conservation, by decreasing the number of positions of Associate Counsel from 10 to 9 and by adding thereto the position of Affirmative Action Administrator 2 (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-33-06-00011-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete positions from and classify positions in the non-competitive class in the Education Department.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department, by deleting therefrom the positions of Chief Scientist (Biology) (1) and Chief Scientist (Geology) (1) and by adding thereto the positions of Museum Scientist 1 (10), Museum Scientist 2 (10), Museum Scientist 3 (10), Museum Scientist 4 (12), Museum Scientist 5 (7), Museum Scientist 6 (3) and Director, Research and Collections Division (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-33-06-00012-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete positions from and classify positions in the non-competitive class in the Department of Health.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health under the subheading "Helen Hayes Hospital," by deleting therefrom the positions of Hospital Clinical Assistant 1 and Hospital Clinical Assistant 2 and by adding thereto the positions of Rehabilitation Hospital Nursing Assistant 1 and Rehabilitation Hospital Nursing Assistant 2.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-33-06-00013-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class and to delete positions from and classify positions in the non-competitive class in the Department of Correctional Services.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Correctional Services, by increasing the number of positions of Investigator from 10 to 11; and

Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Correctional Services, by deleting therefrom the positions of Senior Correctional Services Employee Investigator (4) (Assigned to Workers' Compensation Fraud Unit) and by adding thereto the positions of Senior Correctional Services Employee Investigator (25).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 1, 2006 under the notice of proposed rule making I.D. No. CVS-05-06-00005-P.

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## Education Department

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**NOTICE OF EMERGENCY  
ADOPTION  
AND REVISED RULE MAKING  
NO HEARING(S) SCHEDULED**

**Licensure as a Clinical Laboratory Technologist**

**I.D. No.** EDU-21-06-00009-ERP

**Filing No.** 928

**Filing date:** Aug. 1, 2006

**Effective date:** Aug. 1, 2006

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

**Emergency action taken:** Addition of sections 52.36-52.38 and Subparts 79-13—79-15 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided); 210 (not subdivided); 212(3); 6501 (not subdivided); 6504 (not subdivided); 6507(2)(a), (3)(a), and (4)(a); 6508(1); 8605(1)(b) and (c), and (2)(b) and (c); 8602(2) and (3); 8607(1) and (2); and 8608 (not subdivided)

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

**Specific reasons underlying the finding of necessity:** Article 165 to the Education Law establishes three new licensed professions in New York State: clinical laboratory technologist, cytotechnologist, and clinical laboratory technician. This statute requires individuals who practice these professions to be licensed or under application for a license under the special "grandparenting" requirements in order to practice these professions in New York State on or after September 1, 2006.

Approximately 30,000 persons are employed in these three professional areas and will require licensure or submission of an application under the grandparenting provisions by September 1, 2006 in order to continue to practice these professions. The State Education Department expects that most current practitioners will be licensed under the grandparenting provisions. These clinical laboratory technology practitioners are employed in the State's clinical laboratories to perform tests needed for the diagnosis and treatment of illness and disease. They perform important functions that protect the general welfare, health, and safety of residents of New York State.

The proposed regulation implements the requirements of Article 165 of the Education Law by establishing education and examination standards for licensure or certification, special requirements for licensure or certification for applicants already practicing in these field or who have related education and/or experience (grandparenting applicants), and requirements for limited permits in the three professions. It also sets forth standards for registered college preparation programs that lead to licensure or certification in these fields, in accordance with statutory requirements. These requirements must be in place in order for the State Education Department to license individuals to practice these new professions.

The State Education Department originally planned to adopt these regulations in July 2006, but in response to public comment, the Department needed to make substantive changes to the regulation. These changes required a new public comment period and will delay permanent adoption of the rule past September 1, 2006. An emergency action is necessary to ensure that the requirements for licensure are in place on August 1, 2006, so that the applications may be submitted to meet the September 1, 2006

deadline under the grandparenting provisions and to enable the State Education Department to license individuals in a timely manner.

The recommended action is proposed as an emergency measure because such action is necessary to preserve the general welfare to ensure that procedures and standards are in place to license individuals by the effective date of the statutory licensure requirement for clinical laboratory practitioners, thereby enabling such practitioners to be licensed in a timely manner to meet the health care needs of residents of New York State.

It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption as a permanent rule at its October 2006 meeting.

**Subject:** Licensure as a clinical laboratory technologist and as a cytotechnologist and certification as a clinical laboratory technician.

**Purpose:** To implement the provisions of art. 165 of the Education Law by establishing requirements for licensure as a clinical laboratory technologist or cytotechnologist and for certification as a clinical laboratory technician, requirements for limited permits in these fields, and standards for registered college preparation programs for these professions.

**Substance of emergency/revised rule:** The Commissioner of Education proposes to promulgate regulations, relating to licensure as a clinical laboratory technologist and as a cytotechnologist and certification as a clinical laboratory technician. The following is a summary of the substance of the regulations.

Section 52.36 of the Commissioner's regulations is added to establish requirements for the registration of preparation programs leading to licensure as a clinical laboratory technologist. Subdivision (a) of section 52.36 requires the program to be in clinical laboratory technology leading to a baccalaureate or higher degree or advanced certificate which contains didactic and clinical education that integrates pre-analytical, analytical, and post-analytical components of laboratory services, including the principles and practices of quality assurance/ quality improvement, and which is designed and conducted to prepare graduates to practice clinical laboratory technology using independent judgment and responsibility. Subdivision (b) requires the program to include prescribed courses, each of which shall include a laboratory component, in each of the listed subjects. Subdivision (c) requires curricular content in each of the listed subjects. Subdivision (d) requires a supervised clinical experience of at least 30 hours per week for at least 24 weeks or its equivalent in the practice of clinical laboratory technology.

Section 52.37 is added to establish requirements for the registration of preparation programs leading to licensure as a cytotechnologist. Subdivision (a) of section 52.37 requires the program to be in cytotechnology leading to a baccalaureate or higher degree or advanced certificate which contains didactic and clinical education that integrates pre-analytical, analytical, and post-analytical components of laboratory services, including the principles and practices of quality assurance/ quality improvement; and which is designed to prepare graduates to practice cytotechnology using independent judgment and responsibility. Subdivision (b) requires the program to include prescribed courses, each of which shall include a laboratory component, in each listed subject. Subdivision (c) requires curricular content in each listed subject. Subdivision (d) requires a supervised clinical experience of at least 30 hours per week for at least 10 weeks or its equivalent in the practice of cytotechnology.

Section 52.38 is added to establish requirements for the registration of preparation programs leading to certification as a clinical laboratory technician. Subdivision (a) of section 52.38 requires the program to be a clinical laboratory technician program leading to an associate or higher degree which contains didactic and clinical education that integrates pre-analytical, analytical, and post-analytical components of laboratory services, including the principles and practices of quality assurance/quality improvement. Subdivision (b) requires the program to include prescribed courses, each of which shall include a laboratory component, in each listed subject. Subdivision (c) requires curricular content in each listed subject. Subdivision (d) requires a supervised clinical experience of at least 30 hours per week for at least 10 weeks or its equivalent in the practice of clinical laboratory technician.

Subpart 79-13 of the Regulations of the Commissioner of Education is added to establish requirements for licensure as clinical laboratory technologists. Section 79-13.1 establishes five alternative professional education requirements for licensure, including two alternatives available to applicants who apply for licensure prior to September 1, 2011. The applicant must also certify to the department that he or she has reviewed the regulations of the New York State Department of Health and the U.S. Department of Health and Human Services, relating to practice, as directed by the department.

Section 79-13.2 establishes examination requirements for licensure as a clinical laboratory technologist.

Section 79-13.3 establishes requirements for limited permits to practice as a clinical laboratory technologist. The applicant must: (1) file an application for a limited permit with the department and pay the initial licensure and registration fee, and a limited permit fee of fifty dollars; (2) have met all requirements for licensure as a clinical laboratory technologist, except the examination requirement; (3) submit adequate documentation that the applicant will be under the general supervision of the director of a clinical laboratory, as prescribed. The limited permit has a one-year duration and may be renewed once for good cause.

Section 79-13.4 establishes special provisions that certain applicants may meet to be licensed as a clinical laboratory technologist. The applicant must apply for licensure under this section by September 1, 2007, and meet the alternative requirements for licensure under this section by September 1, 2008, unless the particular requirement prescribes an earlier date for completion, in which case the requirement must be completed by that earlier date. The applicant must: (1) file the application for licensure with the department and pay the prescribed fees, all by September 1, 2007; (2) be of good moral character as determined by the department; (3) be at least 18 years of age; and (4) meet one of six requirements.

The regulation also provides that, in accordance with subdivision (2) of section 8607 of the Education Law, an individual who on or before September 1, 2007 files with the department an application for licensure as a clinical laboratory technologist under this section and certifies to a good faith belief that he or she has or will have met the requirements for licensure under this section by the prescribed completion dates which shall in no case be later than September 1, 2008, shall be deemed qualified to practice as a clinical laboratory technologist from the date of filing the application with the department until such time as the department has acted upon such application.

Subpart 79-14.1 of the Regulations of the Commissioner of Education is added to establish requirements for licensure as cytotechnologists. Section 79-14.1 establishes five alternative professional education requirements for licensure, including two alternatives available to applicants who apply for licensure prior to September 1, 2011. In addition, the applicant must certify to the department that he or she has reviewed the regulations of the New York State Department of Health and the U.S. Department of Health and Human Services, relating to practice as directed by the department.

Section 79-14.2 establishes examination requirements for licensure as a cytotechnologist.

Section 79-14.3 establishes requirements for limited permits to practice as a cytotechnologist. The applicant must: (1) file an application for a limited permit with the department and pay the initial licensure and registration fee, and a limited permit fee of fifty dollars; (2) have met all requirements for licensure as a cytotechnologist, except the examination requirement; and (3) submit adequate documentation that the applicant will be under the general supervision of the director of a clinical laboratory, as prescribed. The limited permit has a one-year duration and may be renewed once for good cause.

Section 79-14.4 establishes special provisions that certain applicants may meet to be licensed as a cytotechnologist. The applicant must apply for licensure under this section by September 1, 2007, and meet the alternative requirements for licensure under this section by September 1, 2008, unless the particular requirement prescribes an earlier date for completion, in which case the requirement must be completed by that earlier date. The applicant must: (1) file the application for licensure with the department and pay the prescribed fees, all by September 1, 2007; (2) be of good moral character as determined by the department; (3) be at least 18 years of age; and (4) meet one of two requirements.

The regulation also provides that, in accordance with subdivision (2) of section 8607 of the Education Law, an individual who on or before September 1, 2007 files with the department an application for licensure as a cytotechnologist under this section and certifies to a good faith belief that he or she has or will have met the requirements for licensure under this section by the prescribed completion dates which shall in no case be later than September 1, 2008, shall be deemed qualified to practice as a cytotechnologist from the date of filing the application with the department until such time as the department has acted upon such application.

Subpart 79-15 of the Regulations of the Commissioner of Education is added to establish requirements for certification as clinical laboratory technicians. Section 79-15.1 establishes three alternative professional education requirements for certification, including one alternative available to applicants who apply for certification prior to September 1, 2011. The

applicant must also certify to the department that he or she has reviewed the regulations of the New York State Department of Health and the U.S. Department of Health and Human Services, relating to practice as directed by the department.

Section 79-15.2 establishes examination requirements for certification as a clinical laboratory technician.

Section 79-15.3 establishes requirements for limited permits to practice as a clinical laboratory technician. The applicant must: (1) file an application for a limited permit with the department and pay the initial certification and registration fee, and a limited permit fee of fifty dollars; (2) have met all requirements for certification as a clinical laboratory technician, except the examination requirement; (3) submit adequate documentation that the applicant will be under the general supervision of the director of a clinical laboratory, as prescribed. The limited permit has a one-year duration and may be renewed once for good cause.

Section 79-15.4 establishes special provisions that certain applicants may meet to be certified as a clinical laboratory technician. The applicant must apply for certification under this section by September 1, 2007, and meet the requirements for certification under this section by September 1, 2008, unless the particular requirement in this section prescribes an earlier date, in which case the requirement must be completed by that earlier date. The applicant must (1) file the application for certification with the department and pay the prescribed fees, all by September 1, 2007; (2) be of good moral character as determined by the department; (3) be at least 18 years of age; and (4) meet one of three requirements.

The regulation also provides that, in accordance with subdivision (2) of section 8607 of the Education Law, an individual who on or before September 1, 2007 files with the department an application for certification as a clinical laboratory technician under this section and certifies to a good faith belief that he or she has or will have met the requirements for certification under this section by the prescribed completion dates which shall in no case be later than September 1, 2008, shall be deemed qualified to practice as a clinical laboratory technician from the date of filing the application with the department until such time as the department has acted upon such application.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on May 24, 2006, I.D. No. EDU-21-06-00009-P. The emergency rule will expire October 29, 2006.

**Emergency rule compared with proposed rule:** Substantial revisions were made in sections 79-13.1(a), (b)(4) and (5), 79-14.1(a), (b)(4) and (5), 79-15.1(a) and (b)(3).

**Text of rule and any required statements and analyses may be obtained from:** Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

**Data, views or arguments may be submitted to:** Johanna Duncan-Poitter, Deputy Commissioner, Office of the Professions, Education Department, 2M West Wing Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: opdepcom@mail.nysed.gov

**Public comment will be received until:** 30 days after publication of this notice.

#### Revised Regulatory Impact Statement

Since publication in the *State Register* of the Notice of Proposed Rule Making on May 24, 2006, the proposed rule has been revised as follows:

Subdivision (a) of section 79-13.1 of the Regulations of the Commissioner of Education is substantially revised to change the definition of "acceptable accrediting agency," for clinical laboratory technology programs. The change is necessary to make the definition more flexible by not having it specifically reference coursework requirements for program registration prescribed in section 52.36 of the Commissioner's Regulations.

Subdivision (b) of section 79-13.1 is non-substantially revised to add the words "meeting the requirements of one of the following paragraphs," after the words "evidence of" to clarify that the subdivision contains alternative requirements.

Paragraph (2) of subdivision (b) of section 79-13.1 is non-substantially revised to add the words "or related title" after the words "clinical laboratory technology." This change is needed to clarify that the education requirements for licensure as a clinical laboratory technologist may be met by a program that is equivalent to a registered program leading to licensure that is in a title related to clinical laboratory technology.

Paragraph (3) of subdivision (b) of section 79-13.1 is non-substantially revised to replace a period with "; or" because two new paragraphs are being added to this subdivision.

Subdivision (b) of section 79-13.1 is substantially revised to add two new paragraphs (4) and (5). The change provides two additional alternative requirements to meet the education requirement for licensure as a clinical laboratory technologist. It is available to applicants who apply for licensure prior to September 1, 2011. This change is necessary to give students who have or will complete existing preparation programs for clinical laboratory technologists the opportunity prior to September 1, 2011 to meet the professional education requirement for licensure through completion of existing programs. The first alternative must be a baccalaureate or higher program in clinical laboratory technology or a related title. The second alternative is a post-baccalaureate program for applicants who have completed baccalaureate or higher study in the major of biology, chemistry, or the physical sciences. These programs in clinical laboratory technology or a related title must meet a content standard prescribed in the regulation and be either registered by the Department for general education purposes, or accredited by an acceptable accrediting agency, or recognized by appropriate civil authorities.

Subparagraph (i) of paragraph (4) of subdivision (b) of section 79-13.4 is non-substantially revised to correct a typographical error by substituting the word "technologist" for the word "technologists."

Subparagraphs (ii) and (vi) of paragraph (4) of subdivision (b) of section 79-13.4 are non-substantially revised to correct a typographical error by correcting the spelling of the word "manner."

Subdivision (a) of section 79-14.1 of the Regulations of the Commissioner of Education is substantially revised to change the definition of "acceptable accrediting agency," for cytotechnology programs. The change is necessary to make the definition more flexible by not having it specifically reference coursework requirements for program registration prescribed in section 52.37 of the Commissioner's Regulations.

Subdivision (b) of section 79-14.1 is non-substantially revised to add the words "meeting the requirements of one of the following paragraphs," after the words "evidence of" to clarify that the subdivision contains alternative requirements.

Paragraph (2) of subdivision (b) of section 79-14.1 is non-substantially revised to add the words "or related title" after the words "clinical laboratory technology." This change is needed to clarify that the education requirements for licensure as a cytotechnologist may be met by a program that is equivalent to a registered program leading to licensure that is in a title related to cytotechnology.

Paragraph (3) of subdivision (b) of section 79-14.1 is non-substantially revised to replace a period with "; or" because two new paragraphs are being added to this subdivision.

Subdivision (b) of section 79-14.1 is substantially revised to add two new paragraphs (4) and (5). The change provides two additional alternative requirements to meet the education requirement for licensure as a cytotechnologist. It is available to applicants who apply for licensure prior to September 1, 2011. This change is necessary to give students who have or will complete existing preparation programs for cytotechnologists the opportunity prior to September 1, 2011 to meet the professional education requirement for licensure through completion of existing programs. The first alternative must be a baccalaureate or higher program in cytotechnology or a related title. The second alternative is a post-baccalaureate program for applicants who have completed baccalaureate or higher study in the major of biology, chemistry, or the physical sciences. These programs in cytotechnology or a related title must meet a content standard prescribed in the regulation and be either registered by the Department for general education purposes, or accredited by an acceptable accrediting agency, or recognized by appropriate civil authorities.

Subdivision (a) of section 79-15.1 of the Regulations of the Commissioner of Education is substantially revised to change the definition of "acceptable accrediting agency," for clinical laboratory technician programs. The change is necessary to make the definition more flexible by not having it specifically reference coursework requirements for program registration prescribed in section 52.38 of the Commissioner's Regulations.

Subdivision (b) of section 79-15.1 is non-substantially revised to add the words "meeting the requirements of one of the following paragraphs," after the words "evidence of" to clarify that the subdivision contains alternative requirements.

Paragraph (2) of subdivision (b) of section 79-15.1 is non-substantially revised to add the words "or related title" after the words "clinical laboratory technician." This change is needed to clarify that the education requirements for certification as a clinical laboratory technician may be met by a program that is equivalent to a registered program leading to certification that is in a title related to clinical laboratory technician.

Paragraph (2) of subdivision (b) of section 79-15.1 is non-substantially revised to replace a period with “; or” because a new paragraph is being added to this subdivision.

Subdivision (b) of section 79-15.1 is substantially revised to add a new paragraph (3). The change provides an additional alternative requirement to meet the education requirement for certification as a clinical laboratory technician. It is available to applicants who apply for licensure prior to September 1, 2011. This change is necessary to give students who have or will complete existing preparation programs for clinical laboratory technicians the opportunity prior to September 1, 2011 to meet the professional education requirement for certification through completion of existing programs. The program must be an associate or higher degree program in clinical laboratory technician or a related title. This program in clinical laboratory technician or a related title must meet a content standard prescribed in the regulation and be either registered by the Department for general education purposes, or accredited by an acceptable accrediting agency, or recognized by appropriate civil authorities.

The revisions to the rule do not necessitate any changes to the Regulatory Impact Statement.

#### **Revised Regulatory Flexibility Analysis**

Since publication in the *State Register* of the Notice of Proposed Rule Making on May 24, 2006, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith. The revisions to the rule do not necessitate any changes to the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

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

Since publication in the *State Register* of the Notice of Proposed Rule Making on May 24, 2006, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith. The revisions to the rule do not necessitate any changes to the Rural Area Flexibility Analysis.

#### **Revised Job Impact Statement**

Since publication in the *State Register* of the Notice of Proposed Rule Making on May 24, 2006, the proposed rule has been substantially revised as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

Article 165 of the Education Law establishes a requirement that clinical laboratory technologists and cytotechnologists be licensed to practice in New York State and that clinical laboratory technicians be certified to practice in this State. The proposed regulation, as revised, implements the requirements of Article 165 of the Education Law by establishing education and examination standards for licensure or certification, special requirements for licensure or certification for applicants already practicing in these fields or have related education and/or experience (grandparenting applicants), and requirements for limited permits in the three professions. It also sets forth standards for registered college preparation programs that lead to licensure or certification in these fields, in accordance with statutory requirements.

The proposed regulation, as revised, implements statutory requirements and directives and will have no impact on jobs or employment opportunities, beyond the impact of Article 165 of the Education Law. Therefore, any impact on jobs and employment opportunity by establishing a licensure requirement for clinical laboratory technologists, cytotechnologists and clinical laboratory technicians is attributable to the statutory requirements, not the proposed rule, which simply establishes consistent implementing standards as directed by statute.

Because it is evident from the nature of the proposed regulation, as revised, that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

#### **Assessment of Public Comment**

The proposed regulation was published in the *State Register* on May 24, 2006. Below is a summary of comments received by the State Education Department and the Department's response.

COMMENT: The regulation will exacerbate staff shortages in clinical laboratories.

RESPONSE: The regulation implements statutory requirements mandating licensure in these new professions. To ease the transition to licensure, the regulation includes “grandparenting” provisions, as prescribed in Education Law section 8607. In response to public comment, the regulation has been substantially revised to establish education standards for licensure for applicants who apply prior to September 1, 2011, permitting

the graduates of most existing programs to meet the education requirement and thereby easing the transition for recent and new graduates.

COMMENT: The regulation should clarify that the requirements do not apply to personnel employed at out-of-state laboratories.

COMMENT: The regulation should clarify that the requirements cover the licensure of personnel employed at out-of-state laboratories, including those that are regulated by the New York State Department of Health.

RESPONSE: Based upon a review of the legislative history of Chapter 755 of the Laws of 2004, and the language of the statute, the intent of Article 165 of the Education Law is to require licensure for individuals practicing the new professions in New York State. The Legislature did not intend to require licensure for personnel providing services in out-of-state laboratories, including those that may be regulated by the Department of Health.

COMMENT: Article 165 of the Education Law does not clearly define the scope of practice for these three new professions (e.g., waived testing that may be performed by unlicensed individuals). The State Education should clarify scope of practice issues.

RESPONSE: The scope of practice for these new professions is prescribed in the Education Law. The Department plans to address scope of practice issues in Practice Alerts and guidelines.

COMMENT: The regulation should permit categorical licensure in specialized areas with limited scopes of practice.

RESPONSE: Education law section 8605 provides for a single generic license in each profession. The statute does not permit the Department to issue specialized licenses in these fields.

COMMENT: The regulation should permit an applicant to meet the education requirement for licensure by completing a program that is accredited by national accrediting agencies, rather than a registered program or its equivalent.

RESPONSE: Education Law sections 8605 and 8606 require the State Education Department to establish education requirements for licensure, including requirements for registered programs leading to licensure in these fields. The regulations are tailored to prescribe course requirements for the licensure-qualifying registered programs, based upon the scope of practice of these professions in New York State. State standards ensure that applicants will have adequate educational preparation for the scope of practice in New York State.

COMMENT: A phase-in period should be established to allow programs to meet the new requirements.

RESPONSE: As a result of public comment, the regulation has been substantially revised to establish education standards for licensure for applicants who apply prior to September 1, 2011. After this date, the requirements will be increased. This will allow registered college programs and applicants for licensure sufficient time to meet more rigorous requirements.

COMMENT: The regulations should permit applicants for licensure to satisfy clinical training requirements at accredited laboratory training programs, rather than degree-granting institutions.

RESPONSE: In response to public comment, the regulation has been revised to permit individuals who apply for licensure in clinical laboratory technology and cytotechnology prior to September 1, 2011 to obtain clinical training at non-credit bearing facilities that are accredited. This will enable such clinical facilities sufficient time to affiliate with credit-bearing institutions.

COMMENT: The regulation requires licensure-qualifying programs to provide generalist training, rather than specialist training, detrimentally affecting laboratory testing in the State.

RESPONSE: Article 165 of the Education Law established a general scope of practice for each profession. Consequently, the education preparation for licensure must be general in scope.

COMMENT: New York should allow on-the-job training and military training as acceptable alternatives to completing an accredited or registered training program.

RESPONSE: The statutory requirements require the applicant to complete degree requirements and college programs registered by the Department or equivalent programs offered in other jurisdictions. These statutory requirements for licensure do not recognize on-the-job or military training. However, such individuals may qualify for licensure under the “grandparenting” provisions, based upon experience in the field.

COMMENT: Requirements for registered programs leading to licensure in clinical laboratory technology and clinical laboratory technician should not include histology because accreditation standards do not require this coursework.

RESPONSE: Education Law section 8601(1) establishes the definition of clinical laboratory technology, which includes "histological procedures and examinations." Therefore, training in this subject is necessary to prepare applicants for permitted practice.

COMMENT: The requirements for registered programs leading to licensure in clinical laboratory technology and clinical laboratory technician are too prescriptive because they list specific courses.

RESPONSE: The requirements for registered programs were carefully designed to provide the necessary competencies to practice these professions.

COMMENT: Cell biology, human genetics, hematology, and mathematics should be required in the curricula of clinical laboratory technology and cytotechnology programs. Histological techniques should be required in cytotechnology programs. Cytopreparatory techniques and biochemistry should be required in clinical laboratory technician programs.

RESPONSE: The requirements for the three licensure-qualifying programs were developed through careful analysis of the scope of practice of these professions, existing programs, national accreditation standards, and expert advice. These requirements do not preclude registered programs from adding requirements, including those suggested.

COMMENT: The curricula for medical technology programs are already filled to capacity.

RESPONSE: The requirements for the registered programs were developed after extensive study of existing New York programs and national accreditation standards. Almost all of the required courses are currently being offered. The requirements for registered programs may be accommodated within four years.

COMMENT: Requiring a laboratory component for courses in registered programs leading to licensure is inflexible.

RESPONSE: The registered programs require that a portion of the class time for prescribed courses be devoted to laboratory work. This is an appropriate requirement considering the field.

COMMENT: Requirements for clinical laboratory technology programs should not include separate courses in anatomy and physiology. Two additional courses cannot be accommodated within four years.

RESPONSE: The requirement only prescribes one course that includes the subjects of anatomy and physiology.

COMMENT: The curriculum for registered clinical laboratory technology programs should permit clinical experience at the academic institution, as well as outside the institution.

RESPONSE: The requirements do not prohibit clinical experience to be obtained at the academic institution.

COMMENT: Department of Health regulations for a certificate of qualification for a director of clinical laboratories do not require applicants to have a four-year medical technology degree. Typically, they have a doctoral degree and on-the-job training as a technologist. The licensure requirement would make this on-the-job training illegal.

RESPONSE: Article 165 of the Education Law establishes licensure requirements for the clinical laboratory technology professions. The statute makes no exception for unlicensed individuals to receive on-the-job training to qualify as a director.

COMMENT: The "grandparenting" provisions should establish special requirements for recent or new graduates.

RESPONSE: The "grandparenting" provisions are mandated in statute (Education Law section 8607), and do not provide special requirements for recent or new graduates. However, as a result of public comment, the regulations have been revised to ease the transition for these graduates by changing the education requirement for applicants who apply for licensure prior to September 1, 2011. The Department expects that graduates of most existing programs in these fields will meet the education requirement for licensure.

COMMENT: The "grandparenting" provision that permits an applicant to be licensed as a clinical laboratory technologist if he or she was "previously qualified under other regulatory requirements for that license or its equivalent," should be interpreted broadly.

RESPONSE: The Department will interpret this provisions in a reasonable fashion based upon the plain meaning of the statutory language.

COMMENT: The "grandparenting" provision should permit licensure as a clinical laboratory technologist based upon employment in these fields in the five years before a year in the future, rather than September 1, 2006.

RESPONSE: This statutory provision requires the applicant to have performed the duties of a clinical laboratory technologist for at least five years prior to the effective date of Article 165 of the Education Law, September 1, 2006. The Department does not have the authority to change this date.

COMMENT: The "grandparenting" provision based upon prior performance of the duties of a clinical laboratory technologist should permit the crediting of experience gained in other jurisdictions.

RESPONSE: The regulation does not preclude the crediting of experience gained in other jurisdictions to meet this requirement.

COMMENT: The "grandparenting" provision based upon prior performance of the duties of a clinical laboratory technologist is too restrictive. Related employment should be credited.

COMMENT: The "grandparenting" provision based upon prior performing the duties of a clinical laboratory technologist is too liberal and will permit the licensing of unqualified individuals.

RESPONSE: The requirement is established in statute. The State Education Department does not have the statutory authority to change the requirement in regulation.

COMMENT: The director of a clinical laboratory in a foreign country or other state should be permitted to verify the experience of the applicant for licensure under the "grandparenting" provisions.

RESPONSE: The regulation does not preclude a director of a clinical laboratory in another jurisdiction from verifying the experience.

COMMENT: The applicant should be permitted to meet the examination requirement for licensure by passing a specialty test offered by recognized national certifying agencies, rather than general examinations.

RESPONSE: Article 165 of the Education law established a generalist license in each of the three professions. General examinations are necessary to ensure entry-level competency given the broad scope of practice for each profession.

COMMENT: The licensure examinations require the candidate to pass with a converted score of at least 75, which may not be consistent with examining agency scoring.

RESPONSE: The Department, in consultation with the State Board for Clinical Laboratory Technology, will convert the passing score of the examining agency to 75.

COMMENT: The regulation does not address reciprocity with other states.

RESPONSE: Education Law provides that the Department may endorse the license of another jurisdiction. The Department determined not to include endorsement requirements at the present time because only 12 other states license these professions and the scopes of practice in these jurisdictions differ. This will require further study.

COMMENT: The regulation should extend the licensure requirement to individuals employed in physician office laboratories.

RESPONSE: Education Law section 8601(2) provides that clinical laboratory practitioners are not required to be licensed to work in a laboratory operated by a licensed physician or other specified health professionals, solely for the treatment of the health professional's patients.

COMMENT: The regulation should mandate continuing education for these professions.

RESPONSE: Education Law does not mandate continuing education for these professions, and the Department does not have the statutory authority to mandate it in regulation.

COMMENT: The requirement that applicants for licensure be of good moral character should be eliminated.

RESPONSE: This is a statutory requirement and may not be changed in regulation.

COMMENT: The licensure and registration fees for these professions are too high, considering the salaries paid.

RESPONSE: The licensure and registration fees for these professions are established in statute. The Department does not have the statutory authority to change them in regulation.

## NOTICE OF ADOPTION

### Requirements for Certification as a Nurse Practitioner

**I.D. No.** EDU-11-06-00004-A

**Filing No.** 929

**Filing date:** Aug. 1, 2006

**Effective date:** Aug. 17, 2006

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

**Action taken:** Amendment of section 64.4 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided); 6504 (not subdivided); 6507(2)(a) and (3)(a); 6902(3)(a); and 6910(1)(c) and (5)

**Subject:** Requirements for certification as a nurse practitioner.

**Purpose:** To strengthen the education requirements for certified nurse practitioners to be certified in an additional specialty area of practice.

**Text or summary was published** in the notice of proposed rule making, I.D. No. EDU-11-06-00004-P, Issue of March 15, 2006.

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

**Revised rule making(s) were previously published in the State Register on** May 31, 2006.

**Text of rule and any required statements and analyses may be obtained from:** Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Mandatory Continuing Education Requirements for Landscape Architects**

**I.D. No.** EDU-22-06-00030-A

**Filing No.** 930

**Filing date:** Aug. 1, 2006

**Effective date:** Aug. 17, 2006

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

**Action taken:** Addition of section 79-1.5 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided); 212(3); 6504 (not subdivided); 6507(2)(a); and 7328(1), (2), (3), (4), (5) and (6)

**Subject:** Mandatory continuing education requirements for landscape architects.

**Purpose:** To establish continuing education requirements that licensed landscape architects must complete to be registered to practice this profession in New York State and requirements for the approval of sponsors of such continuing education.

**Text or summary was published** in the notice of proposed rule making, I.D. No. EDU-22-06-00030-P, Issue of May 31, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

**Assessment of Public Comment**

The agency received no public comment.

**Department of Environmental Conservation**

**NOTICE OF ADOPTION**

**Fish and Wildlife Regulations**

**I.D. No.** ENV-22-06-00006-A

**Filing No.** 923

**Filing date:** July 31, 2006

**Effective date:** Aug. 16, 2006

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

**Action taken:** Amendment of Chapter 1 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, arts. 11 and 13

**Subject:** Correct or eliminate language in regulations which over time has become archaic, obsolete, or inaccurate.

**Purpose:** To correct and update the department's fish and wildlife regulations.

**Text or summary was published** in the notice of proposed rule making, I.D. No. ENV-22-06-00006-P, Issue of May 31, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Gordon R. Batcheller, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8885, e-mail: grbatche@gw.dec.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

**Department of Health**

**ERRATUM**

A Notice of Emergency Adoption, I.D. No. HLT-31-06-00017-E pertaining to Serialized New York State Prescription Form, published in the August 2, 2006 issue of the *State Register* contained the incorrect filing date and effective date. The correct filing date is July 17, 2006; the correct effective date is July 17, 2006.

The Department of State apologizes for any confusion this may have caused.

**Insurance Department**

**EMERGENCY  
RULE MAKING**

**Standards for the Use of Credit Information to Underwrite and Rate Personal Lines Insurance**

**I.D. No.** INS-33-06-00002-E

**Filing No.** 918

**Filing date:** July 27, 2006

**Effective date:** July 27, 2006

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

**Action taken:** Addition of Part 221 (Regulation No. 182) to Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201 and 301 and art. 28

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

**Specific reasons underlying the finding of necessity:** Article 28 of the Insurance Law, which goes into effect on April 23, 2005, requires an insurer that uses credit information to underwrite or rate risks for personal lines insurance to comply with certain requirements and limitations. Chapter 215 of the Laws of 2004, which enacted Article 28, requires the Superintendent to promulgate regulations necessary to effectuate the provisions of Article 28.

It is essential that this regulation be promulgated on an emergency basis to assure that consumers are afforded certain protections with respect to the use of credit information by an insurer in connection with personal lines insurance. Therefore, it is essential that insurers be made aware of the limitations upon and requirements for the use of credit information in the underwriting and rating of personal lines insurance as soon as possible. Insurers that use such information are required to file scoring models (or other scoring processes) with the Superintendent. Insurers must be given sufficient time to review the requirements with respect to such filings prior to the date Article 28 becomes effective.

For the reasons cited above, this regulation is being promulgated on an emergency basis for the preservation of the general welfare.

**Subject:** Standards for the use of credit information to underwrite and rate personal lines insurance.

**Purpose:** To establish limitations upon, and requirements for, the permissible use of credit information by insurers to underwrite and rate risks for personal lines insurance business.

**Substance of emergency rule:** Section 221.0 provides that Chapter 215 of the Laws of 2004 added new Article 28 to the Insurance Law. Article 28 establishes limitations upon, and requirements for, the permissible use of credit information by insurers doing business in this State to underwrite or rate risks for personal lines insurance business.

Section 221.1 provides that this regulation applies to the use of credit information to underwrite and rate personal lines insurance policies applied for, or renewed, on or after April 23, 2005. It also provides that this regulation or Article 28 will not alter the requirements or limitations contained in the Insurance Law, Title 11 of the NYCRR, or the rules of the New York Automobile Insurance Plan or the New York Property Insurance Underwriting Association.

Section 221.2 provides definitions applicable to the regulation.

Section 221.3 provides prohibitions on the use of credit information and permissible use of credit information.

Section 221.4 provides the requirements for obtaining current credit information.

Section 221.5 provides standards for the disclosure of the use of credit information in the underwriting and rating of personal lines insurance policies.

Section 221.6 provides standards for notification when an insurer takes an adverse action based upon credit information.

Section 221.7 provides for dispute resolution and error correction if it is determined that the credit information used by an insurer to underwrite or rate a current insured was incorrect or incomplete.

Section 221.8 provides standards for the filing of credit scoring models (or other scoring processes) and revisions thereto, to the superintendent.

Section 221.9 provides standards for filings by the insurer.

Section 221.10 provides that an insurer that uses credit information in the underwriting and rating of personal lines insurance is required to complete and submit to the superintendent an Insurer Credit Information Compliance Certification. The Insurer Credit Information Compliance Certification shall be in a form prescribed by the superintendent.

**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 October 24, 2006.

**Text of emergency rule and any required statements and analyses may be obtained from:** Mike Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

#### **Regulatory Impact Statement**

1. Statutory authority: Sections 201 and 301 of the Insurance Law, and Article 28 of the Insurance Law, as enacted by Chapter 215 of the Laws of 2004. Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law and to prescribe forms or otherwise make regulations. Article 28, as enacted by Chapter 215 of the Laws of 2004, establishes limitations upon, and requirements for, the permissible use of credit information by insurers doing business in this State to underwrite and rate risks for personal lines insurance business. Further, the Superintendent is directed to provide, by regulation, rules governing the use of credit information.

2. Legislative objectives: The Legislature, in enacting Chapter 215 of the Laws of 2004, wanted to assure that consumers are afforded certain protections with respect to the use of credit information for personal lines insurance. The Superintendent was directed to promulgate a regulation to establish limitations on, and requirements for, the permissible use of credit information by insurers doing business in this State to underwrite and rate risks for personal lines insurance business.

3. Needs and benefits: Most insurers currently use credit information in the underwriting and initial tier placement of consumers for personal lines insurance. The purpose of this regulation is to establish rules to implement the provisions of Article 28. In accordance with Article 28, the regulation establishes and clarifies limitations upon, and requirements for, the permissible use of credit information by insurers doing business in New York State to assure that consumers are afforded certain protections when credit information is used to underwrite and rate risks for personal lines insurance business. The regulation clarifies prohibited and permitted uses of credit information in the underwriting and rating of personal lines insurance. The regulation sets forth whose credit information can be used, the form of the disclosure of the use of credit information and when the disclosure must be provided. The regulation sets forth standards for the notification when an insurer takes an adverse action based upon credit information. The regulation also requires an insurer to take corrective action within thirty days after it receives notice that the insured has obtained a determination pursu-

ant to the process for dispute resolution and error correction under the federal Fair Credit Reporting Act that the credit information used by the insurer was incorrect or incomplete. The regulation also establishes rules for, and provides guidance to, insurers when filing their credit information requirements with the Superintendent.

4. Costs: This rule imposes no compliance costs on state or local governments. There will be no additional costs incurred by the Insurance Department. This rule does not impose additional costs upon insurers. If an insurance producer or other entity has been designated by the insurer to issue disclosure notices and adverse action notices, the insurance producer or other entity will incur additional costs in producing and mailing these documents. However, the designation of an insurance producer or other entity for this purpose is optional, not mandatory, on the part of the insurer and presumably such arrangements will be subject to a contractual agreement between an insurer and its insurance producer(s) or other entities and will be used when it has an overall cost benefit. The notification requirements and submission of filings are required by the statute and the regulation is only implementing the statutory requirement.

5. Local government mandates: None.

6. Paperwork: Paperwork associated with the submission of a filing by an insurer should already be in place. The insurer is required to complete an Insurer Credit Information Compliance Certification for the scoring model (or other scoring processes) filing and any filing of revisions thereto. Also, the insurer is required to maintain records that the disclosures of the use of credit information and adverse action notifications have been provided to the consumer. Where an insurance producer or other entity has been designated by the insurer to issue disclosure notices and adverse action notices, the insurance producers or other entities will incur additional paperwork necessary to insure that the insurer is in compliance with the notice and record retention requirements.

7. Duplication: None.

8. Alternatives: In developing this rule, the Department reviewed the National Conference of Insurance Legislators (NCOIL) model for the use of credit information in personal insurance and various provisions of the Federal and Fair Credit Reporting Act and the Department did outreach with trade associations, consumer groups, and a third party modeler.

There are several provisions of the rule for which alternatives were considered by the Department, as follows.

An insurer who chooses to consider, for any given program of insurance, an absence of credit information or an inability to calculate an insurance score to underwrite or rate risks must choose one of the three options specified in Section 2803(e) of the law to apply to all of the consumers in that program of insurance who have no credit information or whose insurance score cannot be calculated. The three options have been incorporated into the rule. The language used in Section 221.3(a)(5)(iii) of the rule clarifies the parameters of the third option which requires that a filing be made with, and be subject to the prior approval of, the Superintendent, with respect to an individual consumer. An alternative that has been suggested by some insurers is to permit such a filing to be made for a class of insureds. The Department considered this approach but rejected it because the law contemplates that such filing be made as to "the consumer" and not to a class of consumers. To further demonstrate the intention of the law not to treat all insureds who have no credit information or an insurance score as a class, Section 2802(d) prohibits an insurer from taking an adverse action against a consumer solely because he or she does not have a credit card account. Clearly, such insureds would fall into a "class" of insureds that could be defined as having an absence of credit information or an inability to calculate an insurance score but such a class would be violative of Section 2802(d) of the law.

Section 2802(g) of the law gives an insured, where an insurer has chosen to use credit information the right to request, not more often than once every 36 months, that the insurer re-underwrite and re-rate the policy based upon a current credit report or insurance score. Section 221.4(b)(1) of the rule requires that the insurer make any necessary adjustments including moving the insured to the appropriate tier, effective as of the date of the updated report or score. An alternative that has been suggested by the industry is that the insurer be permitted to delay implementation of the re-underwriting and re-rating until the next policy renewal date. The Department considered this approach but rejected it because the law does not provide that re-underwriting and re-rating can be delayed until some future date. It is clear that the Legislative intent was that the remedy be implemented as soon as possible in order to immediately provide the insured with an opportunity to get a lower premium based on current credit information. Some insurers indicated they might have problems with updating credit information mid-term. In order for them to avoid any problems,

insurers are not precluded from choosing to automatically re-run credit scores every 36 months or more frequently, without the insured or the insured agent's request, to determine if the insured is eligible for a lower premium, more favorably priced tier, or placement with an affiliate of the insurer at a lower rate. It is noted that the NCOIL model differs from Article 28 of the Insurance Law in that the model requires that the insurer re-underwrite and re-rate the policy based upon a current credit report or insurance score no later than every 36 months and, if requested, on every renewal date.

Sections 221.4 and 221.7 of the rule require that an insurer, when re-underwriting or re-rating an insured based upon corrected, completed or updated credit information, consider not only whether the insured qualifies for placement in a lower-priced tier within the company, but also whether the insured qualifies for placement in an affiliate of the insurer at a lower rate (i.e., if the affiliate would write the policy). In addition, when determining the amount of the refund due based on the correct credit information, Section 221.7 of the rule requires that the refund be calculated based on the appropriate tier/affiliate the insured would have been written in (assuming that the affiliate is still in the group and is still writing this business) if the insurer had used the correct credit information. This approach recognizes that when an insured applies for insurance from one company within a group of affiliated insurers, it is actually often applying to more than one company in the group. The alternatives the Department considered would have been to require re-underwriting and re-rating based only upon the filed rates and underwriting rules of the current insurer. The Department rejected this because where there is a group of affiliated insurers that includes insurers that do not have tiers the insureds of such insurers would not be able to benefit from a refund. Such a result would render the required statutory remedies for the use of incorrect or outdated credit information meaningless. Even where affiliate insurers each have more than one tier, the insured will not fully benefit by the re-rating and re-underwriting unless the insurer considers its affiliates' tiers as well. The Department believes that this approach is consistent with the law, which makes reference to the relationship between insurers and their affiliates in underwriting and rating. For example, under Section 2802(b) of the law, a placement with an affiliate on the basis of credit information does not constitute a denial of coverage.

Insurers operate in many different organizational structures. A trade association has expressed concern that some of these organizational structures may make it infeasible or inequitable for an insurer to offer a coverage with an affiliate and comply with Sections 221.4 and 221.7 of the proposed rule. Another trade organization commented that the language "substantially equivalent coverage" should be deleted from those sections since a "holding company may designate certain of its companies for designated functional business. For example, consider method of distribution – some companies may be exclusively intended for direct internet business while others are for individuals." These concerns were considered and are specifically addressed in the rule.

For example, an insurer within the group uses agents but it has an affiliate that is a direct writer. The applicant applies for insurance and is placed with the insurer that uses agents. Upon re-underwriting and re-rating the insured, Sections 221.4 and 221.7 of the proposed rule would not require the direct writer affiliate to offer the insured coverage. These sections were intended to address insurer-group underwriting where an applicant that applies for insurance with one insurer is also considered for coverage with other insurers within the group without the need to apply separately to each insurer. Under the example, the insured would not have to be offered coverage with the direct writer since the direct writer is not a part of the group underwriting done with the insurer that uses agents. Further, the direct writer requires the applicant to apply directly with that company. Sections 221.4 and 221.7 reflect clarifications suggested by the industry of the intent of the proposed rule.

The use of "substantially equivalent coverage" in this context contemplates that there may be some differences in the policy forms used by affiliates, but only where the insured is eligible for placement with an affiliate pursuant to Sections 221.4 and 221.7. However, even in such case, if the affiliate does not have a policy form that offers "substantially equivalent coverage", then that affiliate is not required to offer the insured a new policy.

Some insurers use credit information as an underwriting factor for initial tier or company placement. A trade association expressed concern that the use of the tier or company placement as an underwriting factor upon renewal would be considered to be using credit information upon renewal even if the insurer does not look at the insured's credit score upon renewal. The trade association suggested adding language similar to Sec-

tion 2802(c) of the Insurance Law which states "nothing in this section shall be construed to prohibit an insurer from considering an insured's tier placement pursuant to Section 2349 of this chapter or placement with a company within a group of affiliated companies in conjunction with factors other than credit information as part of its renewal process." The proposed rule effectuates the provisions of Article 28 of the Insurance Law and does not supersede the provisions in the law. The proposed rule is not meant to restate every provision of the law and the Department believes that the proposed rule is clear in the permissible uses of credit information. For example consider the following situation:

a) an insurer group consisting of two companies at two different rate levels which uses various factors in underwriting applicants,

b) the two groups of applicants, A and B, both have the same underwriting characteristics except that those in group A have "excellent" credit scores and are placed in the company with the lower rate level, and those in group B have "poor" credit scores and are placed in the company with the higher rate level, and

c) upon renewal, insureds in groups A and B remain in their respective companies with credit scores no longer being reviewed (except upon request as permitted by statute and regulation).

Under this example:

1. if the insurer group takes no rate action, the fact that insureds in group B pay higher rates than insureds in group A upon renewal does not violate Article 28 or the Regulation.

2. if the insurer group does make rate level adjustments to either of these companies, the Department would not consider such actions to be inconsistent with Article 28 or the Regulation provided such adjustments were based on the loss, expense and investment income experience, as set forth in the standards for rates in Article 23 of the Insurance Law.

Similarly, where one insurer has more than one tier and uses credit as one of the underwriting factors in the initial tier placement within the tiers, the fact that the insureds in one tier pay more than the other would not violate Article 28 or the Regulation. Furthermore, if the insurer makes rate level adjustments to any of its tiers, the Department would not consider such adjustments to be inconsistent with Article 28 or the Regulation provided such adjustments were based on the loss, expense and investment income experience of the tier(s), as set forth in the standards for rates in Article 23 of the Insurance Law.

Section 221.8(f) requires a third party that files scoring models on behalf of many insurers to provide the Department with certain information that would identify which insurer is using which scoring model. The Department also originally required the third party to provide the Superintendent with the name of each insurer's contact person and the person's telephone number. A trade association commented that such requirements would establish procedures that could lead to some confusion. The identification of the insurers and the scoring model they are using would assist the Department in evaluating the insurance company's decision on which version they choose to use. However upon further evaluation, the requirement for providing the contact person and the person's telephone number has been deleted from the rule as the third party may not necessarily have this information and the Department has this information from other sources.

The Department also considered some suggestions made by a consumer group. However, most of the suggestions conflict with the statute. For example, the consumer group wanted to amend the Regulation to require that all filed scoring models include loss experience to justify the use of credit information. The statute clearly does not require such information if scoring models are only used in initial underwriting.

The consumer group commented that when re-underwriting and re-rating the policy based upon new, updated or corrected credit information, the rate adjustment should be the "lowest rate possible" among all affiliates and tiers and not simply a "lower rate." Sections 221.4(b)(2) and 221.7(b)(2) states that the insured is eligible for placement in an affiliate at a lower rate in accordance with the affiliates' current underwriting rules. The insurer will have to follow its underwriting rules to determine which company to place the insured. An insurer cannot arbitrarily place an insured in a higher premium company if the insured is also eligible to be placed in a company with lower premiums if everything else remains the same. The purpose of the underwriting rules is to provide guidelines so that insureds with similar characteristics are placed in the same company.

The consumer group commented about disclosures regarding that not all insurers use credit information and that the insureds may wish to consider other options. The Department considers this to be more appropriately addressed in the Department's Consumer Guide to Automobile Insur-

ance (Guide). The Department will add reference to insurers' use of credit information for the next updated version of the Guide.

The rule requires the submission of an Insurer Credit Information Compliance Certification for the scoring model (or other scoring processes) filing and any filing of revisions thereto. This will facilitate the review of the filings and enhance compliance with the statute and rule. The alternative of not requiring an Insurer Credit Information Compliance Certification was considered and rejected because it would provide the Department less assurance that insurers are complying with the law and increase the time needed to review scoring model filings and might result in the need for more market conduct reviews.

9. Federal standards: The provisions of the federal Fair Credit Reporting Act referred to in Article 28 of the Insurance Law are also referred to in the regulation.

10. Compliance schedule: The effective date of the enabling legislation, Chapter 215 of the Laws of 2004, is April 23, 2005. Pursuant to the law, insurers are required to file their scoring models (or other scoring processes) with the Superintendent. The Regulation further provides that on or after August 15, 2005 insurers shall file their scoring models (or other scoring processes) at least 45 days prior to use.

#### **Regulatory Flexibility Analysis**

The Insurance Department finds that this rule would not impose reporting, recordkeeping or other requirements on small businesses. The basis for this finding is that this rule is directed to property/casualty insurance companies licensed to do business in New York State, none of which fall within the definition of "small business".

The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized property/casualty insurers and believes that none of them would fall within the definition of "small business" contained in section 102(8) of the State Administrative Procedure Act, because there are none which are independently owned and have under 100 employees.

The Insurance Department finds that this rule will not impose reporting, recordkeeping or other compliance requirements on local governments. The basis for this finding is that this rule is directed at insurance companies, none of which are local governments.

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

1. Types and estimated numbers of rural areas: This rule applies to property/casualty insurers licensed to do business in New York State. The insurers do business in every county in this state including rural areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: There are requirements for the insurer under certain circumstances to provide written disclosure of the use of credit information and adverse action notifications when an adverse action has been taken. Also, the insurer is required to maintain records that the disclosures of the use of credit information and adverse action notifications have been provided to the consumer. Where an insurance producer or other entity has been designated by the insurer to issue disclosure notices and adverse action notices, the insurance producers or other entities will incur additional paperwork necessary to insure that the insurer is in compliance with the notice and record retention requirements.

3. Costs: Regulated persons under these regulations are insurers. Insurance producers or other entities may be designated by the insurer to issue disclosure notices and adverse notices, in which case the producer or other entity will incur costs in producing and mailing these documents. However, the designation of a producer or other entity for this purpose is optional, not mandatory, on the part of the insurer and presumably such arrangements will be subject to a contractual agreement and will be used when it has an overall cost benefit. The submission of filings and notification requirements are required by the statute and the regulation is only implementing the statutory requirement. This regulation has no impact unique to rural areas.

4. Minimizing adverse impact: This rule applies uniformly to regulated parties that do business in both rural and nonrural areas of New York State. This rule does not impose any additional burden on persons located in rural areas, and the Insurance Department does not believe that it will have an adverse impact on rural areas.

5. Rural area participation: This agency action appeared as a proposal in the Insurance Department's January 2005 Regulatory Agenda.

#### **Job Impact Statement**

This rule should not have any adverse impact on jobs and employment opportunities in this state since it merely implements the provisions of Article 28 of the Insurance Law. The rule sets forth standards that the insurers must follow when using credit information for underwriting and

rating purposes. The rule also sets forth guidelines that insurers must follow when submitting filings to the Superintendent.

### **NOTICE OF WITHDRAWAL**

#### **Unfair Claims Settlement Practices and Claim Cost Control Measures**

**I.D. No.** INS-22-06-00007-W

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

**Action taken:** Notice of proposed rule making, I.D. No. INS-22-06-00007-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on May 31, 2006.

**Subject:** Unfair claims settlement practices and claim cost control measures.

**Reason(s) for withdrawal of the proposed rule:** Received public comment.

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

#### **Continuing Care Retirement Communities**

**I.D. No.** INS-33-06-00003-P

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

**Proposed action:** Amendment of Part 350 (Regulation 140) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301 and 1119; and Public Health Law, sections 4604(4)(a), 4607 and 4611

**Subject:** Continuing care retirement communities authorized pursuant to art. 46 of the Public Health Law.

**Purpose:** To adopt revised standards pertaining to continuing care retirement communities authorized pursuant to art. 46 of the Public Health Law.

**Substance of proposed rule (Full text is posted at the following State website: [www.ins.state.ny.us](http://www.ins.state.ny.us)):** The title of this part is revised from Life Care Communities to Continuing Care Retirement Communities and conforming changes are made throughout Part 350. Section references are revised to reflect renumbering of several sections.

Section 350.5 is repealed and sections 350.1-350.4 are renumbered to be sections 350.2-350.5.

A new section 350.1 is added, which consolidates the definitions used in this Part in one section. Definitions used in various sections are repealed and moved to this new section. Some new definitions are added to enhance the clarity of the regulation.

Subdivisions (a)-(c) of newly renumbered section 350.2 are repealed.

Subdivision (d) of newly renumbered section 350.4 is amended to clarify that class 4 assets are amortized instead of depreciated.

Subdivision (e) of newly renumbered section 350.4 is repealed and subdivisions (f)-(l) of newly renumbered section 350.4 are renumbered to be subdivisions (e)-(k).

Newly renumbered subdivision (g) of newly renumbered section 350.4 is amended to revise the criteria for the assumption as to the average monthly fees per resident for the initial year of a prospective reserve liability calculation.

Newly renumbered subdivision (i) of newly renumbered section 350.4 is amended to delete a reference to a basis other than the closed group basis when calculating the prospective reserve liability.

Subdivision (a) of newly renumbered section 350.5 is repealed and subdivision (b) of newly renumbered section 350.5 is renumbered accordingly. The content of the required demonstration to the superintendent has been clarified.

Subdivision (a) of section 350.6 has been completely rewritten. The minimum liquid requirement has been restructured so that there are now two liquidity requirements. The first is a debt reserve fund to cover the aggregate of all interest and principal payments becoming due within the next 12 months under a mortgage loan, bond indenture or other long term financing of the community. The second is an operating reserve fund equal to thirty five percent of the sum of certain operating expenses of the community during the next 12 months. Assets used to meet these requirements must be in high quality fixed income securities. The current requirement that such securities have one year or less remaining to maturity has been eliminated. Each continuing care retirement community is required to test as of the end of each quarter that it meets the requirements of subdivi-

sion (a) of section 350.6, and if not, to notify the superintendent and submit a plan to achieve compliance.

Section 350.6 is amended by adding a new subdivision (f), which requires that each continuing care retirement community develop formal investment guidelines and policies to be approved by its board of directors. The responsibility for oversight of the investment program shall be retained by the community's board of directors. All investment policies and guidelines and any subsequent changes must be submitted to the superintendent.

The unlettered paragraph of section 350.6 was moved to a new subdivision (g) of section 350.6.

Subdivision (a) of section 350.7 is repealed and subdivisions (b)-(e) of section 350.7 are renumbered to be subdivisions (a)-(d). Newly renumbered subdivisions (b)-(d) of section 350.7 are amended to revise the conditions under which a distribution to an operator may be made.

Section 350.8 is completely rewritten. If a continuing care retirement community is not in satisfactory actuarial balance, the operator shall develop a plan designed to achieve satisfactory actuarial balance, and submit the plan to the superintendent for approval. The allowable time period for such a plan to achieve compliance has been lengthened.

Section 350.9 is renumbered to section 350.11. A new section 350.9 is added, which describes the minimum contents of the periodic actuarial study that is to be performed on behalf of the continuing care retirement community.

A new section 350.10 is added, which discusses the minimum content of fee schedule submissions.

**Text of proposed rule and any required statements and analyses may be obtained from:** Michael Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

**Data, views or arguments may be submitted to:** Gary Teitel, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-7709, e-mail: gteitel@ins.state.ny.us

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

### Regulatory Impact Statement

#### 1. Statutory authority:

The superintendent's authority for the amendment to Regulation 140 (11 NYCRR 350) is derived from sections 201, 301 and 1119 of the Insurance Law, and sections 4604(4)(a), 4607 and 4611 of the Public Health Law.

Sections 201 and 301 authorize the superintendent to prescribe regulations interpreting the provisions of the Insurance Law as well as effectuating any power granted to the superintendent under the Insurance Law, to prescribe forms or otherwise make regulations.

Section 1119(a) authorizes the superintendent to prescribe regulations pertaining to organizations operating pursuant to Article 46 of the Public Health Law with respect to (1) the financial feasibility of the continuing care retirement community (CCRC), (2) the actuarial principles established relating to such communities, and (3) the approval of continuing care retirement contracts and the rates and rating system for such contracts.

Section 1119(b) authorizes the superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 46 of the Public Health Law.

Public Health Law Section 4604(4)(a) states that any increase in any entrance fee or monthly care fee in excess of fees calculated pursuant to the approved rating methodology shall require approval of the superintendent.

Public Health Law Section 4607 states that the annual statement is due within four months of the close of the operator's fiscal year and that an updated actuarial study, including an opinion of a qualified actuary as to the current and projected soundness of the CCRC, is periodically required.

Public Health Law Section 4611 authorizes the superintendent to promulgate a regulation setting forth the reserve requirements, the quantitative and qualitative standards for assets supporting the reserve requirements, the minimum level of liquid assets a CCRC must maintain, and the qualitative standards for such liquid assets.

#### 2. Legislative objectives

The legislative objectives are found in section 4600 of the Public Health Law as created by Chapter 689 of the laws of 1989. If carefully planned and monitored, CCRC's have the potential to provide a continuum of care for older people that will provide an attractive residential option for such persons, while meeting their long term care needs. To ensure that the financial, consumer, and health care interest of individuals who enroll in such communities will be protected, CCRC's must be effectively managed and carefully overseen. The intent of the legislature is to allow for the prudent development of such communities.

The legislature was aware that numerous CCRC's failed during the 1980s and, therefore, authorized an actuarial based model for such communities and mandated the Superintendent of Insurance to develop reserve standards for such communities.

#### 3. Needs and benefits

A CCRC is a residential facility for seniors that provides stated house-keeping, social, and health care services in return for some combination of advance fee, periodic fees, and additional fees. A CCRC is often designed to provide a full continuum of care as the health status of a resident deteriorates with age.

This amendment reduces the minimum liquid requirement amount and liberalizes the investments eligible to support the minimum liquid requirement which should increase investment income to a CCRC. This amendment allows a longer period of time for a CCRC to achieve satisfactory actuarial balance which should have a positive affect on the fees charged to residents.

This amendment is necessary to address various issues that have come to the attention of the Insurance Department, as well as to clarify and simplify certain sections of the regulation.

The first actuarial study for a CCRC after commencement of operations is prepared at the end of the third fiscal year of operation. This first actuarial study captures the differences between originally projected results and the actual results that have emerged. The Department has found that the current requirement to correct an emerging actuarial under-funding within the mandated three year time frame is often not practicable. A longer initial time period would provide the operator with more flexibility in how to achieve full actuarial funding.

The industry has requested some leeway in maintaining a full funding level. The seven year time frame established in the amendment enables a CCRC to smooth out any adverse year to year fluctuations among the various assumptions used in the actuarial study or due to operating expenses emerging higher than what was budgeted.

A CCRC is expected to maintain at all times at least the required minimum level of liquid funds to cover unexpected expenses or unexpected revenue shortfalls. Therefore, these funds are not to cover budgeted expenses. This amendment reduces the minimum liquid amount requirement to a level more in line with the investment community's "days cash on hand" benchmark for an entrance fee community. The "days cash on hand" benchmark is designed to provide sufficient funds to cover unexpected expenditures, provide refunds for unanticipated living unit turnover without an attendant new entrance fee, or meet other unbudgeted expenses.

The current requirement for funds supporting the minimum liquid requirement is that these funds be in fixed income securities with one year or less remaining to maturity. Normally the annual net cash flow for a CCRC is positive and the minimum liquid funds would only be needed should there be unexpected expenses or unexpected revenue shortfalls. Therefore, since the minimum liquid funds would normally not be spent, the Department has concluded that it is appropriate for these funds to be in high quality and readily marketable fixed income securities. This amendment revises the requirement so that funds supporting the minimum liquid requirement must be in high quality fixed income securities and eliminates the one year maturity restriction.

Concerns were expressed about the use of the term "impaired" for a CCRC that is actuarially under-funded. This amendment introduces the concept of a CCRC being in satisfactory actuarial balance, which is the criteria actuaries customarily use in analyzing a CCRC's financial condition.

A new section outlining the minimum requirements for the periodic actuarial study codifies current guidelines in order to clarify what should be included in an actuarial study submission.

The new section outlining the fee submission requirements codifies the material that the Department currently asks for to support a fee schedule increase submission. The Department has found that operators often do not know what documentation should be included in a fee schedule submission.

#### 4. Costs

The additional cost to a CCRC of complying with this amendment should be minimal since reserve standards for CCRC's already exist in this regulation.

The cost of complying with the new requirement to notify the Department and develop a plan for correcting any minimum liquid deficiency should be minimal. The cost of complying with the new requirement to develop a formal statement of investment guidelines and policies should be minimal.

The additional reporting requirements noted above should not require the CCRC to hire additional staff or engage outside experts not currently employed. The current financial staff and/or management company of the CCRC would monitor compliance with the minimum liquid requirement, and would notify the superintendent if the CCRC was not in compliance and develop the plan for achieving compliance. The board of directors and management staff of the CCRC would develop the investment guideline and policy statements for the CCRC.

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

The increased flexibility a CCRC would have in achieving satisfactory actuarial balance and in investing the minimum liquid required amount should offset any additional administrative costs that might be imposed by this amendment.

#### 5. Local government mandates

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

#### 6. Paperwork

This amendment requires that any CCRC that fails to meet the minimum liquid requirement level notify the Department and then submit a plan for correcting the deficiency.

This amendment requires that each CCRC develop formal investment guidelines and policies. No required format is specified. The investment guidelines and policies, and all subsequent changes, are to be submitted to the superintendent. It is good business practice for a Board of Directors to oversee the general investment policy of the CCRC.

This amendment requires that an operator submit a plan to achieve satisfactory actuarial balance if the actuarial study submitted shows that the CCRC is not in satisfactory actuarial balance. A similar paperwork requirement is included in the current regulation.

#### 7. Duplication

Department of Health Regulations (10 NYCRR Parts 900-903) apply to CCRC's. Sections 901.5 and 901.9(e) deal with rate increases. Section 901.7 deals with reserves and supporting assets. Section 901.8 deals with the annual statement submission and the periodic actuarial study.

Pursuant to Article 46 of the Public Health Law, both the Insurance Department and Department of Health regulations complement each other.

#### 8. Alternatives

During the past two years the Department has had many conversations with actuaries and other interested parties involved with CCRC's. The Department attended a forum sponsored by the Department of Health in which interested parties discussed the current regulatory environment regarding CCRC's. The Department also received input from the residents' council of one CCRC. The Department also met with the Department of Health and representatives from the industry's umbrella organization to discuss concerns and the regulatory intent of the Department.

Having heard the various concerns, it was felt that an amendment to the regulation was warranted. The changes reflected in this amendment address the concerns raised while still maintaining the actuarial basis for monitoring a CCRC as intended by the Legislature and required by Article 46 of the Public Health Law.

This amendment addresses the following key concerns that were expressed: (a) lower the minimum liquid requirement to a more reasonable level, (b) allow more investment flexibility for funds supporting the minimum liquid requirement, and (c) allow a longer time period for a CCRC to reach satisfactory actuarial balance.

Not including the new section describing the actuarial study might lead to needed information being omitted from the study, which would delay such reviews.

Not including the new section describing fee submission requirements might lead to required documentation being omitted, which would delay the review of the submission and could cause the proposed effective date of the fee increase to be delayed.

The Department will continue to listen to issues raised by interested parties for consideration in a future amendment.

#### 9. Federal standards

There are no federal standards in this subject area.

#### 10. Compliance schedule

This rule making will be effective upon publication in the *State Register* after adoption. Since the requirements for the minimum liquid require-

ment and achieving full actuarial funding are being liberalized, CCRC's should have no difficulty in meeting the revised requirements.

Some of the information indicated for an actuarial study may not currently be included in all such studies, but the information should be available as a by-product of the study. Therefore there should be no difficulty in providing the requested information.

The amendment provides sufficient time for the eight operational CCRC's to comply with the new requirement for a statement of investment policies and guidelines.

### **Regulatory Flexibility Analysis**

#### 1. Small businesses:

None of the eight presently operating CCRC's, and none of the six applicants for licenses to operate a CCRC, fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act, because there are none which are both independently owned and have fewer than one hundred employees.

The increased flexibility a CCRC would have in achieving satisfactory actuarial balance and in investing the minimum liquid required amount should offset any additional administrative costs that might be imposed by this amendment.

#### 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

Continuing care retirement communities (CCRC's) authorized pursuant to Article 46 of the Public Health Law may operate in every county in this state, including rural areas as defined under section 102(10) of the State Administrative Procedure Act.

#### 2. Reporting, recordkeeping and other compliance requirements

This amendment requires that any CCRC that fails to meet the minimum liquid requirement level notify the Department and then submit a plan for correcting the deficiency.

This amendment requires that each CCRC develop formal investment guidelines and policies. No required format is specified. The investment guidelines and policies, and all subsequent changes, are to be submitted to the superintendent.

Any cost involved with the above should be minimal. The additional reporting requirements noted above should not require the CCRC to hire additional staff or engage outside experts not currently employed.

#### 3. Costs

Any costs incurred by the CCRC's as a result of the amendment should be minimal.

The increased flexibility a CCRC would have in achieving satisfactory actuarial balance and in investing the minimum liquid required amount should offset any additional administrative costs that might be imposed by this amendment.

#### 4. Minimizing adverse impact

This amendment imposes no adverse impact on rural areas.

#### 5. Rural area participation

During the past two years the Insurance Department has had many conversations with actuaries and other interested parties involved with CCRC's. The Department attended a forum sponsored by the Department of Health in which interested parties discussed the current regulatory environment regarding CCRC's. The Department also received input from the residents' council of one CCRC. The Department also met with the Department of Health and representatives from the industry's umbrella organization to discuss concerns and the regulatory intent of the Department.

### **Job Impact Statement**

The Insurance Department finds that this rule will have no adverse impact on jobs and employment opportunities. This amendment liberalizes the reserve standards for a continuing care retirement community operating pursuant to Article 46 of the Public Health Law, including allowing a longer time period for a community to achieve satisfactory actuarial balance. This amendment is unlikely to impact job and employment opportunities.

## Public Service Commission

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

#### Reinstatement of Emergency Demand Response Programs by Central Hudson Gas & Electric Corporation, et al.

**I.D. No.** PSC-33-06-00001-EP

**Filing date:** July 26, 2006

**Effective date:** July 26, 2006

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

**Action taken:** The commission, on July 26, 2006, adopted an order in Case 00-E-2054 approving on an emergency basis, Central Hudson Gas & Electric Corporation's and Niagara Mohawk Power Corporation d/b/a National Grid's tariff filings to reinstate their emergency demand response programs.

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

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

**Specific reasons underlying the finding of necessity:** Immediate adoption is necessary to ensure the continuation of the Emergency Demand Response Program (EDRP) provisions, which are essential to the provision of safe and reliable electric service. Without the demand reductions that can be implemented through the EDRP, the electric delivery system might be overloaded and service interruptions could occur.

**Subject:** Reinstatement of emergency demand response programs.

**Purpose:** To reinstate emergency demand response programs.

**Substance of emergency/proposed rule:** The Commission approved on an emergency basis Central Hudson Gas and Electric Corporation's and Niagara Mohawk Power Corporation d/b/a National Grid's tariff filings to reinstate their Emergency Demand Response Programs (EDRP), which had previously expired. The Commission also approved the elimination of any expiration date for EDRP from the companies' tariffs, subject to the terms and conditions set forth in the order.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of proposed rule making. The rule will expire October 23, 2006.

**Text of rule may be obtained from:** Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 486-2660

**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.

(00-E-2054SA36)

### NOTICE OF ADOPTION

#### Rules and Guidelines Governing Installation of Metering Equipment

**I.D. No.** PSC-46-04-00009-A

**Filing date:** Aug. 1, 2006

**Effective date:** Aug. 1, 2006

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

**Action taken:** The commission, on June 20, 2006, adopted an order in Case 00-E-0165 issuing new guidelines on and revising existing policies and procedures governing the metering of a customer's electric and/or gas consumption by Meter Service Providers (MSPs) or Meter Data Service Providers (MDSPs).

**Statutory authority:** Public Service Law, art. 2, sections 44, 66, 72, 80 and 85

**Subject:** Rules and guidelines governing installation of metering equipment and access to and exchange of metering data between MSPs, MDSPs, utilities and customers.

**Purpose:** To establish uniform statewide business practices governing interactions between utilities, MSPs, MDSPs and customers regarding the measurement of customer's energy consumption and the exchange of measurement data between interested parties.

**Substance of final rule:** The Commission adopted an order requiring electric utilities to develop and file plans for feasible and cost effective advanced metering systems and directed gas utilities to assess opportunities for installation of advanced metering systems and develop plans that are needed for installing the systems, 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-E-0165SA4)

### NOTICE OF ADOPTION

#### New Types of Electricity Meters, Transformers and Auxiliary Devices by Ritz Instrument Transformers Incorporated

**I.D. No.** PSC-16-06-00010-A

**Filing date:** July 26, 2006

**Effective date:** July 26, 2006

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

**Action taken:** The commission, on July 19, 2006, adopted an order approving Ritz Instrument Transformers Incorporated's request for use in New York of three families of electrical capacitor voltage transformers.

**Statutory authority:** Public Service Law, section 67(1)

**Subject:** Approval of new types of electricity meters, transformers and auxiliary devices.

**Purpose:** To permit electric utilities to use the proposed Ritz Instrument Transformers capacitor voltage transformers.

**Substance of final rule:** The Commission adopted an order approving Ritz Instrument Transformers Incorporated's request for use in New York of three families of electrical capacitor voltage transformers.

**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.

(06-E-0358SA1)

### NOTICE OF ADOPTION

#### Submetering of Electricity by the City of Niagara Falls

**I.D. No.** PSC-16-06-00011-A

**Filing date:** July 27, 2006

**Effective date:** July 27, 2006

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

**Action taken:** The commission, on July 19, 2006, adopted an order approving the City of Niagara Falls' request to submeter electricity at Rain-

bow Mall, One Falls St., Niagara Falls, NY, located in the territory of National Grid Corporation.

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

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

**Purpose:** To approve the City of Niagara Falls' petition to submeter electricity at Rainbow Mall, One Falls St., Niagara Falls, NY.

**Substance of final rule:** The Commission adopted an order approving the City of Niagara Falls' request to submeter electricity at Rainbow Mall, 1 Falls Street, Niagara Falls, New York, located in the territory of National Grid Corporation.

**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. (06-E-0384SA1)

### NOTICE OF ADOPTION

#### Approval of a New Electricity Meter by Itron Incorporated

**I.D. No.** PSC-18-06-00013-A

**Filing date:** July 26, 2006

**Effective date:** July 26, 2006

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

**Action taken:** The commission, on July 19, 2006, adopted an order approving Itron Incorporated's request to use the Centron Polyphase solid-state commercial and industrial meter line in New York State.

**Statutory authority:** Public Service Law, section 67(1)

**Subject:** Approval of new types of electricity meters, transformers and auxiliary devices.

**Purpose:** To permit electric utilities to use the Centron Polyphase solid-state meter in commercial and industrial metering applications.

**Substance of final rule:** The Commission adopted an order approving Itron Incorporated's request to use the Centron Polyphase solid-state commercial and industrial meter line in New York State.

**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. (06-E-0421SA1)

### NOTICE OF ADOPTION

#### Submetering of Electricity by Hines Interests Limited Partnership

**I.D. No.** PSC-20-06-00013-A

**Filing date:** July 27, 2006

**Effective date:** July 27, 2006

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

**Action taken:** The commission, on July 19, 2006, adopted an order approving the petition of WXIV/Broadway Grant Realty, LLC to submeter electricity at 40 Mercer St., New York, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

**Purpose:** To approve WXIV/Broadway Grand Realty, LLC's request to submeter electricity at 40 Mercer St., New York, NY.

**Substance of final rule:** The Commission adopted an order approving WXIV Broadway Grand Realty, LLC's request to submeter electricity at 40 Mercer Street, New York, New York, located in the territory of Consolidated Edison Company of New York, 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. (06-E-0455SA1)

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

#### Interconnection Agreement between Verizon New York Inc. and ACC Corp.

**I.D. No.** PSC-33-06-00018-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 proposal filed by Verizon New York Inc. and ACC Corp. for approval of an interconnection agreement and amendment nos. 1 and 2 executed on Aug. 1, 2006.

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

**Subject:** Interconnection of the networks between Verizon New York Inc. and ACC Corp. for local exchange service and exchange access.

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

**Substance of proposed rule:** Verizon New York Inc. and ACC Corp. have reached a negotiated agreement whereby Verizon New York Inc. and ACC Corp. 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 and Amendment Nos. 1 and 2 establish obligations, terms and conditions under which the parties will interconnect their networks lasting until July 31, 2009, or as extended.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**Data, views or arguments may be submitted to:** Jaclyn A. Brillings, 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.

(06-C-0848SA1)

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

#### Interconnection Agreement between Verizon New York Inc. and AT&T Communications of New York, Inc.

**I.D. No.** PSC-33-06-00019-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 proposal filed by Verizon New

York Inc. and AT&T Communications of New York, Inc. for approval of an interconnection agreement and amendment nos. 1 and 2 executed on Aug. 1, 2006.

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

**Subject:** Interconnection of the networks between Verizon New York Inc. and AT&T Communications of New York, Inc. for local exchange service and exchange access.

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

**Substance of proposed rule:** Verizon New York Inc. and AT&T Communications of New York, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and AT&T Communications of 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 and Amendment Nos. 1 and 2 establish obligations, terms and conditions under which the parties will interconnect their networks lasting for the term of an underlying agreement.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**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. (06-C-0849SA1)

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

**Interconnection Agreement between Verizon New York Inc. and Teleport Communications Group Inc.**

**I.D. No.** PSC-33-06-00020-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 Verizon New York Inc. and Teleport Communications Group Inc. for approval of an interconnection agreement and amendment nos. 1 and 2 executed on Aug. 1, 2006.

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

**Subject:** Interconnection of the networks between Verizon New York Inc. and Teleport Communications Group Inc. for local exchange service and exchange access.

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

**Substance of proposed rule:** Verizon New York Inc. and Teleport Communications Group Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Teleport Communications Group 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 and Amendment Nos. 1 and 2 establish obligations, terms and conditions under which the parties will interconnect their networks lasting until July 31, 2009, or as extended.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**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. (06-C-0850SA1)

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

**Interconnection Agreement between ALLTEL New York, Inc. and Nextel**

**I.D. No.** PSC-33-06-00021-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 ALLTEL New York, Inc. and Nextel for approval of an interconnection agreement executed on Nov. 22, 2005.

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

**Subject:** Interconnection of the networks between ALLTEL New York, Inc. and Nextel for local exchange service and exchange access.

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

**Substance of proposed rule:** ALLTEL New York, Inc. and Nextel have reached a negotiated agreement whereby ALLTEL New York, Inc. and Nextel 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 March 14, 2007, or as extended.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**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. (06-C-0872SA1)

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

**Interconnection Agreement between Frontier Telephone of Rochester, Inc. and Neutral Tandem—New York, Inc.**

**I.D. No.** PSC-33-06-00022-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 Telephone of Rochester, Inc. and Neutral Tandem—New York, Inc. for approval of an interconnection agreement executed on June 15, 2006.

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

**Subject:** Interconnection of the networks between Frontier Telephone of Rochester, Inc. and Neutral Tandem—New York, Inc. for local exchange service and exchange access.

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

**Substance of proposed rule:** Frontier Telephone of Rochester, Inc. and Neutral Tandem—New York, Inc. have reached a negotiated agreement whereby Frontier Telephone of Rochester, Inc. and Neutral Tandem—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 15, 2007, or as extended.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**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.

(06-C-0892SA1)

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

**Interconnection Agreement between Frontier Communications of AuSable Valley, Inc. and PrimeLink, Inc.**

**I.D. No.** PSC-33-06-00023-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 AuSable Valley, Inc. and PrimeLink, Inc. for approval of an interconnection agreement executed on June 16, 2006.

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

**Subject:** Interconnection of the networks between Frontier Communications of AuSable Valley, Inc. and PrimeLink, Inc. 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 AuSable Valley, Inc. and PrimeLink, Inc. have reached a negotiated agreement whereby Frontier Communications of AuSable Valley, Inc. and PrimeLink, 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 16, 2007, or as extended.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**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.

(06-C-0893SA1)

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

**Submetering Electricity by Bellevue South Associates, LP**

**I.D. No.** PSC-33-06-00024-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, the petition filed by Bellevue

South Associates, LP, to submeter electricity at 460-520 Second Ave., New York, NY.

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

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

**Purpose:** To consider the request of Bellevue South Associates, LP, to submeter electricity at 460-520 Second Ave., New York, NY.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Bellevue South Associates, LP, to submeter electricity at 460-520 Second Avenue, New York, New York.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**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.

(06-E-0842SA1)

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

**Submetering of Electricity by Herbert E. Hirschfeld, P.E. on Behalf of Oceangate Associates, LP**

**I.D. No.** PSC-33-06-00025-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, deny or modify, in whole or part, the petition filed by Herbert E. Hirschfeld, P.E., on behalf of Oceangate Associates, LP, to submeter electricity at 2730 W. 33rd St., Brooklyn, NY.

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

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

**Purpose:** To consider the request of Herbert E. Hirschfeld, P.E., on behalf of Oceangate Associates, LP, to submeter electricity at 2730 W. 33rd St., Brooklyn, NY.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Herbert E. Hirschfeld, P.E., on behalf of Oceangate Associates, LP, to submeter electricity at 2730 West 33rd Street, Brooklyn, New York.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**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.

(06-E-0847SA1)

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

**Submetering of Electricity by Cabrini Towers**

**I.D. No.** PSC-33-06-00026-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, deny or modify, in whole or part, the petition filed by Cabrini Towers, to submeter electricity at 900 W. 190th St., New York, NY.

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

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

**Purpose:** To consider the request of Cabrini Towers to submeter electricity at 900 W. 190th St., New York, NY.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Cabrini Towers to submeter electricity at 900 West 190th Street, New York, New York.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**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.

(06-E-0874SA1)

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

**Average Commodity Cost of Gas by Central Hudson Gas & Electric Corporation**

**I.D. No.** PSC-33-06-00027-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, or modify in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 12 to become effective Oct. 31, 2006.

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

**Subject:** Average commodity cost of gas.

**Purpose:** To reflect the inclusion of risk management fees in the calculation of the average cost of gas.

**Substance of proposed rule:** The Commission is considering Central Hudson Gas & Electric Corporation's request to update its gas tariff to reflect the inclusion of risk management fees in the calculation of the average cost of gas.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**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.

(06-G-0908SA1)

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

**Capacity Release Service Program by Orange and Rockland Utilities, Inc.**

**I.D. No.** PSC-33-06-00028-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, reject or modify in whole or in part, a proposal filed by Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 4 to become effective Nov. 1, 2006.

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

**Subject:** Capacity release service.

**Purpose:** To indefinitely extend the Capacity Release Service Program and to replace a limitation on the sellers' ability to increase or decrease their capacity requirements from year to year.

**Substance of proposed rule:** The Commission is considering Orange and Rockland Utilities, Inc.'s request to continue Capacity Release Service until further notice and to establish a year-to-year limitation on increases or decreases in the amount of capacity to be obtained from the company.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

**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.

(06-G-0917SA1)

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

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

**I.D. No.** PSC-33-06-00029-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, reject or modify in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 9 to become effective Nov. 1, 2006.

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

**Subject:** Capacity release service.

**Purpose:** To indefinitely extend the Capacity Release Service Program, to move the capacity release service from Service Classification No. 9 to Service Classification No. 20 and to limit the aggregate marketers' ability to either increase or decrease their capacity requirement by not more than 20 percent of the aggregate percentage of capacity released to marketers in the preceding capacity release period.

**Substance of proposed rule:** The Commission is considering Consolidated Edison Company of New York Inc.'s (the company's) request to continue Capacity Release Service until further notice. The company is also proposing to move the Capacity Release Service tariff from S.C. No. 9 – Transportation Service to S.C. No. 20 – Transportation Receipt Service and to establish a year-to-year limitation on increases or decreases in the amount of capacity to be obtained from the company.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:**

Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(06-G-0918SA1)

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

**Transfer of Water Supply Assets by Ocean Bay Park Water Corporation and the Suffolk County Water Authority**

**I.D. No.** PSC-33-06-00030-P

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

**Proposed action:** The Public Service Commission is considering whether to approve, reject, or modify, in whole or in part, a request by Ocean Bay Park Water Corporation and the Suffolk County Water Authority for approval of the transfer of all of the water supply assets of Ocean Bay Park Water Corporation to the Suffolk County Water Authority. The commission may also consider other related matters.

**Statutory authority:** Public Service Law, sections 2, 5, 89-b and 89-h

**Subject:** Transfer of water supply assets and other related matters.

**Purpose:** To consider the transfer of the water supply assets of Ocean Bay Park Water Corporation to the Suffolk County Water Authority and other related matters.

**Substance of proposed rule:** On July 13, 2006, Ocean Bay Park Water Corporation (Ocean Bay) and the Suffolk County Water Authority (SCWA) filed a joint petition requesting permission for Ocean Bay to transfer its water supply assets to the SCWA for \$400,000 plus up to \$12,500 for related closing costs. Ocean Bay provides metered water service to about 320 customers in an area known as Ocean Bay Park on Fire Island, in the Town of Brookhaven, Suffolk County. Ocean Bay also provides year round fire protection service to the Ocean Bay also provides year round fire protection service to the Ocean Bay Park Fire District serving Ocean Bay Park and part of a neighboring community known as Seaview. There are also mutual supply agreement with Seaview and the SCWA.

The Commission may approve, reject, or modify, in whole or in part, the parties' request. It may also consider other related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:** Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(06-W-0830SA1)

## Racing and Wagering Board

### NOTICE OF ADOPTION

**Administration of Race Day Medications by Veterinarians**

**I.D. No.** RWB-20-06-00010-A

**Filing No.** 922

**Filing date:** July 28, 2006

**Effective date:** Aug. 16, 2006

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

**Action taken:** Amendment of section 4005.5 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, section 101

**Subject:** The administration of race day medications by veterinarians employed by the New York State Racing and Wagering Board and licensed thoroughbred racing associations.

**Purpose:** This rule is intended to allow the administration of Board-authorized race day medications to horses that are quartered in limited access security barns by Board or association veterinarians. Currently, such veterinarians are prohibited from administering medications except in emergencies. Such security barns are designed to prohibit the unauthorized administration of certain medications. Nevertheless, the Board has authorized the administration of certain medication on the day that a horse will race, including the medication known as furosemide. This amendment will allow the Board veterinarian or association veterinarian to administer such race day medications and preserve the integrity of the limited access security barns.

**Text or summary was published** in the notice of proposed rule making, I.D. No. RWB-20-06-00010-P, Issue of May 17, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: [info@racing.state.ny.us](mailto:info@racing.state.ny.us)

**Assessment of Public Comment**

The agency received no public comment.

## Office of Real Property Services

### EMERGENCY RULE MAKING

**Training Requirements for New York City Assessors**

**I.D. No.** RPS-27-06-00006-E

**Filing No.** 924

**Filing date:** Aug. 1, 2006

**Effective date:** Aug. 1, 2006

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

**Action taken:** Addition of Subpart 188-8 to Title 9 NYCRR.

**Statutory authority:** Real Property Tax Law, art. 3, title 3 and section 210(1)(l)

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

**Specific reasons underlying the finding of necessity:** Chapter 139 of the Laws of 2005 requires the State Board to have a program in place for the training of New York City assessors by April 1, 2006.

**Subject:** Training requirements for New York City assessors.

**Purpose:** To establish a program of training, certification and minimum qualifications for New York City assessors.

**Text of emergency rule:**

## SUBPART 188-8

## NEW YORK CITY ASSESSORS

Section 188-8.1 Certification requirements for New York City assessors, generally. (a) This subpart applies to all individuals who perform professional appraisal duties relating to the assessment of property for the real property tax. On or before April 1 each year ORPS will provide the Department of Citywide Administrative Services with a list of those agencies of the City government and the job titles within those agencies that are subject to the provisions of this subpart. Additions to or deletions from that list may be made at any time.

(b) Each assessor serving on the effective date of this subpart must attain certification by April 1, 2008.

(c) A State certified assessor must be recertified upon a reappointment where there has been an interruption of continuous service of at least four years.

Section 188-8.2 Minimum qualification standards for New York City assessors. (a) The minimum qualification standards for appointed assessors are as follows:

(1)(i) graduation from high school, or possession of an accredited high school equivalency diploma; and

(ii) two years of satisfactory full-time paid experience in an occupation involving the valuation of real property, such as assessor, appraiser, valuation data manager, real property appraisal aide or the like. Such experience shall be deemed satisfactory if it is demonstrated that the experience primarily was gained in the performance of one or more of the following tasks: collection and recording of property inventory data, preparation of comparable sales analysis reports, preparation of signed valuation or appraisal estimates or reports using cost, income or market data approaches to value. Mere listing of real property for potential sale, or preparation of asking prices for real estate for potential sale, using multiple listing reports or other published asking prices is not qualifying experience; or

(2) graduation from an accredited two-year college and one year of the experience described in subparagraph (1)(ii) of this subdivision; or

(3) graduation from an accredited four-year college and six months of the experience described in subparagraph (1)(ii) of this subdivision; or

(4) certification by the State Board as a candidate for assessor.

(b) In evaluating the experience described in subparagraph (1)(ii) of this subdivision (a), the following conditions shall apply:

(i) for the purpose of crediting full-time paid experience, a minimum of 30-hour per week shall be deemed as full-time employment;

(ii) three years of part-time paid experience as sole assessor or as chairman of the board of assessors shall be credited as one year of full-time paid experience, and five years of part-time paid experience as a member of a board of assessors shall be credited as one year of full-time paid experience. Additional paid part-time experience in excess of these amounts shall be credited proportionately;

(iii) volunteer experience in an assessor's office may be credited as paid experience to the extent that it includes tasks such as data collection; calculation of value estimates; preparation of preliminary valuation reports; providing routine assessment information to a computer center; public relations; and review of value estimates, computer output and exemption applications; and

(iv) in no case shall less than six months of the experience described in subparagraph (1)(ii) of subdivision (a) be acceptable.

Section 188-8.3 Basic course of training for New York City assessors. (a) The basic course of training shall include the following components:

(1) assessment administration (New York City);

(2) fundamentals of data collection;

(3) fundamentals of real property appraisal;

(4) income approach to valuation;

(5) advanced income approach to valuation;

(6) ethics;

(7) fundamentals of mass appraisal; and

(8) computer assisted mass appraisal modeling.

(c) Successful completion of the basic course of training shall be demonstrated by fulfilling the requirements for all required components and passing all of the prescribed examinations for the components.

(d) An individual who has successfully completed a training session not conducted or approved by ORPS, which presented topics similar to those in one or more of the components of the basic course of training, may request that this session be accepted as satisfaction of such component or components. The individual must submit the same supporting material as required by section 188-2.8 of this Part for obtaining continuing education

credit. In no event will any training be accepted that was successfully completed more than three years prior to the date that the assessor became subject to the provisions of this Subpart.

(e) If ORPS determines that the training session is not an acceptable substitute for successful completion of a component or components of the basic course of training, ORPS shall provide written notification of that determination to the individual. Such notice shall set forth the reasons for the determination and state that the person may request a review of such determination.

(f) An individual adversely affected by a determination may request a review within 15 days of such determination. Such request must be made in writing and be addressed to the executive director.

(g) The executive director shall provide the applicant with written notification of his or her affirmation or reversal of the initial determination, including the reasons for such decision.

(h) An individual shall have up to two opportunities through examinations to successfully complete a component of the basic course of training without attending classroom instruction. A failure of the examination or failing to attend an examination is considered an opportunity.

Section 188-8.4 Interim certification for New York City assessors. [reserved]

Section 188-8.5 Continuing education requirement for New York City assessors. [reserved]

Section 188-8.6 Reimbursement of expenses for New York City assessors. (a) Certain expenses incurred by an assessor in successfully completing a component of the basic course of training set forth in section 188-8.3 of this Subpart, or while attending a training course, conference or seminar with the approval of ORPS shall be a State charge subject to audit by the State Comptroller, subject to the following:

(1) The course or seminar and the expenses must be approved by ORPS.

(2) The assessor must successfully complete the course or seminar, as demonstrated by passing the examination for the course or seminar, or, if no such examination was offered, by proof of attendance at the course or seminar.

(b) Where the conditions in subdivision (a) of this section have been satisfied, reimbursement shall be in the same manner and to the same extent that employees of the State of New York who are members of the Professional, Scientific and Technical unit are reimbursed for travel expenses except as provided below:

(1) Reimbursement for non-overnight travel mileage shall be limited to a maximum of one hundred miles per day, unless either the component is not offered within fifty miles of the official station of the assessor, or ORPS approves attendance at a component offered beyond 50 miles where attendance is found by ORPS to be more practicable;

(2) Expenses for room and board shall be allowed if an assessor can demonstrate that commuting to and from the location of a component will create undue hardship or a component is not offered within 50 miles of the official station of the assessor;

(3) Tuition fees will be reimbursed at a rate that is usual and reasonable for that type of training;

(4) Reimbursement for completing components of the basic course of training for attaining certification as a State Certified Assessor and for satisfaction of continuing education requirements shall be made only upon claims submitted no later than 30 days following completion of such training. Submissions by mail shall be deemed to have been submitted when postmarked. Claims submitted more than 30 days following the completion of such training will be reviewed for possible payment on or before the first day of June of the succeeding fiscal year. If funds remain from the appropriation for training reimbursement in the fiscal year in which the assessor completed such training, claims will be paid in full or, if the remaining funds are insufficient, prorated.

(c) Requests for reimbursement shall be made on a State of New York standard voucher (AC92) and any other form required by the State Office.

(d) Reimbursement shall be dispersed as follows:

(1) Upon appropriation of an amount for reimbursement of expenses pursuant to this Part in the State Budget, this appropriation shall be divided into three allotments, an allotment of one-half of the total appropriation, to be referred to as the first allotment, an allotment of one-third of the total appropriation, to be referred to as the second allotment, and an allotment of one-sixth of the total appropriation, to be referred to as the third allotment.

(2) Reimbursement for successful completion of one or more components of the basic course of training shall be made in the full amount due under this Part as vouchers are received.

(3) Reimbursement for training completed between April 1 and July 31 of each fiscal year in compliance with the continuing education requirements of this Part shall be made in accordance with this paragraph. All such amounts due shall be totaled and compared to the first allotment minus all payments of reimbursement for basic training; this constitutes the net first allotment. If the total of possible reimbursement is equal to the net first allotment, the full amount due shall be paid for each voucher. If the total of possible reimbursement is less than the net first allotment, the full amount due shall be paid for each voucher and the remainder shall be added to the second allotment. If the total of possible reimbursement is more than the net first allotment, the total of possible reimbursement shall be divided into the net first allotment. The resulting fraction is the first proration factor. The first proration factor shall be applied to each continuing education voucher to determine the reimbursement payment to be made for each of these vouchers.

(4) Reimbursement for training completed between August 1 and November 30 of each fiscal year in compliance with the continuing education requirements of this Part shall be made in accordance with this paragraph. All such amounts shall be totaled and compared to the second allotment, minus all payments of reimbursement for basic training plus any addition resulting from paragraph (3); this constitutes the net second allotment. If the total of possible reimbursement is equal to or less than the net second allotment, the full amount shall be paid for each voucher and any remainder shall be added to the third allotment. If the total of possible reimbursement is more than the net second allotment, the total of possible reimbursement shall be divided into the net second allotment. The resulting fraction is the second proration factor. The second proration factor shall be applied to each continuing education voucher amount to determine the reimbursement payment to be made for each of these vouchers.

(5) Reimbursement for training completed between December 1 and March 31 of each fiscal year in compliance with the continuing education requirements of this Part shall be made in accordance with this paragraph. All such amounts shall be totaled and compared to the third allotment, minus all payments of reimbursement for basic training plus any addition resulting from paragraph (4); this constitutes the net third allotment. If the total of possible reimbursement is equal to or less than the net third allotment, the full amount shall be paid for each voucher. If the total of possible reimbursement is more than the net third allotment, the total of possible reimbursement shall be divided into the net third allotment. The resulting fraction is the third proration factor. The third proration factor shall be applied to each continuing education voucher amount to determine the reimbursement payment to be made for each of these vouchers.

(e) Whenever any training is deemed to satisfy the requirements of this subpart, for purposes of reimbursement pursuant to this section, the training shall be deemed to have been completed on the date upon which it is deemed to satisfy the appropriate training requirement. The local official receiving credit for the training shall be provided with the necessary voucher and information which must be returned completed within thirty days.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. RPS-27-06-00006-P, Issue of July 5, 2006. The emergency rule will expire September 29, 2006.

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

#### **Regulatory Impact Statement**

1. Statutory Authority: Section 202(1)(1) of the Real Property Tax Law (RPTL) authorizes the State Board of Real Property Services to adopt such rules "as may be necessary for the exercise of its powers and the performance of its duties."

Title 3 of Article 3 of the RPTL requires assessors in New York City, to obtain certification from the State Board of Real Property Services.

Section 1532 of the Real Property Tax Law requires directors of county real property tax services agencies to obtain certification from the State Board of Real Property Services.

2. Legislative Objectives: The training and certification of New York City Assessors.

3. Needs and Benefits: Title 3 of Article 3 of the Real Property Tax Law, as added by Chapter 139 of the Laws of 2005, requires the State Board of Real Property Services to establish, in rule, a program for the qualifications, training and certification of New York City assessors. The genesis of this bill was the recent scandal involving assessors in the

Department of Finance. The Department had approximately 175 individuals serving as assessors who were valuing annually each of the City's almost one million parcels with minimal supervision. The allegation was that some assessors were systematically overvaluing parcels, particularly commercial buildings in Manhattan, and subsequently reducing those values in return for bribes.

Under Title 2 of Article 3, the State Board of Real Property Services has the responsibility for the training and certification of local assessment personnel outside of the assessing units of New York City, Nassau County, Buffalo, Rochester, Syracuse, Albany and Yonkers. This program entails the qualifications, certification and continuing education of the individuals holding 802 appointive assessor positions and 55 county directors of real property tax service agencies, the certification of 489 elective assessor positions, and the qualifications and certification of 94 candidates for assessor and 49 real property appraisers. The State Board prescribes the various standards and requirements for minimum qualifications, certification and continuing education. The Board is also authorized to enforce these requirements through proceedings to remove from office those not in compliance.

Under the present program, the qualifications of appointive assessors are submitted to the agency prior to the municipality making the appointment. If the agency approves the applicant's qualifications, the newly appointed assessor must obtain certification within three years. During that time the assessor must maintain an interim certification by making mandated progress toward certification. If an assessor is unable to obtain certification in the required time due to reasons beyond the assessor's control, that assessor may seek a temporary certificate to enable the assessor to continue in office until certified. Once certified, appointive assessors must satisfy continuing education requirements. Assessors can obtain reimbursement for necessary expenses incurred in complying with these training requirements.

The *Final Report* of the New York City Department of Finance and Department of Investigation Joint Task Force Charged with eliminating Corruption in the Department of Finance's Real Property Assessment Unit (January 2004) contained a recommendation to "Require Assessors to Attain the Same Professional Credentials and Standards Required Throughout New York State" (IV[A], p.11). The recommendation included requiring the "State Certified Assessor-Advanced" designation issued by the New York State Office of Real Property Services (NYSORPS), which is not part of the mandated training program. Although this report may have been the genesis of this legislation, its recommendations are not incorporated directly.

Title 3 contains some but not all of the existing provisions for appointive assessors. New York City Assessors have to obtain certification by completing required training, passing a comprehensive examination or receive a waiver based upon a professional designation (§ 354[1][2][3]). These provisions are parallel to those in Title 2 (§ 318[1][2][3]). However, the time limit and interim certification provisions in section 318(1) have not been included. The effective date provides two years for current assessors to obtain certification. The drafters apparently recognized the need for time to attend required training but did not reflect this need in the new program. Certification may thus be a prerequisite to appointment. This is similar to the requirement for town and village justices, who must be trained before serving (Uniform Justice Court Act, § 105), rather than the existing assessor provisions that allow an assessor to serve for up to three years without having obtained certification.

Section 354(4) repeats the language in 318(4) concerning state reimbursement, including the phrase "including continuing education prescribed by the state board". However, the bill does not repeat the language in 310(5)(b) authorizing the State Board to prescribe a continuing education program. Given that the removal provisions of section 358 do not include failure to satisfy continuing education requirements as grounds for removal (*c.f.* § 322[1][f]), it may be that the reference to continuing education was unintentional and that the Board can not prescribe such a program.

It is unclear which City employees the bill encompasses. New section 352 would have the Board establish minimum qualifications for "(a) chief or inferior assessors and (b) other administrative positions having professional appraisal duties relating to the assessment of real property for purposes of taxation". However, the certification requirements only apply to assessors (§ 354) and candidates for assessor (§ 356). Even if provisions only apply to assessors, the position "city assessor" exists in three different City agencies – the Departments of Finance and Law and the Tax Commission. In addition, appraiser positions exist in departments other than Finance.

The draft rules avoid the question of which City employees are subject to the requirements by making this an annual determination (188-8.1[a]). This will allow ORPS to ensure regularly that the correct individuals are covered. ORPS would make the determination each April 1 and could change it at any time.

In the absence of an interim certification program in the statute, section 188-8.6 is reserved for the necessary provisions should the statute be amended. The rules are silent on whether new assessors have to be certified before appointment. If the statute is not amended, this provision would be implicit and could be added later. Similarly, in the absence of the authority to mandate continuing education, section 188-8.7 is reserved for the necessary provisions should the statute be amended.

The basic course of training consists of the following components:

- (1) assessment administration (New York City);
- (2) fundamentals of data collection;
- (3) fundamentals of real property appraisal;
- (4) income approach to valuation;
- (5) advanced income approach to valuation;
- (6) ethics;
- (7) fundamentals of mass appraisal; and
- (8) computer assisted mass appraisal modeling.

Training taken within three years of the requirements taking effect would be accepted (188-8.5[d]).

4. Costs: (a) To State Government: As the program is implemented, starting in 2006-07, there will be additional ORPS resources needed, although no estimate has been made. In addition, the funds paid for reimbursement to local officials for training expenses, \$350,000 for the 2005-2006 fiscal year for training outside of New York City, will increase in 2006-07 to provide for the expenses of training New York City assessors. There is no accurate estimate of the cost at this point.

(b) To local governments: The implementation of Title 3 by this proposal will result in lost productivity as New York City assessors take time from training as well as imposing reporting and recordkeeping requirements on the City. In addition, the City may absorb some of the costs of training assessors.

(c) To private regulated parties: None. There are no private regulated parties in this program.

(d) Basis of cost estimates: Past experience and the requirements of Title 3.

5. Local Government Mandates: Title 3 places the mandate on the City of having its assessors trained and certified, with the corollary loss of productivity and recordkeeping. This proposal implements that mandate.

6. Paperwork: Implementation of the program will require maintenance of over 125 training records by the New York State Office of Real Property Services and by the City.

7. Duplication: There are no comparable State or Federal requirements.

8. Alternatives: The proposal could have imposed the existing course of training, resulting in a course of training that is less responsive to the needs of the City. The proposal could have required training that is not as readily available. The proposal could have mandated the same reporting requirements on the City that other local governments face.

9. Federal Standards: There are no Federal regulations concerning this subject.

10. Compliance Schedule: None. Chapter 139 contains the requirement that those assessors currently employed must obtain certification by April 1, 2008. This requirement is not repeated in the proposal.

**Regulatory Flexibility Analysis**

The amendment proposed would not impose any adverse economic conditions or any reporting, recordkeeping or other compliance requirements on small businesses.

The rule will require New York City to provide information on the appointment of assessors and training they may be taking to satisfy the requirements of the proposal. In addition, the City may suffer a loss in productivity as approximately 150 employees attend approximately 35 hours of training over a two year period. Both of these effects are necessary given the mandate of Chapter 139 of the Laws of 2005, which added Title 3 to Article 3 of the Real Property Tax Law, to require State certification of New York City assessors.

However, the agency has attempted to mitigate the impact on the City. The proposal assures the only the appropriate individuals are subject to the requirements by making this an annual determination. The notice requirement for new assessors is less complicated than the existing requirement for other municipalities, which must submit qualifications of appointees to this agency prior to appointments (9 NYCRR 188-2.4[a]). The basic course of training has been tailored to the needs of the City rather than

simply imposing the existing course in 9 NYCRR 188-2.6. Most of the training is available from the International Association of Assessing Officers. By requiring training that can be provided by professionals at centralized locations, the proposal further mitigates the impact on the City and its assessors. And finally, the proposal is the result of discussions with the City, discussions to which individual assessors have had input.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not required for this rule making because the proposal only applies to New York City.

**Job Impact Statement**

A job impact statement is not required for this rule making because the amendment only concerns New York City civil servants and administration of a statutorily required program by New York City and the New York State Office of Real Property Services.

**Assessment of Public Comment**

At the meeting of the State Board of Real Property Services at which these emergency rules were first adopted, Thomas Frey, Executive Secretary of the New York State Assessors' Association, expressed opposition to these rules on two grounds. First, the proposal limits previous training that may be used to satisfy the requirements to training taken in the previous three years. No such restriction exists for assessors outside of New York City. Chapter 139 provides that New York City assessors must attain certification by completing training by April 1, 2008. We believe that allowing unlimited acceptance of prior training, as requested, is inconsistent with the clear legislative intent. His second issue was that several of the components of the basic course involve training that is irrelevant to the work of New York City assessors. The components were developed with the cooperation of the City's Department of Finance. We believe that the components represent the types of skills needed to perform the assessment function in the nation's largest City. The input of the Department is necessary to assure that the basic course reflects the needs of the City government. The current proposal was not changed as a result of these comments. At a public hearing on the proposed rules held on July 24, 2006, these concerns were repeated. Other concerns expressed included the content of a recent component presented by the Department of Finance and the statutory provisions allowing for the termination of uncertified assessors. These, and any other comment received during the period for public comment, will be addressed if the proposal is adopted.

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## Department of State

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

**Qualifying Courses for Home-Inspection Applicants**

**I.D. No.** DOS-33-06-00004-EP

**Filing No.** 920

**Filing date:** July 28, 2006

**Effective date:** July 30, 2006

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

**Action taken:** Addition of Subpart 197-2 to Title 19 NYCRR.

**Statutory authority:** Real Property Law, sections 444-c(6)(A) and 444-1  
**Finding of necessity for emergency rule:** Preservation of general welfare.

**Specific reasons underlying the finding of necessity:** This amendment was adopted on an emergency basis to preserve the public welfare by ensuring that schools and students will know what courses are required in order for an applicant to qualify for a home inspection license pursuant to Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law. Article 12-B provides, in part, that, on and after December 31, 2005, no person shall conduct a home inspection for compensation unless such person is licensed as a home inspector pursuant to Article 12-B. To qualify for a license, an applicant must successfully complete a course of study to be prescribed and approved by the Department of State. Accordingly, in order to ensure that prospective applicants can obtain the

required courses and to ensure that schools are prepared to offer approved courses, this rule has been adopted on an emergency basis.

**Subject:** Qualifying courses for home-inspection applicants.

**Purpose:** To establish standards for home-inspection courses, as well as procedures for course approval.

**Text of emergency/proposed rule:** A new Subpart 197-2 of Part 197 of Title 19 of the NYCRR is adopted to read as follows:

*Subpart 197-2*

*Home Inspection Qualifying Courses*

*§ 197-2.1 Approved entities.*

*Home Inspection courses and offerings may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency accepted by said Commissioner of Education; public and private schools; and home inspection related professional societies and organizations.*

*§ 197-2.2 Request for approval of courses of study.*

*Applications for approval to conduct courses of study to satisfy the requirements for licensed home inspector shall be made at least 60 days before the proposed course is to be conducted. The application shall be prescribed by the Department to include the following:*

*(a) name and business address of the proposed school which will present the course;*

*(b) if applicant is a partnership, the names and home addresses of all the partners of the entity;*

*(c) if applicant is a corporation, the names and home addresses of persons who own five percent or more of the stock of the entity;*

*(d) the name, home and business address and telephone number of the education coordinator that will be responsible for administering the regulations contained in this part;*

*(e) locations where classes will be conducted;*

*(f) title of each course to be conducted;*

*(g) detailed outline of each module, together with the time sequence of each segment;*

*(h) final examination to be presented for each course, including the answer key;*

*(i) all times included on each test form must be consistent with content specifications indicated for each course. Weighing of significant content areas should fall within the weight ranges indicated. All reference sources used to support each correct answer must be included. Linkage to each answer must be indicated with a footnote showing page number, subject matter, etc.;*

*(j) description of materials that will be distributed;*

*(k) the books that will be used for the outline and the final exams; and*

*(l) a detailed description of the means of providing the 40 hour field based training.*

*§ 197-2.3 Subjects for study - home inspection.*

*The following are the required subjects to be included in the course of study in home inspection for licensure as a home inspector, and the required number of hours to be devoted to each such subject. All approved schools must follow this course syllabus in conducting their program.*

*Home Inspection Course Modules - 140 hours*

*Module 1*

*Structural*

*Exterior*

*Roof*

*25 hours*

*Final Exam*

*Module 2*

*Interior*

*Insulation and Ventilation*

*Electrical*

*25 hours*

*Final Exam*

*Module 3*

*Heating*

*Cooling*

*Plumbing*

*25 hours*

*Final Exam*

*Module 4*

*Overview of Profession*

*NYS License Law*

*Report Writing*

*25 hours*

*Final Exam*

*Module 5 - 40 hours*

*(1) 40 hours of unpaid field-based training in the presence of and under the direct supervision of a home inspector licensed by New York State, or a professional engineer or architect regulated by New York State who oversees and takes full responsibility for the inspection and any report produced.*

*(2) Students have the option of not completing the field-based training by an approved school; however, all entities requesting approval for the Home Inspection qualifying curriculum must be approved for and make available to their students the 40 hours of unpaid field-based training and provide the Department of State with a detailed description of the means for providing the training.*

*(3) Schools must maintain a log of all inspections completed for purposes of providing proof of each student's field based training. The log must contain the following information:*

*(a) the student's name;*

*(b) the date of the home inspection;*

*(c) the address of the property inspected;*

*(d) the name of the client;*

*(e) the amount of time that was spent on the inspection; and*

*(f) the name, unique identification number and signature of the licensed home inspector, professional engineer or architect.*

*(4) Approved entities must verify hours of training and provide the student with a certificate of completion.*

*(5) If Field-based training is not completed by an Approved Home Inspection School, the student must maintain a log of all inspections completed for purposes of providing proof of their field based training. The log must contain the following information:*

*(a) the date of the inspection;*

*(b) the address of the property inspected;*

*(c) the name of the client;*

*(d) the amount of time that was spent on the inspection; and*

*(e) the name, unique identification number and signature of the licensed home inspector, professional engineer or architect.*

*(6) Completed home inspections must be maintained by the licensed home inspector, professional engineer or architect, and are subject to review by the Department of State.*

*§ 197-2.4 Equivalency pre-licensing education courses completed prior to January 1, 2006.*

*(a) The criteria for approval of courses completed prior to the January 1, 2006, shall be that the course or courses have substantially covered the same subject matter, classroom hours of attendance and completed standards as prescribed by this Subpart as a prerequisite of licensing.*

*(b) Application for course evaluation must be accompanied by an official transcript or other documentation showing the subjects taken, the hours of instruction devoted to each subject and the hours attended by said applicant together with the date completed. In addition, a course description or outline must be provided by the school along with an applicant's equivalency request.*

*(c) The Department may request additional supportive documentation to determine course equivalency.*

*§ 197-2.5 Computation of instruction time.*

*To meet the minimum statutory requirement, attendance shall be computed on the basis of an hour equaling 50 minutes. For every 50 minutes of instruction there shall be an additional 10 minute break. The time of the breaks shall be left to the discretion of the individual education coordinator. Breaks shall not be considered optional, nor are they to be used to release the class earlier than scheduled.*

*§ 197-2.6 Attendance and examinations.*

*(a) No person shall receive credit for any course module presented in a class-room setting if he or she is absent from the class room, during any instructional period, for a period or periods totaling more than 10 percent of the time prescribed for the course module pursuant to section 197-2.3 of this Subpart, and no person shall be absent from the class room except for a reasonable and unavoidable cause.*

*(b) Students who fail to attend the required scheduled class hours may, at the discretion of the approved entity, make up the missed subject matter during subsequent classes presented by the approved entity.*

*(c) Final examinations may not be taken by any student who has not satisfied the attendance requirement.*

*(d) A make up examination may be presented to students at the discretion of the approved entity. Make up examinations must be submitted for approval to the Department in accordance with guidelines noted in section 197-2.2 of this Subpart.*

(e) All examinations required for course work shall be written and given within a reasonable time after the course work has been conducted. The failure of the final exam shall constitute failure of the course module.

§ 197-2.7 Facilities.

Each course shall be presented in such premises and in such facilities as shall be necessary to properly present the course.

§ 197-2.8 Record retention.

All organizations conducting approved courses of study shall retain the attendance records, the final examinations and a list of students who successfully complete each course module for a period of three years after completion of each course module. All documents shall at all times during such period be available for inspection by duly authorized representatives of the Department of State.

§ 197-2.9 Faculty.

(a) Each instructor for an approved home inspection course of study must be approved by the Department of State. To be approved, an instructor must submit an application along with a resume reflecting three years of experience as a home inspector during which time the applicant has completed at least 250 home inspections.

(b) An instructor who does not qualify under subdivision (a) of this section may be approved as a technical expert if the instructor submits an application and resume establishing, to the satisfaction of the Department of State, that the applicant is an expert in and has at least three years' experience in a specific technical subject related to home inspection. Approval by the Department of State shall specify the subject(s) within the home inspection course or course module for which approval is given.

§ 197-2.10 Policies concerning course cancellation and tuition refund.

Any educational institution or other organization requesting from the Department of State approval for home inspection courses must have a policy relating to course cancellation and tuition refunds. Such policy must be provided in writing to prospective students prior to the acceptance of any fees.

§ 197-2.11 Revocation, suspension and denial of course approval.

The Department of State may deny, suspend, or revoke the approval or renewal of a home inspection course or a home inspection instructor, if it is determined that they are not in compliance with applicable law and rules, or if the offering does not adequately reflect and present current home inspection knowledge as a basis for a level of home inspection practice, or if the course provider or instructor has obtained, used or attempted to obtain or use the Department of State's home inspection examination questions. Prior to the denial of an application, suspension or revocation, the course provider or instructor shall have the opportunity to be heard by the Secretary of State or his designee.

§ 197-2.12 Advertisements.

Any education institution or other organization offering approved courses may not make or publish any false or misleading statement regarding employment opportunities which may be available as a result of the successful completions of a course or as a result of acquisition of a home inspector license.

§ 197-2.13 Auditing.

A duly authorized representative of the Department of State may audit any course offered, and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

§ 197-2.14 Open to public.

All courses approved pursuant to this Subpart shall be open to all members of the public regardless of the membership of the prospective student in any home inspection related professional society or organization.

§ 197-2.15 Certificates of completion and student lists.

(a) Evidence of successful completion of a course module must be furnished to students in certificate form. The certificate must indicate the following: name of the student; name of the course provider; title of the home inspection module; number of hours; code number of the module; a statement that the student, who shall be named, has satisfactorily completed a course of study in home inspection subjects or unpaid field-based training approved by the Secretary of State in accordance with the provisions of section 197-2.3 of this Subpart, and that his or her attendance record was satisfactory and in conformity with the law, and that such module was completed on a stated date. The certificate must be signed and dated with an original signature by the owner or course coordinator.

(b) A list of the names and addresses of students who successfully complete each course module must be submitted to the Department of State within 15 days of completion of a course module.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 25, 2006.

**Text of rule and any required statements and analyses may be obtained from:** Nathan A. Hamm, Associate Attorney, Office of Counsel, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740

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

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

**Regulatory Impact Statement**

1. Statutory authority:

Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law was enacted as Chapter 461 of the Laws of 2004 and subsequently amended by Chapter 225 of the Laws of 2005. Section 444-d of Article 12-B provides, in part, that on and after December 31, 2005, no person shall perform a home inspection for compensation unless such person is licensed as a home inspector. Section 444-e(b)(I) of Article 12-B provides that an applicant for a home inspection license must have successfully completed a course of study of not less than 140 hours approved by the Secretary of State. Section 444-c(6)(A) of Article 12-B authorizes the Secretary of State to adopt standards for home-inspection training, including standards for course approval. In addition, section 444-l, authorizes the Secretary of State to adopt such rules and regulations as shall be necessary to implement the home-inspection licensing program. This rule establishes standards for home-inspection training and procedures for course approval. Accordingly, the Secretary of State has express authority to adopt this rule.

2. Legislative objectives:

By enacting Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law, the Legislature sought, in part, to ensure that home inspectors would be qualified by training and experience. As required by Article 12-B, this rule establishes standards for home-inspection training, as well as procedures for course approval. Accordingly, this rule advances the objectives that the Legislature sought to advance when it enacted Article 12-B.

3. Needs and benefits:

This rule is needed to ensure that schools can offer and that prospective license applicants can obtain the approved courses that will be needed to qualify for a home inspection license. Without this rule, courses cannot be approved. If no courses are approved, prospective applicants will be unable to qualify for home inspection licenses.

4. Costs:

a. Costs to regulated parties:

The Department of State solicited comments and costs from nine schools. Three schools responded with estimates of anticipated costs of complying with the rule. The following costs are based on those responses:

Estimated cost of preparing an application for course approval: \$750 to \$2,500.

Estimated cost per module for students: \$400 to \$600 per module.

Estimated cost of providing student with a certificate of completion: \$5 to \$10 per certificate.

Estimated cost of submitting names and addresses to the Department of State: \$10 to \$20 per student.

b. Costs to the Department of State:

The Department of State anticipates that the cost of implementation and continued administration of this rule will be minimal and that the Department's role in approving courses can be accomplished using existing staff and resources.

c. Cost to State and local governments:

The rule does not otherwise impose any implementation or compliance costs on State or local governments.

5. Local government mandates:

The rule does not impose any program, service, duty or other responsibility on local governments.

6. Paperwork:

The following sections of the rule have paperwork requirements:

§ 197-2.2 requires the submission of an application for approval of home inspection courses. Submission of an application is necessary if the Department of State is to evaluate and approve courses.

§ 197-2.3, Module 5(3), requires that an approved school maintain a log of all home inspections completed by each student as proof of the student's field-based training. The log is necessary for audit purposes and will be used as a means of providing proof that the student has completed his or her field-based training.

§ 197-2.3, Module 5(5), requires that a student maintain a log of all home inspections completed if the student's field-based training is not completed with an approved school. The log is necessary for audit purposes and will be used as a means of providing proof that the student has completed his or her field-based training.

§ 197-2.4 requires that an application for evaluation be filed if an applicant is claiming credit for unapproved courses that were taken prior to January 1, 2006. Submission of this application will provide an applicant with a means to obtain credit for a course taken prior to January 1, 2006, if the course is equivalent to the course curriculum prescribed in § 197-2.3 of this rule.

§ 197-2.8 requires that an approved school shall retain attendance records, final examinations, and a list of students who successfully complete each course module for a period of three years. The rule is required for audit purposes and, this rule will benefit any student who may need a duplicate certificate of completion because he or she may have lost or misplaced the original certificate prior to filing their application with the Department of State.

§ 197-2.9 requires that each instructor file an application for approval before teaching an approved course. The rule is necessary to ensure that instructors are qualified by training and experience to teach the approved home-inspection courses.

§ 197-2.10 requires that an approved school shall, prior to accepting any fee from a student, provide to the student a written statement of the school's policy regarding cancellations and refunds. The rule is necessary to ensure that a student knows the school's cancellation and refund policy before paying any fee or tuition to a school.

§ 197-2.15(a) requires an approved school provide each student with a certificate of completion for each course module successfully completed by the student. The rule is necessary to ensure that students have proof of their having successfully completed an approved course.

§ 197-2.15(b) requires that an approved school submit to the Department of State a list of the names and addresses of the students who have successfully completed a course module and that such list be submitted within 15 days of completion of the course module. The rule is necessary for audit purposes.

#### 7. Duplication:

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

#### 8. Alternatives:

The Department of State consulted with numerous individuals representing the home inspection industry, as well as industry teachers and building code officials. All parties were in general agreement that the proposed topics are standard topics for the industry. There was some interest in including certain environmental topics. However, in order to keep the required curriculum at 140 hours, it was decided not to include those topics, which can be offered at the desecration of the schools as addition, unmandated topics or as a continuing education offering.

#### 9. Federal standards:

There are no federal standards for the training of prospective home inspectors. Accordingly, this rule does not exceed any existing federal standard.

#### 10. Compliance schedule:

The Department of State anticipates that schools will be able to immediately comply with this rule. The schools that commented on the draft for this rule did not note any compliance difficulties.

### **Regulatory Flexibility Analysis**

#### 1. Effect of rule:

The rule will affect schools that offer approved courses for home inspectors. The Department of State is aware of nine schools that may offer approved courses. The Department anticipates that other schools may decide to offer such courses. The Department believes that all of these schools can be classified as small businesses for the purpose of this analysis.

The rule will also affect persons wishing to be come licensed as home inspectors. The Department of State is able to predict how many persons intend to become licensed as home inspectors. The Department believes that all such persons can be classified as small businesses for the purpose of this analysis.

The rule does not apply to local governments.

#### 2. Compliance requirements:

The reporting and recordkeeping requirements for are detailed in section 6 of the Regulatory Impact Statement. Those requirements will affect the small businesses identified in section 1 of this Analysis.

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

#### 3. Professional services:

Small businesses will not need professional services in order to comply with this rule.

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

#### 4. Compliance costs:

Estimates of the costs of compliance are detailed in section 4 of the Regulatory Impact Statement.

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

#### 5. Economic and technological feasibility:

The estimated costs of compliance, as set forth in section 6 of the Regulatory Impact Statement, suggest that it will be economically feasible for small businesses to comply with the rule. The rule does not require any technical expertise in order to comply with the rule.

The rule does not affect local governments.

#### 6. Minimizing adverse economic impact:

Since all of the regulated parties are small businesses, the rule does not adversely impact small businesses relative to large businesses. Accordingly, differing reporting or compliance requirements were not a practical option. The nature of the rule does not lend itself to the adoption of performance standards, and the rule, which follows a statutory mandate, does not allow for exceptions. Accordingly, although the Department considered the approaches suggested in State Administrative Procedure Act, § 202-b(1), the Department did not adopt any of those approaches.

#### 7. Small business and local government participation:

The Department of State solicited and received comment from schools that are likely to offer home-inspection courses, as well as comment from the New York State Association of Home Inspectors.

Since the rule would not affect local governments, the Department did not solicit comment from local governments.

### **Rural Area Flexibility Analysis**

(a) This rule will apply equally to all home-inspector applicants and all home-inspector schools in all areas of the State--urban, suburban and rural.

(b)(1) The reporting, recordkeeping and other compliance requirements are set forth fully in Section 6 of the Regulatory Impact Statement.

(2) Home-inspector applicants and home-inspector schools in rural areas will not need to employ any professional services in order to comply with this rule.

(c) The compliance costs are set forth in Section 4 of the Regulatory Impact Statement. The Department of State does not anticipate that those estimated costs will vary significantly for different types of public or private entities in rural areas.

(d) Article 12-B (Home Inspection Professional Licensing) of the Real Property Law seeks to establish minimum qualifications for home inspectors throughout the State. In doing so, Article 12-B prescribes that an applicant must complete a course of study consisting of at least 140 hours of study approved by the Secretary of State. In developing this rule, the Department of State did not identify any areas of study that were unique to home inspectors in rural areas. Accordingly, the rule prescribes a course of study that will be required of all prospective applicants, including those in rural areas. In addition, Article 12-B does not provide the Department of State with authority to exempt applicants who live in rural areas of the State.

(e) Because the rule will apply in all areas of the State, the Department of State could not identify any practical way to notify interested parties in rural areas of the State. However, the Department of State worked closely with New York State Association of Home Inspectors, many of whose members practice as home inspectors in rural areas of the State to develop this rule.

### **Job Impact Statement**

This rule will not have any substantial adverse impact on jobs and employment opportunities. Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law requires that an applicant for a home inspection license provide proof of having completed a course of study of at least 140 hours approved by the Secretary of State. If this rule was not adopted, home-inspector schools would not be able to offer approved courses and, accordingly, students would be unable to obtain the required 140 hours of study required of an applicant for a home inspector's license. Therefore, this rule will promote employment opportunities for those who will teach the courses and for those students who aspire to become licensed home inspectors.

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

**General Liability Insurance for Licensed Home Inspectors**

**I.D. No.** DOS-33-06-00005-EP

**Filing No.** 921

**Filing date:** July 28, 2006

**Effective date:** July 30, 2006

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

**Action taken:** Addition of Part 197 and Subpart 197-1 to Title 19 NYCRR.

**Statutory authority:** Real Property Law, sections 444-k and 444-l

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

**Specific reasons underlying the finding of necessity:** This rule was adopted on an emergency basis to preserve the public welfare. Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law provides, in part, that, on and after December 31, 2005, no person shall conduct a home inspection for compensation unless such person is licensed as a home inspector pursuant to Article 12-B. Further, § 444-k of Article 12-B provides that every licensed home inspector shall secure, maintain and file with the Secretary of State proof of a certificate of liability coverage, the terms and conditions of which shall be determined by the Secretary of State. Accordingly, in order to ensure that prospective applicants will know the terms and conditions of the required liability coverage before this rule is adopted on a permanent basis, this rule has been adopted on an emergency basis.

**Subject:** General liability insurance for licensed home inspectors.

**Purpose:** To establish the type and amount of liability coverage that will be required of licensed home inspectors.

**Text of emergency/proposed rule:** A new Part 197 and Subpart 197-1 of Title 19 of the NYCRR are adopted to read as follows:

*Part 197*

*Home Inspectors*

*Subpart 197-1 Business practices and standards*

*Section 197-1.1 Liability Coverage*

(a) Every applicant and every licensed home inspector shall secure, maintain, and file with the Department of State proof of general liability insurance of at least \$150,000 per occurrence and \$500,000 in the aggregate.

(b) Every proof of liability coverage shall provide that cancellation or nonrenewal of the policy shall not be effective unless and until at least ten days' notice of intention to cancel or nonrenew has been received in writing by the Secretary of State.

(c) In addition, every proof of liability coverage shall include the following information:

(1) the name and business address of the insured;

(2) the name, business address and telephone number of insurance company;

(3) the policy number;

(4) the term of the policy; provided, however, that the proof of liability coverage shall provide that the coverage shall not expire until a notice of intention to cancel or non-renewal has been received in writing by the Secretary of State at least ten days prior to the date of cancellation or non-renewal;

(5) a statement indicating that the policy provides general liability coverage of at least \$150,000 per occurrence and \$500,000 in the aggregate.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 25, 2006.

**Text of rule and any required statements and analyses may be obtained from:** Nathan A. Hamm, Associate Attorney, Office of Counsel, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740

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

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

**Regulatory Impact Statement**

1. Statutory authority:

Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law was enacted as Chapter 461 of the Laws of 2004 and subsequently amended by Chapter 225 of the Laws of 2005. Section 444-d of Article 12-B provides, in part, that on and after December 31, 2005, no person shall perform a home inspection for compensation unless such person is licensed as a home inspector. Further, § 444-k of Article 12-B provides that every licensed home inspector shall secure, maintain and file with the Secretary of State proof of a certificate of liability coverage, the terms and conditions of which shall be determined by the Secretary of State. In addition, the Real Property Law, § 444-l, authorizes the Department of State to adopt such rules and regulations as shall be necessary to implement the home-inspection licensing program. This rule establishes the type and amount of the liability coverage that will be required of licensed home inspectors. Accordingly, the Department of State has express authority to adopt this rule.

2. Legislative objectives:

By enacting Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law, the Legislature sought, in part, to ensure that home inspectors would be qualified by training and experience and that home inspectors would maintain liability coverage, the terms and conditions of which would be determined by the Department of State. This rule establishes the type and amount of the liability coverage that will be required of licensed home inspectors. Accordingly, this rule advances the objectives that the Legislature sought to advance when it enacted Article 12-B.

3. Needs and benefits:

The rule is needed because, without the rule, home-inspector applicants could not comply with Real Property Law, § 444-k, which requires that an applicant obtain and file with the Department of State proof of liability coverage, the terms and conditions of which shall be prescribed by the Department of State. By adopting this rule, the Department of State has ensured that home-inspector applicants can obtain liability coverage that will allow the applicants to comply with § 444-k.

4. Costs:

a. Costs to regulated parties:

The Department of State solicited comments and costs from several insurance agents, and the estimated cost was \$500 per year for general liability insurance in the amount of \$150,000 per occurrence and \$500,000 in the aggregate.

b. Costs to the Department of State:

The Department of State anticipates that the cost of implementation and continued administration of this rule will be minimal and that implementation and administration will be accomplished using existing resources.

c. Cost to State and local governments:

The rule does not otherwise impose any implementation or compliance costs on State or local governments.

5. Local government mandates:

The rule does not impose any program, service, duty or other responsibility on local governments.

6. Paperwork:

The Real Property Law, § 444-k, provides that every licensed home inspector shall secure, maintain and file with the Department of State proof of liability coverage. This rule provides that the proof of liability coverage shall contain the following information:

(1) the name and business address of the insured;

(2) the name, business address and telephone number of insurance company;

(3) the policy number;

(4) the term of the policy; provided, however, that the proof of liability coverage shall provide that the coverage shall not expire until a notice of intention to cancel or non-renewal has been received in writing by the Secretary of State at least ten days prior to the date of cancellation or non-renewal;

(5) a statement indicating that the policy provides general liability coverage of at least \$150,000 per occurrence and \$500,000 in the aggregate.

7. Duplication:

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

8. Alternatives:

The Department of State was advised by several insurance agents that there are three basic forms of liability coverage available to businesses. They are automobile liability insurance, general liability insurance, and errors-and-omissions liability insurance. The Department of State decided

to require general liability insurance. Automobile liability insurance was rejected as an option because it is already required by State law for any vehicle registered in the State of New York. Errors-and-omissions liability insurance was rejected because the Legislature had not specified errors-and-omissions liability insurance. An early version (A. 76-A) of Article 12-B had specified errors-and-omissions insurance in the amount of \$500,000 per occurrence. However, the final version (A. 76-B) dropped the errors-and-omissions liability insurance and substituted "liability coverage, which terms and conditions shall be determined by the Secretary of State . . ." Accordingly, the Department of State interpreted that change as an indication that the Legislature did not intend to require that home inspectors obtain errors-and-omissions liability insurance.

#### 9. Federal standards:

There are no federal standards prescribing insurance for licensed home inspectors. Accordingly, this rule does not exceed any existing federal standard.

#### 10. Compliance schedule:

The Department of State anticipates that home inspectors will be able to immediately comply with this rule.

### **Regulatory Flexibility Analysis**

#### 1. Effect of rule:

The rule will affect persons wishing to be come licensed as home inspectors. However, the Department of State is not able to predict how many persons intend to become licensed as home inspectors. The Department believes that all such persons can be classified as small businesses for the purpose of this analysis.

The rule does not apply to local governments.

#### 2. Compliance requirements:

The reporting and recordkeeping requirements are detailed in section 6 of the Regulatory Impact Statement. Those requirements will affect the small businesses identified in section 1 of this Analysis.

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

#### 3. Professional services:

Small businesses will not need professional services in order to comply with this rule.

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

#### 4. Compliance costs:

Estimates of the costs of compliance are detailed in section 4 of the Regulatory Impact Statement.

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

#### 5. Economic and technological feasibility:

The estimated cost of compliance, as set forth in section 6 of the Regulatory Impact Statement, suggests that it will be economically feasible for small businesses to comply with the rule. Compliance with the rule will not require any technical expertise.

The rule does not affect local governments.

#### 6. Minimizing adverse economic impact:

Since all of the regulated parties are assumed to be small businesses, the rule does not adversely impact small businesses relative to large businesses. Accordingly, differing reporting or compliance requirements for small businesses was not a practical option. In addition, the nature of the rule does not lend itself to the adoption of performance standards, and the rule, which follows a statutory mandate, does not allow for exceptions. Accordingly, although the Department considered the approaches suggested in State Administrative Procedure Act, Section 202-b(1), the Department did not adopt any of those approaches.

#### 7. Small business and local government participation:

The Department of State solicited and received comment in the development of this rule from the New York State Association of Home Inspectors, which has members who work in rural areas.

Since the rule would not affect local governments, the Department did not solicit comment from local governments.

### **Rural Area Flexibility Analysis**

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

This rule will apply equally to all home-inspector applicants in all areas of the State — urban, suburban and rural.

#### 2. Reporting, recordkeeping and other compliance requirements:

(1) The reporting, recordkeeping and other compliance requirements are set forth fully in Section 6 of the Regulatory Impact Statement.

(2) Home-inspector applicants in rural areas will not need to employ any professional services in order to comply with this rule.

#### 3. Costs:

The estimated compliance cost is set forth in Section 4 of the Regulatory Impact Statement. The Department of State does not anticipate that the estimated cost will vary significantly for different types of public or private entities in rural areas.

#### 4. Minimizing adverse impact:

The Real Property Law, Section 444-k, requires that a licensed home inspector file with the Department of State proof of liability coverage, the terms and conditions of which shall be determined by the Secretary of State. Since a home inspector can inspect homes in any part of the State, the rule prescribes the same insurance requirement for all home inspectors. Further, Article 12-B does not provide the Department of State with authority to exempt home inspectors who live and work in rural areas.

#### 5. Rural area participation:

Because the rule will apply in all areas of the State, the Department of State could not identify any practical way to notify interested parties in all of rural areas of the State. However, the Department of State worked closely in the development of this rule with New York State Association of Home Inspectors, many of whose members practice as home inspectors in rural areas of the State.

### **Job Impact Statement**

This rule will not have any substantial adverse impact on jobs and employment opportunities. Section 444-k of the Real Property Law requires that an applicant for a home inspection license provide the Department of State with proof of having liability coverage, the terms and conditions of which shall be determined by the Secretary of State. If this rule were not adopted, prospective applicants could not comply with Section 444-k. Therefore, this rule will promote employment opportunities by ensuring that applicants can comply with Section 444-k and, thereby, qualify for a license as a home inspector.

## Thruway Authority

### NOTICE OF ADOPTION

#### **E-ZPass Discount Plan**

**I.D. No.** THR-16-06-00007-A

**Filing No.** 919

**Filing date:** July 27, 2006

**Effective date:** Aug. 16, 2006

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

**Action taken:** Amendment of section 101.2 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, section 354(5), (8) and (15); Public Authorities Law, section 361(1)(a); Vehicle and Traffic Law, section 1630

**Subject:** Implementation of a special E-ZPass Discount Plan and minor technical corrections to section 101.2.

**Purpose:** To implement a special E-ZPass Discount Plan for pick-up truck vehicle combinations using a fifth wheel hitch and make two technical corrections to 21 NYCRR section 101.2.

**Text or summary was published** in the notice of proposed rule making, I.D. No. THR-16-06-00007-P, Issue of April 19, 2006.

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

**Text of rule and any required statements and analyses may be obtained from:** Marcy Pavone, Thruway Authority, 200 Southern Blvd., Albany, NY 12209, (518) 436-2867, e-mail: marcy\_pavone@thruway.state.us

#### **Assessment of Public Comment**

The agency received no public comment.