

RULE REVIEW

Department of Agriculture and Markets

Review of Existing Regulations

Pursuant to Section 207 of the State Administrative Procedure Act, notice is hereby provided of the continuation without modification of the following rules which the Department of Agriculture and Markets has reviewed in 2010. Notice that a review of these regulations would be conducted and public comment on that continuation or modification accepted until March 31, 2010 was published in the January 6, 2010 State Register. All section and Part references are to Title 1 of the New York Code of Rules and Regulations.

Part 6 Sampling and Testing Milk for Component Content.

Statutory Authority: Agriculture and Markets Law
Sections 16, 18, 46-a, 56 and 255.

Justification: The Department has determined that the continuation of this regulation without modification is necessary to retain the procedure for sampling and testing milk to assure that dairy farmers are accurately paid for milk produced by them.

Assessment of Public Comment: None received.

Part 45 Sanitation Requirements for Poultry Dealers and Poultry Transporters.

Statutory Authority: Agriculture and Markets Law
Sections 16, 18 and 72

Justification: The Department has determined that the continuation of this regulation without modification is necessary to retain an effective avian influenza control program by requiring a poultry transporter holding a valid domestic animal health permit who buys or sells poultry to be sold or offered for sale in a live poultry market, or transports poultry to a live poultry market, to have facilities that can be cleaned and disinfected on a year round basis; to possess and utilize mechanical crate washers to clean and disinfect crates between uses on a year round basis; to use all-season truck or vehicle wash facilities to clean and disinfect trucks or vehicles between uses on a year round basis; and to compile and maintain records of the dates and times that the crates and the trucks or vehicles were cleaned and disinfected. The regulation also clarifies the requirement that the certificate of veterinary inspection remain with the DAHP holder (i.e. poultry dealer or poultry transporter) and the invoice accompanies the poultry to the live poultry market.

Assessment of Public Comment: None received.

Section 131.1 Pine Shoot Beetle Quarantine
Statutory Authority: Agriculture and Markets Law
Sections 18, 164 and 167.

Justification: The Department has determined that the continuation of this regulation without modification is necessary to provide a buffer between those counties that are infested with the pine shoot beetle and those that are not infested.

Assessment of Public Comment: None received.

Banking Department

Pursuant to Section 207 of the State Administrative Procedure Act, Review of Existing Rules, the Banking Department submits the following rules that were adopted during calendar year 1999 and 2004 that the Department has reviewed and determined should be continued without modification. All Section and Part references are to the New York Code of Rules and Regulations.

1999 Rules:

- Amendments to Part 8 of the General Regulations of the Banking Board, 3 NYCRR
 - a. Description of rule: Permits state and federal thrifts to participate in Banking Development District (BDD) program
 - b. Legal basis for rule: Banking Law Section 96-d
 - c. Need for rule: The addition of thrift institutions to the list of entities eligible to participate in the BDD program will further enhance public access to banking services and promote local economic development.
 - d. Assessment of Public Comment: No comments were received.
- Amendments to Part 32.1 of the General Regulations of the Banking Board, 3 NYCRR
 - a. Description of rule: Eliminates fixed maximum returned check charge and provides parameters to be followed by banking institutions in establishing such charges.
 - b. Legal basis for rule: Banking Law Sections 108(8), 202(8), 235-C and 383(13).
 - c. Need for rule: National banks and federal thrifts are free to establish NSF fees without fixed ceilings. Higher NSF fees may be a deterrent to improper banking behavior. Also, the bouncing of checks slows down the check clearing system and is often illegal.
 - d. Assessment of Public Comment: No comments were received.
- Amendments to Part 32.4 of the General Regulations of the Banking Board, 3 NYCRR
 - a. Description of rule: Requires certain banking institutions to disclose to depositors the sequence in which the bank pays checks presented to it.
 - b. Legal basis for rule: Banking Law Section 14(1)
 - c. Need for rule: Provides consumers with information which will help them avoid writing checks against insufficient or uncollected funds.
 - d. Assessment of Public Comment: No comments were received.
- Adoption of new Part 6.5 of the General Regulations of the Banking Board, 3 NYCRR
 - a. Description of rule: The rule sets forth the guidelines for investments in community development entities or projects banks or trust companies.
 - b. Legal basis for rule: Banking Law Sections 13.4, 14-g and 14-h.
 - c. Need for rule: Part 6.5 provides New York State-chartered banks parity with national banks, utilizing New York's Wildcard authority.

c. Need for rule: Updates the Banking Department's regulations to reflect significant amendments to FOIL and to reflect changes in the Department's FOIL procedures.

d. Assessment of Public Comment: No comments were received.

Banking Department

Pursuant to Section 207 of the State Administrative Procedure Act, Review of Existing Rules, the Banking Department submits the following rules that were adopted in 2000 and 2005 that the Department has reviewed and determined should be continued without modification. All Section and Part references are to the New York Code of Rules and Regulations.

2000 Rules

- New Part 41 of the General Regulations of the Banking Board, 3 NYCRR

a. Description of rule: The rule regulates the making of high cost home loans by lenders regulated by the Banking Department.

b. Legal basis for rule: Banking Law Sections 6-i, 14(1).

c. Need for rule: Regulation of high cost home lending is necessary in order to deter predatory lending practices.

d. Assessment of Public Comment: No comments were received.

2005 Rules

- New Part 6.7 of the General Regulations of the Banking Board, 3 NYCRR

a. Description of rule: Part 6.7 gives New York banks and trust companies parity with national banks in underwriting, dealing in and investing in municipal revenue bonds and other government securities

b. Legal basis for rule: Banking Law Sections 10, 14 and 14-g.

c. Need for rule: As part of the federal Gramm-Leach-Bliley Act of 1999, well-capitalized national banks were granted the authority to underwrite municipal revenue bonds; that is, obligations of a state or political subdivision other than general obligations. Based on the wild card authority in Section 14-g of the Banking Law, this rule gives New York banks and trust companies parity with national banks in underwriting, dealing in and investing in municipal revenue bonds and other government securities.

d. Assessment of Public Comment: No comments were received.

- Amendments to Part 96.6 of the General Regulations of the Banking Board, 3 NYCRR

a. Description of rule: The rule allows credit unions to make loans to a single member in excess of the \$1,000,000 cap with the superintendent's prior permission.

b. Legal basis for rule: Banking Law Sections 14(1), 454 and 454(6).

c. Need for rule: The rule removes the arbitrary fixed dollar limit on loans by state chartered credit unions while retaining other lending limits that relate to the size of the credit union making the loan.

d. Assessment of Public Comment: No comments were received.

- Amendments to Parts 95, 96 and 97 and repeal of Part 113 of the General Regulations of the Banking Board, new Parts 326 and 327 of the Superintendent's Regulations, 3 NYCRR

a. Description of rule: The rules provide New York chartered credit unions with powers comparable to, and competitive with, those of their federal counterparts

b. Legal basis for rule: Banking Law Sections 14(1), 453(5), 454, 454(9), 454(14), 458(9) and 458-a.

c. Need for rule: Chapter 679 of the Laws of 2003 contains amendments to Article XI of the New York Banking Law that are intended to provide New York chartered credit unions with powers comparable to, and competitive with, those of their federal counterparts. It also makes technical amendments which modernize, clarify and simplify the Banking Law as it relates to credit unions. The above-referenced rules are needed to conform the existing affected Banking Department regulations to the provisions of the new law.

d. Assessment of Public Comment: No comments were received.

- Amendments to Part 70.2 of the General Regulations of the Banking Board, 3 NYCRR

a. Description of rule: Section 70.2 of the General Regulations of the Banking Board sets forth the process by which the Banking Board grants permission for officer and director interlocks between banking organizations.

b. Legal basis for rule: Banking Law Sections 130(3)(b), 143(3)(b), 209(3)(b), 247(3)(b), 349(5)(b) and 399-a(2).

c. Need for rule: Eliminates the requirement that interlock permissions granted by the Banking Board be expressed in a Special Regulation.

d. Assessment of Public Comment: No comments were received.

- Amendments to Part 207 of the Special Regulations of the Banking Board, 3 NYCRR

a. Description of rule: Expresses permission granted to Scott Shay to serve as both an executive officer of Signature Bank and a director of Bank Hapoalim, B.M., a foreign banking corporation maintaining a branch in New York

b. Legal basis for rule: Banking Law Sections 130(3)(b), 143(3)(b), 209(3)(b), 247(5)(b), 399(5)(b), 399-a(2)

c. Need for rule: Section 70.2 of the General Regulations of the Banking Board, as then written, required that permission for an interlock be expressed in a Special Regulation of the Banking Board.

d. Assessment of Public Comment: No comments were received.

- Amendments to Part 301.5 of the Superintendent's Regulations, 3 NYCRR

a. Description of rule: The rule amends regulations regarding the quality and retention requirements for videotapes used in automated teller machine surveillance systems.

b. Legal basis for rule: Banking Law Sections 75-c and 75-n.

c. Need for rule: The rule conforms the ATM videotape retention regulations to changes in the Banking Law and facilitates the use of digital automated teller machine surveillance systems.

d. Assessment of Public Comment: No comments were received.

- Amendments to Supervisory Policies G 4 and G 6 and Supervisory Procedures G 104, G 105, G 108, CB 103, SB 101 and SL 101, 3 NYCRR

a. Description of rule: Streamlines forms and procedures for certain branch and public accommodation office applications.

b. Legal basis for rule: Banking Law Sections 9-d, 14(1), 28, 29 and 195.

c. Need for rule: The amendments provide an expedited branch application process for well-rated institutions; establish simplified application forms; eliminate outdated or unnecessary informational requirements; and develop more consistent or similar requirements among the different types of banking institutions.

d. Assessment of Public Comment: No comments were received.

Department of Taxation and Finance

Rule Continued Without Modification

Pursuant to section 207.4 of the State Administrative Procedure Act, the Department of Taxation and Finance hereby gives notice of the following:

As part of the Department's 2010 review of rules that were adopted during 2000 and 2005, it has reviewed amendments to 20 NYCRR 541.7 (Trash and debris removal) of the Sales and Use Taxes Regulations that were adopted in 2000. This rule was amended to authorize a contractor to purchase a trash and debris removal service exempt from sales tax as a purchase for resale when the service is an integral part of maintaining, servicing, or repairing real property by the contractor and includes conditions under which the service qualifies for the exemption. The rule also clarifies that neither the contractor nor the customer is liable for tax when such a service is purchased by the contractor in conjunction with the construction, demolition, or rehabilitation of real property in the performance of a capital improvement. The statutory authority for this rule is contained in sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided) of the Tax Law.

This rule was previously reviewed as part of the Department's 2005

Rule Review published in the State Register on January 5, 2005, and was continued without modification. Notice of the 2005 continuance was published in the Rule Review section of the July 6, 2005, issue of the State Register.

The rule is once again being continued without modification because there have been no statutory amendments or changes in policy to warrant any modification of the rule.

A summary of the rule was published in the Rule Review section of the January 6, 2010, issue of the State Register. The 2010 Rule Review, including the summary, was also posted to the Department's Web site (<http://www.tax.state.ny.us/rulemaker/regulations/fiveyearrev.htm>) on December 31, 2009. The Department did not receive any public comments regarding this rule.

For further information contact: John W. Bartlett, Department of Taxation and Finance, Taxpayer Guidance Division, Bldg. 9, W A Harriman Campus, Albany, NY 12227, (518) 457-2254