

# RULE MAKING ACTIVITIES

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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.

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## Banking Department

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### EMERGENCY RULE MAKING

#### Signage Requirements for Licensed Check Cashers

**I.D. No.** BNK-38-04-00001-E  
**Filing No.** 999  
**Filing date:** Sept. 2, 2004  
**Effective date:** Sept. 6, 2004

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

**Action taken:** Amendment of section 400.6 of Title 3 NYCRR.

**Statutory authority:** Banking Law, sections 37(3), 371 and 372

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

**Specific reasons underlying the finding of necessity:** Need to make signage requirements in Part 400 consistent with newly adopted changes in regulation governing fees which check cashers are permitted to charge.

**Subject:** Signage requirements for licensed check cashers.

**Purpose:** To change signage requirements for licensed check cashers so as to disclose the check cashing fee based on the amount of the check; and permit signs to be made from a wider range of materials in light of the possibility of changes in fees.

**Text of emergency rule:** Paragraph (1) of Subsection (a) of Section 400.6 of the Superintendent's Regulations shall be amended to read as follows:

(a) Every licensee shall:

(1) Post and display at all times in a conspicuous place on the premises the license and also the schedule of rates to be charged. The schedule shall be made of [plastic or metal] *durable material*, be no less than 30 inches wide and 36 inches high with letters at least  $\frac{3}{4}$  inch in size and indicate [in five cent increments, between 60 cents and \$14.00,] the fee applicable to the full amount of the check to be cashed [provided that such schedules shall indicate that the minimum fee of 60 cents shall apply to all checks under \$42.86 and that the maximum fee cannot exceed 1.4 percent of the amount of the check]. *The schedule shall indicate the fee that corresponds to the amount of the check. The amount of the check shall be set forth on the schedule in increments of \$25.00 ranging from \$25.00 to \$2,000. The schedule shall also indicate the percentage charge imposed on all checks and the minimum charge of \$1.00 per check.* The schedule shall be in English and in Spanish and posted in the customer's area.

**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 November 30, 2004.

**Text of emergency rule and any required statements and analyses may be obtained from:** Sam L. Abram, 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 371 of the Banking Law authorizes the Superintendent to make such rules and regulations, and such specific rulings, demands and findings, as he or she may deem necessary for the proper conduct of the business authorized and licensed under Article 9-A of the Banking Law, which governs licensed cashers of checks, and for the enforcement of that article. Section 372 of the Banking Law provides, among other things, that the Superintendent shall, by regulation, establish the maximum fees which may be charged by a licensee for cashing a check, draft or money order; requires that the schedule of fees and charges permitted under that section be conspicuously and continuously posted in every location and mobile unit licensed under Article 9-A; and that each licensee shall keep and use in its business such books, accounts, and records as the Superintendent may require to carry into effect the provisions of Article 9-A and the rules and regulations made by the Superintendent thereunder. Under Banking Law Section 37(3), the Superintendent may require any licensed cashier of checks to make special reports in addition to the reports specifically required by the Banking Law.

##### 2. Legislative Objectives

In requiring licensed check cashers to conspicuously and continuously post the schedule of permitted fees and charges in every location, the Legislature undoubtedly sought to insure that prospective customers were clearly and fully informed in advance of the costs of a check cashier's services.

##### 3. Needs and Benefits

On June 3, 2004 the Superintendent adopted amendments to Part 400.12 of the Superintendent's Regulations. These amendments increase the maximum fee that licensed check cashers may charge. In addition to an immediate fee increase, the amendments provide for an annual fee adjustment thereafter based on the increase in the consumer price index for the New York metropolitan area, if any.

As a result of the amendments to Part 400.12, licensed check cashers need to revise their posted schedules of fees and charges.

In addition to amending the disclosure of the amount of the check-cashing fee, the structure of the disclosure is being amended to provide more useful information. Previously under Part 400.6, the signage was required to disclose the fee charged in five-cent increments. As a result, the corresponding check amounts were often atypical amounts. It was determined that this approach to disclosure was not helpful to consumers. Under the proposed amendments to Part 400.6, the disclosure would be governed by the amount of the check. Accordingly, the amendment mandates that the amount of the check and the corresponding check cashing fee be set forth on the signage according to the amount of the check in increments of \$25.00 ranging from \$25.00 to \$2,000. The schedule will also indicate the percentage charge imposed on all checks and the \$1.00 minimum.

Moreover, since the fee may change in the future due to increases in the Consumer Price Index, the amendment allows signs to be made of durable material instead of specifying that the signs must be made of plastic or metal.

#### 4. Costs

As noted in "Needs and Benefits" above, licensed check cashers will be required periodically to revise their posted schedule of fees and charges as a consequence of the amendments to Part 400.12. No additional costs will be incurred in complying with the requirement that the new signs reflect the new disclosure structure. Indeed, the new regulations may reduce the costs of compliance by specifying only that the signs be made of a durable material, rather than requiring that they be made of plastic or metal.

#### 5. Local Government Mandates

The proposed rule making will not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

#### 6. Paperwork

The amendment to Part 400.6 will not require any new reporting or other paperwork by licensed check cashers.

#### 7. Duplication

The amendment to Part 400.6 will not result in duplication, overlap or conflict with any rules or other legal requirements of the state and federal governments.

#### 8. Alternative Approaches

Consideration was given to leaving Part 400.6 unchanged. However, as noted in "Needs and Benefits" above, it was determined that the need for licensed check cashers to make signage changes to reflect the new fee schedule imposed by the amendments to Part 400.12 meant that making the proposed amendments to Part 400.6 at the same time would provide an opportunity to improve the quality of disclosure to customers and provide greater flexibility in signage materials without imposing additional costs on licensed entities.

#### 9. Federal Standards

No minimum standards of the federal government for the same or similar subject areas will be exceeded by the amendments to Part 400.6.

#### 10. Compliance Schedule

As noted in "Needs and Benefits" above, licensed check cashers must make signage changes to reflect the new fee schedule imposed by the amendments to Part 400.12. No additional time will be required for licensees to comply with the amendments to Part 400.6.

#### Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not attached because the amendments to Part 400.6 will not impose any adverse economic or technological impact upon small businesses or local governments. The fee increases resulting from amendments to Part 400.12 of the Superintendent's Regulations will require licensees to revise their signage. The amendments to Part 400.6 will simply affect the structure of disclosure on the new signs and provide additional flexibility regarding the materials from which they can be made.

#### Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not attached because the amendments to Part 400.6 will not impose any reporting, compliance, recordkeeping or other compliance requirements on public or private entities in rural areas. Virtually all licensed check cashing facilities are located in metropolitan areas of the state, particularly the New York City metropolitan area.

#### Job Impact Statement

A Job Impact Statement is not attached because the amendments to Part 400.6 will not have any appreciable and/or substantial adverse impact on jobs and employment opportunities.

## EMERGENCY RULE MAKING

### Supervision of Article XII Investment Company Holding Companies and their Subsidiaries Regarding European Union Financial Conglomerates Directive

**I.D. No.** BNK-38-04-00002-E

**Filing No.** 1000

**Filing date:** Sept. 2, 2004

**Effective date:** Sept. 5, 2004

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), 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 November 30, 2004.

**Text of emergency rule and any required statements and analyses may be obtained from:** Sam L. Abram, 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. The Banking Department expects to know whether it will be required to provide equivalent supervision in the fall of 2004. The requirements of the European Directive are applicable to financial conglomerates starting in January 2005.

#### 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 supervi-

sion 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, record keeping 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.

## NOTICE OF ADOPTION

### **Regulation of Licensed Mortgage Bankers and Registered Mortgage Brokers**

**I.D. No.** BNK-19-04-00006-A

**Filing No.** 1001

**Filing date:** Sept. 3, 2004

**Effective date:** Sept. 22, 2004

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

**Action taken:** Amendment of Part 410 of Title 3 NYCRR.

**Statutory authority:** Banking Law, section 589 *et seq.*, art. 12-D

**Subject:** Regulation of licensed mortgage bankers and registered mortgage brokers pursuant to Banking Law, art. 12-D.

**Purpose:** To set forth the regulatory requirements and standards of operation for entities licensed and registered under Banking Law, art. 12-D.

**Text of final rule:** The title is amended to read as follows:

MORTGAGE BANKERS; LICENSING REQUIREMENTS;  
MORTGAGE BROKERS; REGISTRATION REQUIREMENTS;  
BRANCH APPLICATIONS; NOTIFICATIONS; BOOKS AND  
RECORDS; ANNUAL REPORTS; SURETY BONDS; AND CONSULTANTS OF LICENSED MORTGAGE BANKERS AND REGISTERED MORTGAGE BROKERS.

(Statutory authority: Banking Law, Article 12-D)

Paragraph 3 of subdivision (b) of Section 1 of Part 410 is amended to read as follows:

§ 410.1 Mortgage banking license; minimum standards.

(b) Financial responsibility. Applicants for a license to engage in the business of making mortgage loans shall demonstrate and maintain:

(1) adjusted net worth of not less than \$250,000;

(2) an existing line of credit in an amount of not less than \$1,000,000.00 provided by an unaffiliated banking institution, insurance company, or similar credit facility approved by the [s]Superintendent; and

(3) a corporate surety bond issued by a bonding company or an insurance company authorized to do business in New York or pledged deposit (valued at the lower of principal amount or market) in the amount [of \$50,000.00] set forth in Section 410.9 of this Part.

Subdivision (e) of Section 1 of Part 410 is repealed.

Subdivision (a) of Section 8 of Part 410 is amended to read as follows:  
§ 410.8 Books and records; annual reports.

(a) Each mortgage banker and mortgage broker shall keep its books and records in a manner [which] that will allow the [s]Superintendent to determine whether the mortgage banker or mortgage broker is complying with article 12-D of the Banking Law. Every mortgage banker and mortgage broker shall preserve its books and records for inspection for a minimum of three years. [Specifically] Every mortgage banker and mortgage broker shall establish and maintain the following:

Subdivision (4) of Section 8 of Part 410 is amended to read as follows:

(1) A centralized application log for the principal office and all branch offices, updated daily, [maintained in chronological order,] based on the date of receipt of the application, containing the following information:

(i) date application received;

(ii) name and address of applicant;

(iii) file number assigned;

(iv) address of property;

(v) source of application — if the source is a referral, the entry must include the name, address and a description of the entity making the referral. This information may be contained in the application log or set forth by file number or applicant name in one or more accounting records of sufficient detail;

(vi) all other fees collected and/or distributed prior to closing — include the amount of the fee, date paid, purpose (e.g. appraisal, credit report, etc.) and the name, address, and description of the entity to whom each fee is paid and/or from whom a fee is received. This information may be contained in the application log or set forth by file number or applicant name in one or more accounting records of sufficient detail; and

(vii) final disposition of the application and the date thereof. Every mortgage broker shall also establish and maintain items 2, 3 and 4 above (paragraphs [2]-[4] of this subdivision). In addition, the application log shall also contain the entity with [whom] which the loan was placed and the amount of the fees received for mortgage brokerage service directly from the applicant and all other sources (e.g. lenders, other brokers, etc.). Said fees shall be listed separately for each source. This information may be contained in the application log or set forth by file number or applicant name in one or more accounting records of sufficient detail.

(2) Branches must report their activity to the principal office on a daily basis not later than noon of the fifth business day after the activity takes place.

New subdivisions (f) through (q) of Section 8 of Part 410 are added to read as follows:

(f) Loan files. Each mortgage banker shall maintain all documents relating to the credit, underwriting and pricing decisions of each loan file irrespective of whether the application has been denied, approved or withdrawn. Each mortgage broker shall maintain a copy of the HUD-1 in each loan file.

(g) Documentation relating to pricing and credit. Each mortgage banker shall establish and maintain the following:

(1) if overages are charged, the lending policies and procedures pertaining to the imposition of overages. For purposes of this Part, an overage is a specific amount charged to a borrower in excess of the applicable amount indicated on the regular rate sheet utilized by the lender, whether in the interest rate or in the points, which serves to increase compensation to lenders and loan officers. Such rate sheet shall be maintained and available for review by the Banking Department. If such rate sheet is not maintained in the loan file, then each loan file shall contain information sufficient to identify which rate sheet was utilized to price that loan;

(2) the lending policies and procedures pertaining to the charging of discount and/or origination points, if any, irrespective of whether such points reduce the interest rate; and

(3) the lending policies and procedures pertaining to the payment, if any, of premium pricing to mortgage brokers.

(h) Other required documentation relating to pricing and credit. Each mortgage banker shall establish and maintain the following documents for all loans, provided that such documents need not be maintained for federally related mortgage loan programs including, but not limited to, any loan purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, securitized by the Government National Mortgage Association or insured by the Federal Housing Administration, the Veterans' Administration or the Farmers' Home Administration or such loans that are prime no documentation/low documentation or alternative documentation loans:

(1) the lending policies and procedures pertaining to loan pricing and the conditions under which exceptions to such loan pricing policies and procedures can be made and by whom;

(2) documents reflecting pricing matrices; and

(3) documents reflecting the establishment of credit grades.

(i) Mortgage loan pipeline. With respect to mortgage loans for which a commitment has been issued but the loan has not yet closed and funded, each mortgage banker shall maintain a report or reports, updated on a monthly basis, that provides the following information, both by state and in the aggregate:

(1) Total number and dollar amount of such loans;

(2) Type of loan, (i.e., purchase money, refinance, etc.);

(3) Total number and dollar amount of all such loans having a locked-in interest rate and total number and dollar amount of such loans whose interest rate is not locked-in; and

(4) The date the commitment was issued and any fees collected from the borrower up to the date of commitment by any party to the mortgage transaction.

Such report(s) shall be retained for one year.

(j) Mortgage loans subject to a lock-in agreement. For mortgage loans in which the loan applicant has entered into a lock-in agreement with respect to the interest rate, mortgage bankers shall maintain a report, updated monthly, regarding such loans that includes the date the interest rate was locked-in and the date and dollar amount of any fees collected by any party for the purpose of guaranteeing the lock-in rate. Such report shall be retained for one year.

(k) Lines of credit. For each line of credit, a mortgage banker shall maintain a report, or equivalent documentation, updated weekly, listing each advancement of funds from the line of credit that reflects the date of the advancement, the name of the borrower, the date that the mortgage loan closed and the date the funds were forwarded to satisfy its obligation for the advancement from the line of credit;

(l) Closing agents. Each mortgage banker shall maintain a list, by state, of the closing agents that it uses that contains, at a minimum, the name, address and telephone number of the closing agent.

(m) Quarterly reports. Within 45 days of the end of each fiscal quarter, each mortgage banker shall file:

(1) an unaudited financial statement with the Department that, at a minimum, includes a balance sheet, income statement, cash flow statement, statement of adjusted net worth and dollar amount of mortgage loans for which a commitment has been issued but the loan has not yet closed. In instances where a mortgage banker has more than one affiliated company, said mortgage banker shall submit such financial statements on both a consolidated and consolidating basis;

(2) with respect to mortgage loans for which a commitment has been issued but said loan has not yet closed and funded, a quarterly report with the Department that provides the number and dollar amount of such loans, the average number of days from commitment to closing and the number of loans in the quarter that did not close within said average number of days.

(n) Compliance officer. Each mortgage banker shall employ an in-house Compliance Officer who shall be responsible for ensuring that the mortgage banker operates its mortgage banking business in accordance with all applicable federal and state laws and regulations. While the Compliance Officer may have other job responsibilities, the mortgage banker is responsible for ensuring that the Compliance Officer devotes sufficient time to the compliance function responsibilities. Alternatively, the mortgage banker may retain an unaffiliated third party to provide such compliance services.

(o) FNMA or FHLMC certified lenders. Within ten (10) days of receipt, each mortgage banker certified by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation shall provide the Department with:

(1) copies of any and all financial reporting on the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation forms;

(2) a copy of any audit letter issued on behalf of the mortgage banker in conjunction with the Uniform Single Audit Program for Mortgage Bankers and evidence of current certification by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, if applicable; and

(3) copies of any and all notices received from the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation relating to the withdrawal of said certification.

(p) Third party audit reports. Within 10 days of receipt, each mortgage banker shall provide the Department with a certified copy of any report of an audit of the mortgage banker and/or its affiliates by any lender extending a line of credit to the mortgage banker, investor, party to a loan purchase agreement, any Federal agency or Government Service Organization.

(q) Maintenance of certain mortgage loan data. In order to allow the Superintendent of Banks to ensure that all mortgage bankers are conducting their residential mortgage lending business in accordance with the provisions of Section 296-a of the Executive Law, each mortgage banker exempt from the mortgage data reporting requirements of Section 203.3(2) of Regulation C, 12 CFR 203, issued by the Board of Governors of the Federal Reserve pursuant to the Federal Home Mortgage Disclosure Act, 12 USC 2801, et seq., as amended, shall maintain the same data as required by Regulation C for review by the Superintendent of Banks. The regulation is incorporated by reference and is authored by the Board of Governors of the Federal Reserve System and published by the United States Government Printing Office, Washington, DC 20402. A copy is available for public inspection and copying at the New York City office of the New York State Banking Department located at the address stated in Supervisory Policy G 1 of Title 3 of the NYCRR. Said data shall be compiled on an annual basis by March 1st of the following year in the manner required by Regulation C but need not be submitted to the Department but must be available for examination for a minimum of three years. Mortgage bankers wishing to retain the above data in a form other than that required by Regulation C may apply in writing for a waiver from the Superintendent of Banks.

Subdivisions (a) and (b) of Section 410.9 are amended to read as follows:

§ 410.9 [Provision for] Corporate surety bonds for mortgage bankers.

(a) Every mortgage banker licensed pursuant to Banking Law Section 591[,] shall file with the [s]Superintendent a corporate surety bond in [the] a principal amount of [50,000] not less than \$50,000 or more than \$500,000 based on its volume of business. The amount of the bond required shall be as follows:

Aggregate \$ Amount of NY Loans Closed Bond	Required Amount of Surety Bond
\$300,000,000+	\$500,000
\$200,000,000 - \$299,999,999	\$350,000
\$100,000,000 - \$199,999,999	\$250,000
\$30,000,000 - \$99,999,999	\$150,000
\$10,000,000 - \$29,999,999	\$100,000
\$0 - \$9,999,999	\$50,000

The amount of the surety bond shall be determined from information submitted in the annual Volume of Operations Report ("VOOR"). The 2004 bond will be based upon the 2002 VOOR figures reported to the Department. Thereafter, adjustments to the amount of the bond shall be made within 30 days after filing the applicable VOOR. Moreover, a licensed mortgage banker may submit a sworn statement indicating the aggregate dollar amount of NY loans closed during the first half of the calendar year if such amount, on an annualized basis, would change the required amount of the surety bond. Such corporate surety bond shall be issued by a bonding company or insurance company authorized to do business in this State. If the Superintendent determines, in his or her sole discretion, that a licensee has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct, the Superintendent may require such licensee to post a surety bond, or keep on deposit, twice the amount of such bond or deposit as is required consistent with this subdivision.

(b) Such bond shall be in favor of the [s]Superintendent for the protection of the [s]Superintendent and residential mortgage consumers located in New York State [. The principal amount of such bond shall be \$50,000] and it shall contain substantially the following language:

"In the event of the insolvency, liquidation or bankruptcy of such licensee, or the expiration, surrender or revocation of such mortgage banker's license, or where the Superintendent takes possession of such licensee, the proceeds of this bond shall constitute a trust fund to be used exclusively by the [s]Superintendent to reimburse consumer fees or other charges determined by the [s]Superintendent to be improperly charged or collected and to pay past due [b]Banking [d]Department examination costs and assessments charged to the licensee, unpaid penalties, or other obligations of the licensee. [solely in the event of the insolvency, liquidation or bankruptcy of such mortgage banker or the surrender, expiration or revocation of such mortgage banker's license.] In the event of the insolvency, liquidation or bankruptcy of the mortgage banker, or the expiration, surrender or revocation of such mortgage banker's license, or where the Superintendent takes possession of such licensee, the proceeds of the bond shall be paid to the [s]Superintendent forthwith for disposition in accordance with the applicable provisions of the Banking Law."

Section 10 of Part 410 is amended to read as follows:

§ 410.10 Deposit of assets.

Pursuant to Banking Law, section 591(4), a mortgage banker may, in lieu of filing a corporate surety bond pursuant to section 410.9 of this Part, elect to deposit assets with a value of \$50,000 to \$500,000, in accordance with the requirements of section 410.9, valued at the lower of principal amount or market value in a New York State chartered commercial bank, trust company, savings bank, savings and loan association or a national bank, federal savings bank or federal savings and loan association in the State of New York. Pursuant to Banking Law section 591-a, a mortgage broker may, in lieu of filing a corporate surety bond pursuant to section 410.15 of this Part, elect to deposit assets with a value of \$10,000 to \$100,000, in accordance with the requirements of section 410.15, valued at the lower of principal amount or market value in a New York State chartered commercial bank, trust company, savings bank, savings and loan association or a national bank, federal savings bank or federal savings and loan association in the State of New York. No such deposit shall be made until the deposit agreement referred to in section 410.11 of this Part has been approved by the [s]Superintendent.

Section 11 of Part 410 is amended to read as follows:

§ 410.11 Deposit agreement; certificate of licensee or registrant.

Any mortgage banker or mortgage broker, which elects to deposit assets pursuant to section 410.10 of this Part, shall execute with the depository a deposit agreement on a form obtained from the Mortgage Banking Division of the Banking Department or such other form as is satisfactory to the [s]Superintendent. An executed copy of such deposit agreement shall be filed with the [s]Superintendent. As part of this deposit agreement, the mortgage banker or mortgage broker shall agree that prior to the release or substitution of any assets subject to the deposit agreement, the mortgage banker or mortgage broker shall file a certificate with the depository which shall specify the following:

- (a) the complete title of each security being withdrawn;
- (b) the complete title of each security being deposited in place thereof;
- (c) the interest rate, series, serial number (if any), face value maturity date, call date, principal amount and market value of each replacement security;
- (d) the aggregate principal amount of all such replacement securities;
- (e) the amount, if any, of the funds being withdrawn or deposited; and
- (f) certify that any securities being deposited in exchange for securities being withdrawn comply as to type with the provisions of subdivision 4 of section 591 of the Banking Law, and that, after giving effect to the exchange, the aggregate amount of all securities and funds remaining on deposit by the licensed mortgage banker or registered mortgage broker, based in the case of such securities is upon the principal amount or market value, whichever is lower, is at least equal to [50,000] the amount required in Section 410.9 of this Part for mortgage bankers, or Section 410.15 of this Part for mortgage brokers.

In addition, as part of this deposit agreement, the licensee or registrant shall agree that the [s]Superintendent may revoke the authority of the depository to pay dividends or interest on the securities, funds or other assets deposited pursuant to this deposit agreement.

Section 13 of Part 410 is amended to read as follows:

§ 410.13 Retention of receipts or statements.

Each mortgage banker and mortgage broker shall retain until completion of its next examination the originals of any and all receipts and/or statements obtained from a depository pursuant to the deposit agreement referred to in section 410.11 of this Part as well as copies of any and all withdrawal requests and the certificate given to a depository pursuant to the deposit agreement referred to section 410.11 of this Part.

Section 14 of Part 410 is amended to read as follows:

§ 410.14 Miscellaneous provisions.

(a) Reliance on written communication of department. For the purposes of the deposit agreement, the mortgage banker, *mortgage broker* and the depository shall accept and may rely upon, as an order of the [s]Superintendent, any written communication with the seal of the department affixed thereto, and signed:

(1) by the [s]Superintendent;

(2) by a [d]Deputy [s]Superintendent of banks;

(3) by any two employees jointly of the department whom the [s]Superintendent may specifically designate in writing, to the depository [or], the mortgage banker or *mortgage broker* (whichever is the addressee of such communication).

(b) Release from compliance with terms or conditions of deposit agreement. The [s]Superintendent may by order relieve the mortgage banker, the *mortgage broker* or the depository from compliance with any term or condition of the deposit agreement, including any term or condition prescribed by this Part, if the [s]Superintendent shall find such action necessary or proper to give effect to the purposes of sections 591(4) and 591-a(3) of the Banking Law or of this Part.

Section 15 of Part 410 is amended by deleting the existing paragraph and adding new subdivisions a and b to read as follows:

§ 410.15 *Corporate surety bonds for mortgage brokers*. [Imposition of corporate surety bond or deposit of assets on mortgage brokers]

[In the event the superintendent shall impose a corporate surety bond or deposit of asset requirement on a registered mortgage broker, pursuant to section 591-a of the Banking Law, such corporate surety bond or deposit of asset shall be made in accordance with section 410.9, 410.10, 410.11, 410.12, 410.13, and 410.14 of this Part except that the principal amount required shall not exceed \$25,000, valued at the lower of principal amount or market.]

(a) *Every mortgage broker registered pursuant to Banking Law Section 591-a shall file with the Superintendent a corporate surety bond in a principal amount of not less than \$10,000 or more than \$100,000 based on its number of applications. The amount of the bond required shall be as follows:*

<i>Number of New York Applications</i>	<i>Required Amount of Surety Bond</i>
600+	\$100,000
300 - 599	\$75,000
100 - 299	\$50,000
25 - 99	\$25,000
0 - 24	\$10,000

*The amount of the surety bond shall be determined from information submitted in the annual Volume of Operations Report ("VOOR"). The 2004 bond will be based upon the 2002 VOOR figures reported to the Department. Thereafter, adjustments to the amount of the bond shall be made within 30 days after filing the applicable VOOR. Moreover, a registered mortgage broker may submit a sworn statement indicating the number of applications taken during the first half of the calendar year if such number, on an annualized basis, would change the required amount of the surety bond. Such corporate surety bond shall be issued by a bonding company or insurance company authorized to do business in this State. If the Superintendent determines, in his or her sole discretion, that a registrant has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct, the Superintendent may require such registrant to post a surety bond, or keep on deposit, twice the amount of such bond or deposit as is required consistent with this subdivision.*

*The term "application" shall have the same meaning as that term has in section 202.2(f) of Regulation B of the Federal Reserve System (12 CFR 202). The regulation, including the interpretations thereof contained in Supplement 1 to Part 202—Official Staff Interpretations, is incorporated by reference and is authored by the Board of Governors of the Federal Reserve System and published by the United States Government Printing Office, Washington, DC 20402. A copy is available for public inspection and copying at the New York City office of the New York State Banking Department located at the address stated in Supervisory Policy G 1 of Title 3 of the NYCRR.*

(b) *Such bond shall be in favor of the Superintendent for the protection of the Superintendent and residential mortgage consumers located in New York State and it shall contain substantially the following language:*

*"In the event of the insolvency, liquidation or bankruptcy of such registrant, or the expiration, surrender or revocation of such mortgage broker's registration, or where the Superintendent takes possession of such registrant, the proceeds of this bond shall constitute a trust fund to be used exclusively by the Superintendent to reimburse consumer fees or*

*other charges determined by the Superintendent to be improperly charged or collected and to pay past due Banking Department examination costs and assessments charged to the registrant, unpaid penalties, or other obligations of the registrant. In the event of the insolvency, liquidation or bankruptcy of the mortgage broker, or the expiration, surrender or revocation of such mortgage broker's registration, or where the Superintendent takes possession of such registrant, the proceeds of the bond shall be paid to the Superintendent forthwith for disposition in accordance with the applicable provisions of the Banking Law."*

(c) *Mortgage brokers that have been placed on inactive status pursuant to section 410.17 need not obtain a surety bond or deposit of assets. Should the mortgage broker seek to reactivate its registration, satisfactory proof of the surety bond or deposit of assets will be required before reactivation is granted.*

(Section 16 of Part 410 is amended to read as follows)

§ 410.16 Release of corporate surety bond or deposit of assets.

*If a claim is not made against the surety bond or deposit of assets held pursuant to Sections 591(4) and 591-a(3) of the Banking Law within six months of the insolvency, liquidation, bankruptcy of the mortgage banker or broker, or the expiration, surrender or revocation of the mortgage banker's license or mortgage broker's registration, or where the Superintendent takes possession of the mortgage banker or broker, the [s]Superintendent shall release any such corporate surety bond or deposit of assets. Provided that the proceeds of the bond or deposit of assets shall have been first applied to:*

(a) all consumer fees determined by the [s]Superintendent to be improperly charged or collected by said mortgage banker or mortgage broker; and

(b) all [b]Banking [d]Department examination costs and assessments outstanding against said mortgage banker or mortgage broker. Nothing contained herein shall prevent the Superintendent from continuing to retain possession of the bond or its proceeds or the deposit of assets in the event of ongoing litigation involving the mortgage banker or mortgage broker.

(New sections 410.18 and 410.19 are added to read as follows:)

§ 410.18 *Consultants, Employees and Independent Contractors of Licensed Mortgage Bankers and Registered Mortgage Brokers.*

(a) *The term consultant shall mean an individual or entity involved in advising or directing management, performing management functions, or providing services to management of a licensed mortgage banker or registered mortgage broker on matters relating to the operation of the company, or an individual or entity that receives compensation, either directly or indirectly, from the licensed or registered entity, for advising potential applicants or borrowers with regard to the making of a mortgage loan. An individual or entity may be deemed a consultant regardless of whether that person or entity is receiving compensation. Consultant shall not include:*

(1) *an individual who is a W-2 employee of a licensee or registrant;*

or  
(2) *an individual with a professional license issued by this state or another state including, but not limited to, attorneys, accountants, real estate agents and appraisers, provided that the services provided by such individual to the licensee or registrant are the services for which such individual has a professional license; or*

(3) *an individual who is employed by an entity that is regulated by any local, state or federal regulatory agency; or*

(4) *any 1099 independent contractor or other outside contractor that does not provide mortgage related services.*

(b) *The term employee shall mean any individual performing a service for either a mortgage broker, or mortgage banker for whom such entity would be liable for withholding taxes pursuant to Title 26 of the United States Code.*

(c) *The term independent contractor shall mean any individual engaged in regulated activities as an independent contractor pursuant to Title 26 of the United States Code on behalf of either a mortgage broker, or mortgage banker.*

(d) *Applicants for a license to engage in the business of mortgage banking and applicants for registration as a mortgage broker shall provide a list of its consultants at the time of application. A list of consultants must be filed with the Superintendent by the licensee or registrant in such form as may be prescribed within ten days of commencement of retainment. In addition, notification of the termination of any consultant shall be made to the Superintendent within 10 days of such termination.*

(e) *An undertaking of accountability for each independent contractor must be filed with the Superintendent by the licensee or registrant in such form as may be prescribed within ten days of commencement of retainment. In addition, notification of the termination of any independent con-*

tractor shall be made to the Superintendent within 10 days of such termination.

§ 410.19 Filings.

All filings under this Part may be submitted electronically in a format acceptable to the Superintendent.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 410.8(f) and (g) and 410.15.

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

#### **Regulatory Impact Statement**

A revised Regulatory Impact Statement is not needed because the minor changes that were made to the last published rule do not affect the accuracy or completeness of the previously published Regulatory Impact Statement.

#### **Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis for Small Business and Local Government is not being submitted, based on the Department's conclusion that the minor changes made to the last published rule will not impose any special adverse economic or technological impact upon small businesses beyond those imposed in general as set forth in the Regulatory Impact Statement. The minor changes will not impose any adverse economic or technological impact upon local governments. The minor changes will not impose any special adverse reporting, recordkeeping or compliance requirements on small businesses other than those imposed in general as set forth in the Regulatory Impact Statement. The minor changes will not impose any adverse reporting, recordkeeping or compliance requirements on local governments.

#### **Rural Area Flexibility Analysis**

A Rural Area Flexibility analysis is not submitted because the minor changes to the last published rule do not result in any hardship to a regulated party in a rural area.

#### **Job Impact Statement**

A revised Job Impact Statement is not needed because the minor changes that were made to the last published rule do not affect the accuracy or completeness of the previously published Job Impact Statement.

#### **Assessment of Public Comment**

The Notice of Proposed Rulemaking was published on May 12, 2004 and the Department received four (4) public comments regarding the proposed amendments. The comments were received from one (1) trade association, one (1) consultant to the mortgage banking industry, one (1) mortgage banker, and one (1) real estate law office.

Two of the comments relate to the documentation that mortgage bankers must establish and maintain with regard to pricing and credit. Among other things, the proposed amendments would have required that if overages are charged then rate sheets shall be maintained "in the loan file". One commenter felt it was inappropriate to maintain the investor rate sheets and internal rate sheets in the loan file because he felt that profit margins should be private for the business and not available for employees to view. In response, the Department has revised the regulation to remove the requirement that the rate sheet be maintained in the loan file. The regulation now simply provides that the rate sheet shall be maintained and available for review by the Banking Department. In addition, a sentence was added to the proposed regulation to require that if the rate sheet is not maintained in the loan file, then the loan file must contain information sufficient to identify which rate sheet was utilized to price that loan.

With regard to the requirement for documentation relating to charging of origination points that do not reduce the interest rate, one commenter argued that for the most part origination points are not the points that reduce the interest rate and that ordinarily discount points reduce the interest rate. In order to address this issue, a minor change was made to the proposed regulation to clarify that mortgage bankers are required to maintain documentation pertaining to the charging of discount and/or origination points, if any, irrespective of whether such points reduce the interest rate.

One commenter felt that the requirement regarding the maintenance of certain documents for mortgage bankers should also be applied to mortgage brokers and suggested that the brokers should be required to keep a copy of the HUD-1 or other documents that would enable an examiner to verify that the fees that were disclosed to the borrower were actually the fees that were collected when the loan closed. In response, the Department added language requiring mortgage brokers to maintain a copy of the HUD-1 in each loan file.

One commenter suggested that the requirement for mortgage bankers to employ a "Compliance Officer" should be changed to require a "Regula-

tory Compliance Officer" because many mortgage bankers employ compliance officers who are thoroughly familiar with compliance issues required by the secondary market but are not necessarily familiar with the requirements of the New York State Banking Law and other state and/or federal statutes. The Department did not feel this change was necessary because the proposed amendment to the regulation makes it clear that the Compliance Officer employed by the mortgage banker is responsible for ensuring that the mortgage banker operates its business in accordance with all applicable federal and state laws and regulations.

One commenter noted that the bonding requirement for mortgage brokers is based on the number of applications taken in a given year but that the term application has never been defined in the regulation and stated there is confusion in the industry as to what constitutes an application. In order to clarify this issue, the language in the proposed regulation was clarified by providing that the term application shall have the same meaning as that term has in section 202.2(f) of Regulation B of the Federal Reserve System (12 CFR 202).

One commenter argued that certain requirements, especially the one requiring mortgage bankers to file quarterly reports would be difficult and burdensome on mortgage bankers. However, the Department believes that the additional record keeping and reporting requirements are not overly burdensome and are needed to help the Department to better monitor the activities of mortgage bankers and brokers.

One commenter argued that the new requirement for mortgage brokers to obtain bonds should not be applied to mortgage brokers that are in inactive status. In response, language was added to the proposed regulation making it clear that mortgage brokers that have been placed on inactive status pursuant to section 410.17 need not obtain a surety bond or deposit of assets. However, if the mortgage broker seeks to reactive its registration, satisfactory proof of the surety bond or deposit of assets will be required before reactivation is granted.

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## Department of Health

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### NOTICE OF ADOPTION

#### **Veterans' Homes**

**I.D. No.** HLT-17-04-00003-A

**Filing No.** 1002

**Filing date:** Sept. 7, 2004

**Effective date:** Sept. 22, 2004

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

**Action taken:** Amendment of Subpart 88-2 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 206

**Subject:** Veterans' homes.

**Purpose:** To include the State veterans homes in Batavia, St. Albans, and Montrose along with Oxford.

**Text or summary was published** in the notice of proposed rule making, I.D. No. HLT-17-04-00003-P, Issue of April 28, 2004.

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

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

#### **Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

#### **Managed Care Organizations**

**I.D. No.** HLT-13-04-00017-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. HLT-13-04-00017-P was published in the *State Register* on March 31, 2004.

**Subject:** Managed care organizations.

**Purpose:** To clarify the applicability of Subpart 98-1 to newly legislated and newly evolved forms of managed health care, amend obsolete provisions, provide a clearer guidance to the health care industry concerning the certification and operational requirements for managed care organizations.

**Substance of rule:** Revisions to Subpart 98-1, Managed Care Organizations (formerly Part 98, Health Maintenance Organizations) reflect changes made to Article 44 since the last time this section of 10 NYCRR was promulgated.

Revisions are made throughout the rule clarifying the applicability of provisions to specific types of managed care entities.

#### Title

The title was changed to incorporate new managed care entities that have been authorized by statutory changes.

#### 98-1.1 Applicability

New types of managed care entities are added.

#### 98-1.2 Definitions

Definitions are added for: "capitation"; "care management"; "comprehensive HIV special needs plan" (HIV SNP); "HIV SNP case management"; "HIV specialist primary care provider"; "independent practice association" (IPA); "managed care organization" (MCO); "managed long term care plan" (MLTCP); "material change to a contract"; "prepaid health services plan" (PHSP); "primary care partial capitation program" (PCPCP); "referral"; "Title XIX;" and, "Title XXI".

Existing definitions were changed to reflect these new managed care entities, to achieve consistency with state and federal law and regulation and to update to reflect current practice.

#### 98-1.3 Letter of Intent

Section 98-1.3, Letter of Intent, is obsolete and has been eliminated.

#### 98-1.4 Certificate of Incorporation or Articles of Organization

This section is changed to recognize articles of organization.

#### 98-1.5 Application for a Certificate of Authority

Changes to this section include: already approved MLTCPs may enroll members prior to obtaining a certificate of authority; applicants for certification provide notice to the Department of the resignation, termination or replacement of any officer or the medical director; pre-operational reserves and deposits must be calculated using projected net premium income and expenditures for the first calendar year; requirements for enrollee consent for release of medical records; provider contracts are required to include enrollee hold harmless provisions; authorization for the Commissioner of Health access to enrollee medical records; requirements are added for approvals of material changes to MCO/provider contracts; State guidelines for provider contracts are authorized; recognition of limited liability corporations and IPAs organized under articles of organization; IPAs must use the term, "IPA" in the IPA name; an IPA certificate of incorporation or articles of organization must disclaim the operation of a hospital or other facilities; "Adult Care Facility" is added to this disclaimer; delineate the permitted activities of an IPA; proposed contracts for reinsurance must be submitted to the Commissioner and Superintendent prior to issuance of a certificate of authority; rates of payment must be consistent with the principles of community rating, with certain exceptions; and, requirements for review and prior approval of MCO and IPA name changes.

#### 98-1.6 Issuance of the Certificate of Authority

Language is added requiring approval of risk sharing arrangements and including holding companies and limited liability company members and managers in the character and competence reviews. This section is also updated for consistency with State statute regarding utilization review procedures, quality monitoring, complaints and grievances programs and open enrollment. A new provision requires approval of performance improvement programs prior to issuance of a certificate of authority. Approval authority for each line of business is specified.

#### 98-1.7 Limitations of a Certificate of Authority

Changes to this section authorize the Commissioner and/or Superintendent to request financial projections related to an MCO's request to extend its service area.

#### 98-1.8 Continuance of a Certificate of Authority

Changes provide the Commissioner authority to impose limitations and conditions on a certificate of authority, require that the notice period for new contracts and contract amendments be consistent with contract guidelines, and specify the approval requirements and entities for amendments to risk sharing arrangements, enrollee contracts and Medicaid rates of payment. Provisions requiring demonstration of compliance with the regulations by December 10, 1986 have been eliminated.

#### 98-1.9 Acquisition or Retention of Control of Managed Care Organizations

This section contains modified approval requirements for acquisitions of control of MCOs, including consideration of the MCO's holding company and its directors.

#### 98-1.10 Transactions within a Holding Company System Affecting Controlled Managed Care Organizations

Changes to this section modify approval requirements for loans and extensions of credit between an MCO and anyone in its holding company, as well as notice and approval requirements for certain transactions between an MCO and its holding company.

#### 98-1.11 Operational and Financial Requirements for Managed Care Organizations

Changes in this section modify requirements for: transfers or loans between lines of business or to contractors, subsidiaries or members of the MCO's holding company system; contingent reserves, which are increased to 12.5 percent over six years for HMOs, PHSPs and HIV SNPs except that reinsurance contract premiums may be substituted for up to half of the required annual reserve increase and the reserve may be offset by up to 50 percent of the required level at the end of a calendar year by means of an approved reinsurance agreement; escrow deposits, which must be in the form of trust accounts; governing authority composition and responsibilities, including an optional enrollee advisory council; management contracts, including what functions may and may not be delegated to a management contractor, management contract approval requirements and State authority to conduct character and competence and financial feasibility reviews. Changes also establish criteria for the declaration and distribution of dividends on capital stock by HMOs, including prior approval requirements in certain instances, authorize sanctions against MCOs engaging in improper management contracting activities and modify rules concerning the use of brokers. Several sections related to obsolete contingency reserve requirements were eliminated.

#### 98-1.12 Quality Management Program

Amendments to this section clarifies the respective responsibilities of the internal quality assurance committee and the peer review committee, and modify requirements for quality assurance programs, including provider credentialing/recredentialing and removal of disciplined providers from the network, record retention and provider manual distribution.

#### 98-1.13 Assurance of Access to Care

Amendments to this section require that covered services be provided within the network except when services are not available in-network, require that limitations on accessing the entire network be communicated to enrollees and potential enrollees, establish requirements for prior approval of assignment of, and noticing for, termination of certain large providers, establish requirements for HIV SNP primary care practitioner (PCP) qualifications and HIV SNP member-to-PCP ratios, establish access and availability standards for HIV SNPs and MLTCPs, limit enrollee liability for referral services, modify enrollee consent and confidentiality provisions and establish criteria for retrospective review of pre-authorized services.

#### 98-1.14 Enrollee Services and Grievance Procedures

Amendments to this section modify requirements for the content, approval and distribution of enrollee handbooks, modify language regarding complaint, grievance and internal utilization review procedures for consistency with State and federal law, require approval of grievance and complaint procedures prior to the start of enrollment and include requirements for acknowledgement of grievances and complaints and explanations of determinations.

#### 98-1.16 Disclosure and Filing

Amendments to this section include requirements for the content and submission of financial statements, establish penalties for failure to submit complete reports or other information within 30 days of a written request, modify requirements for maintaining, distributing and submitting Health Provider Network information, add a requirement that MCOs serving Medicaid enrollees submit a compliance plan for the Americans with Disabilities Act (ADA) and establish reporting requirements for MLTCPs.

#### 98-1.18 Relationship Between an MCO and an IPA

Amendments to this section make MCOs responsible for agreements between a contracted IPA and other IPAs, specify the information required for approval of risk sharing arrangements between an MCO and an IPA and add non-compliance with Title 1 of Article 49 as an offense subject to fines.

#### 98-1.19 Marketing by MLTCPs

This new section delineates MLTCP requirements for marketing plans, marketing materials, marketing activities, marketing prohibitions, applica-

tion processing and enrollment agreements consistent with Social Services and Public Health Law.

**98-1.20 Waived Requirements for Managed Long Term Care Plans**

This new section is added to waive requirements of Section 365-i of the Social Services Law pertaining to prescription drug payments as authorized by Section 4403-f(7)(ii) of the Public Health Law.

**98-1.21 Fraud and Abuse Prevention Plans and Special Investigation Units**

This new section requires MCOs with 10,000 or more enrollees that participate in public or government sponsored programs to develop a fraud and abuse prevention plan, to include establishment of a Special Investigations Unit, and details the required contents of the plan. The section also details the required qualifications of staff of the Special Investigations Unit and the contents and timetable for submission of the required annual report.

**98-1.22 Warning Statements**

This new section provides requirements for language to be contained in claim forms warning individuals of the consequences of fraud.

**Changes to rule:** No substantive changes.

**Expiration date:** March 31, 2005.

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

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

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## Division of the Lottery

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### NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Division of the Lottery publishes a new notice of proposed rule making in the NYS Register.

**Video Lottery Gaming**

I.D. No.	Proposed	Expiration Date
LTR-28-03-00009-P	July 16, 2003	July 15, 2004

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## Public Service Commission

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### NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-04-03-00009-P	January 29, 2003
PSC-07-04-00022-P	February 18, 2004
PSC-18-04-00004-P	May 5, 2004
PSC-18-04-00005-P	May 5, 2004
PSC-24-04-00007-P	June 16, 2004

### NOTICE OF ADOPTION

**Lightened Regulation and Financing Approval by Calpine Eastern Corporation**

**I.D. No.** PSC-48-03-00014-A

**Filing date:** Sept. 1, 2004

**Effective date:** Sept. 1, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 03-E-1581 authorizing the financing for Calpine Eastern Corporation's (Calpine) proposed 79.9 MW combined-cycle combustion turbine generating unit.

**Statutory authority:** Public Service Law, sections 4(1), 66(1), 69, 70 and 110

**Subject:** Lightened regulation and financing approval.

**Purpose:** To grant financing for Calpine's proposed generating facility.

**Substance of final rule:** The Commission approved the request of Calpine Eastern Corporation to enter into a financing transaction (up to \$95 million) for the construction of its proposed 79.9 MW combined-cycle combustion turbine generating unit in Bethpage, NY, 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. (03-E-1581SA1)

### NOTICE OF ADOPTION

**Request for Accounting Authorization by Corning Natural Gas Corporation**

**I.D. No.** PSC-49-03-00010-A

**Filing date:** Sept. 1, 2004

**Effective date:** Sept. 1, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 03-G-1571 approving a request by Corning Natural Gas Corporation for deferred accounting treatment of incremental uncollectible account expense and denying it request for deferred accounting treatment of short-time interest expense.

**Statutory authority:** Public Service Law, section 66-9

**Subject:** Deferred accounting treatment.

**Purpose:** To defer incremental expenses over and above the previous level established in rates.

**Substance of final rule:** The Commission approved Corning Natural Gas Corporation's (Corning Gas) request for deferred accounting treatment of incremental uncollectible account expense of \$80,163 for the fiscal year ended September 30, 2003 and denied Corning Gas's request for deferred accounting treatment for short-time interest expense of \$19,098.

**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. (03-G-1571SA1)

### NOTICE OF ADOPTION

**Submetering of Electricity by Dara Owners Corporation**

**I.D. No.** PSC-08-04-00011-A

**Filing date:** Sept. 1, 2004

**Effective date:** Sept. 1, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 04-E-0104 granting Dara Owners Corporation permission to subme-

ter electricity at Dara Gardens 150-29 72nd Rd., 150-10 71st Ave., 150-20 71st Ave., 150-30 71st Ave., 150-40 71st Ave., 150-11 72nd Rd., 150-15 72nd Rd. and 150-25 72nd Rd. in Kew Garden Hills, NY.

**Statutory authority:** Public Service Law, sections 65(1), 66(1), (2), (3), (4), (5), (12) and (14)

**Subject:** Submetering of electricity.

**Purpose:** To allow Dara Owners Corporation to submeter electricity.

**Substance of final rule:** The Commission approved a request by Dara Owners Corporation to submeter electricity at Dara Gardens located at 150-29 72nd Road, 150-10 71st Avenue, 150-20 71st Avenue, 150-30 71st Avenue, 150-40 71st Avenue, 150-11 72nd Road, 150-15 72nd Road and 150-25 72nd Rd. in Kew Garden Hills New York, located in the territory of Consolidated Edison Company of New York, Inc.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-E-0104SA1)

### NOTICE OF ADOPTION

#### Calculation of Franchise Fees by Cablevision Systems Long Island Corp. and the Village of Sea Cliff

**I.D. No.** PSC-16-04-00010-A

**Filing date:** Sept. 3, 2004

**Effective date:** Sept. 3, 2004

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

**Action taken:** The commission, on July 8, 2004, adopted an order in Case 97-V-0319 granting Cablevision Systems Long Island Corp. d/b/a Cablevision a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Village of Sea Cliff.

**Statutory authority:** Public Service Law, section 216(1)

**Subject:** Calculation of franchise fees.

**Purpose:** To allow exclusion of franchise fee collections from calculation of gross revenues.

**Substance of final rule:** The Commission approved Cablevision Systems of Long Island Corp. d/b/a Cablevision's request for a waiver of Section 595.1(o)(2) to permit exclusion of franchise fee collections from calculation of gross receipts to determine the franchise fee for the Village of Sea Cliff, Nassau County.

**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. (97-V-0319SA1)

### NOTICE OF ADOPTION

#### Calculation of Franchise Fees by Cablevision of Wappingers Falls, Inc. and the Village of Croton-on-Hudson

**I.D. No.** PSC-16-04-00014-A

**Filing date:** Sept. 3, 2004

**Effective date:** Sept. 3, 2004

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

**Action taken:** The commission, on July 8, 2004, adopted an order in Case 04-V-0319 granting Cablevision of Wappingers Falls, Inc. d/b/a Cablevi-

sion a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Village of Croton-on-Hudson.

**Statutory authority:** Public Service Law, section 216(1)

**Subject:** Calculation of franchise fees.

**Purpose:** To allow exclusion of franchise fee collections from calculation of gross revenues.

**Substance of final rule:** The Commission approved Cablevision of Wappingers Falls, Inc. d/b/a Cablevision's request for a waiver of Section 595.1(o)(2) to permit exclusion of franchise fee collections from calculation of gross receipts to determine the franchise fee for the Village of Croton-on-Hudson, Westchester County.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-V-0319SA1)

### NOTICE OF ADOPTION

#### Calculation of Franchise Fees by Cablevision of Wappingers Falls, Inc.

**I.D. No.** PSC-20-04-00014-A

**Filing date:** Sept. 3, 2004

**Effective date:** Sept. 3, 2004

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

**Action taken:** The commission, on July 8, 2004, adopted an order in Case 04-V-0436 granting Cablevision of Wappingers Falls, Inc. d/b/a Cablevision a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Town of Phillipstown.

**Statutory authority:** Public Service Law, section 216(1)

**Subject:** Calculation of franchise fees.

**Purpose:** To allow exclusion of franchise fee collections from calculation of gross revenues.

**Substance of final rule:** The Commission approved Cablevision of Wappingers Falls, Inc. d/b/a Cablevision's request for a waiver of Section 595.1(o)(2) to permit exclusion of franchise fee collections from calculation of gross receipts to determine the franchise fee for the Town of Phillipstown (South) Putnam County.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-V-0436SA1)

### NOTICE OF ADOPTION

#### Calculation of Franchise Fees by Cablevision of Wappingers Falls, Inc.

**I.D. No.** PSC-20-04-00015-A

**Filing date:** Sept. 3, 2004

**Effective date:** Sept. 3, 2004

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

**Action taken:** The commission, on July 8, 2004, adopted an order in Case 04-V-0437 granting Cablevision of Wappingers Falls, Inc. d/b/a Cablevision a waiver of section 595.1(o)(2) pertaining to the manner of calculation of franchise fees in the Town of Phillipstown.

**Statutory authority:** Public Service Law, section 216(1)

**Subject:** Calculation of franchise fees.

**Purpose:** To allow exclusion of franchise fee collections from calculation of gross revenues.

**Substance of final rule:** The Commission approved Cablevision of Wappingers Falls, Inc. d/b/a Cablevision's request for a waiver of Section 595.1(o)(2) to permit exclusion of franchise fee collections from calculation of gross receipts to determine the franchise fee for the Town of Phillipstown (North) Putnam County.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-V-0437SA1)

**NOTICE OF ADOPTION**

**Release of Deferred Revenues by Corning Natural Gas Corporation**

**I.D. No.** PSC-27-04-00025-A

**Filing date:** Sept. 1, 2004

**Effective date:** Sept. 1, 2004

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

**Action taken:** The commission, on Aug. 25, 2004, adopted an order in Case 02-G-0003 approving the terms and provisions of Corning Natural Gas Corporation's (Corning) third joint proposal.

**Statutory authority:** Public Service Law, sections 65(1), 66(12), 72 and 114

**Subject:** Corning's three-year rate plan.

**Purpose:** To provide Corning an opportunity to restructure its debt, improve its financial status and maintain its on-going operations.

**Substance of final rule:** The Commission authorized Corning Natural Gas Corporation's (Corning) to apply approximately \$174,000 of deferred revenues to its annual earnings for each of three years which will afford Corning an opportunity to rearrange its debt structure by converting short-term debt to a term loan, 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. (02-G-0003SA5)

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

**Inter-Carrier Telephone Service Quality Measures and Standards by Carrier Working Group**

**I.D. No.** PSC-38-04-00004-P

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

**Proposed action:** The commission is considering modification to existing inter-carrier telephone service quality measures and standards.

**Statutory authority:** Public Service Law, section 94(2)

**Subject:** Inter-carrier telephone service quality standards and metrics.

**Purpose:** To review recommendations from the Carrier Working Group to incorporate appropriate modifications.

**Substance of proposed rule:** The Carrier Working Group, a telecommunications industry group in which the Staffs of the Department of Public Service participate, will be making recommendations to the Commission which modify and clarify the existing carrier service quality guideline documents for Verizon New York Inc. and Frontier Telephone of Rochester. These recommendations are being made pursuant to the Commission's order in Case 02-C-1425, issued August 25, 2004, which require the Carrier Working Group to develop hot cut metrics and standards consistent with the order. The Carrier Working Group may submit to the Commission an agreed-upon resolution within 60 days of the order, or, should consensus not be achieved, parties may brief outstanding issues 21 days thereafter.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting 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. (97-C-0139SA21)

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

**Ancillary Procedures by Central Hudson Gas & Electric Corporation**

**I.D. No.** PSC-38-04-00005-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 15 to become effective Dec. 1, 2004.

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

**Subject:** Ancillary procedures.

**Purpose:** To revise the ancillary procedures applicable to retail suppliers/direct customers participating in the company's retail access program.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, modify, or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to revise the ancillary procedures applicable to retail suppliers/direct customers participating in the company's retail access program.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting 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-1071SA1)

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

**Request for Accounting Authorization by Corning Natural Gas Corporation**

**I.D. No.** PSC-38-04-00006-P

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

**Proposed action:** The commission is considering a petition from Corning Natural Gas Corporation for permission to defer the costs associated with a revised allocation reflecting the Sept. 2003 sale of the subsidiary appliance business. The commission may approve, modify or reject, in whole or in part, the relief requested.

**Statutory authority:** Public Service Law, section 66-9

**Subject:** Request for accounting authorization.

**Purpose:** To defer expenses beyond the end of the year in which they were incurred.

**Substance of proposed rule:** The Commission is considering a petition from Corning Natural Gas Corporation to defer the costs associated with a revised allocation reflecting the September 2003 sale of the subsidiary appliance business. The Commission may approve, modify or reject, in whole or in part the relief requested.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillig, 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-G-1032SA01)

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## State University of New York

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

#### Traffic and Parking Regulations at the State University College of Technology at Canton

I.D. No. SUN-38-04-00003-P

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

**Proposed action:** Amendment of Part 571 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 360(1)

**Subject:** Traffic and parking regulations at the State University College of Technology at Canton.

**Purpose:** To change parking and enforcement regulations and add traffic stop intersections.

**Text of proposed rule:**

#### PART 571

#### STATE UNIVERSITY COLLEGE OF TECHNOLOGY AT CANTON

Section 571.0 Definitions. For purposes of this Part, the following are defined as:

(a) Employee. All officers, full-time and part-time faculty and staff employed by the college, the college association, the college foundation, and the State University Research Foundation. (Exception: resident assistants, student managers or student workers are not employees.)

(b) Student. All individuals registered in a full-time or part-time course of study.

#### § 571.1 Registration of vehicles.

(a) No student, employee or member of any organization utilizing space on the campus shall operate or park a motor vehicle of any kind or description on premises or property under the control of the university unless such motor vehicle is properly registered with the university police department of the campus.

(b) Such registration shall be conditioned upon the registrants' payment of a motor vehicle registration fee and any applicable parking fee, as approved by the [chancellor or his designee] *campus president or desig-*

*nee, or, if directed by the Board of Trustees, by the Board of Trustees.* The amount of the registration fee shall be substantially based on the costs attributable to the vehicle registration procedure. Parking fees for employees shall be consistent with applicable collective bargaining agreements. All parking fees shall be approved in accordance with guidelines established by the [chancellor or designee] *president or designee, or by the Board of Trustees, as the case may be.* Such guidelines shall provide that the determination of the amount of the fee be substantially based on an analysis of the costs attributable to the operation and maintenance of the parking facilities owned and operated by the College of Technology at Canton.

(c) Upon payment of a motor vehicle registration fee and any applicable parking fee, a permit shall be issued which must be affixed to the vehicle in accordance with instructions provided. Where such registered vehicle is sold or transferred or where the owner or operator is no longer enrolled or in the employ of the institution, or in the event of the revocation of a registration, such permits must be removed and returned.

#### § 571.2 Parking regulations.

(a) No person shall park a vehicle in any area except those areas specifically designated as motor vehicle lots or spaces. Where campus parking areas have been designated, respectively, for students, employees or visitors, as the case may be, no motor vehicle shall be parked in a designated parking area other than the parking area to which such registrant or visitor has been assigned. Special parking permission may be granted in extraordinary circumstances by the chief of university police. The chief of university police may also restrict parking in designated areas due to extraordinary circumstances such as weather conditions, special campus events, construction, etc., provided that notice of such restrictions be published in campus communications and/or appropriate signs be erected.

(1) All students will be required to park [either] in [lot] *student parking lots 1, 3, 4, 6 or 7, or any other area as designated by the chief of university police. Students may also park in that portion of French Hall designated "15 Minute Temporary Parking With Flashers On". Commuter students may also park in that portion of Miller Campus Center parking lot designated as "Commuter Student Parking".*

(2) Students are not to park in the following areas at any time. Violators will be ticketed and their vehicles may be towed away at the owner's expense:

- (i) east and west side of Nevaldine Hall;
- (ii) [service] *Payson Drive* east of Payson Hall;
- (iii) service drive and the parking area east of Chaney Dining Center;
- (iv) service drive and parking area east of each residence hall;
- (v) *Wicks and Faculty Office* parking lot 5 in its entirety;
- (vi) French Hall parking lot;
- (vii) no student shall park or cause a vehicle to be parked on the premises of the university during periods when the college is not in session;
- (viii) on any area of the academic plaza; [and]
- (ix) Dana Hall parking lot.
- (x) *east of Southworth Library;*
- (xi) *Cook Hall parking lot;*
- (xii) *any portion of Cornell Drive;*
- (xiii) *Newell Hall parking lot;*
- (xiv) *Cooper Complex parking lot;*
- (xv) *university police parking lot; and*
- (xvi) *northeast side of Campus Center.*

(3) All employees assigned to Payson Hall, Cook Hall, [student activities] *Richard W. Miller Campus Center, Wicks Hall, and the Faculty Office Building* will park in parking lot 5, 6 or 7. *Employees with special permits issued by the chief of university police can park in Miller Campus Center parking lot or Payson Hall parking lot.* Residence hall directors of Heritage, Rushton and Mohawk residence halls will park in the designated areas of the service drives on the east side of each hall. Smith Residence Hall director and custodial staff will park in parking lot 1. Custodial staff of Heritage, Rushton and Mohawk residence halls will park in designated areas of the service drives on the east side of each hall. Chaney Dining Center employees will park in the parking area on the southeast side of [the dining hall] *Chaney Dining Hall.* Southworth [Library] employees will park on the east side of [Nevaldine Hall] *Southworth Library.* Nevaldine Hall employees will park on either the east or west side of that building, *lots 10A and 10B.* Cooper Service Building employees will park in designated areas of that building's parking lot. French Hall employees will park in the French Hall parking lot or lot 6 or 7. University police employees

will park in the parking lot adjacent to the university police building. *Veterinary science building employees will park in Nevaldine parking lot or Newell parking lot.*

(4) Employees are not to park in the following areas at any time. Violators will be ticketed and their vehicles may be towed away at the owner's expense:

- (i) any area designated in paragraph (a)(1) of this section, except *student parking* lots 6 and 7; or
- (ii) on any area of the academic plaza; or
- (iii) on any portion of *Cornell Drive*.

(b) No person shall park a motor vehicle within their designated parking area other than within the space for the parking or standing of a motor vehicle as indicated by posted signs, pavement markings, or painted lines restricting or limiting such parking.

(c) No person shall park a vehicle on the premises of the university in such manner as to interfere with the use of a fire hydrant, fire lane, or other emergency zone, create any other hazard or unreasonably interfere with the free and proper use of a road-way or pedestrian way. Any person, except those having express permission of the chief of university police or designee, who parks in areas restricted by signs or fails to properly register their vehicle, will be ticketed and their vehicle may be towed away at the owner's expense.

(d) No person shall park or cause a vehicle to be parked in spaces marked as handicapped parking spaces unless an appropriate permit for handicapped parking is displayed.

§ 571.3 Traffic regulations.

(a) Operation of vehicles on or off campus must conform with all State and municipal regulations as well as college regulations. The Vehicle and Traffic Law shall apply upon such premises notwithstanding any reference in such law to public highways, streets, roads, or sidewalks.

(b) A complaint regarding any violation of the Vehicle and Traffic Law or any traffic ordinance applicable on such premises shall be processed in accordance with the requirements of applicable law. All violations other than parking are handled through uniform traffic tickets, which are answerable to the Village Justice, Village of Canton.

(c) The speed limit on all college roads is as posted. No person shall drive a vehicle on university streets, roads or highways at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing, but in no event shall a person drive a vehicle in excess of 30 miles per hour unless a different speed is authorized and indicated by the university.

(d) All vehicles are excluded from all pedestrian walkways, except service and emergency vehicles specifically authorized by the chief of university police, or designee.

(e) The following roadways are designated for one-way traffic:

- (1) The southerly Cooper Service Complex Exit Drive for traffic proceeding in a westerly direction only.
- (2) The easterly driveway from parking lot 1 for traffic proceeding in a southerly direction only.
- (3) The easterly driveway from parking lot 3 for traffic proceeding in a northerly direction only.

(f) The following roadways are designated as stop intersections with the erection of stop signs as indicated below:

Intersection of	With Stop Sign On	Entrance from:
(1) Route 68 and Cornell Drive	Westerly side of Cornell Drive	North
(2) Cornell Drive	Westerly Cooper Service Complex Exit Drive	East
(3) Cornell Drive	Westerly Drive to Nevaldine Hall	North
(4) Cornell Drive	Easterly Drive to Nevaldine Hall	North
(5) Cornell Drive	[Westerly Driveway] <i>Miller Drive</i> from Parking Lot 1	North
(6) Cornell Drive	Easterly Driveway from Parking Lot 1	North
(7) Cornell Drive	Southerly Driveway from Chaney Dining Hall	Northwest
(8) Cornell Drive	Northerly Driveway from Chaney Dining Hall	Southwest
(9) Cornell Drive	[Westerly Driveway] <i>Payson Drive</i> from Parking Lot 3	Southeast
(10) Cornell Drive	Driveway from Parking Lot 4	Northwest
(11) Cornell Drive	Three Driveways from Parking Lot 5	East
(12) Cornell Drive	Driveway from Dana Hall	Southeast

(13) Cornell Drive	Northerly Driveway from French Hall	Southeast
(14) Cornell Drive	Southerly Driveway from French Hall	Northeast
(15) Cornell Drive	Driveway from Parking Lot 6	West
(16) Cornell Drive	Driveway from Parking Lot 7	East
(17) Easterly "Y" Spur Roadway	"Y" Crossover Roadway	Northwest
(18) Westerly "Y" Spur Roadway	Easterly "Y" Spur Roadway	Northeast
(19) Westerly "Y" Spur Roadway	"Y" Crossover Roadway	Southeast
(20) <i>Miller Drive</i>	<i>Driveway from Newell Hall</i>	<i>East</i>
(21) <i>Miller Drive</i>	<i>Driveway from Southworth Library</i>	<i>West</i>

(g) The following intersections are designated as yield intersections with the erection of yield signs as indicated below:

Intersection of	With Yield Sign On	Entrance from:
(1) Cornell Drive	Driveway from Cooper Service Complex	South
(2) <i>Miller Drive</i>	<i>Westerly driveway from Miller Campus Center</i>	<i>North</i>

(h) Standing is prohibited on all roadways on the grounds of the State University of New York, College of Technology at Canton, Village of Canton, St. Lawrence County.

§ 571.4 Enforcement.

(a) Tickets for violations must be issued only by members of the university police department.

(1) A complaint regarding any violation of the campus regulations shall be in writing reciting the time and place of the violation and the title, number or substance of the applicable rule.

(2) The complaint must be affirmed by the officer witnessing the violation and shall be served upon the violator or attached to the vehicle involved.

(3) The complaint shall indicate the amount of the fine assessable for the violation, and advise that if the person charged does not dispute the violation, fines must be paid within five business days after the date the ticket is issued.

(4) The complaint shall recite that, if the charge is disputed, an appeal hearing may be requested [by] *after* paying the fine within five business days [after] *from* the date [of] the [charge] *ticket was issued*.

(5) The complaint shall recite that, should the alleged violator fail to act within the period as prescribed in paragraphs (3) and (4) of this subdivision, the complaint is proved and shall warrant that grades and transcripts will be withheld in the case of students and deduction will be made from salary or wages in the case of employees of the college. In all other cases, unpaid fines shall be referred to the office of the Attorney General for collection.

(b) If the violator disputes the charge and requests an appeal hearing, an appeal form will be supplied which will be used to schedule the offender before the campus parking violation appeals board. If the board finds the ticket was unwarranted, then the refund will be authorized. Appeals must be requested within five business days from the date of the ticket. Any person who does not appear before his or her scheduled appeals board meeting will forfeit his or her right of appeal. This means that the complaint is proved.

(c) The penalty for violation of these regulations is:

- (1) a \$15 fine for each violation; and
- (2) a \$50 fine for violation of a handicapped designated space.

Upon a finding that five campus parking violations have been incurred during an academic year, the campus motor vehicle registration may be revoked with a loss of parking privileges for the balance of the academic year and may result in the vehicle being towed from the campus at the violator's expense.

(d) *Three or more unanswered complaints in an 18-month period by the same person regarding violations of a campus parking rule, shall result in a referral to the New York State Commissioner of Motor Vehicles for review in considering the renewal of an operator's license and/or a motor vehicle registration, and the imposition of a fee as approved by the campus president or designee, or by the Board of Trustees, as the case may be, to meet the administrative costs of such referral.*

§ 571.5 Appeals board.

(a) The [chief administrative officer] *campus president or designee* shall designate a hearing *officer* or board not to exceed [six] *three* persons to hear complaints for violation of campus traffic and parking regulations enforceable on campus. Such hearing *officer* or board shall not be bound by the rules of evidence but may hear or receive any testimony or evidence directly relevant and material to the issues presented. The board will be comprised of a panel of six persons as follows: two students; two faculty;

two classified staff. Any three persons, one from each constituency, shall be present to hear appeals. At the conclusion of the hearing or not later than five days thereafter, such hearing board shall file a report. A notice of the decision shall be promptly transmitted to the violator. The report shall include:

- (1) the name and address of the alleged violator;
- (2) the time and place when the complaint was issued;
- (3) the campus rule violated;
- (4) a concise statement of the facts established on the hearing based upon the testimony or other evidence offered;
- (5) the time and place of the hearing;
- (6) the name(s) of all witnesses;
- (7) each adjournment, stating upon whose application and to what time and place it was made; and
- (8) the decision (guilty or not guilty) of the hearing board.

(b) The campus parking violation appeals board will be responsible for administration of this section. This board will meet at the call of the chairperson.

(c) No excuses will be accepted because of ignorance of the vehicle registration, traffic and parking regulations.

**Text of proposed rule and any required statements and analyses may be obtained from:** Penny Ploughman, State University of New York, State University Plaza, Albany, NY 12246, (518) 443-5400, e-mail: ploughpe@sysadm.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)
2. Legislative objectives: By vesting the State University with authority to adopt parking and traffic regulations, the Legislature intended that each State University College promulgate and update rules pertaining to parking and traffic on its campus.
3. Needs and benefits: The proposal will allow the State University College of Technology at Canton to better manage vehicular traffic on campus and better regulate and enforce rules for vehicular traffic and parking.
4. Costs: a.) costs to regulated parties for the implementation of and continuing compliance with the rule: There are no costs to regulated parties regarding implementation of the rule.  
b.) costs to the agency, the state and local governments for the implementation and continuation of the rule: There will be no costs for the State University College of Environmental Science and Forestry.  
c.) the information, including the source(s) of such information and the methodology upon which the cost analysis is based: The cost analysis is based upon information provided by the campus.
5. Local government mandates: The proposal does not apply to local governments.
6. Paperwork: There are no new reporting requirements.
7. Duplication: None.
8. Alternatives: There are no viable alternatives.
9. Federal standards: There are no related Federal standards.
10. Compliance schedule: It is expected that compliance will be achieved immediately.

#### **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 College of Technology at Canton.

#### **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 College of Technology at Canton.

#### **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 College of Technology at Canton.

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## Office of Temporary and Disability Assistance

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### NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

#### **Case Management Subsystem**

**I.D. No.** TDA-13-04-00002-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. TDA-13-04-00002-P was published in the *State Register* on March 31, 2004.

**Subject:** Use of the case management subsystem of the welfare management system.

**Purpose:** To require social services districts to use the case management subsystem of the welfare management system for purposes of maintaining appropriate documentation to support their recovery and recoupment claims against public assistance recipients and record all repayment of public assistance.

**Substance of rule:** The proposed regulations would standardize local cash processing systems by requiring social services districts outside of New York City to use the cash management subsystem (CAMS) of the Welfare Management System (WMS) for receipt of cash and for refunds and recoveries of past expenditures, as well as for the collection and tracking of overpayments. The proposed regulations would require New York City to use WMS as its primary system of records and to use WMS in conjunction with CAMS for receipt of cash and for refunds and recoveries of past expenditures, as well as for the collection and tracking of overpayments. The proposed amendments would reduce the number of systems used by social services districts to establish and collect recoveries and overpayments on a timely basis and to identify claims on collection cases. In addition, the proposed regulations would encourage more orderly claims processing.

**Changes to rule:** No substantive changes.

**Expiration date:** March 31, 2005.

**Text of proposed rule and changes, if any, may be obtained from:** Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573

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