

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

NOTICE OF ADOPTION

Commercial Weighing and Measuring Devices

I.D. No. AAM-08-06-00003-A
Filing No. 680
Filing date: May 31, 2006
Effective date: June 21, 2006

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

Action taken: Amendment of section 220.1 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, section 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 or summary was published in the notice of proposed rule making, I.D. No. AAM-08-06-00003-P, Issue of February 22, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Mr. Ross Andersen, Department of Agriculture and Mar-

kets, 10B Airline Dr., Albany, NY 12235, (518) 457-3146, e-mail: ross.andersen@agmkt.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Tolerances and Regulations for Commercial Weighing and Measuring Devices

I.D. No. AAM-25-06-00012-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 220.2(a) of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: 2006 edition of National Institute of Standards and Technology ("NIST") Handbook 44.

Purpose: To incorporate by reference in Title 1 NYCRR the 2006 edition of NIST Handbook 44.

Text of proposed rule: Subdivision (a) of section 220.2 of 1 NYCRR is amended to read as follows:

(a) Except as otherwise provided in this Part, the specifications, tolerances and regulations for commercial weighing and measuring devices shall be those adopted by the [89th] 90th National Conference on Weights and Measures [2004] 2005 as published in the National Institute of Standards and Technology Handbook 44, [2005] 2006 edition. This document is available from the National Conference on Weights and Measures, 15245 Shady Grove Road, Rockville, MD 20850, or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is available for public inspection and copying in the office of the Director of Weights and Measures, Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, or in the office of the Department of State, 41 State Street, Albany, NY 12231.

Text of proposed rule and any required statements and analyses may be obtained from: Mr. Ross Andersen, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-3146, e-mail: ross.anderson@agmkt.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.

Consensus Rule Making Determination

The proposed rule will amend 1 NYCRR section 220.2 to incorporate by reference the 2006 edition of National Institute of Standards and Technology Handbook 44 in place of the 2005 edition which is presently incorporated by reference.

The proposed rule in non-controversial. The 2006 edition of Handbook 44 has been adopted by or is in use in every state other than New York; the State's manufacturers of weighing and measuring devices already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce. Furthermore, the State's users of commercial weighing and measuring devices already use devices that conform to the provisions of this document due to its nearly-nation-wide applicability. The proposed rule will not, therefore, 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 incorporate by reference in 1 NYCRR section 220.2 the 2006 edition of National Institute of Standards and Technology Handbook 44 (henceforth, "Handbook 44 (2006 edition)") which contains specifications, tolerances and regulations for commercial measuring devices. The 2005 edition of Handbook 44 is presently incorporated by reference. Handbook 44 (2006 edition) differs from the 2005 edition in that it amends several requirements for scales, so that such requirements are consistent with international standards; changes requirements for retail motor fuel dispensers; and revises vapor elimination procedures for metering systems mounted on vehicles. Handbook 44 (2006 edition) has been adopted by or is in use in every state other than New York; the State's manufacturers and users of weighing and measuring devices already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce.

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

Banking Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

High Cost Home Loans

I.D. No. BNK-25-06-00009-P

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

Proposed action: Amendment of Part 41 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 6-1 and 6-1

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 6-1 of the Banking Law, to clarify certain provisions of section 6-1, and to otherwise make provisions of Part 41 internally consistent given the amendments necessitate by section 6-1 and previous amendments to Part 41.

Substance of proposed rule (Full text is posted at the following State website: <http://www.banking.state.ny.us/41.htm>): Substance of proposed amendments to Part 41:

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.

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.

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. In addition, Article 12-D of the Banking Law authorizes and requires the regulation of mortgage banking by the Banking Department by licensing mortgage bankers and registering mortgage brokers and regulating various aspects of mortgage loan transactions, the latter applicable to all mortgage lenders as well as licensed bankers and registered brokers. Section 589 of such Article provides a statement of legislative intent and declaration and states that such regulation is for the purpose of insuring the conduct of such business is "in the best interests of New York homeowners and potential homeowners." Sections 590(3), 590-a, and 595 specifically empower the Banking Board to adopt rules and regulations to effectuate the purpose of Article 12-D or to regulate specific aspects of mortgage transactions.

Section 6-1 of the Banking Law imposes new requirements upon the making of certain mortgage loans. Part 41 of the rules and regulations of

the Banking Board was adopted pursuant to section 6-i of the Banking Law, and prior to approval of chapter 626 of the laws of 2002, which enacted section 6-l. Provisions of section 6-l, which are inconsistent with certain provisions of Part 41, supersede such regulatory provisions, and the Banking Board, in proposing the amendments to Part 41, generally would make Part 41 consistent with section 6-l. The proposed amendments also harmonize other provisions of Part 41, not directly affected by the provisions of section 6-l, with revisions to Part 41 necessitated by enactment of section 6-l, for example, by establishing uniform time-frame parameters for various disclosure requirements. The Banking Board, in proposing this rule, also clarifies certain limited provisions of section 6-l, which establish two new, but undefined, standards applicable to lending practices. Finally, in one instance, the proposed rule expands the scope of an existing Part 41 standard relating to the refinancing of high cost home loans to include certain lenders.

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 (1) be in conformity with section 6-l; (2) clarify certain provisions of this section in order that lenders and brokers appropriately make or broker high cost loans in conformity with the intended legislative objectives; and (3) in one instance expand the application of an existing lending limitation in order to provide additional consumer protection.

3. Needs and benefits:

The proposed rule was necessitated by the Legislature's enactment of the statutory provisions contained in section 6-l of the Banking Law, and therefore it is intended to make the provisions of Part 41 consistent with and conform to such statutory provisions and implement the consumer protections intended by the enactment of section 6-l.

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 in the making or brokering of such loans, sought to prevent occurrences of predatory lending. Predatory lending occurs (i) when the borrower or debtor does not have sufficient income or other financial resources to pay the monthly principal and interest payments or (ii) 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. This is necessary 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 "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 occurred.

Finally, the Banking Board and the Department determined that it is necessary to increase the consumer protection available under Part 41 by expanding the application of an existing limitation upon charging points and fees in re-financings of high cost home loans to all such lenders so that all borrowers considering or undertaking refinancing of a high cost home loan through another lender are treated similarly.

4. Costs:

The cost upon mortgage lenders and brokers due to proposed amendments to Part 41 is virtually impossible to determine without a sufficient period of time to observe lending practices and activities that result from the adoption of these amendments and portions of section 6-l of the Banking law not otherwise incorporated into Part 41 by these revisions. Lending practices and activities are also affected by prevailing interest rate trends, and given the current historic low levels of mortgage interest rates, is difficult to judge, at this point in time, the long-term cost impact the

section 6-l requirements and the proposed revisions to Part 41 will have upon the mortgage lending industry.

The difficulty of making any definitive determination of the cost impact is demonstrated by the contradictory effects the proposed amendments and the section 6-l requirements may cause. Certain provisions of section 6-l and the proposed amendments to Part 41, such as the revised definition of points and fees and lowering the percentage of points and fees that may be financed through the principal loan amount, have the potential effect of lessening the number of high cost home loans made. The revised definition of points and fees potentially increases the dollar amount of such points and fees and, at the same time, the revised financing limitation lowers the amount of such points and fees that may be financed. It is an accepted fact that most borrowers in the sub-prime market can only pay points and fees by financing such costs, and without payment of points and fees, a mortgage loan cannot be closed. Offsetting this effect somewhat are provisions modifying the points-and-fees threshold for a high cost home loan less than \$50,000 by increasing the threshold to points and fees charged in excess of 6 percent, or \$1500, whichever is greater. Under current Part 41 standards, the mortgage lending industry previously indicated it was not cost effective to make small-sized loans because of certain fixed costs, which had the effect of inflating the percentage cost of points and fees relative to the principal loan amount. Lowering the financing limitation upon points and fees to 3 percent as required by section 6-l and the proposed amendments to Part 41 would only serve to exacerbate this problem. Increasing the points and fees threshold for small-sized loans (i.e., those less than \$50,000) will tend to increase the number of such small-sized loans that are not subject to the section 6-l and Part 41 requirements and specifically the 3 percent financing limitation upon points and fees, thus promoting the making of such loans.

The revisions to the disclosure requirements, by conforming the time frames within which the various disclosures required by Part 41 and section 6-l must be given to potential borrowers, should lessen somewhat the compliance burden upon regulated parties. It is difficult to conclude, however, that such revisions will have any measurable cost benefit for regulated parties.

Similarly, the regulatory provisions added by the proposed amendments that clarify provisions of section 6-l relating to "corroboration by independent verification" of a borrower's repayment ability and "net tangible benefit" to a borrower should lessen the imposition of unnecessary compliance costs upon regulated parties. The amendments defining or elaborating these requirements provide threshold compliance standards beyond which a regulated party need not proceed. These regulatory standards should also provide guidance to the courts in any legal action that may be brought against a regulated entity contesting its compliance with section 6-l. Presumably, then, if a regulated party were in compliance with such standards, such party would avoid the potential costly penalties and remedies that a court may assess pursuant to section 6-l.

With respect to the modification of the standards pertaining to mortgage lenders regarding the refinancing of high cost home loans, the provisions of both section 6-l and the proposed amendments to Part 41 affecting the charging of points and fees in such instances may reduce the number of such refinanced mortgage loans. If such reduction occurs, this most certainly will reduce the amount of points-and-fees income realized by mortgage lenders and brokers. Under existing Part 41 requirements, a current lender refinancing a high cost home loan with another high cost home loan, and any other lender using a mortgage broker in any such refinancing, may only charge points and fees on any new monies the borrower may receive if the current loan is refinanced with a new high cost home loan within two years of its making. Pursuant to provisions of section 6-l, a current lender of a high cost loan may not charge any points and fees in any such refinancing, no matter when the refinancing occurs, if the loan remains a high cost home loan. Under this provision, a current lender may only charge points and fees on any new monies realized by the borrower if the current lender amends or modifies such loans. Thus, a current lender should not necessarily realize any lost of revenue if such "refinancing" is accomplished by modification or amendment of the existing high cost home loan. How often this may occur, however, is questionable given that a large majority of sub-prime loans are sold by the originating lenders into the secondary market shortly after closing.

Regarding the extension of the current Part 41 restrictions on charging points and fees upon the refinancing of existing high cost home loans to all lenders, other than the current lender of such a loan, the current two-year limitation is intended to prevent on-going refinancings of high cost home loans through which equity in the real property is stripped by the repeated charging of points and fees on the entire loan amount. Restricting the

charging of points and fees to any new monies that are realized through such refinancings limits this expense only to the actual additional economic benefit realized by borrower. The Department cannot determine any rationale that would justify not extending this standard to all lenders, in contrast to limiting the standard only to those lenders and transactions in which a mortgage broker has been used. It is also noted that changes to the definition of points and fees and the limitation upon the financing of points and fees imposed by section 6-1, which effectively may limit the number of, and the revenue from, high cost home loans, may encourage certain lenders to look to refinancings of recently made high cost home loans as a source of revenue. The presumption is that a refinancing of recently made mortgage loan is less costly for a lender, resulting from a less extensive process to conduct the necessary due diligence, in contrast to a loan mortgage loan not recently made. For example, the borrower's credit history, property title searches, and survey of the property do not require extensive updates. Thus, the ability of a lender, which does not use a mortgage broker, to charge points and fees on the entire principal loan amount, may encourage certain lenders to aggressively pursue this segment of the high cost home loan market. This effect would confound the regulatory objective of the refinancing limitation. Further, section 6-1, in this respect, does not address the refinancing of high cost home loans by other than the current lender. This amendment establishes a uniform policy applicable to all lenders.

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:

Section 41.3(a)(2) specifically sets forth a new consumer and home ownership counseling notice which must be delivered to a borrower of a high cost home loan within 3 days of determining such loan is a high cost home loan, but not less than 10 days prior to closing the loan. This additional disclosure form and the content thereof is required and specified by section 6-1(2)(l)(ii) of the Banking Law.

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 6-1 of the Banking Law, given that section 6-1 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 6-1 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 6-1. In addition, the provisions of section 6-1 that are clarified by the amendments will eliminate uncertainty among mortgage lenders and brokers in the making and brokering 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 6-1.

Outreach. In light of the lack of guidance provided by the Legislature, following adoption of the initial emergency rule making (BNK-20-03-00020-E), the Department invited both state-based consumer groups and industry groups to meet with representatives of the Department to review and react to the emergency rule and discuss any concerns or issues relating to the provisions of section 6-1 as a first step in advancing the proposed rule and considering possible amendments to section 6-1 as part of subsequent legislative program recommendations by the Department. Groups which responded to the invitation and met with the Department comprised three consumer organizations, including state and national representatives from the American Association of Retired Persons, one banking trade association, two mortgage banking/finance trade associations, a mortgage broker trade association, a bond securities trade association, two national securities rating agencies, and a consumer financial services committee of the NYS Bar Association. Written comments were also received from a state trade association representing credit unions.

With respect to notable revisions subsequently made to the initial emergency rule and reflected in this proposed rule as a result of such meetings and discussions, revisions to the threshold definitions for high cost home loans and, in particular, the definition and computation of points and fees pursuant to part 41 and section 6-1 comprised a significant portion of the substantive changes.

Based on the suggestion of one of the consumer organizations, the annual percentage rate thresholds for first and second mortgages were

revised in Part 41 to conform the calculation of the annual percentage rate when a mortgage loan provides an initial or introductory interest rate with the corresponding provisions of section 6-1. Further, the definition of points and fees was expanded to explicitly except various forms of insurance products, which are usually necessary or required expenses associated with mortgage transactions. These insurance products are distinct from the types of financed credit insurance products that are required to be included within the computation of points and fees pursuant to section 6-1 and Part 41 and incidental to the mortgage loan transaction.

As a general observation resulting from the Department's meeting with industry and consumer representatives, a certain degree of confusion exists as to the legislative intent regarding the definition of points and fees in section 6-1. The Legislature did not adopt in the statute the definition of points and fees as contained in the federal Homeownership and Equity Protection Act (HOEPA), which is the "standard" definition of what constitutes points and fees in the mortgage loan industry. The statute refers to certain expenses "listed in" in the Act's provisions defining points and fees and more narrowly references the appropriate federal statutory cites for such definitions. The Department believes that explicit incorporation of the federal definition as the State's standard would be beneficial for both the industry and the consumer, but the revisions to Part 41 cannot accommodate this result without further amendment of section 6-1.

A similar confusion and disagreement turns on when discount points are included with the computation of points and fees. One consumer association contended that section 6-1 provides for the inclusion of all discount points within the computation of points and fees if such points are financed and exceed two in number. The representatives of the credit union association contended that such points are excluded up to and including two points regardless of how many points are financed. The Department agrees with the latter reading of section 6-1 and the rule was revised to reflect that interpretation. In addition, the industry organizations commented that the statutory-required inclusion of discount points in the computation of points and fees turns also upon whether the annual percentage rate of the mortgage loan was more than one percent above the yield on Treasury securities having a comparable term to the loan. The effect is to cause mortgage loans that otherwise would be considered conventional, or prime, loans to be treated as high cost home loans. The Department does not believe the Legislature intended this outcome by the enactment of section 6-1, but, again, the legislative intent is not clear and the proposed rule conforms Part 41 to this treatment of discount points within the computation of points and fees. Further amendment of section 6-1 by the Legislature is necessary if discount points are to be treated otherwise.

The consumer organizations also expressed concerns regarding the Department's efforts to define and clarify "net tangible benefit" as it pertains to loan flipping. Again, there is no legislative indication of what the scope of net tangible benefit should be. In an effort to further clarify this standard, the Department restated the conditions that are needed to satisfy acceptable high cost home loan refinancing activity under the Superintendent's supervisory oversight and expanded the conditions to indicate that a "commensurate" relationship must be maintained between the economic benefit to the borrower and any increase in the total debt and/or the principal and interest payments.

Numerous technical revisions to Part 41 are reflected in the proposed rule, certain of which were suggested by the organizations and others resulting from a word-by-word review of the rule caused by the organizations' comments to insure internal consistency and also conformity with section 6-1. Examples of these revisions include requiring that a separate sheet be attached to a loan application document indicating the loan is a high cost home loan when a specific loan application form is required by entities, such as the government sponsored enterprises, which participate significantly in the home loan market. Also, the definition and use of the term "obligor" was deleted from Part 41, and replaced by the definition and use of the term "borrower" consistently throughout the rule.

Finally, the Department notes that much of the commentary by the industry organizations centered upon the violation, penalty and assignee provisions of section 6-1. Though the Department can understand the basis for many of the concerns voiced, Part 41 does not and cannot address any of those concerns. The Department believes further amendments to section 6-1 are necessary in that regard.

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 HOEPA. Subsequently, federal regulators modified the annual percentage rate threshold for first mortgages under HOEPA by making it identical to the corresponding threshold in Part 41. Section 6-1 of the

Banking Law establishes modified points and fees thresholds in certain instances that are more lenient for brokers and lenders than the comparable threshold in HOEPA. The definition of points and fees, in part, established by section 6-1 refers and therefore corresponds to the comparative definition in HOEPA. The amendments adopt the thresholds and definitions established by section 6-1.

10. Compliance schedule:

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

Further, an emergency rule containing most of the substantive amendments contained in the proposed rule was published, effective May 5, 2003, and republished thereafter upon expiration of the previous emergency rule. A revised emergency rule, identical to the proposed rule, was published, effective March 8, 2004, and republished thereafter. Thus, the mortgage lending industry essentially has been subject to and operating under the proposed regulatory requirements.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this proposed rule because the substantive amendments to Part 41 conform regulatory requirements to provisions of section 6-1 of the Banking Law, enacted by Chapter 626 of the laws of 2002, which became effective April 1, 2003. There are no regulatory alternatives that could be substituted for the statutory requirements of section 6-1 in order to lessen or reduce the burden upon regulated parties (i.e., mortgage lenders and mortgage brokers). As of December 31, 2004, the Department regulated 275 banking institutions (banks, trust companies, savings banks, savings and loan associations, foreign bank branches and agencies, and credit unions), 273 licensed mortgage bankers and 2162 registered mortgage brokers whose mortgage lending activities may be subject to the requirements of section 6-1 and the proposed revised requirements of Part 41. These requirements have application to federally chartered banking institutions and their affiliates conducting mortgage banking activities in New York. However, the Office of the Comptroller of the Currency, pursuant to a rule making action, determined that the National Bank Act comprehensively preempts state regulation of the banking activities of national banks. The regulatory action therefore appears to effectively preempt the application of section 6-1 to national bank residential mortgage lending. Similarly, the Office of Thrift Supervision expressly determined that the provisions of section 6-1 are preempted by the Home Owners' Loan Act with respect federal savings associations. Many of the affected regulated entities would be considered small businesses.

General Economic Impact

It is impossible to determine the overall economic impact, if any, as a result of the Chapter 626 of the Laws of 2002. That act contains provisions, which are not the subject of this proposed regulatory action, that could adversely affect the making of high cost home loans. Such provisions relate to assignee liability when such mortgages are placed into the secondary market and could cause secondary market entities to determine that such mortgages pose unacceptable risks. The sub-prime mortgage market, which includes many high cost home loans, cannot be viable if such loans do not have access to the secondary market. In any event, the promulgation of any of the amendments to Part 41 contained in this proposed rule should not, in and of themselves, have an adverse economic impact.

Lending practices and activities also may be affected by prevailing interest rate trends and current mortgage interest rates in comparison to historical levels. Lenders and brokers also can choose to make mortgage loans that do not exceed the high cost home loan thresholds. There is evidence that this practice has occurred since section 6-1 became effective, particularly among large mortgage lenders. Presumably such a practice would not reduce loan volume, yet such lenders and brokers would not incur the costs in complying with the statutory and regulatory requirements that accompany the making of high cost home loans.

Section 6-1 and the proposed conforming amendments to Part 41 may affect costs in a myriad of sometimes contradicting ways. For example, the revised definition of points and fees and the lower percentage of points and fees that may be financed in the principal loan amount, could reduce the number of high cost home loans made and, thus, could have an adverse impact upon those regulated parties that specialize in the making of mortgage loans to the sub-prime market. Offsetting this effect somewhat are the

provisions increasing the points-and-fees threshold for a high cost home loan for loans less than \$50,000 to 6 percent or \$1500, whichever is greater.

Finally, it should be noted that if mortgage lenders decide to not make loans that exceed the high cost home loan thresholds for the reasons noted above, this could have an adverse impact upon certain sub-prime borrowers. Lenders must determine what risk a potential borrower presents in extending credit, and the interest rate charged is a reflection of the level of assessed risk. It is possible certain borrowers that would qualify for high cost home loans, may not be able to obtain mortgage credit.

General Compliance Effect

The regulatory revisions necessitated by Chapter 626 of the Laws of 2002 do not create significant additional compliance requirements. Generally, these revisions create different standards compared to those provisions previously contained in Part 41. The modification of the prohibition upon balloon mortgages is one example. The current Part 41 standard permits such mortgages only if the balloon payment occurs no sooner than seven years into the term of the mortgage. The parallel section 6-1 provision sets this term at fifteen years.

Those amendments to Part 41 not directly resulting from the section 6-1 requirements attempt to ameliorate any additional compliance burden upon regulated parties. For example, the revised disclosure time frames should reduce somewhat the compliance burden upon regulated parties, though it is not clear whether they will provide any measurable cost benefit for regulated parties. At a minimum, however, they should not require additional time or other resources to comply with these standards.

Expounding on the definitions of "corroboration by independent verification" of a borrower's repayment ability and "net tangible benefit" to a borrower also should reduce unnecessary compliance costs for regulated parties. These regulatory standards should also provide guidance to the courts.

The most troublesome regulatory compliance problem for regulated parties arising from requirements of section 6-1 and the proposed revisions to Part 41 concerns the definition of points and fees. Regulated parties must be cognizant of when third-party charges must be included in the calculation. This depends on whether the lender, or an affiliate of the lender, receives any direct or indirect compensation from such charges. Inclusion of such charges may cause the loan to exceed the points-and-fee threshold, thereby creating a high cost home loan that is subject to section 6-1 and Part 41. To assist regulated parties, the Department has posted these requirements on its web page as well as a listing of the various third-party charges that must be included in the computation of points and fees under section 6-1 and the proposed amendments to Part 41.

Effects Relating to Modification of Regulatory Refinancing Requirements

Of special note is the single instance in which this proposal goes beyond revisions necessitated explicitly by, or in order to harmonize Part 41 with, section 6-1. This modification addresses certain regulatory provisions affecting the refinancing of high cost home loans.

Both section 6-1 and the proposed amendments to Part 41 may reduce the number of refinanced mortgage loans by reducing the points and fee mortgage lenders and brokers may charge. Under Part 41, a lender that refinances its own high cost home loan with another high cost home loan, and any other lender that uses a mortgage broker in any such refinancing, may charge points and fees only on any new monies the borrower may receive if the existing loan is refinanced within two years. Section 6-1, however, provides that a lender that refinances its own high cost loan may not charge any points and fees in any such refinancing, including points and fees on any new money portion of the loan and no matter when the refinancing occurs, if the refinanced loan remains a high cost home loan. The only means, then, by which a current lender may provide additional funds to its own high cost home loan borrower and charge points and fees on such additional funds is by modifying, amending, renewing, or extending the current loan. Revised Part 41 goes further, by extending the existing regulatory limitation on other lenders charging points and fees only on any additional monies realized by the borrower when a high cost home loan is refinanced to apply to all such lenders, whether or not a mortgage broker was used in the refinancing. This limitation, which applies to any refinancing during the first two years of the mortgage loan, is intended to prevent on-going refinancings of high cost home loans through which equity in the real property is stripped by the repeated charging of points and fees on the entire loan amount. This practice has been a significant source of predatory lending abuses. Restricting the charging of points and fees in such cases limits such expenses to the actual additional eco-

conomic benefit realized by borrower and ensures that uniform standards apply.

The amendments impose no additional cost upon the Banking Department or any other state agency, or any unit of local government.

Rural Area Flexibility Analysis

A statement in lieu of a rural area flexibility analysis is submitted with this proposed rule. The requirements of the proposed rule and section 6-1 of the Banking Law apply to 275 banking institutions, 273 licensed mortgage bankers and 2162 registered mortgage brokers regulated by the Department whose mortgage lending activities may be subject to such requirements. These requirements have application to federally chartered banking institutions and their affiliates conducting mortgage banking activities in New York. However, the Office of the Comptroller of the Currency, pursuant to a rule making action, determined that the National Bank Act comprehensively preempts state regulation of the banking activities of national banks. The regulatory action therefore appears to effectively preempt the application of section 6-1 to national bank residential mortgage lending. Similarly, the Office of Thrift Supervision expressly determined that the provisions of section 6-1 are preempted by the Home Owners' Loan Act with respect federal savings associations. Many of these entities would be considered small businesses and many of these entities are either located or conducting business in rural areas of this state. There are no regulatory alternatives that may be substituted for the statutory requirements of section 6-1 to reduce the burden upon regulated parties (i.e., mortgage lenders and mortgage brokers).

It is likely that the statutory provisions changing the points and fees threshold for small loans (i.e., loans less than \$50,000) reflected in this regulation will have a greater impact in truly rural areas of this state where the real market value of improvements on land often is lower than in non-rural areas of this state. Thus, it may be that a greater proportion of smaller sized loans made in such areas of the state will not be subject to the high cost home loan requirements unless such loans have annual percentage rates (APRs) which fall within the APR thresholds. If this proves to be the case, the costs upon regulated parties in rural areas may be less than those incurred by similar regulated parties in non-rural areas of the state. The extent of any such presumed cost savings for regulated parties cannot be estimated at this time.

Job Impact Statement

Article 12-D of the Banking Law regulates the making of residential mortgage loans on property located in this state. As part of such regulatory scheme, Article 12-D provides for the licensing and registration, respectively, of mortgage bankers and mortgage brokers. In addition, the regulatory requirements and standards pertaining to the making of such mortgage loans apply to such bankers and brokers and also to banking institutions, and their affiliates, engaged in such lending. Part 41, which in particular regulates the making of a certain portion of such residential mortgage loans, defined as high cost home loans, similarly applies to all such lenders and brokers engaged in the brokering or making of high cost home loans.

Part 41, which became effective October 1, 2000, was made permanent and amended, and was the operative regulatory scheme for making such high cost home loans until April 1, 2003 at which time section 6-1 of the Banking Law became effective. Section 6-1 also regulates the making of high cost home loans and supersedes Part 41 to the extent the provisions of Part 41 are inconsistent. On the whole, section 6-1 does not establish an entirely new or novel regulatory scheme for the making of such loans. Thus, compliance by lenders and brokers with the provisions of Part 41 as amended to reflect section 6-1 should not impose any significant new or additional regulatory burden upon lenders and brokers engaged in such lending and, therefore, should, not have any effect upon job creation or job retention by lenders and brokers engaged in such lending.

However, Chapter 626 of the Laws of 2002 also includes provisions that impose new liabilities and penalties. These provisions, which are not incorporated into the proposed rule could affect the extent to which lenders and brokers continue to make high cost home loans.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

European Union Financial Conglomerates Directive

I.D. No. BNK-25-06-00010-P

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

Proposed action: Addition of Part 114 to Title 3 NYCRR.

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

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

Purpose: To clarify the superintendent's examination, supervision, regulation and enforcement authority over art. XII investment company parent organizations and their subsidiaries for purpose of providing equivalent supervision as required under the European Union Financial Conglomerates Directive.

Text of proposed 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 certain 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.

"Company" means a corporation, partnership, unincorporated association, limited liability company, or any other entity.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of a company, whether by means of the ownership of the voting stock or equity interests of such company or of one or more persons controlling such 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 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 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 company 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 subsidiaries (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 company 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.

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.

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.

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 have or will become subject to the supervision requirements of the Financial Conglomerates Directive. 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 as 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 record-keeping or other compliance requirements on small businesses or local governments. The proposed rule relates to supervision of the parents and

affiliates of Article XII investment companies having financial business operations within the European Union. These entities are large financial conglomerates, which do not qualify as small businesses in New York State and are not local governments.

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Office of Children and Family Services

EMERGENCY RULE MAKING

Market Rates for Subsidized Child Care

I.D. No. CFS-13-06-00017-E
Filing No. 688
Filing date: June 6, 2006
Effective date: June 6, 2006

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

Action taken: Amendment of section 415.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 410 and 410-x(4)

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

Specific reasons underlying the finding of necessity: The adoption of these regulations on an emergency basis is necessary for the preservation of the health, safety and welfare of children in need of subsidized child care services in this State. Section 410-x(4) of the Social Services Law requires that the market rates be sufficient to ensure equal access to eligible children to comparable day care available to children whose parents are not eligible to receive a subsidy. The current market rates were initially issued in October, 2003 and reflect rate data collected in 2003. Accordingly, the current rates are artificially low. The adjustments to the market rates are needed to address the significantly escalating costs of providing child care services. Social services districts have experienced difficulty in recruiting and retaining providers to care for subsidized children because the actual costs of providing child care are greater than the current market rates.

Continuing to maintain the existing rates could result in subsidized families losing their child care arrangements or being unable to find appropriate child care. As a result, such families could be forced to place their children in child care settings that are inappropriate or unsafe for their children, leave their children unsupervised, or leave their jobs or training programs. If they choose the latter option, the families may remain on public assistance for longer periods of time or return to public assistance. This would directly counter the overriding purpose of welfare reform to encourage families on public assistance to move into employment or training programs. Thus, the increases in the market rates are necessary to maintain and preserve the gains achieved for poor families under welfare reform. As a result of these regulations, public assistance recipients and other low income families will not have to decide between losing their employment income and placing their children in child care that is unsafe or inappropriate.

Delaying the adoption of these regulations would be contrary to the public interest because it could result in children from public assistance or other low income families receiving unhealthy or unsafe child care, or in persons leaving jobs or training programs and returning to public assistance, to the detriment of the public welfare system. Therefore, it is necessary to adopt these regulations on an emergency basis.

Subject: Market rates for subsidized child care.

Purpose: To update the market rates social services districts can pay for subsidized child care.

Text of emergency rule: Section 415.9(f) is amended to read as follows:

Where child care services are provided by multiple providers, reimbursement will be made for the actual cost of such services up to the applicable rate for each child care provider used. *However, if the combined reimbursement to the multiple providers would exceed one weekly market rate, in order to receive such reimbursement the parent or caretaker must demonstrate that the schedule of employment of the parent or caretaker or the special needs of the child necessitates that child care services be arranged with multiple providers. If the social services district determines that the parent or caretaker has not demonstrated that there is a necessity to use multiple providers, reimbursement is limited to one weekly market rate that is applicable for the type of provider who provides care for the highest number of hours. The social services district will determine how to distribute the reimbursement for the multiple providers.*

Section 415.9(j) is amended to read as follows:

Effective October 1, [2003] 2005, following are the local market rates for each social services district set forth by the type of provider, the age of the child and the amount of time the child care services are provided per week. The market rates are established in five groupings of social services districts. Except for districts noted as an exception in the market rate schedule, the rates established for a group apply to all districts in the designated group. The district groupings are as follows:

Group A: Nassau, Putnam, Rockland, Suffolk, Westchester

Group B: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins, Warren

Group C: Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, Yates

Group D: Albany, Dutchess, Orange, Ulster

Group E: Bronx, Kings, New York, Queens, Richmond

GROUP A COUNTIES:

Nassau, Putnam, Rockland, Suffolk, and Westchester

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$300	\$265	\$240	\$250
Exceptions:				
Nassau	--	--	\$248	\$261
Westchester	\$338	\$317	\$271	--
DAILY	\$70	\$60	\$55	\$54
Exceptions:				
Westchester	\$75	\$70	\$58	--
PART-DAY	\$47	\$40	\$36	\$36
Exceptions:				
Westchester	\$50	\$47	\$39	--
HOURLY	\$8.88	\$8.75	\$8.81	\$8.75

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$250	\$225	\$225	\$225
Exceptions:				
Westchester	--	\$246	--	--
DAILY	\$56	\$56	\$55	\$50
PART-DAY	\$37	\$37	\$37	\$33
HOURLY	\$8.00	\$8.00	\$7.50	\$7.50

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$250	\$250	\$243	\$240
Exceptions:				

Rockland	--	--	\$250	\$250
Westchester	--	--	--	\$250
DAILY	\$58	\$56	\$55	\$56
PART-DAY	\$39	\$37	\$37	\$37
HOURLY	\$8.00	\$8.00	\$8.00	\$8.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$250
Exceptions:				
Nassau	--	--	--	\$261
DAILY	\$0	\$0	\$0	\$54
PART-DAY	\$0	\$0	\$0	\$36
HOURLY	\$0	\$0	\$0	\$8.75

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$175	\$158	\$158	\$158
DAILY	\$40	\$40	\$39	\$35
PART-DAY	\$27	\$27	\$26	\$23
HOURLY	\$5.60	\$5.60	\$5.25	\$5.25

GROUP B COUNTIES: Columbia, Erie, Monroe, Onondaga, Ontario, Rensselaer, Saratoga, Schenectady, Tompkins and Warren

DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$190	\$180	\$166	\$160
Exceptions:				
Monroe	--	\$185	\$173	--
DAILY	\$45	\$43	\$39	\$38
Exceptions:				
Erie	--	--	\$44	--
Monroe	--	\$49	--	--
PART-DAY	\$30	\$28	\$26	\$25
Exceptions:				
Erie	--	--	\$29	--
Monroe	--	\$33	--	--
HOURLY	\$7.00	\$7.00	\$6.25	\$7.00

REGISTERED FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$150	\$145	\$135	\$135
Exceptions:				
Erie	--	\$150	\$140	--
Saratoga	--	\$150	\$150	\$143
Schenectady	\$170	\$150	\$150	\$150
DAILY	\$34	\$33	\$31	\$31
Exceptions:				
Columbia	\$35	--	--	--
Erie	\$38	\$38	\$34	\$34
Saratoga	\$35	\$35	--	\$33
Warren	--	--	--	\$33
PART-DAY	\$23	\$22	\$21	\$21
Exceptions:				
Erie	\$25	\$25	\$23	\$23
Saratoga	--	\$23	--	\$22
Warren	--	--	--	\$22
HOURLY	\$5.00	\$5.00	\$5.00	\$4.41

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$158	\$150	\$150	\$149
Exceptions:				
Erie	--	\$173	\$165	\$160
Schenectady	\$175	\$175	\$165	\$160
DAILY	\$38	\$35	\$34	\$33
Exceptions:				
Erie	--	--	--	\$34
PART-DAY	\$25	\$23	\$23	\$22
Exceptions:				

Erie -- -- -- \$23
 HOURLY \$5.00 \$5.00 \$5.00 \$5.00
 SCHOOL AGE CHILD CARE
 AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$160
DAILY	\$0	\$0	\$0	\$38
PART-DAY	\$0	\$0	\$0	\$25
HOURLY	\$0	\$0	\$0	\$7.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$105	\$102	\$95	\$95
DAILY	\$24	\$23	\$22	\$22
PART-DAY	\$16	\$15	\$15	\$15
HOURLY	\$3.50	\$3.50	\$3.50	\$3.09

GROUP C COUNTIES:
 Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Niagara, Oneida, Orleans, Oswego, Otsego, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Washington, Wayne, Wyoming, and Yates

DAY CARE CENTER
 AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$160	\$150	\$142	\$130

Exceptions:
Niagara -- -- -- \$138
 DAILY \$39 \$36 \$34 \$31
 PART-DAY \$26 \$24 \$23 \$21
 HOURLY \$5.00 \$5.00 \$5.00 \$5.00

REGISTERED FAMILY DAY CARE
 AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$135	\$130	\$125	\$125

Exceptions:
Clinton -- -- -- \$135
 DAILY \$31 \$31 \$30 \$30
 Exceptions:
Clinton -- -- -- \$34
Sullivan -- -- -- \$31
 PART-DAY \$21 \$21 \$20 \$20
 Exceptions:
Clinton -- -- -- \$23
Sullivan -- -- -- \$21
 HOURLY \$3.18 \$3.00 \$3.00 \$3.00

GROUP FAMILY DAY CARE
 AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$135	\$130	\$125	\$125
DAILY	\$34	\$33	\$31	\$30
PART-DAY	\$23	\$22	\$21	\$20
HOURLY	\$4.00	\$4.00	\$4.00	\$4.00

SCHOOL AGE CHILD CARE
 AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$130

Exceptions:
Niagara -- -- -- \$138
 DAILY \$0 \$0 \$0 \$31
 PART-DAY \$0 \$0 \$0 \$21
 HOURLY \$0 \$0 \$0 \$5.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE
 AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$95	\$91	\$88	\$88

DAILY	\$22	\$22	\$21	\$21
PART-DAY	\$15	\$15	\$14	\$14
HOURLY	\$2.23	\$2.10	\$2.10	\$2.10

GROUP D COUNTIES:
 Albany, Dutchess, Orange, and Ulster
 DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$205	\$190	\$175	\$176

Exceptions:
Dutchess \$227 \$215 \$197 --
 DAILY \$49 \$46 \$44 \$44

Exceptions:
Albany -- \$50 \$45 --
 PART-DAY \$33 \$30 \$29 \$29

Exceptions:
Albany -- \$33 \$30 --
 HOURLY \$7.00 \$6.75 \$6.50 \$7.00

REGISTERED FAMILY DAY CARE
 AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$175	\$175	\$167	\$175

Exceptions:
Dutchess \$180 \$180 \$175 \$180
Orange \$196 \$181 \$175 --

DAILY \$44 \$41 \$38 \$38

Exceptions:
Dutchess -- \$45 \$44 \$45
Orange -- -- -- \$44

PART-DAY \$29 \$27 \$25 \$25

Exceptions:
Dutchess -- \$30 \$29 \$30
Orange -- -- -- \$29

HOURLY \$6.00 \$6.00 \$6.00 \$6.00

GROUP FAMILY DAY CARE
 AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$185	\$180	\$175	\$175

Exceptions:
Orange \$200 \$194 -- --

DAILY \$44 \$44 \$41 \$40

PART-DAY \$29 \$29 \$27 \$27

HOURLY \$6.00 \$6.00 \$6.00 \$6.00

SCHOOL AGE CHILD CARE
 AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$176
DAILY	\$0	\$0	\$0	\$44
PART-DAY	\$0	\$0	\$0	\$29
HOURLY	\$0	\$0	\$0	\$7.00

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$123	\$123	\$117	\$123
DAILY	\$31	\$29	\$27	\$27
PART-DAY	\$21	\$19	\$18	\$18
HOURLY	\$4.20	\$4.20	\$4.20	\$4.20

GROUP E COUNTIES:
 Bronx, Kings, New York, Queens, and Richmond
 DAY CARE CENTER

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$288	\$255	\$180	\$177
DAILY	\$67	\$67	\$50	\$50
PART-DAY	\$45	\$43	\$33	\$33
HOURLY	\$13.75	\$17.00	\$13.00	\$11.65

REGISTERED FAMILY DAY CARE
 AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$150	\$135	\$125	\$125
DAILY	\$34	\$35	\$35	\$31
PART-DAY	\$23	\$23	\$23	\$21
HOURLY	\$15.00	\$10.00	\$11.00	\$11.60

GROUP FAMILY DAY CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$160	\$150	\$150	\$140
DAILY	\$38	\$38	\$36	\$35
PART-DAY	\$25	\$25	\$24	\$23
HOURLY	\$15.00	\$13.00	\$11.00	\$16.00

SCHOOL AGE CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$0	\$0	\$0	\$177
DAILY	\$0	\$0	\$0	\$50
PART-DAY	\$0	\$0	\$0	\$33
HOURLY	\$0	\$0	\$0	\$11.65

LEGALLY-EXEMPT FAMILY CHILD CARE AND IN-HOME CHILD CARE

AGE OF CHILD

	Under 1½	1½-2	3-5	6-12
WEEKLY	\$105	\$95	\$88	\$88
DAILY	\$24	\$25	\$25	\$22
PART-DAY	\$16	\$17	\$17	\$15
HOURLY	\$10.50	\$7.00	\$7.70	\$8.12

SPECIAL NEEDS CHILD CARE

The rate of payment for child care services provided to a child determined to have special needs is the actual cost of care up to the statewide limit of the highest weekly, daily, part-day or hourly market rate for child care services in the State, as applicable, based on the amount of time the child care services are provided per week regardless of the type of child care provider used or the age of the child.

The highest full time market rate in the State is:

WEEKLY	\$338
DAILY	\$ 75
PART-DAY	\$ 50
HOURLY	\$ 17

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. CFS-13-06-00017-P, Issue of March 29, 2006. The emergency rule will expire August 30, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

Section 34(3)(f) of SSL authorizes the Commissioner to establish regulations for the administration of public assistance and care within the State.

Section 410 of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Section 410-x(4) of the SSL requires the Office to establish, in regulation, the applicable market-related payment rates that will establish the ceilings for State and federal reimbursement for payments made under the New York Child Care Block Grant. The amount to be paid or allowed for child care assistance funded under the Block Grant and under Title XX shall be the actual cost of care but no more than the applicable rate established in regulations. Payment rates must be sufficient to ensure equal access for eligible children to comparable child care assistance in the substate area that are provided to children whose parents are not eligible to receive assistance under any federal or State programs. Payment rates must take into account the variations in the costs of providing child care in

different settings and to children of different age groups, and the additional cost of providing child care for children with special needs.

Federal statute, section 658E(c)(4)(A) of the Social Security Act, and federal regulation, 45 CFR 98.43(a), also require that the State establish payment rates for federally-funded child care subsidies that are sufficient to ensure such equal access for eligible children. Additionally, federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. The current State Plan covers the period October 1, 2003 through September 30, 2005 and the proposed State Plan for the period October 1, 2005 through September 30, 2007 has been submitted for approval by the federal government. The market rates that are being replaced were issued in October 2003 and were based on a survey conducted in 2003.

2. Legislative objectives:

The legislative intent is to have child care subsidy payment rates that reflect market conditions and that are adequate to enable subsidized families to access child care services comparable to other families not in receipt of a child care subsidy.

3. Needs and benefits:

The regulations are needed to adjust existing rates that were established based on a survey done in 2003. Since then, child care providers have experienced increased costs in operating their businesses. These costs are reflected in the higher rates that they are charging as compared to the existing rates. The rates need to be updated to reflect the increased rates in order to continue to provide subsidized families with equal access to child care comparable to that received by unsubsidized families as required by federal and State laws.

The methodology used by the Office to establish the payment rates for the regulations meets the federal and State statutory requirements for conducting a local survey of child care providers. Prior to conducting the market rate survey, a letter was mailed to all licensed and registered providers to inform them that they might be among the sample of providers who would be asked to participate in the market rate survey. The Office contracted with a market research firm to conduct the telephone survey in English and Spanish and had resources available to assist providers in other languages. The sample was drawn so that it encompassed the full range of providers within all geographic areas.

The payment rates were established based on approximately 4,800 completed telephone market rate surveys from licensed and registered providers throughout the State. Providers were asked for the rates they charge for full-time and part-time care, if applicable, based on the age of the child.

These rates were analyzed to determine the 75th percentile. The federal Administration of Children and Families has indicated in the preamble to the final rule for the Child Care and Development Fund that it regards the 75th percentile of the actual cost of care as sufficient to provide subsidized parents with equal access to child care providers. The rates that resulted were then clustered into five distinct groupings of social services districts based on rate similarities. Within each group, rates are differentiated by type of provider (*i.e.*, day care center, school-age child care, family day care, group family day care and legally-exempt family child care and in-home child care), age of child (*i.e.*, under 1½, 1½-2, 3-5, 6-12), and amount of time in care (*i.e.*, weekly, daily, part-day, and hourly). This data was compiled and analyzed by Suzanne Zafonte Sennett, Director within the Office's Bureau of Early Childhood Services.

The market rates for legally-exempt family child care and in-home child care were established based on a 70 percent differential applied to the market rates established for family day care. This differential reflects the higher costs associated with meeting the higher regulatory standards to become a registered family day care provider.

Revising the existing rates will help subsidized families to avoid losing their child care arrangements or being unable to find appropriate child care. This will help prevent such families from being forced to place their children in child care settings that are inappropriate or unsafe or to leave their children unsupervised. Avoiding such results is important because it can be detrimental to a child's development to experience disruption in care or to receive substandard or no care at all. The updated rates also will help subsidized families avoid having to choose whether to use their limited income to supplement the cost of child care services or to meet their basic living costs.

The proposed regulations clarify the maximum reimbursement that may be issued when a family uses multiple child care providers. When the combined reimbursement to multiple child care providers exceeds one

weekly market rate, the caretaker must demonstrate that the caretaker's schedule of employment or the special needs of the child necessitates that child care services be arranged with multiple providers. If the family does not demonstrate a necessity to use multiple providers, then reimbursement is limited to the weekly market rate that is applicable for the type of provider who provides care for the highest number of hours.

4. Costs:

Under section 410-v(2) of the SSL, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; and, districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2005-2006, social services districts received their allocations of \$716,520,153 in federal and State funds under the New York State Child Care Block Grant, an increase of \$5.9 million from the base amount allocated to districts for SFY 2004-05. These increases in funding are sufficient to cover the increased payments by social services districts due to the implementation of the adjusted market rates. In addition, social services districts had the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

5. Local government mandates:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to applicable market rates. When a caretaker uses multiple child care providers and the reimbursement exceeds one weekly market rate, districts will need to determine whether the situation requires multiple child care providers. Payment adjustments will have to be made, as appropriate.

6. Paperwork:

Social services districts will need to process any required payment adjustments after conducting the necessary case reviews.

7. Duplication:

The new requirements do not duplicate any existing State or federal requirements.

8. Alternatives:

The adjustments in rates set forth in the regulations are necessary to implement the federal and State statutory and regulatory mandates. The language added to Section 415.9(f) is consistent with the intent of the existing regulations and is necessary to prevent recipient families and providers from exploiting the child care subsidy system by allowing providers to receive unwarranted payments in excess of the market rates. Some social services districts have informed the Office of instances in which recipient families have used multiple child care providers unnecessarily to evade the market rates, and maximize each provider's child care payments. Given the limited amount of child care subsidy funding and the unnecessary use of multiple providers in these situations, the Office made the regulatory change to prevent the abuse of the child care subsidy system, and provide more needed funding to eligible families. The Office is aware that some families legitimately need multiple providers to address their families' unique circumstances. This regulatory change will not prevent those families from accessing the needed providers.

9. Federal standards:

The regulations are consistent with applicable federal regulations. 45 CFR 98.43(a) and (b)(2) and (3) require that the State establish payment rates that are sufficient to ensure equal access to comparable care received by unsubsidized families, based on a survey of providers and consistent with the parental choice provisions in 45 CFR 98.30.

10. Compliance schedule:

These provisions must be implemented effective on October 1, 2005.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments:

The adjustments to the child care market rates will affect the 58 social services districts. There is a potential effect on over 20,000 licensed and registered child care providers and an estimated 70,000 informal providers that may provide child care services to families receiving a child care subsidy.

2. Compliance requirements:

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine whether the payments reflect the actual cost of care up to the new market rates. When a family uses multiple child care providers and the reimbursement exceeds one weekly market rate, districts will need to determine whether the situation requires multiple child care providers. Payment adjustments will have to be made, as needed.

3. Professional services:

Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

4. Compliance costs:

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2005-06, social services districts received their allocations of \$716,520,153 in federal and State funds under the New York State Child Care Block Grant, an increase of \$5.9 million from the base amount allocated to districts for SFY 2004-05. These increases in funding are sufficient to cover the increased payments by social services districts due to the implementation of the new market rates. In addition, social services districts had the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

5. Economic and technological feasibility:

The child care providers and social services districts affected by the regulations have the economic and technological ability to comply with the regulations.

6. Minimizing adverse impact:

Federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers. The Office took a representative sample of approximately 4,800 licensed and registered child care providers throughout the State. The rates were analyzed to establish the market rates at the 75th percentile of the amounts charged in accordance with guidelines issued in the Child Care and Development Fund Final Rule. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for counties are based on the actual costs of care within the counties.

Social services districts will benefit from the increases in the rates. The increases will enable districts to provide temporary assistance recipients and low-income families receiving subsidized child care services with access comparable to those families not receiving a child care subsidy. This will assist these districts to enable more temporary assistance and low-income families to work, thereby reducing the number of families in need of public assistance. It also should assist the districts in meeting their federal participation rates for Temporary Assistance (TA) recipients because there should be a reduction in the number of TA recipients who are excused from work activities due to a lack of child care.

Child care providers also will benefit from the increases in the market rates. The adjustments to the market rates will help address the escalating costs incurred by child care providers in operating their businesses. These providers will also be in a better position to serve low-income families who previously may not have had access to their programs due to their rates.

Social services districts will benefit from the clarification given regarding reimbursement when multiple child care providers are used. These regulations will strengthen the ability of social services districts to monitor payments so that families and child care providers do not receive unwarranted payments in excess of the market rates. Parents and caretakers will be able to use multiple child care providers, with payments reflecting the appropriate market rate for each provider, when their employment schedule or the special needs of the children merit it.

7. Small business and local government participation:

In accordance with federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. Prior to conducting

the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had the resources available to assist providers in other languages, if needed. Rate data was collected from almost 4,800 providers and that information formed the basis for the updated market rates.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The regulations will affect the 44 social services districts located in rural areas of the State and the child care providers located in those districts.

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

The regulations will not result in any new reporting or recordkeeping requirements for social services districts.

Social services districts will be required to make payments for subsidized child care services based on the actual cost of care up to the new market rates. Districts will need to review cases to determine if the payments reflect the actual cost of care up to the new market rates. When a family uses multiple child care providers and the reimbursement exceeds one weekly market rate, districts will need to determine whether the situation requires multiple child care providers. Payment adjustments will have to be made, as needed.

Neither social services districts nor child care providers should have to hire additional professional staff in order to implement these regulations.

3. Costs:

Under section 410-v(2) of the Social Services Law, the State is responsible for reimbursing social services districts for 75 percent of the costs of providing subsidized child care services to public assistance recipients; districts are responsible for the other 25 percent of such costs. In addition, the State is responsible for reimbursing districts for 100 percent of the costs of providing child care services to other eligible low-income families. The State reimbursement for these child care services is made from the State and/or federal funds allocated to the State Child Care Block Grant, and is limited on an annual basis to each district's State Child Care Block Grant allocation for that year.

Under the State Budget for SFY 2005-2006, social services districts received their allocations of \$716,520,153 in federal and State funds under the New York State Child Care Block Grant, an increase of \$5.9 million from the base amount allocated to districts for SFY 2004-05. These increases in funding are sufficient to cover the increased payments by social services districts due to the implementation of the new market rates. In addition, social services districts had the option to transfer a portion of their Flexible Fund for Family Services allocations to the New York State Child Care Block Grant to supplement their Block Grant allocations.

4. Minimizing adverse impact:

The market rates were developed in accordance with federal guidelines for conducting a survey of child care providers. The Office took a representative sample of approximately 4,800 completed surveys from licensed and registered child care providers throughout the State. The rates were analyzed to establish market rates at the 75th percentile of the amounts charged. The market rates are clustered into five distinct groupings of counties based on similarities in rates among the counties in each group. As a result, the rates established for rural counties are based on the actual costs of care within the counties.

Social services districts in rural areas will benefit from the increases in the rates. The increases will enable districts to provide temporary assistance recipients and low-income families receiving subsidized child care services with access to additional child care providers. This will assist these districts to enable more temporary assistance and low-income families to work, thereby reducing the number of families in need of temporary assistance. It also should assist the districts in meeting their federal participation rates for Temporary Assistance (TA) recipients because there should be a reduction in the number of TA recipients who are excused from work activities due to a lack of child care.

Child care providers in rural areas also will benefit from the increases in the market rates. The adjustments to the market rates will help address the escalating costs incurred by child care providers in operating their businesses. These providers will also be in a better position to serve low-income families who previously may not have had access to their programs due to their rates.

Social services districts will benefit from the clarification given regarding reimbursement when multiple child care providers are used. These

regulations will strengthen the ability of social services districts to monitor payments so that families and child care providers do not receive unwarranted payments in excess of the market rates. Parents and caretakers will be able to use multiple child care providers, with payments reflecting the appropriate market rate for each provider, when their employment schedule or the special needs of the children merit it.

5. Rural area participation:

Federal regulation 45 CFR 98.43(b)(2) requires that payment rates be based on a local market survey conducted no earlier than two years prior to the effective date of the currently approved State plan for the Child Care and Development Fund. In accordance with the federal regulatory requirements, OCFS conducted a telephone survey of a sample of regulated providers. The sample drawn was representative of the regions across the State and, therefore, providers located in rural areas were appropriately represented in the survey. Prior to conducting the telephone survey, a letter was sent to all regulated child care providers to inform them that they might be included among the sample of providers called to participate in the market rate survey. A copy of the questions was also sent so that providers could prepare responses. A market research firm conducted the telephone survey in English and in Spanish, as needed, and had resources available to assist providers in other languages, if needed. Rate data was collected from almost 4,800 providers and that information formed the basis for the updated market rates.

Job Impact Statement

Section 201-a of the State Administrative Procedures Act requires a job impact statement to be filed if proposed regulations will have an adverse impact on jobs and employment opportunities in the State.

These regulations will have a positive impact on jobs or employment opportunities as the increased rates will allow child care providers to hire additional staff or improve the compensation they pay existing staff. Individuals who may have been discouraged from starting up new child care programs in low-income communities because the existing rates would not have been sufficient to support their operational costs may be encouraged by the new rates to establish such programs. In addition, by making child care more available and affordable for low-income working families, the regulations will improve the ability of employers to attract and retain employees and the ability of low-income workers to obtain and maintain jobs.

NOTICE OF ADOPTION

Market Rates for Subsidized Child Care

I.D. No. CFS-13-06-00017-A

Filing No. 689

Filing date: June 6, 2006

Effective date: June 21, 2006

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

Action taken: Amendment of section 415.9 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(f), 410 and 410-x(4)

Subject: Market rates for subsidized child care.

Purpose: To update the market rates social services districts can pay for subsidized child care.

Text or summary was published in the notice of proposed rule making, I.D. No. CFS-13-06-00017-P, Issue of March 29, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

Assessment of Public Comment

The Office of Children and Family Services (Office) received comments from representatives of two advocacy groups. The Office reviewed all comments. The following summarizes the comments and provides the Office's response to the comments.

The Office received two comments to the proposed revised regulations in 18 NYCRR § 415.9(f) related to the limited payments for use of multiple providers stating that the new requirement creates an unnecessary burden for parents seeking a child care subsidy. The Office reviewed the comments and believes that the new requirement does not impose an undue burden on the parent or the district. Currently, the parent, as part of the application process for a child care subsidy, must document the schedule of employment or approved activity. The Office believes that the additional requirement for the parent to demonstrate the necessity of using

multiple providers establishes a reasonable measure to control the use of limited public funds for the child care subsidy program. Thus, there is no change to the regulations based on these comments.

The Office received two comments recommending that additional language be added to 18 NYCRR § 415.9 to set forth that the market rates regulations do not prohibit a child care provider from charging a late fee to a parent. The Office determined that the process in which the provider determines the fees charged to families is outside the authority of the Office and scope of the market rate regulations. Thus, there is no change to the regulations based upon these comments.

The Office received two comments that the Office should issue detailed instructions to child care providers related to specific issues that are not addressed in this regulatory proposal. Since the comments do not pertain to this regulatory proposal, there will be no change to the regulations based on these comments.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-13-06-00002-A
Filing No. 685
Filing date: June 5, 2006
Effective date: June 21, 2006

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

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

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-13-06-00002-P, Issue of March 29, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-13-06-00003-A
Filing No. 686
Filing date: June 5, 2006
Effective date: June 21, 2006

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

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

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

Subject: Jurisdictional classification.

Purpose: To delete a position from the exempt class in the Department of State.

Text was published in the notice of proposed rule making, I.D. No. CVS-13-06-00003-P, Issue of March 27, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-13-06-00004-A
Filing No. 682
Filing date: June 5, 2006
Effective date: June 21, 2006

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Correctional Services.

Text was published in the notice of proposed rule making, I.D. No. CVS-13-06-00004-P, Issue of March 29, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-13-06-00005-A
Filing No. 683
Filing date: June 5, 2006
Effective date: June 21, 2006

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the Department of Labor.

Text was published in the notice of proposed rule making, I.D. No. CVS-13-06-00005-P, Issue of March 29, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-13-06-00006-A
Filing No. 684
Filing date: June 5, 2006
Effective date: June 21, 2006

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

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

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

Subject: Jurisdictional classification.

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

Text was published in the notice of proposed rule making, I.D. No. CVS-13-06-00006-P, Issue of March 29, 2006.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification**I.D. No.** CVS-13-06-00007-A**Filing No.** 681**Filing date:** June 5, 2006**Effective date:** June 21, 2006

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional classification.**Purpose:** To delete a position from and classify a position in the exempt class in the Department of Family Assistance and the Department of Mental Hygiene.**Text was published in the notice of proposed rule making, I.D. No.** CVS-13-06-00007-P, Issue of March 29, 2006.**Final rule compared with proposed rule:** No changes.**Text of rule may be obtained from:** Stella Chen Harding, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6205, e-mail: stella.harding@cs.state.ny.us**Assessment of Public Comment**

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**Jurisdictional Classification****I.D. No.** CVS-25-06-00002-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional classification.**Purpose:** To classify a position in the exempt class in the Temporary State Commission of Investigation.**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Temporary State Commission of Investigation, by increasing the number of positions of Assistant Counsel from 5 to 6.**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: john.barr@cs.state.ny.us**Public comment will be received until:** 45 days after publication of this notice.**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**Jurisdictional Classification****I.D. No.** CVS-25-06-00003-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional classification.**Purpose:** To classify a position in the non-competitive in the Executive Department.**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the

Executive Department under the subheading "Office of General Services," by adding thereto the position of General Services Visitor Program Production Manager (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: john.barr@cs.state.ny.us**Public comment will be received until:** 45 days after publication of this notice.**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**Jurisdictional Classification****I.D. No.** CVS-25-06-00004-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional classification.**Purpose:** To classify a position in the non-competitive class in the Department of Audit and Control.**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Audit and Control, by adding thereto the position of Compliance Specialist 2 (1).**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us**Data, views or arguments may be submitted to:** John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: john.barr@cs.state.ny.us**Public comment will be received until:** 45 days after publication of this notice.**Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**Jurisdictional Classification****I.D. No.** CVS-25-06-00005-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional classification.**Purpose:** To classify a position in the non-competitive class in the Department of Family Assistance.**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by adding thereto the position of Housing Specialist 2 (1).**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: shirley.laplante@cs.state.ny.us

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

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

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

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

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

Jurisdictional Classification

I.D. No. CVS-25-06-00006-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor under the subheading "Workers' Compensation Board," by deleting therefrom the position Director, Hearing Reporter Service (1).

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

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

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

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

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

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

Jurisdictional Classification

I.D. No. CVS-25-06-00007-P

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

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

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

Subject: Jurisdictional classification.

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

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Homeland Security," by thereto the position of Homeland Security Associate Director (1).

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

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

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

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

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

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

Jurisdictional Classification

I.D. No. CVS-25-06-00008-P

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

Proposed action: Amendment of Appendix(es) 3 of Title 4 NYCRR.

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the labor class in the State Department Service.

Text of proposed rule: Amend Appendix(es) 3 of the Rules for the Classified Service, listing positions in the labor class, in the State Department Service under the subheading "All State Departments and Agencies," by adding thereto the positions of Parks and Recreation Aide 6 (Seasonal) and Parks and Recreation Aide 7 (Seasonal).

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

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

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

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

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

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

Jurisdictional Classification

I.D. No. CVS-25-06-00011-P

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

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

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

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt and non-competitive classes in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Racing and Wagering Board, Harness Racing," by increasing the number of positions of Assistant to Presiding Judge from 8 to 16, Associate Judge from 16 to 24, Investigator from 8 to 16, Paddock Judge from 8 to 16, Presiding Judge from 8 to 16, Recording Judge from 8 to 16, Starter from 8 to 16 and Supervising Racing Veterinarian from 8 to 16; and, in the Executive Department under the subheading "Racing and Wagering Board, Thoroughbred Racing," by increasing the number of positions of Investigator from 2 to 4 and Supervising Racing Veterinarian from 2 to 4; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Racing and Wagering Board," by increasing the number of positions of Assistant to Racing Steward (seasonal) from 4 to 6 and Supervising Inspector (Harness Racing) (seasonal) from 7 to 8.

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

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

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

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

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

Deferred Compensation Board

NOTICE OF ADOPTION

Deferred Compensation Plans

I.D. No. DCB-12-06-00008-A

Filing No. 687

Filing date: June 5, 2006

Effective date: June 21, 2006

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

Action taken: Amendment of sections 9000.2, 9002.2, 9003.1, 9003.5, 9004.1 and 9003.6 of Title 9 NYCRR.

Statutory authority: State Finance Law, section 5; L. 1982, ch. 547

Subject: Deferred compensation plans.

Purpose: The purposes of the proposed rule making are: (a) to ease the administrative burden on local governments that operate Internal Revenue Code ("IRC") section 457 deferred compensation plans under the New York State Deferred Compensation Board's (the "Board") model plan document by providing for a more efficient document filing process, (b) to provide that a financial organization selected through a competitive selection process be permitted to manage the assets of a deferred compensation plan's stable income fund by investing in guaranteed investment contracts, purchasing book value wrap contracts, and allocating the assets of a fund between or among other financial organizations selected by the Board or deferred compensation committee, as applicable, (c) to permit a deferred compensation committee to contract with a firm of public accountants selected through a request for proposals undertaken by the local employer that sponsors the deferred compensation plan provided that specific requirements are met, and (d) to further clarify that a contractor to a deferred compensation plan may not use information obtained in providing services to the plan to solicit or induce participants to invest in or purchase any product offered by that contractor outside of the plan.

Text or summary was published in the notice of proposed rule making, I.D. No. DCB-12-06-00008-P, Issue of March 22, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Edward J. Lilly, Deferred Compensation Board, Empire State Plaza Station, P.O. Box 2103, Albany, NY 12220-2103, (518) 473-6619, e-mail:elilly@nysdcp.com

Assessment of Public Comment

The agency received no public comment.

State Board of Elections

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Statewide Voter Registration List

I.D. No. SBE-25-06-00020-P

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

Proposed action: Addition of Part 6217 to Title 9 NYCRR.

Statutory authority: Election Law, sections 5-614, 3-102; and L. 2005, ch. 24

Subject: Statewide voter registration list.

Purpose: To govern the creation, maintenance and use of the official statewide voter registration list.

Substance of proposed rule (Full text is posted at the following State website: www.elections.state.ny.us): These rules govern the operation of the statewide voter registration list to be known as NYSVoter. NYSVoter includes both NYSVoter I and II. NYSVoter I covers the development and the initial data collection phase. NYSVoter II covers the complete networked phase of the list. These regulations include procedures and requirements for list security, user administration, and report/information queries.

Establishing the statewide voter registration list is a requirement of the federal Help America Vote Act (HAVA) and state election law. The statewide voter registration database regulations include the following:

1. Purpose: NYSVoter will serve as the single, interactive, statewide voter registration list for storing and managing the official list of registered voters throughout New York State. The County Boards of Elections have sole responsibility for adding changing, cancelling or removing voter registration records from the statewide voter registration list. The list shall be maintained and administered by the State Board.

2. Initial Creation of the List: The statewide voter registration list shall be created by combining the existing voter registration lists maintained by each local board of elections into a single integrated list. The information required to be sent to the State Board to appear on the list shall be determined by the State Board Commissioners. Once all data from the counties has been received, the State Board shall run a check for duplicate voter registration records within the integrated statewide voter registration list. After all duplicate registration issues have been resolved, the State Board shall assign a unique identifier to every voter on NYSVoter.

3. Review of Each County's Voter Registration System: Prior to sending data to the statewide list, any proposed county voter registration system must be approved by the State Board to ensure it meets the technical specifications to interface with the official statewide voter registration list and to determine if it conforms to all of the requirements of the state law and of these regulations.

4. Voter Registration Information Entry: County election officials shall enter all voter registration information and the corresponding data elements to be included in the statewide voter registration list. County Boards have the responsibility for adding, changing, canceling or removing voter registration records in NYSVoter.

5. Voter Registration Processing: The County Board is responsible for processing each application and determining whether the application is complete and whether the applicant meets constitutional and statutory requirements. All voter registration activity must be done by a bipartisan team of workers, to assure fairness and uniformity in the process.

6. Voter Identification Verification: The County Board shall utilize the information provided on the application and shall attempt to verify such information with the information provided by the New York State Department of Motor Vehicles, or the United State Social Security Administration and any other lawfully available information source. If a voter's identity is not verified before election day, the voter will be asked to provide identification before they vote for the first time.

7. Processing Voters That Move Between Counties: NYSVoter shall verify that a voter has moved between counties based upon a match of an applicant's name, date of birth and other pertinent data.

8. Identification of Possible Duplicate Voter Registrations: NYSVoter shall perform a check to identify existing records for all registration application transactions or as needed by the County Board. NYSVoter shall notify the "to county" and "from county" if a voter is a potential duplicate registration between the counties. The notification shall include pertinent information regarding the voter.

9. Voter Registration Status: Each voter maintained in NYSVoter will be assigned a Voter Registration Status by the County Board which will determine the voter's eligibility to vote. The Voter Registration Status will be updated after an application is processed and an application disposition has been assigned.

10. Voter Registration List Changes and List Maintenance: Procedures to ensure that the name of each registered voter appears in the statewide voter registration list; only names of persons who are not registered or who are not eligible to vote are removed from the list; and, the prior registra-

tions of duplicate names are removed from the list. The State Board, shall establish minimum standards for statewide voter registration list maintenance activities and schedules for such activities.

11. Voter Registration List Security and List Administration: The State Board will be responsible for providing tools necessary for county boards to authorize local users to NYSVoter functions, verify that local users identified in transaction headers are authorized for that purpose, and for insuring that a message was not altered in transmission.

12. Reports and Information Queries: County Board operators will have the ability to: query all records in the database; conduct searches of voter records; generate queries and reports; sort voter registration data by county, election district, jurisdiction, birth date, and other information.

Text of proposed rule and any required statements and analyses may be obtained from: Patricia L. Murray, Board of Elections, 40 Steuben St., Albany, NY 12207, (518) 474-6367, e-mail: pmurray@elections.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:

Election Law, sections 5-614, 3-102 and Ch. 24 L. 2005.

2. Legislative Objectives:

The Legislature in creating the Statewide Voter Registration List, required that it be done in a manner that to the extent practicable, allows county boards of election to retain their current election management and voter registration systems. These regulations set out procedures to be followed in creating and maintaining the statewide list which allows better than 90 percent of county boards to retain their current EMS/VRS systems.

3. Needs and Benefits:

The Statewide Voter Registration List will serve as the official list of registered voters for New York State pursuant to requirements of both federal and state law. Regulations guiding the creation, maintenance and use of the list assures its accuracy and integrity.

4. Costs:

The State Board of Elections will absorb reasonable costs for the remediation of all fifty-eight county systems so that the counties and state can exchange necessary information. The State Board of Elections will also pay for the creation of the network the database will require. Therefore, county boards will continue to use current systems, they will incur no costs for implementation of these regulations. There are fewer than six counties who will have to incur costs to replace their systems which were created in-house and are unable to be amended to communicate with the statewide database.

5. Local Governmental Mandates:

Counties will continue to do their voter registration duties as they do now. They will, however, be required to send to the statewide list the registration information on all voters in their system. When counties print poll books and their official voter information they must use the statewide list.

6. Paperwork:

Whenever a county is notified of a potential duplicate registration or the failure to verify a voter's identity, the county must take appropriate action to resolve the issue, and indicate electronically that it has been resolved.

7. Duplication:

These regulations do not duplicate any federal or state laws.

8. Alternatives:

There are none.

9. Federal Standards:

These regulations do not exceed federal minimum standards for statewide voter registration lists.

10. Compliance Schedule:

All counties will be in full compliance by Spring, 2007. The full development of this database is expected to take approximately twelve months.

Regulatory Flexibility Analysis

These regulations impact county boards of elections and are designed to effect the least amount of change possible in how they currently do business. Costs are borne by the State Board of Elections. County commissioners have been actively involved in the development of these regulations.

Rural Area Flexibility Analysis

This rule has no adverse impact on business or local governments in rural areas of the state.

Job Impact Statement

These regulations will neither help or hinder the creation of jobs in New York State, nor contribute to any loss of current employment.

Department of Health

EMERGENCY RULE MAKING

Neonatal Herpes Infection Reporting and Laboratory Specimen Submission

I.D. No. HLT-25-06-00001-E

Filing No. 678

Filing date: May 31, 2006

Effective date: May 31, 2006

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

Action taken: Amendment of sections 2.1 and 2.5 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 225(4), (5)(a), (g), (h) and (i) and 206(1)(d) and (e)

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

Specific reasons underlying the finding of necessity: Neonatal herpes is a serious disease that can cause permanent neurological impairments to an infant and neonatal death. Most cases of neonatal herpes are acquired from perinatal transmission from an infected mother, with additional cases acquired by exposure in utero or postnatal exposure to persons with herpes in the community.

Unlike most serious communicable diseases, neonatal herpes is not reportable in New York State. Little data exists to accurately estimate the incidence of the disease, but national data suggest that there are approximately 80 neonates infected each year in New York State. Approximately the same number of cases are estimated to occur in New York State exclusive of New York City, and in New York City.

Current diagnostic and therapeutic advances enable the disease to be detected in infected neonates. Without timely antiviral therapy, 80% of the infected neonates will die and one to two-thirds of the survivors will have lasting neurodevelopment impairment.

The new reporting requirements will enable the NYSDOH to have more comprehensive and complete information on neonatal herpes cases. Given the ability to detect and treat cases if identified in a timely fashion, it is imperative to better estimate the incidence of neonatal herpes infection. This information will also enable the NYSDOH to systematically monitor outbreaks of neonatal herpes and prevent further transmission. Data can also be used to identify gaps in knowledge by clinicians and the public about maternal and other routes of transmission of herpes to the neonate, as well as the detection and treatment of cases of neonatal herpes, and provide necessary education.

By adopting this rule, neonatal herpes will be added to the list of communicable diseases. Immediate adoption of this rule is necessary for accurate identification and monitoring of neonatal herpes and for preservation of the public health and general welfare.

Subject: Neonatal herpes infection reporting and laboratory specimen submission.

Purpose: To properly identify and treat infected mothers and detect early causes of neonatal herpes; and make neonatal herpes a reportable disease will assist in the diagnosis, prevention and effective management and call public attention to this disease.

Text of emergency rule: Subdivision (a) of Section 2.1 is amended to read as follows:

Section 2.1. Communicable diseases designated: cases, suspected cases and certain carriers to be reported to the State Department of Health.

(a) When used in the Public Health Law and in this Chapter, the term infectious, contagious or communicable disease, shall be held to include the following diseases and any other disease which the commissioner, in the reasonable exercise of his or her medical judgment, determines to be communicable, rapidly emergent or a significant threat to public health, provided that the disease which is added to this list solely by the commis-

collect and preserve such information relating to marriage, birth, mortality, disease and health as may be useful in the discharge of his duties or may contribute to the promotion of health or the security of life in the state." PHL Article 21 requires local boards of health and health officers to guard against the introduction of such communicable diseases as are designated in the sanitary code by the exercise of proper and vigilant medical inspection.

Legislative Objectives:

This regulation meets the legislative objective of protecting the public health by adding neonatal herpes to reportable disease requirements, thereby permitting enhanced monitoring of disease, prompt identification of cases and unusual or dramatic increases in disease reporting that might indicate an outbreak, and the ability to implement measures, if necessary, to prevent further transmission.

Needs and Benefits:

Neonatal herpes, defined as herpes infection in infants aged 60 days or less, is a serious disease associated with neurological devastation of the infant and neonatal death. Neonatal herpes can result from infection with either herpes simplex virus (HSV) type 1 (HSV-1) or HSV type 2 (HSV-2). The disease can be localized to skin, eye and mouth (SEM disease), involve the central nervous system (CNS), or manifest as disseminated infection involving multiple organs. Most infants with CNS or disseminated disease have neurological sequelae, and the mortality rate in the absence of therapy is very high (80%) for these babies.

There are three ways that neonatal herpes infection can occur: (1) congenital (in utero) from an infected mother to the fetus; (2) perinatal from an infected mother to the neonate at delivery; or (3) following delivery (postnatal acquisition).

Congenital infection:

Intrauterine infection represents approximately 5% of cases of neonatal herpes infection. It can result from an ascending infection from the cervix or vulva or as a consequence of transplacental transmission. The risk of herpes transmission to the neonate is greatest, approximately 50 percent, if the pregnant woman develops a primary infection in the third trimester.

Perinatal infection:

Neonatal infection with HSV most often occurs during delivery. In 85% of cases, HSV infection is transmitted to the neonate during labor when the baby comes into direct contact with infected maternal secretions in the birth canal. The risk of neonatal herpes is increased if the woman has obvious lesions at delivery. Delivery by Caesarean section appears to decrease the risk of HSV transmission in the presence of an active lesion.

Post-partum infection:

Postnatal acquisition of HSV accounts for approximately 10% of all cases of neonatal herpes and occurs as a consequence of the baby coming into contact with an environmental source of herpes, such as a family member or caregiver with orolabial herpes or lesions at other sites (e.g. breast, herpetic whitlow).

Based on national estimates, neonatal herpes is one of the most common of all congenital and perinatal infections in the United States, infecting approximately 1/1,500 to 1/3,200 live births each year. Based on these estimates, it can be estimated that of the 133,532 births in New York State in 2003, exclusive of New York City, there could have been approximately 40 neonatal herpes cases. Another 40 cases could be estimated to have occurred among the 119,469 births in New York City.

Diagnostic tests and therapies exist to properly identify and treat infected mothers and detect early cases of neonatal herpes. Type-specific serologic tests for herpes are commercially available and amplification tests such as polymerase chain reaction (PCR) have increased the sensitivity of diagnostic testing. Antiviral therapy can be used to reduce viral shedding of an infected pregnant woman and to treat an infected neonate. Cesarean delivery of infants born to mothers presenting with genital lesions can also reduce the likelihood of perinatal transmission.

Making neonatal herpes a reportable disease will assist in the diagnosis, prevention and effective management of neonatal herpes and call public attention to this disease. Multi-center studies of neonatal herpes show that delays in instituting appropriate therapies persist. Clinicians need to be educated to include neonatal herpes in the differential diagnosis for a febrile neonate, and recognize clinical signs. Educating expecting parents with known genital herpes about risks to the newborn can also promote early intervention. New York State reporting of neonatal herpes is needed to:

- Accurately measure the incidence of this disease by transmission category;
- Increase awareness of the disease by providers and the public;

- Investigate cases of neonatal herpes to systematically assess and address gaps in provider knowledge of prevention and treatment strategies;
- Identify outbreaks of postnatally-acquired neonatal herpes in a timely fashion, identify the source, and intervene to prevent subsequent infection.

Neonatal herpes is currently a reportable condition in seven states (Connecticut, Florida, Louisiana, Massachusetts, Nebraska, South Dakota and Washington). The New York City Department of Health and Mental Hygiene recently amended the New York City Health Code to require reporting of neonatal herpes.

Costs:

Costs to Regulated Parties:

The costs associated with implementing the reporting of this disease are minimal as reporting processes and forms already exist. Hospitals, practitioners and clinical laboratories are accustomed to reporting communicable disease to public health authorities.

In the event of post-partum cases of neonatal herpes, it is imperative to the public health that suspect cases be reported immediately and investigated thoroughly to curtail additional exposure and potential morbidity and mortality.

Costs to Local and State Governments:

The staff who will be involved in reporting and tracking neonatal herpes at the State and local health departments are the same as those currently involved with other communicable diseases listed in 10 NYCRR Section 2.1 and existing disease reporting processes will be used. Therefore, minimal incremental cost is expected. The time expended by a local health department to report a neonatal herpes case is estimated to be low to receive the report, obtain any missing information, and enter the report into the surveillance data system.

The additional cost to local or state governments associated with investigating and implementing control strategies to curtail the spread of neonatal herpes, particularly post-partum cases of neonatal herpes, could become significant depending upon the extent of any outbreak. Suspect cases are to be reported to the local health department, who should immediately notify the Regional Epidemiologist or the New York State Department of Health (NYSDOH) after-hours duty officer.

By monitoring and preventing the spread of neonatal herpes, savings may include reducing costs associated with public health control activities, morbidity, treatment and premature death.

Costs to the Department of Health:

The NYSDOH already collects communicable disease reports from local health departments, checks the reports for accuracy and transmits them to the federal Centers for Disease Control and Prevention. The addition of neonatal herpes to the list of communicable diseases should lead to slight to moderate additional costs, mostly related to investigating cases. Existing staff should be able to handle the incremental increase in workload.

Paperwork:

The existing general communicable disease reporting form (DOH-389) will be revised. This form is familiar to and is already used by regulated parties.

Local Government Mandates:

Under Part 2 of the State Sanitary Code (10 NYCRR Part 2), the city, county or district health officer receiving reports of neonatal herpes will be required to immediately forward such reports to the State Health Commissioner.

Duplication:

There is no duplication of this initiative in existing State or federal law.

Alternatives:

No other alternatives are available. Reporting of cases of neonatal herpes is of critical importance to public health. There is an urgent need to conduct surveillance, identify cases in a timely manner, and reduce the potential for further exposure to contacts.

Federal Standards:

Currently there are no federal standards requiring the reporting of neonatal herpes.

Compliance Schedule:

Reporting of neonatal herpes is currently mandated, pursuant to the authority vested in the Commissioner of Health by 10 NYCRR Section 2.1(a). This mandate will be extended upon emergency adoption of this regulation by the Public Health Council, and filing of a Notice of Emergency Adoption of this regulation with the Secretary of State and made permanent by publication of a Notice of Adoption of this regulation in the *New York State Register*.

Regulatory Flexibility Analysis

Effect on Small Business and Local Government:

This proposed rule will apply to physicians, hospitals, nursing homes, diagnostic and treatment centers and clinical laboratories. There are approximately 65,000 licensed and registered physicians in New York State; it is not known how many of them practice in small businesses. Three hospitals, 100 nursing homes, 237 diagnostic and treatment centers, and 1,000 clinical laboratories employ less than 100 persons and qualify as small businesses.

Implementation will require reporting of neonatal herpes in all 57 counties of the State outside of New York City. New York City has already passed regulations making neonatal herpes a reportable disease.

Compliance Requirements:

Existing reporting forms will be revised. Clinical laboratories that are small businesses will utilize the revised NYSDOH electronic reporting format.

Professional Services:

No additional professional staff will be needed to complete the required forms manually and mail to the county health department.

Compliance Costs:

No initial capital costs of compliance are anticipated. The reporting of neonatal herpes should have a negligible to modest effect on the estimated cost of disease reporting. The cost of complying with required reporting includes staff time to complete the necessary forms and mail to the respective local health department. The cost of reporting neonatal herpes by laboratories should be modest given the estimated small number of cases.

Minimizing Adverse Impact:

There are no alternatives to the reporting or laboratory testing requirements. Adverse impacts have been minimized since revised forms and reporting staff will be utilized by regulated parties. Electronic reporting will save time and expense. The approaches suggested in the State Administrative Procedure Act Section 202-b(1) were rejected as inconsistent with the purpose of the regulation.

Feasibility Assessment:

The NYSDOH estimates minimal increases in workload and costs associated with the requirement to report neonatal herpes.

Small Business and Local Government Participation:

Local governments have been consulted in the process through ongoing communication on this issue with local health departments and the New York State Association of County Health Officers (NYSACHO).

Rural Area Flexibility Analysis**Effect on Rural Areas:**

The proposed rule will apply statewide. It is assumed that the distribution of neonatal herpes will be less in rural counties than in more urban or metropolitan areas similar to the population distribution.

Compliance Requirements:

Compliance requirements are the same in rural areas as those in all other areas of the state. Existing reporting forms will be revised. Clinical laboratories will use the revised NYSDOH electronic reporting format.

Professional Services:

No additional professional staff should need to be hired to complete the required forms and mail to the county health department. Rural providers are expected to use existing staff to comply with the requirements of this regulation.

Compliance Costs:

No initial capital costs of compliance are anticipated. See cost statement in Regulatory Impact Statement for additional information.

Minimizing Adverse Impact:

There are no alternatives to the reporting requirements. Adverse impacts have been minimized since familiar forms and existing staff will be utilized by regulated parties. The approaches suggested in State Administrative Procedure Act Section 202-b (2) were rejected as inconsistent with the purpose of the regulation.

Rural Area Input:

The New York State Association of County Health Officers (NYSACHO), including representatives of rural counties, has been informed about this change and has voiced no objections.

Job Impact Statement

This regulation adds neonatal herpes to the list of diseases that clinical laboratories, clinicians, and hospitals must report to public health authorities and for which clinicians must submit laboratory specimens. The staff who are involved in reporting neonatal herpes at the local and State health departments are the same as those currently involved with reporting, monitoring and investigating other communicable diseases. Implementation should not significantly increase the demands on existing staff nor increase the need to hire additional staff for laboratories, hospitals, and providers.

The NYSDOH has determined that this regulatory change will not have a substantial adverse impact on jobs and employment.

NOTICE OF ADOPTION**Agricultural Fairgrounds**

I.D. No. HLT-07-06-00019-A

Filing No. 679

Filing date: May 31, 2006

Effective date: June 21, 2006

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

Action taken: Amendment of Subpart 7-5 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

Subject: Agricultural fairgrounds.

Purpose: To modify the campsite size and camping unit separation distance requirements at agricultural fairgrounds and consolidate other campground regulations from Subpart 7-3 (Campgrounds) into Subpart 7-5.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-07-06-00019-P, Issue of February 15, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

Higher Education Services Corporation

ERRATUM

A Notice of Emergency Adoption, I.D. No. ESC-23-06-00003-E pertaining to New York State District Attorney Loan Forgiveness Program, published in the June 7, 2006 issue of the *State Register* contained an error in the heading of the rule. The filing number and effective date were transposed. The filing number is 625, the effective date is May 22, 2006.

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

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Operations of Community Residences

I.D. No. OMH-25-06-00013-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 repeal Part 586 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b) and 31.04(a)

Subject: Operation of community residences.

Purpose: To repeal an obsolete rule.

Text of proposed rule: Pursuant to the authority granted to the Commissioner in §§ 7.09(b) and 31.04(a) of the Mental Hygiene Law, Title 14 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows:

Part 586 is repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.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.

Consensus Rule Making Determination

No person is likely to object to this proposed rule making since it merely repeals an obsolete Part of 14 NYCRR that no longer applies to any person or organization. 14 NYCRR Part 586 (Operation of Community Residences) has been replaced by 14 NYCRR Parts 594 and 595. 14 NYCRR Part 594 (Operation of Licensed Housing Programs for Children and Adolescents with Serious Emotional Disturbances) was adopted in 1993. 14 NYCRR Part 595 (Operation of Residential Programs for Adults) was adopted in 1994.

14 NYCRR Part 586 was not repealed at the time Parts 594 and 595 were adopted in order to give existing Part 586 residential housing providers time to transition over to the new requirements. This transition is now complete, and 14 NYCRR Part 586 is now obsolete.

Job Impact Statement

It is evident from the nature of the proposed rule making, which merely repeals a Part which no longer applies to any person or organization, that the proposed rule making will have no impact on jobs or employment activities.

A review of Part 29 indicates that the regulation does not coincide with some of the recently enacted local laws. For example, the regulation does not reflect the tax exemption for any vehicles that are registered with farm or agricultural plates. Fortunately, our collection procedures have been modified in accordance with the local laws.

A consensus rule making is appropriate since these amendments are merely technical in nature, i.e., they conform the regulation to the local laws.

Job Impact Statement

A Job Impact Statement is not submitted with this consensus rule because it will have no impact on job opportunities or job creation in New York State.

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

County Motor Vehicle Use Tax

I.D. No. MTV-25-06-00014-P

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

Proposed action: This is a consensus rule making to amend Part 29 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii) and Tax Law, section 1202(c)

Subject: County motor vehicle use tax.

Purpose: Technical amendments to motor vehicle use tax.

Substance of proposed rule (Full text is posted at the following State website: www.nysdmv.com): Repeals the Schoharie County motor vehicle use tax to reflect that county's repeal of its local law authorizing collection of the tax.

Makes technical amendments to the use tax regulation to reflect the local laws enacted in various counties.

Makes clear that no tax shall be collected on vehicles registered with farm or agricultural plates in the counties of Schuyler, Allegany, Steuben, Yates, Clinton, Chautauqua, Madison, Orleans, and Erie.

Text of proposed rule and any required statements and analyses may be obtained from: Michele L. Welch, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

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

Consensus Rule Making Determination

The Vehicle and Traffic Law and the Tax Law authorize the Department of Motor Vehicles to collect a motor vehicle use tax on behalf of counties in New York State, if such counties pass a local law mandating that DMV collect the tax.

Public Service Commission

NOTICE OF ADOPTION

Discounted Retail Access Transportation Service Program by National Fuel Gas Distribution Corporation

I.D. No. PSC-01-06-00011-A

Filing date: June 2, 2006

Effective date: June 2, 2006

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

Action taken: The commission, on May 17, 2006, approved National Fuel Gas Distribution Corporation's (NFG) proposal to establish an Energy Services Company (ESCO) referral program identified as a Discounted Retail Access Transportation Service (DRS) Program.

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

Subject: Establishment of NFG's DRS Program.

Purpose: To approve the program.

Substance of final rule: The Commission adopted an order approving National Fuel Gas Distribution Corporation's proposal to establish and Energy Services Company (ESCO) referral program identified as a Discounted Retail Access Transportation Service program, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-G-1047SA3)

NOTICE OF ADOPTION

Area Development Program by National Fuel Gas Distribution Corporation

I.D. No. PSC-07-06-00012-A

Filing date: June 2, 2006

Effective date: June 2, 2006

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

Action taken: The commission, on May 17, 2006, approved National Fuel Gas Distribution Corporation's request to establish a five-year Area Development Program.

Statutory authority: Public Service Law, sections 66(1), (2), (12-b) and (12-c)

Subject: Consideration of a proposal for a five-year Area Development Program.

Purpose: To provide grants for specific projects in order to expand economic development activities in the utility's service territory.

Substance of final rule: The Commission adopted an order approving National Fuel Gas Distribution Corporation's request for a five-year Area Development Program to provide grants for specific projects in order to expand economic development activities in the utility's service territory, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(04-G-1047SA4)

NOTICE OF ADOPTION

Exemption from Certain Charges by Delphi Corporation

I.D. No. PSC-14-06-00001-A

Filing date: June 1, 2006

Effective date: June 1, 2006

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

Action taken: The commission, on June 1, 2006, adopted an order in Case 06-E-0265 making permanent the order establishing an economic development rate for Delphi Corporation.

Statutory authority: Public Service Law, sections 65(1), (2), (3), 66(1), (2), (5), (12) and (12-b)

Subject: Exempting Delphi Corporation from certain charges related to the delivery of 10 MW in new expansion power for its Lockport, NY facility.

Purpose: To adopt as a permanent rule the terms of the commission's March 15, 2006 order, approving Delphi Corporation's request to design a special economic development rate that waives New York State Electric and Gas Corporation's system benefits charge, renewable portfolio standards and non-bypassable wires charges for delivery at 10 MW of New York Power Authority expansion power to Delphi's Lockport manufacturing facility.

Substance of final rule: The Commission adopted as a permanent rule the provisions of the Commission's March 15, 2006 Order exempting Delphi Corporation from certain charges related to the delivery of 10 MW in new Expansion Power for its Lockport, New York facility.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(06-E-0265SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Community Development Association, LLC

I.D. No. PSC-25-06-00015-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 whether to grant, deny, or modify, in whole or part, the petition filed by Community Development Association, LLC to submeter electricity at 31 Water St., Jamestown, NY.

Statutory authority: Public Service Law, section(s) 2, 4(1), 65(1), (2), (3), (4), (5), (12) and (14)

Subject: Request for the submetering of electricity.

Purpose: To allow Community Development Association, LLC to submeter electricity at 31 Water St., Jamestown, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny, or modify, in whole or part, the petition filed by Community Development Association, LLC to submeter electricity at 31 Water Street, Jamestown, New York.

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

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

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

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

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

(06-E-0576SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Daylight Saving Time

I.D. No. PSC-25-06-00016-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 whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 15 to become effective Sept. 1, 2006.

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

Subject: Daylight saving time

Purpose: To modify its time-of-use period definition resulting from the daylight saving time schedule change.

Substance of proposed rule: The Commission is considering central Hudson Gas and Electric Corporation's (Central Hudson's) request to modify Service Classification No. 6—Residential Time-of-Use Service. Central Hudson proposes to modify its Time-of-Use period definition resulting from the Daylight Saving Time schedule change included in Section 110 of the U.S. Energy Policy Act of 2005. The Commission may approve, reject or modify, in whole or in part, Central Hudson's request.

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

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

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

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

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

(06-E-0645SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Purchased Power Adjustment by Massena Electric Department

I.D. No. PSC-25-06-00017-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 whether to approve or reject, in whole or in part, a proposal filed by Massena Electric Department to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 2 to become effective Sept. 1, 2006.

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

Subject: Purchased power adjustment.

Purpose: To revise the method of calculating its purchased power adjustment and to update its factor of adjustment.

Substance of proposed rule: The Commission is considering Massena Electric Department's (Massena's) request to revise the method Massena uses in calculating its Purchased Power Adjustment. Massena is also proposing to update its Factor of Adjustment. The Commission may approve, reject or modify, in whole or in part, Massena's request.

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

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

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

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

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

(06-E-0655SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Gas Supply Charge by Central Hudson Gas & Electric Corporation

I.D. No. PSC-25-06-00018-P

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

Proposed action: The Public Service Commission is considering whether to approve, reject, or modify, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 12 to become effective Aug. 30, 2006.

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

Subject: Gas supply charge.

Purpose: To revise the application of the gas supply charge such that the monthly factors are prorated based on the number of days each factor is in effect during a customer's billing period.

Substance of proposed rule: The Commission is considering Central Hudson Gas & Electric Corporation's request to revise the application of the Gas Supply Charge such that the monthly factors are prorated based on the number of days each factor is in effect during a customer's billing period.

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

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

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

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

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

(06-G-0655SA1)