

RULE REVIEW

Banking Department

Pursuant to Section 207 of the State Administrative Procedure Act, Review of Existing Rules, notice is hereby given of the following rules which the Banking Department will be reviewing this year to determine whether they should be continued or modified. These rules were adopted in 1999 and 2004.

1999 Rules:

- Amendments to Part 8 of the General Regulations of the Banking Board, 3 NYCRR
 - a. Description of rule: Permits state and federal thrifts to participate in Banking Development District (BDD) program
 - b. Legal basis for rule: Banking Law Section 96-d
 - c. Need for rule: The addition of thrift institutions to the list of entities eligible to participate in the BDD program will further enhance public access to banking services and promote local economic development.
- Amendments to Part 32.1 of the General Regulations of the Banking Board, 3 NYCRR
 - a. Description of rule: Eliminates fixed maximum returned check charge and provides parameters to be followed by banking institutions in establishing such charges.
 - b. Legal basis for rule: Banking Law Sections 108(8), 202(8), 235-C and 383(13).
 - c. Need for rule: National banks and federal thrifts are free to establish NSF fees without fixed ceilings. Higher NSF fees may be a deterrent to improper banking behavior. Also, the bouncing of checks slows down the check clearing system and is often illegal.
- Amendments to Part 32.4 of the General Regulations of the Banking Board, 3 NYCRR
 - a. Description of rule: Requires certain banking institutions to disclose to depositors the sequence in which the bank pays checks presented to it.
 - b. Legal basis for rule: Banking Law Section 14(1)
 - c. Need for rule: Provides consumers with information which will help them avoid writing checks against insufficient or uncollected funds.
- Adoption of new Part 6.5 of the General Regulations of the Banking Board, 3 NYCRR
 - a. Description of rule: The rule sets forth the guidelines for investments in community development entities or projects banks or trust companies.
 - b. Legal basis for rule: Banking Law Sections 13.4, 14-g and 14-h.
 - c. Need for rule: Part 6.5 provides New York State-chartered banks parity with national banks, utilizing New York's Wild-card authority. This rule allows state-chartered banks to certify equity investments that are designed primarily to promote the public, including the welfare of low- and moderate-income areas or individuals.
- Amendments to Part 322 of the Superintendent's Regulations, 3 NYCRR
 - a. Description of rule: Permits exclusion of liabilities resulting from securities repurchase agreements from the calculation of total liabilities for purposes of the foreign bank branch and agency asset pledge requirement.
 - b. Legal basis for rule: Banking Law Section 202-b(1)
 - c. Need for rule: Reduces regulatory requirement to pledge securities in connection with liabilities resulting from repurchase agreements, to the extent such liabilities are themselves secured.
- Amendments to Part 400.12 of the Superintendent's Regulations, 3 NYCRR
 - a. Description of rule: Increases permissible check cashing fees.
 - b. Legal basis for rule: Banking Law Sections 371 and 372.
 - c. Need for rule: The rate increase is needed to ensure the financial stability of the check cashing industry by providing a reasonable rate of return.
- Amendments to Part 400.6 of the Superintendent's Regulations, 3 NYCRR
 - a. Description of rule: Revises the requirements regarding the rate schedule to be posted by check cashers.
 - b. Legal basis for rule: Banking Law Sections 371 and 372.
 - c. Need for rule: Conforms the schedule to changes in the permitted rates and makes other changes in the posting requirements that should be helpful to consumers.
- Amendments to Part 402 of the Superintendent's Regulations, 3 NYCRR
 - a. Description of rule: Reduces minimum size of signs that must be displayed at each licensed budget planner.
 - b. Legal basis for rule: Banking Law Section 587
 - c. Need for rule: Makes signage requirements for budget planners more consistent with those for licensed check cashers and money transmitters.
- Amendments to Part 14 of the General Regulations of the Banking Board, 3 NYCRR Part 14
 - a. Description of rule: Permits qualified state chartered commercial banks and trust companies to provide the Department with after-the-fact notification when making new investments, or performing new activities, in certain subsidiaries.
 - b. Legal basis for rule: Banking Law Sections 14(1) and 97(4-a).
 - c. Need for rule: Streamlines regulatory procedures for certain investments by state-chartered banks so as to broadly parallel changes in the regulatory procedures for investments by national banks.
- Amendments to Part 31 of the General Regulations of the Banking Board and Part 207 of the Special Regulations of the Banking Board, 3 NYCRR
 - a. Description of rule: Permits investments by banks and trust companies in, and officer and director interlocks with, Depository Trust and Clearing Corporation ("DTCC").

- b. Legal basis for rule: Banking Law Sections 97(5), 130(3)(b), 143(3)(b) and 209(3).
 - c. Need for rule: Extends the investment and interlock permissions previously granted with respect to The Depository Trust Company to cover its newly-formed holding company, DTCC.
- 2004 Rules
- Repeal of Part 17 of the General Regulations of the Banking Board and Supervisory Procedure CB 114, 3 NYCRR
 - a. Description of rule: Repeals regulations implementing statutory restrictions on personnel interlocks between banking organizations and firms primarily engaged in securities underwriting activities.
 - b. Legal basis for rule: L. 2000, c. 493, Section. 1
 - c. Need for rule: Conforms the Supervisory Procedures of the Banking Department to the repeal of Banking Law Sections 130(4) and 143(1).
 - Amendments to Part 400.12 of the Superintendent's Regulations, 3 NYCRR
 - a. Description of rule: Increases the maximum percentage rate that may be charged as a fee for cashing of checks by licensed check cashers; provides for an annual adjustment of such maximum per centum rate based upon an increase in the consumer price index; and increases the minimum fee that may be charged.
 - b. Legal basis for rule: Banking Law Section 372(1)
 - c. Need for rule: Provides a reasonable return for firms engaged in the check cashing business and insures the future viability of the industry. The annual modification of the fee is intended to keep the fee in step with inflationary trends affecting consumer prices.
 - Amendments to Part 402 of the Superintendent's Regulations, 3 NYCRR
 - a. Description of rule: Sets forth revised regulatory requirements and standards of operation for licensed budget planners.
 - b. Legal basis for rule: Banking Law Section 587.
 - c. Need for rule: Extensively revises the regulations governing budget planners in light of amendments to the Banking Law and General Business Law and provides a broader regulatory scheme which will strengthen consumer protection for existing and potential clients of budget planners.
 - Amendments to Part 410 of the Superintendent's Regulations, 3 NYCRR
 - a. Description of rule: Modifies the regulations pertaining to mortgage bankers and mortgage brokers.
 - b. Legal basis for rule: Banking Law Art. 12-D.
 - c. Need for rule: Conforms the regulations pertaining to mortgage bankers and mortgage brokers to changes in the Banking Law regarding surety bond requirements and other matters, amends mortgage banker and mortgage broker recordkeeping requirements.
 - Amendments to Supervisory Procedure FB 105, 3 NYCRR
 - a. Description of rule: Sets forth the procedure to be followed by a foreign banking corporation in connection with a change of manager, representative or individual designated to receive process.
 - b. Legal basis for rule: Banking Law Section 200.
 - c. Need for rule: Simplifies the regulatory requirements when a foreign banking corporation changes the individual designated to receive process.
 - Amendments to Supervisory Policy G 8, 3 NYCRR
 - a. Description of rule: This rule clarifies and streamlines the regulatory requirements for registering a domestic bank representative office.
 - b. Legal basis for rule: Banking Law Sections 14(1), 132 and 258.
 - c. Need for rule: This rule reduces the regulatory burden for establishment of representative offices by domestic banking institutions.
 - Amendments to Supervisory Policy G106, 3 NYCRR
 - a. Description of rule: Updates the Banking Department's regulations setting forth information and procedures regarding public access to Department records by means of the Freedom of Information Law ("FOIL").
 - b. Legal basis for rule: Public Officers Law Sections 87 et seq.
 - c. Need for rule: Updates the Banking Department's regulations to reflect significant amendments to FOIL and to reflect changes in the Department's FOIL procedures.
- Public comment on the continuation or modification of the above rules is invited. Comments must be received within 45 days of the date of publication of this notice. *Comments should be submitted to:* Sam L. Abram, Secretary of the Banking Board, Banking Department, One State St., New York, NY 10004, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us
- Banking Department**
- Pursuant to Section 207 of the State Administrative Procedure Act, Review of Existing Rules, notice is hereby given of the following rules which the Banking Department will be reviewing this year to determine whether they should be continued or modified. These rules were adopted in 2000 and 2005.
- 2000 Rules
- New Part 41 of the General Regulations of the Banking Board, 3 NYCRR
 - a. Description of rule: The rule regulates the making of high cost home loans by lenders regulated by the Banking Department.
 - b. Legal basis for rule: Banking Law Sections 6-i, 14(1).
 - c. Need for rule: Regulation of high cost home lending is necessary in order to deter predatory lending practices.
- 2005 Rules
- New Part 6.7 of the General Regulations of the Banking Board, 3 NYCRR
 - a. Description of rule: Part 6.7 gives New York banks and trust companies parity with national banks in underwriting, dealing in and investing in municipal revenue bonds and other government securities
 - b. Legal basis for rule: Banking Law Sections 10, 14 and 14-g.
 - c. Need for rule: As part of the federal Gramm-Leach-Bliley Act of 1999, well-capitalized national banks were granted the authority to underwrite municipal revenue bonds; that is, obligations of a state or political subdivision other than general obligations. Based on the wild card authority in Section 14-g of the Banking Law, this rule gives New York banks and trust companies parity with national banks in underwriting, dealing in and investing in municipal revenue bonds and other government securities.
 - Amendments to Part 96.6 of the General Regulations of the Banking Board, 3 NYCRR
 - a. Description of rule: The rule allows credit unions to make loans to a single member in excess of the \$1,000,000 cap with the superintendent's prior permission.
 - b. Legal basis for rule: Banking Law Sections 14(1), 454 and 454(6).
 - c. Need for rule: The rule removes the arbitrary fixed dollar limit on loans by state chartered credit unions while retaining other lending limits that relate to the size of the credit union making the loan.
 - Amendments to Parts 95, 96 and 97 and repeal of Part 113 of the General Regulations of the Banking Board, new Parts 326 and 327 of the Superintendent's Regulations, 3 NYCRR
 - a. Description of rule: The rules provide New York chartered credit unions with powers comparable to, and competitive with, those of their federal counterparts
 - b. Legal basis for rule: Banking Law Sections 14(1), 453(5), 454, 454(9), 454(14), 458(9) and 458-a.

- c. Need for rule: Chapter 679 of the Laws of 2003 contains amendments to Article XI of the New York Banking Law that are intended to provide New York chartered credit unions with powers comparable to, and competitive with, those of their federal counterparts. It also makes technical amendments which modernize, clarify and simplify the Banking Law as it relates to credit unions. The above-referenced rules are needed to conform the existing affected Banking Department regulations to the provisions of the new law.
- Amendments to Part 70.2 of the General Regulations of the Banking Board, 3 NYCRR
 - a. Description of rule: Section 70.2 of the General Regulations of the Banking Board sets forth the process by which the Banking Board grants permission for officer and director interlocks between banking organizations.
 - b. Legal basis for rule: Banking Law Sections 130(3)(b), 143(3)(b), 209(3)(b), 247(3)(b), 349(5)(b) and 399-a(2).
 - c. Need for rule: Eliminates the requirement that interlock permissions granted by the Banking Board be expressed in a Special Regulation.
 - Amendments to Part 207 of the Special Regulations of the Banking Board, 3 NYCRR
 - a. Description of rule: Expresses permission granted to Scott Shay to serve as both an executive officer of Signature Bank and a director of Bank Hapoalim, B.M., a foreign banking corporation maintaining a branch in New York
 - b. Legal basis for rule: Banking Law Sections 130(3)(b), 143(3)(b), 209(3)(b), 247(5)(b), 399(5)(b), 399-a(2)
 - c. Need for rule: Section 70.2 of the General Regulations of the Banking Board, as then written, required that permission for an interlock be expressed in a Special Regulation of the Banking Board.
 - Amendments to Part 301.5 of the Superintendent's Regulations, 3 NYCRR
 - a. Description of rule: The rule amends regulations regarding the quality and retention requirements for videotapes used in automated teller machine surveillance systems.
 - b. Legal basis for rule: Banking Law Sections 75-c and 75-n.
 - c. Need for rule: The rule conforms the ATM videotape retention regulations to changes in the Banking Law and facilitates the use of digital automated teller machine surveillance systems.
 - Amendments to Supervisory Policies G 4 and G 6 and Supervisory Procedures G 104, G 105, G 108, CB 103, SB 101 and SL 101, 3 NYCRR
 - a. Description of rule: Streamlines forms and procedures for certain branch and public accommodation office applications.
 - b. Legal basis for rule: Banking Law Sections 9-d, 14(1), 28, 29 and 195.
 - c. Need for rule: The amendments provide an expedited branch application process for well-rated institutions; establish simplified application forms; eliminate outdated or unnecessary informational requirements; and develop more consistent or similar requirements among the different types of banking institutions.

Public comment on the continuation or modification of the above rules is invited. Comments must be received within 45 days of the date of publication of this notice. *Comments should be submitted to:* Sam L. Abram, Secretary of the Banking Board, Banking Department, One State St., New York, NY 10004, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

Division of Criminal Justice Services

Pursuant to § 207 of the State Administrative Procedure Act, notice is hereby given of the following rules adopted by the Division of Criminal Justice Services which must be reviewed in calendar year 2010. Public comment on the continuation or modification of these rules is invited. Information regarding these rules may be obtained from and

comments may be submitted to Mark Bonacquist, Supervising Attorney, 4 Tower Place, Albany, New York 12203. Comments will be accepted for 45 days after publication of this notice in the *State Register*.

I.D. number: CJS-10-05-00001

Description of subject matter: Accreditation program for public forensic laboratories; amendment of 9 NYCRR section 6190.5(b).

Need for the rule: Section 6190.5 requires a forensic laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) to undergo an interim audit midway through the ASCLD/LAB five-year re-accreditation cycle. ASCLD/LAB offers two accreditation programs known as the International program and the Legacy program. Unlike the Legacy program, a laboratory accredited under the International program must undergo annual surveillance visits. The Commission on Forensic Science determined that these annual surveillance visits meet the intent of the interim audit requirement for laboratories accredited under the Legacy program and such laboratories need not conduct the interim audit. This rule clarifies that laboratories accredited under the International program need not undergo an interim audit.

Legal basis of the rule: Executive Law §§ 837(13) and 995-b(1).

I.D. number: CJS-17-00-00006

Description of subject matter: Accreditation program for public forensic laboratories; amendment of 9 NYCRR Part 6190.

Need for the rule: Executive Law § 995-b(1) requires minimum standards and a program of accreditation for all forensic laboratories in New York State. This rule established a process for forensic laboratories to maintain their New York State accreditation, which would have expired on July 1, 2000 under the regulatory framework in place at the time.

Legal basis of the rule: Executive Law § 995-b(1).

I.D. number: CJS-17-00-00005

Description of subject matter: Peace officer registry; amendment of 9 NYCRR Part 6056.

Need for the rule: Executive Law § 845-a(4) requires the Division to establish and maintain a central state registry of peace officers and to empower the Division to promulgate rules and regulations governing the registry. This purpose of this rule was to ease reporting mandates by eliminating the requirement that peace officer employers submit fingerprints of peace officers and report each peace officer's personal address and other related information with their submissions to the registry. The rule also changed references to the obsolete "Bureau for Municipal Police" to the Division of Criminal Justice Services.

Legal basis of the rule: Executive Law § 845-a(4).

I.D. number: CJS-18-00-00022

Description of subject matter: Notification of designated offenders; amendment of 9 NYCRR sections 6191.1 and 6191.3.

Need for the rule: Executive Law § 995-c(4) requires the Division to promulgate rules and regulations governing the procedures for notifying designated offenders of their requirement to provide a DNA sample for inclusion in the State DNA databank. This rule added references to designated offenders in the custody of the Office of Children and Family Services and the Division of Parole, offenders who were previously omitted from the provisions of the rule. It also changed the specific requirement of providing a sample of "blood" to providing a "sample appropriate for DNA testing," thereby conforming the rule with statutory amendments to section 995-c(3) of the Executive Law. The rule also amended the definition of "designated offender" by referencing the definition of designated offender found in Executive Law section 995(7), thus eliminating the need to amend the regulation every time the statutory definition of designated offender was amended.

Legal basis of the rule: Executive Law § 995-c(4).

I.D. number: CJS-06-00-00007

Description of subject matter: DNA databank; amendment of 9 NYCRR Part 6192 and addition of 9 NYCRR Part 6193.

Need for the rule: Executive Law § 995-c(1) empowers the com-

missioner of the Division of Criminal Justice Services to promulgate a rule governing the establishment of the State DNA identification index. This rule made various changes to the regulation initially promulgated by the commissioner in order to clarify and re-codify provisions.

Legal basis of the rule: Executive Law § 995-c(1).