

# RULE REVIEW

---

## Department of State

Review Pursuant to State Administrative Procedure Act Section 207 of Rules Adopted by the Department of State in Calendar Year 2004 and Calendar Year 1999

Pursuant to Section 207(4) of the State Administrative Procedure Act (SAPA), the Department of State hereby gives notice that it has reviewed the following regulations which were adopted during 2004 and 1999. A summary of each of these rules was published in the Rule Review section of the January 14, 2009 edition of the State Register. The Department of State did not receive any comments from the public regarding any of these rules.

For further information about any of these rules, contact: Nathan A. Hamm, Office of Counsel, Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, New York 12231-0001, (518) 474-6740.

### RULES ADOPTED IN 2004

- (1) DOS-31-03-00001 Approval of Real Estate Courses  
Amended Part 176 of Title 19 NYCRR to update then existing rules relating to the approval of real estate courses and schools offering qualifying education to prospective real estate brokers and salespersons, and to eliminate obsolete portions of then existing rules

Analysis of the need for the rule: The rule is needed so that the New York State Real Estate Board can fulfill its statutory responsibilities found in Article 12-A of the Real Property Law concerning setting statewide standards for real estate courses and schools.

The rule will be continued without modification because it is required if the Real Estate Board is to continue to fulfill these responsibilities.

Statutory authority for the rule: Real Property Law, sections 442-k(2) and (3)

- (2) DOS-34-04-00006 Identification of Buildings Utilizing Truss Type Construction  
Added Part 1264 to Title 19 NYCRR to establish requirements for signs which identify the existence of truss construction in a building

Analysis of the need for the rule: Subdivision 2 of Executive Law section 382-a directed the State Fire Prevention and Building Code Council to promulgate such rules and regulations as it deemed necessary to put into effect the provisions of subdivision 1 of section 382-a. Subdivision 1 requires that all commercial and industrial buildings and structures which utilize truss type construction be marked with a sign or symbol which will notify fire and other emergency personnel that truss construction exists in the structure. This rule making established specific requirements which must be satisfied to identify buildings and structures which utilize truss type construction.

The rule will be continued without modification because it has

provided useful guidance concerning the identification of buildings and structures which utilize truss type construction.

Statutory authority for the rule: Executive Law, section 382-a

- (3) DOS-52-03-00002 Inspection of College Buildings for Fire Safety Compliance  
Added to new Part 500 to Title 19 NYCRR to protect college students and staff from injury and death caused by fires

Analysis of the need for the rule: Chapter 81 of the Laws of 2002 amended Education Law section 807-b and added a new Executive Law section 156-e which directed the Department of State Office of Fire Prevention and Control to conduct fire inspections at least annually at all public and independent college buildings located outside of New York City to ensure compliance with the State Uniform Fire Prevention and Building Code. Part 500 of Title 19 NYCRR was adopted pursuant to statutory authorization found in Education Law section 807-b(3) (which permits the establishment of minimum standards for the content and frequency of inspections) and statutory authorization found in Executive Law section 156-e(2) (which permits the adoption of rules regarding the issuance of violations, compliance with orders, and providing time for compliance, reinspection procedures, and issuance of certificates of conformance).

Although no comments were received concerning this rule, it is in the process of being amended. This amended rule will enable OFPC to perform its functions in a more effective manner and will reflect the experience and knowledge gained by OFPC since the initial promulgation of rules following the enactment of Chapter 81 of the Laws of 2002.

Statutory authority for the rule: Executive Law sections 91, 156, and 156-e, and Education Law, section 807-b

- (4) DOS-52-03-00019 Filing of Security Interests  
Repealed Parts 143 and 144 and added a new Part 143 to Title 19 NYCRR to implement the provisions of Article 9 of the Uniform Commercial Code concerning security interests

Analysis of the need for the rule: The rule was needed to implement the provisions of Article 9 of the Uniform Commercial Code, as revised by Chapter 84 of the Laws of 2001.

The rule will be continued without modification because it is needed for continuing implementation of the provisions of Chapter 84 of the Laws of 2001.

Statutory authority for the rule: Uniform Commercial Code, section 9-526-a and Executive Law, section 96-a

- (5) DOS-53-02-00018 Fire Safety Standards for Cigarettes to Limit Ignition Risk

Added a new Part 429 of Title 19 NYCRR to set fire safety standards for cigarettes which will insure that such cigarette meet performance standards which limit the risk that such cigarettes will ignite upholstered furniture, mattresses, or other household furnishings

Analysis of the need for the rule: The rule was needed because Executive Law Section 156-c(2)(a) required the Department of State Office of Fire Prevention and Control to promulgate fire safety standards for cigarettes sold or offered for sale in New York State.

No comments were received concerning this rule, however, it is in the process of being amended to conform to statutory amendments.

Statutory authority for the rule: Executive Law, section 156-c(2)(a)  
RULES ADOPTED IN 1999

- (1) DOS-06-99-00001 Cemetery Corporations  
Amended Parts 200-203 of Title 19 NYCRR to remove outdated terminology and make the regulations easier to comprehend

Analysis of the need for the rule: The rule was needed to clarify, revise, and delete language in rules regulating cemeteries organized under Article 15 of the Not-for-Profit Corporation Law and regulated by the State Cemetery Board. The rule reduced operating costs to cemeteries and was of particular benefit to smaller cemeteries.

The rule will be continued without modification because cemeteries have benefitted and continue to benefit from its provisions.

Statutory authority for the rule: Not-for-Profit Corporation Law, section 1504(c)(1)

- (2) DOS-09-99-00005 Natural Hair Styling License  
Repealed section 162.3 and added a new section 162.3 to Title 19 NYCRR to establish qualifying education requirements for the natural hair styling license

Analysis of the need for the rule: After much study and consideration, the Appearance Enhancement Advisory Committee of the Department of State and the Education Department determined that it was necessary to establish a curriculum which would meet the minimum training needed to provide assurance to the public that an applicant is reasonably competent to provide natural hair styling services.

The rule will be continued without modification because the establishment of a training curriculum remains necessary in order to provide assurance to the public that an applicant is reasonably competent to provide natural hair styling services.

Statutory authority for the rule: General Business Law, section 404; Chapter 343 of the Laws of 1998, section 3

- (3) DOS-17-99-00008 Qualifying Education for the Waxing License  
Amended sections 160.1(b), 160.2, 160.10(b) and 160.36 and added section 162.5 to Title 19 NYCRR to include the waxing license under the general rules of practice applicable to appearance enhancement practitioners and prescribe the curriculum that must be completed by applicants for the waxing license

Analysis of the need for the rule: After much study and deliberation, the Department of State, the Appearance Enhancement Advisory Committee, and the Education Department determined that the rule would provide a curriculum containing the minimum amount of training that will provide assurance that an applicant is reasonably competent to provide waxing services to the public. In addition, the rule added the practice of waxing to the general rules of practice applicable to all other appearance enhancement licensees.

The rule will be continued without modification because the establishment of a training curriculum remains necessary in order to

provide assurance to the public that an applicant is reasonably competent to provide waxing services.

Statutory authority for the rule: General Business Law, section 404; Chapter 343 of the Laws of 1998, section 3

- (4) DOS-28-99-00001 Experience Credit for Mass Appraisals  
Repealed section 1102.6(b) and added a new section 1102.7 to Title 19 NYCRR to recognize mass appraisal credit for the purposes of licensing and certification

Analysis of the need for the rule: The rule repealed section 1102.6(b) to Title 19 NYCRR which provided that mass appraisals could not be used as qualifying experience for purposes of licensing and certification of real estate appraisers, and added a new section 1102.7 to Title 19 NYCRR which established criteria for granting credit for mass appraisals. This change was necessary because the State Board of Real Estate Appraisal recognized mass appraisals to be a valid form of real estate appraisal practice and therefore concluded that mass appraisal experience should be credited for licensing and certification purposes under Article 6-E of the Executive Law.

The rule will be continued without modification because the State Board of Real Estate Appraisal continues to believe that mass appraisals is a valid form of real estate appraisal practice.

Statutory authority for the rule: Executive Law, section 160-d(1)(a)

- (5) DOS-28-99-00002 Qualifying Education Requirements for State Licensed Real Estate Appraisers  
Amended section 1103.8 of Title 19 NYCRR to conform New York's qualifying education standards to standards adopted by the Appraisal Qualification Board of the Appraisal Foundation

Analysis of the need for the rule: Executive Law section 160-d(1)(a) provides that the New York State Board of Real Estate Appraisal (State Board) shall adopt rules and regulations to define the type of educational experience, appraisal experience, and equivalent experience that will meet the statutory requirements for certification and licensing of real estate appraisers. The requirements adopted by the State Board may not be less than the minimum criteria established by the Appraisal Qualification Board of the Appraisal Foundation. Acting pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. §§ 3310-3351), the Appraisal Qualification Board raised the qualifying education standards for State licensed appraisers from 75 to 90 hours, effective on January 1, 1998. The adoption of this rule ensured that the educational standards for State licensed real estate appraisers would not be less than established federal standards.

Although no comments were received concerning this rule, it is in the process of being amended so that its language will conform to significant revisions made to the education requirements for real estate appraisers made by the Federal Appraisal Qualifications Board in 2004.

Statutory authority for the rule: Executive Law, section 160-d(1)(a)

- (6) DOS-28-99-00003 Ethics and Standards Courses for State Licensed and Certified Real Estate Appraisers  
Amended section 1103.10 of Title 19 to allow schools more flexibility in developing ethics and standards courses for State licensed and certified real estate appraisers

Analysis of the need for the rule: Applicants for real estate appraisers licensing and certification are required to complete a 15-hour course related to the ethics and standards of appraisal practice as part of their qualifying education (see sections 1103.8(a) and (c) of Title 19 NYCRR). In addition, licensed and certified real estate appraisers must complete a 15-hour course relating to the ethics and standards of appraisal practice every six years as part of their continuing education. Section 1103.10 of Title 19 NYCRR sets forth the basic requirements

for the ethics and standards course. Section 1103.10 was understood to require that schools teach a specific course that gave equal attention to each of the topics set forth in it. However, the State Board intended section 1103.10 to be a general guide and not a rigid curriculum. Therefore, to better express that intent, section 1103.10 was amended to make it clear that schools have flexibility in developing courses for ethics and standards.

Although no comments were received concerning this rule, it is in the process of being amended so that its language will conform to significant revisions made to the education requirements for real estate appraisers made by the Federal Appraisal Qualifications Board in 2004.

Statutory authority for the rule: Executive Law, section 160-d(1)(a) and (c)

- (7) DOS-31-99-00003 Exclusive Listing Contracts  
Amended section 175.24(c) of Title 19 NYCRR to repeal the requirement that a real estate broker provide a new client with a list of the names and addresses of the members of the local multiple listing service

Analysis of the need for the rule: Section 175.24(c) of Title 19 NYCRR was first adopted in 1977. At that time, most multiple listing services (MLSs) required that a seller offer subagency to all members of the MLS. To ensure that a seller could know the names and addresses of the real estate firms to which the offer of subagency was being made, section 175.24 required that the listing broker provide the seller with a list of all of the members of the MLS. By 1999, MLSs no longer required that the seller make an offer of subagency. Instead, the listing broker offered compensation to other member brokers who worked with the listing broker on a cooperative basis. The member of the MLS might be the buyer's brokers or co-operating brokers. In either case, the seller would have received a written agency disclosure form from each broker involved in the transaction, as required by section 443 of the Real Property Law. Consequently, the agency disclosure form supplanted the MLS list as the means by which the seller was notified of the agency status of the brokers involved in the transaction. As a result, the continued requirement that the seller receive the MLS list imposed an unnecessary paperwork requirement and consequent expense on the real estate industry.

The rule will be continued without modification because the circumstances which required its adoption in 1999 still exist.

Statutory authority for the rule: Real Property Law, section 443-k(1)

- (8) DOS-51-98-00001 Licensing of Armored Car Carriers  
Added Part 185 to Title 19 NYCRR to prescribe requirements for armored car carriers concerning records retention, and concerning fingerprinting, notification of name changes, and notification of employment or termination of guards

Analysis of the need for the rule: General Business Law section 89-ccc requires that armored car carriers be licensed before operating in New York State. This rule enabled applicants and licensees to comply with their statutory duties with regard to fingerprinting, retention of business records, notification of change of name, and notification of employment or termination of guards. Without this rule it would have been more likely that confusion and misunderstandings with regard to these matters would have resulted. This rule helped applicants and licensees avoid the delays and costs that would have resulted from such confusion and misunderstandings.

The rule will be continued without modification so that applicants and licensees will continue to be able to avoid delays and costs associated with applications and licensing for armored car carriers.

Statutory authority for the rule: General Business Law, section 89-lll

- (9) DOS-51-98-00002 Registration of Armored Car Guards  
Added Part 186 to Title 19 NYCRR to prescribe requirements for armored car guards concerning fingerprinting, a staggered registration schedule, and display of the State issued registration card

Analysis of the need for the rule: The rule was required to clarify how fingerprints of armored car guards are to be taken, to prescribe a staggered schedule of registration as required by § 89-uuu of the General Business Law, and to ensure that the identification cards of armored car guards are visible to the public.

The rule will be continued without modification because it has resulted in substantial benefits to the regulated public.

Statutory authority for the rule: General Business Law, section 89-yyy

- (10) DOS-52-98-00001 Qualifying Education Requirements for Certified General Real Estate Appraisers  
Amended section 1103.9 of Title 19 NYCRR to conform New York's qualifying education standards to standards adopted by the Appraisal Qualification Board of the Appraisal Foundation

Analysis of the need for the rule: If the rule had not been adopted, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council could have withdrawn its recognition of New York's program for certifying real estate appraisers. If this had happened, New York's certified general real estate appraisers would not have been eligible to perform appraisals for federally related real estate transactions, and, as a result, New York financial institutions would not have been able to participate in those transactions where federal law requires the use of a State certified real estate appraiser. Adoption of this rule ensured the continued recognition of New York's licensing and certification program and prevented disruption in New York's markets for real estate financing and the loss of employment opportunities for New York's licensed and certified real estate appraisers.

Although no comments were received concerning this rule, it is in the process of being amended so that its language will conform to significant revisions made to the education requirements for real estate appraisers made by the Federal Appraisal Qualifications Board in 2004.

Statutory authority for the rule: Executive Law, section 160-d(1)(a)

- (11) DOS-52-98-00002 Qualifying Experience Requirements for Certified Real Estate Appraisers  
Amended Part 1102 of Title 19 NYCRR to conform New York's qualifying experience standards to standards adopted by the Appraisal Qualification Board of the Appraisal Foundation

Analysis of the need for the rule: If the rule had not been adopted, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council could have withdrawn its recognition of New York's program for certifying real estate appraisers. If this had happened, New York's certified general real estate appraisers would not have been eligible to perform appraisals for federally related real estate transactions, and, as a result, New York financial institutions would not have been able to participate in those transactions where federal law requires the use of a State certified real estate appraiser. Adoption of this rule ensured the continued recognition of New York's licensing and certification program and prevented disruption in New York's markets for real estate financing and the loss of employment opportunities for New York's licensed and certified real estate appraisers.

For the reasons noted above, this rule will be continued without modification.

Statutory authority for the rule: Executive Law, section 160-d(1)(a)

