

RULE MAKING ACTIVITIES

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

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

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

Banking Department

EMERGENCY RULE MAKING

Overdraft Protection Fee Disclosure

I.D. No. BNK-21-06-00002-E

Filing No. 559

Filing date: May 5, 2006

Effective date: May 8, 2006

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

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

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

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

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

Subject: Overdraft protection fee disclosure.

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

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

§ 6.8 Overdraft Protection Charges.

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

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

c. The Banking Board hereby finds that title 12, Code of Federal Regulations, Section 7.4002 provides that national banks may impose charges and fees on their customers, and title 12, Code of Federal Regulations, Section 557.12(f) allows federal savings associations to impose charges and fees regardless of any state laws. The Office of the Comptroller of the Currency and the Office of Thrift Supervision, in interpreting these sections, permit national banks and federal savings associations, respectively, to impose greater daily charges in connection with overdraft protection programs than is otherwise allowed under New York Banking Law for banks and trust companies, savings banks and savings and loan associations. (See Joint Guidance on Overdraft Protection Programs, 70 Federal Register 9127 (February 24, 2005), applicable to banks and trust companies and Guidance on Overdraft Protection Programs, 70 Federal Register 8428 (February 18, 2005), applicable to savings banks and savings and loan associations.)

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 2, 2006.

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

Regulatory Impact Statement

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

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

3. Needs and benefits. In order that the account disclosures and required information therein addressed by the federal Guidances on Overdraft Protection Programs (Joint Guidance on Overdraft Protection Programs, 70 Federal Register 9127 (February 23, 2005), and Guidance on Overdraft Protection Programs, 70 Federal Register 8428 (February 18, 2005) and the federal regulations pertaining to the Truth in Savings Act (Regulation DD, 12 CFR Part 230)) be clearly set forth to customers and accountholders, the emergency rule requires State chartered banking institutions to provide a separate disclosure regarding any bounce protection that will apply to a new or existing account, beyond the one-time fee previously permitted by the Department's regulations. The information contained in the disclosure will need to conform to the standards specified by the federal Guidances and the TISA regulations. The purpose of this requirement is to ensure that particulars of bounce protection are not solely described within an account agreement's terms and conditions or a periodic statement, though banking institutions presumably will continue to also set forth those particulars in the account agreements. Bounce protection programs may cause consumers to incur significant costs if the bounce protection feature is used extensively. The information contained in the required notice that is the subject of this rule making may well be overlooked by customers due to scope of other information contained in the account agreement and the statement, if it is not disclosed through a separate format.

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

5. Local government mandates. None.

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

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

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

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

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

Regulatory Flexibility Analysis

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

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

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

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

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

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

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

EMERGENCY RULE MAKING

European Union Financial Conglomerates Directive

I.D. No. BNK-21-06-00003-E

Filing No. 560

Filing date: May 5, 2006

Effective date: May 8, 2006

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

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

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

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

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

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

Purpose: To clarify the examination, supervision, regulation and enforcement authority of the Superintendent of Banks over financial conglomerates for purposes of carrying out equivalent supervision under the European Union Financial Conglomerates Directive.

Text of emergency rule:

Part 114

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

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

§ 114.1 Purpose and Scope.

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

§ 114.2 Definitions.

For purposes of this Part:

"Banking Law" means the New York Banking Law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 114.4 Supervision Agreements with Financial Conglomerates.

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

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

§ 114.5 Limitations.

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and

will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 2, 2006.

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

Regulatory Impact Statement

1. Statutory authority:

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

2. Legislative objective:

The rule promotes the legislative objective of maintaining the safety and soundness of banking organizations through effective examination and supervision. Banking Law Section 10 declares it to be the policy of New York that all banking organizations shall be supervised and regulated by the Banking Department in such manner as to ensure the safe and sound conduct of such business and to protect the public interest. Article XII sets forth the powers as well as the duties and responsibilities of Article XII companies. Such duties include recordkeeping and the provision of reports to the Superintendent. As banking organizations, Article XII companies are subject to examination by the Superintendent (B.L. Section 36) as well as to enforcement actions by the Superintendent (e.g. enforcement actions under B.L. 39; monetary penalties under B.L. 44).

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

3. Needs and benefits:

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

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

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

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

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

The Department has significant experience in providing consolidated supervision to large banking organizations, both in its role as supervisor of banks within a holding company structure and in its role as a consolidated supervisor for several Article XII companies owned by large financial institutions that have operations in Europe and abroad. The Department is

also very accustomed to coordinating supervision among various regulators, including the banking, insurance and securities regulators in the U.S., as well as banking and other financial regulators in Europe and in other countries abroad.

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

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

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

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

4. Costs:

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

5. Local government mandates:

The regulation imposes no burdens on local governments.

6. Paperwork:

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

7. Duplication:

None. Various other U.S. supervisors, such as the Federal Reserve, the U.S. Securities and Exchange Commission, the Office of the Comptroller

of the Currency and the Office of Thrift Supervision may be required to provide equivalent supervision to institutions under their jurisdiction that have European operations. However, supervision by federal regulators and the Banking Department would not be conflicting or duplicative, as an organization would only have one designated "equivalent supervisor" for purposes of the European Union Directive.

8. Alternatives:

a. Rely on Existing Authority

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

Banking Law Section 36 clearly grants the Superintendent the authority to examine banking organizations (which includes Article XII investment companies) as well as affiliates of banking organizations when necessary to determine the financial condition of a banking organization. The Superintendent can also issue enforcement orders against banking organizations under B.L. Section 39, and it is possible that certain activities of affiliates (e.g. ordering cease and desist, etc.) might be reachable through such orders. However, based on discussions with the Commission and European supervisors, it was clear to Department staff that the Commission, in order to make a determination that a supervisor could effectively provide equivalent supervision, strongly preferred, and would likely require, demonstrable express statutory or regulatory authority of the supervisor to carry out examination, supervision, regulation and enforcement over the conglomerate.

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

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

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

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

This alternative was rejected by Department staff as less clear and less effective than the approach decided upon. For example, to accomplish the

required end, the regulation would have needed to very broadly define the term "examination" to encompass the ability of the Superintendent to issue regulations and enforcement actions against both the banking organization and its affiliates.

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

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

9. Federal standards:

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

10. Compliance schedule:

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

11. Outreach:

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

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

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

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

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

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

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

EMERGENCY RULE MAKING

High Cost Home Loans

I.D. No. BNK-21-06-00004-E

Filing No. 561

Filing date: May 5, 2006

Effective date: May 8, 2006

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

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

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

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

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

Subject: The making of certain residential mortgage loans, referred to as high cost home loans.

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

Substance of emergency rule: Summary 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.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 2, 2006.

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

Regulatory Impact Statement

1. Statutory authority:

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

2. Legislative objectives:

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

3. Needs and benefits:

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

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

Further, it is also necessary that certain provisions of section 6-l be clarified by the amendments to Part 41 in order that lenders and brokers may be in compliance with the requirements section 6-l when making such loans, given that such provisions are not otherwise defined by section 6-l nor has the Legislature provided any other guidance which would clarify the intended meaning of those provisions. The clarifying provisions of the amendments to Part 41 address determining “corroboration by independent verification” of a borrower’s repayment ability and “net tangible benefit” to a borrower, both of which are critical standards in assessing whether instances of predatory lending have occurred.

4. Costs:

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

5. Local government mandates:

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

6. Paperwork:

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

7. Duplication:

None.

8. Alternatives:

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

9. Federal standards:

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

10. Compliance schedule:

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Licensure as a Clinical Laboratory Technologist

I.D. No. EDU-21-06-00009-P

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

Proposed action: Addition of sections 52.36, 52.37 and 52.38 and Subparts 79-13, 79-14 and 79-15 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided); 210 (not subdivided); 212(3); 6501 (not subdivided); 6504 (not subdivided); 6507(2)(a), (3)(a) and (4)(a); 6508(1); 8605(1)(b) and (c) and (2)(b) and (c); 8606(2) and (3); 8607(1) and (2); and 8608

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

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

Substance of proposed rule (Full text is posted at the following State website: www.op.nysed.gov): The Commissioner of Education proposes to promulgate regulations, relating to licensure as a clinical laboratory technologist and as a cytotechnologist and certification as a clinical laboratory technician. The following is a summary of the substance of the regulations.

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

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

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

hours per week for at least 10 weeks or its equivalent in the practice of clinical laboratory technician.

Subpart 79-13 of the Regulations of the Commissioner of Education is added to establish requirements for licensure as clinical laboratory technologists. Section 79-13.1 establishes education requirements: holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in clinical laboratory technology registered as leading to licensure; or holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in clinical laboratory technology that is substantially equivalent to such a registered program; or holding a baccalaureate or higher degree awarded upon successful completion of an acceptable baccalaureate or higher degree program in the major of biology, chemistry, or the physical sciences and completing a credit bearing program in clinical laboratory technology that is registered as leading to licensure or its substantially equivalent. The applicant must also certify to the department that he or she has reviewed the regulations of the New York State Department of Health and the U.S. Department of Health and Human Services, relating practice, as directed by the department.

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

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

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

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

Subpart 79-14.1 of the Regulations of the Commissioner of Education is added to establish requirements for licensure as cytotechnologists. Section 79-14.1 establishes education requirements: holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in cytotechnology registered as leading to licensure; or holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in cytotechnology that is substantially equivalent to such a registered program; or holding a baccalaureate or higher degree awarded upon successful completion of an acceptable baccalaureate or higher degree program in the major of biology, chemistry, or the physical sciences and completing a credit bearing program in cytotechnology that is registered as leading to licensure or its substantial equivalent. In addition, the applicant must certify to the department that he or she has reviewed the regulations of the New York State Department of Health and the U.S. Department of Health and Human Services, relating practice as directed by the department.

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

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

tory, as prescribed. The limited permit has a one-year duration and may be renewed once for good cause.

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

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

Subpart 79-15 of the Regulations of the Commissioner of Education is added to establish requirements for certification as clinical laboratory technicians. Section 79-15.1 establishes education requirements: holding an associate or higher degree awarded upon successful completion of an associate or higher degree program in clinical laboratory technician registered as leading to certification as a clinical laboratory technician pursuant to section 52.38 of this Title; or holding an associate or higher degree awarded upon successful completion of an associate or higher degree program in clinical laboratory technician that is substantially equivalent. The applicant must also certify to the department that he or she has reviewed the regulations of the New York State Department of Health and the U.S. Department of Health and Human Services, relating to practice as directed by the department.

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

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

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

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 210 of the Education Law grants to the Board of Regents the authority to register domestic and foreign institutions in terms of New York standards.

Subdivision (3) of section 212 of the Education Law authorizes the State Education Department to determine and set fees for certification and permits, for which fees are not set or otherwise provided.

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the Article of the Education Law for the particular profession.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and practice of the professions.

Paragraph (a) of subdivision (3) of section 6507 of the Education Law provides that the State Education Department shall establish standards for pre-professional and professional education, experience, and licensing examinations, as required to implement the Article for each profession.

Paragraph (a) of subdivision (4) of section 6507 of the Education Law authorizes the State Education Department to establish standards for and register or approve educational programs designed for the purpose of providing educational preparation for licensure.

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Regents and the Department in matters of professional licensure and practice.

Paragraphs (b) and (c) of subdivision (1) of section 8605 of the Education Law authorizes the State Education Department to establish implementing standards for the education and examination that must be successfully completed to qualify for a license as a clinical laboratory technologist.

Paragraphs (b) and (c) of subdivision (2) of section 8605 of the Education Law authorizes the State Education Department to establish implementing standards for the education and examination that must be successfully completed to qualify for a license as a cytotechnologist.

Subdivisions (2) and (3) of section 8606 of the Education Law authorizes the State Education Department to establish implementing standards for the education and examination that must be successfully completed to qualify for certification as a clinical laboratory technician.

Subdivision (1) of section 8607 of the Education Law establishes special provisions for licensure as a clinical laboratory technologist and cytotechnologist and certification as a clinical laboratory technician.

Subdivision (2) of section 8607 of the Education Law establishes a time-frame for applying special provisions for licensure and certification and a phase-in period for those applying under these provisions.

Section 8608 of the Education Law authorizes the State Education Department to establish regulations for the issuance of limited permits that allow an individual to practice as clinical laboratory technologists, cytotechnologists, and clinical laboratory technicians.

2. LEGISLATIVE OBJECTIVES:

The proposed regulation carries out the intent of the aforementioned statute in that it, as directed by statute, establishes standards implementing education and examination requirements and special provisions for licensure as a clinical laboratory technologist and as a cytotechnologist and certification as a clinical laboratory technician under Article 165 of the Education Law.

3. NEEDS AND BENEFITS:

The purpose of the proposed regulation is to implement the provisions of Article 165 of the Education Law by establishing requirements for licensure as a clinical laboratory technologist or cytotechnologist and for certification as a clinical laboratory technician, requirements for limited permits in these fields, and standards for registered college preparation programs for these professions.

Chapter 755 of the Laws of 2004 added a new Article 165 to the Education Law. Article 165 provides for the licensing of clinical laboratory technologists and cytotechnologists and the certification of clinical laboratory technicians, and establishes these three professions as practice and title protected, under a State Board for Clinical Laboratory Technology. The proposed regulation is needed to implement Article 165 of the Education Law by establishing specific education and examination requirements that an applicant for licensure or certification must meet.

In addition, in accordance with the requirements of Article 165 of the Education Law, the proposed regulation is needed to set forth standards for registered college programs that lead to licensure as a clinical laboratory technologist and cytotechnologist and certification as a clinical laboratory technician.

The regulation is needed to establish requirements for limited permits to practice each of the three professions in accordance with statute. It also establishes a definition for the general supervision of the limited permit holder by the director of the clinical laboratory, and a fee for the limited permit.

As authorized by statute, the proposed regulation is also needed to implement special licensure and certification requirements for applicants who are already practicing in these fields or have related education and/or experience (grandparenting applicants). This will ease the transition to licensure or certification for these individuals.

4. COSTS:

(a) Costs to State government: The proposed regulation will not impose any additional cost on State government, including the State Education Department, over and above the costs imposed by Article 165 of the Education Law for administering these new professions.

(b) Cost to local government: The proposed promulgation establishes requirements for licensure as a clinical laboratory technologist and cytotechnologist and certification as a clinical laboratory technician. The regulation will not impose additional costs on local government. The regulation will not impose additional costs on licensed clinical laboratories that are operated by local governments. While the regulation does not directly regulate clinical laboratories, it requires the applicant for the limited permit to document that the level of supervision will meet the regulation's definition of "general supervision" by the clinical director before a limited permit will be issued by the State Education Department. The proposed regulation's standard for general supervision by the director of a licensed clinical laboratory of limited permit holders in the three professions was developed after consultation with Department of Health, and is consistent with the level of supervision that the director already is required to provide such employees by Department of Health regulations. Therefore, the regulation will not impose additional costs on the licensed clinical laboratories that are operated by local governments.

(c) Cost to private regulated parties: The proposed regulation requires an applicant for a limited permit to practice as a clinical laboratory technologist, cytotechnologist, or clinical laboratory technician to pay an application fee of \$50. The proposed regulation will not impose any other costs on regulated parties over and above those imposed by Article 165 of the Education Law. Article 165 establishes licensure and registration fees. Article 165 requires applicants for licensure as a clinical laboratory technologist or cytotechnologist to be educated at the baccalaureate degree level, and applicants for certification as a clinical laboratory technician to be educated at the associate degree level. The proposed regulation simply establishes the content of the coursework, and imposes no additional educational costs beyond those imposed by the statutory requirement. The proposed regulation's standard for general supervision by the director of a licensed clinical laboratory of limited permit holders in the three professions is consistent with the level of supervision that the director already is required to provide such employees by Department of Health regulations. Therefore, the regulation will not impose additional costs on the licensed clinical laboratories operated as private businesses.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed regulation does not impose costs on the State Education Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed regulation implements the requirements of Article 165 of the Education Law and concerns requirements that individuals must meet to be licensed as clinical laboratory technologists and as cytotechnologists and certified as clinical laboratory technicians. Therefore, the regulation does not regulate local governments, except for one provision. That provision concerns the definition for "general supervision" by the director of a clinical laboratory for holders of limited permits in these professions. Education Law section 8608 requires the Department to define this term. The clinical laboratory may be operated by a local government. While the regulation does not directly regulate the clinical laboratory, it requires the applicant for the limited permit to document that the level of supervision will meet the regulatory requirement before a limited permit will be issued by the State Education Department. The proposed regulation does not impose any other program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed regulation imposes no additional reporting or record-keeping requirements beyond those imposed by Article 165 of the Education Law. In accordance with Article 165, applicants for licensure will be required to submit to the State Education Department evidence of meeting licensure requirements. Colleges and universities seeking registration of preparation programs leading to licensure in the three new professions will be required to submit to the State Education Department evidence of meeting program registration requirements.

7. DUPLICATION:

The proposed regulation does not duplicate other existing State or Federal requirements. There are no State or Federal requirements for the licensure of clinical laboratory technologists, cytotechnologists or clinical laboratory technicians for employment in New York State. The State Education Department consulted with the State Department of Health during the development of this regulation to ensure that the proposed regulations coordinate with Health Department regulations for licensed clinical laboratories. The proposed requirements meet or exceed requirements for the qualifications of clinical laboratory technical personnel, for employment in licensed clinical laboratories, established in the regulations of the Department of Health. Accordingly, individuals licensed or certified under the proposed regulations will meet Health Department requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed regulation and none were considered. The proposed regulation implements statutory requirements.

9. FEDERAL STANDARDS:

There are no Federal standards for the licensure of clinical laboratory technologists, cytotechnologists or clinical laboratory technicians, the subject of the proposed regulation. The education requirements for the licensure or certification in these fields require applicants to certify that they have reviewed the rules and regulations of the U.S. Department of Health and Human Services, relating to practice in these fields, in accordance with written guidance by the State Education Department.

10. COMPLIANCE SCHEDULE:

Applicants for licensure or certification must comply with the regulation on the stated effective date. In accordance with section 8607(2) of the Education Law, the regulation permits a transition period for applicants who apply on or before September 1, 2007 under the special provisions available to individuals who are already practicing in these fields or have specified related education and/or experience (grandparenting applicants). Such applicants who certify to a good faith belief that they will have met the requirements for licensure or certification by the prescribed completion dates, which in no case will be later than September 1, 2008, will be deemed qualified to practice from the date of filing the application with the State Education Department until such time as the Department has acted upon the application.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

This proposal implements the provisions of Article 165 of the Education Law by establishing requirements for the licensure of individuals as clinical laboratory technologist or cytotechnologist and certification of individuals as clinical laboratory technicians, and standards for registered college preparation programs leading to licensure in these fields. Such licensed and certified individuals are employed at clinical laboratories licensed and regulated by the New York State Department of Health. Of 3,800 licensed clinical laboratories located in New York State, 586 report that they are small businesses and 183 are operated by local governments, according to the New York State Department of Health.

2. COMPLIANCE REQUIREMENTS:

The regulation establishes education and examination requirements for individuals to be licensed as clinical laboratory technologists or cytotechnologists or certified as clinical laboratory technicians. Therefore, the regulation does not regulate small businesses or local governments, except for one provision. That provision concerns the definition for "general supervision" of limited permit holders in these professions by the director of a clinical laboratory. Education Law section 8608 requires the Department to define this term. While the regulation does not directly regulate the clinical facility, it requires the applicant for the limited permit to document that the level of supervision will meet the regulatory requirement before a limited permit will be issued by the State Education Department.

The regulation requires the director of the clinical laboratory to readily available for consultation with the permit holder, as needed, and to be responsible for the performance and findings of all tests carried out by the permit holder, either by directly overseeing such testing, or by delegating

this responsibility to authorized supervisors who are on site within the laboratory, among other requirements.

3. PROFESSIONAL SERVICES:

The proposed regulation will not require licensed clinical laboratories that are classified as small businesses or operated by local governments to hire professional services to comply.

4. COMPLIANCE COSTS:

The regulation will not impose additional costs on licensed clinical laboratories that are small businesses or are operated by local governments. The standard for general supervision by the director of a licensed clinical laboratory of limited permit holders in the three professions was developed after consultation with Department of Health, and is consistent with the level of supervision that the director already is required to provide such employees by Department of Health regulations. Therefore, the regulation will not impose additional costs on the licensed clinical laboratories that are classified as small businesses or operated by local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed regulation will not impose any technological requirements on regulated parties, including those that are classified as small businesses, and is economically feasible. See above "Compliance Costs" for the economic impact of the regulation.

6. MINIMIZING ADVERSE IMPACT:

The standard for general supervision by director's of clinical laboratory of limited permit holders in the three professions will allow licensed clinical laboratories, including those that are small businesses or operated by local governments, a great deal of flexibility to determine how the limited permit holder will be supervised. The proposed regulatory standards for general supervision by directors of licensed clinical laboratories of limited permit holders in the three professions are consistent with the level of supervision that the director already is required to provide such employees by Department of Health regulations, because of the flexibility of the proposed standards and the fact that they are consistent with Department of Health requirements, different standards for licensed clinical laboratories that are small businesses or operated by local governments are not appropriate or necessary.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The State Board for Clinical Laboratory Technology and its extended panel, include members who have experience working in clinical laboratories that are classified as small businesses or operated by local governments. Both the Board and its extended panel worked with staff of the State Education Department to develop the proposed regulation. In addition, the State Education Department communicated with directors and other supervisory staff of clinical laboratories, including those that are small businesses or operated by local governments, during the development of the proposed regulation. Staff of the Department met with large groups of individuals who are employed as clinical laboratory technologists, cytotechnologists, and clinical laboratory technicians at clinical laboratories that are small businesses and operated by local governments, among others, to obtain their input during the development of the regulation. The Department also sent the proposed regulation to licensed clinical laboratories across the State, including those that are small businesses and operated by local governments of the State.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed regulation will apply statewide to all individuals who apply for licensure as clinical laboratory technologists and cytotechnologists and certification as clinical laboratory technicians (approximately 30,000 individuals), and colleges statewide that seek registration of programs leading to licensure and certification in these fields, including those located in the 44 rural counties of New York State with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

Chapter 755 of the Laws of 2004 added a new Article 165 to the Education Law. Article 165 provides for the licensing of clinical laboratory technologists and cytotechnologists and the certification of clinical laboratory technicians, and establishes these three professions as practice and title protected, under a State Board for Clinical Laboratory Technology. The proposed regulation implements the requirements of Article 165 of the Education Law by establishing specific education and examination standards that an applicant for licensure or certification must meet.

In addition, in accordance with the requirements of Article 165 of the Education Law, the proposed regulation set forth standards for registered

college preparatory programs that lead to licensure or certification in these fields.

The proposed regulation establishes requirements for limited permits to practice each of the three professions in accordance with statute. It establishes a definition for general supervision by the director of a clinical laboratory of the limited permit holder, and a fee for the limited permit.

As authorized by statute, the proposed regulation also implements statutory provisions designed to permit applicants who are already practicing in these fields or have related education and/or experience to be licensed or certified under special provisions (grandparenting applicants).

The proposed regulation does not impose reporting requirements over and above that required by statute. In accordance with statutory requirements, applicants for licensure or certification in these three professions will have to submit to the State Education Department evidence of meeting licensure or certification requirements. Colleges and universities seeking registration of programs leading to licensure or certification in these fields will be required to submit to the State Education Department evidence of meeting program registration requirements.

The proposed regulation will not impose recordkeeping requirements on regulated parties, and will not require regulated parties to obtain professional services to comply beyond the educational services needed to meet the professional education requirements for licensure or certification.

3. COSTS:

The proposed regulation requires an applicant for a limited permit to practice as a clinical laboratory technologist, cytotechnologist, or clinical laboratory technician to pay an application fee of \$50. The regulation will not impose any other additional costs on regulated parties over and above those imposed by Article 165 of the Education Law, which establishes licensure and registration fees. Article 165 requires applicants for licensure as a clinical laboratory technologist or cytotechnologist to be educated at the baccalaureate level, and applicants for certification as a clinical laboratory technician to be educated at the associate degree level. The proposed regulation simply establishes the content of the coursework for the college preparation program, and imposes no additional educational costs beyond those imposed by the statutory requirement. The proposed regulation's standard for general supervision by the director of a licensed clinical laboratory of limited permit holders in the three professions is consistent with the level of supervision that the director already is required to provide such employees by Department of Health regulations. Therefore, the regulation will not impose additional costs on clinical laboratories for supervision. The proposed regulation will not require regulated parties to incur capital costs.

4. MINIMIZING ADVERSE IMPACT:

The proposed regulation implements and clarifies education and examination standards required for licensure as a clinical laboratory technologist or cytotechnologist and certification as a clinical laboratory technician, as directed by Article 165 of the Education Law. It also establishes requirements for college programs registered as leading to licensure in these fields. The statute makes no exception for individuals or entities located in rural areas of the State. The State Education Department has determined that such requirements should apply to all individuals seeking licensure or certification no matter their geographic location to ensure an adequate standard of competency across the State. Likewise, the Department has determined that registered college programs that lead to licensure should be subject to the same requirements, regardless of their geographic location, to ensure that candidates for licensure are adequately prepared. Because of the nature of the proposed rule, alternative approaches for entities located in rural areas of the State were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed regulation were solicited from statewide organizations representing parties having an interest in the practice of the three professions. Included in this group was the State Board for Clinical Laboratory Technology, and professional associations and collective bargaining organizations representing individuals practicing these professions. These groups have members who live or work in rural areas. Staff of the State Education Department met with large groups of individuals who are employed in the three fields to obtain their input during the development of the regulation. These groups included individuals from rural areas of New York State. In addition, comments were solicited from colleges and universities in the State that offer programs that prepare clinical laboratory technologists, cytotechnologists, and clinical laboratory technicians, some of which are located in rural areas. The Department also sent the proposed regulation to licensed clinical laboratories across the State, including those that are located in rural areas of New York State.

Job Impact Statement

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

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

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

Insurance Department

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Reinsurance Credit from Unauthorized Insurers

I.D. No. INS-48-05-00001-C

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

The notice of proposed rule making, I.D. No. INS-48-05-00001-P was published in the *State Register* on November 30, 2005.

Subject: Credit for reinsurance from unauthorized insurers.

Purpose: To limit and apply other standards to securities eligible for deposit in a Regulation 20 trust fund for alien reinsurers when those securities are funded, of obligated to be funded, by cash flows that emanate from the alien reinsurers establishing the trust. Among other things, the proposal will allow the Superintendent to limit the amount of these types of securities that will be permitted in any reinsurer's individual trust, with the maximum amount in any such trust fund being 40 percent of the total required.

Substance of rule: Regulation 20 [11 NYCRR 125.4(c)] provides that an insurer ceding risk to an alien insurer (non-U.S. insurer) may only reflect the benefit of that reinsurance if certain conditions are met. Regulation 20 provides alien reinsurers with the means whereby they may secure their United States obligations through the establishment of a multi-beneficiary trust. The current regulation requires that funds held in such a trust must be in the form of cash or readily marketable securities that meet certain standards. These amendments establish standards and limitations on such securities when they are of the type that are highly rated and are funded, or obligated to be funded, by cash flows that emanate from a group of alien reinsurers establishing the trusts to meet the requirements of Regulation 20. The limitations include a maximum allowance for such securities. The Superintendent will establish the limitation, with the maximum for each alien assuming reinsurer (or each member of a group of assuming reinsurers) not to exceed forty percent.

Changes to rule: No substantive changes.

Expiration date: November 30, 2006.

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

Data, views or arguments may be submitted to: Michael Moriarty, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5127, e-mail: mmoriart@ins.state.ny.us

Long Island Power Authority

NOTICE OF ADOPTION

Fuel and Purchased Power Costs

I.D. No. LPA-04-06-00005-A

Filing date: May 9, 2006

Effective date: May 9, 2006

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

Action taken: The authority adopted a proposal involving the recovery of fuel and purchased power costs for the year 2006 and future years.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Fuel and purchased power costs.

Purpose: To provide for the recovery of fuel and purchased power costs.

Text or summary was published in the notice of proposed rule making, I.D. No. LPA-04-06-00005-P, Issue of January 25, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Richard M. Kessel, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700

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.

Niagara Frontier Transportation Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Procurement Guidelines

I.D. No. NFT-21-06-00005-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 1159.4 of Title 21 NYCRR.

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

Subject: Procurement guidelines.

Purpose: To amend the NFTA's procurement guidelines to make technical corrections and conform to Federal law.

Text of proposed rule: Subsection (vi) to subsection (2) of subdivision (i) of section 1159.4 is amended to read as follows:

(vi) solicitation of [separately packaged and] sealed technical proposals [and cost proposals] from each of the consultants;

Subsection (vii) to subsection (2) of subdivision (i) of section 1159.4 is amended to read as follows:

(vii) the selection board, at its option may conduct interviews/presentations/discussions. If this option is elected, interviews/presentations/discussions must be held with each consultant who has submitted a technical proposal [and a cost proposal];

Subsection (ix) to subsection (2) of subdivision (i) of section 1159.4 is amended to read as follows:

(ix) initiate discussions with the most qualified, acceptable proposer to develop and agree upon the scope of work. Thereafter, the NFTA prepares its engineer's estimate and requests the cost proposal of the most qualified, acceptable proposer;

Subsection (x) to subsection (2) of subdivision (i) of section 1159.4 is amended to read as follows:

(x) upon completion of the engineer's estimate the selection board shall open and review the cost proposal [of only the most qualified, acceptable proposer]. Thereafter, negotiations are undertaken;

Subsection (xi) to subsection (2) of subdivision (i) of section 1159.4 is repealed, and subsections (xii), (xiii) and (xiv) are renumbered to be subsections (xi), (xii) and (xiii).

Subsection (xi) to subsection (2) of subdivision (i) of section 1159.4 is amended to read as follows:

(xi) if a fair and reasonable price cannot be reached with the most qualified, acceptable proposer, negotiations are commenced with the next most qualified and acceptable proposer. The cost proposal of the next most qualified proposer may be [opened] *requested* only after negotiations with the most qualified proposer have been formally terminated. This process shall be repeated until the successful negotiation of a fair and reasonable contract price for an acceptable proposal from a qualified proposer is reached, or until the procurement is discontinued;

Subsection (2) of subdivision (k) of section 1159.4 is amended to read as follows:

(2) A sole-source award is justified under circumstances limited to the following:

- (i) a validated "single bid;"
- (ii) emergency (subdivision [v] of this section);
- (iii) exigency (subdivision [v] of this section);
- (iv) expediency (waiver of competition, for cause, by a two-thirds vote of the board of commissioners) (subdivision [w] of this section); or
- (v) a validated "single source" (paragraph [4] of this subdivision).

A cost or price analysis must be prepared for all sole source awards in accordance with FTA guidelines.

Subdivision (x) of section 1159.4 is amended to read as follows:

(x) Records retention. Procurement records shall be retained in accordance with the New York State Records Retention Manual.

Every procurement file shall contain, at a minimum, records detailing:

- (A) *the rationale for the method of procurement,*
- (B) *the rationale for the selection of contract type,*
- (C) *reasons for contractor selection or rejection, and*
- (D) *the basis for the contract price.*

Subsection (i) to subsection (3) to subdivision (z) of section 1159.4 is amended to read as follows:

(i) The engineering department shall serve as the user department for all major public work projects.

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

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 Niagara Frontier Transportation Authority has determined that no person is likely to object to the rule being repealed or the rule as written for the following reasons:

1. All of the changes are being made to conform the regulations to existing laws and regulations and/or are technical in nature.
2. None of the changes are controversial.

Job Impact Statement

The Niagara Frontier Transportation Authority has determined adoption of the proposed rule will have no impact on jobs or employment opportunities for the following reasons:

1. The subject of the proposed rule are technical corrections to the NFTA's Procurement Guidelines. Changes to the rules will not impact the level of procurements made by the NFTA, and therefore will not impact jobs or employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Memorandum of Agreement of Net Congestion Charges by Niagara Mohawk Power Corporation

I.D. No. PSC-01-06-00010-A

Filing date: May 4, 2006

Effective date: May 4, 2006

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

Action taken: The commission, on March 15, 2006, adopted an order in Case 05-E-1604 regarding Niagara Mohawk Power Corporation's (Niagara Mohawk) petition for a memorandum of agreement on net congestion charges associated with the March 2004 Leeds substation outage.

Statutory authority: Public Service Law, section 66

Subject: Memorandum of agreement on net congestion charges associated with the March 2004 Leeds substation outage.

Purpose: To implement a memorandum of agreement that would pass back to customers \$6.0 million through Niagara Mohawk's Transmission Revenue Adjustment Clause, P.S.C. No. 207, Electricity, Rule 43.

Substance of final rule: The Commission approved the terms of the Memorandum of Agreement on Net Congestion Charges associated with the March 2004 Leeds Substation Outage between Niagara Mohawk Power Corporation and Department of Public Service Staff and directed Niagara Mohawk to pass back \$6 million to ratepayers immediately through the Transmission Revenue Adjustment Clause mechanism, 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. (05-E-1604SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

2005 Reliability Report by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-21-06-00006-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 (commission) is considering Consolidated Edison Company of New York, Inc.'s (Con Edison or the company) report on 2005 performance under electric service reliability performance mechanism (2005 reliability report). Specifically, the commission will consider whether Con Edison has met all of the performance standards as prescribed by the commission in the company's current rate plan.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Con Edison's 2005 reliability report.

Purpose: To consider whether Con Edison has met all of the performance standards as prescribed by the commission in the company's current rate plan.

Substance of proposed rule: The Public Service Commission (Commission) is considering Consolidated Edison Company of New York, Inc.'s (Con Edison or the company) Report on 2005 Performance under Electric Service Reliability Performance Mechanism (2005 Reliability Report). Specifically, the Commission will consider whether Con Edison has met all of the required performance standards set forth in the Joint Proposal of the company's current Rate Plan. Con Edison has stated that a revenue

adjustment of \$8 million is applicable for failure to meet threshold standards for network and radial interruption duration. The company states that it has met all other threshold targets, including targets for interruption frequency, major outages, pole repairs, shunt removal, no current street-light repairs, over duty circuit breaker replacement.

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.
(04-E-0572SA8)

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

Electric Utility Emergency Plans by Niagara Mohawk Power Corporation

I.D. No. PSC-21-06-00007-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 reviewing the performance of Niagara Mohawk Power Corporation (NMPC) following electric service interruptions resulting from a windstorm in Feb. 2006. The commission may direct NMPC to take actions or make improvements to its emergency plans to ensure appropriate utility performance in the future.

Statutory authority: Public Service Law, sections 2, 5, 65(1) and 66(21)

Subject: Improvements to electric utility emergency plans.

Purpose: To consider notifications to utility emergency plans as they relate to performance during and after storms.

Substance of proposed rule: The Public Service Commission is reviewing the performance of Niagara Mohawk Power Corporation (NMPC) following electric service interruptions resulting from a windstorm in February 2006. Based on this review, the Commission may direct such actions or improvements to NMPC's emergency plans as are necessary to ensure appropriate performance during and after future storm events.

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-M-0496SA1)

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

Electric Utility Emergency Plans by Consolidated Edison Company of New York, Inc. and New York State Electric and Gas Corporation

I.D. No. PSC-21-06-00008-P

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

Proposed action: The Public Service Commission is reviewing the performance of Consolidated Edison Company of New York, Inc. (Con Edison) and New York State Electric and Gas Corporation (NYSEG) following electric service interruptions resulting from a windstorm in Jan. 2006. The commission may direct the utilities to take actions or make improvements to their emergency plans to ensure appropriate utility performance in the future.

Statutory authority: Public Service Law, sections 2, 5, 65(1) and 66(21)

Subject: Improvements to electric utility emergency plans.

Purpose: To consider notifications to utility emergency plans as they relate to performance during and after storms.

Substance of proposed rule: The Public Service Commission is reviewing the performance of Consolidated Edison Company of New York, Inc. (Con Edison) and New York State Electric and Gas Corporation (NYSEG) following electric service interruptions resulting from a windstorm in January 2006. Based on this review, the Commission may direct such actions or improvements to the utilities' emergency plans as are necessary to ensure appropriate performance during and after future storm events.

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-M-0548SA1)

State University of New York

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

Traffic and Parking Regulations at the SUNY College of Technology at Delhi

I.D. No. SUN-21-06-00001-P

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

Proposed action: Amendment of sections 574.1 and 574.5 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Traffic and parking regulations of the State University of New York College of Technology at Delhi.

Purpose: To increase the allowable amount for parking fines and bring the traffic and parking regulations into conformity with chapter 699, Laws of 2005, by authorizing the exemption of veterans attending the State University of New York College of Technology at Delhi from parking and registration fees.

Text of proposed rule: Section 574.1 is amended by adding a new subdivision (d) to read as follows:

§ Application of rules.

(d) Veterans. Any veteran, as defined in section 360 of the New York State Education Law, in attendance as a student at the State University College of Technology at Delhi shall be exempt from registration and parking fees upon submission by the veteran of a written request for exemption together with written certification by the veteran that such veteran was honorably discharged or released under honorable circumstances from such service.

Subdivision (c) of section 574.5 is amended to read as follows:

§ 574.5 Penalties for violations.

(c) Such fine for each violation shall be \$[20] 25 for the first and each subsequent violation. In addition, for each violation of regulations or rules related to handicapped parking areas, the fine shall be \$[35] 50 for the first and each subsequent violation.

Text of proposed rule and any required statements and analyses may be obtained from: Marti Anne Ellermann, Senior Managing Campus Counsel, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: Marti.Ellermann@suny.edu

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: Education Law § 360(1) authorizes the State University Trustees to make rules and regulations relating to parking, vehicular and pedestrian traffic and safety on the State-operated campuses of the State University of New York.

2. Legislative objectives: The present measure will bring the parking and traffic regulations applicable to the State University of New York College of Technology at Delhi into compliance with Chapter 699 of the Laws of 2005 by authorizing SUNY/Delhi to exempt veterans attending the College from applicable parking and registration fees and also will increase allowable fines for violation of parking regulations.

3. Needs and benefits: New York State Education Law was amended to authorize exemption of veterans from State University parking and registration fees. This amendment is needed to conform the SUNY/Delhi parking and traffic regulations to the change in law. Additionally, parking fine thresholds applicable to violation of campus parking regulations have not been changed for a number of years. In the meantime, many municipalities have increased parking fines for violation of local parking ordinances, particularly for violation of handicapped parking rules. The increase proposed here will allow SUNY/Delhi to have their fines increased to levels comparable to local municipal rules, thus strengthening incentives to avoid violation of campus parking rules.

4. Costs: Veterans enrolled at State-operated campuses of the State University will have exemptions from parking and registration fees and thus incur savings. Parking violators will experience higher fines.

5. Local government mandates: None.

6. Paperwork: Veterans will have to submit a written request for exemption and certify that they were honorably discharged.

7. Duplication: None.

8. Alternatives: There are no viable alternatives.

9. Federal standards: There are no related Federal standards.

10. Compliance schedule: SUNY/Delhi will notify those affected as soon as the rule is effective. Compliance should be immediate.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because this proposal does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College of Technology at Delhi.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because this proposal will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College of Technology at Delhi.

Job Impact Statement

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College of Technology at Delhi.