RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

EMERGENCY RULE MAKING

Farm Wineries

I.D. No. AAM-08-06-00002-E
Filing No. 164
Filing date: Feb. 3, 2006
Effective date: Feb. 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 197 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, section 18(6); and Alcoholic Beverage Control Law, section 76-a(5)

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

Specific reasons underlying the finding of necessity: The immediate adoption of this emergency rule is necessary for the preservation of the general welfare due to the adverse weather conditions during the grape growing season that have destroyed no less than forty percent of certain grape varietals grown or produced in New York State. Pursuant to subdivision 42 of section 16 of the Agriculture and Markets Law and subdivision 5 of section 76-a of the Alcoholic Beverage Control Law, as amended by chapter 286 of the Laws of 2005, under such circumstances, the Commissioner of Agriculture and Markets, in consultation with the Chairman of the State Liquor Authority, may give authorization to a duly licensed farm winery to manufacture or sell wine produced from grapes grown outside New York State. Said Laws further provide that no such authorization shall be granted to a farm winery licensee unless such licensee certifies to the commissioner the quantity of New York grown grapes unavailable to the licensee due to natural disaster, act of God or continuing adverse weather conditions and satisfies the commissioner that reasonable efforts were made to obtain grapes from a New York State source for wine making purposes.

This rule establishes the form by which farm wineries may make the certification required by the new Laws and submit an application to the commissioner for authorization to manufacture or sell wine produced from grapes grown outside the State.

In light of the destruction of no less than forty percent of certain New York grape varietals during this growing season, it is imperative that farm wineries are able to immediately submit the certifications and applications necessary to obtain the authorization they must have in order to manufacture or sell wine from grapes grown outside New York State. The adoption of the emergency rule establishing the form for such certification and application will make this possible.

Subject: Farm wineries.

Purpose: To establish a form for farm wineries to use to make certifications and submit applications to the commissioner for authorization to manufacture or sell wine produced from grapes grown outside New York State.

Text of emergency rule: Part 197 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is added to read as follows:

PART 197
FARM WINERY CERTIFICATION AND APPLICATION FOR AUTHORIZATION TO MANUFACTURE OR SELL WINE PRODUCED FROM GRAPES GROWN OUTSIDE NEW YORK STATE

§ 197.1 Form for certification and application. Applications by farm wineries, pursuant to subdivision 42 of section 16 of the Agriculture and Markets Law and subdivision 5 of section 76-a of the Alcoholic Beverage Control Law for authorization to manufacture or sell wine produced from grapes grown outside New York State; and certifications as to the quantity of New York grown grapes unavailable due to natural disaster, act of God or continuing adverse weather condition shall be made using the following form:

See Appendix in the back of this issue.

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. AAM-08-06-00002-P, Issue of February 22, 2006. The emergency rule will expire April 3, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: William Kimball, Director Agricultural Protection and Development, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-7076

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 76-a(5) of the Alcoholic Beverage Control Law provides, in part, that the Department of Agriculture and Markets and the State Liquor Authority are authorized to adopt rules and regulations as they may deem necessary to carry out the provisions of said subdivision, which shall include ensuring that in manufacturing wine farm wineries utilize grapes grown or produced in New York State to the extent they are reasonably available prior to utilizing grapes from an out-of-state source for such purpose.

2. Legislative objectives:

The statutory provisions pursuant to which the regulation is proposed are aimed at providing authorization to duly licensed farm wineries to manufacture or sell wine produced from grapes grown outside the State. Such authorization would be made after a determination that a natural disaster, act of God, or continued adverse weather condition has destroyed no less than forty percent of a specific grape varietal grown in New York State.

3. Needs and benefits:

The immediate adoption of this emergency rule is necessary for the preservation of the general welfare due to the adverse weather conditions during the grape growing season that have destroyed no less than forty percent of certain grape varietals grown or produced in New York State. Pursuant to subdivision 42 of section 16 of the Agriculture and Markets Law and subdivision 5 of section 76-a of the Alcoholic Beverage Control Law, as amended by Chapter 286 of the Laws of 2005, under such circumstances the Commissioner of Agriculture and Markets, in consultation with the Chairman of the State Liquor Authority, may give authorization to a duly licensed farm winery to manufacture or sell wine produced from grapes grown outside New York State. Under ordinary circumstances a licensed farm winery may only manufacture or sell wines produced from grapes grown within New York State. Without the special authorization by Chapter 286 of the Laws of 2005 a farm winery would have to obtain a more expensive regular winery license in order to utilize out-of-state grapes. Said Laws further provide that no such authorization shall be granted to a farm winery licensee unless such licensee certifies to the Commissioner the quantity of New York grown grapes unavailable to the licensee due to natural disaster, act of God or continuing adverse weather conditions and satisfies the Commissioner that reasonable efforts were made to obtain grapes from a New York State source for wine making purposes.

This rule established the form by which farm wineries may make the certification required by the Law and may submit an application to the Commissioner for authorization to manufacture or sell wine produced from grapes grown outside the State.

In light of the destruction of no less then forty percent of certain New York grape varietals during this growing season, it is imperative that farm wineries are able to immediately submit the certifications and applications necessary to obtain the authorization they must have in order to manufacture or sell wine from grapes grown outside New York State. The adoption of this emergency rule establishing the form for such certification and application will make this possible.

4. Cost:

(a) Costs to regulated parties:

The costs to regulated parties are limited to the time and effort associated with completing and submitting the form prescribed by the rule. This is expected to take no more than fifteen minutes and to have a minimum cost since the information to be entered on the form is limited to that required by Chapter 286 of the Laws of 2005 and is already in the possession of the regulated parties. Completion and submission of the form is permissive and need only be done by those licensed farm wineries that wish to receive authorization to manufacture or sell wine from grapes grown outside New York State.

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

There will be no costs to local government or the State, other than the cost to the Department. The cost to the Department is limited to processing the forms established by the rule, is expected to be minimal and to be met with existing resources.

(c) Source:

Costs are based upon the Department's experience with similar programs involving the submission of forms for processing.

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 by which farm wineries may make application for authorization to manufacture and sell wine from grapes grown outside New York State. As required by Chapter 286 of the Laws of 2005 in order to receive such authorization, such farm wineries are required to certify the quantity of grape varietals unavailable to them due to a natural disaster, act of God or continuing adverse weather condition during the growing season and to satisfy the Commissioner that they made reasonable efforts to obtain New York grown grapes from a New York source for wine making purposes.

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 form by means of a rule. That alternative was rejected in favor of this rule so that the form could be formally adopted, published in the *State Register* and codified in 1 NYCRR.

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 farm wineries in the event they need to apply for authorization to manufacture or sell wine produced from grapes grown outside New York State. It is anticipated that farm wineries can begin to comply with this rule immediately since they have available the information required by Chapter 286 of the Laws of 2005 which can be entered on the form this rule establishes.

Regulatory Flexibility Analysis

1. Effect of rule:

There are approximately 160 licensed farm wineries in New York State. No local government will be affected by the rule.

2. Compliance requirements:

The rule establishes the form by which farm wineries may make application for authorization to manufacture and sell wine from grapes grown outside New York State. As required by Chapter 286 of the Laws of 2005, such farm wineries are required to certify the quantity of grape varietals unavailable to them due to a natural disaster, act of God or continuing adverse weather condition during the growing season and to satisfy the Commissioner that they made reasonable efforts to obtain New York grown grapes from a New York source for wine making purposes.

3. Professional services:

Farm wineries, most if not all of which, are small businesses are not likely to need professional services to comply with the rule.

The farm wineries that wish to complete and submit the form already have the information the form requires.

4. Compliance costs:

The costs to regulated parties are limited to the time and effort associated with completing and submitting the form prescribed by the rule. This is expected to take no more than fifteen minutes and to have a minimal cost since the information required by the form is limited to that required by Chapter 286 of the Laws of 2005 and is already in the possession of the regulated parties. Completion and submission of the form is permissive and need only be done by those licensed farm wineries that wish to receive authorization to manufacture or sell wine from grapes grown outside New York State. There will be no initial capital costs incurred by a regulated business or industry or local government to comply with the proposed rule and no annual cost for continuing compliance with the proposed rule.

5. Economic and technological feasibility:

Compliance with the rule is both economically and technologically feasible for the licensed farm wineries affected by it. Those farm wineries that wish to submit the form and seek authorization to utilize out-of-state grapes already have in their possession the information the form requires. It simply needs to be entered on the form and submitted to the Department.

6. Minimizing adverse impact:

The rule was designed to minimize adverse impact on the licensed farm wineries subject to it by permitting a farm winery to use one form to certify as many as ten varietals as unavailable to it due to a natural disaster, act of God, or continuing adverse weather condition during the growing season. The same form can be used to apply for authorization to manufacture or sell wine produced from grapes grown outside New York State. The form also allows the farm winery to set forth the efforts it made to obtain New York grown grapes from a New York State source for wine making purposes. Pursuant to Chapter 286 of the Laws of 2005, a farm winery must satisfy the Commissioner that reasonable efforts were made to obtain grapes from a New York State source for wine making purposes in order to

qualify for authorization to manufacture or sell wine produced from grapes grown outside New York State.

By allowing farm wineries to provide all of the statutorily required information on one form and for all grape varietals, the rule takes into account the limited office resources of farm wineries and simplifies the process by which they make the required certification and apply for authorization from the Commissioner to manufacture or sell wine produced from grapes grown outside New York State.

7. Small business and local government participation:

The Department has received information from licensed farm wineries indication that certain grape varietals are unavailable to them due to natural disaster, act of God or continuing adverse weather conditions. After investigating and compiling information as required by Chapter 286 of the Laws of 2005 the Commissioner has determined that a natural disaster, act of God, or continued adverse weather condition has destroyed no less than forty percent of several grape varietals grown or produced in New York State and used for winemaking. This emergency rule establishes the form by which licensed farm wineries can immediately make the certification and apply for the authorization permitted by Chapter 286 of the Laws of 2005. In the subsequent rulemaking to adopt the rule on a permanent basis licensed farm wineries will have the opportunity to comment as to the how, if at all, the form established by the rule can be improved.

Rural Area Flexibility Analysis

1. Types and estimated numbering rural areas:

The approximately 160 licensed farm wineries in New York State are located throughout the rural areas of the State.

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

The rule establishes the form by which farm wineries may make application for authorization to manufacture and sell wine from grapes grown outside New York State. As required by Chapter 286 of the Laws of 2005, in order to receive such authorization, farm wineries are required to certify the quantity of grape varietals unavailable to them due to a natural disaster, act of God or continuing adverse weather condition during the growing season and to satisfy the Commissioner that they made reasonable efforts to obtain New York grown grapes from a New York source for wine making purposes. Farm wineries, most, if not all of which, are located in rural areas, are not likely to need professional services to comply with the rule. The farm wineries that wish to complete and submit the form already have the information the farm requires.

3. Costs:

The costs to regulated parties most, if not all of which, are located in rural areas are limited to the time and effort and have a minimal cost since the information required by the form is limited to that required by Chapter 286 of the Laws of 2005 and is already in the possession of the regulated parties. Completion and submission of the form is permissive and need only be done by those licensed farm wineries that wish to receive authorization to manufacture or sell wine from grapes grown outside New York State. There is no likely variation in such costs for the regulated private entities in rural areas to which the rule applies since they are generally similarly situated. There will be no initial capital costs incurred by a regulated business and no annual cost for continuing compliance with the proposed rule.

4. Minimizing adverse impact:

The rule was designed to minimize adverse impact on licensed farm wineries most, if not all of which, are located in rural areas, by permitting such wineries to use one form to certify as many as ten varietals as unavailable to it due to a natural disaster, act of God, or continuing adverse weather condition during the growing season. The same form can be used to apply for authorization to manufacture or sell wine produced from grapes grown outside New York State. The form also allows the farm winery to set forth the efforts it made to obtain New York grown grapes from a New York State source for wine making purposes. Pursuant to Chapter 286 of the Laws of 2005, a farm winery must satisfy the Commissioner that reasonable efforts were made to obtain grapes from a New York State source for wine making purposes in order to qualify for authorization to manufacture or sell wine produced from grapes grown outside New York State. The approaches suggested by SAPA § 202-bb(2) and similar approaches were considered to permit the statutory requirements to be met, while minimizing any adverse impact on the regulated parties in rural areas.

5. Rural area participation:

The Department will be proposing this emergency rule for permanent adoption. Through the notice and comment process of the State Administrative Procedure Act and the outreach conducted by the Department, 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 establish the form farm wineries need in order to receive authorization this season to manufacture and sell wine from grapes grown outside New York State.

Job Impact Statement

1. Nature of impact:

By establishing the form farm wineries need to use to receive authorization to utilize grapes grown outside New York State, the rule will help preserve jobs and employment opportunities. The unavailability of certain New York grape varietals due to a natural disaster, act of God, or continuing adverse weather condition during the growing season makes the use of grapes grown outside New York State necessary if the affected farm wineries are to stay in business and continue to provide jobs and employment opportunities.

2. Categories and numbers affected:

The number of persons employed by the approximately 160 licensed farm wineries is not known.

3. Regions of adverse impact:

The farm wineries subject to the rule 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 to keep farm wineries in business despite the unavailability of certain varietals of New York grown grapes that they usually rely upon. The rule was designed to minimize adverse impact on farm wineries by permitting them to use one form to certify as many as ten varietals as unavailable to it due to a natural disaster, act of God, or continuing adverse weather condition during the growing season. The same form can be used to apply for authorization to manufacture or sell wine produced from grapes grown outside New York State. The form also allows the farm winery to set forth the efforts it made to obtain New York grown grapes from a New York State source for wine making purposes. Pursuant to Chapter 286 of the Laws of 2005, a farm winery must satisfy the Commissioner that reasonable efforts were made to obtain grapes from a New York State source for wine making purposes in order to qualify for authorization to manufacture or sell wine produced from grapes grown outside New York State.

By allowing farm wineries to provide all the statutorily required information on one form and for all grape varietals, the rule takes into account the limited office resources of farm wineries and simplifies the process by which they make the required certification and apply for authorization from the Commissioner to manufacture or sell wine produced from grapes grown outside New York State.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Farm Wineries

I.D. No. AAM-08-06-00002-P

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

Proposed action: This is a consensus rule making to add Part 197 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, section 18(6); and Alcoholic Beverage Control Law, section 76-a

Subject: Farm wineries.

Purpose: To establish a form for farm wineries to use to make certifications and submit applications to the commissioner for authorization to manufacture or sell wine produced from grapes grown outside New York State.

Text of proposed rule: Part 197 of Title 1 of the Official Compilation of Codes, Rules and Regulations of the State of New York is added to read as follows:

PART 197

FARM WINERY CERTIFICATION AND APPLICATION FOR AUTHORIZATION TO MANUFACTURE OR SELL WINE PRODUCED FROM GRAPES GROWN OUTSIDE NEW YORK STATE

§ 197.1 Form for certification and application. Applications by farm wineries, pursuant to subdivision 42 of section 16 of the Agriculture and Markets Law and subdivision 5 of section 76-a of the Alcoholic Beverage Control Law for authorization to manufacture or sell wine produced from

grapes grown outside New York State; and certifications as to the quantity of New York grown grapes unavailable due to natural disaster, act of God or continuing adverse weather condition shall be made using the following form:

See Appendix in the back of this issue.

Text of proposed rule and any required statements and analyses may be obtained from: William Kimball, Director Agricultural Protection and Development, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-7076

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

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

Consensus Rule Making Determination

This rule is proposed as a consensus rule, within the definition of that term in State Administrative Procedure Act section 102(11) pursuant to the expectation that no person is likely to object to its adoption because it is non-controversial.

This rule establishes the form by which farm wineries may make application for authorization to manufacture and sell wine from grapes grown outside New York State. As required by Chapter 286 of the Laws of 2005, in order to receive such authorization, such farm wineries are required to certify the quality of grape varietals unavailable to them due to a natural disaster, act of God or continuing adverse weather condition during the growing season and to satisfy the Commissioner that they made reasonable efforts to obtain New York grown grapes from a New York source for wine making purposes.

Job Impact Statement

1. Nature of impact:

By establishing the form farm wineries need to use to receive authorization to utilize grapes grown outside New York State, the rule will help preserve jobs and employment opportunities. The unavailability of certain New York grape varietals due to a natural disaster, act of God, or continuing adverse weather condition during the growing season makes the use of grapes grown outside New York State necessary if the affected farm wineries are to stay in business and continue to provide jobs and employment opportunities.

2. Categories and numbers affected:

The number of persons employed by the approximately 160 licensed farm wineries is not known.

3. Regions of adverse impact:

The farm wineries subject to the rule 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 to keep farm wineries in business despite the unavailability of certain varietals of New York grown grapes that they usually rely upon. The rule was designed to minimize adverse impact on farm wineries by permitting them to use one form to certify as many as ten varietals as unavailable to it due to a natural disaster, act of God, or continuing adverse weather condition during the growing season. The same form can be used to apply for authorization to manufacture or sell wine produced from grapes grown outside New York State. The form also allows the farm winery to set forth the efforts it made to obtain New York grown grapes from a New York State source for wine making purposes. Pursuant to Chapter 286 of the Laws of 2005, a farm winery must satisfy the Commissioner that reasonable efforts were made to obtain grapes from a New York State source for wine making purposes in order to qualify for authorization to manufacture or sell wine produced from grapes grown outside New York State.

By allowing farm wineries to provide all the statutorily required information on one form and for all grape varietals, the rule takes into account the limited office resources of farm wineries and simplifies the process by which they make the required certification and apply for authorization from the Commissioner to manufacture or sell wine produced from grapes grown outside New York State.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Commercial Weighing and Measuring Devices

I.D. No. AAM-08-06-00003-P

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

Proposed action: This is a consensus rule making to amend section 220.1 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 179(2) and (10)

Subject: Commercial weighing and measuring devices.

Purpose: To exempt certain simple commercial weighing and measuring devices from the regulatory requirement that they may not be used or sold in the State prior to being approved by the Commissioner of Agriculture and Markets.

Text of proposed rule: Section 220.1 of 1 NYCRR is amended to read as follows:

Section 220.1 Type Approval. [Prior to the sale or use of any]

(a) Except as provided in subdivision (d) of this section, no person shall sell or use a commercial weighing [and] *or* measuring device in the State of New York[,] *unless* [a representative sample of the design or pattern of each such device shall be submitted to] *the device is approved by* the Commissioner of Agriculture and Markets [for examination, approval and certification. Only a commercial weighing and measuring device so certified shall be sold or used in the State of New York]. The commissioner [may accept the] *shall grant approval if, after examining a representative sample of the design or pattern of the device, he or she determines that it conforms to the requirements set forth in section 220.2 of this Part. The commissioner may accept a* certificate of conformance issued *for such device*, pursuant to the National Type Evaluation Program, by the [National Bureau of Standards or its successor organization, the National Institute of Standards and Technology, United States Department of Commerce] *National Conference on Weights and Measures, as proof of conformance*, in lieu of such [representative sample being submitted and without the need for additional] examination [by the department].

(b) Any change or modification in such approved [and certified] device that may affect its performance or otherwise result in a departure from the requirements [of the National Bureau of Standards Handbook 44 or other requirements as adopted by the commissioner,] *set forth in section 220.2 of this Part* must be approved [and certified] by the commissioner before sale or use in this State.

(c) When the commissioner has approved [and certified] the device, [the certification] *such approval* shall be accepted by all local jurisdictions and no other approval [or certification is] *shall be* required or permitted. A certificate of approval may be revoked by the commissioner at any time if the device fails to meet performance or other technical requirements [of National Bureau of Standards Handbook 44 or other requirements as adopted by the commissioner] *set forth in section 220.2 of this Part.*

(d) Notwithstanding the provisions of subdivisions (a) through (c) of this section to the contrary, the following devices may be sold and/or used without having been approved by the commissioner.

Device Type	Handbook 44 Code Reference
Weights	Section 2.23
Liquid Measures	Section 4.41
Farm Milk Tanks	Section 4.42
Measure Containers	Section 4.43
Dry Measures	Section 4.45
Berry Baskets and Boxes	Section 4.46
Wire-and Cordage-Measuring Devices	Section 5.51
Linear Measures	Section 5.52
Odometers	Section 5.53
Timing Devices	Section 5.55

Text of proposed rule and any required statements and analyses may be obtained from: Ross Anderson, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-3146

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

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

Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR section 220.1 to exempt certain "simple" commercial weighing and measuring devices, specified in the express terms of the proposed rule, from the requirement that all commercial weighing and measuring devices must be approved by the Commissioner of Agriculture and Markets prior to being sold or used in the State.

The proposed rule is non-controversial. Manufacturers of commercial weighing and measuring devices will all benefit; those who manufacture "simple" devices will be able to sell such devices in the State without

having to wait for the Commissioner to examine them and determine their accuracy and reliability, and those who manufacture more complex devices will be able to have such devices examined, and their accuracy and reliability determined, more quickly because "simple" devices will not have to be evaluated. Wholesalers and retailers who purchase and use "simple" devices will, also, benefit in that they will be able to purchase such devices and "put them to work", sooner than they would otherwise be able to do. Furthermore, the State's consumers will benefit in that they will be able to purchase commodities weighed or measured on, in or by such simple devices, which will be available for use sooner than they otherwise would be and which may also be more accurate or reliable than the devices which they replace.

Based upon the preceding, the proposed rule will not have any adverse impact upon regulated businesses and is, therefore, non-controversial.

Job Impact Statement

The proposed rule will not have an adverse impact on jobs or on employment opportunities.

The proposed rule will exempt certain types of commercial weighing and measuring devices from the requirement that they must be approved by the Commissioner prior to sale or use in the State.

The proposed rule, if adopted, will allow manufacturers of such devices to sell them in the State without having to wait for approval, will allow commercial users of such devices to purchase them as soon as the manufacturers thereof make them available, and will allow consumers to benefit by having certain commodities they purchase weighed or measured on, with or by devices that may be more accurate, easier to use, less expensive and/or more versatile.

The proposed rule will not, therefore, have any adverse impact upon jobs or employment opportunities.

Banking Department

EMERGENCY RULE MAKING

High Cost Home Loans

I.D. No. BNK-08-06-00005-E
Filing No. 165
Filing date: Feb. 7, 2006
Effective date: Feb. 8, 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: Ch. 626 of the Laws of 2002 became effective on April 1, 2003. Provisions of ch. 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 the Title 3 NYCRR has governed the making of such loans prior to the effective date and is note in conformity with certain provisions of the ch. 626. Also, in certain limited instances, the proposed amendments to Part 41 will clarify certain provisions enacted by ch. 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 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 May 7, 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-l of the Banking Law establishes modified points and fees thresholds in certain instances that are more lenient for brokers and lenders than the comparable threshold in HOEPA. The definition of points and fees, in part, established by section 6-l refers to certain—but not all—provisions of HOEPA that define points and fees. The amendments would adopt the thresholds and definition established by section 6-l.

10. Compliance schedule:

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

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Government is not submitted, based on the Department's conclusion that the amendments to Part 41 will not impose any adverse economic or technological impact upon small business beyond any such effects that may be caused by the requirements established by section 6-l of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41. The amendments will not impose any adverse economic or technological impact upon local governments. The proposed amendments will impose no adverse reporting, record keeping or compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for Small Business and Local Government is not submitted, based on the Department's conclusion that the amendments to Part 41 will not impose any adverse economic impact upon private entities in rural areas beyond any such effects that may be caused by the requirements established by section 6-l of the Banking Law, applicable to the making of high cost home loans, to which the amendments conform Part 41. The amendments will not impose any adverse economic impact upon public entities in rural areas. The proposed amendments will impose no adverse reporting, recordkeeping or compliance requirements private on public entities in rural areas.

Job Impact Statement

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

EMERGENCY RULE MAKING

Supervision of Article XII Investment Company Holding Companies and their Subsidiaries

I.D. No. BNK-08-06-00006-E
Filing No. 166
Filing date: Feb. 7, 2006
Effective date: Feb. 8, 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, section 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 conglomerates 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

§ 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 May 7, 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-a-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-a-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 recordkeeping 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.

EMERGENCY RULE MAKING

Overdraft Protection Fee Disclosure

I.D. No. BNK-08-06-00007-E
Filing No. 167
Filing date: Feb. 7, 2006
Effective date: Feb. 22, 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 accountholder if the account is or will be subject to newly permitted overdraft protection fees.

Text of emergency rule: 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 90 days after the effective date of this subdivision (e), 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 accountholder 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 May 7, 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, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

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

NOTICE OF ADOPTION

Overdraft Check Fees

I.D. No. BNK-38-05-00007-A
Filing No. 168
Filing date: Feb. 7, 2006
Effective date: Feb. 22, 2006

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

Action taken: Amendment of Parts 6 and 32 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 14.1, 14-g, 14-h, 108(8), 202(8), 235-c and 383(13)

Subject: Charging fees for accepting or honoring checks or other payment orders (hereafter "checks") that overdraw accounts; establishing charges for transactions sought to be effectuated against insufficient funds; clarifying certain terms.

Purpose: To permit State-chartered banks, trust companies, savings banks, and savings and loan associations to charge fees to the same extent as national banks for accepting or honoring checks which overdraw accounts; to clarify that charges may be imposed with respect to electronic as well as check transactions; and to clarify that such institutions may establish different charges for consumer accounts and other types of accounts, such as commercial accounts, that they may offer.

Text of final rule:

Amendment to General Regulations of the Banking Board
Part 32
MAXIMUM CHARGES FOR PAYMENTS MADE AGAINST INSUFFICIENT FUNDS, UNCOLLECTED BALANCES AND RETURN ITEMS; CERTAIN DISCLOSURES
(Statutory authority: Banking Law, Sections 14(1), 108(8), 202[(8)], 235-c, 383(13))

Section 32.1(a) is amended to read as follows:

§ 32.1 Maximum charges.

(a) Insufficient funds. The establishment of [a charge] *charges* that [is] *are* imposed by a bank, trust company, savings bank, savings and loan association or licensed branch of a foreign banking corporation *(collectively for purposes of this part a "banking institution")* in connection with a check *drawn* or other written order [drawn] upon, *or electronic transfer sought to be effectuated against,* insufficient funds or uncollected balances, [irrespective] *irrespective* of whether the *check, order* [instrument] *or electronic transaction (collectively for purposes of this part an "item")* is paid, accepted or returned by the *banking institution* [bank, trust company, savings bank, savings and loan association or licensed branch of a foreign banking corporation], is a business decision to be made by each *banking institution* [bank, trust company, savings bank, savings and loan association or licensed branch of a foreign banking corporation], in its discretion, according to sound banking judgment and safe and sound banking principles. A [bank, trust company, savings bank, savings and loan association or licensed branch of a foreign banking corporation] *banking institution shall be deemed to have* reasonably [establishes] *established* such [a charge] *charges* if it [considers] *considered* the following factors, among others:

(1) the cost incurred by the *banking institution* [bank, trust company, savings bank, savings and loan association or licensed branch of a foreign banking corporation], plus a profit margin, in providing the service;

(2) the deterrence of misuse by customers of banking services;

(3) the enhancement of the competitive position of the *banking institution* [bank, trust company, savings bank, savings and loan association or licensed branch of a foreign banking corporation] in accordance with its marketing strategy; and

(4) the maintenance of the safety and soundness of the *banking institution* [bank, trust company, savings bank, savings and loan association or licensed branch of a foreign banking corporation].

In establishing charges under this subdivision, a banking institution may consider the nature of the account and may determine to establish different charges for an account that is opened and maintained primarily for personal, household or family purposes than for an account that is not, and, in determining such charges, may also consider whether the item is to be paid, accepted or returned.

Section 32.4 is amended to read as follows:

§ 32.4 Required disclosures.

In addition to any disclosure required by Part 13 of the General Regulations of the Banking Board, with regard to consumer deposit accounts, a [bank, trust company, savings bank, savings and loan association or licensed branch of a foreign banking corporation] *banking institution* shall disclose in writing to its depositors the order in which it pays [checks] *items* drawn against a depositor's account. By way of illustration, and without limitation, such disclosure may inform the depositor that the [banking organization] *banking institution* pays the largest [checks] *items* first, the smallest [checks] *items* first, or by the number of the [check] item or in the order received. Such disclosure shall be given to the depositor at the time the account is opened and 30 days prior to the time the payment policy is changed. For existing accounts, such disclosure shall be provided within 120 days of the effective date of this section.

Part 6 of 3 NYCRR is amended by adding a new Section 6.8 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.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 6.8(d), 32.1 and 32.4.

Text of 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

Revised Regulatory Impact Statement

1. Statutory authority. Sections 108(8), 202(8), 235-c and 383(13) of the Banking Law authorize the Banking Board to regulate the fees charged by banking institutions, including licensed branches of foreign banking corporations, when paying, accepting, or returning checks drawn on accounts not having sufficient funds or having uncollected balances. Sections 14-g and 14-h 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. Thus, to the extent that any provision of the Banking Law, including specifically the above noted sections other than sections14-g and 14-h, does not permit banks, trust companies, savings banks and saving and loan associations to exercise the same rights or powers or engage in the same activities as national banks or federal savings association, or to do so to the same extent, then the Banking Board may adopt a rule or regulation allowing such banking institutions to do so, subject to any conditions the Banking Board deems appropriate.

2. Legislative objectives. The Legislature sought when enacting the provisions of sections 108(8), 202(8), 235-c and 383(13) of the Banking Law to regulate the amount of fees charged when paying, accepting, or returning a check for which sufficient funds did not exist in the account on which the check was drawn. Further, the Legislature specified in sections 108(8) and 202(8) that if the banks and trust companies and licensed branches of foreign banking corporations charged any additional fees in such situations, such fees would constitute the charging of interest and be subject to other provisions of law, including the Banking Law, that govern the charging of interest.

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 regulations, 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 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. All banking institutions, whether state or federally chartered, are authorized or permitted to charge fees related to the payment of checks submitted for collection or deposit. This applies to both the bank to which a check is submitted for collection or deposit as well as the bank of the accountholder on which the check is drawn. The drawer's bank must ultimately make payment on the check if the account contains sufficient funds at the time of presentation. Banks may charge related fees

if there are not sufficient funds in the account when such checks are presented, whether the check is dishonored or not accepted and returned to the drawer or accepted and paid. In addition, the bank to which the check has been presented for collection or deposit may charge the person presenting the check a returned check charge, if the check ultimately is not accepted by the bank on which it is drawn.

Traditionally, if an account did not contain sufficient funds when a check was presented for payment to the bank on which it is drawn, the bank would not honor or accept the check, or "bounce" the check. The drawer of the check was charged a fee for attempting to overdraw the account and the incident may have caused, indirectly, a report to be made by a person or vendor that received the check in payment to credit rating agencies, thus having a negative effective upon the accountholder's credit score. Banks however have long honored on an exception basis checks of some accountholders that occasionally overdrew the account on which the check was drawn. The banks may or may not have charged fees for doing so. These accountholders tend to be customers with long standing and extensive business relationships with the bank that likely include the presence of additional accounts in the bank that contain sufficient funds to cover the check amount. It may be this practice that was the impetus for the banking industry to formalize programs or products to honor checks drawn on accounts not having sufficient funds. Initially, these programs included linked accounts and overdraft lines of credit. Under the former arrangement, if an accountholder has multiple accounts in the bank, such as a savings account, the overdraft is debited against an account having sufficient funds or funds are automatically transferred from that account to the account on which the check is drawn sufficient to cover the check amount. Again, a fee may or may not be charged by the bank for this service.

Under the latter arrangement, the overdraft line of credit, banks may or may not impose a fee initially for each check that overdraws or continues to overdraw such account, but they charge interest on the amount by which the account is overdrawn until the account is brought current. The overdraft line of credit constitutes an extension of credit usually to a specified limit. As an extension of credit, the overdraft line of credit is therefore subject to whatever interest rate or usury limits may be imposed by a state. The overdraft line of credit, which is pursuant to the account agreement or contract, necessitates the bank honor all such checks that overdraw the account to the specified credit limit.

A more recent evolutionary innovation apparently of the overdraft line of credit product is the overdraft or bounce protection product or program. Under a bounce protection arrangement, banks are not entering into a written agreement to extend credit. Banks cover the amount of the overdraft and charge a fee or fees for honoring the check. Such programs, which vary among federal banking institutions and state-chartered banking institutions, where permitted, generally contain the following features:

inform customers that the program is an account feature and advertise the use of the program;

provide automatic coverage for customers meeting certain criteria but such criteria usually entail no credit underwriting;

impose an aggregate limit on the amount of such overdrafts and advise the customers of these limits;

include other types of transactions such as ATM withdrawals and point-of-sale transactions, pre-authorized automated debits for certain bill payments, etc.

impose an initial or one-time fee that may or may not be the equivalent of the fee charged for not accepting the check and impose a daily fee in addition or as an alternative to a one-time fee for each day the account remains overdrawn;

continue to accept checks for which the account does not have sufficient funds up a certain limit and impose identical fees on each such check; and

offer the program as a discretionary service under which the bank at any time may refuse to accept any such check.

It is noted that when bouncing a check, in addition to the adverse credit report it causes the accountholder, the refusal to accept a check for payment also imposes additional costs upon the bank. When checks are not processed and cleared normally through the payment system, banks must engage in a specialized and exceptional process to refuse payment and advise the initial presenting bank and the customer that the check does not represent good funds. Thus, for all concerned interests, it is more productive and beneficial if checks causing overdrafts are accepted or honored. However, in doing so, banks are undertaking a risk, because failure of the accountholder ultimately to bring the account current means a loss of funds and income to the bank.

With respect to whether New York State chartered banking institutions may offer bounce protection, as noted above, the provisions of Section 108(8), 202(8), 235-c and 383(13) of the Banking Law regulate the amount of fees banking institutions may charge when paying, accepting, or returning a check for which sufficient funds do not exist. Further, section 108(8) provides that if banks and trust companies charge any additional fees in such situations, such fees would constitute the charging of interest and be subject to other provisions of law, including the Banking Law, that govern the charging of interest.

Section 32.1 and 32.2 of Part 32 of the General Regulations of the Banking Board essentially re-state these statutory provisions and the requirements are made applicable to all banking institutions (except credit unions) chartered or licensed by the Superintendent. With respect to the charge relating to paying, accepting or returning a check or other written payment order pursuant to section 32.1(a), a maximum dollar amount is not specified. Rather, the regulations specify that establishing such a charge is a business decision to be made by each banking institution and further provide that such determination is reasonable if the institution considers the following factors:

(1) the cost to the institution, plus a profit margin, in providing the service;

(2) the deterrence of misuse of the service by the banking customer;

(3) the enhancement of the competitive position of the institution in regard to its marketing strategy; and

(4) the maintenance of safety and soundness by the institution.

Section 32.1(a) mirrors parallel regulations of the Comptroller of the Currency (12 CFR 7.4002) that apply to national banks when charging customers non-interest charges and fees for similar check transactions. Though section 32.1(a) would appear upon an initial reading to permit banking institutions to charge fees to the same extent as national banks when providing a bounce protection program, sections 108(8) and 202(8) of the Banking Law also require that any additional charges for checks or other payment orders not having sufficient funds must be treated as the charging of interest. Section 32.2 of the General Regulations of the Banking Board also repeats these statutory provisions. Subsequent fee charges by banking institutions therefore would be subject to caps on interest rates and criminal usury ceilings imposed respectively by the Banking Law and the Penal Law. In contrast, however, the Federal Reserve Board and the Comptroller of the Currency have permitted banks to charge higher fees even if connected with loan or credit products in certain respects, and this interpretation has been upheld by the federal courts. Thus, whether national banks charge one fee when accepting a check that overdraws an account, a daily fee, or both, such fees would not be subject to this state's caps on interest rates or the criminal usury ceilings. Consequently, the Banking Department previously advised the banking industry that State-chartered institutions may not charge daily fees exceeding permissible interest charges in connection with bounce protection programs in cases where there was no written agreement to so honor such checks.

In order for banking institutions to offer bounce protection programs to the same extent as national banks, it is necessary that the Banking Board adopt the proposed rule amending Part 6 by adding a new section 6.8. Further, the amendments to Part 32, which amend section 32.1, clarify that charges related to overdrawing accounts, whether the transaction is accepted or not, apply to any type of account transaction, such as an ATM or POS transaction. This amendment conforms the scope of Part 32 regarding types of transactions causing overdrafts to the policy applicable to national banks and federal savings associations.

In addition, the amendments to Part 32 clarify that banking institutions may set charges of different amounts for accepting or not accepting checks which overdraw accounts. The amendments also clarify that banking institutions may set charges of different amounts for different types of accounts. In setting such amounts, however, banking institutions must make such determinations in conformance with the standards set forth in section 32.1(a) and noted above. With respect to differentiating the amounts of charges by type of account, the terms and conditions of commercial and other non-consumer account relationships between customers and banking institutions, including fees or interest that may be charged, are generally subject to whatever agreement can be reached between the two parties. Because of the potential leverage the non-consumer customer can exert, such accounts do not require the degree of regulatory oversight afforded consumer accounts.

4. Costs. The proposed rule would cause an increase in costs for consumers that have accounts with bounce protection, if the banking institutions charge a daily fee when a check overdraws an account. However, this cost may be offset, to some extent, by the benefit of not causing

negative credit reports that result, indirectly, by a report being made by the person or vendor that receives an overdraft check in payment, the effect of which may result in higher interest rate costs if such consumers borrow money. It is also noted that the technical amendment of section 32.4 contained in the revised text of the rule will prevent any State chartered banking institution from engaging in transaction clearing manipulation regarding electronic transactions or checks to maximize bounce protection fee income, which potentially benefits consumers that will use the bounce protection product.

Finally, the expansion of consumer bounce protection programs may result in fewer returned checks for businesses and units of local government.

5. Local government mandates. The proposed rule imposes no mandates upon units of local government.

6. Paperwork. The proposed rule imposes no additional paperwork requirements upon non-banking businesses or units of local government. It is also presumed the proposed rule will not result in an overall increase in the paperwork or recordkeeping requirements for banking institutions. Clerical operations at such institutions are already highly automated. The expansion of bounce protection programs which may occur as a result of these regulations can be expected to avoid or reduce the significant additional clerical and recordkeeping operations for banking institutions caused by bounced checks. The technical amendment to section 32.4 may make it necessary for certain State-chartered banking institutions to reissue the required disclosure regarding their respective transaction clearing process to make clear the process used applies to all transactions, rather than just paper check transactions.

7. Duplication. None.

8. Alternatives. There are no alternatives by which banking institutions may provide bounce protection programs to the same extent as national banks or federal savings associations, absent an amendment of section 108(8) of the Banking Law.

9. Federal standards. In November 2002, the Federal Reserve Board (FRB) sought comment about the operation of overdraft programs and received numerous comments, mostly from industry representatives describing how the programs operate. Public comments by the federal regulatory agencies indicated the agencies were planning to provide guidance on bounce protection programs. In May 2004, the FRB issued proposed rules amending Regulation DD (12 CFR 230), Truth in Savings, relating to the uniformity and adequacy of information provided consumers regarding bounce protection programs. This regulatory initiative was issued as a Final Rule, May 2005, and is effective July 1, 2006. This rule may be reviewed via the Banking Department's web-page (www.banking.state.ny.us) through the link to the FRB's web-page or a copy may be obtained from the same source as indicated for the text of the proposed rule making.

In June 2004, a proposed Interagency Guidance on Overdraft Protection Programs was issued by the Federal Financial Institution Examination Council agencies (Office of the Comptroller of the Currency (OCC), FRB, Federal Deposit Insurance Corporation (FDIC), Office of Thrift Supervision (OTS) and the National Credit Union Administration (NCUA)). The proposed Interagency Guidance addressed three areas: Safety and Soundness Considerations, Legal Risks and Best Practices. The section on Safety and Soundness sought to ensure that banking institutions adopted adequate policies and procedures to address the risk associated with offering overdraft protection products. The section on Legal Risks outlined several federal consumer compliance laws, generally alerted banking institutions to the need to comply with applicable federal and state law in offering such products, and advised institutions to have legal counsel review their overdraft protection programs to ensure overall compliance. The Best Practices section provided examples of the practices currently observed and recommended by the banking industry in offering these programs and generally addressed the marketing and communications related to offering the programs and the disclosure and operation of program features. Public comment was received from the banking institutions, trade associations, vendors of the overdraft products, consumer and community groups, government officials, and individual consumers.

In February 2005, a final Joint Guidance on Overdraft Protection Programs (70 Federal Register 9127 (February 24, 2005)), was issued by the OCC, the FRB, the FDIC, and NCUA. The OTS also issued a final Guidance on Overdraft Protection Programs (70 Federal Register 8428 (February 18, 2005)) which differed in certain respects from the Joint Guidance. The agencies issuing the Joint Guidance consider all overdraft programs to be credit products, but they do not consider the fees for paying overdraft items a finance fee subject to Regulation Z disclosure requirements since the institution has not agreed in writing to pay overdrafts. In contrast, the OTS' final Guidance takes the position that depending on the particular overdraft program, it may or may not be a credit product. Given the general characteristics of most bounce protection programs, especially in contrast to an overdraft line-of-credit, the OTS considers the charges in connection with such programs to be fees for services.

The Joint Guidance generally adopted the proposed Interagency Guidance without significant substantive change, except in one respect, and this revision was also adopted by the OTS in issuing its final Guidance. Both Guidances under the Safety and Soundness commentaries advise institutions to write off any overdraft balances, including any related fees, for which the account is not brought current within sixty (60) days. The Interagency Guidance initially recommended a thirty (30) day write off period, but industry comments recommended the period be extended to give customers more time to bring such accounts current. Finally, the OTS final Guidance deleted the commentary on Legal Risks, except to recommend that any overdraft program should be reviewed by legal counsel.

The Best Practices set forth in both Guidances are not herein reviewed other than to note the practices generally address giving the customers appropriate disclosures of how such programs operate, including but not limited to the types of the transactions covered, the aggregated limit of the overdraft, the discretionary nature of bounce protection, and the fees charged. However, the OTS final Guidance did incorporate best practices not contained in the Joint Guidance. The OTS Guidance advises that thrift institutions should not manipulate transaction-clearing processes so as to maximize fees, and the Guidance also advises not allowing consumers to access overdraft amounts in the course of electronic transactions unless the customer is informed the transaction will cause the overdraft fee and is given an opportunity to cancel the transaction. If this notice is not feasible because of the type of transaction, then the customer should be given the opportunity to make the bounce protection unavailable by type of transaction. The Best Practices issued by the Joint Guidance and the OTS final Guidance are posted on the Banking Department's web-page (www.banking.state.ny.us) and copies may be obtained from the same source as indicated for the text of the proposed rule making.

It is noted that the proposed regulation adding section 6.8 authorizes State-chartered banks and trust companies to offer bounce protection programs to the same extent and subject to the same conditions as national banks. The amendment adding section 6.8 authorizes State-chartered savings banks and savings and loan associations to offer bounce protection programs to the same extent and subject to the same conditions as federal savings associations. Therefore, the Joint Guidance standards will be applicable to the bounce protection programs of banks and trust companies and the OTS final Guidance will be applicable to savings banks and savings and loan associations. Best Practices, or the principles within, are enforceable as supervisory standards to the extent they are required by other applicable federal or state statutes or regulations.

10. Compliance schedule. The rule making will become effective upon publication in the *State Register*, and banking institutions may commence bounce protection programs thereafter in accordance with applicable law and regulations.

Revised Regulatory Flexibility Analysis

1. Effect of rule: It is expected that, pursuant to final approval of this proposed rule-making, banking institutions (State-chartered banks, trust companies, savings banks and saving and loan associations) which vary in size from the smallest to the largest institutions will offer overdraft or bounce protection programs to the same extent as national banks and federal savings association may. The adoption of this rule is expected to result in a net increase in fee income for any banking institutions that adopt bounce protection or modify existing programs to charge daily fees for overdrafts.

For other businesses, the amendments to section 32.1(a) clarifying that banking institutions may vary their fee charges by type of account and amount may or may not increase costs for customers having commercial or other types of checking accounts with banking institutions. It is dependent upon whether banking institutions modify their existing policies on overdrafts and also the amount or amounts of the fees they charge their accountholders when overdrawing their accounts, whether such checks are returned, paid or accepted.

It is presumed that units of local government would not use bounce protection programs.

2. Compliance requirements: In order to offer bounce protection programs, banking institutions, as reflected by the guidance documents on overdraft protection programs issued by the federal bank regulators and referred to in new Part 6.8(c) (collectively the "Guidance"), will need to

insure that such programs meet the appropriate safety and soundness standards and legal sufficiency standards, and conform to the best practices standards as set forth in the Guidance that pertains to the particular type of banking institution.

There are no compliance requirements applicable to businesses other than banking institutions or to any unit of government.

3. Professional services: Bounce protection programs require certain software program capabilities to insure proper administration of the programs. It is expected that smaller sized banking institutions will use outside or third-party software vendors to mount such software capabilities, while larger sized banking institutions may have sufficient in-house information technology resources to not require use of outside vendors.

4. Compliance costs: It is expected that all banking institutions will experience increased compliance costs at least in initially mounting these programs because of the need to insure the programs meet the appropriate Guidance standards as discussed above. It is likely that adequate software programs or capabilities are necessary in order to meet proper safety and soundness standards. While bounce protection programs may increase banking institutions' fee income and reduce costs associated with dishonoring or not accepting checks having insufficient funds, if customers are permitted to overdraw accounts beyond set amounts and do not bring the accounts current within a certain specified time period, significant monetary losses may be incurred by the banking institutions.

The proposed rule making imposes no compliance costs on non-banking businesses and units of government.

5. Economic and technological feasibility: The proposed rulemaking should impose no adverse economic or technological burden on banking institutions. The software capabilities for mounting such programs have been well developed during the last five years, and the institutions already have available all of the necessary account and customer communications capabilities needed to appropriately advise customers of account balances, charged fees, and provide periodic statements and other appropriate notices that may be required by the Guidance standards.

6. Minimizing adverse economic impact: It is expected that while certain operational costs will increase in the administration of bounce protection programs, the net fee income will increase for banking institutions. In addition, by honoring or accepting checks which overdraw accounts, banking institutions as a whole reduce costs by allowing such checks to be processed and cleared normally through the payment system. When checks are not honored or accepted, then banking institutions engage in an irregular and in some respects extraordinary process to refuse payment and advise the initial presenting banking institution and the customer that the check does not represent good funds. Further, a consumer or vendor that has taken the check in payment for goods or services and has presented the check for payment or collection incurs usually a returned check charge. This cost will not occur if the account has bounce protection and the check amount is within the parameters of the bounce protection program. In addition, because the deposited or collected overdraft check does not bounce, the consumer or vendor will not have cause to submit a negative report to credit bureaus regarding the customer's account due to late payment of a bill or other charges. The customer's credit rating or score, therefore, is not adversely affected. Thus, while the customer may pay the banking institution additional fees because of overdrawing the account, it may be less expensive for the customer to experience the costs associated with bounce protection, than to pay higher interest rates for extensions of credit by a banking institution or other lending institutions. Finally, the costs an accountholder incurs when accessing his or her overdraft balance will vary greatly depending on the amount of time an accountholder who incurs an overdraft takes to bring the account to a positive balance.

7. Small business participation and local government participation: Small banking institutions as members of the New York Bankers Association, the Independent Bankers Association of New York State, and the Community Bankers Association of New York State have strongly supported this rule making. Individual CEOs of small banking institutions have expressed support for the rulemaking. The proposed rule was posted on the web page of the Department at www.banking.state,ny.us since September 1, 2005 and was the subject of an extended public comment period as well as a public hearing, prior to adoption by the Banking Board at its meeting on February 2.

Banking and financial services industry associations and banking institutions participated in the public hearing and/or submitted comments during the comment period, as did consumer organizations and private individuals. No comments were received from non-financial business interests or local governments at the hearing or otherwise during the comment period.

Rural Area Flexibility Analysis and Job Impact Statement

Changes made to the amendments to Part 32 and to new Part 6.8 from those regulations as proposed do not necessitate revision to the previously published Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

In summarizing and responding to the public comment on the proposed rule making, any such comments that referred to and discussed "overdraft protection" or "overdraft fees" will be referred to as "bounce protection" or "bounce protection fees" to clearly distinguish the products or programs that are the subject of this rule making from overdraft products and programs that provide a line of credit and charge interest when the line of credit is accessed.

Organizations Commenting. The Department held a public hearing on October 17, 2005 in New York City to receive comments on the proposed rule. The general public was invited to testify. Oral or written testimony was received from a staff person testifying on behalf of a member of the NYS Assembly Banks Committee, representatives of two banking industry state trade associations, four regional or state consumer organizations and one CEO of a State chartered bank.

During the public comment period, additional written or emailed comments were received from a former member of the House of Representatives' Financial Services Committee, four not-for-profit consumer/community lending or reinvestment organizations, a state trade association that represents the check cashing industry, and one of the banking industry state trade associations that testified at the hearing. The consumer/community organizations in certain instances were coalition organizations, of which certain member organizations, or staff members of such organizations, commented separately. Three members of the NYS Assembly, including the member who testified, also submitted a joint statement.

Finally, two New York residents submitted comments. One opposed the rule making because of the consumer's experiences with overdraft charges. The other consumer stated "support of [the] new limits on overdraft protection fees", but referred negatively to a debit transaction experience that caused overdraft fees to be charged.

The Superintendent extended the initial public comment period until November 25, 2005.

Summary of Comments. The member of the Assembly commented that the recent development of expedited check processing and certain procedures associated with electronic debit processing were likely to cause more consumer overdrafts in the future. Thus, the adoption of the bounce protection policy for the purpose of fostering bank charter parity likely would cause unnecessary financial risk for consumers.

The joint letter from the Assembly members generally recommended that consumer protection standards advocated by the Superintendent to the federal bank regulators, when such regulators undertook a review of bounce protection programs, should be added to the Part 6 rule making as additional requirements applicable to State chartered bank bounce protection programs. In addition, the joint letter commented extensively on the increased maximum returned check fee and the restriction of such fee cap only to consumer or personal checking accounts, arguing that the Superintendent and the Banking Board did not meet the statutory requirements prescribed by SAPA and the Banking Law in proposing the amendments to Part 32.

The consumer organizations noted the following concerns in opposing the proposed rule making: (i) fees assessed in bounce protection programs far outweigh the costs of banking institutions in processing a bounced check and thus are not commensurate with the actual risk banks incur and cannot be rationally justified; (ii) the bounce protection fees charged are predatory and result in less available expendable income for the consumer; (iii) a bounce protection program is not a form of consumer protection, but rather a high-cost credit product; and (iv) the programs are intended to maximize fee income for the banking institution by encouraging more overdraft transactions rather than limiting the number of such transactions. One of the consumer organizations also stated that the adoption of a bounce protection policy for State banking institutions demonstrates that federal preemption of state consumer laws will cause a "race to the bottom" to achieve deregulation from such laws. It was further noted that such programs also apply to accounts in which are deposited monies from various public benefit programs that are otherwise protected from set-offs. The consumer organizations generally recommended that the proposed bounce protection rule be modified to:

(i) prohibit the application of bounce protection programs to Basic Banking accounts;

(ii) prohibit the application of bounce protection programs to ATM transactions;

(iii) require customer's prior affirmative consent when point of sale (POS) and ATM transactions would cause bounce protection charges;

(iv) exempt public benefit and other "protected" income from bounce protection charges;

(v) require that account holders having bounce protection be afforded a grace period to bring the account current before any daily fees are imposed;

(vi) restrict the repeat use of bounce protection;

(vii) require customer or account holder "opt in" of bounce protection programs for their accounts; and

(viii) prohibit banks from manipulating their transaction clearing processing to maximize bounce protection revenue.

The banking industry trade associations and the State chartered bank CEO stated that permitting State chartered banking institutions to offer such programs to the same extent as nationally chartered institutions will provide an additional tool to discourage the overdrawing of accounts and encourage account management, thus providing a safety and soundness benefit for the institutions, and will permit the State chartered institutions to be economically competitive with their nationally chartered counterparts, thus assisting in the preservation of the dual banking system. In a written statement subsequently submitted by one of the industry trade associations, it was noted that customers do appreciate service provided by overdraft protection programs because the product does not result in merchant charges and a listing in shared banking data bases or necessitate alternate payment arrangements that result from bouncing a check. Further, the association argued that the federal regulatory requirements prohibit misleading advertisements regarding such programs and mandate the fees associated with a bounce protection service be disclosed separately in the periodic account statements for both the statement period and the calendar year to date.

The former member of Congress submitted a copy of a letter sent to the federal bank regulators in support of a House of Representatives bill, H.R. 3449, which would regulate bounce protection programs. In criticizing various aspects of the federal regulatory actions applicable to bounce programs, the former Congressman recommended (i) consumer disclosure and consent relating to such programs, and alternatives thereto; (ii) federal bank regulator collection of data quantifying the extent and magnitude of bounce protection programs; (iii) accountholder notification of monthly and year-to-date overdraft fee totals in the periodic statements for all deposit accounts subject to the Truth-in-Savings Act (TISA) Regulation DD; (iv) for ATM transactions, disclosure of an overdraft fee, opportunity to cancel the transaction, and statement of the account balance without the inclusion of any overdraft balance; (v) a limitation upon the charging of overdraft fees for multiple POS debit card transactions by a customer; (vi) prohibition upon manipulation of transaction processing to maximize bounce protection fee income; and (vii) investigation of bounce protection program disclosures by banking institutions.

The state trade association for the check cashing industry indicated general support for the objective of the rule to permit State chartered banks to offer bounce protection programs to the same extent as permitted federally chartered banking institutions. However, the association noted concerns regarding the provisions of Part 32 that limit the return check maximum fee charge of $20 to consumer accounts and not commercial accounts. The association stated that removing any cap on commercial accounts will increase the amount of return fee charges to which the industry is subject because of the volume of returned checks the industry experiences when depositing customer checks for collection. The association indicated that a substantial amount of such return charges cannot be recovered from either the customer payees or the drawers of the checks and this expense will need to be monitored in the future since the industry is subject to a fee cap on the amount check cashers may charge for chasing a check.

Assessment of Comments. The concerns and recommendations noted by the consumer groups and the former Congressman are considered in relation to the best practices as set forth in the Joint Guidances on Overdraft Protection Programs (Joint Guidance) issued by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation, and National Credit Union Administration and the Guidance on Overdraft Protection Programs (Guidance) issued by the Office of Thrift Supervision (OTS) and to the requirements of the FRB amendments to Regulation DD, which applies to all federally insured deposit accounts including those held by State chartered banking institutions. Sections 14-g and 14-h of the Banking Law and the rule making adding section 6.8 makes the federal regulatory Guidances applicable to bounce protection programs offered by State chartered banking institutions.

If bounce protection programs are treated as credit products, as the consumer groups argue they should be, then appropriate disclosures pursuant to Regulation Z, implementing the federal Truth in Lending Act, would need to be made to all accountholders that have bounce protection and the fee charges may be treated as finance charges and subject to whatever state laws govern interest rates and usury. Though the OTS and the other federal bank regulators issuing the Joint Guidance disagree on whether overdraft protection programs constitute a form of credit, the end result is that all federal bank regulators do not require the programs to be subject to Regulation Z requirements. The OTS takes the position bounce protection is a fee-for-service product. The other federal bank regulations consider bounce protection to be an extension of credit but not subject to Regulation Z since it is extended on a discretionary basis by banking institutions and is not subject to a written agreement with the account holder. Since the purpose of this rule making is to permit State chartered banks to offer such programs to the same extent as federally chartered institutions, it would be illogical to then treat State chartered bank bounce protection programs as extensions of credit and therefore subject to Regulation Z requirements. The legislative intent of sections 14-g and 14-h of the Banking Law is to permit state chartered banks, trust companies and thrift institutions to engage in banking activities and have access to the same powers, rights and privileges, to the same extent, as their federal bank counterparts. Though Part 32 and the respective sections of the Banking Law that constitute the underlying authorization for Part 32 treat additional overdraft fees, beyond any initial fee, as interest charges, the Part 6 amendment adding section 6.8 as authorized by sections 14-g and 14-h would permit such additional fees to be charged as non-interest charges. The Part 6 amendment therefore is consistent with the policy objectives the Legislature intended by the enactment of the "Wild Card" laws.

Regarding the contention that the fees charged for bounce protection are not commensurate with the risk banks incur, it is noted that banking regulators generally do not regulate fees charged for banking services and products. Further, any one-time fee charged for paying a check that overdraws an account will likely be the same as or similar to the one-time NSF fee that is charged the drawer of the check if it is not paid (i.e., dishonored). Since the latter fee is not subject to any cap or regulatory standard that it be based solely on what it costs an institution or the risk to the institution to dishonor and return a check, there is no justification for a cap or such regulatory standard to apply to one-time overdraft charges. Whether the consumer groups' contention applies to any daily fee an institution charges when honoring an overdraft check, the risk to the banking institution increases when it accepts or pays a check that overdraws the account. The obligation is upon the drawer to bring the account into balance, which is a condition that does not occur when the account holder bounces a check. Thus, the daily fee is based not only on cost and profit factors of the institution when permitting the overdraft but as an incentive for the account holder to bring to account current. No basis exists that enables a regulator to determine whether a daily overdraft fee is "reasonable" in relation to these objectives relative to all banking institutions and all account holders that would enable a regulator to prescribe a general fee cap or specify a bounce protection daily fee for each institution.

Regarding the consumer groups' contention that the fees charged are predatory and result in less disposable income for a consumer, it is noted again that a bounce protection program results in paying a check that overdraws an account. The account holder would incur a similar initial charge if the check were dishonored, and he or she potentially is subject to additional charges or expenses, such as late fees and interest, imposed by the payee that rendered goods and services to the drawer. The federal Guidances state that prompt notice be given each time an overdraft usage occurs and indicate the date of transaction, the type of transaction, the amount, the fee associated with the overdraft, the amount necessary to bring the account to a positive balance, the time the account holder has to bring the account current, and the consequences of not doing so. If a drawer promptly brings an account current it is not likely the drawer would experience significantly greater total costs if such a check were honored compared to dishonoring the check.

Concerning whether bounce protection programs are high-cost credit products, the federal bank regulators disagree on whether bounce protection is an extension of credit. As stated previously, the OTS takes the position bounce protection is a fee-for-service product; however, the other federal regulators consider the product to be an extension of credit by a bank but not a credit or loan product subject to Regulation Z because it is

discretionary on the bank's part and not subject to underwriting or a written agreement with the account holder. Whether the credit or fee-for-service product is "high cost" relates entirely to the extent to which the accountholder uses the product and how promptly the account is brought current. As noted above, any initial or one-time charge is likely to be similar to or the same as the NSF fee charged for bouncing a check, which is the alternative fee imposed if an overdraft is not paid. A bank would be responsible for any "high-cost" associated with this product if it imposed the fees without prompt notice, encouraged usage and did not cause the account holder to promptly bring the account to a positive balance.

With regard to the various consumer-related comments that bounce protection programs are intended to deceptively encourage usage in order to maximize fee income, the federal Guidances, under the safety and soundness considerations, and the TISA regulations place a substantial burden on banks to maintain comprehensive monitoring of program usage. The Guidances indicate that banking institutions should adopt written policies and procedures to address the credit, operational, and other risks associated with bounce protection programs. Such risk management includes express account eligibility standards and well-defined and properly documented dollar limit decision criteria. In addition, proper risk management also necessitates that such accounts and usage of the product be monitored on an on-going basis in order to identify consumers who represent an undue credit risk, with the possibility of disqualification from further usage of the product. Prudent risk management also includes establishing specific time frames in which consumers must pay off overdraft balances, and the Guidances direct the institutions to charge off overdraft balances when deemed uncollectible but not later than 60 days from the date of the first overdraft. Further, bounce protection programs will require institutions to exercise proper risk-based capital treatment to outstanding overdraft balances and the unused portion of the dollar limit of the bounce protection product. Though the best practices are considered recommendations, institutions must treat these recommendations as operative supervisory standards, especially in the case of the noted safety and soundness best practices, or must otherwise justify and demonstrate alternate practices that have the same effect.

An appendix submitted with one of consumer groups' comments constitutes the marketing document of a vendor promoting its bounce protection software. The document states that proper risk management is a necessary component of a successful program and that the program be directed at "deserving customers". This implies the program is not necessarily a product that should be applied to all customers, and it pointedly states that such customers should be those that have regular and consistent deposit transactions. It also emphasized other programmatic features that are intended to keep the accounts current, if for whatever reason the accountholder's practice of regular and consistent deposits became faulty. The vendor's statement sought to demonstrate how to maximize income from its bounce protection product or service. However, the programmatic standards it articulates parallel the safety and soundness standards set forth in the federal Guidances—bounce protection is not a product to be given to every account holder and when applied to an account, its usage must be carefully monitored by the banking institution. If abuse occurs, the Guidances state that the banking institution must consider other alternatives for the accountholder including possible termination of the accountholder's use of the product.

Changes Recommended to Proposed Rule. Though initially considering prohibiting the application of bounce protection programs to basic checking accounts a viable modification of the proposed rule, the Department subsequently determined such a prohibition is not workable. Section 14-f of the Banking Law defines a basic banking account; however, subdivision 7 of such section permits banking institutions to make available alternative accounts or services determined by the Superintendent to be at least as advantageous to consumers as the basic banking account. Accounts which provide "free" checking account services generally have been considered acceptable alternatives to basic banking accounts. Such free accounts, however, are offered widely to and chosen by many customers of banking institutions. Restricting the application of bounce protection programs to such accounts may impact customers that prefer the service and who are not disgruntled or presumably adversely impacted by the fees that may be charged.

Similarly with respect to exempting public benefit and other "protected" income from bounce protection fees, it is not possible to isolate deposit amounts comprising "protected income" from other funds deposited in the account. However, it is not necessary that such deposits be given special treatment under the proposed rule. The Guidances specifically recommend that banking institutions obtain the affirmative consent of customers to receive bounce protection or to permit customers to opt out of the program if it is to be applied automatically to the account. Thus, customers in all instances should have prior knowledge of whether a bounce protection program will apply to their deposit accounts regardless of the types of funds deposited therein.

The Department has considered whether to restrict or qualify in some manner the application of bounce protection programs to debit POS and ATM transactions. After reviewing the payment process for clearing electronic transactions, the Department has determine that qualifying or restricting the application of bounce protection programs to debit POS transactions is not workable. The clearing of merchant and vendor payment transactions does not occur at the time a transaction is executed (i.e., in real time) and is usually conducted by batch processing of transactions after the close of the business day. Though it may appear to a customer that a transaction has cleared against the current balance in the account when a transaction is approved, this is not the case. Rather, a "hold" charge equal to or greater than the transaction amount is placed against the balance in the account. After the close of business when such transactions are cleared, actual withdrawal and transfer of the transaction amount occurs. Thus, one or more debit POS transactions may access an overdraft balance, though the customer would have no way of knowing this at the time of the transactions. The Department is not prepared to ban the application of a bounce protection program to POS transactions as this would create different state and federal standards. The federal Guidances, as noted below, either recommend or suggest banking institutions consider prohibiting the application of bounce protection to transactions for which notice of overdraft transactions is not feasible or permitting the consumer to opt out of the application of the bounce protection to such type of transactions.

Regarding ATM transactions, the Department has investigated whether banking institutions clear ATM transactions against real time current balances or otherwise. The Department, after consulting with electronic processing companies, understands that ATM transactions by customers may be cleared immediately against a real time balance or against a daily balance file posted presumably at the beginning of the business day. This appears to be the case whether the transaction is conducted through the ATMs of the accountholder's bank or at non-proprietary or foreign ATMs. Thus, for institutions using a daily balance file, whether one or more ATM transactions access an overdraft balance would only be known with any absolute certainty when the account is balanced after the close of the business day against all transactions occurring during the business day.

The joint federal Guidances recommend that banking institutions give notice to customers if a transaction will trigger any bounce protection fees, if feasible. The notice should be given in a manner that permits a customer to cancel the attempted transaction. Where this is not feasible, a posted notice should be used indicate that such transactions may overdraw the account and fees may be incurred. The Joint Guidance states that banking institutions "should consider making access to the overdraft protection program unavailable . . ." by other than check transactions. The Joint Guidance also recommends that when notice of account balances are given, the notice clearly distinguish between any actual balance in the account and any overdraft balance. The OTS Guidance goes further and directs thrift institutions not to allow customer access to an overdraft balance unless it give notice that an electronic transaction will trigger an overdraft fee. If this is not feasible for a particular transaction, then the OTS Guidance recommends that the customer should be given a choice to limit the application of the bounce protection program to particular types of transactions.

Though the Department believes a minimal uniform regulatory standard on ATM transaction should be applicable to all State chartered banking institutions, the Department is not prepared to propose any additional rule on such transactions at this time due absence of uniform real time clearing of such transactions by all banks. In the case of both debit POS and ATM transactions, State chartered banking institutions will need to be guided by the applicable federal Guidances.

With respect to the recommendation that the repeat use of bounce protection be limited, both federal Guidances recommend that in marketing bounce protection programs banking institutions should not "in any manner" encourage routine or intentional overdrafts and should present the program as a service to cover "inadvertent" overdrafts. Under operational best practices, the federal Guidances suggest banking institutions place daily limits on the customers' costs incurred from a bounce protection program. Further, the Guidances direct banking institutions to monitor excessive customer usage, which may indicate the need for alternate services and to advise a customer of such alternatives. As noted above regarding the concerns that bounce protection programs are intended to

encourage usage, this is not consistent with either the safety and soundness standards articulated by the Guidances or the programmatic standards recommended by the bounce protection vendor.

Concerning the recommendation that accountholders having bounce protection be afforded a grace period to bring an account current before any daily fee is imposed, the federal Guidances direct banking institutions to "promptly notify" customers when an overdraft balance has been accessed and specify the date and type of the transaction, the overdraft amount, the fee charged, the amount necessary to return the account to a positive balance, the amount of time the customer has to return the account to a positive balance, and the consequences of not doing so within the specified timeframe. If customers keep timely track of their account balances, it is likely that few or no daily fees will be charged if a prompt return of the account to a positive balance occurs. It is also noted that under the TISA Regulation DD requirements, deposit account disclosures must include the amount of any fee that may be imposed and the "conditions under which the fee may be imposed." Further, the requirements state that if bounce protection is added to an existing deposit account, advance notice must be given to the customer if the fee or fees charged exceed the fee or fees charged for accounts that do not have the service or feature. Thus, the conditions under which any daily fee will be charge should be apparent to the accountholder.

The consumer groups recommended that customers or accountholders be permitted to "opt-in" to a bounce protection program. As noted above, the federal Guidances adequately address this issue by directing banking institutions to obtain the affirmative consent of customers to receive bounce protection or to permit customers to opt out of the program if it is to be applied automatically to an existing account.

Finally, the consumer groups recommend that banking institutions be prohibited from manipulating their transaction clearing processing in order to maximize bounce protection revenue. In this instance, the federal Guidances diverge. The OTS Guidance directs thrift institutions to not manipulate transaction clearing rules and to explain the impact of transaction clearing policies. The Joint Guidance does not provide this guidance. By operation of section 14-h of the Banking Law, the OTS Guidance on transaction clearing will apply to state chartered thrifts. However, to achieve a uniform policy applicable to state chartered banks, trust companies and thrifts, it is noted that section 32.4 of 3 NYCRR presently requires that a banking institution give written notice to customers regarding the order in which it pays checks at the time of opening an account and 30 days prior to the time the payment policy is changed. This requirement effectively prohibits state chartered banking institutions from manipulating the clearing process to maximize bounce protection revenue, since the effect of the rule requires that such institutions have a uniform policy of check clearing and advise customers in advance of any change in such policy. However, the Department agrees with the observation noted in the comment letter signed by the three Assembly members. The final rule refers provides a technical clarification of section 32.4 by requiring that the payment disclosure specify the payment order of all account transactions.

In order that the account disclosures addressed by the federal Guidances be clearly set forth to customers and accountholders, the Department recommended to the Banking Board that the final rule amending Part 6 be modified by adopting an emergency rule requiring State chartered banking institutions to provide a separate disclosure regarding any bounce protection program that will apply to a new or existing account. In taking final action on the proposed section 6.8, the Board did adopt an emergency rule adding a new subsection (e) to section 6.8 to require such disclosure. The disclosure will need to conform to the standards specified by the federal Guidances and TISA. The purpose of this requirement is to ensure that particulars of a bounce protection program are not solely described within an account agreement's terms and conditions, though banking institutions presumably will continue to also set forth those particulars in such agreements.

Finally, the Department also agrees with the observation noted in the comment letter signed by the three Assembly members that the promulgation of the proposed amendment to section 32.1(b) regarding return items does not conform with the requirements of section 108(8)(c) of the Banking Law. The Department will not advance the proposed amendment increasing the return item fee cap at this time.

The Department does not agree with Assembly members' observation that section 108(8) of the Banking Law contains no basis to permit the application of requirements of Part 32 to vary by type of account or by amount of the fee or fees charged. In short, the position of the Assembly members is that the standards required by section 108(8) must be applied uniformly, whether it is a commercial, consumer or other account. Other than the comments received from the check cashers' association, the Department received no comments from other retail businesses either at the public hearing or otherwise during the comment period. It has been the Department's long standing position and interpretation that the Legislature intended the provisions of section 108(8) to apply to consumer accounts and not commercial accounts. The Department believes that the legislative history related to the enactment of these provisions, and subsequent amendments thereto, supports this interpretation. The amendments to section Part 32 regarding the scope of the regulatory requirements expressly codifies the Department's long standing interpretation.

In conclusion regarding the consumer groups' concerns and recommendations, generally the federal Guidances' best practices comprehensively address those concerns and recommendations. It may be appropriate in the future that one or more of those practices be adopted as regulatory requirements. As noted above, the best practices constitute supervisory standards which banking institutions are expected to meet. To determine to what extent institutions adhere to these best practices, the Superintendent will survey banking institutions regarding the use and particulars of bounce protection programs and will direct the Department's Consumer Services Division to examine institutions' practices when providing bounce protection programs to accountholders and to report its findings, and any recommendations, to the Banking Board.

NOTICE OF ADOPTION

Allowable Investments by Banks and Trust Companies

I.D. No. BNK-47-05-00004-A
Filing No. 163
Filing date: Feb. 3, 2006
Effective date: Feb. 22, 2006

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

Action taken: Amendment of Part 31 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 14(1)(d) and 97(5)

Subject: Allowable investments by banks and trust companies not otherwise specifically authorized by the Banking Law.

Purpose: To permit banks and trust companies make purchases of the stock of Atlantic Central Bankers Bank.

Text or summary was published in the notice of proposed rule making, I.D. No. BNK-47-05-00004-P, Issue of November 23, 2005.

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

Text of 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

Assessment of Public Comment

One comment was received from the president of a banking institution, who did not oppose the rule, but rather recommended the Board adopt a general rule permitting such membership investments in any bankers' bank.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Authority for Mergers between Banks and Trust Companies and Nonbank Affiliates

I.D. No. BNK-08-06-00004-P

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

Proposed action: Addition of section 6.9 to Title 3 NYCRR.

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

Subject: Authority for mergers between banks and trust companies and nonbank affiliates.

Purpose: To give New York State chartered banks and trust companies parity with national banks in mergers with nonbank affiliates.

Text of proposed rule: Part 6 is amended by adding a new Section 6.9 to read as follows:

§ 6.9 Merger of a bank or trust company with a nonbank affiliate.

(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 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 215a-3 and Title 12, Code of Federal Regulations, Section 5.33(g)(4) permit a national bank to merge with one or more nonbank affiliates of such bank.

(c) Definitions

For purposes of this Section 6.9:

(i) "Banking institution" means a banking organization as defined in Section 2(11) of the Banking Law, national bank, federal savings bank, federal savings and loan association, federal credit union, foreign banking corporation, or any bank, trust company, savings bank, savings and loan association or credit union organized under the laws of any other state.

(ii) "Company" means a corporation, limited liability company, partnership, business trust, association or similar organization.

(iii) "Control" shall be deemed to exist when:

(a) One company or shareholder, directly or indirectly, or acting through one or more other persons, owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company, or

(b) One company or shareholder controls in any manner the election of a majority of the directors or trustees of the other company;

provided, in either case, that no company shall be deemed to own or control another company by virtue of its ownership or control of shares in a fiduciary capacity.

(iv) "Nonbank affiliate" of a bank or trust company means any company (other than a banking institution) that controls, is controlled by, or is under common control with the bank or trust company.

(v) "Receiving corporation" means the bank or trust company which is to receive into itself the merging affiliate or affiliates.

(d) (i) With the approval of the Superintendent, a bank or trust company may merge with one or more of its nonbank affiliates, with the bank or trust company as the receiving corporation, in accordance with the provisions of this section 6.9, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. In determining whether to approve the merger, the Superintendent shall consider the purpose of the transaction, its impact the safety and soundness of the bank or trust company, and any effect on the bank or trust company's customers, and may deny the merger if it would have a negative effect in any such respect. The transaction may also be subject to approval by the Federal Deposit Insurance Corporation under the Bank Merger Act, 12 U.S.C. 1828(c).

(ii) A bank or trust company entering into the merger shall be subject to the requirements and follow the procedures set forth in Section 601 of the Banking Law and the regulations of the Banking Department thereunder as if the nonbank affiliate were a bank or trust company, except as otherwise provided herein.

(iii) A nonbank affiliate entering into the merger shall follow the procedures for such mergers set out in the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(iv) The rights of dissenting shareholders and appraisal of dissenters' shares of stock in the nonbank affiliate entering into the merger shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate is organized.

(v) The corporate existence of each entity participating in the merger shall be continued in the receiving corporation, and all the rights, franchises, property, appointments, liabilities and other interest of the participating entities shall be transferred to the receiving corporation, as set forth in Section 602 of the Banking Law, in the same manner and to the same extent as in a merger between two corporations subject to the provisions of article three of this chapter, as if the nonbank affiliate were a bank or trust company.

(e) A merger authorized under subsection (d) shall not have the effect of enabling a bank or trust company to exercise any right, power, privilege or benefit that it could not lawfully exercise immediately prior to such merger.

(f) The authority provided by subsection (d) shall not limit any other authority contained in the Banking Law or regulations.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

Section 14(1) of the Banking Law empowers the Banking Board to make, alter and amend rules and regulations not inconsistent with law. Section 14-g empowers the Banking Board to adopt, in its discretion, such rules and regulations as are appropriate to enable banks or trust companies to exercise any right, power, privilege or benefit, to engage in any activity, or to enter into any loan, investment or transaction which a national bank may lawfully exercise or into which it may lawfully engage or enter.

2. Legislative objective:

The rule promotes the legislative objective, set forth in Banking Law Section 14-g(1), of ensuring parity between New York State chartered banks and trust companies and national banks, in order to preserve and enhance the state banking charter. As specifically stated in Section 14-g, the so-called "wild card" statute, it is the intention of the Legislature that the statute be construed in such a manner as to ensure that banks and trust companies may exercise the same rights and powers and engage in the same activities as national banks, on substantially the same terms and conditions as national banks.

3. Needs and benefits:

The purpose of the new rule is to permit New York State chartered banks and trust companies to merge with nonbank affiliates with the bank or trust company as the surviving entity, to the same extent as national banks.

Sections 600 and 14-e of the Banking Law permit state chartered banking institutions to merge with other depository institutions, whether affiliates, subsidiaries, or independent entities, but such section does not authorize a merger with a nonbank affiliate or subsidiary. The combination or consolidation may only be achieved by a purchase of assets of the subsidiary.

Under Section 6 of the National Bank Consolidation and Merger Act (12 U.S.C. 215a-3), national banks are authorized to enter into mergers with nonbank affiliates. Nonbank affiliates, pursuant to federal statute and regulation, are inclusive of both subsidiaries of a national bank and affiliates, the latter having common ownership with the bank.

The proposed regulation would remedy this disparity in powers by giving New York banks and trust companies the same power as a national bank to merge a nonbank affiliate into the bank. Similarly to the counterpart OCC regulation governing such mergers by national banks, (i) the authority to merge would not be automatic but would require approval of the Superintendent, (ii) the requirements and procedures for the merger would be generally analogous to those for mergers between two banks, and (iii) the surviving entity would be the bank or trust company. The proposed regulation would also make it clear that the bank or trust company could not acquire powers by virtue of the merger that it could not previously have exercised.

In addition to promoting the legislative objective of ensuring parity between banks and trust companies and national banks, the proposed regulation, by giving corporate groups that include a bank or trust company additional flexibility in organizing the structure of their operations, can be expected to help minimize the operating costs of such groups and thus facilitate their efficient operation.

4. Costs:

No significant new costs are imposed as a result of this rule. Indeed, the purpose of the rule is to provide additional flexibility to regulated parties to enable them to operate in the most efficient manner. While acting on requests for merger approvals under the proposed rule will impose some costs to the Department, such costs should not be greater (and may well be less) than the regulatory costs of reviewing the alternative types of corporate reorganization.

5. Local government mandates:

The regulation imposes no burdens on local governments.

6. Paperwork:

The regulation imposes no new reporting requirements. While a bank or trust company seeking to take advantage of the new power granted by the regulation must apply to the Banking Department for approval of a nonbank affiliate merger, the approval process is substantially similar to the established application procedure for bank mergers.

7. Duplication:

The proposal minimizes potential duplication, overlap and conflict with legal requirements of the federal government by applying to New

York State chartered banks and trust companies substantially the same rules with regard to nonbank affiliate mergers which federal law applies to national banks.

8. Alternatives:

Either of two bills on banking matters which were under consideration in the 2005 Legislative Session, a regulatory relief bill (S. 5806; A. 8796-A) and a "direct wild card" bill (S. 5518; A. 8641), would have provided a statutory basis for affiliate mergers by banks and trust companies and thus avoided the need for the proposed regulation. However, the Legislature has not acted on either bill.

Consideration was given to leaving unchanged the existing situation, under which banks and trust companies are not authorized to merge with nonbank subsidiaries and affiliates. However, it was concluded that continuing to restrict the powers of such banks and trust companies would perpetuate their existing disadvantage relative to national banks in this respect, contrary to the Legislature's objective of preserving and enhancing the state banking charter.

9. Federal standards:

The proposal would give banks and trust companies substantially the same powers to merge with nonbank affiliates and subsidiaries as are possessed by national banks.

10. Compliance schedule:

The additional powers given to banks and trust companies would be available immediately upon the effectiveness of the rule.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not submitted because the proposed rule will not impose any adverse economic impact, or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The rule would permit mergers of nonbank subsidiaries and affiliates into New York state chartered banks and trust companies to the same extent as into national banks.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted because 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. The rule would permit mergers of nonbank subsidiaries and affiliates into New York state chartered banks and trust companies to the same extent as into national banks.

Job Impact Statement

A Job Impact Statement is not submitted because it is apparent from the nature and purpose of the rule that the proposed rule will have no adverse effect on jobs or job creation. The rule would permit mergers of nonbank subsidiaries and affiliates into New York state chartered banks and trust companies to the same extent as into national banks.

Office of General Services

EMERGENCY RULE MAKING

Automated External Defibrillation Program For State Institutions and Buildings

I.D. No. GNS-41-05-00010-E
Filing No. 169
Filing date: Feb. 6, 2006
Effective date: Feb. 6, 2006

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

Action taken: Addition of Part 303 to Title 9 NYCRR.

Statutory authority: Public Buildings Law, section 140 as amd. by L. 2004, ch. 510

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

Specific reasons underlying the finding of necessity: Defibrillators save lives. A probe conducted by the Senate Investigations Committee found that the greater acquisition, deployment, and use of automated external defibrillators (AEDs) in New York can save thousands of people from otherwise certain death from heart attacks. In recent years the legislature has enacted laws relating to expanding the use of AEDs: in 1999, the legislature approved a $500 tax credit for purchase of AEDs (Chapter 407 of the Laws of 1999); and in 1998, the legislature eliminated obstacles to permitting non-medical providers to use AEDs (Chapter 552 of Laws of 1998). Chapter 510 of the Laws of 2004 amended the Public Buildings Law by creating a new subdivision two of section 140, requiring that State institutions and buildings be equipped with AEDs, and requiring the Commissioner of the Office of General Services to prescribe and promulgate regulations concerning the appropriate number of AEDs for each size and class of public building, the training of personnel and use of AEDs, and "any other matter deemed necessary" to effectuate the duty created by law. Moreover, the amended provisions of Public Building Law require that the Commissioner of General Services promulgate such regulations on or before the effective date of the amendment, April 1, 2005. Such regulations were contained in the amendment to Title 9 adopted on an emergency basis on April 1, 2005, but those regulations expired on June 29, 2005. They were again adopted on an emergency basis with the latest expiring on November 25, 2005. Due to a staffing change, this lapse was not discovered until recently. The same public health, public safety and statutory reasons underlying the adoption of the amendment dated April 1, 2005 continue, and the instant amendment to Title 9 provides, on an emergency basis, revised regulations for a public access defibrillation plan for State institutions and buildings.

Consequently, it is critical that these regulations be adopted as promptly as possible. For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the public health and general welfare.

Subject: Automated External Defibrillation Program for State institutions and buildings.

Purpose: To reduce unnecessary deaths from heart attacks in public institutions and buildings of the State by providing for a public access defibrillation program in such public institutions and public buildings; to provide rules and guidance for State agencies in formulating agency- and building-specific plans for a phased-in program of acquisition and use of cardiac automated external defibrillators (AEDs); identification and training of operators for the said AEDs; and compliance with other related State and Federal laws, rules and regulations relating to public access defibrillation.

Substance of emergency rule: The addition of Part 303 of Title 9 provides for implementation of a phased-in plan for public access defibrillation in the public institutions and buildings of the State. Such plan entails the installation and safe operation of a sufficient number of cardiac Automated External Defibrillators in each Public Building, to enable prompt response to human cardiac events that may occur in such Public Buildings.

Section 303.0 states the purpose of the regulations and statutory authority for their promulgation by the Commissioner of General Services.

Section 303.1 provides definitions for terms used in the regulations: (1) Automated External Defibrillator, or "AED;" (2) Public Building; (3) State Agency or Agency; (4) Collaborative Agreement; (5)Emergency Health Care Provider, or "ECHP;" (6) Regional Emergency Medical Services Council(s), or "REMSCO;" (7) Commissioner; (8) "OGS;" (9) "DOH."

Section 303.2 provides for implementation of the regulations. Subsection (a) requires compliance with Public Health Law section 3000-b. Subsection (b) requires each agency to provide and maintain on-site in each of its Public Buildings a sufficient number of functional cardiac AED devices, and to endeavor to provide a sufficient number of trained AED operators for emergencies, as outlined in the regulations, unless conditions exist in a certain structure that prevent an Agency from reasonably complying with the regulations. Subsection (c) provides that each Agency will be responsible for the phased-in installation of AEDs in its respective facilities over a period not to extend beyond March 31, 2010, absent extraordinary circumstances, and provides that any such extraordinary circumstances resulting in exemption from or noncompliance with the regulations must be detailed in a report to be submitted by the Agency. Subsection (d) provides that agencies sharing building space may use memoranda of understanding ("MOU") relative to the development and funding of an AED program for the shared space. Subsection (e) provides for OGS responsibility for installation of AEDs, and for managing AED maintenance and operator training for Agencies located in building space owned or managed by OGS; requires that Agencies occupying OGS space to comply with the AED policy including the recruiting of Agency personnel as AED operators and coordinators. Subsection (f) provides that, in specified circumstances, Agencies will be responsible for the installation of AEDs and for the management of AED maintenance and operator training. Subsection (g) provides that Agencies operating medical facilities

that provides alternative services for emergency defibrillation shall file a written notification explaining how the medical facility addresses emergency defibrillation, and that such Agencies with alternative services plans approved by DOH will be deemed to have fulfilled the requirements of sections 303.5, 303.6, 303.7, and 303.8 of the regulations. Subsection (h) provides that each State Agency shall immediately commence the process for implementation of an AED program and by April 1, 2006, all state agencies shall file a written report of their respective AED program plans. Such plans must be updated annually. Subsection (i) requires from Agencies unable to fulfill requirements of the regulation a written report with the Commissioner, and provides that filing of such an explanatory report shall temporarily suspend the Agency's obligation to fulfill other requirements of the Part for the subject Public Building(s) until the underlying condition(s) may be corrected. Subsections 303.2(g), (h), and (i) provide for issuance by OGS of acknowledgments of receipt for the notification and reports required of State Agencies by those subsections.

Section 303.3 provides guidelines and standards for Agency use in determining the placement of AED equipment in their public buildings, including provisions for prioritization of buildings based upon occupancy, character of the population served, level of physical activity or occupant density; and the quantity and placement of AEDs, based upon the size and physical layout of the Public Building, including criteria (i.e., placement of AEDs in locations that reasonably allow for an optimal response time to cardiac events of not more than three (3) minutes; mobile deployment of AEDs); other building features (i.e., locations of stairways and elevators; number of floors in the facility; security considerations; and equipment security considerations). Where placement of AEDs may be problematic, the Agency may consider alternate installations. AED options for children are also contemplated.

Section 303.4 provides for identification and training of AED operators.

Section 303.5 provides for administration of AED programs, including the designation of an Agency AED administrator and coordinators for buildings or regional areas. The duties of the Agency AED administrator and coordinators are outlined.

Section 303.6 outlines equipment-related provisions, i.e., need for physician's prescription for AED equipment acquisition; maintenance of AED equipment pursuant to manufacturers' recommendations; inspection of AED pursuant to applicable state and federal government standards; and regular inspections of AED equipment.

Section 303.7 details medical support issues for AED programs, including the requirement for each Agency's collaborative agreement with an Emergency Health Care Provider; filing of the Agency PAD plans with local Regional Emergency Medical Services Council; and provision of notice of AED availability to local emergency dispatch (911 or the community equivalent ambulance dispatch entity). Subsection 303.7(b)(4) provides for issuance by OGS of acknowledgments of receipt for the notices, agreements and confirmations outlined therein.

Section 303.8 details responsibilities of the Agency AED administrator and AED coordinators, relating to equipment use and maintenance, and event documentation and reporting practices.

Section 303.9 addresses the useful life and development of a replacement schedule for AED equipment.

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. GNS-41-05-00010-P, Issue of October 12, 2005. The emergency rule will expire April 7, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: William F. Bruso, Jr., Office of General Services, Legal Services, 41st Fl., Corning Tower, Empire State Plaza, Albany, NY 12242, (518) 473-4982, e-mail: william.bruso@ogs.state.ny.us

Regulatory Impact Statement

1. Statutory authority: Chapter 510 of the Laws of 2004 amended the Public Buildings Law by creating a new subdivision two of section 140, requiring that State institutions and buildings be equipped with automated external defibrillators (AEDs). Additionally, it required the Commissioner of the Office of General Services (OGS) to prescribe and promulgate regulations addressing the appropriate number of AEDs for each size and class of public building, the training of personnel and use of AEDs, and "any other matter deemed necessary" to effectuate the duty created by law. The Chapter law also required the Commissioner of OGS to promulgate such regulations on or before the effective date of the amendment, April 1, 2005.

2. Legislative objectives: By enacting Chapter 510 of the Laws of 2004, the Legislature sought to save lives by making AEDs readily available in State buildings and institutions. Chapter 510 of the Laws of 2004 amended the Public Buildings Law § 140 to provide for a program of public access defibrillation (PAD) to be phased in over a period of time. The memorandum filed in support of Chapter 510 of the Laws of 2004 states that "Defibrillators save lives. A probe conducted by the Senate Investigations Committee found that the greater acquisition, deployment, and use of automated external defibrillators (AEDs) in New York can save thousands of people from otherwise certain death from heart attacks." In recent years the Legislature has enacted laws that expanded the use of AEDs. In 1998, the Legislature eliminated obstacles to permitting non-medical providers to use AEDs (Chapter 552 of laws of 1998), and in 1999, the legislature approved a $500 tax credit for purchase of AEDs (Chapter 407 of the laws of 1999). Chapter 510 of the Laws of 2004 directed the Commissioner of OGS to promulgate regulations that provide for a phased-in implementation schedule of the PAD program. The regulations must address the appropriate number of AEDs for each public building—based upon size or occupancy; the training of personnel and use of AEDs; and any other matter deemed necessary by the Commissioner of OGS to effectuate the duty prescribed by that section of the law.

3. Needs and benefits: This addition of 9 NYCRR 303 is necessary to provide for the phased-in implementation of a PAD program for State institutions and buildings. The Legislature has recognized that use of automated external defibrillators (AEDs) in New York can save thousands of people from otherwise certain death from heart attacks, and has amended the Public Buildings Law to create a duty of each superintendent or chief executive officer of each of the public institutions and buildings of the state to equip each public building with an AED. The Commissioner of OGS was charged with the promulgation of regulations providing for a phased-in schedule for implementation of a PAD program for public buildings on or before the effective date of the Public Buildings Law amendment, April 1, 2005. These regulations require that State agencies prepare a PAD plan for each of the buildings and facilities operated under their authority, and permit substantial flexibility in the formulation of individual PAD plans. This flexibility is intended to accommodate the distinct missions and circumstances of agencies and the unique features of the State's varied public buildings as well as to permit the Agencies' management of the financial aspects of their AED programs. This flexibility is balanced by the incorporation of critical elements of guidelines published by nationally recognized authorities on PAD (*e.g.*, American Heart Association, "AED Implementation Guide," http://www.americanheart.org/presenter.jhtml?identifier=3027225; National Center for Early Defibrillation, "On-Site AED Placement Guide," http://www.early-defib.org/docs/Placement_Guide.pdf; American College of Occupational and Environmental Medicine, "Evidence Based Statements, ACOEM Guideline – Automated External Defibrillation," http://www.acoem.org/guidelines/article.asp?ID=41) thereby vindicating the Legislature's public health objectives.

4. Costs: a. Costs to State government will turn on determinations to be made by agencies in the formulation of their PAD plans and, accordingly, cannot be calculated with precision at this point. Any treatment of costs should consider that the subject regulations provide for a phased process of implementation over a period of five (5) years. The Office of General Services has, however, developed some assumptions in connection with estimating PAD costs for its own program. These assumptions are based upon current state contracts, and include a) initial cost (*i.e.*, AED acquisition, installation, and initial CPR/AED training) at $4,000 per unit and b) post-acquisition annual cost (*i.e.*, CPR/AED (re)training and equipment maintenance) at $500 per unit per year. Chapter 510 of the Laws of 2004 provides for funding of the PAD programs through annual appropriations for the maintenance of State buildings and institutions. At the time of this writing, the Division of Budget has advised that approximately $5 million will be made available for PAD programs in the 2005-06 fiscal year, and the Office of General Services is working on developing a methodology for allocating and distributing these funds among state agencies.

b. Costs to local governments. The regulations do not apply to local government and do not impose any costs on local government.

c. Costs to private regulated parties. The regulations do not apply to private parties and do not impose any costs on private to private parties.

d. Costs to the regulatory agency. As stated in the above section "Costs to State Government," the Office of General Services will incur certain costs in connection with the acquisition, deployment and maintenance of AEDS, as will every regulated agency. In this regard, and to the extent that OGS's PAD plans are not complete, costs cannot be calculated with

precision at this point. As regulatory agency, OGS plans to meet its responsibilities by reorganizing and reassigning its present staff; accordingly, OGS expects no additional costs in connection with its role as regulatory agency.

5. Local government mandates: The subject regulations do not impose any program, service duty or responsibility upon any local government.

6. Paperwork: The subject regulations require that each state agency prepare an initial written report, due on or by April 1, 2006, and then, commencing April 1, 2007, annual updates of these reports. These reports are the only paperwork requirements created by the subject regulations, and will detail the agencies' implementation plans, any changes to the plans effected since adoption or the last report, and the agencies' progress toward achieving full implementation of its plan. The documentation provided by these reports will facilitate full and timely implementation of the agencies' PAD plans, which in turn will serve the safety and health objectives of the Legislature in amending the Public Buildings Law. Additionally, as required by Public Health Law section 3000-b(2), agencies will be required to develop and enter into written agreements ("collaborative agreements") with Emergency Health Care Providers, to permit acquisition, possession and operation of an AED, and to document the agreement and practice protocols; and agencies will also be required to comply with provisions of Public Health Law regarding the preparation and filing of notices, *e.g.,* to Regional Emergency Medical Services Councils. Agencies will incur certain paperwork responsibilities related to equipment acquisition, documentation of equipment maintenance, documentation of AED usage, etc., as required by State law (see, *e.g.,* State Finance Law; Public Health section 3000-b (2), (3)); AED manufacturers' equipment maintenance schedules; and agency policy. Some agencies may incur paperwork in connection with contracting for AED equipment maintenance and support services. All reports and paperwork required by these regulations is necessary to ensure the health and safety of occupants of the State's public buildings. It is expected that the overall addition of paperwork to comply with the proposed regulations will be minimal.

7. Duplication: The subject regulations do not duplicate other existing Federal or State requirements.

8. Alternatives: During the development of these regulations, OGS has solicited the participation and comments of numerous state agencies in the development of these regulations. The broad scope of application of the regulations and the substantial differences among the regulated agencies precluded inclusion of all agency comments in the regulations.

OGS incorporated many of the suggestions made by various agencies. For example, agencies requested that 1) the definition of "public building" exclude any building that has limited use or a nominal number of assigned staff, relieving agencies of compliance at storage and other smaller facilities (§ 303.1(2)); 2) a 5-year installation phase-in provision be added for the AED equipment (§ 303.2(c)); 3) accommodations be made for the presence of agency- or facility-specific extraordinary circumstances which may result in noncompliance with or exemption from the regulations (§ 303.2(c)); 4) accommodations be made for agencies located in buildings owned or managed by OGS, and agencies located in buildings owned or managed by another agency—by OGS pursuant to an agreement with another agency (§ 303.2 (e) & (f)); 5) agencies operating a medical facility that provides an alternative defibrillation service approved by the Department of Health, will be deemed to have fulfilled certain requirements of the regulations (*i.e.,* §§ 303.5, 303.6, 303.7 and 303.8) (§ 303.2(g)); 6) if an agency is unable to fulfill requirements of the regulations due to insufficient staff or other restrictive conditions, the agency may either develop an alternative implementation defibrillation program or provide an explanation for the inability of implementing an AED program at particular public building(s) (§ 303.2 (i)); 7) guidelines for agency determinations of appropriate placement and numbers of AED equipment be included rather than prescribing rules or formulas for placement and numbers (§ 303.3); 8) mobile deployment of AED units be permitted to accommodate circumstances in which agency buildings are in a campus atmosphere (§ 303.3(b)(1)); 9) accommodations be made for agencies where operators of AED equipment may not be volunteer employees, but may be assigned operators such as in medical facilities or correctional facilities (§ 303.4); and 10) agencies be permitted to designate AED coordinators on a regional or geographic basis, rather than on a building by building basis, to accommodate agencies with numerous public buildings (§ 303.5 (3)). Great efforts were taken to incorporate these and all other reasonable valid suggestions made by the agencies.

There were however, certain comments that were not included in the regulations for different reasons. For example, a provision that would have entailed OGS granting approvals or waivers for agencies unable to achieve compliance (see, § 303.2(i)) was rejected because of concerns that such a scheme of approval or waiver would diminish an agency's incentive to achieve compliance, present unwieldy administrative issues for OGS, and would tend to undermine the public health objectives of the Legislature. A proposal was also made that the definition of "public buildings" be revised to explicitly exclude certain classes of public buildings such as group homes and satellite offices was rejected because the regulations are intended to recognize the expertise of agencies and to afford maximum flexibility and discretion to agencies. Additionally, other provisions of the regulations permit agencies to effectively exempt certain of their public buildings (see, §§ 303.1(a)(2); 303.2(i)).

9. Federal standards: The regulations are consistent with Federal standards for PAD.

10. Compliance schedule: The regulations provide for a period of five (5) years, during which it is anticipated that all state agencies will be able to achieve substantial compliance with the regulations.

Regulatory Flexibility Analysis

The subject regulations apply to public institutions and buildings of the State only, and do not affect any small business or local government by way of any adverse economic impact or reporting, recordkeeping, document creation, or other compliance requirements. Based upon the foregoing facts and the nature of the regulations, no further steps were needed to ascertain any adverse impacts and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and has not been prepared.

Rural Area Flexibility Analysis

These regulations apply to public institutions and buildings of the State only, and will not impose any adverse impact, reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The regulations require that state agencies develop and implement a program of Public Access Defibrillation at state operated public buildings, and as such, the regulations are not burdensome, time consuming or costly to any private entity. Based upon the foregoing facts and the nature of the regulations, no further steps were taken to analyze impacts on public and private interests in rural areas; a rural area flexibility analysis is not required and has not been prepared.

Job Impact Statement

1. Nature of impact: The subject regulations could, pending the responses of regulated state agencies and the availability of state funding, possibly result in the creation of jobs. Such jobs would likely be related to administration of the Public Access Defibrillation program implemented by the regulations, and could be jobs within the regulated agencies or in the private sector, *e.g.,* jobs with vendors supplying AED equipment and related services. The regulations do not require the creation of any jobs, and it is not anticipated that the regulations could result in the loss of any jobs or employment opportunities.

2. Categories and numbers affected: The categories and numbers of jobs affected by the subject regulations will turn on the approaches taken by the regulated agencies and cannot be projected with any precision at this juncture.

3. Regions of adverse impact: There are no adverse job or employment impacts of the subject regulations in any region of the State.

4. Minimizing adverse impact: Inapplicable; there are no adverse job or employment impacts of the subject regulations in any region of the State.

5. Self-employment opportunities: Due to the nature of the regulations (*i.e.,* medical/technical), it is not anticipated that these regulations will have a measurable impact on opportunities for self-employment.

Division of the Lottery

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Mega Millions Multi-State Lottery Game

I.D. No. LTR-08-06-00001-P

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

Proposed action: Amendment of Part 2806 of Title 21 NYCRR.

Statutory authority: Tax Law, section 1617

Subject: Mega Millions Multi-State Lottery game.

Purpose: To add new state in Mega Millions game, amend the game matrix and clarify existing regulations.

Text of proposed rule: 21 NYCRR Section 2806.1 subdivision (a)-(c) is hereby repealed and replaced by new 21 NYCRR Section 2806.1 subdivision (a)-(c).

§ 2806.1 Purpose.

(a) The purpose of MEGA MILLIONS is the generation of revenue for education in New York through the operation of specially-designed multi-state lottery game(s) that will award prizes to ticket holders consistent with the game rules established for a particular game. Such game(s) may include instant tickets ("instants") and/or matching specified combinations of numbers randomly selected in regularly scheduled drawings ("on-line").

(b) During each MEGA MILLIONS on-line drawing, six (6) MEGA MILLIONS Winning Numbers will be selected from two (2) fields of numbers in the following manner: five (5) winning numbers from a field of one (1) through fifty-six (56) numbers, and one (1) winning number from a field of one (1) through forty-six (46) numbers.

(c) The objective of MEGA MILLIONS on-line drawings shall be to select at random, with the aid of drawing equipment, MEGA MILLIONS Winning Numbers, pursuant to the controls and methods established for the game.

21 NYCRR Section 2806.2 paragraph (1), (4), (5), (7) through (13)-(16) of subdivision (a) is hereby repealed and replaced by new 21 NYCRR Section 2806.2 paragraphs (1), (4), (5), (7) through (13)-(16) of subdivision (a).

(1) Agent - The person who has been licensed and authorized by the New York Lottery to sell lottery tickets pursuant to Part 2801 of these regulations.

(4) Cash Option - The manner in which the on-line MEGA MILLIONS Jackpot Prize may be paid in a single payment.

(5) Claimant - Any person or entity submitting a claim form within the required time period to collect a prize for any MEGA MILLIONS Ticket. A Claimant may be the person or entity named on a signed MEGA MILLIONS Ticket, or the bearer of an unsigned MEGA MILLIONS Ticket. No Claimant may assert rights different from the rights acquired by the original Purchaser at the time of purchase.

(7) Jackpot Prize - For the on-line MEGA MILLIONS game, the prize awarded for selecting all the numbers drawn from both fields. If more than one player from all participating lottery states has selected all the numbers drawn, the jackpot prize shall be divided among those players. Jackpot prize may also be referred to from time to time as "Grand Prize". For any other game, the Jackpot Prize will be identified in game rules issued for such game.

(8) MEGA MILLIONS Play Area - For the on-line MEGA MILLIONS game, the areas on a MEGA MILLIONS play slip identified by an alpha character, A through E, containing two separate fields - one field of 56 and a second field of 46 – both containing one or two digit numbers each. This is the area where the player, or computer if the player is using the Quick Pick option, will select five (5) one or two-digit numbers from the first field, and will select one (1) one or two-digit numbers from the second field.

(9) MEGA MILLIONS Play Slip - For the on-line MEGA MILLIONS game, a computer-readable form, printed and issued by the New York Lottery, used in purchasing a MEGA MILLIONS Ticket, having up to five (5) separate play areas. The Play Slip additionally includes boxes for selection of Cash Option or Annuity Option. The play slip also provides for multiple drawing wagering up to 26 draws.

(10) MEGA MILLIONS Ticket - A game ticket, produced on official paper stock, by an agent in an authorized manner, bearing player or computer selected numbers from the play area on the play slip, game name, drawing dates, amount of wager, jackpot prize payment option, and validation data.

(11) MEGA MILLIONS Winning Numbers - For the on-line MEGA MILLIONS game, five (5) one or two digit numbers, from one (1) through fifty-six (56) and one (1) one or two-digit number from one (1) through forty-six (46), randomly selected at each MEGA MILLIONS drawing, which shall be used to determine winning MEGA MILLIONS plays contained on MEGA MILLIONS Tickets.

(12) Pari-Mutuel - For the on-line MEGA MILLIONS game total amount of prize money allocated to pay prize Claimants, at the designated prize level, divided among the number of winning MEGA MILLIONS Tickets.

(13) Party Lottery or Party Lotteries - One or more of the state lotteries established and operated pursuant to the laws of any state lottery which becomes a signatory to the Mega Millions Game agreement.

(16) Quick-Pick - For the on-line MEGA MILLIONS game, a player option in which MEGA MILLIONS number selections are determined at random by the lottery terminal.

21 NYCRR Section 2806.3 subdivision (a) is hereby repealed and replaced by new 21 NYCRR Section 2806.3 subdivision (a).

§ 2806.3 Ticket Sales.

(a) The sale of MEGA MILLIONS Tickets within New York State may be conducted only by an agent.

21 NYCRR Section 2806.4 subdivision (a) is hereby repealed and replaced by new 21 NYCRR Section 2806.4 subdivision (a).

§ 2806.4 Ticket Price.

(a) For the on-line MEGA MILLIONS game: MEGA MILLIONS Tickets may be purchased for $1.00 per play at the discretion of the Purchaser, in accordance with the number of game panels and inclusive drawings. The Purchaser receives one play for each $1.00 wagered in MEGA MILLIONS. Instants will be at the price stated on any such ticket. Tickets may contain multiple plays.

21 NYCRR Section 2806.5 subdivision (f) is hereby repealed and replaced by new 21 NYCRR Section 2806.5 subdivision (f).

§ 2806.5 Play Characteristics and restrictions.

(f) For the on-line MEGA MILLIONS game, purchasers may submit a manually completed MEGA MILLIONS Play Slip to an Agent to have issued a MEGA MILLIONS Ticket. MEGA MILLIONS Play Slips shall be available at no cost to the Purchaser and shall have no pecuniary or prize value, or constitute evidence of purchase or number selections. The use of mechanical, electronic, computer generated or any other non-manual method of marking Play Slips is prohibited.

21 NYCRR Section 2806.6 is hereby repealed and replaced by new 21 NYCRR Section 2806.6.

§ 2806.6 Time, Place and Manner of Conducting Drawings

For the on-line MEGA MILLIONS game: MEGA MILLIONS drawings will be conducted twice weekly approximately 11:00 p.m. Eastern Time in one of the party lottery states. The day, time, frequency and location of the MEGA MILLIONS drawings may be changed following public announcement.

21 NYCRR Section 2806.7 subdivision (a) is hereby repealed and replaced by new 21 NYCRR Section 2806.7 subdivision (a).

§ 2806.7 Prize Structure

(a) For the on-line MEGA MILLIONS game - Matrix of 5/56 and 1/46 with 50 Percent Anticipated Prize Fund

Match Field 1	*Match Field 2*	*Odds*	*Prize Category*	*Percentage of Prize Fund*
5	*1*	*1:175,711,536.00*	*Grand*	*63.60 percent*
5	*0*	*1:3,904,700.80*	*Second*	*12.80 percent*
4	*1*	*1:689,064.85*	*Third*	*2.90 percent*
4	*0*	*1:15,312.55*	*Fourth*	*1.96 percent*
3	*1*	*1:13,781.30*	*Fifth*	*2.18 percent*
2	*1*	*1:843.75*	*Sixth*	*2.38 percent*
3	*0*	*1:306.25*	*Seventh*	*4.58 percent*
1	*1*	*1:140.63*	*Eighth*	*4.26 percent*
0	*1*	*1:74.80*	*Ninth*	*5.34 percent*
Reserve				*0 percent*
Totals		*1:39.89*		*100 percent*

21 NYCRR Section 2806.7 paragraph (1) of subdivision (b) is hereby repealed and replaced by new 21 NYCRR Part 2806.7 paragraph (1) of subdivision (b).

(b) Jackpot Prize Payments.

For the on-line MEGA MILLIONS game:

(1) The prize money allocated from the winning pool for the Jackpot Prize, plus any money brought forward from a previous drawing plus any money added from the prize reserve fund or any other available source pursuant to a guaranteed first prize amount announcement will be divided equally among all Jackpot Prize winners in all participating lottery states. Prior to each drawing, the annuitized MEGA MILLIONS Jackpot Prize amount will be advertised. The advertised Jackpot Prize amount shall be the basis for determining the amount to be awarded for each MEGA MILLIONS Panel matching all five (5) of the five (5) MEGA MILLIONS Winning Numbers drawn for Field 1 and the one (1) MEGA MILLIONS Winning Number drawn for Field 2.

21 NYCRR Section 2806.7 paragraph (1) of subdivision (c), paragraph (2) of subdivision (c), paragraph (6) of subdivision (c) is hereby repealed

and replaced by new 21 NYCRR Section 2806.7 paragraph (1) of subdivision (c), paragraph (2) of subdivision (c), paragraph (6) of subdivision (c).

(c) Second through Ninth Level Prizes

For the on-line MEGA MILLIONS game:

(1) MEGA MILLIONS Panels matching five (5) of the five (5) MEGA MILLIONS Winning Numbers drawn for Field 1, but not matching the MEGA MILLIONS Winning Number drawn for Field 2 shall be entitled to receive a Second Prize of $250,000.*

(2) MEGA MILLIONS Panels matching four (4) of the five (5) MEGA MILLIONS Winning Numbers drawn for Field 1 and the MEGA MILLIONS Winning Number drawn for Field 2 shall be entitled to receive a Third Prize of $10,000.*

(6) MEGA MILLIONS Panels matching three (3) of the five (5) MEGA MILLIONS Winning Numbers drawn for Field 1 but not matching the MEGA MILLIONS Winning Number drawn for Field 2 shall be entitled to receive a Seventh Prize of $7.

Footnote identified by asterisk is hereby repealed and replaced by new footnote identified by asterisk.

** Should total prize liability, exclusive of Grand/Jackpot Prize rollover from previous drawings and California Lottery sales and prizes for prize levels 2 through 9, exceed 300% of draw sales or 50% of draw sales plus $50,000,000, whichever is less, (both hereinafter referred to as the "Liability Cap"), the Second through Fifth prizes shall be paid on a pari-mutuel rather than fixed prize basis, provided, however, that in no event shall the pari-mutuel prize be greater than the fixed prize. The amount to be used for the allocation of such pari-mutuel prizes shall be the Liability Cap less the amount paid for the Grand/Jackpot Prize and prize levels Six through Nine.*

21 NYCRR Section 2806.7 subdivision (d) is hereby repealed and replaced by new 21 NYCRR Section 2806.7 subdivision (d).

(d) In a single on-line drawing, a Claimant may win in only one prize category per single MEGA MILLIONS Panel in connection with MEGA MILLIONS Winning Numbers, and shall be entitled only to the highest prize.

21 NYCRR Section 2806.9 paragraph (10) of subdivision (a), paragraph (14) of subdivision (a), paragraph (15) of subdivision (a) is hereby repealed and replaced by new 21 NYCRR Part 2806.9 paragraph (10) of subdivision (a), paragraph (14) of subdivision (a), paragraph (15) of subdivision (a).

(10) The ticket must not be misregistered, defectively printed, or produced in error to an extent that it cannot be processed by the New York Lottery;

(14) The ticket must be submitted to the New York Lottery and to no other lottery participating in any MEGA MILLIONS lottery game.

(15) No MEGA MILLIONS ticket purchased outside the State of New York may be presented to either the New York Lottery or an agent for payment within New York.

21 NYCRR Section 2806.9 paragraph (1) of subdivision (b) is hereby repealed and replaced by new 21 NYCRR Part 2806.9 paragraph (1) of subdivision (b).

(b)

(1) The Director may, at his/her option, replace an invalid ticket with a MEGA MILLIONS Ticket of equivalent sales price;

21 NYCRR Section 2806.12 subdivision (a) is hereby repealed and replaced by new 21 NYCRR Section 2806.12 subdivision (a)

§ 2806.12 Governing Law

(a) In purchasing a ticket issued for MEGA MILLIONS within New York State, the Purchaser agrees to comply with and be bound by all applicable statutes, administrative rules and regulations, and procedures of New York State, and by directives and determinations of the Director of the New York Lottery. The Purchaser agrees, as its sole and exclusive remedy, that claims arising out of a ticket purchased in New York State from an agent can be pursued only against the New York Lottery and no other lottery. Litigation, if any, arising from the purchase of a MEGA MILLIONS ticket in New York State from an agent shall only be maintained against the New York Lottery within the State of New York.

Text of proposed rule and any required statements and analyses may be obtained from: Robert J. McLaughlin, General Counsel, New York Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: rmclaughlin@lottery.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory authority: The Lottery was authorized by Chapter 383 of the Laws of 2001 to commence a multi-state lottery game. The rule amends Lottery regulations pertaining to the operation of such game pursuant to the Lottery's authority under Tax Law Section 1604 to promulgate rules and regulations governing the operation of Lottery games.

2. Legislative objectives: The purpose of operating Lottery games is to generate revenue for the support of education in the State. Amendment of these regulations forwards the mission of the New York State Division of the Lottery to generate revenue for education.

3. Needs and benefits: The New York Lottery has sustained competitive pressure from large jackpot lottery games in adjoining states. New Yorkers routinely travel outside the state to participate in those games. Entry into a multi-state game has allowed the Lottery to offer large jackpot prizes and permits its retailers around the state to compete with sales of lottery products in bordering states, providing them an immediate competitive advantage at the point of purchase. On average the revenue to education from Mega Millions has been roughly $158 Million per fiscal year in New York State. The addition of California to Mega Millions is expected to generate roughly another $30 Million annually for education.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing lottery games are expected to be sufficient to support this new game.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the Lottery Division's experience in operating State Lottery games for more than 30 years.

5. Local government mandates: None.

6. Paperwork: There are no changes in paperwork requirements. New play cards and game brochures are required for this game, and the Lottery Division is providing new play cards and game brochures for public convenience at retailer locations free of charge.

7. Duplication: None.

8. Alternatives: None.

9. Federal standards: None.

10. Compliance schedule: None.

Regulatory Flexibility Analysis

The Division of the Lottery finds that the rule will not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments. The basis of this finding is the fact that the Mega Millions lottery game does not increase the regulatory burdens on small businesses or local governments. Some small businesses that are licensed Lottery sales agents will be required to explain the Mega Millions game rules to customers, but that duty does not significantly increase the workload of Lottery agents and it is based on a Lottery sales agent's pre-existing duty to properly represent the State Lottery to the public. The Lottery will supply game brochures free of charge to the retailers at point of sale to assist in explaining to customers how the game is played.

Rural Area Flexibility Analysis

The Division of the Lottery finds that the rule will not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The basis of this finding is the Mega Millions lottery game does not increase the regulatory burdens on public or private entities in rural areas. Some small businesses that are licensed Lottery sales agents will be required to explain the Mega Millions game rules to customers, but that duty does not significantly increase the workload of such Lottery sales agents and it is based on a Lottery sales agent's pre-existing duty to properly represent the State Lottery to the public. The Lottery will supply game brochures free of charge to the retailers at point of sale to assist in explaining to customers how the game is played.

Job Impact Statement

The Division of the Lottery finds that adoption of the rule will have either a positive impact or no impact on existing jobs, employment opportunities, and self-employment opportunities. Since the game is expected to increase sales of Lottery products in New York, this will likely have a positive impact on existing jobs, employment opportunities and self employment opportunities for Lottery retailers.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Schedule for Electric Service by Niagara Mohawk Power Corporation

I.D. No. PSC-08-06-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 207 to become effective May 1, 2006.

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

Subject: Service Classification No. 7—sale of standby service to customers with on-site generation facilities and Service Classification No. 11—individually negotiated contract rates.

Purpose: (1) To revise Service Classification. No. 7 to permit a waiver of the competitive transition charge associated with a customer's applicable standby contract demand charge for qualifying distributed generation projects, and (2) to revise Service Classification No. 11 to allow for customer service agreements to be amended to permit customers to self-supply a portion of their electric load through on-site generation.

Substance of proposed rule: On February 6, 2006 Niagara Mohawk Power Corporation (Niagara Mohawk) filed proposed tariff amendments to revise its rules for service under S.C. No. 7 - Sale of Standby Service to Customers with On-Site Generation Facilities and S.C. No. 11 - Individually Negotiated Contract Rates. Niagara Mohawk proposes to add a new provision to S.C. No. 7 which permits a waiver of the Competitive Transition Charge (CTC) associated with a customer's applicable S.C. No. 7 Standby Contract Demand Charge for qualifying combined heat and power distributed generation projects installed on or after the original effective date of S.C. No. 7 (July 1, 2002). Niagara Mohawk also proposes tariff language be included in S.C. No. 11 to specifically allow for customer service agreements to be amended to permit customers to self-supply a portion of their electric load through on-site generation. Niagara Mohawk proposes these revisions on the condition the Commission agrees that the lost revenues associated with these changes be included in the Standby Service Lost Revenue Deferral Account for recovery through the Standby Service Lost Revenue Adjustment at each CTC Reset. These revisions supplement a filing made by Niagara Mohawk on August 31, 2005 regarding exemptions from standby rates. The Commission may approve, reject or modify, in whole or in part, Niagara Mohawk's proposed tariff revisions.

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.

(01-E-1847SA6)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Electric Rates for Standby Service

I.D. No. PSC-08-06-00009-P

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

Proposed action: As discussed in a notice issued Feb. 3, 2006 in Case 02-E-0551, the Public Service Commission is considering the extension of deadlines for qualifying for exemptions from, or phase-ins to, electric rates for standby service, and the terms, conditions and requirements that would apply if the deadlines are extended.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5) and (10)

Subject: Electric rates for standby service.

Purpose: To adopt exemptions from, or phase-ins to electric rates for standby service.

Substance of proposed rule: As discussed in a Notice issued February 3, 2006 in Case 02-E-0551, the Public Service Commission is considering the extension of deadlines for qualifying for exemptions from, or phase-ins to, electric rates for standby service, and the terms, conditions and requirements that would apply if the deadlines are 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. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(02-E-0551SA4)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Accurate Energy Group

I.D. No. PSC-08-06-00010-P

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

Proposed action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Accurate Energy Group to submeter electricity at 151 E. 58th 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 submetering of electricity.

Purpose: To consider the request.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Accurate Energy Group to submeter electricity at 151 East 58th 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. 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.

(05-E-1522SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Sale of Buildings and Property by National Fuel Gas Distribution Corporation

I.D. No. PSC-08-06-00011-P

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

Proposed action: The commission is considering a petition by National Fuel Gas Distribution Corporation (NFG) for approval to sell buildings and property at 35 Norton St., Village of Honeoye Falls, NY to Mathstone Corporation.

Statutory authority: Public Service Law, section 70

Subject: Sale of buildings and property at 35 North St., Village of Honeoye Falls.

Purpose: To permit the sale of buildings and property.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, a petition by National Fuel Gas Distribution Corporation (NFG) to sell buildings and property at 35 Norton Street, Village of Honeoye Falls, New York to Mathstone Corporation. NFG has closed its service center at this location and transferred its function to new larger center. NFG will receive $170,000 for the property which has a fair market value of an estimated $150,317.

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.

(05-G-1625SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Electronic Data Interchange 814 Enrollment Request & Response Standard by Central Hudson Gas & Electric Corporation

I.D. No. PSC-08-06-00012-P

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

Proposed action: The New York Public Service Commission is considering modifications in the Electronic Data Interchange (EDI) 814 enrollment request & response standard to clarify the content of response transactions initiated by a utility when customers have been enrolled with an ESCO directly by the utility rather than through an EDI enrollment request transaction initiated by an ESCO. Central Hudson requests that a PER segment to added to the enrollment standard to enable utilities to transmit a customer's telephone number in an 814 enrollment accept response transaction. This change is necessary to support the implementation of an Energy Switch Program in Central Hudson's service territory.

Statutory authority: Public Service Law, section 5(2)

Subject: Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible ESCO/marketers.

Purpose: To revise the TS814 enrollment request & response standard.

Substance of proposed rule: In Opinion and Order No. 01-03, issued and effective July 23, 2001, the Commission adopted various data exchange standards, compatible with Electronic Data Interchange (EDI) systems, necessary to enable customers to easily change their electric or gas commodity service provider. Following the initial publication of these EDI standards, it has been necessary to modify these standards as regulatory policies change.

In conjunction with Commission adoption of guidelines for ESCO Referral Programs (Case 05-M-0858) and specific approval for Central Hudson's referral program, known as Energy Switch (Case 05-M-0332), the 814 Enrollment Standard must now be revised to provide for the exchange of additional information between utilities and Energy Service Companies (ESCOs).

Central Hudson proposes to modify the 814 Enrollment standard to add a PER segment to enable Central Hudson, or any other utility, to provide ESCOs with a customer's telephone number where the process of enrolling a customer with an ESCO is initiated by the utility rather than by an Enrollment Request transaction sent by an ESCO.

In the Energy Switch program Central Hudson customers may enroll with an ESCO for a predetermined incentive period at a reduced commodity price. Under this program Central Hudson would enroll an interested customer with an ESCO and then send the ESCO an 814 Response transaction to confirm customer participation in Energy Switch and provide the ESCO with specific information about the customer that has been enrolled with them. Central Hudson proposes to add a PER segment to the Enrollment standards to enable transmission of a customer's phone number in Enrollment Response transactions pertaining to Energy Switch enrollments.

Comments are requested on version 1.7 of the Enrollment Request & Response Implementation Guide which contains the change proposed by Central Hudson. If the change in the Implementation Guide is approved a corresponding change would be made in the 814 Enrollment Data Dictionary.

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.

(98-M-0667SA55)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Water Rates and Charges by Aqua America, Inc.

I.D. No. PSC-08-06-00013-P

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

Proposed action: The Public Service Commission is considering tariff revisions filed by Aqua America, Inc., f/k/a Philadelphia Suburban Corporation, f/k/a AquaSource Utility Inc., f/k/a Kingsvale Water Company, Inc. pursuant to commission order in Case 98-W-1990 issued April 1, 1999, to increase rates based on increases in the gross domestic product.

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

Subject: Water rates and charges.

Purpose: To increase annual revenues by about $5,376 or 6.46 percent.

Substance of proposed rule: On January 16, 2006, Aqua America, Inc., f/k/a Philadelphia Suburban Corporation, f/k/a AquaSource Utility Inc., f/k/a Kingsvale Water Company, Inc. (the company) filed to become effective March 18, 2006, Seventeenth Revised Leaf No. 20, to its tariff schedule, P.S.C. 1 – Water. The filing is made pursuant to Commission Order in Case 98-W-1990 issued April 1, 1999, to increase rates based on the Gross Domestic Product Inflator. The company requests to increase its annual operating revenues by $5,376 or 6.46%. The company provides water service to approximately 170 customers in the Town of Ulster, Ulster County. The Commission may approve or reject, in whole or in part, or modify the company's filing.

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-0145SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Loan Agreement between Fishers Island Water Works Corporation and Bank of Rhode Island

I.D. No. PSC-08-06-00014-P

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

Proposed action: The commission is considering the petition of Fishers Island Water Works Corporation for approval to enter into a loan agreement with the Bank of Rhode Island for an amount of $525,000.

Statutory authority: Public Service Law, section 89-f

Subject: Issues of stock, bonds and other forms of indebtedness.

Purpose: To allow Fishers Island Water Works to obtain a loan for $525,000.

Substance of proposed rule: The Commission is considering whether to approve, reject or modify the petition of Fishers Island Water Works Corporation for approval to enter into a loan agreement for $525,000. Although the company was given approval to enter into a loan agreement with Citizens Bank of Connecticut for an amount of $530,000 in Case 04-W-1073, the loan was never closed due to disagreements that developed. Therefore, the terms and conditions of a new loan with the Bank of Rhode Island must be approved.

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-0146SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges by Aqua America, Inc.

I.D. No. PSC-08-06-00015-P

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

Proposed action: The Public Service Commission is considering tariff revisions filed by Aqua America Inc., f/k/a Philadelphia Suburban Corporation, f/k/a AquaSource Utility Inc., f/k/a Waccabuc Water Works, Inc. pursuant to commission order in Case 99-W-1331 issued Dec. 28, 2000, to increase rates based on increases in the gross domestic product.

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

Subject: Water rates and charges.

Purpose: To increase annual revenues by about $1,677 or 3.89 percent.

Substance of proposed rule: On January 16, 2006, Aqua America Inc., f/k/a Philadelphia Suburban Corporation, f/k/a AquaSource Utility Inc., f/k/a Waccabuc Water Works, Inc. (the company) filed to become effective March 18, 2006, Third Revised Leaf No. 8, to its tariff schedule, P.S.C. No. 1 – Water. The filing is made pursuant to Commission Order in Case 99-W-1331 issued December 28, 2000, to increase rates based on increases in the Gross Domestic Product Inflator. The company requests to increase its annual operating revenues by $1,677 or 3.89%. The company provides water service to approximately 80 customers in the Town of Lewisboro, Westchester County. The Commission may approve or reject, in whole or in part, or modify the company's filing.

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-0147SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges by Aqua America, Inc.

I.D. No. PSC-08-06-00016-P

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

Proposed action: The Public Service Commission is considering tariff revisions filed by Aqua America, Inc., f/k/a Philadelphia Suburban Corporation, f/k/a AquaSource Utility Inc., f/k/a Wild Oaks Water Company, Inc. pursuant to commission order in Case 98-W-1192 issued Jan. 8, 1999, to increase rates based on increases in the gross domestic product.

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

Subject: Water rates and charges.

Purpose: To increase annual revenues by about $8,141 or 5.94 percent.

Substance of proposed rule: On January 16, 2006, Aqua America, Inc., f/k/a Philadelphia Suburban Corporation, f/k/a AquaSource Utility Inc., f/k/a Wild Oaks Water Company, Inc. (the company) filed to become effective March 18, 2006, 11th Revised Leaf No. 33, 4th Revised Leaf No. 33A, 1st Revised Leaf No. 33Bth Revised Leaf Nos. 34 and 35, and 2nd Revised Leaf No. 36, to its tariff schedule, P.S.C. No. 1 - Water. The filing is made pursuant to Commission Order in Case 98-W-1192 issued January 8, 1999, to increase rates based on increases in the Gross Domestic Product Inflator. The company requests to increase its annual operating revenues by $8,141 or 5.94%. The company provides water service to approximately 192 customers in Goldens Bridge, Town of Lewisboro, Westchester County. The company also provides public fire protection service to the Goldens Bridge Fire Department and a private fire protection customer. The Commission may approve or reject, in whole or in part, or modify the company's filing.

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-0148SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges by Aqua America, Inc.

I.D. No. PSC-08-06-00017-P

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

Proposed action: The Public Service Commission is considering tariff revisions filed by Aqua America, Inc., f/k/a Philadelphia Suburban Corporation, f/k/a AquaSource Utility Inc., f/k/a Cambridge Water Works Company pursuant to commission order in Case 98-W-1274 issued Jan. 8, 1999, to increase rates based on increases in the gross domestic product.

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

Subject: Water rates and charges.

Purpose: To increase annual revenues by about $9,238 or 6.20 percent.

Substance of proposed rule: On January 16, 2006, Aqua America, Inc., f/k/a Philadelphia Suburban Corporation, f/k/a AquaSource Utility Inc., f/k/a Cambridge Water Works Company (the company) filed to become effective March 18, 2006, 10th Revised Leaf Nos. 8, 9 and 10, and 3rd Revised Leaf No. 11, to its tariff schedule, P.S.C. No. 3 - Water. The filing is made pursuant to Commission Order in Case 98-W-1274 issued January 8, 1999, to increase rates based on increases in the Gross Domestic Product Inflator. The company requests to increase its annual operating revenues by $9,238 or 6.20%. The company provides water service to approximately 473 customers in the Washington County Towns of Cambridge, White Creek and Jackson, and public fire protection to the Village of Cambridge. The Commission may approve or reject, in whole or in part, or modify the company's filing.

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-0149SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges by Aqua America, Inc.

I.D. No. PSC-08-06-00018-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 tariff revisions filed by Aqua America Inc., f/k/a Philadelphia Suburban Corporation, f/k/a AquaSource Utility Inc., f/k/a Dykeer Water Company, Inc. pursuant to commission order in Case 99-W-1472 issued Feb. 10, 2000, to increase rates based on increases in the gross domestic product.

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

Subject: Water rates and charges.

Purpose: To increase annual revenues by about $3,721 or 5.45 percent.

Substance of proposed rule: On January 16, 2006, Aqua America, Inc., f/k/a Philadelphia Suburban Corporation, f/k/a AquaSource Utility Inc., f/k/a Dykeer Water Company, Inc. (the company) filed to become effective March 18, 2006, First Revised Leaf No. 12, to its electronic tariff schedule, P.S.C. No. 2 - Water. The filing is made pursuant to Commission Order in Case 99-W-1472 issued February 10, 2000, to increase rates based on increases in the Gross Domestic Product Inflator. The company requests to increase its annual operating revenues by $3,721 or 5.45%. The company provides water service to approximately 120 customers in the Hamlet of Lincolndale, Town of Somers, Westchester County. The Commission may approve or reject, in whole or in part, or modify the company's filing.

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-0150SA1)

Department of State

NOTICE OF ADOPTION

Public Access to Records

I.D. No. DOS-45-05-00004-A
Filing No. 161
Filing date: Feb. 2, 2006
Effective date: Feb. 22, 2006

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

Action taken: Repeal of Part 8300 of Title 9 NYCRR.

Statutory authority: L. 1995, ch. 83, sections 3-9

Subject: Rules of the former Office of Rural Affairs relating to public access to records.

Purpose: To repeal rules of the former Office of Rural Affairs relating to public access to records. Functions of the Office of Rural Affairs were transferred to the Department of State by chapter 83 of the Laws of 1995. The rules of the Office of Rural Affairs found in Part 8300 of Title 9 NYCRR should be repealed because they duplicate Department of State regulations found in Chapter II of Title 19 NYCRR.

Text or summary was published in the notice of proposed rule making, I.D. No. DOS-45-05-00004-P, Issue of November 9, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Nathan A. Hamm, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740

Assessment of Public Comment

The agency received no public comment.