

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Movement and Transfer of Horses and Other Equidae

I.D. No. AAM-04-12-00010-A

Filing No. 837

Filing Date: 2012-08-13

Effective Date: 2012-08-29

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

Action taken: Repeal of sections 64.1, 64.2 and 64.3; and addition of new sections 64.1, 64.2, 64.3 and 64.12 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18(6), 72(3), 74(5) and (9)

Subject: Movement and transfer of horses and other equidae.

Purpose: To establish an Equine Interstate Passport Program.

Text or summary was published in the January 25, 2012 issue of the Register, I.D. No. AAM-04-12-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Dr. David Smith, DVM, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3502

Assessment of Public Comment

The Department received the following comments:

Comment: A person inquired whether the proposed amendment

would supersede NYRA's requirements for horses entering their facilities.

Response: The proposed amendments do not supersede NYRA's requirements, since the proposed Equine Interstate Passport Program is more stringent entry requirements than New York State's minimum requirements for entry into voluntary and individual venues may have the State.

Comment: A person was concerned that the proposed equine passport program would replace the existing program.

Response: Since participation in the proposed Equine Interstate Passport Program is voluntary, the existing program remains intact.

Comment: Two persons expressed the opinion that some action should be taken to ease requirements for movement of horses across the Canadian border.

Response: The United States Department of Agriculture (USDA) has jurisdiction over the movement of horses across the U.S./Canadian border. USDA regulations would preempt any State regulation.

Comment: One person who takes frequent trail rides in various states supports the proposed equine passport program since it precludes the need to renew health certificates every 30 days.

Response: The Department agrees.

Comment: Two persons recommended that our focus on preventative health measures for horses such as vaccinations should be increased.

Response: It is the Department's position that current vaccination requirements are adequate to ensure the health of horses. Due to varying risk levels, one vaccine program is not suitable for all horses. Horse owners should consult their veterinarian for recommendations.

Comment: One person expressed opposition to the proposed equine passport program, arguing that prevention of disease transmission would suffer if health papers requiring a veterinarian exam were good for six months, and suggested that all health papers be good for six months provided common vaccination is certified on the certificates as being current. The person also questioned the monetary savings of the Equine Interstate Passport Program.

Response: Implementation of equine passport programs in other states has not resulted in an increase in disease transmission. Certification of vaccinations is inapplicable, since the Equine Interstate Passport Program requires veterinary examinations, not vaccinations. The Equine Interstate Passport Program was designed to comply with equine interstate event permit regulations already in use in many other states. It would be confusing and ineffective for New York to develop different standards from the rest of the country. The cost of the passport is \$25, plus the cost of a certificate of veterinary inspection. By moving a horse more than once on the passport, the owner would save money by not having to pay for repeated veterinary examinations.

NOTICE OF ADOPTION

To Repeal Obsolete Rules

I.D. No. AAM-18-12-00001-A

Filing No. 836

Filing Date: 2012-08-13

Effective Date: 2012-08-29

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

Action taken: Repeal of sections 78.3 through 78.10 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, section 18(1)

Subject: To repeal obsolete rules.

Purpose: To repeal regulations governing filings for dog licenses since the Department no longer regulates dog licensing.

Text or summary was published in the May 2, 2012 issue of the Register, I.D. No. AAM-18-12-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: David Smith, DVM, Director, Division of Animal Industry, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-3502, email: david.smith@agriculture.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-35-12-00008-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Corrections and Community Supervision, by decreasing the number of positions of Correctional Industries Sales Representative from 19 to 17 and Secretary from 2 to 1.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-35-12-00009-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State Department Service under the subheading "All State Departments and Agencies," by deleting therefrom the title of Baker; in the State University of New York under the subheading "SUNY at Buffalo," by deleting therefrom the position of Senior Musical Instrument Mechanic (1); in the Executive Department under the subheading "Office of the Governor," by deleting therefrom the position of Associate Librarian (1); in the Executive Department under the subheading "Office of General Services," by deleting therefrom the position of Insurance Analyst (1); in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by deleting therefrom the positions of Radio Technician (2) and Senior Administrative Assistant (1); in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by deleting therefrom the position of Heritage Trails Program Manager (1); in the Executive Department under the subheading "Commission on Quality of Care and Advocacy for Persons with Disabilities," by deleting therefrom the positions of Director of Protection and Advocacy (1) and Training and Staff Development Evaluation Specialist 2 (1); in the Executive Department under the subheading "Office for Technology," by deleting therefrom the position of Principal Program Specialist (OPAL) (1); in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by deleting therefrom the position of Chief of Social Services Cost Containment 2 (1); in the Department of Mental Hygiene under the subheading "Office of Alcoholism and Substance Abuse Services," by deleting therefrom the position of Supervisor of Substance Abuse Research and Evaluation (1); and, in the Department of Transportation, by deleting therefrom the positions of Minority Business Specialist 2 (2).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

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

Jurisdictional Classification

I.D. No. CVS-35-12-00010-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office for Technology," by increasing the number of positions of Special Assistant from 5 to 6.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

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

Jurisdictional Classification

I.D. No. CVS-35-12-00011-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by decreasing the number of positions of Youth Counselor 1 from 20 to 13.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

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

Jurisdictional Classification

I.D. No. CVS-35-12-00012-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State under the subheading "Joint Commission on Public Ethics," by increasing the number of positions of Deputy Counsel from 2 to 4.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Ilene Lees, Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-06-12-00001-P, Issue of February 8, 2012.

Department of Corrections and Community Supervision

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Queensboro Correctional Facility

I.D. No. CCS-35-12-00007-P

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

Proposed Action: Amendment of section 100.83(c) of Title 7 NYCRR.

Statutory authority: Correctional Law, sections 70 and 73

Subject: Queensboro Correctional Facility.

Purpose: Add the additional designation of residential treatment facility to the functions performed by Queensboro Correctional Facility.

Text of proposed rule: Amend subdivision (c) of section 100.83, 7 NYCRR, as follows:

(c) Queensboro Correctional Facility shall be classified as a minimum security facility, to be used for the following functions:

- (1) general confinement facility; and
- (2) residential treatment facility. [-]
- (3) [reserved]

Text of proposed rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, Albany, NY 12226-2050, (518) 457-4951, email: Rules@Doccs.ny.gov

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

Statutory Authority

Sections 70 and 73 of the Correction Law require that the commissioner designate each correctional facility and residential treatment facility in the rules and regulations of the department.

Legislative Objective

By vesting the commissioner with this rulemaking authority, the legislature intended that each facility designation specify the facility name and location, gender and age range of the inmates, security level, and functions served.

Needs and Benefits

This proposal will add the additional designation of residential treatment facility, as set forth in Correction Law Section 73, to the functions performed by Queensboro Correctional Facility in order to provide a new, reintegration program to certain offenders who are technical parole violators, who have been returned to the Department's custody, and who are nearing rerelease. As set forth in Correction Law Section 2(6), a residential treatment facility is a correctional facility consisting of a community based residence in or near a community where employment, educational and training opportunities are readily available for persons who are on parole or conditional release and for persons who are or soon will be eligible for release on parole who intend to reside in or near that community when released. The Department intends to develop a new transitional reintegration program at Queensboro for certain technical parole violators who have been returned to the Department's custody for a technical rule violation, and who have a set release date. The technical parole violators to be part of the program will have been committed from the New York City area, Nassau, Suffolk, Westchester or Rockland Counties. The new program will aim to link these technical parole violators to community resources and services that are designed to promote their rehabilitation and successful transition back to their home communities, where they will again be placed on community supervision.

For a number of years, Queensboro had been designated as a resi-

dential treatment facility, but at the time it was used for an entirely different purpose; namely, for inmates who had been successful participants in the work release program, or who had successfully completed Phase I of the CASAT Program, as authorized by Correction Law Section 2(18). Queensboro was returned to its current exclusive use as a general confinement facility when these functions were assumed by other correctional facilities in New York City. To reflect its actual use at the time, in 2010, the Department repealed the designations for Queensboro, both as a residential treatment facility and as a work release facility. In order to implement this new program, it is necessary that Queensboro again be designated as a residential treatment facility, in addition to its present designation and use as a general confinement facility.

Costs

- a. To regulated parties: None.
- b. To agency, the state and local governments: It is anticipated that this pilot project will present a fiscal savings to the agency, the state and local governments.
- c. Source of information: By diverting certain offenders into the Residential Treatment Facility following the issuance of a parole violation warrant, the offender will spend significantly less time in the local correctional facility. It will not be necessary for the offender to be held pending a final adjudication on the charged violation.

The Community Supervision Violator pilot project is also expected to have a significant cost savings for the agency and the state. When an offender agrees to participate in the pilot program, the agency will not incur the costs associated with either the preliminary or the final violation hearing. Furthermore, a period of 45-days of Residential Treatment Facility participation is, in most cases, going to be significantly shorter than the length of imprisonment associated with a revocation and return to custody.

Local Government Mandates

There are no new mandates imposed upon local governments by this proposal.

Paperwork

There are no additional reports or paperwork expected from this proposal.

Duplication

This proposed rule does not duplicate any existing State or Federal requirement.

Alternatives

No alternatives were considered as facility designations in the rules and regulations are required by Correction Law.

Federal Standards

There are no minimum standards of the Federal government for this or similar subject area.

Compliance Schedule

The Department of Corrections and Community Supervision will achieve compliance with the proposed rule immediately.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local governments. This proposal adds an additional function to the classification of Queensboro Correctional Facility.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal adds an additional function to the classification of Queensboro Correctional Facility.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal adds an additional function to the classification of Queensboro Correctional Facility.

State Board of Elections

NOTICE OF ADOPTION

Amend the Address of the State Board of Elections by Reason of the Move of the Office Under the Re-Stacking Program

I.D. No. SBE-22-12-00001-A

Filing No. 842

Filing Date: 2012-08-14

Effective Date: 2012-08-29

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

Action taken: Amendment of sections 6201.3(a)(2), (b)(2), (c)(2), 6208.2(a), 6213.2(b)(1), 6213.3(a), 6216.2(b)(6), (c)(4) and (d)(6) of Title 9 NYCRR.

Statutory authority: Election Law, sections 3-100, 3-102, 3-103, 3-104, 3-105 and 3-106

Subject: Amend the address of the State Board of Elections by reason of the move of the office under the re-stacking program.

Purpose: Amend the address of the State Board of Elections by reason of the move of the office under the re-stacking program.

Text or summary was published in the May 30, 2012 issue of the Register, I.D. No. SBE-22-12-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Paul M. Collins, Deputy Special Counsel, State Board of Elections, 40 North Pearl Street, Suite 5, Albany, New York 12207-2729, (518) 473-5088, email: paul.collins@elections.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

EMERGENCY RULE MAKING

Unclaimed Life Insurance Benefits and Policy Identification

I.D. No. DFS-35-12-00004-E

Filing No. 805

Filing Date: 2012-08-10

Effective Date: 2012-08-10

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

Action taken: Addition of Part 226 (Regulation 200) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 316, 1102, 1104, 2601, 4521 and 4525 and art. 24

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

Specific reasons underlying the finding of necessity: Many life insurance companies and fraternal benefit societies ("insurers") have not adopted or implemented reasonable procedures and standards for investigating claims and locating beneficiaries with respect to death benefits payable under life insurance policies, annuity contracts and accounts ("policies and accounts"). The Department conducted an investigation into how such insurers track life insurance policy holders. The Department's investigation found that many insurers regularly use lists of recent deaths from the U.S. Social Security Administration ("SSA") to promptly cease making annuity payments. However, most insurers had not been using that list to determine whether death benefits were payable to beneficiaries or amounts under accounts appropriately distributed. While insurers were extremely diligent about terminating benefits, they were much less so in seeing that benefits were paid to beneficiaries and that monies held by them in accounts were properly distributed.

On July 5, 2011, the Department issued a letter to insurers, pursuant to New York Insurance Law section 308 ("308 Letter"), that required every insurer to submit a report that included a narrative summary of the SSA's Death Master File ("SSA Master File") cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. To date, over \$262 million has been paid to beneficiaries nationwide, including more than \$95 million paid to New York beneficiaries. The 308 Letter required a one-time cross-check of the SSA Master File. This rule requires insurers to continue to perform regular SSA Master File cross-checks and to request more detailed beneficiary information (e.g., social security number, address) when policies are issued to facilitate locating and making payments to beneficiaries.

The current system leads to many abuses, for example in situations where deaths occur but without claims being filed, with an insurer continuing to deduct premiums from the account value or cash value until policies lapse. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed. Insurers must take reasonable steps to ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled.

To ensure that policyowners and policy beneficiaries are provided with all such benefits, this Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, to further ensure payment of unclaimed benefits, this Part requires insurers to respond to requests from the Superintendent to search for policies insuring the life of, or owned by, decedents, and to initiate the claims process for any death benefits that are identified as a result of those requests. Any delay in implementing these requirements will result in beneficiaries not receiving benefits or having monies distributed to them to which they are entitled, and in insurers thereby undeservedly retaining such amounts.

For the reasons stated above, the promulgation of this regulation on an emergency basis is necessary for the general welfare.

Subject: Unclaimed Life Insurance Benefits and Policy Identification.

Purpose: To ensure payment of unclaimed benefits to policyowners and policy beneficiaries.

Text of emergency rule: UNCLAIMED LIFE INSURANCE BENEFITS AND POLICY IDENTIFICATION

Section 226.0 Purpose

(a) Many life insurance companies and fraternal benefit societies have not adopted or implemented reasonable procedures and standards to investigate claims and locate beneficiaries with respect to death benefits under life insurance policies, annuity contracts and accounts. The Department conducted an investigation into how such insurers track life insurance policy holders. The Department's investigation has found that many insurers have been regularly using lists of recent deaths from the Social Security Administration to promptly cease making annuity payments. However, most had not been using it to determine whether death benefits were payable to beneficiaries.

(b) The public needs to know that insurers are taking reasonable steps to ensure that policyowners and policy beneficiaries are provided with all of the life insurance benefits for which they have paid and to which they are entitled. In particular, there may be instances where a death has occurred and no claim has been filed, but premiums continue to be deducted from the account value or cash value until the policy lapses. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

(c) To ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled, this Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, to further ensure payment of unclaimed benefits, this Part requires insurers to respond to requests from the superintendent to search for policies insuring the life of, or owned by, decedents and to initiate the claims process for any death benefits that are identified as a result of those requests.

Section 226.1 Definitions

(a) Account means:

(1) any mechanism, whether denoted as a retained asset account or otherwise, whereby the settlement of proceeds payable to a beneficiary under a policy is accomplished by the insurer or an entity acting on behalf of the insurer placing the proceeds into an account where those proceeds are retained by the insurer and the beneficiary has check or draft writing privileges; or

(2) any other settlement option relating to the manner of distribution of the proceeds payable under a policy.

(b) *Death index* means the death master file maintained by the United States social security administration or any other database or service acceptable to the superintendent.

(c) *Insured* includes an annuitant when the annuity contract provides for benefits to be paid or other monies to be distributed upon the death of the annuitant.

(d) *Insurer* means a life insurance company or fraternal benefit society.

(e) *Lost policy finder* means a service made available by the Department on its website or otherwise to assist consumers in locating unclaimed life insurance benefits.

(f) *Policy* means a life insurance policy, annuity contract, or a certificate under a life insurance policy or annuity contract, or a certificate issued by a fraternal benefit society, under which benefits are to be paid upon the death of the insured.

Section 226.2 Applicability

(a) This Part shall apply to:

(1) every policy issued by a domestic insurer and any account established under or as a result of such policy; and

(2) every policy delivered or issued for delivery in New York by an authorized foreign insurer and any account established under or as a result of such policy.

(b) Notwithstanding subdivision (a) of this section, with respect to a policy delivered or issued for delivery outside this State, an insurer may, in lieu of the requirements of this Part, implement procedures that meet the minimum requirements of the state in which the policy was delivered or issued, provided that the superintendent concludes that such other requirements are no less favorable to the policyowner and beneficiary than those required by this Part.

Section 226.3 Multiple Policy Search Procedures

(a) Upon receiving notification of the death of an insured or account holder or in the event of a match made by a death index cross-check pursuant to section 226.4 of this Part, an insurer shall search every policy or account subject to this Part to determine whether the insurer has any other policies or accounts for the insured or account holder.

(b) Every insurer that receives a notification of death of the insured or account holder, or identifies a death index match, shall notify each insurer in its holding company system of the notification or verified death index match.

Section 226.4 Standards for investigating claims and locating claimants under policies and accounts

(a) Prior to a policy's issuance or an account's establishment, and upon any change of insured, owner, or beneficiary, every insurer shall request information sufficient to ensure that all benefits or other monies are distributed to the appropriate persons upon the death of the insured or account holder, including, at a minimum, the name, address, social security number, and telephone number of every owner, insured and beneficiary of such policy or account, as applicable.

(b)(1) Every insurer shall use the latest available updated version of the death index to cross-check every policy and account subject to this Part, except as specified in subdivision (h) of this section. The cross-checks shall be performed no less frequently than quarterly. An insurer may submit a request to the superintendent for the insurer to perform the cross-checks less frequently than quarterly. The superintendent may grant such a request upon the insurer's demonstration of hardship.

(2) The cross-checks shall be performed using:

(i) the social security number of the insured or account holder; or

(ii) where the social security number is not known to the insurer, the name and date of birth of the insured or account holder.

(c) If an insurer uses a resource instead of or in addition to a death index in order to terminate benefits or close an account, the insurer shall also use that resource when cross-checking policies or accounts pursuant to subdivision (b) of this section.

(d) If an insurer uses a resource more frequently than quarterly in order to terminate benefits or close an account, the insurer shall use that resource with the same frequency when cross-checking policies or accounts pursuant to subdivision (b) of this section.

(e) If an insurer only has a partial name, social security number, date of birth, or a combination thereof, of the insured or account holder under a policy or account, the insurer shall use the available information to perform the cross-check pursuant to subdivision (b) of this section.

(f)(1) Every insurer shall implement reasonable procedures to account for common variations in data that would otherwise preclude an exact match with a death index, including:

(i) nicknames, initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;

(ii) compound last names, and blank spaces or apostrophes in last name;

(iii) incomplete date of birth data, and transposition of the "month" and "date" portions of the date of birth;

(iv) incomplete social security number; and

(v) common data entry errors in name, date of birth and social security data.

(2) An insurer that does not have in place on the effective date of this Part reasonable procedures to implement paragraph (1) of this subdivision shall do so as expeditiously as possible but no later than 150 days after such effective date.

(g) Every insurer shall establish reasonable procedures to locate beneficiaries and shall make prompt payments or distributions in accordance with Part 216 of this Title (Insurance Regulation 64).

(h) This section shall not apply to any policy or any account in the event of the death of an insured or account holder:

(1) where the insurer has fully satisfied all obligations under the policy or account prior to the date that the cross-check is performed;

(2) where the insurer has paid full death benefits on all insureds under the policy, or where the remaining obligations have been transferred to one or more new policies or accounts providing benefits of any kind in the event of the death of the insured or account holder;

(3) where the insurer has paid full surrender benefits on the policy, including a policy that is replaced after full surrender;

(4) where the policy has been rescinded and the insurer has returned all paid premiums;

(5) where the policy has been returned under a free-look provision and the insurer has returned all paid premiums;

(6) where the insurer has paid full maturity benefits under the policy;

(7) where the insurer has no record of certificate holders under a group policy administered by the group policyholder;

(8) where all monies due under the policy or account have escheated in accordance with state unclaimed property statutes;

(9) where the insurer has novated the policy;

(10) where the policy is a group annuity contract that funds employer-sponsored retirement plans and the insurer is not obligated by the terms of the contract to pay death benefits directly to the plan participant's beneficiary;

(11) where the insurer receives payroll deduction contributions for either a group annuity contract or premium payment for a group policy and a payment has been made 90 days prior to a cross-check;

(12) except as to retired employees, where premiums are wholly paid by an employer on an individual or group policy; or

(13) where a policy has lapsed or otherwise terminated and no death has been reported and the policy has been cross-checked with a death index for a period of at least two years since lapse or termination with no match.

Section 226.5 Lost policy finder application procedures

(a) Every insurer shall:

(1) upon receiving a request forwarded by the superintendent through a lost policy finder application, search for policies and any accounts subject to this Part that insure the life of, or are owned by, an individual named as the decedent in the request forwarded by the superintendent;

(2) report to the superintendent through a lost policy finder application:

(i) within 30 days of receiving the request, the findings of the search; and

(ii) where the search reveals that benefits may be due, within 30 days of the final disposition of the request, the benefit paid and any other information requested by the superintendent; and

(3) within 30 days of receiving the request, for each identified policy and account insuring the life of, or owned by, the named decedent, provide to:

(i) a requestor who is also the beneficiary of record on the identified policy or account all items, statements and forms that the insurer reasonably believes to be necessary in order to file a claim; or

(ii) a requestor who is not the beneficiary of record on the identified policy or account the requested information to the extent permissible to be disclosed in accordance with Part 420 (Insurance Regulation 169) of this Title and any other applicable privacy law, and to take such other steps necessary to facilitate the payment of any benefit that may be due under the identified policy or account.

(b)(1) Every insurer shall establish procedures to electronically receive the lost policy finder application request from, and make reports to, the superintendent as provided for in subdivision (a) of this section. When transmitted electronically, the date that the superintendent forwards the request shall be deemed to be the date of receipt by the insurer unless the day is a Saturday, Sunday or a public holiday, as defined in General Construction Law section 25 and, in such case, the date of receipt shall be as provided in General Construction Law section 25-A.

(2) An insurer required to electronically receive and submit pursuant to this Part may apply to the superintendent for an exemption from the requirement that the submission be electronic by submitting a written request to the superintendent for approval.

(3) *The insurer's request for an exemption shall specify whether it is making the request for an exemption based upon undue hardship, impracticability, or good cause, and set forth a detailed explanation as to the reason that the superintendent should approve the request.*

(4) *The insurer requesting an exemption shall submit, upon the superintendent's request, any additional information necessary for the superintendent to evaluate the insurer's request for an exemption.*

(5) *The insurer shall be exempt from the electronic submission requirement upon the superintendent's written determination so exempting the insurer. The superintendent's determination will specify the basis upon which the superintendent is granting the request and for how long the exemption applies.*

(6) *If the superintendent approves an insurer's request for an exemption from the electronic submission requirement, then the insurer shall make a physical submission in a form and manner acceptable to the superintendent.*

Section 226.6 Report to the comptroller

By February first of each year, every insurer shall submit a report to the office of the comptroller of this State specifying the number of policies and accounts that the insurer has identified pursuant to section 226.4 of this Part for the prior calendar year under which any outstanding monies have not been paid or distributed by December thirty-first of such year.

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 7, 2012.

Text of rule and any required statements and analyses may be obtained from: David Neustadt, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1690, email: david.neustadt@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for promulgation of this rule derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 316, 1102, 1104, 2601, 4521 and 4525 and Article 24 of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent to be the head of the Department of Financial Services.

FSL section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting, among others, the Insurance Law.

Insurance Law section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity that makes a filing or submission with the Superintendent, pursuant to the Insurance Law, to do so by electronic means.

Insurance Law section 1102 authorizes the Superintendent to refuse to issue or renew an insurer's license if such refusal will best promote the interests of the people of this state.

Insurance Law section 1104 authorizes the Superintendent to revoke the license of a foreign insurer if such revocation is reasonably necessary to protect the interests of the people of this state.

Insurance Law Article 24 regulates trade practices in the insurance industry by prohibiting practices that constitute unfair methods of competition or unfair or deceptive acts or practices.

Insurance Law section 2601 prohibits insurers from engaging in unfair claim settlement practices, including the failure to adopt and implement reasonable standards for prompt investigation of claims.

Insurance Law section 4521 authorizes the Superintendent to revoke or suspend a fraternal benefit society's license if such society is not carrying out its contracts in good faith.

Insurance Law section 4525 applies Articles 3 and 24 of the Insurance Law to authorized fraternal benefit societies.

2. Legislative objectives: The Department has been investigating allegations of unfair claims and trade practices by authorized life insurers and fraternal benefit societies (collectively herein, "insurers"). The Department is concerned that many insurers have not adopted or implemented reasonable procedures and standards to investigate claims and locate beneficiaries with respect to death benefits due under policies and accounts. In particular, there may be instances in which a death has occurred and no claim has been filed, but premiums continue to be deducted from the account value or cash value until the policy lapses. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

The Department met with several insurers that have substantial writings in New York to discuss past and current claim and death benefit payment practices. Some insurers have used the U.S. Social Security Administration's Death Master File ("SSA Master File") to confirm the death of a

contract holder so that it may cease making annuity payments, but have not used the SSA Master File to determine whether any death benefit payments are due under insurance policies or other accounts.

The Department sent a letter dated July 5, 2011, to every insurer requesting the submission of a special report, pursuant to Insurance Law section 308 (the "308 Letter"). The 308 Letter required the insurer to submit a report that included a narrative summary of the SSA Master File cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. After matches were identified, each insurer was directed to provide to the Superintendent a final report updating the actions it had taken to investigate the matches to determine whether a death benefit payment was due, and to describe the procedures it had implemented to locate the beneficiaries and make payments, where appropriate. To date, over \$262 million has been paid nationwide to beneficiaries, including more than \$95 million that was paid to New York beneficiaries.

The 308 Letter was a one-time comparison of the SSA Master File. This rule is necessary to require insurers to continue to make the cross-checks on an ongoing basis. This rule requires insurers to continue to perform regular cross-checks using the SSA Master File, or other database or service acceptable to the Superintendent, and to request more detailed beneficiary information (e.g., social security number, address) to facilitate locating and making payments to beneficiaries.

The regulation also addresses another matter of concern. The Department regularly receives requests from family members and other potential beneficiaries requesting assistance in locating lost policies. Although certain fee-based services have been available to provide some assistance, there has not been an efficient, no-fee mechanism by which the Department could assist the public.

The Department has now developed a Lost Policy Finder application that offers a free-of-charge service to assist in locating unclaimed benefits on policies insuring the life of, or owned by, the deceased and accounts that are established under or as a result of such policies.

This rule requires insurers to establish procedures to respond within 30 days of the Department's notification of a request to identify coverage, which the Department received through its new Lost Policy Finder application. The rule also requires the insurer to notify the beneficiary, within 30 days of the notification, of all items necessary to file a claim, if the insurer determines that there are benefits to be paid or other monies to be distributed.

3. Needs and benefits: Many insurers have still not adopted or implemented reasonable procedures and standards to investigate claims and locate beneficiaries with respect to death benefits under policies and accounts. The Department conducted an investigation into how insurers track life insurance policy holders. The Department found that many insurers have been regularly using lists of recent deaths from the Social Security Administration to promptly cease making annuity payments. However, most had not been using it to determine whether death benefits were payable to beneficiaries.

This leads to many abuses. For example, in some instances, a death may occur and no claim filed, but premiums continue to be deducted from the account value or cash value until the policy lapses. In other cases, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

While insurers were extremely diligent about terminating benefits, they were much less so in seeing that benefits were paid to beneficiaries and monies held by them in accounts were properly distributed. Insurers must take reasonable steps to ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled.

To ensure that policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled, this Part requires insurers to implement reasonable procedures to identify unclaimed death benefits, locate beneficiaries, and make prompt payments. In addition, this Part requires insurers to respond to requests from the Superintendent to search for policies insuring the life of, or owned by, decedents and to initiate the claims process for any death benefits that are identified as a result of those requests. It also establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

4. Costs: Many insurers have already implemented procedures similar to those required by this rule to terminate annuity payments. In response to the 308 Letter sent by the Department to insurers in July 2011, a number of insurers confirmed that they have already established, or are in the process of establishing, the standards and procedures required by this rule. As a result, such insurers should incur minimal additional costs to comply with the requirements of this rule. The public benefit of ensuring that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled outweighs the incidental costs of complying with this rule.

The cost to the Department, and the Office of the Comptroller, will be minimal because existing personnel are available to verify and ensure compliance of this rule. There are no costs to any other state government agency or local government.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: Section 226.5 of this rule requires every insurer to report to the Superintendent, within 30 days of receiving the Superintendent's request to search for policies and accounts, the findings of that search. In addition, within 30 days of the final disposition of the request, every insurer is required to report the benefits or amounts paid, if any, as a result of the search, and any other information requested by the Superintendent. Section 226.6 of this rule requires every insurer to submit a report to the Office of the Comptroller specifying the number of policies and accounts that the insurer has identified through a death index match or notification of the death of an insured or account holder, for the prior calendar year, any outstanding monies that have not been paid or distributed by December thirty-first of such year.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: There are no viable alternatives to this rule. As a result of the 308 Letter, to date, more than \$262 million has been paid to beneficiaries nationwide, including more than \$95 million paid to New York beneficiaries. The benefit to the public on an on-going basis is unquestionable. While some insurers may voluntarily implement these procedures, promulgation of this rule is necessary to require all insurers to do so. This rule addresses unfair claims and trade practices by insurers in a manner that protects the public while providing minimal burdens on insurers.

After considering comments received from insurers after the 308 Letter was issued, the Department issued guidance to supplement the 308 Letter. This rule incorporates those comments.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: Many insurers have already implemented procedures similar to those required by this rule to terminate annuity payments. In response to the 308 Letter, a number of insurers confirmed that they have already established, or are in the process of establishing, the standards and procedures required by this rule. Additionally, the standards included in this rule were previously adopted on an emergency basis, effective June 13, 2012. Thus, insurers have been required to comply with the requirements of the rule since that time. Therefore, this rule will take effect upon filing with the Secretary of State; however, under section 226.4(f)(2), an insurer that does not have in place on the effective date of this Part reasonable procedures to implement section 226.4(f)(1) shall do so as expeditiously as possible but no later than 150 days after such effective date.

Regulatory Flexibility Analysis

1. Small Businesses: The Department of Financial Services finds that this rule will not impose any adverse economic impact or any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at life insurers and fraternal benefit societies (collectively, "insurers") authorized to do business in New York State, none of which fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Department of Financial Services has reviewed filed reports on examination and annual statements of these authorized insurers and believes that none of them fall within the definition of "small business," because there are none which are both independently owned and have less than one hundred employees.

2. Local Governments: This rule does not impose any adverse economic impact on local governments, including reporting, recordkeeping, or other compliance requirements.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers covered by this rule do business in every county in this state, including rural areas as defined under State Administrative Procedure Act Section 102(13).

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule requires authorized life insurers and fraternal benefit societies (collectively, "insurers") to establish standards for investigating claims and locating claimants under policies and accounts providing benefits in the event of the death of an insured or account holder. It also requires insurers to establish procedures to search for policies and accounts upon receipt of a death notice or the Superintendent's notification of a request to identify coverage, which was received through the Lost Policy Finder application. It requires insurers to perform, no less than quarterly, a cross-check of the death index (i.e., the U.S. Social Security Administration's Death Master File ("SSA Master File")) or any other

database or service that is acceptable to the Superintendent). In addition, it requires insurers to establish procedures for lost policy searches, and establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

Section 226.5 of this rule requires every insurer to report to the Superintendent, within 30 days of receiving the Superintendent's request to search for policies and accounts, the findings of that search. In addition, within 30 days of the final disposition of the request, every insurer is required to report the benefits or amounts paid, if any, as a result of the search, and any other information requested by the Superintendent. Additionally, section 226.6 of this rule requires every insurer to submit a report to the Office of the Comptroller specifying the number of policies and accounts that the insurer has identified through a death index match or notification of the death of an insured or account holder, for the prior calendar year, any outstanding monies that have not been paid or distributed by December thirty-first of such year.

3. Costs: Many insurers have already implemented procedures similar to those required by this rule to terminate annuity payments. In response to a letter sent by the Department to insurers in July 2011, pursuant to Insurance Law section 308, a number of insurers confirmed that they have already established, or are in the process of establishing, the standards and procedures required by this rule. As a result, such insurers should incur minimal additional costs to comply with the requirements of this rule. The public benefit of ensuring that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled outweighs the incidental costs of complying with this rule.

The cost to the Department, and the Office of the Comptroller, will be minimal because existing personnel are available to verify and ensure compliance with this rule. There are no costs to any other state government agency or local government.

4. Minimizing adverse impact: The public needs to know that insurers are taking reasonable steps to ensure that all policyowners and policy beneficiaries are provided with all of the benefits for which they have paid and to which they are entitled. In particular, there may be instances where a death has occurred and no claim has been filed, but premiums continue to be deducted from the account value or cash value until the policy lapses. In other instances, the policies or accounts may simply remain dormant after death. In these instances, a valid death benefit is either not paid or distributed or is delayed.

The Department sent a letter, dated July 5, 2011, to every insurer requesting the submission of a special report, pursuant to Insurance Law section 308 (the "308 Letter"). The 308 Letter required the insurer to submit a report that included a narrative summary of the SSA Master File cross-check procedures implemented by the insurer; the overall results of the SSA Master File cross-check; the current procedures utilized by the insurer to locate beneficiaries, and a seriatim listing of death benefits paid as a result of the SSA Master File cross-check. After matches were identified, each insurer was directed to provide to the Superintendent a final report updating the actions it had taken to investigate the matches to determine whether a death benefit payment was due, and to describe the procedures it had implemented to locate the beneficiaries and make payments, where appropriate. To date, over \$262 million has been paid nationwide to beneficiaries, including more than \$95 million that was paid to New York beneficiaries.

The 308 Letter was a one-time comparison of the SSA Master File. This rule is necessary to require insurers to continue to make the cross-checks on an ongoing basis. This rule requires insurers to continue to perform regular cross-checks using the SSA Master File, or other database or service acceptable to the Superintendent, and to request more detailed beneficiary information (e.g., social security number, address) to facilitate locating and making payments to beneficiaries.

The regulation also addresses another matter of concern. The Department regularly receives requests from family members and other potential beneficiaries requesting assistance in locating lost policies. Although certain fee-based services have been available to provide some assistance, there has not been an efficient, no-fee mechanism by which the Department could assist the public.

The Department has now developed a Lost Policy Finder application that offers a free-of-charge service to assist in locating unclaimed benefits on policies insuring the life of, or owned by, the deceased and accounts that are established under or as a result of such policies.

This rule requires insurers to establish procedures to respond within 30 days of the Department's notification of a request to identify coverage, which the Department received through its new Lost Policy Finder application. The rule also requires the insurer to notify the beneficiary, within 30 days of the notification, of all items necessary to file a claim, if the insurer determines that there are benefits to be paid or other monies to be distributed.

The rule thus ensures that insurers will continue to make death index

cross-check efforts so that policyowners and policy beneficiaries will be provided with all of the benefits for which they have paid and to which they are entitled. This rule will result in the rightful payment of millions of dollars of additional benefits to beneficiaries. Therefore, it is necessary for all insurers to comply with the requirements of this rule.

5. Rural area participation: The Department received comments from insurers, including those doing business in rural areas of the State, regarding the 308 Letter. Those comments have been incorporated into this rule.

Job Impact Statement

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. This rule requires insurers to set forth standards for investigating claims and locating claimants under policies and accounts providing benefits in the event of an individual's death. It also requires insurers to set up procedures for lost policy searches, and establishes a filing requirement with the Office of the Comptroller regarding unpaid benefits.

The Department does not believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities.

EMERGENCY RULE MAKING

License, Financial Responsibility, Education and Test Requirements for Mortgage Loan Originators

I.D. No. DFS-35-12-00006-E

Filing No. 835

Filing Date: 2012-08-10

Effective Date: 2012-08-13

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

Action taken: Repeal of Part 420 and Supervisory Procedures MB 107 and MB 108; addition of new Part 420 and Supervisory Procedure MB 107 to Title 3 NYCRR.

Statutory authority: Banking Law, arts. 12-D and 12-E

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

Specific reasons underlying the finding of necessity: Article 12-E of the Banking Law provides for the regulation of mortgage loan originators (MLOs). Article 12-E was recently amended in order to conform to the regulation of MLOs in New York to new federal legislation (Title V of the Housing and Economic Recovery Act of 2008, known as the "SAFE Act").

The SAFE Act authorized the federal Department of Housing and Urban Development ("HUD") to assume the regulation of MLOs in any state that did not enact acceptable implementing legislation by August 1, 2009. In response, the Legislature enacted revised Article 12-E.

The emergency rulemaking revises the existing MLO regulations, which implement the prior version of Article 12-E, to conform to the changes in the statute.

Under the new legislation, MLOs, including those already engaged in the business of originating mortgage loans, must complete new education, testing and bonding requirements prior to licensure. Meeting these requirements will likely entail significant time and effort on the part of individuals subject to the revised law and regulations.

Emergency adoption of the revised regulations is necessary in order to afford such individuals sufficient advance notice of the new substantive rules and licensing procedures for MLOs that they will have an adequate opportunity to comply with the new licensing requirements and in order to protect against federal preemption of the regulation of MLOs in New York.

Subject: License, financial responsibility, education and test requirements for mortgage loan originators.

Purpose: To require that individuals engaging in mortgage loan origination activities must be licensed by the Superintendent of Financial Services (formerly the Superintendent of Banks).

Substance of emergency rule: Section 420.1 summarizes the scope and application of Part 420. It notes that all individuals unless exempt must be licensed under Article 12-E to engage in mortgage loan originator ("MLO") activities. It also sets forth the basic authority of the Superintendent to revoke or suspend a license.

Section 420.2 sets out the exemptions available to individuals from the general license requirements. Specifically, the proposed regulation includes a number of exemptions, including exemptions for individuals who work for banking institutions as mortgage loan originators and individuals who arrange mortgage loans for family members. Also, individuals who work for mortgage loan servicers and negotiate loan modifications are only subject to the license requirement if required by HUD. The Superintendent is authorized to approve other exemptions for good cause.

Section 420.3 contains a number of definitions of terms that are used in Part 420. These include definitions for "mortgage loan originator," "originating entity," "residential mortgage loan" and "loan processor or underwriter".

Section 420.4 describes the applications procedures for applying for a license as an MLO. It also provides important transitional rules for individuals already engaging in mortgage loan origination activities pursuant to the authority of the prior version of Article 12-E or, in the case of individuals engaged in the origination of manufactured homes, not previously subject to regulation by the Department of Financial Services (formerly the Banking Department).

Section 420.5 describes the circumstances in which originating entities may employ or contract with MLOs to engage in mortgage loan origination activities during the application process.

Section 420.6 sets forth the steps the Superintendent of Financial Services (formerly the Superintendent of Banks) must take upon determining to approve or disapprove an application for an MLO license.

Section 420.7 describes the circumstances when an MLO license is inactive and how an MLO may maintain his or her license during such periods.

Section 420.8 sets forth the circumstances when an MLO license may be suspended or terminated. Specifically, the proposed regulation provides that an MLO license shall terminate if the annual license renewal fee has not been paid or the requisite number of continuing education credits have not been taken. The Superintendent also may issue an order suspending an MLO license if the licensee does not file required reports or maintain a bond. The license of an MLO that has been suspended pursuant to this authority shall automatically terminate by operation of law after 90 days unless the licensee has cured all deficiencies within this time period.

Section 420.9 sets forth the process for the annual renewal of an MLO license.

Section 420.10 sets forth the process by which an MLO may surrender his or her license.

Section 420.11 sets forth the pre-licensing educational requirements applicable to applicants seeking an MLO license. Twenty hours of educational courses are required, including courses related to federal law and state law issues.

Section 420.12 sets out the requirement that pre-licensing education and continuing education courses and education course providers must be approved by the Nationwide Mortgage Licensing System and Registry (the "NMLS"). This represents a change from the prior law pursuant to which the Superintendent issued such approvals.

Section 420.13 sets forth the pre-licensing testing requirements for applicants for an MLO license. It also sets out the test location requirements and the minimum passing grades to obtain a license.

Section 420.14 sets out the continuing education requirements applicable to MLOs seeking to renew their licenses.

Section 420.15 sets out the new requirements that MLOs have a surety bonds in place as a condition to being licensed under Article 12-E. It also sets out the minimum amounts of such bonds.

Section 420.16 requires the Superintendent to make reports to the NMLS annually regarding violations by, and enforcement actions against, MLOs. It also provides a mechanism for MLOs to challenge the content of such reports.

Section 420.17 sets forth the process for calculating and collecting fees applicable to MLO licensing.

Sections 420.18 and 420.19 set forth the various duties of MLOs

and originating entities. Section 420.20 also describes conduct prohibited for MLOs and loan originators.

Finally, Section 420.21 describes the administrative action and penalties that the Superintendent may take against an MLO for violations of law or regulation.

Section 107.1 contains definitions of defined terms used in the Supervisory Procedure. Importantly, it defines the National Mortgage Licensing System (NMLS), the web-based system with which the Superintendent has entered into a written contract to process applications for initial licensing and applications for annual license renewal for MLOs.

Section 107.2 contains general information about applications for initial licensing and annual license renewal as an MLO. It states that a sample of the application form (which must be completed online) may be found on the Department's website and includes the address where certain information required in connection with the application for licensing must be mailed.

Section 107.3 describes the parts of an application for initial licensing. The application includes (1) the application form, (2) fingerprint cards, (3) the fees, (4) applicant's credit report, (5) an affidavit subscribed under penalty of perjury in the form prescribed by the Superintendent, and (6) any other information that may be required by the Superintendent. It also describes the procedure when the Superintendent determines that the information provided by the application is not complete.

Section 107.4 describes the required submissions for annual license renewal of an MLO.

Section 107.5 covers inactive status.

Section 107.6 provides information on places where applicants may obtain additional instructions and assistance on the Department's website, by email, by mail, and by telephone.

Supervisory Procedure MB 108 is hereby repealed.

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 7, 2012.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 709-1658, email: sam.abram@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority.

Revised Article 12-E of the Banking Law became effective on July 11, 2009 when Governor Paterson signed into law Chapter 123 of the Laws of 2009. The revised version of Article 12-E is modeled on the provisions of Title V of the federal Housing and Economic Recovery Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act (the "SAFE Act") pertaining to the regulation of mortgage loan originators. Hence, the licensing and regulation of mortgage loan regulators in New York now closely tracks the federal standard.

Current Part 420 of the Superintendent's Regulations, implementing the prior version of Article 12-E, was adopted on an emergency basis in December of 2008. Since the new version of Article 12-E is already effective, it is necessary to revise Part 420 and adopt the revised version on an emergency basis. An earlier draft of this regulation was published on the Department's website on August 27, 2009. To date, the Department has received two sets of comments, and these have been incorporated into the current version of the revised regulation as appropriate.

New Section 599-a of the Banking Law sets forth the legislative purpose of new Article 12-E. It notes that the new Article is intended to enhance consumer protection, reduce fraud and ensure the public welfare. It also notes that the new regulatory scheme is to be consistent with the SAFE Act.

Section 599-b sets forth the definitions used in the new Article. Defined terms include: mortgage loan originator ("MLO"); mortgage loan processor -- an individual who may not need to be licensed; residential mortgage loans -- loans for which an MLO must be licensed; residential real property; and the Nationwide Mortgage Licensing System and Registry (the "NMLS").

Section 599-c sets forth the requirements for being licensed as an MLO, the effective date for licensing and exemptions from the licensing requirements. Exemptions include ones for individuals who work for insured financial institutions, licensed attorneys who negotiate the terms of a loan for a client as an ancillary to the attorney's representation of the client, and, unless required to be licensed by the U.S. Department of Housing and Urban Development ("HUD"), certain individuals employed by a mortgage loan servicer.

Section 599-d sets out the process for obtaining an MLO license. It also sets out the Department's authority for imposing fees, the authority of the NMLS to collect such fees, the ability of the Superintendent of Financial Services (formerly the Superintendent of Banks) to modify the requirements of Article 12-E in order to ensure compliance with the SAFE Act, the requirement that filings be made electronically and required background information from all applicants.

Section 599-e sets for the findings that the Superintendent must make before a license is issued. These include a finding that the applicant not have any felony convictions within seven years or any fraud convictions at any time, that the applicant demonstrate acceptable character and fitness, educational and testing criteria and a bonding requirement. An MLO also must be affiliated with an originating entity -- a licensed mortgage banker or registered mortgage broker (or other licensed entity in the case of individuals originating manufactured homes) -- or working for mortgage loan servicers.

Section 599-f sets out the pre-licensing education requirements, and Section 599-g sets forth the pre-licensing testing requirements. Section 599-h imposes a reporting requirement on entities employing MLOs. Such entities must make annual filings through the NMLS.

Section 599-i sets forth the annual license renewal requirements for MLOs. In addition to continuing to satisfy the initial requirements for licensing, MLOs must satisfy annual continuing educational requirements and must have paid all fees. Failure to meet these requirements shall result in the automatic termination of an MLO's license. The statute also provides for a licensee going into inactive status, provided the individual continues to pay all applicable fees and to take required education courses.

Section 599-j sets forth the continuing education requirements for MLOs, and Section 599-k sets forth the requirements for a surety bond. Section 599-l requires the Superintendent to report through the NMLS at least annually on all violations of Article 12-E and all enforcement actions. MLOs may challenge the information contained in such reports. Section 599-m sets forth the records and reports that originating entities must maintain or make on MLOs employed by, or working for, such entities. This section also requires the Superintendent to maintain on the internet a list of all MLOs licensed by the Department and requires reporting to the Department by MLOs.

Section 599-n sets forth the enforcement authority of the Superintendent. In addition to "for good cause" suspension authority, the Superintendent may revoke a license for stated reasons (after a hearing), and the Superintendent may suspend a license if a required surety bond is allowed to lapse or thirty days after a required report is not filed. This section also sets out the requirements for surrendering a license and the implications of any surrender, revocation, termination or suspension of a license.

Section 599-o sets forth the authority of the Superintendent to adopt rules and regulations implementing Article 12-E, including the authority to adopt expedited review and licensing procedures for individuals previously authorized under the prior version of Article 12-E to act as MLOs. It also authorizes the Superintendent to investigate licensees and the entities with which they are associated.

Section 599-p requires that the unique identifier of every originator be clearly shown on certain documents. Section 599-q provides certain confidentiality protections for information provided to the Superintendent by an MLO, notwithstanding the sharing of such information with other regulatory bodies.

2. Legislative objectives.

As noted, new Article 12-E was intended to conform New York Law to federal law and to enhance the regulation of MLOs operating in this state. These objectives have taken on increased urgency with

the problems evidenced in the mortgage banking industry over the past few years.

The regulations implement this statute. New Part 420 differs from the prior version in a number of respects. The following is a summary of the major changes from the previous regulation:

1. The definition of a mortgage loan originator is broadened to include any individual who takes a mortgage application or offers or negotiates the terms of the mortgage with a consumer.

2. Individuals who originate loans on manufactured homes will be subject to the regulation for the first time.

3. If licensing of individuals who work for mortgage loan servicers and who engage in loan modification activities is required by the U.S. Department of Housing and Urban Development, such individuals may be subject to the licensing requirements of the new law and to the new regulation.

4. Individuals who have applied for "authorization" under the prior version of Article 12-E and Part 420 have a simplified process for becoming licensed and may continue to originate loans until they are licensed under the revised regulation or their applications are denied.

5. Individuals with a felony conviction within the last seven years or a felony conviction for fraud at any time are now prohibited from being licensed as MLOs in New York State.

6. Individuals must satisfy new pre-license education and testing requirements. There also are new bonding requirements and continuing education requirements.

7. A license automatically terminates if the licensee does not pay his or her annual license renewal fee or take the requisite amount of continuing education credits. The authority of the Superintendent to suspend an individual for good cause also has been clarified.

When Part 420 was originally adopted on an emergency basis, the Superintendent also adopted Supervisory Procedures MB 107 and MB 108. Supervisory Procedure MB107 deals with applications to become an MLO. It has been updated in line with the revisions to Article 12-E and Part 420.

Supervisory Procedure MB 108, relating to the approval of education providers and courses, was originally adopted because the prior version of Article 12-E required the Superintendent to approve both courses and providers. This activity has been transferred to the NMLS under new Article 12-E. Accordingly, Supervisory Procedure MB 108 is being rescinded.

3. Needs and benefits.

The SAFE Act is intended to impose a nationwide standard for MLO regulation; new Article 12-E constitutes New York's effort to adopt a regulatory regime consistent with this uniform standard. This regulation is needed to implement revised Article 12-E and is necessary to address problems that have surfaced over the last several years in the mortgage industry.

As has now been recognized at the federal level in the SAFE Act, increased oversight of mortgage loan originators is necessary to curb disreputable and deceptive businesses practices by MLOs. Individuals engaging in abusive practices have avoided detection by moving from company to company and in some instances, from state to state. The licensing of MLOs will greatly assist the Department in its efforts to oversee the mortgage industry and protect consumers. The regulation will enable the Department to identify, track and hold accountable those individuals who engage in abusive practices, and ensure continuing education for all MLOs that are licensed by the Department.

These regulatory requirements will improve accountability among mortgage industry professionals, protect and promote the integrity of the mortgage industry, and improve the quality of service, thereby helping to restore consumer confidence.

If New York did not adopt the new federal standards for MLO regulation or failed to implement its requirements, the SAFE Act requires that HUD assume the licensing of MLOs in New York State. This would result in ceding an important responsibility and element of state sovereignty to the federal government.

4. Costs.

MLOs are already experiencing increased costs as a result of the

fees and continuing education requirements associated with the prior version of Article 12-E. These costs will continue under the new law and regulations.

The amount of the fingerprint fee is set by the State Division of Criminal Justice Services and the processing fees of the National Mortgage Licensing System and Registry are set by that body.

The ability by the Department to regulate MLOs is expected to substantially decrease losses to consumers and the mortgage industry, as well as to assist in decreasing the number of foreclosures in the State and the associated direct and indirect costs of such foreclosures. It is expected also to reduce consumer complaints regarding MLO conduct.

The regulations will not result in any fiscal implications to the State. The Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local government mandates.

None.

6. Paperwork.

An application process has been established for MLOs electronically through the NMLS. Over time, the application process is expected to become virtually paperless; accordingly, while a limited number of documents, including fingerprints where necessary, currently have to be submitted to the Department in paper form, these requirements should diminish with the passage of time.

The specific procedures that are to be followed in order to apply for licensing as a mortgage loan originator are detailed in revised Supervisory Procedure MB 107.

7. Duplication.

The revised regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives.

The purpose of the regulation is to carry out the statutory mandate to license and regulate MLOs in a manner consistent with the SAFE Act. As noted above, the alternative would be to cede this responsibility to the federal government. By enacting revised Article 12-E, the Legislature has indicated its desire to retain this responsibility at the state level.

9. Federal standards.

Currently, mortgage loan originators are required under the SAFE Act to be licensed under requirements nearly identical to those set forth in new Article 12-E.

10. Compliance schedule.

New Article 12-E became effective on July 11, 2009.

A transitional period is provided for mortgage loan originators who, as of July 11, 2009, were authorized to act as MLOs or had filed applications to be so authorized. Such MLOs may continue to engage in MLO activities, provided they submit any additional, updated information required by the Superintendent. The transitional period runs until January 1, 2011, in the case of authorized persons, and until July 31, 2010, in the case of applicants (unless their applications are denied or withdrawn as of an earlier date). Applicants are required to complete their applications considerably in advance of these dates under the regulations in order to allow the Department to complete their processing.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The revised regulation will not have any impact on local governments. However, many of the originating entities who employ or are affiliated with mortgage loan originators are mortgage bankers or mortgage brokers who are considered small businesses. In excess of 2,700 of these businesses are licensed or registered by the Department of Financial Services (formerly the Banking Department).

2. Compliance Requirements:

The revised regulation reflects the changes made in revised Article 12-E of the Banking Law. The small businesses that MLOs are

employed by or affiliated with will be required to ensure that all MLOs employed by them have been duly licensed, report four times a year on the MLOs newly employed by them or dismissed for actual or alleged violations, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly, fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. In addition to these requirements, originating entities will be required to assign MLOs to registered locations and to ensure that an MLO's unique identifier is recorded on each mortgage application he or she originates.

3. Professional Services:

None.

4. Compliance Costs:

As under the existing Part 420, some mortgage entities may choose to pay for costs associated with initial licensing and annual license renewal for their MLOs and with continuing education requirements, but are not required to do so. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education are expected to be minimal.

5. Economic and Technological Feasibility:

The rule-making should impose no adverse economic or technological burden on small businesses that MLOs are employed by or affiliated with.

6. Minimizing Adverse Impacts:

The industry, and specifically small businesses who are licensed and registered mortgage businesses, supported passage of the previous Banking Law Article 12-E and had substantial opportunity to comment on the specific requirements of this statute and its supporting regulations. In addition, these businesses were involved in a policy dialogue with the Department during rule development. In order to minimize any potential adverse economic impact of the rulemaking, outreach was conducted with associations representing the industries that would be affected thereby (mortgage bankers, and mortgage brokers).

The revised regulation implements changes in Article 12-E of the Banking Law. An earlier draft of the revised regulation was published on the Department's website on August 27, 2009. Changes incorporating the comments have been made in the regulation where appropriate.

7. Small Business and Local Government Participation:

See response to Item 6 above.

Rural Area Flexibility Analysis

Types and Estimated Numbers. The New York State Department of Financial Services (formerly the Banking Department) licenses over 1,045 mortgage bankers and brokers, of which over 761 are located in the state. It has received 19,000 applications from MLOs under the present regulations and anticipates receiving approximately 500 initial licensing applications from individuals who seek to enter and/or re-enter the market as the economy stabilizes. Many of these entities and MLOs will be operating in rural areas of New York State and would be impacted by the regulation.

Compliance Requirements. Mortgage loan originators in rural areas must be licensed by the Superintendent of Financial Services (formerly the Superintendent of Banks) to engage in the business of mortgage loan origination. The application process established by the regulations requires an MLO to apply for a license electronically and to submit additional background information to the Mortgage Banking unit of the Department. This additional information consists of fingerprints, a recent credit report, supplementary background information and an attestation as to the truthfulness of the applicant's statements. Mortgage brokers and bankers are required to ensure that all MLOs employed by them have been duly licensed, report four times a year on the MLOs newly employed by them or dismissed for cause, determine that each MLO employed by or affiliated with them has the character, fitness and education qualifications to warrant the belief he or she will engage in mortgage loan originating honestly,

fairly and efficiently; and, finally, retain acceptable documentation as evidence of satisfactory completion of required education courses for each MLO for a period of six years. The Department believes that this rule will not impose a burdensome set of requirements on entities operating in rural areas.

Costs. Some mortgage businesses in rural areas may choose to pay the increased costs associated with the continuing education requirements and the fees associated with licensing and annual renewal of their MLOs, but are not required to do so. The regulation sets forth a background investigation fee of \$125.00, an initial license processing fee of \$ 50.00 and an annual license renewal fee of \$50. There will also be a fee for the processing of fingerprints and fees to cover the cost of third party processing of the application. The latter two fees will be posted on the Department's website. Costs associated with electronic filing of quarterly employment reports and retaining for six years evidence of completion by MLOs of required continuing education courses are expected to be minimal. The cost of continuing education is estimated to be approximately \$500 every two years. The Department's increased effectiveness in fighting mortgage fraud and predatory lending will lower costs related to litigation and will decrease losses to consumers and the mortgage industry by hundreds of millions of dollars.

Minimizing Adverse Impacts. The industry supported passage of the prior Article 12-E and had substantial opportunity to comment on the specific requirements of this statute and its supporting regulation. In addition, the industry was involved in a dialogue with the Department during rule development.

The revised regulations implement revised Article 12-E of the Banking Law, which in turn closely tracks the provisions of Title V of the federal Housing and Economic Recovery Act of 2008, also known as the S.A.F.E. Mortgage Licensing Act (the "SAFE Act"). Hence, the licensing and regulation of mortgage loan originators in New York now closely tracks the federal standard. If New York did not adopt this standard, the SAFE Act requires that the federal Department of Housing and Urban Development assume the licensing of MLOs in New York State.

Rural Area Participation. Representatives of various entities, including mortgage bankers and brokers conducting business in rural areas and entities that conduct mortgage originating in rural areas, participated in outreach meetings that were conducted during the process of drafting the prior Article 12-E and the implementing regulations. As noted above, the revised statute and regulations closely track the provisions of the federal SAFE Act.

Job Impact Statement

Revised Article 12-E of the Banking Law, effective on July 11, 2009, replaces the prior version of Article 12-E with respect to the licensing and regulation of mortgage loan servicers. This proposed regulation sets forth the application, exemption and approval procedures for licensing registration as a Mortgage Loan Originator (MLO), as well as financial responsibility requirements for individuals engaging in MLO activities. The proposed regulation also provides transition rules for individuals who engaged in MLO activities under the prior version of the article to become licensed under the new statute.

The requirement to comply with the proposed regulations is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. This is because individuals were already subject to regulation under the prior version of Article 12-E of the Banking Law. New Article 12-E and Part 420 are intended to conform the regulation of MLOs to the requirements of federal law. Absent action by New York to conform this regulation to federal requirements, federal law authorized the Department of Housing and Urban Affairs to take control of the regulation of MLOs in New York State.

As with their predecessors, the new statute and proposed regulations require the use of the internet-based National Mortgage Licensing System and Registry (NMLS), developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. This system uses a common on-line application for MLO registration in New York and other participating states. It is believed that any remaining adverse impact would be due primarily to

the nature and purpose of the statutory licensing requirement rather than the provisions of the proposed regulations.

Supervisory Procedure 108 relates to the approval by the Superintendent of Financial Services (formerly the Superintendent of Banks) of educational courses and course providers for MLOs. Under revised Article 12-E, this function has been transferred to the NMLS. Moreover, educational requirements have been increased under the new law and proposed regulation by the Superintendent.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Smoker/Nonsmoker Mortality Tables and Underwriting Classifications

I.D. No. DFS-35-12-00002-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 57 (Regulation 113) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 2403, 3201, 4217, 4221, 4224, 4511 and 4517

Subject: Smoker/nonsmoker mortality tables and underwriting classifications.

Purpose: To provide that juveniles will be treated as non-smokers unless an insurer has evidence to the contrary.

Text of proposed rule: Part 57 is hereby re-titled from “Smoker/Nonsmoker Mortality Tables For Use In Determining Minimum Nonforfeiture Benefits And Minimum Reserve Liabilities” to “Smoker/Nonsmoker Mortality Tables and Underwriting Classifications.”

Sections 57.1 to 57.4 are amended to read as follows:

§ 57.1 Purpose and applicability.

(a) The purpose of this Part is to establish standards and rules for classifying an insured as a smoker or a nonsmoker and for reclassifying an insured in accordance with section 57.5(d) of this Part and to permit the use of mortality tables that reflect differences in mortality between smokers and nonsmokers in determining minimum cash surrender values, minimum amounts and minimum periods of paid-up nonforfeiture benefits, and minimum reserve liabilities for plans of insurance with separate premium rates for smokers and nonsmokers. This Part, as amended, clarifies that if an insurer issues coverage to an insured not underwritten as a smoker at issue then the insurer may not subsequently treat the insured as a smoker for that coverage.

(b) This Part applies to every authorized life insurance company and authorized fraternal benefit society.

§ 57.2 Definitions.

As used in this Part:

(a) 1980 CSO Table with or without Ten-Year Select Mortality Factors means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Nonforfeiture Law and Standard Valuation Law for Life Insurance, and referred to in those models as the Commissioners 1980 Standard Ordinary Mortality Table, with or without Ten-Year Select Mortality Factors. The same select factors will be used for both smoker and nonsmoker tables.

(b) 1980 CET Table means that mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC Amendments to the Model Standard Nonforfeiture Law and Standard Valuation Law for Life Insurance, and referred to in those models as the Commissioners 1980 Extended Term Insurance Table.

(c) 2001 CSO Mortality Table has the same meaning as set forth in section 100.3 of Part 100 of this Title (Insurance Regulation 179).

(d) [The phrase smoker] *Smoker* and nonsmoker mortality tables [refers to] *means* mortality tables with separate rates of mortality for smokers and nonsmokers [derived from the tables, defined in subdivisions (a) and (b) of this section, which were developed by the Society of Actuaries Task Force on Smoker/Nonsmoker Mortality, recommended by the NAIC Technical Staff Actuarial Group and approved by the NAIC in December 1983].

[(d)](e) [The phrase composite] *Composite* mortality tables [refers to] *means* mortality tables[, defined in subdivisions (a) and (b) of this section, as they were originally published with rates of mortality] that do not distinguish between smokers and nonsmokers.

(f) *Smoker* means a proposed insured or an insured who has been classified by an insurer, based on current or past behavior within a specified timeframe in accordance with its standard underwriting rules or procedures, as one who smokes, uses tobacco or uses nicotine.

(g) *Nonsmoker* means a proposed insured or an insured who is classified as a nonsmoker at the time of application for life insurance or who at any subsequent time is reclassified as a nonsmoker in accordance with the insurer's underwriting procedures.

(h) *Insurer* means an authorized life insurance company or authorized fraternal benefit society.

§ 57.3 Alternate tables.

(a) In determining minimum cash surrender values, minimum amounts and minimum periods of paid-up nonforfeiture benefits and minimum reserve liabilities, for any policy of insurance delivered or issued for delivery in this State after the operative date of *Insurance Law* section 4221(k) [of the Insurance Law (formerly section 208-a[7-d])] for that policy form, at the option of the [company] insurer and subject to the conditions stated in section 57.4 of this Part:

(1) the 1980 CSO Smoker and Nonsmoker Mortality Tables, with or without Ten-Year Select Mortality Factors, may be substituted for the 1980 CSO Table, with or without Ten-Year Select Mortality Factors; and

(2) the 1980 CET Smoker and Nonsmoker Mortality Tables may be substituted for the 1980 CET Table.

(b) The 1980 CSO and 1980 CET Smoker and Nonsmoker Mortality Tables in subdivision (a) of this section are sex-distinct tables. They may be gender-blended in accordance with the provisions of Part 47 of this Title (Insurance [Department] Regulation [Number] 112).

(c) The rates of mortality for the various smoker and nonsmoker mortality tables are shown in the Appendix to this Part (Appendix 21 of this Title).

§ 57.4 Conditions.

(a) For each plan of insurance with separate premium rates for smokers and nonsmokers, an insurer may:

(1) use composite mortality tables to determine minimum cash surrender values, minimum amounts and minimum periods of paid-up nonforfeiture benefits and minimum reserve liabilities.

(2) use smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by *Insurance Law* section 4218 [of the Insurance Law (formerly section 206)], and use composite mortality tables to determine minimum cash surrender values, and minimum amounts and minimum period of paid-up nonforfeiture benefits and basic minimum reserve liabilities; or

(3) use smoker and nonsmoker mortality tables to determine minimum cash surrender values, minimum amounts and minimum periods of paid-up nonforfeiture benefits and minimum reserve liabilities.

(b) Once an insurer has selected a method as described in paragraph (1), (2) or (3) of subdivision (a) of this section to apply [with respect] to a specific series of issues of a particular plan of insurance, [such] that method must be continued for [such] that block of business unless [and until] the superintendent [shall have approved] approves a request for a change in method.

(c) For policies with separate premium rates for smokers and nonsmokers, delivered or issued for delivery in this State prior to [the effective date of this Part] September 19, 1984, with nonforfeiture

values based upon 1980 CSO and 1980 CET composite mortality tables, aggregate basic reserve liabilities (exclusive of any additional minimum reserves required by *Insurance Law* section 4218 [of the *Insurance Law*, formerly section 206]) must not be less than aggregate minimum basic reserves according to the same composite mortality tables. For such policies, the insurer may use 1980 CSO and 1980 CET smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by *Insurance Law* section 4218 [of the *Insurance Law* (formerly section 206)].

(d) The reserve actually held for each policy (including any additional minimum reserve required by *Insurance Law* section 4218 [of the *Insurance Law*, formerly section 206]) must not be less than the cash surrender value of such policy at the same duration.

(e) *In accordance with section 57.5(e) of this Part, an insurer may use composite mortality tables when a policy is issued to any individual up to an age identified in the policy between ages 15 and 18, inclusive, and smoker/nonsmoker mortality tables when the policy is issued to any individual over that age.*

New sections 57.5 and 57.6 are added to read as follows:

§ 57.5 *Classification and reclassification.*

(a) *An insured may only be treated as a smoker for rating and benefit purposes if:*

(1) *the insurer has determined that the insured is a smoker in accordance with subdivision (b) of this section; and*

(2) *subject to underwriting in accordance with subdivision (b) of this section, the insurer treats any other insured who is not determined to be a smoker as a non-smoker for rating and benefit purposes.*

(b) *If, based on its underwriting procedures, an insurer determines, at the time of policy application or at the time of a request for an increase in insurance coverage where evidence of insurability is required under the terms of the policy with respect to the amount of the increase, that an insured is a smoker, the policy must specify when the rates or benefits of the policy will be based on the insured's classification as a smoker.*

(c) *A policy on an insured classified as a smoker must identify any amounts of coverage to which the smoker classification is being applied and, if applicable, any amounts of coverage to which the smoker classification does not apply.*

(d) *If the insurer has any procedures for the insured to seek a more favorable underwriting classification, then the insurer must describe those procedures in any policy issued after the effective date of this section. Amounts of coverage issued on an insured may not subsequently be reclassified to a less favorable underwriting classification. This subdivision does not apply to any increases in insurance coverage for which evidence of insurability is required.*

(e) *For any policy issued under the 2001 CSO Mortality Table at ages for which the table does not have distinct mortality rates for smokers and nonsmokers, an insurer may either:*

(1) *use the composite mortality table for all attained ages; or*

(2) *use the composite mortality table for attained ages up to an age identified in the policy between ages 15 and 18, inclusive, and thereafter use smoker and non-smoker tables in accordance with Part 100 of this Title (Insurance Regulation 179) and as provided in this section.*

(f) *This section applies to all policies issued on or after the effective date of this section.*

§ 57.6 *Determined violation.*

A contravention of section 57.5 of this Part shall be deemed to be an unfair method of competition or an unfair or deceptive act and practice in the conduct of the business of insurance in this State, and shall be deemed to be a trade practice constituting a determined violation, as defined in Insurance Law section 2402(c), in violation of Insurance Law section 2403.

Text of proposed rule and any required statements and analyses may be obtained from: David Neustadt, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1690, email: david.neustadt@dfs.ny.gov

Data, views or arguments may be submitted to: Dennis Lauzon, Assistant Chief Life Actuary, New York State Department of Financial Services, One Commerce Plaza, Albany, New York 12257, (518) 474-7929, email: Dennis.Lauzon@dfs.ny.gov

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

Regulatory Impact Statement

1. Statutory authority: Financial Services Law (“FSL”) sections 202 and 302; and Insurance Law (“Ins Law”) sections 301, 2403, 3201, 4217, 4221, 4224, 4511 and 4517.

FSL section 202 describes the powers of the Superintendent of Financial Services generally.

FSL section 302 and Ins Law section 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law and the Insurance Law, and to prescribe regulations interpreting them.

Ins Law section 2403 describes prohibited trade practices that constitute determined violations.

Ins Law section 3201 provides that no life insurance policy form may be delivered or issued for delivery in this state unless it has been filed with and approved by the Superintendent as conforming to the requirements of the Insurance Law, and not inconsistent with law.

Ins Law section 4217 governs the valuation of life insurance policies, including the calculation of reserves and use of mortality tables.

Ins Law section 4221 is the standard nonforfeiture law for life insurance and sets forth certain minimum requirements for life insurance policies.

Ins Law section 4224 prohibits unfair discrimination between individuals of the same class and equal expectation of life, and requires that any difference in treatment be based upon sound actuarial principles.

Ins Law sections 4511 and 4517 govern life insurance certificates issued by fraternal benefit societies, including their nonforfeiture benefits and valuation.

2. Legislative objectives: The proposed amendment to the rule comports with the public policy objective of Insurance Law section 4224 by ensuring that individuals of the same class and equal expectation of life are treated the same and that any difference is based on sound actuarial principles, is not unfair, and is clearly disclosed to insureds and potential insureds, thereby implicating Insurance Law sections 3201 (approval of filings), 4217 (use of mortality tables and reserves calculations), 4221 (minimum nonforfeiture requirements), and 4511 and 4517 (life insurance certificates issued by fraternal benefit societies). The rule, as amended, will ensure that an insured will not be classified as a smoker or tobacco user by an insurer unless the insured actually smokes or uses tobacco or nicotine products. Currently, some insurers re-classify certain insureds as smokers or tobacco users upon the attainment of a specified age without evidence of the insured's actual tobacco or nicotine usage. The amendment will also require insurers to provide notice of any procedures to seek reclassification of their risk classification.

3. Needs and benefits: This is one of several Parts that address the use of mortality tables by insurers. It focuses on the classification of individuals as smokers or nonsmokers and the use of smoking/nonsmoking tables. Some insureds are automatically reclassified as “smokers” under their life insurance policies upon attainment of a specified age or are unaware that the insurer has procedures for the insured to seek reclassification as a nonsmoker. This amendment creates a presumption that every insured qualifies for a non-smoker class unless the insurer, in responding to a request for insurance coverage, has identified the insured in accordance with its underwriting rules or procedures as one who smokes or uses tobacco or nicotine. The amendment prohibits changing coverage issued as “nonsmoker” to “smoker.” The amendment requires the policy to describe any procedures for reclassification. Thus, when a juvenile becomes an adult, coverage will continue to be based on the class assigned at the time coverage was issued and the insurer may not reclassify the smoking status. In addition, some minor technical changes are being made to the rule, such as updating language for consistency purposes and reformatting the rule for clarity. These changes do not substantively alter the meaning of any affected provision.

4. Costs: The cost for life insurers and fraternal benefit societies to comply with the proposed amendment to the rule should be nominal. While some changes in classification may necessitate training for the insurer's personnel, the revised rule only affects classification without substantially affecting the underwriting process. There should be no additional costs imposed upon the Department or other state agencies or local governments as a result of this amendment.

5. Local government mandates: The proposed amendment to the rule imposes no new programs, services, duties or responsibilities on any county, town, village, school district, fire district or other special district.

6. Paperwork: The proposed amendment to the rule does not impose any additional reporting requirements on the affected life insurers or fraternal benefit societies.

7. Duplication: The proposed amendment to the rule is not duplicative of any other rule, and changes are made to coordinate with 11 NYCRR 100 (Insurance Regulation 179).

8. Alternatives: The only alternative to the proposed amendment to the rule is to maintain the status quo and allow insureds to be classified as smokers even though they may be non-smokers. This alternative does not meet the legislative objective and was therefore rejected.

9. Federal standards: There are no analogous federal standards.

10. Compliance schedule: This amendment will take effect 180 days after Notice of Adoption is published in the State Register, except for section 57.5 which will take effect 270 days after Notice of Adoption is published in the State Register, to allow enough time for insurers to adjust their classification procedures.

Regulatory Flexibility Analysis

The Department has determined that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The basis for this finding is that this rule is directed at life insurance companies and fraternal benefit societies that are licensed to do a life insurance business in New York State, none of which is a local government or falls within the definition of "small business" as defined in section 102(8) of the State Administrative Procedure Act.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The proposed amendment applies equally to urban and rural areas throughout the State.

2. Reporting, recordkeeping and other compliance requirements, and professional services: The reporting, recordkeeping and compliance requirements for the proposed amendment are the same across the state. No special professional services will be required in a rural area to comply with the proposed rule.

3. Costs: The proposed amendment is not expected to result in any additional costs since it reflects a change in the substantive underwriting rule without affecting the underwriting process itself.

4. Minimizing adverse impact: The proposed amendment does not have any adverse impact on rural areas.

5. Rural area participation: Public participation in the preparation of this rule was afforded by the public comment period solicited when the proposed rule was published on the Department's website.

Job Impact Statement

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. The proposed rule provides that juveniles must be treated as non-smokers unless an insurer has evidence to the contrary. The rule does not change the underwriting process in any way that would require staffing changes.

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

Unfair Claims Settlement Practices and Claim Cost Control Measures

I.D. No. DFS-35-12-00003-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 216 (Regulation 64) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301 and 2601

Subject: Unfair claims settlement practices and claim cost control measures.

Purpose: To require at a minimum the inclusion, and prohibition, of certain provisions contained in a claims release.

Text of proposed rule: Subdivision 216.6(g) is hereby amended to read as follows:

(g) [Checks] *Check*, [or drafts] *draft*, *other payment medium or device, or use of electronic transfer* in payment of claims; releases.

(1) *For the purpose of this subdivision, release shall mean a written document whereby a person or entity relinquishes rights and discharges an insured and/or insurer from obligations in exchange for settlement of a claim.*

(2) [No] *An insurer shall not:*

(i) *issue a check, [or] draft, or other payment medium or device or make an electronic transfer in payment of a [first-party] claim or any element thereof, arising under any policy subject to this Part, that contains any language or provision that expressly or impliedly states that acceptance of such check, [or] draft, other payment medium or device, or electronic transfer shall constitute a final settlement or release of any or all future obligations arising out of the loss[.]; or*

[No insurer shall] (ii) *require execution of a release on a [first- or third-party] claim that:*

(a) *is broader than the scope of the settlement[.];*

(b) *unreasonably restricts the ability of the releasor to:*

(1) *discuss the terms and conditions of the settlement, provided, however, that the insurer shall not in any case prohibit the releasor from discussing the terms and conditions of the settlement with:*

(i) *the releasor's attorney, accountant, or financial advisor or planner;*

(ii) *any of the releasor's family members;*

(iii) *any court of law; or*

(iv) *any local, state, or federal agency; and*

(2) *make statements about the insurer, provided, however, that nothing herein shall prevent an insurer from requiring the execution of a release that prohibits the releasor from making false statements about the insurer.*

(3) *In addition to the prohibition set forth in paragraph (2) of this subdivision, with respect to any policy issued pursuant to Insurance Law § 1113(a)(4) through (14); (16); (19); or (20), with regard to inland marine insurance subject to the provisions of section 3425 of the Insurance Law; or (32) as a substantially similar kind of such insurance:*

(i) *an insurer shall not require execution of a release for any claim arising under the policy, unless the release sets forth:*

(a) *where the claim arises under a liability insurance policy, whether the claim is a property damage claim or a bodily injury liability claim;*

(b) *the nature of the occurrence from which the claim arises;*

(c) *the date and location of the occurrence from which the claim arises;*

(d) *the total amount of actual damages, except where the claim arises under a liability insurance policy; and*

(e) *where the claim arises under a motor vehicle liability insurance policy, the dollar or percentage reduction in damages as a result of an agreement between the parties or as a result of comparative negligence, where ascertainable; and*

(ii) *an insurer shall use separate releases for the property damage claim and the bodily injury liability claim for settlements that involve both property damage and bodily injury liability claims arising under a liability insurance policy.*

(a) *A release for a bodily injury liability claim shall state in its heading in bolded capital letters that the release is only for the bodily injury liability claim.*

(b) *A release for a property damage claim shall state in its heading in bolded capital letters that the release is only for the property damage claim.*

(4) *With regard to a motor vehicle property damage claim arising under a motor vehicle liability insurance policy, if an insurer requires execution of a release, then the insurer shall use the prescribed model "Release of Motor Vehicle Property Damage Liability Claim Only" form contained in section 216.12 of this Part, or a form that contains substantially equivalent language.*

(5) *An insurer shall not be subject to paragraphs (2)(ii)(b), (3), and (4) of this subdivision provided that the claimant is a large commercial claimant and the claimant agrees in writing that the insurer shall*

not be subject to such paragraphs. The insurer shall maintain a copy of the claimant's written agreement in the claim file. For the purpose of this subdivision, large commercial claimant means an entity that:

(i) has a net worth of at least ten million dollars, as determined by an independent certified public accountant, as of the claimant's fiscal year end immediately preceding the claim;

(ii) has gross assets exceeding thirty-three million dollars and a net worth of at least two million dollars, as determined by an independent certified public accountant, as of the claimant's fiscal year end immediately preceding the claim;

(iii) is a for-profit business entity that generates annual gross revenues exceeding thirty-three million dollars, and has a net worth of at least two million dollars, as determined by an independent certified public accountant, as of the claimant's fiscal year end immediately preceding the claim;

(iv) is a for-profit business entity that has gross assets exceeding thirty-three million dollars and generates annual gross revenues exceeding thirty-three million dollars as determined by an independent certified public accountant, as of the claimant's fiscal year end immediately preceding the claim; or

(v) is a not-for-profit organization or public entity with an annual budget exceeding thirty-three million dollars for each of its three fiscal years immediately preceding the claim.

(6) Nothing in this subdivision shall be construed as requiring an insurer to use a release.

(7) This subdivision shall not apply to any court-ordered settlement.

Section 216.12 is hereby amended by adding a new model "Release of Motor Vehicle Property Damage Liability Claim Only" form to read as follows:

RELEASE OF MOTOR VEHICLE PROPERTY DAMAGE LIABILITY CLAIM ONLY

Claim # _____

For and in consideration of the sum of \$ _____, which represents the total known property damages asserted reduced by _____, the undersigned hereby releases and forever discharges: % or \$ _____,

(NAME OF INSURER AND/OR INSURED)

his/her/its/their employees, agents, successors, heirs, executors, administrators, representatives, and assigns from all claims, demands, actions, causes of action, damages, and costs on account of any and all known property damage, including loss of use thereof, resulting from a motor vehicle accident that occurred on or about:

(DATE AND LOCATION OF ACCIDENT)

The above sum shall be distributed as follows:

Payable to: _____

Transmitted to: _____

It is understood and agreed that this settlement is the compromise of a disputed claim or matter, and that the payment is not to be construed as an admission of liability by the party or parties hereby released or for whose favor this release is given.

The undersigned declares and represents that no promise, inducement, or agreement not herein expressed has been made to the undersigned; that this release contains the entire agreement between the parties hereto; and that the terms of this release are contractual and not a mere recital.

The undersigned further agrees, acknowledges, represents, and warrants that the undersigned is the sole and lawful owner of all rights and title to, and all interests in, every claim or matter herein released, and has not assigned, transferred, or purported or attempted to assign or transfer to any person, firm, or entity any claim or other matter herein released, and that the undersigned shall not file, cause to be filed, or assist in the preparation or filing of any action or claim herein released.

Any person who knowingly and with intent to defraud any insurance company or other person files an application for commercial insurance or a statement of claim for any commercial or personal insurance benefits containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, and any person who, in connection with such application or claim, knowingly makes or knowingly assists, abets, solicits or conspires with another to make a false report of the theft, destruction, damage or conversion of any motor vehicle to a law enforcement agency, the department of motor vehicles or an insurance company commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the value of the subject motor vehicle or stated claim for each violation.

I certify under penalty of perjury that the signature below is my signature.

(CLAIMANT) (DATE)

Text of proposed rule and any required statements and analyses may be obtained from: David Neustadt, New York State Department of Financial Services, One State Street, New York, NY 10004-1511, (212) 709-1691, email: david.neustadt@dfs.ny.gov

Data, views or arguments may be submitted to: Joana Lucashuk, New York State Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-2125, email: joana.lucashuk@dfs.ny.gov

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

Regulatory Impact Statement

1. Statutory authority: Financial Services Law §§ 202 and 302 and Insurance Law §§ 301 and 2601.

Financial Services Law § 202 establishes the office of the Superintendent of Financial Services ("Superintendent").

Financial Services Law § 302 and Insurance Law § 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law, and prescribe regulations interpreting the Insurance Law.

Insurance Law § 2601 prohibits an insurer from engaging in unfair claims practices, including knowingly misrepresenting pertinent facts or policy provisions; failing to acknowledge with reasonable promptness pertinent communications as to claims; failing to adopt and implement reasonable standards for the prompt investigation of claims; not attempting in good faith to effectuate prompt, fair, and equitable claim settlements submitted in which liability has become reasonably clear; and compelling policyholders to institute suits to recover amounts due by offering substantially less than the amounts ultimately recovered in suits brought by the policyholders.

In order to protect insurance claimants, the proposed amendment exercises the Superintendent's broad authority under Financial Services Law § 302 and Insurance Law §§ 301 and 2601 by setting forth minimum provisions that an insurer must include in a release if the insurer requires the execution of a release, and prohibiting certain other provisions in such a release.

2. Legislative objectives: Insurance Law § 2601 requires insurers to effectuate prompt, fair, and equitable claim settlements. Insurers must use releases in a manner that is fair and equitable to all parties, including third-party claimants. Further, Financial Services Law § 302 and Insurance Law § 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law, and to effectuate any power granted to the Superintendent under the Insurance Law to prescribe forms or otherwise make regulations.

3. Needs and benefits: Insurers often require a third-party claimant to execute a general release in exchange for settling the claim.¹ However, insurers frequently do not tailor these releases to the specific claim and often use one generic release for different types of claims. The generic language of releases often makes it difficult to ascertain exactly what the parties are settling, how the insurer has calculated the settlement amount, and what the settlement amount represents. As a result, releasors often execute releases that go far beyond the scope of the proposed claim settlement.

Pursuant to 11 NYCRR § 216.2, § 216.6(g) applies to all insurers authorized to do business in New York, provided, however, that § 216.6(g) does not apply to workers' compensation insurance; credit insurance; title insurance; inland marine insurance, unless the insurance is subject to Insurance Law § 3425; and ocean marine insurance. Note that § 216.6(g) does not apply to self-insured entities, such as local governments.

Therefore, the purpose of this amendment is to provide clarity regarding the scope of releases to: provide a level playing field for all authorized insurers; allow the Department of Financial Services ("Department") to more easily enforce this section; and ensure that releases are narrowly tailored to the claim being settled and are easy for all parties to understand.

4. Costs: This rule does not impose compliance costs on state or local governments. The Department does not anticipate that it will incur additional costs; there may be a cost savings due to a reduced number of complaints received by the Department.

The costs to authorized insurers should be negligible. Insurers already have release templates, which they will only need to alter to comport with the draft amendment.

In addition, while an insurer may need to draft two separate releases when a settlement involves both property damage and bodily injury liability claims, the cost to do so should be negligible, as many insurers already use separate releases for property damage and bodily injury liability claims.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: For settlements that involve both property damage and bodily injury liability claims, the draft amendment requires an insurer to use separate releases for the property damage claim and the bodily injury liability claim. As a result, there may be more paperwork in such situations, because an insurer must draft two releases instead of one, but the impact on the insurer and additional paperwork obligation would be minimal.

7. Duplication: This amendment will not duplicate, overlap, or conflict with any existing state or federal rule or other legal requirement.

8. Alternatives: The Department received comments on a September 2009 draft of the rule from a state agency, three insurance trade associations, and three insurers. A trade association and an insurer questioned the rationale of applying the draft amendment to claims where counsel represents the claimant. The Department added a carve-out for a "large commercial claimant," but does not think a carve-out would be appropriate for non-commercial claimants or small commercial claimants.

A trade association commented that the amendment, which would prohibit an insurer from issuing a check or draft in payment of any settlement where the check or draft contains language that acceptance constitutes a final settlement or release, is too restrictive and will result in fewer settlements. Another trade association remarked that requiring a separate release to be signed would add administrative costs. The Department met with stakeholders of a trade association to discuss their concerns. The Department offered an alternative whereby the insurer could issue a check or draft that contains such language, but the insurer would need to send along with the check a document that complies with section 216.6(g). The Department was advised that the alternative was not feasible. Therefore, the Department did not make any changes.

In April 2010, the Department posted a revised version of the rule on its website and received comments from three insurance trade associations and four insurers. A trade association and an insurer expressed concern about the prohibition against requiring the releasor to keep the terms and conditions of the settlement confidential. The proposed rule has been revised to allow an insurer to require the execution of a release provided that it does not unreasonably restrict the ability of the releasor to discuss the terms and conditions of the settlement. Moreover, the insurer may not prohibit the releasor from discussing the terms and conditions of the settlement with certain persons, such as the releasor's attorney, accountant, or financial advisor or planner.

A trade association also expressed concern with the prohibition against the execution of a release that prohibits the releasor from making disparaging, negative, denigrating, or derogatory statements about the releasee, asserting that an insurer should not be put in a position of offering a fair settlement to a complainant, only to face disparaging remarks or have complainant's counsel recruit other policyholders to pursue similar complaints. The Department revised this section to state that an insurer shall not require execution of a release that unreasonably restricts the ability of the releasor to make statements about the insurer, provided that nothing therein would prevent the insurer from requiring the execution of a release that prohibits the releasor from making false statements about the insurer.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: Insurers will be required to comply with the new requirements no later than 90 days after publication of the Notice of Adoption in the *State Register*.

¹ With regard to first-party claims, an insurer typically requires an insured to fill out a proof-of-loss, rather than requiring the insured to execute a release.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services finds that this amendment will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this amendment is directed at insurers licensed to do business in this State, none of which falls within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Department bases this conclusion on its review of Reports on Examination and Annual Statements filed by authorized insurers, which shows that none of them constitutes a "small business", because none are both independently owned and have under one hundred employees.

2. Local governments: The amendment does not impose reporting, recordkeeping, or other compliance requirements on local governments.

Rural Area Flexibility Analysis

1. Types and Estimated Number of Rural Areas: Authorized insurers do business in every county in the State, including rural areas as defined under State Administrative Procedure Act § 102(13). Some of the home offices of these insurers lie within these rural areas.

2. Reporting, Recordkeeping, and Other Compliance Requirements and Professional Services: Authorized insurers already require the execution of releases for the settlement of third-party claims in many instances. However, for settlements that involve both property damage and bodily injury liability claims, the proposed amendment requires an insurer to use a separate release for both the property damage claim and the bodily injury liability claim. As a result, there may be more paperwork in such situations, because an insurer must draft two releases instead of one.

3. Costs: The costs to authorized insurers should be negligible. Insurers already have release templates, which an insurer will only need to alter to comport with the proposed amendment. Further, with regard to third-party motor vehicle property damage claims, Office of General Counsel ("OGC") Opinion 08-07-01 (July 1, 2008) and OGC Opinion 07-10-02 (October 10, 2007) interpreted the current language set forth in 11 NYCRR § 216.6(g) to prohibit a release from releasing an insurer from all unexpected, unknown, and/or unanticipated property damage claims. Therefore, insurers already should be complying in part with the proposed amendment.

In addition, while an insurer may need to draft two separate releases when a settlement involves both property damage and bodily injury liability claims, the cost to do so should be negligible.

4. Minimizing Adverse Impact: This amendment applies to authorized insurers that issue certain types of policies or contracts. The same requirements that will apply to non-rural entities will apply to rural area entities. Therefore, the amendment does not impose any adverse impact on rural areas.

5. Rural Area Participation: This notice is intended to provide small businesses, local governments and public and private entities in rural and non-rural areas with the opportunity to participate in the rule making process. Interested parties will have the opportunity to comment once the proposal is published in the *State Register*.

Job Impact Statement

This proposed amendment should not adversely impact jobs or employment opportunities in New York State. It is likely to have no impact whatsoever, since the proposed change merely clarifies the Department's current interpretation of the existing regulation.

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Operation of Hospitals for Persons with Mental Illness

I.D. No. OMH-35-12-00001-P

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

Proposed Action: Amendment of section 582.8 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 31.04

Subject: Operation of Hospitals for Persons with Mental Illness.

Purpose: To add provisions regarding fire safety and smoking within buildings.

Text of proposed rule: A new subdivision (e) is added to Section 582.8 of Title 14 NYCRR and the existing subdivision (e) is re-lettered as (f).

(e) Fire safety

(1) Training. Facilities shall provide fire safety training to all staff.

Fire safety training shall address topics including, but not limited to:

(i) fire prevention;

(ii) discovering a fire;

(iii) operating the fire alarm system;

(iv) use of firefighting equipment; and

(v) building evacuation, including fire drill protocols that identify staff roles and locations where patients must assemble (i.e., assembly points).

(2) Fire Drills. On a quarterly basis, facilities shall conduct fire drills in each building that houses patients.

(i) For each quarter, each such building must have a minimum of one practice fire drill per shift.

(ii) Facilities must direct all staff members on all shifts to participate in fire drills.

(iii) Drills must be scheduled at varying times during a shift.

(iv) Use of alternative exits must be practiced during fire drills.

(v) Most drills shall be unannounced for both staff and patients.

(vi) Whenever practicable, drills shall involve the actual evacuation of patients to an assembly point as specified in the fire drill protocols. Consistent with Life Safety Code standards, in larger facilities that are subdivided into separate smoke compartments to limit the spread of fire and smoke and move patients without leaving the building or changing floors, evacuation may include relocation of patients to such compartments.

(vii) Unplanned fire drills (i.e., false alarms) may count toward the number of required fire drill practices if they are fully documented.

(viii) Facilities must document and maintain records regarding fire drill performance which include an evaluation of the results of the fire drill, any corrective action that may be required, and completion of steps taken to achieve such corrective action.

(3) Tests and Inspections. Facilities must routinely test and inspect all fire safety equipment according to applicable codes, regulations and manufacturer's recommendations.

(i) All tests and inspections, and the dates conducted, shall be documented.

(ii) Facilities shall immediately correct, and document correction of, any deficiency noted during inspection and testing.

(4) Prohibited items. The following items are prohibited from use within any buildings on the grounds of the facility:

(i) devices for heating, cooking, or lighting which use kerosene, gasoline, wood, or alcohol;

(ii) portable space heating devices;

(iii) portable electric hot plates; and

(iv) barbecue grills, which may only be used outside the building if located further than 30 feet away of any building structure, including overhangs, canopies or awnings.

(5) Smoking. Facilities must not permit smoking within any buildings on the grounds of the facility. If smoking is permitted on the grounds of the facility, it shall be contained to a specific location(s) equipped with an approved non-combustible ash receptacle. Smoking shall not be permitted within 30 feet of any building structure, including overhangs, canopies or awnings.

Text of proposed rule and any required statements and analyses may be obtained from: Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Sue.Watson@omh.ny.gov

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: Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction, and to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for persons diagnosed with mental illness, pursuant to an operating certificate.

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. The New York State Clean Indoor Air Act (Public Health Law, Article 13-E) prohibits smoking in virtually all workplaces, including residential health-care facilities, unless separately designated smoking areas for adult patients are provided. The proposed rule establishes smoking and fire safety provisions for freestanding psychiatric facilities licensed by the Office of Mental Health (Office), thereby furthering the legislative policy of providing high quality mental health services to individuals with mental illness in a safe and secure environment.

3. Needs and Benefits: Current regulations governing the operation of hospitals for persons with mental illness mandate that all facilities must be safe and suitable for the comfort and care of patients. The goals of the amendments are twofold. First, the proposed amendments are needed to clearly state the expectations of the Office with respect to fire safety. The inclusion of fire safety provisions is directed toward staff improvement and increased knowledge.

The primary goal of this regulatory change is to ensure staff can and will successfully manage a fire emergency. Requirements include completion of fire safety training for all staff, conducting of practice fire drills, testing of fire safety equipment, and a prohibition on the use of certain devices for heating, cooking or lighting. These requirements are consistent with the New York State Building Code and the accreditation standards of The Joint Commission.

The second goal of the proposed amendments is to prohibit smoking within buildings. Smoking, if permitted on the grounds of the facility, will be limited to a specific location that has an approved non-combustible ash receptacle.

4. Costs:

(a) Costs to State government: These regulatory amendments will not result in any additional costs to State government.

(b) Costs to local government: These regulatory amendments will not result in any additional costs to local government.

(c) Costs to regulated parties: There is no anticipated cost associated with implementation of these amendments.

5. Local Government Mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not have a significant increase in the paperwork requirements of providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The only alternative to the regulatory amendment would be inaction. The Office is charged with the responsibility of ensuring a safe and secure environment for persons receiving mental health services. Existing regulations do not clearly specify the Office's expectations with respect to fire safety and smoking within buildings. Freestanding psychiatric facilities licensed by the Office must be aware of these expectations; therefore, that alternative was not considered.

9. Federal Standards: The regulatory amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: These regulatory amendments are effective immediately upon adoption.

Regulatory Flexibility Analysis

The proposed rule establishes smoking and fire safety provisions for freestanding psychiatric facilities licensed by the Office of Mental Health. As there will be no adverse economic impact on small businesses or local governments as a result of these amendments, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

The amendments to Part 582 of Title 14 NYCRR establish smoking and fire safety provisions for freestanding psychiatric facilities licensed by the Office of Mental Health. The amendments will not impose any adverse economic impact on rural areas; therefore, a Rural Area Flexibility Analysis is not submitted with this notice.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the purpose of this rule making is to establish smoking and fire safety provisions for freestanding psychiatric facilities licensed by the Office of Mental Health. There will be no adverse impact on jobs and employment opportunities as a result of the proposed amendments to 14 NYCRR Part 582.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Request by the Village of Angelica to Modify Its Tariff Schedule PSC No. 1

I.D. No. PSC-35-12-00013-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 whether to approve, reject or modify, in whole or in part, a request by the Village of Angelica to modify its Tariff Schedule, PSC No. 1, Electricity to reflect NYPA approved rates.

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

Subject: Request by the Village of Angelica to modify its Tariff Schedule PSC No. 1.

Purpose: To consider request by the Village of Angelica to modify its Tariff Schedule PSC No. 1.

Substance of proposed rule: The Commission is considering whether to approve, reject, or modify, in whole or in part a request by the Village of Angelica (Angelica) to modify its PSC Tariff No. 1 to reflect New York Power Authority (NYPA) approved rates. Angelica became subject to the Commission's jurisdiction in 1998 when it became a partial-requirement customer of NYPA and its rates were made temporary by the Commission.

Angelica did not provide the Commission with updated rates to reflect a rate increase approved by NYPA in October 1999 prior to Angelica's rates being made permanent by the Commission in 2001. Angelica attributes this to clerical error and seeks to modify its tariff to reflect the NYPA approved rates that have been in effect since 1999.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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.

(12-E-0339SP1)

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

To Implement an Abandonment of White Knight's Water System

I.D. No. PSC-35-12-00014-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 filed by White Knight Management LLC (White Knight) to abandon its water system.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10) and 89-h

Subject: To implement an abandonment of White Knight's water system.

Purpose: To approve the implementation of abandonment of White Knight's water system.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition filed by White Knight Management LLC (White Knight), to abandon its water system. White Knight provides water service to 65 customers in the Town of Thompson in Sullivan County. White Knight has been acquired, managing, and providing water services to what was the Melody Lakes Water Utility since January 2011. The Commission may resolve related matters and may take this action for other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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.

(12-W-0364SP1)

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

Water Rates and Charges

I.D. No. PSC-35-12-00015-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 tariff filing by Dutchess Estates Water Co., Inc., requesting approval to increase its base

rates by approximately \$28,511 or 45%, in P.S.C. No. 1 — Water, to become effective January 1, 2013.

Statutory authority: Public Service Law, sections (4)1, 5(1)(f), 89-c(1) and (10)

Subject: Water rates and charges.

Purpose: To approve an increase in base rates by approximately \$28,511 or 45%.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Dutchess Estates Water Co., Inc., requesting approval to increase its base rates by approximately \$28,511 or 45%, to be phased-in over three quarters in P.S.C. No. 1 — Water. The proposed filing has an effective date of January 1, 2013. The Commission may resolve related matters and may take this action for other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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.

(12-W-0362SP1)

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

Whether to Permit the Use of the Romet RM56000 DCID Rotary Meter for Use in Commercial Gas Meter Applications

I.D. No. PSC-35-12-00016-P

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

Proposed Action: The PSC is considering whether to approve, deny or modify, in whole or in part, a petition filed by Consolidated Edison Company of New York, Inc. for the approval to use the Romet RM56000 DCID rotary meter manufactured by Romet LTD., Mississauga, Canada.

Statutory authority: Public Service Law, section 67(1)

Subject: Whether to permit the use of the Romet RM56000 DCID rotary meter for use in commercial gas meter applications.

Purpose: To permit gas utilities in New York State to use the Romet RM56000 DCID rotary meter.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny, or modify, in whole or part, the petition filed by Consolidated Edison Company of New York Inc., to use the Romet 56000 DCID rotary meter in commercial natural gas meter applications.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann.ayer@dps.ny.gov

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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.

(12-G-0363SP1)

Department of State

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Will Require Local Government Agencies to Post Contact Information for Records Access Officers Online Where Practicable

I.D. No. DOS-35-12-00005-P

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

Proposed Action: Amendment of section 1401.9 of Title 21 NYCRR.

Statutory authority: Public Officer's Law, section 89(1)(b)(iii)

Subject: Will require local government agencies to post contact information for records access officers online where practicable.

Purpose: To make contact information for FOIL requests available online.

Text of proposed rule: 1401.9 Public notice.

Each agency shall publicize by posting in a conspicuous location and to the extent practicable, by posting on its website, and/or by publication in a local newspaper of general circulation:

(a) The locations where records shall be made available for inspection and copying.

(b) The name, title, business address and business telephone number of the designated records access officers.

(c) The right to appeal by any person denied access to a record and the name and business address of the person or body to whom an appeal is to be directed.

Text of proposed rule and any required statements and analyses may be obtained from: Camille S. Jobin-Davis, NYS Committee on Open Government, 99 Washington Ave., Suite 650, Albany, NY 12231, (518) 474-2518, email: camille.jobin-davis@dos.ny.gov

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: The Committee on Open Government's authority to propose and adopt the subject regulation is described in Public Officers's Law § 89(1), which sets forth as follows:

“(b) The committee shall:...

iii. promulgate rules and regulations with respect to the implementation of subdivision one and paragraph (c) of subdivision three of section eighty-seven of this article;...”

Subdivision one of § 87 references “general rules and regulations as may be promulgated by the committee on open government”.

2. Legislative objectives: In keeping with the Legislature's efforts to ensure that public business be performed in an open and public manner, and yet not impose onerous requirements, in recent years the Legislature has amended Articles 6 and 7 of the Public Officer's Law (“POL”) in a manner similar to the proposed regulatory change. In 2009, POL § 87(3)(c) was amended to require that up to date subject matter lists be posted on each state agency's website with accommodations for those agencies that do not maintain websites. That same year, POL § 104(5) was added, requiring notice of public meetings be posted on agency websites, at the state and local level “when a public body has the ability to do so.” In 2012, POL § 103(e) was amended to require agencies at the state and local level to post records scheduled to be discussed at public meetings online, when practicable. These amendments were in keeping with what we believe to be a cultural shift to include relevant substantive information online when reasonable to do so. This regulation would require agencies to place contact information online, when practicable, in a manner similar to those outlined above.

3. Needs and benefits: In 2006, the Legislature added POL § 89(4)(b), to require that all agencies at the state and local level, “provided such entity has reasonable means available” receive and

respond to requests via electronic mail, using forms, to the extent practicable, consistent with forms promulgated by the Committee on Open Government. Later, in 2008, the Legislature amended the statute to require each state agency that maintains a website, to post contact information for such requests online. The purpose of this regulation, therefore, is to make information about such requests available online at a local level, when practicable. The necessity for doing so is grounded in the statutory requirement that all agencies receive and respond to FOIL requests electronically, and the benefits derived from this statute include streamlining the public's ability to make requests for records without having to contact the agency by other means in order to obtain the appropriate email address.

4. Costs: Similar to the Legislature's amendment to POL § 103(e) in 2012, this proposed change may involve the expenditure of additional moneys to implement; however such cost will be nominal and, the proposal will actually decrease the burden imposed on agencies going forward. Making contact information available online, if it is not already, will only reduce the number of queries that the agency will be required to field for such information.

5. Local government mandates: The measure is only required “when practicable.”

6. Paperwork: The proposal does not include a reporting requirement.

7. Duplication: There are no known duplicative requirements.

8. Alternatives: There are no significant alternatives to the proposal.

9. Federal standards: There are no minimum standards of the federal government for similar information.

10. Compliance schedule: There is no necessity that the requirement imposed by this proposal be completed within a certain period of time.

Regulatory Flexibility Analysis

Based on the qualified language of the proposal, “when practicable”, and the one-time effort involved in placing contact information online that the proposal would require, the proposed regulation will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirement on small businesses or local governments. In many instances, it is believed that local governments already have this or similar information available online.

Rural Area Flexibility Analysis

The regulation will not adversely impact local governments in rural areas, will not impose any additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The proposal would be required “when practicable” and involves a one-time effort to place contact information online; it will not impose any adverse economic impact.

Job Impact Statement

The one-time requirement to place contact information online “when practicable” will not have any impact on jobs or employment opportunities.

Department of Transportation

NOTICE OF ADOPTION

Suspension and Revocation of Operating Authority Held by Motor Carriers of Passengers

I.D. No. TRN-22-12-00003-A

Filing No. 841

Filing Date: 2012-08-14

Effective Date: 2012-08-29

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

Action taken: Addition of section 720.32 to Title 17 NYCRR.

Statutory authority: Transportation Law, section 156, subd. 2

Subject: Suspension and revocation of operating authority held by motor carriers of passengers.

Purpose: The protection of public safety by suspending operating authority of unsafe motor carriers.

Text or summary was published in the May 30, 2012 issue of the Register, I.D. No. TRN-22-12-00003-EP.

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

Text of rule and any required statements and analyses may be obtained from: David E. Winans, Associate Counsel, New York State Department of Transportation, Div. of Legal Affairs, 50 Wolf Rd., Albany, NY 12232, (518) 457-5793, email: david.winans@dot.ny.gov

Assessment of Public Comment

The agency received no public comment.