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

Amendment of Parts 48, 53 and 59 of Title 1 to Repeal Obsolete or Unenforced Regulations

I.D. No. AAM-44-13-00005-A
Filing No. 1273
Filing Date: 2013-12-31
Effective Date: 2014-01-15

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

Action taken: Repeal of Part 48; and amendment of sections 53.5, 59.2 and 59.3 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 72, 74, 75 and 89

Subject: Amendment of Parts 48, 53 and 59 of Title 1 to repeal obsolete or unenforced regulations.

Purpose: To repeal regulations that are obsolete or not being enforced.

Text or summary was published in the October 30, 2013 issue of the Register, I.D. No. AAM-44-13-00005-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, Department of Agriculture and Markets, 10B Airline Drive, Albany NY 12235, (518) 457-3502, email: David.Smith@agriculture.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Agriculture and Markets publishes a new notice of proposed rule making in the NYS *Register*.

Standards of Identity for Grade A Maple Syrup and Processing Grade Maple Syrup

I.D. No.	Proposed	Expiration Date
AAM-52-12-00008-P	December 26, 2012	December 26, 2013

Department of Corrections and Community Supervision

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Privileged Correspondence

I.D. No. CCS-02-14-00003-P

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

Proposed Action: Addition of section 721(a)(4) to Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Privileged Correspondence.

Purpose: Add the definition for ''Rape Crisis Program.''

Text of proposed rule: The Department of Corrections and Community Supervision proposes to amend 7NYCRR Part 721 by adding the new Section 721.2(a)(4) as follows:

(4) Rape Crisis Program. Any local, state or national organization authorized to provide rape crisis services, victim advocacy services and emotional support services, including but not limited to organizations approved to provide such services in New York State by the Department of Health pursuant to Public Health Law § 206(15).

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, The Harriman State Campus - Building 2, 1220 Washington Avenue, 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

1. Statutory Authority

Section 112 of Correction Law. Section 112 grants the Commissioner the management and control of the Department's correctional facilities, the inmates confined therein, and of all matters relating to the government, discipline and policing thereof. It also empowers the Commissioner to promulgate rules and regulations for the Department so long as they are not in conflict with the statutes of the sate.

2. Legislative Objective

By vesting the commissioner with the rulemaking authority as listed above, the legislature intended the commissioner to promulgate such rules and regulations that provide fair and consistent procedures with regard to guidelines for privileged correspondence.

3. Needs and Benefits

The revision is intended to assist the Department in meeting the national standards established pursuant to the Prison Rape Elimination Act (PREA) (42 USC § 15601 et seq.; Title 28 C.F.R. § 115.05 et seq.). Section 115.53(a) of the national PREA Standards requires that "the facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations…. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible."

While DOCCS works to establish a rape crisis hotline that all offenders can access using the offender telephone system, incarcerated offenders should also have the ability to access other recognized victim advocacy or rape crisis organizations. This revision will enable incarcerated offenders to have meaningful access to these organizations.

4. Costs

a. To agency, state and local government: No discernable costs are anticipated.

b. Cost to private regulated parties: None. The proposed rule changes do not apply to private parties.

c. This cost analysis is based upon the fact that the rule changes merely clarify and expand upon previously established rules regarding privileged correspondence.

5. Paperwork

There is one Corrections and Community Supervision form letter that has been created (memorandum format on Department letterhead) to assist Department staff in verifying all of required documents from the program participants.

6. Local Government Mandates

There are no new mandates imposed upon local governments by these proposals. The proposed amendments do not apply to local governments.

7. Duplication

These proposed amendments do not duplicate any existing State or Federal requirement.

8. Alternatives

DOCCS considered the alternative of not promulgating the rule but decided that the rulemaking was necessary in order to ensure that the Department's current privileged correspondence policy and procedure is appropriately reflected in the corresponding sections of 7 NYCRR.

9. Federal Standards

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

10. Compliance Schedule

The Department of Corrections and Community Supervision will achieve compliance with the proposed rules 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 is adding the definition of "Rape Crisis Center."

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 is adding the definition of "Rape Crisis Program."

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 is adding the definition of "Rape Crisis Program."

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Inmate Telephone Calls

I.D. No. CCS-02-14-00004-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 723.5(c)(2)(i) of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Inmate Telephone Calls.

Purpose: Add the provision that an inmate may add attorney or DOH approved Rape Crisis Program to their telephone list.

Text of proposed rule: The Department of Corrections and Community Supervision proposes to amend 7NYCRR Section 723.5 (c)(2)(i) as follows:

i) Each inmate shall be limited to 15 approved names and phone numbers which will be maintained as his[/] *or* her ''telephone list.'' Except for immediate family members, *and as otherwise specified herein,* revisions to the telephone list will only be made when the inmate is due a quarterly review. Phone number changes for immediate family members already on the list will be permitted. *An inmate may add an attorney or a Department of Health approved Rape Crisis Program to his or her telephone list at any time by submitting a request to his or her assigned Offender Rehabilitation Coordinator.*

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, The Harriman State Campus - Building 2, 1220 Washington Avenue, 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

The New York State Department of Corrections and Community Supervision (DOCCS) is making an amendment to 7 NYCRR Part 723, "Inmate Telephone Calls." The specific content related changes are denoted in the Needs and Benefits section below.

1. Statutory Authority

Section 112 of Correction Law. Section 112 grants the Commissioner the management and control of the Department's correctional facilities, the inmates confined therein, and of all matters relating to the government, discipline and policing thereof. It also empowers the Commissioner to promulgate rules and regulations for the Department so long as they are not in conflict with the statutes of the state.

2. Legislative Objective

By vesting the commissioner with the rulemaking authority as listed above, the legislature intended the commissioner to promulgate such rules and regulations that provide fair and consistent procedures with regard to inmate telephone calls.

3. Needs and Benefits

The revision is intended to assist the Department in meeting the national standards established pursuant to the Prison Rape Elimination Act (PREA) (42 USC § 15601 et seq.; Title 28 C.F.R. § 115.05 et seq.). Section 115.53 (a) of the national PREA Standards requires that "the facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations…. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible."

While DOCCS works to establish a rape crisis hotline that all offenders can access using the offender telephone system, incarcerated offenders should also have the ability to access other recognized victim advocacy or rape crisis organizations. This revision will enable incarcerated offenders to have meaningful access to these organizations.

4. Costs

a. To agency, state and local government: No discernable costs are anticipated.

b. Cost to private regulated parties: None. The proposed rule changes do not apply to private parties.

c. This cost analysis is based upon the fact that the rule changes merely clarify and expand upon previously established rules regarding inmate telephone calls.

5. Paperwork

There is one Corrections and Community Supervision form letter that has been created (memorandum format on Department letterhead) to assist Department staff in verifying all of required documents from the program participants.

6. Local Government Mandates

There are no new mandates imposed upon local governments by these proposals. The proposed amendments do not apply to local governments.

7. Duplication

These proposed amendments do not duplicate any existing State or Federal requirement.

8. Alternatives

DOCCS considered the alternative of not promulgating the rule but decided that the rulemaking was necessary in order to ensure that the Department's current Inmate Telephone Calls policy and procedure is appropriately reflected in the corresponding sections of 7 NYCRR.

9. Federal Standards

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

10. Compliance Schedule

The Department of Corrections and Community Supervision will achieve compliance with the proposed rules 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 is adding the provision that an inmate may add an attorney or a DOH approved Rape Crisis Program to their telephone list.

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 is adding the provision that an inmate may add an attorney or a DOH approved Rape Crisis Program to their telephone list.

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 the provision that an inmate may add an attorney or a DOH approved Rape Crisis Program to their telephone list.

Department of Financial Services

EMERGENCY RULE MAKING

Excess Line Placements Governing Standards

I.D. No. DFS-29-13-00002-E

Filing No. 1269

Filing Date: 2013-12-26

Effective Date: 2013-12-26

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

Action taken: Amendment of Part 27 (Regulation 41) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 3103, 5907, 5909, 5911, 9102 and art. 21 and 59; L. 1997, ch. 225; L. 2002, ch. 587; L. 2011, ch. 61

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

Specific reasons underlying the finding of necessity: This regulation governs the placement of excess line insurance. Article 21 of the Insurance Law and Regulation 41 enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from unauthorized insurers (known as "excess line insurers") if the unauthorized insurers are "eligible," and an excess line broker places the insurance.

On July 21, 2010, President Obama signed into law the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"), which prohibits any state, other than the insured's home state, from requiring a premium tax payment for nonadmitted insurance. The NRRA also subjects the placement of nonadmitted insurance solely to the statutory and regulatory requirements of the insured's home state, and provides that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate nonadmitted insurance with respect to such insured. On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amended the Insurance Law to implement the provisions of the NRRA.

The sections of Part I of Chapter 61 that amend the Insurance Law to bring New York into conformance with the NRRA took effect on July 21, 2011, which is when the NRRA took effect. The regulation was previously promulgated on an emergency basis on July 22, 2011, October 19, 2011, January 16, 2012, April 16, 2012, July 13, 2012, October 10, 2012, January 7, 2013, April 5, 2013, July 3, 2013, August 30, 2013, and October 28, 2013. The regulation was also proposed in June 2013, and was published in the State Register on July 17, 2013.

For the reasons stated above, emergency action is necessary for the general welfare.

Subject: Excess Line Placements Governing Standards.

Purpose: To implement chapter 61 of the Laws of 2011, conforming to the federal Nonadmitted and Reinsurance Reform Act of 2010.

Substance of emergency rule: On July 21, 2010, President Obama signed into law the federal Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which contains the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"). The NRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess (or "surplus") line insurance. The NRRA also subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state, and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured.

In addition, the NRRA provides that an excess line broker seeking to procure or place excess line insurance for an exempt commercial purchaser ("ECP") need not satisfy any state requirement to make a due diligence search to determine whether the full amount or type of insurance sought by the ECP may be obtained from admitted insurers if: (1) the broker procuring or placing the excess line insurance has disclosed to the ECP that the insurance may be available from the admitted market, which may provide greater protection with more regulatory oversight; and (2) the ECP has subsequently requested in writing that the broker procure the insurance from or place the insurance with an excess line insurer.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amends the Insurance Law to conform to the NRRA.

Insurance Regulation 41 (11 NYCRR Part 27) consists of 24 sections and one appendix addressing the regulation of excess line insurance placements.

The Department of Financial Services ("Department") amended Section 27.0 to discuss the NRRA and Chapter 61 of the Laws of 2011.

The Department amended Section 27.1 to delete language in the definition of "eligible" and to add three new defined terms: "exempt commercial purchaser," "insured's home state," and "United States."

Section 27.2 is not amended.

The Department amended Section 27.3 to provide an exception for an ECP consistent with Insurance Law Section 2118(b)(3)(F) and to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.4 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.5 to: (1) clarify that the requirements set forth in this section apply when the insured's home state is New York; (2) with regard to an ECP, require an excess line broker or the producing broker to affirm in part A or part C of the affidavit that the ECP was specifically advised in writing, prior to placement, that the insurance may or may not be available from the authorized market that may provide greater protection with more regulatory oversight; (3) require an excess line broker to identify the insured's home state in part A of the affidavit; and (4) clarify that the premium tax is to be allocated in accordance with Section 27.9 of Insurance Regulation 41 for insurance contracts that have an effective date prior to July 21, 2011.

The Department amended Section 27.6 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.7(b) to revise the address to which reports required by Section 27.7 should be submitted.

The Department amended Section 27.8 to: (1) require a licensed excess line broker to electronically file an annual premium tax statement, unless the Superintendent of Financial Services (the "Superintendent") grants the broker an exemption pursuant to Section 27.23 of Insurance Regulation 41; (2) acknowledge that payment of the premium tax may be made electronically; and (3) change a reference to "Superintendent of Insurance" to "Superintendent of Financial Services."

The Department amended Section 27.9 to clarify how an excess line broker must calculate the taxable portion of the premium for: (1) insurance contracts that have an effective date prior to July 21, 2011; and (2) insurance contracts that have an effective date on or after July 21, 2011 and that cover property or risks located both inside and outside the United States.

The Department amended Sections 27.10, 27.11, and 27.12 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.13 to clarify that the requirements set forth in this section apply when the insured's home state is New York and to require an excess line broker to obtain, review, and retain certain trust fund information if the excess line insurer seeks an exemption from Insurance Law Section 1213. The Department also amended Section 27.13 to require an excess line insurer to file electronically with the Superintendent a current listing that sets forth certain individual policy details.

The Department amended Section 27.14 to state that in order to be exempt from Insurance Law Section 1213 pursuant to Section 27.16 of Insurance Regulation 41, an excess line insurer must establish and maintain a trust fund, and to permit an actuary who is a fellow of the Casualty

Actuarial Society (FCAS) or a fellow in the Society of Actuaries (FSA) to make certain audits and certifications (in addition to a certified public accountant), with regard to the trust fund.

Section 27.15 is not amended.

The Department amended Section 27.16 to state that an excess line insurer will be subject to Insurance Law Section 1213 unless the contract of insurance is effectuated in accordance with Insurance Law Section 2105 and Insurance Regulation 41 and the insurer maintains a trust fund in accordance with Sections 27.14 and 27.15 of Insurance Regulation 41, in addition to other current requirements.

The Department amended Sections 27.17, 27.18, 27.19, 27.20, and 27.21 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

Section 27.22 is not amended.

The Department repealed current Section 27.23 and added a new Section 27.23 titled, "Exemptions from electronic filing and submission requirements."

Section 27.24 is not amended.

The Department amended the excess line premium tax allocation schedule set forth in appendix four to apply to insurance contracts that have an effective date prior to July 21, 2011.

The Department added a new appendix five, which sets forth an excess line premium tax allocation schedule to apply to insurance contracts that have an effective date on or after July 21, 2011 and that cover property and risks located both inside and outside the United States.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-29-13-00002-P, Issue of July 17, 2013. The emergency rule will expire February 23, 2014.

Text of rule and any required statements and analyses may be obtained from: Joana Lucashuk, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2125, email: joana.lucashuk@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the promulgation of the Fourteenth Amendment to Insurance Regulation 41 (11 NYCRR Part 27) derives from Sections 202 and 302 of the Financial Services Law, Sections 301, 316, 1213, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 9102, and Article 21 of the Insurance Law, Chapter 225 of the Laws of 1997, Chapter 587 of the Laws of 2002, and Chapter 61 of the Laws of 2011.

The federal Nonadmitted and Reinsurance Reform Act of 2010 (the "NRRA") significantly changes the paradigm for excess line insurance placements in the United States. Chapter 61 of the Laws of 2011 amends the Insurance Law and the Tax Law to conform to the NRRA. The NRRA and Chapter 61 have been impacting excess line placements since their effective date of July 21, 2011.

Section 301 of the Insurance Law and Sections 202 and 302 of the Financial Services Law authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law. Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

Section 1213 provides the manner by which substituted service on an unauthorized insurer may be made in any proceeding against it on an insurance contract issued in New York. Substituted service may be made on the Superintendent in the manner prescribed in Section 1213.

Article 21 sets forth the duties and obligations of insurance brokers and excess line brokers. Section 2101 sets forth relevant definitions. Section 2104 governs the licensing of insurance brokers. Section 2105 sets forth licensing requirements for excess line brokers. Section 2110 provides grounds for the Superintendent to discipline licensees by revoking or suspending licenses or, pursuant to Section 2127, imposing a monetary penalty in lieu of revocation or suspension. Section 2116 permits payment of commissions to brokers and prohibits compensation to unlicensed persons. Section 2117 prohibits the aiding of an unauthorized insurer, with exceptions. Section 2118 sets forth the duties of excess line brokers, with regard to the placement of insurance with eligible foreign and alien excess line insurers, including the responsibility to ascertain and verify the financial condition of an unauthorized insurer before placing business with that insurer. Section 2121 provides that brokers have an agency relationship with insurers for the collection of premiums. Section 2122 imposes limitations on advertising by producers. Section 2130 establishes the Excess Line Association of New York ("ELANY").

Section 9102 establishes rules regarding the allocation of direct premiums taxable in New York, where insurance covers risks located both in and out of New York.

2. Legislative objectives: Generally, unauthorized insurers may not do an insurance business in New York. In permitting a limited exception for licensed excess line brokers to procure insurance policies in New York from excess line insurers, the Legislature established statutory requirements to protect persons seeking insurance in New York. The NRRA significantly changes the paradigm for excess (or "surplus") line insurance placements in the United States. The NRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess line insurance. Further, the NRRA subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured. In addition, the NRRA establishes uniform eligibility standards for excess line insurers. A state may not impose additional eligibility conditions.

Under the new NRRA paradigm, an excess line broker now must ascertain an insured's home state before placing any property/casualty excess line business. Thus, if the insured's home state is not New York, even though the insured goes to the broker's office in New York, the excess line broker must be licensed in the insured's home state in order for the broker to procure the excess line coverage for that insured. Conversely, a person who is approached by an insured outside of New York must be licensed as an excess line broker in New York in order to procure excess line coverage for an insured whose home state is New York.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amends the Insurance Law to conform to the NRRA. The NRRA and Chapter 61 took effect on July 21, 2011 and have been impacting excess line placements since that date.

3. Needs and benefits: Insurance Regulation 41 governs the placement of excess line insurance. The purpose of the excess line law is to enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from eligible excess line insurers. This regulation implements the provisions and purposes of Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRA. The NRRA and Chapter 61 took effect on July 21, 2011 and have been impacting excess line placements since that date.

Section 27.14 of Insurance Regulation 41 currently prohibits an excess line broker from placing coverage with an excess line insurer unless the insurer has established and maintained a trust fund. However, the new NRRA eligibility requirements do not include a trust fund with respect to foreign insurers (alien insurers, however, do have to maintain a trust fund that satisfies the International Insurers Department ("IID") of the National Association of Insurance Commissioners ("NAIC")). As such, New York is no longer requiring a trust fund of foreign insurers for eligibility.

Currently, Insurance Law Section 1213(e) exempts excess line insurers writing excess line insurance in New York from the requirements of Section 1213, such as the requirement that an insurer deposit with the clerk of the court cash or securities or a bond with good and sufficient sureties, in an amount to be fixed by the court sufficient to secure payments of any final judgment that may be rendered by the court, with the clerk of the court before filing any pleading in any proceeding against it, so long as the excess line insurance contract designates the Superintendent for service of process and, in material part, the policy is effectuated in accordance with Section 2105, the section that applies to excess line brokers. In a memorandum to the governor, dated March 30, 1949, recommending favorable executive action on the bill, the Superintendent of Insurance wrote that it was "our understanding that this subsection was inserted as the result of representations made by the representatives of Lloyds of London because the contracts of insurance customarily [written] by the underwriters and placed through licensees of this Department, contain a provision whereby the underwriters consent to be sued in the courts of this state and they maintain a trust fund in New York of a very sizable amount, which is available for the payment of any judgment which may be secured in an action involving one of their contracts of insurance."

When the Superintendent of Insurance first promulgated Insurance Regulation 41, effective October 1, 1962, pursuant to his broad power to make regulations, he codified in the regulation the longstanding practice regarding the trust fund, and established minimum provisions and requirements, thus providing a reasonable alternative for unauthorized insurers that regularly engage in the sale of insurance through the excess line market. While the specific provisions have been amended a number of times over the years, every iteration of Insurance Regulation 41 has called for a trust fund as a means of providing alternative security that the insurer would have resources to pay judgments against the insurer.

Although the NRRA apparently precludes New York from requiring a foreign insurer to maintain a trust fund to be eligible in New York, or a trust fund for an alien insurer that deviates from the IID requirements, New York policyholders need to be protected when claims arise. As a result, the Department is amending Section 27.16 of Insurance Regulation 41 to provide that an excess line insurer will be subject to Insurance Law Section 1213's requirements unless the contract of insurance is effectuated in accordance with Insurance Law Section 2105, the Superintendent is designated as agent for service of process, and the insurer maintains a trust fund in accordance with Sections 27.14 and 27.15 of Insurance Regulation 41 (in addition to other requirements currently set forth in Section 27.16). Further, the Department is amending Section 27.14 of Insurance Regulation 41 to state that in order to be exempt from Insurance Law Section 1213 pursuant to Section 27.16 of Insurance Regulation 41, an excess line insurer must establish and maintain a trust fund. Insurance Law Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

The Department amended Section 27.8(a) of Insurance Regulation 41 to require excess line brokers to file annual premium tax statements electronically, and amended Section 27.13 to require excess line brokers to file electronically a listing that sets forth certain individual policy details. In addition, the Department added a new Section 27.13 to Insurance Regulation 41 to allow excess line brokers to apply for a "hardship" exception to the electronic filing or submission requirement.

4. Costs: The rule is not expected to impose costs on excess line brokers, and it merely conforms the requirements regarding placement of coverage with excess line insurers to the requirements in Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRA. Although the amended regulation will require excess line brokers to file annual premium tax statements and a listing that sets forth certain individual policy details electronically, most brokers already do business electronically. In fact ELANY already requires documents to be filed electronically. Moreover, the regulation also provides a method whereby excess line brokers may apply for an exemption from the electronic filing or submission requirement.

With regard to the trust fund amendment, on the one hand, excess line insurers may incur costs if they choose to establish and maintain a trust fund in order to be exempt from Insurance Law Section 1213. On the other hand, it should be significantly less expensive to establish and maintain a trust fund rather than comply with Insurance Law Section 1213. This is a business decision that each insurer will need to make. The trust fund, if established and maintained, will be for the purpose of protecting all United States policyholders.

Costs to the Department of Financial Services also should be minimal, as existing personnel are available to review any modified filings necessitated by the regulations. In fact, filing forms electronically may produce a cost savings for the Department of Financial Services. These rules impose no compliance costs on any state or local governments.

5. Local government mandates: These rules do not impose any program, service, duty or responsibility upon a city, town, village, school district or fire district.

6. Paperwork: The regulation imposes no new reporting requirements on regulated parties.

7. Duplication: The regulation will not duplicate any existing state or federal rule, but rather implement and conform to the federal requirements.

8. Alternatives: The Department discussed the changes related to trust funds and Insurance Law Section 1213 with counsel at the NAIC and with ELANY.

9. Federal standards: This regulation will implement the provisions and purposes of Chapter 61 of the Laws of 2011, which amends the Insurance Law to conform to the NRRA.

10. Compliance schedule: Pursuant to Chapter 61 of the Laws of 2011, this regulation will impact excess line insurance placements effective on and after July 21, 2011.

Regulatory Flexibility Analysis

This rule is directed at excess line brokers and excess line insurers.

Excess line brokers are considered to be small businesses as defined in section 102(8) of the State Administrative Procedure Act. The rule is not expected to have an adverse impact on these small businesses because it merely conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010.

The rule will require excess line brokers to file annual premium tax statements electronically, and to file electronically a listing that sets forth certain individual policy details. However, the excess line broker may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent.

Further, the Department of Financial Services has monitored Annual Statements of excess line insurers subject to this rule, and believes that none of them fall within the definition of "small business," because there are none that are both independently owned and have fewer than one hundred employees.

The Department of Financial Services finds that this rule 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 rule does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

The Department of Financial Services ("Department") finds that this rule does not impose any additional burden on persons located in rural areas, and the Department finds that it will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Job Impact Statement

The Department of Financial Services finds that this rule should have no impact on jobs and employment opportunities. The rule conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010. The rule also makes an excess line insurer subject to Insurance Law section 1213, unless it chooses to establish and maintain a trust fund in New York for the benefit of New York policyholders.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY RULE MAKING

Unclaimed Life Insurance Benefits and Policy Identification

I.D. No. DFS-44-13-00008-E

Filing No. 1271

Filing Date: 2013-12-27

Effective Date: 2013-12-27

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; Insurance Law, sections 301, 316, 1102, 1104, 2601, 3240 (Unclaimed benefits), 4521, 4525 and art. 24

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

Specific reasons underlying the finding of necessity: Beginning in 2011, the Department conducted an investigation into how life insurance companies and fraternal benefit societies track life insurance policyholders. The Department's investigation found that many insurers had been regularly using 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 the lists to determine whether death benefits were payable to beneficiaries.

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 $812 million has been paid to beneficiaries nationwide, including more than $241 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 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 system had led to many abuses, for example in situations where deaths had occurred but without claims having been filed, with an insurer having continued to deduct premiums from the account value or cash value until policies lapsed. In other instances, the policies or accounts had simply remained dormant after death. In those instances, a valid death benefit was either not paid or distributed or was delayed.

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. Any delay in implementing these requirements would 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) Beginning in 2011, the Department conducted an investigation into how life insurance companies and fraternal benefit societies track life insurance policyholders. The Department's investigation found that many insurers had been regularly using lists of recent deaths from the social security administration to promptly cease making annuity payments. However, most insurers had not been using the lists 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 existing policy values 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 was promulgated on an emergency basis. Subsequently, the Legislature enacted Insurance Law section 3212-a, which was renumbered as section 3240, to address the issues that the Department had observed.

(d) 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 the insurer retains those proceeds 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 that is at least as comprehensive as the death master file maintained by the United States social security administration and that is acceptable to the superintendent.

(c) Insured means an individual covered by a policy or 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 of Financial Services on its website or otherwise developed by the superintendent either on his or her own or in conjunction with other state regulators, to assist consumers with locating unclaimed life insurance benefits.

(f) Policy means a life insurance policy, an annuity contract, 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, including a policy that has lapsed or been terminated.

Section 226.2 Applicability

(a) This Part shall apply to a policy that is:

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

(2) delivered or issued for delivery in this state 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, a domestic insurer may, in lieu of the requirements of this Part, implement procedures that meet the minimum requirements of the state in which the insurer delivered or issued the policy, provided that the superintendent determines 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) An insurer that receives a notification of death of an insured or account holder, or identifies a death index match, shall notify each United States affiliate, parent, or subsidiary, and any entity with which the insurer contracts that may maintain or control records relating to policies or accounts covered by this Part of the notification or verified death index match. An insurer shall take all steps necessary to have each affiliate, parent, subsidiary, or other entity perform the search required by subdivision (a) of this section.

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

(a)(1) Except as set forth in paragraph (2) of this subdivision, at no later than policy delivery or the establishment of an account and upon any change of insured, owner, account holder, or beneficiary, an 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, date of birth, social security number, and telephone number of every owner, account holder, insured and beneficiary of such policy or account, as applicable.

(2) Where an insurer issues a policy or provides for an account based on information received directly from an insured's employer, the insurer may obtain the beneficiary information described in paragraph (1) of this subdivision by communicating with the insured after the insurer's receipt of the information from the insured's employer.

(b)(1) An 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, but in no event shall the cross-checks be performed less frequently than semi-annually. The superintendent may grant such a request upon the insurer's demonstration of hardship.

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

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

(ii) where the insurer does not know the insured or account holder's social security number, the name and date of birth of the insured or account holder.

(3) An insurer may comply with the requirements of this subdivision by using the full death index once annually and using the death index update files for the remaining cross-checks in that year.

(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) 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:

(1) 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;

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

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

(4) incomplete social security number; and

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

(f) 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, then the insurer shall use the available information to perform the cross-check pursuant to subdivision (b) of this section, which may be accomplished by using the procedures outlined in subdivision (e) of this section.

(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:

(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 does not maintain or control the records containing the information necessary to comply with the requirements of this section 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 or individual policy and a payment has been made in the 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 terminated with no benefits payable that was cross-checked with a death index within the 18 months preceding the effective date of this Part or that was cross-checked with a death index more than 18 months prior to the most recent cross-check conducted by the insurer.

Section 226.5 Lost policy finder application procedures

(a) An insurer shall:

(1) upon receiving a request forwarded by the superintendent through a lost policy finder, search for policies, excluding group policies administered by group policyholders where the insurer does not maintain or control the records containing the information necessary to comply with the requirements of section 226.4 of this Part, 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:

(i) within 30 days of receiving the request, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, 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, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, 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) An insurer shall establish procedures to electronically receive the lost policy finder 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; provided however that if the date is a Saturday, Sunday or a public holiday, as defined in General Construction Law section 24, then 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

An insurer subject to this Part shall include in the report required under Abandoned Property Law section 703 any information on unclaimed benefits due pursuant to this Part and 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, except potential matches still being investigated pursuant to section 226.4 of this Part. A copy of the report also shall be filed with the superintendent.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-44-13-00008-P, Issue of October 30, 2013. The emergency rule will expire February 24, 2014.

Text of rule and any required statements and analyses may be obtained from: Michael Maffei, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5027, email: michael.maffei@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, 3240 (Unclaimed benefits), 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 3240 (Unclaimed benefits) requires insurers to compare life insurance policies against the federal death master file to identify potential matches of their insureds or account holders and to undertake a good faith effort to confirm the death of the insureds and locate beneficiaries. Section 3240(j) authorizes the superintendent to promulgate rules and regulations to implement the statute.

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: Beginning in 2011, the Department investigated allegations of unfair claims and trade practices by authorized life insurers and fraternal benefit societies (collectively herein, "insurers") in connection with claims and the location of beneficiaries. The Department was concerned that many insurers had 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 were instances in which a death had occurred and no claim had been filed, but premiums continued to be deducted from the account value or cash value until the policy lapsed. In other instances, the policies or accounts may simply have remained dormant after death. In these instances, a valid death benefit was either not paid or distributed or was 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 had used the U.S. Social Security Administration's Death Master File ("SSA Master File") to confirm the death of contract holders so that they could cease making annuity payments, but had not used the SSA Master File to determine whether any death benefit payments were 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 each 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 $812 million has been paid nationwide to beneficiaries, including more than $241 million that was paid to New York beneficiaries.

The 308 Letter was a one-time comparison to the SSA Master File. This rule was promulgated on an emergency basis 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 that the Department receives through its new Lost Policy Finder application, or within 45 days of receiving the request where an insurer contracts with another entity to maintain the insurer's records. The rule also requires an insurer to notify the beneficiary, within 30 days of the Department's notification, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, 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.

After the initial issuance of the regulation, the Legislature in 2012 enacted Insurance Law section 3213-a, which required insurers to perform a comparison of life insurance policies against the federal death master file to identify potential matches of their insureds or account holders and to undertake a good faith effort to confirm the death of insureds and locate beneficiaries. It also authorized the Superintendent to promulgate rules and regulations to implement the statute. Although the governor signed the bill into law, he expressed a number of concerns with the legislation. A chapter amendment amended the bill, addressing those concerns. The chapter amendment also renumbered the section as section 3240. Since the original bill had a delayed effective date, it never took effect in its original form. The regulation has been amended to conform to the requirements of new section 3240 (Unclaimed benefits).

3. Needs and benefits: Many insurers had 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 had regularly been using lists of recent deaths from the Social Security Administration to promptly cease making annuity payments. However, most insurers had not been using the lists to determine whether death benefits were payable to beneficiaries.

This practice led to many abuses. For example, in some instances, a death may have occurred with no claim being filed, but premiums would continue to be deducted from the account value or cash value until the policy lapsed. In other cases, the policies or accounts may simply have remained dormant after death. In these instances, a valid death benefit was either not paid or distributed or was delayed.

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. 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: All insurers affected by this rule have already implemented procedures required by this rule, which was promulgated on an emergency basis on May 14, 2012, August 10, 2012, November 9, 2012, February 6, 2013, May 6, 2013, August 2, 2013, and October 30, 2013. Additionally, in response to the 308 Letter sent by the Department to insurers in July 2011, several insurers had confirmed then that they had already established, or were in the process of establishing, the standards and procedures required by this rule. Thus, insurers should incur only minimal, if any, additional costs to comply with the requirements of this rule.

As a result of the 308 Letter, to date, more than $812 million has been paid to beneficiaries nationwide, including more than $241 million paid to New York beneficiaries. Additionally, more than $338 million has been escheated or identified for escheatment. The amounts paid to beneficiaries and escheated (or identified for escheatment) now totals more than $1.1 billion.

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 minimal 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, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, 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 $812 million has been paid to beneficiaries nationwide, including more than $241 million paid to New York beneficiaries. Additionally, more than $338 million has been escheated or identified for escheatment. The amount paid to beneficiaries and escheated (or identified for escheatment) now totals more than $1.1 billion - unquestionably an ongoing benefit to the public. While some insurers may have voluntarily implemented these procedures, promulgation of this rule was 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.

After the regulation was first promulgated on an emergency basis, the Legislature enacted section 3213-a, now 3240 (Unclaimed benefits). The regulation is revised to the extent necessary to conform to the statute.

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

10. Compliance schedule: All insurers affected by this rule have already complied with the requirements of this rule, which was promulgated on an emergency basis on May 14, 2012, August 10, 2012, November 9, 2012, February 6, 2013, May 6, 2013, August 2, 2013, and October 30, 2013. Therefore, this rule will take effect upon filing with the Secretary of State.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services ("Department") 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") that are authorized to do business in New York State, none of which are a "small business" as defined in section 102(8) of the State Administrative Procedure Act. The Department 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 operated 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, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, 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: All insurers affected by this rule have already implemented procedures required by this rule, which was promulgated on an emergency basis on May 14, 2012, August 10, 2012, November 9, 2012, February 6, 2013, May 6, 2013, August 2, 2013, and October 30, 2013. Additionally, in response to the 308 Letter sent by the Department to insurers in July 2011, several insurers had confirmed then that they had already established, or were in the process of establishing, the standards and procedures required by this rule. Thus, insurers should incur only minimal, if any, additional costs to comply with the requirements of this rule.

As a result of the 308 Letter, to date, more than $812 million has been paid to beneficiaries nationwide, including more than $241 million paid to New York beneficiaries. Additionally, more than $338 million has been escheated or identified for escheatment. The amounts paid to beneficiaries and escheated (or identified for escheatment) now totals more than $1.1 billion.

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 minimal 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 $812 million has been paid nationwide to beneficiaries, including more than $241 million that was paid to New York beneficiaries.

The 308 Letter was a one-time comparison of the SSA Master File. This rule was promulgated on an emergency basis 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 that the Department received through its new Lost Policy Finder application, or within 45 days of receiving the request where an insurer contracts with another entity to maintain the insurer's records. The rule also requires the insurer to notify the beneficiary, within 30 days of the Department's notification, or within 45 days of receiving the request where the insurer contracts with another entity to maintain the insurer's records, 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 establish 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 believes that this rule will not have any adverse impact on jobs or employment opportunities, including self-employment opportunities.

Assessment of Public Comment
The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY RULE MAKING

Credit Exposure Arising from Derivative Transactions

I.D. No. DFS-02-14-00001-E
Filing No. 1268
Filing Date: 2013-12-26
Effective Date: 2013-12-31

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

Action taken: Addition of Part 117 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 103 and 235; Financial Services Law, section 302

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

Specific reasons underlying the finding of necessity: Derivative transactions, including swaps and options, are a basic tool used by many banking organizations in New York and elsewhere to hedge their exposure to various types of risk, including interest rate, currency and credit risk.

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act [cite] ("DFA") became effective [date]. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an insured state bank (including an insured state savings bank) may only engage in derivative transactions if the law of its chartering state regarding lending limits "takes into consideration credit exposure to derivative transactions."

In light of federal enactment of the DFA, the Legislature amended the Banking Law provision regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from derivative transactions should be taken into account. Laws of 2011, c. 182, § 2.

This regulation sets forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Emergency adoption of the regulation is necessary in order to ensure that New York banking organizations continue to be able to engage in derivative transactions on and after January 21, 2013.

Subject: Credit exposure arising from derivative transactions.

Purpose: To provide for the consideration of credit exposure relating to derivative transactions in calculating bank loan limits.

Text of emergency rule: *PART 117*

LENDING LIMITS: INCLUSION OF CREDIT EXPOSURES ARISING FROM DERIVATIVE TRANSACTIONS

§ 117.1 Definitions.

For the purposes of this Part:

a) The appropriate Federal banking agency of a bank shall be the agency specified by Section 3(q) of the Federal Deposit Insurance Act (FDIA), 12 USC § 1813(q), or the successor to such provision.

b) Bank includes a bank or trust company or a savings bank formed under the Banking Law whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

c) Credit derivative means a financial contract that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure) to another party (the protection provider).

d) The current credit exposure of a bank to a counterparty on a particular date with respect to a derivative transaction other than a credit derivative shall be the amount that the bank reasonably determines would be its loss under the terms of the derivative contract covering such transaction if the counterparty defaulted on such date.

e) The credit exposure of a bank to a counterparty arising from derivative transactions other than credit derivatives is the higher of zero or the sum of the then positive current credit exposures with respect to such derivative transactions, provided, however, that in calculating such credit exposure, the bank may take into account netting to the extent specified in section 117.4(a).

f) Derivative transaction includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

g) Effective margining arrangement means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds $25 million created by the derivative transactions covered by the agreement.

h) Eligible credit derivative means a single-name credit derivative or a standard, non-tranched index credit derivative, provided that:

(1) The derivative contract is executed under standard industry credit derivative documentation and meets the requirements of an eligible guarantee and has been confirmed by both the protection purchaser and the protection provider;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, restructuring (for obligors not subject to bankruptcy or insolvency) or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(4) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract; and

(5) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process.

i) Eligible protection provider means:

(1) A sovereign entity (a central government, including the United States government; an agency; department; ministry; or central bank);

(2) This state or any city, county, town, village or school district of this state, the New York State Thruway Authority, the Metropolitan Transportation Authority, the Triborough Bridge and Tunnel Authority or The Port Authority of New York and New Jersey;

(3) Any state other than the State of New York,

(4) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(5) A Federal Home Loan Bank;

(6) The Federal Agricultural Mortgage Corporation;

(7) A depository institution, as defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c);

(8) A bank holding company, as defined in Section 2 of the Bank Holding Company Act, 12 U.S.C. § 1841;

(9) A savings and loan holding company, as defined in Section 10 of the Home Owners' Loan Act, 12 U.S.C. § 1467a;

(10) A securities broker or dealer registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq.;

(11) An insurance company that is subject to the supervision of a state insurance regulator;

(12) A foreign banking organization;

(13) A non-United States-based securities firm or a non-United States-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies;

(14) A qualifying central counterparty; and

(15) Such other entity or entities as may be designated from time to time by the superintendent.

j) Readily marketable collateral means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value.

k) Financial market utility shall have the same meaning as used in Section 803(6) of the Dodd–Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5462(6).

l) The following terms shall have the same meaning as used in the Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches (Capital Adequacy Guidelines) of the bank's appropriate Federal banking agency.[1]

(1) Eligible guarantee;

(2) Qualifying netting agreement;

(3) Qualifying central counterparty.

§ 117.2 General Rule.

a) In computing the amount of loans of a bank outstanding to a person under Section 103.1 of the Banking Law or to a borrower under Section 235.8-c of the Banking Law at any specific time, the credit exposures of the bank arising from derivative transactions with respect to such person or borrower shall be included.

b) Such credit exposures shall be calculated as the sum of the bank's credit exposure to such person or borrower as a counterparty arising from derivative transactions other than credit derivatives plus the bank's

credit exposure to such person or borrower as a counterparty arising from credit derivatives plus, where such person or borrower is the obligor on a reference exposure, the bank's credit exposure with respect to such person or borrower as obligor on such reference exposure arising from credit derivatives.

§ 117.3 Credit Derivatives.

a) Credit exposure to a counterparty. A bank shall calculate its credit exposure to a counterparty arising from credit derivatives by adding the net notional value of all protection purchased from the counterparty with respect to each reference exposure.

b) Credit exposure with respect to a reference exposure. A bank shall calculate the credit exposure with respect to a reference exposure arising from credit derivatives entered by the bank by adding the notional value of all protection sold on such reference exposure.

c) Exposure mitigants. In computing the exposures in paragraphs a and b hereof, the bank may take into account exposure mitigants to the extent specified in section 117.4.

§ 117.4 Exposure Mitigants.

a) Netting. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty with whom such bank has in force a qualifying master netting agreement, such bank may net the credit exposures covered by such qualifying master netting agreement.

b) Collateral. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty, such credit exposures may be reduced to the extent that such credit exposures have been secured with readily marketable collateral under an effective margining arrangement. The amount of such reduction shall be equal to the value of such collateral multiplied by the percentage applicable to such type of collateral as may be prescribed by the superintendent from time to time.

c) Hedging. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty or with respect to a particular reference exposure, such credit exposures may be reduced to the extent hedged by an eligible credit derivative from an eligible protection provider.

§ 117.5 Exception.

In computing its credit exposures arising from derivative transactions, a bank need not include credit exposures to a qualifying central counterparty that has been designated by the Financial Stability Oversight Council as a financial market utility that is, or is likely to become, systemically important.

§ 117.6 Alternate Valuation Method.

With the permission of the superintendent, a bank may utilize an alternate method to evaluate its credit exposures arising from derivative transactions.

§ 117.8 Residual Authority of the Superintendent.

Where the method or methods used by a bank fails to appropriately reflect the credit exposures of the bank arising from derivative transactions, the superintendent may direct such bank to use an alternate method or methods.

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[1] *In the case of a bank that is a member of the Federal Reserve System (member bank), the applicable definitions appear at Section 2 of Appendix F to 12 C.F.R. Part 208, and the case an Federally-insured bank that is not a member of the Federal Reserve System (nonmember insured bank), the applicable definitions appear at Section 2 of Appendix D to 12 C.F.R. Part 325.*

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires March 25, 2014.

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, (212) 709-1658, email: sam.abram@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority

Section 14 of the Banking Law provides that the Superintendent of Financial Services (the "Superintendent") shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the New York Banking Law (the "Banking Law") authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law (the "FSL") authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

2. Legislative Objectives

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y).

In response to federal enactment of Section 611 of DFA, the New York Legislature amended the Banking Law regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from certain types of transactions, including derivative transactions, shall be taken into account for purposes of the statutory loan limits. (L. 2011, c. 182).

This emergency regulation implements the Superintendent's authority by setting forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Note that state chartered or licensed entities subject to DFA Section 610, including savings associations, and branches and agencies of foreign banking organizations, are not covered by the regulation.

3. Needs and Benefits

Derivative transactions, including swaps and options, are a basic tool used by many banking organizations to manage exposure to various types of risk, including interest rate, currency and credit risk. If the state's lending limit rules do not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on state banks' ability to manage the exposures embedded in their existing balance sheets (including exposures from any derivatives contracts entered into prior to the cutoff date), as well as the risks arising out of their ongoing business. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave state banks at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

While noting that there already exists some flexibility in the lending limit statute to interpret what constitutes credit exposure, the objective of the amendment was to provide certainty that New York law will comply with the requirements of DFA so as to ensure that insured banks in New York could continue to engage in derivative transactions after the cutoff date in Section 611 of DFA.

4. Costs

Banks that use derivatives already have systems in place to measure and manage the exposures incurred and their effect on the banks' overall risk position. The Department currently reviews such systems as part of its regular safety and soundness examination of regulated organizations.

It is believed that most state banks which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be comparatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for these banks are expected to be minimal.

Banks that engage in a larger volume of more complex derivatives transactions already have more sophisticated systems and processes in place for managing their risks, including those associated with derivatives transactions. The regulation provides that these institutions may, with the permission of the Superintendent, use an "alternative valuation method" to measure their credit exposure resulting from derivatives. Such institutions are expected to seek permission to use measurement methods which reflect their existing risk management procedures, thus minimizing the additional compliance costs resulting from the regulation.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not require that state banks produce any additional reports. Banks that use derivatives have internal systems to measure their exposures, including exposures resulting from derivatives. In the course of its regular safety and soundness examination, the Department expects to be able to review the bank's records and computations regarding compliance with applicable lending limits.

While a bank seeking permission from the Department to utilize an alternative valuation model will be expected to provide information supporting the reasonableness of the proposed model, it is anticipated that such models will normally already have been reviewed by the Department during the examination process.

7. Duplication

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

8. Alternatives

The Department could choose not to adopt a regulation with respect to loan limits that takes into consideration credit exposure to derivative transactions. However, under DFA Section 611 if such a regulation is not adopted insured state banks will not be able to engage in derivative transactions, a basic tool used by many banking organizations to manage their exposure to various types of risk, including interest rate, currency and credit risk. In addition, not adopting such a regulation would put state banks at a competitive disadvantage, since federally chartered banks will be able to continue to engage in derivative transactions to manage their exposure to risk.

The Department also considered adoption of a regulation similar to the interim rule adopted by the federal Office of the Comptroller of the Currency (the "OCC") regarding credit exposure arising from derivatives and securities financing transactions (the "OCC Interim Rule"). 77 FR 37265, 37275 (June 21, 201212), C.F.R. § 32 (2012). However, that rule is quite complex and requires institutions to devote significant resources to compliance. Given the non-complex nature of the derivatives activity of most state banks, the Department did not consider it necessary to impose such extensive requirements.

9. Federal Standards

Although DFA Section 611 prohibits state banks from engaging in derivative transactions after January 20, 2013 if state's law does not take into account credit exposure to derivative transactions, there are no federal standards for how state law is to do so.

The OCC Interim Rule applies to national banks and federal and state savings associations. Under Section 4 of the International Banking Act of 1978, federally licensed branches and agencies of foreign banks are generally subject to the same limitations on their activities as national banks. Thus, the OCC Interim Rule effectively applies to them as well and through the Foreign Bank Supervision Enhancements Act applies to state-licensed branches and agencies. See 12 USC § 3105(h). However, the OCC Interim Rule does not apply to state-chartered banks and savings banks.

10. Compliance Schedule

The regulation is effective immediately. However, it is recognized that banks will require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology.

Regulatory Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are small businesses are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally-chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

This regulation does not have any impact on local governments.

2. Compliance Requirements

It is believed that most banks which are small businesses and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are small businesses, produce any additional reports.

3. Professional Services

Banks that are small businesses and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

Those banks that are small businesses and use derivatives generally engage in a relatively limited number of non-complex derivative transactions. For such banks it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for those banks that are small businesses.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are small businesses, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are small businesses, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013, to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are small businesses.

6. Minimizing Adverse Impacts

If the state's lending limit does not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are small businesses, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are small businesses, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Small Business and Local Government Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are small businesses. The regulation takes account of the comments received in the course of this process.

Rural Area Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall

have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are located in rural areas are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets, as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

2. Compliance Requirements

It is believed that most banks which are located in rural areas and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are located in rural areas, produce any additional reports.

3. Professional Services

Banks which are located in rural areas and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

To the extent banks located in rural areas use derivatives, they generally engage in a relatively limited number of non-complex derivative transactions. For such banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for banks that are located in rural areas.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are located in rural areas, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are located in rural areas, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013 to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are located in rural areas.

6. Minimizing Adverse Impacts

If the state's lending limit did not take account of credit exposure from derivatives transactions, DFA Section 611 would prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are located in rural areas, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are located in rural areas, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Rural Area Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are located in rural areas. The regulation takes account of the comments received in the course of this process.

Job Impact Statement

The regulation will not have an adverse impact on employment in the state. Banking organizations that engage in derivative transactions already have systems and staff in place to manage the credit and other risks associated with those transactions.

Conversely, failing to adopt the regulation could have an adverse impact on employment. Under DFA Section 611, state banks would be prohibited from engaging in derivative transactions and therefore would need to find other uses for staff currently involved in derivatives activity. Moreover, if state banks were no longer able to use derivatives to manage the risks resulting from their current types and levels of business, they might be forced to reduce or restructure the banking services they provide, which could have a further adverse impact on employment levels for both the banks and their customers.

EMERGENCY RULE MAKING

Adjustment of the Subprime Threshold as Established in Banking Law Section 6-m

I.D. No. DFS-02-14-00002-E
Filing No. 1272
Filing Date: 2013-12-27
Effective Date: 2013-12-29

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

Action taken: Addition of Part 42 to Title 3 NYCRR.

Statutory authority: Financial Services Law, section 302; and Banking Law, section 6-m

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

Specific reasons underlying the finding of necessity: Section 6-m of the Banking Law provides for the regulation of subprime home loans. Section 6-m defines a subprime home loan as a loan in which the initial interest rate or the fully-indexed rate, whichever is higher, exceeds by more than a specified number of percentage points the average commitment rate for loans with a comparable duration of such home loan as set forth in an index provided by the Federal Home Loan Mortgage (the "subprime threshold").

In Mortgagee Letter 2013-04, the Federal Housing Administration (the "FHA") revised the period for assessing the annual Mortgage Insurance Premium ("MIP") for FHA-insured loans such that, in certain cases, MIP is required to be paid over the life of the loan, effective June 3, 2013. The FHA's revised policy has caused significantly more FHA-insured loans to exceed the subprime threshold. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that FHA Mortgagee Letter 2013-04 has effectively decreased the threshold on certain FHA-insured loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York State. Accordingly, emergency adoption of this regulation is necessary to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of FHA Mortgagee Letter 2013-04.

Subject: Adjustment of the subprime threshold as established in Banking Law Section 6-m.

Purpose: To set forth the adjustment of the subprime threshold as established in Banking Law Section 6-m.

Text of emergency rule: *TITLE 3. BANKING DIVISION*
CHAPTER I. SUPERINTENDENT'S REGULATIONS
PART 42. SUBPRIME HOME LOANS – THRESHOLDS
(Statutory authority: Banking Law § 6-m; Financial Services Law § 302)
Sec.
§ 42.1 Background

§ 42.2 Adjustment of Subprime Threshold
§ 42.3 Effective Date
§ 42.1 Background.

Section 6-m of the Banking Law provides for the regulation of subprime home loans as defined in the statute. In doing so, the statute incorporates the federal concept of Annual Percentage Rate ("APR"), as defined in the Federal Truth-in-Lending Act, for determining whether a home loan is deemed subprime. Loans with a fully-indexed rate (a calculation correlated with APR) above a specified threshold are defined as subprime loans.

The term "fully-indexed rate" is defined in Section 6-m(1)(b) to mean "(i) for an adjustable rate loan based on an index, the annual percentage rate calculated using the index rate on the loan on the date the lender provides the 'good faith estimate' required under 12 USC § 2601 et seq. plus the margin to be added to it after the expiration of any introductory period or periods; or (ii) for a fixed rate loan, the annual percentage rate on the loan disregarding any introductory rate or rates and any interest rate caps that limit how quickly the contractual interest rate may be reached calculated at the time the lender issues its commitment."

Section 6-m defines a subprime home loan as a loan in which the initial interest rate or the fully-indexed rate, whichever is higher, exceeds by more than one and three-quarters percentage points for a first-lien loan, or by more than three and three-quarters percentage points for a subordinate-lien loan, the average commitment rate for loans with a comparable duration of such home loan as set forth in an index provided by the Federal Home Loan Mortgage Corporation for the date as specified in the statute (the first-lien threshold and subordinate-lien threshold, collectively, the "subprime threshold").

In Mortgagee Letter 2013-04, the Federal Housing Administration (the "FHA") revised the period for assessing the annual Mortgage Insurance Premium ("MIP") for FHA-insured loans such that, in certain cases, MIP is required to be paid over the life of the loan, effective June 3, 2013. Because MIP is part of the APR calculation, the FHA's revised policy has caused the APR on many FHA-insured loans to increase, resulting in significantly more FHA-insured loans exceeding the subprime threshold. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

Section 6-m anticipated the need to adjust the statute's established subprime threshold under certain circumstances. Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the threshold, stating, "(n)otwithstanding the comparable rates set forth in this paragraph, and notwithstanding any other law, if. . . the provisions of this section have had an unduly negative effect upon the availability or price of mortgage financing in this state, the superintendent may from time to time designate such other threshold rates as may be necessary. . . to alleviate such unduly negative effects."

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that FHA Mortgagee Letter 2013-04 has effectively decreased the threshold on certain loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York State. The Superintendent has further determined to use the authority provided by Section 6-m to promulgate this regulation to restore the availability of mortgage financing to New York State residents.

Accordingly, as set forth in Part 42.2 below, the Superintendent is adjusting the subprime threshold by 75 basis points, or 0.75%, to restore the availability of mortgage financing to approximately the levels predating the effective date of FHA Mortgagee Letter 2013-04, subject to the specifications set forth in § 42.2.

§ 42.2 Adjustment of Subprime Threshold.

(a) Threshold Adjustment. Notwithstanding the subprime threshold currently set forth in Banking Law Section 6-m, and subject to the exclusions set forth in subdivision (b), a subprime home loan, if insured by the FHA, means a home loan in which the initial interest rate or the fully-indexed rate, whichever is higher, on the loan exceeds by more than two-and-a-half percentage points for a first-lien loan, or by more than four-and-a-half percentage points for a subordinate-lien loan, the average commitment rate for such loans in the northeast region with a comparable duration to the duration of such home loan, as published by the Federal Home Loan Mortgage Corporation (herein "Freddie Mac") in its weekly Primary Mortgage Market Survey (PMMS) posted in the week prior to the week in which the lender provides the "good faith estimate" required under 12 USC § 2601 et seq."

(b) Exclusions:

(1) The following types of FHA-insured loans are excluded from the threshold adjustment in subdivision (a), and instead are examined in accordance with the threshold currently set forth in Banking Law Section 6-m:

i. Title I Home Improvement Loans;
ii. Home Equity Conversion Mortgages; and
iii. Any loan in which the fully-indexed rate, calculated using the FHA MIP policies that were in effect immediately prior to the effectiveness of Mortgagee Letter 2013-04, exceeds the unadjusted subprime threshold.

(2) All home loans other than FHA-insured loans are excluded from the threshold adjustment in subdivision (a), and instead are examined in accordance with the threshold currently set forth in Banking Law Section 6-m.

§ 42.3 Effective Date.
This Part shall be effective immediately.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires March 26, 2014.

Text of rule and any required statements and analyses may be obtained from: Harry Goberdhan, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 709-1669, email: harry.goberdhan@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

Section 6-m of the Banking Law provides for the regulation of subprime home loans as defined in the statute. Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m, stating, "(n)otwithstanding the comparable rates set forth in this paragraph, and notwithstanding any other law, if. . . the provisions of this section have had an unduly negative effect upon the availability or price of mortgage financing in this state, the superintendent may from time to time designate such other threshold rates as may be necessary... to alleviate such unduly negative effects."

2. Legislative Objectives.

Part 42 of the Superintendent's Regulations sets forth the adjustment of the subprime threshold as established in Banking Law Section 6-m. As a result of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium ("MIP"), significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

The purpose of Part 42 of the Superintendent's Regulations is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of the FHA's rule change concerning the calculation of MIP.

3. Needs and Benefits.

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that a rule change by the FHA concerning the calculation of the annual MIP has effectively decreased the threshold for certain loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York State. Accordingly, emergency adoption of this regulation is necessary to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP.

4. Costs.

This proposed regulation will not result in any fiscal implications to the State. It simply restores the availability of mortgage financing to approximately the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP.

5. Local Government Mandates.

This regulation does not impose any new programs, services, duties, or responsibilities upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork.

This proposed regulation does not impose any paperwork burden on lenders or borrowers. It simply restores the availability of mortgage financing to approximately the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP.

7. Duplication.

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

8. Alternatives.

The Department could choose not to adopt a regulation with respect to adjusting the subprime threshold as established in Banking Law Section 6-m. The emergency adoption of this regulation, however, will restore the availability of mortgage financing to the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP, which will benefit borrowers throughout New York State.

9. Federal Standards.

There are no applicable federal standards.

10. Compliance Schedule.

It is proposed that the regulation be effective upon filing.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Governments is not being submitted with the regulation because the regulation will not impose any adverse economic impact or any reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

The purpose of Part 42 of the Superintendent's Regulations is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium. As a result of the rule change, significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State. Banking Law Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m. Part 42 is issued pursuant to this authority. Since nothing in this regulation will create any adverse impacts on any small businesses or local governments in the state, a full Regulatory Flexibility Analysis is not required and therefore one has not been prepared.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this proposed regulation because it will not impose any adverse impact on rural areas or any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The proposed regulation does not distinguish between regulated parties located in rural, suburban, or metropolitan areas of New York State, but applies universally throughout the state.

The purpose of Part 42 of the Superintendent's Regulations is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium. As a result of the rule change, significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State. Banking Law Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m. Part 42 is issued pursuant to this authority. Since nothing in this proposed regulation will create any adverse impacts on rural areas in the state, a full Rural Area Flexibility Analysis is not required and therefore one has not been prepared.

Job Impact Statement

A Job Impact Statement is not being submitted with this proposed regulation because it is evident from the subject matter of the regulation that it will not have an adverse impact on jobs and employment opportunities in New York State. The purpose of Part 42 of the Superintendent's Regulations is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium. As a result of the rule change, significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State. Banking Law Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m. Part 42 is issued pursuant to this authority. The terms as interpreted will not have any adverse impact on jobs or employment opportunities in New York State.

NOTICE OF ADOPTION

Valuation of Life Insurance Reserves

I.D. No. DFS-46-13-00008-A

Filing No. 1274

Filing Date: 2013-12-31

Effective Date: 2014-01-01

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

Action taken: Amendment of Part 98 (Regulation 147) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 1304, 1308, 4217, 4218, 4240 and 4517

Subject: Valuation of Life Insurance Reserves.

Purpose: To remove the January 1, 2014 sunset provisions in section 98.9(c)(viii).

Text or summary was published in the November 13, 2013 issue of the Register, I.D. No. DFS-46-13-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Michael Maffei, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5027, email: michael.maffei@dfs.ny.gov

Revised Job Impact Statement

Current Section 98.9(c)(2)(viii), which permits insurers to use certain prescribed lapse assumptions, is subject to "sunset" provisions that would make the section inoperable with respect to policies written on or after January 1, 2014. This amendment deletes the January 1, 2014 sunset provisions to keep the rule in operation. Therefore, amendment of the regulation will not adversely impact job or employment opportunities in New York, or have any adverse impact on self-employment opportunities, because the revision imposes no new or additional requirements on any insurer subject to the rule; it merely keeps the rule in effect with respect to policies written on or after January 1, 2014.

Assessment of Public Comment

The agency received no public comment.

Office for People with Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Updates to SSI Offset and SNAP Benefit Offset

I.D. No. PDD-02-14-00007-EP

Filing No. 1275

Filing Date: 2013-12-31

Effective Date: 2014-01-01

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

Proposed Action: Amendment of sections 671.7 and 686.17 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b), 41.25, 41.36(c) and 43.02

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: The emergency adoption of these amendments, which update the rent allowance offset for Individualized Residential Alternatives (IRAs) & Community Residences (CRs) and the Supplemental Nutrition Assistance Program (SNAP) benefit offset for supervised CRs and supervised IRAs, is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system.

The figures found in the emergency amendments were not available to OPWDD within a timeframe that would have allowed OPWDD to propose the amendments through the regular rulemaking process. OPWDD was notified of the Social Security Income (SSI) benefit increase on October 30, 2013 and the SNAP benefit reduction on October 3, 2013. OPWDD would have needed the pertinent information in September in order to use the regular rulemaking process to achieve a rule effective January 1, 2014.

During the three to four months required to promulgate a rule through the regular rulemaking process, without the emergency amendments, reimbursement established by OPWDD for rent and food costs would not have been properly offset by the actual amount of rent or reimbursement for food costs received by providers. In the case of the rent allowance

offset, the State would have overpaid providers by an amount equivalent to the increase in rent portion of the SSI. The amount overpaid by the State would likely have been recovered by imposing a reduction in reimbursement to providers for the delivery of services to individuals with developmental disabilities. This reduction in reimbursement would have adversely affected the health, safety and/or welfare of the individuals receiving those services. In the case of the SNAP benefit offset, the State would have underpaid providers for the costs of food. Individuals receiving services would have had to increase their out of pocket expenses in order to cover the amount underpaid to providers, and the affected providers would have experienced an overall reduction in revenues, especially if individuals could not afford to pay out of pocket for food. This would have adversely affected the health, safety and/or welfare of the individuals receiving services.

Consequently, the emergency adoption of these amendments is necessary in order to avoid an overall reduction in reimbursement to providers and to preserve the health, safety, and welfare of individuals receiving services in the OPWDD system.

Subject: Updates to SSI Offset and SNAP Benefit Offset.

Purpose: To adjust reimbursement to affected providers for rent and food costs.

Public hearing(s) will be held at: 10:30 a.m., March 3, 2014 at Office for People with Developmental Disabilities, Counsel's Office Conference Room, 44 Holland Ave., Albany, NY; 10:30 a.m., March 4, 2014 at Office for People with Developmental Disabilities, Counsel's Office Conference Room, 44 Holland Ave., Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Text of emergency/proposed rule: • Section 671.7(a)(9) is amended by the addition of a new subparagraph (xxi) as follows:

(xxi) Effective January 1, 2014:

NYC, Nassau, Rockland, Suffolk, and Westchester Counties $33.20 per day

Rest of State $32.20 per day

Note: Rest of paragraph remains unchanged.

• Subparagraph 671.7(a)(10)(i) is amended by the addition of clauses (c) and (d) as follows:

(c) Effective January 1, 2014, the offset shall be $189 per month.

(d) The total amount received by a provider for the calendar year 2014 will also include the amount that the provider would have received if the offset for the period November 1, 2013 to December 31, 2013 had been $189 per month per individual instead of $200 per month per individual.

• Subparagraph 686.17(b)(1)(iii) is amended as follows:

(iii) the individual pays the provider [$200 per month] *the specified amount* for food.

(a) Effective October 1, 2010, the individual shall pay the provider $200 per month.

(b) For the period November 1, 2013 to December 31, 2013, the amount that the individual is required to pay to the provider for food is reduced by $11 per month. The provider shall reimburse any individual for any amount the individual paid in excess of $189 per month for the period November 1, 2013 to December 31, 2013.

(c) Effective January 1, 2014, the individual shall pay the provider $189 per month.

Subparagraph 686.17(b)(2)(iii) is amended as follows:

(iii) the individual pays the provider [$200 per month] for food *as specified in this subparagraph*.

(a) Effective October 1, 2010, the individual shall pay the provider $200 per month.

(b) For the period November 1, 2013 to December 31, 2013, the amount that the individual is required to pay to the provider for food is reduced by $11 per month. The provider shall reimburse any individual for any amount the individual paid in excess of $189 per month for the period November 1, 2013 to December 31, 2013.

(c) Effective January 1, 2014, the individual shall pay the provider $189 per month.

• Clause 686.17(d)(2)(iii)(b) is amended as follows:

(b) if the individual does not allow the provider to apply for food stamp benefits, does not make his or her own application or maintain his or her own eligibility for food stamp benefits, and does not present documentation of an inability to pay [$200 per month] *the required amount*, the individual must pay *the provider as specified in this clause;*

(1) Effective October 1, 2010, the individual shall pay the provider $200 per month for food.[;]

(2) For the period November 1, 2013 to December 31, 2013, the amount that the individual is required to pay to the provider for food is reduced by $11 per month. The provider shall reimburse any individual for any amount the individual paid in excess of $189 per month for the period November 1, 2013 to December 31, 2013.

(3) Effective January 1, 2014, the individual shall pay the provider $189 per month for food.

• Clause 686.17(d)(2)(iii)(c) is amended as follows:

(c) if the application for food stamp benefits for the individual was denied, or if the individual presents documentation that he or she cannot pay [$200 per month] *the required amount*, the individual shall pay an amount he or she is able to pay;

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 30, 2014.

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director of Regulatory Affairs (RAU), OPWDD, 44 Holland Avenue, Albany, NY 12229, (518) 474-1830, email: RAU.Unit@opwdd.ny.gov

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

Public comment will be received until: Five days after the last scheduled public hearing.

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory Authority:

a. OPWDD has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

b. Section 41.25 of the Mental Hygiene Law allows providers of services to establish fee schedules for services and requires that fees charged or payments requested take into account costs and ability to pay, considering resources available from private and public assistance programs.

c. Section 41.36(c) of the Mental Hygiene Law requires OPWDD to establish fees or rates for community residences.

d. OPWDD has the responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates for services in facilities licensed by OPWDD.

2. Legislative Objectives: These emergency/proposed amendments further the legislative objectives embodied in sections 13.09(b), 41.25, 41.36 and 43.02 of the Mental Hygiene Law. The emergency/proposed amendments update the rent allowance offset for Individualized Residential Alternatives (IRAs) & Community Residences (CRs) and the Supplemental Nutrition Assistance Program (SNAP) benefit offset for supervised CRs and supervised IRAs.

3. Needs and Benefits: Section (a) below describes the needs and benefits of the update to the rent allowance offset and section (b) does the same for the update to the SNAP benefit offset.

a. An essential element of OPWDD's price setting and reimbursement methodologies for IRAs and CRs is an offset for rent which is based on the Supplemental Security Income (SSI) per diem allowances consistent with levels determined by the Federal Social Security Administration for Congregate Care level II. SSI levels for 2014 were increased. Without these amendments, the prices established by OPWDD for these facilities would not have been properly offset by the amount of rent received by the provider from other sources (primarily SSI).

b. The federal American Recovery and Reinvestment Act (ARRA) of 2009 authorized a temporary increase to SNAP benefits. This increase expired on October 31, 2013, which resulted in a benefit reduction for households in (NYS receiving the federal SNAP benefit. Consequently, the NYS Office of Temporary and Disability Assistance (OTDA) advised that the maximum federal SNAP benefit in NYS for a household of one is reduced from 200 dollars to 189 dollars per month effective November 1, 2013. The emergency/proposed amendments require that, effective January 1, 2014, individuals pay their respective supervised CR or supervised IRA providers $189 per month and that reimbursement to these affected providers be offset by $189 per month. The amendments also require that the amount paid by individuals and the offset in reimbursement to providers for the period November 1, 2013 to December 31, 2013 be reduced to $189 per month to reflect the reduction in the SNAP benefit that took effect on November 1, 2013. OPWDD considers that these amendments are necessary to prevent individuals from using other resources (which may be scarce or limited) to pay for food and to prevent an overall reduction in reimbursement for food to operators of supervised CRs and supervised IRAs.

4. Costs:

a. Costs to the Agency and to the State and its local governments.

Regarding the rent allowance offset, the modest increase in the rent offset in the methodology for setting prices for community residences and IRAs will reduce overall expenditures for these programs by $2,413,000. The federal share of this reduction is $599,500 and the State share is $1,813,500. The State share includes both Medicaid and non-Medicaid State expenses.

Regarding the SNAP benefit offset, to the extent SNAP and other benefits of individuals will not exceed the provider's costs the State will increase Medicaid expenditures by an amount of $2.7 million on an annual basis. New York State's portion of the increased Medicaid expenditure is $2 million, and the portion paid by the federal government is $700,000. The State share includes both Medicaid and non-Medicaid State expenses.

There will be no impact to local governments as a result of any of these amendments.

b. Costs to private regulated parties: There are no initial capital investment costs or initial non-capital expenses for either of these amendments.

The adjustments to reimbursement to providers found in these amendments result in an overall fiscal impact on providers that is cost neutral. The adjustments to reimbursement compensate providers for changes to revenue received from outside sources (i.e. SSI and SNAP benefits received from the federal government).

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: No additional paperwork is required by the emergency/proposed amendments.

7. Duplication: Although the emergency/proposed amendments are derived from figures found in existing State and/or federal requirements, the amendments do not duplicate any existing requirements that are applicable to IRAs and community residences or other services for persons with developmental disabilities.

8. Alternatives: OPWDD did not consider any alternatives to the emergency/proposed amendments because not adjusting reimbursement for providers, and, in the case of the SNAP benefit offset, not adjusting the payment for food required of individuals, would have jeopardized the health, safety, and welfare of individuals receiving services. Without the emergency/proposed amendments, overall funding to providers would have been reduced, and, in the case of the SNAP benefit offset, individuals would have been required to pay for food with other resources that may be scarce or limited for such individuals. The emergency/proposed amendments reflect what OPWDD believes to be proper reimbursement of IRA facilities and community residences and other services which will prevent the loss of funding to providers and protect the (scarce or limited) resources of individuals receiving services.

Additionally, there is no alternative to the emergency adoption of these amendments as the figures found in the amendments were not available to OPWDD within a timeframe that would have allowed for OPWDD to propose the amendments through the regular rulemaking process.

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

10. Compliance Schedule: The emergency rule is effective January 1, 2014. OPWDD has concurrently filed the rule as a Notice of Proposed Rule Making, and it intends to finalize the rule as soon as possible within the time frames mandated by the State Administrative Procedure Act. These amendments do not impose any new requirements with which regulated parties are expected to comply.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses and local governments is not being submitted because these amendments do not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses. There are no professional services, capital, or other compliance costs imposed on small businesses as a result of these amendments.

The emergency/proposed amendments are concerned with updating the rent allowance offset for Individualized Residential Alternatives (IRAs) & Community Residences (CRs) and the Supplemental Nutrition Assistance Program (SNAP) benefit offset for supervised CRs and supervised IRAs. The amendments result in an overall fiscal impact that is cost neutral for the affected facilities and services, and further, the amendments do not result in any new compliance requirements. Due to an overall cost neutral fiscal impact and no new compliance requirements, the emergency/proposed amendments do not have any adverse effects on regulated parties.

These amendments do not impose any requirements on local governments.

These amendments will consequently have no adverse impacts on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments do not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the amendments.

The emergency/proposed amendments are concerned with updating the rent allowance offset for Individualized Residential Alternatives (IRAs) & Community Residences (CRs) and the Supplemental Nutrition Assistance Program (SNAP) benefit offset for supervised CRs and supervised IRAs. The amendments result in an overall fiscal impact that is cost neutral for the affected facilities and services, and further, the amendments do not result in any new compliance requirements. Due to an overall cost neutral fiscal impact and no new compliance requirements, the emergency/proposed amendments do not have any adverse effects on regulated parties.

The amendments will consequently have no adverse impacts on public or private entities in rural areas.

Job Impact Statement

A Job Impact Statement for the emergency/proposed amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they do not have a substantial adverse impact on jobs and/or employment opportunities.

The emergency/proposed amendments are concerned with updating the rent allowance offset for Individualized Residential Alternatives (IRAs) & Community Residences (CRs) and the Supplemental Nutrition Assistance Program (SNAP) benefit offset for supervised CRs and supervised IRAs. The amendments result in an overall fiscal impact that is cost neutral for the affected facilities and services, and further, the amendments do not result in any new compliance requirements. Due to an overall cost neutral fiscal impact and no new compliance requirements, the emergency/proposed amendments do not have a substantial adverse impact on jobs or employment opportunities in New York State.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-21-13-00004-P	May 22, 2013
PSC-42-13-00010-P	October 16, 2013

NOTICE OF ADOPTION

Approving NFG's Petition for the Use of the Romet AdEC for Use in Commercial and Industrial Gas Meter Applications

I.D. No. PSC-47-12-00010-A

Filing Date: 2013-12-26

Effective Date: 2013-12-26

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

Action taken: On 12/19/13, the PSC adopted an order approving a petition by National Fuel Gas Distribution Corporation (NFG) for the use of the Romet Advanced Electronic Corrector (AdEC) for use in New York State.

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

Subject: Approving NFG's petition for the use of the Romet AdEC for use in commercial and industrial gas meter applications.

Purpose: To approve NFG's petition for the use of the Romet AdEC for use in commercial and industrial gas meter applications.

Substance of final rule: The Commission, on December 19, 2013, adopted an order approving a petition by National Fuel Gas Distribution Corporation to use the Romet Limited Advanced Electronic Corrector (AdEC) for revenue metering and billing applications for commercial and industrial installations in New York State.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518)

486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(12-G-0495SA1)

NOTICE OF ADOPTION

Approving the Tariff Filing of the Village of Holley to Revise its Returned Check Charge and Reconnection Fees

I.D. No. PSC-14-13-00004-A

Filing Date: 2013-12-26

Effective Date: 2013-12-26

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

Action taken: On 12/19/13, the PSC adopted an order approving a tariff filing by the Village of Holley Electric Department to revise its returned check charge and reconnection fees contained in PSC No. 1 — Electricity.

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

Subject: Approving the tariff filing of the Village of Holley to revise its returned check charge and reconnection fees.

Purpose: To approve the tariff filing of the Village of Holley to revise its returned check charge and reconnection fees.

Substance of final rule: The Commission, on December 19, 2013, adopted an order approving a tariff filing by the Village of Holley to revise its returned check charge and reconnection fees contained in its tariff schedule, PSC No. 1 — Electricity, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-E-0106SA1)

NOTICE OF ADOPTION

Allowing Revisions to the Telephone Corporations Class A and Class B PSC Annual Reports

I.D. No. PSC-35-13-00009-A

Filing Date: 2013-12-26

Effective Date: 2013-12-26

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

Action taken: On 12/19/13, the PSC adopted an order revising annual reports to the Telephone Corporations Class A and Class B required under Section 641.1 of the Commission's regulations.

Statutory authority: Public Service Law, section 95

Subject: Allowing revisions to the Telephone Corporations Class A and Class B PSC Annual Reports.

Purpose: To Allow revisions to the Telephone Corporations Class A and Class B PSC Annual Reports.

Substance of final rule: The Commission, on December 19, 2013, adopted an order revising PSC annual reports for Class A and Class B Telephone Corporation required under Section 641.1 of the Commission's regulations, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-C-0349SA1)

NOTICE OF ADOPTION

Approving EEPS Program Changes for the Years 2014-2015

I.D. No. PSC-39-13-00012-A

Filing Date: 2013-12-26

Effective Date: 2013-12-26

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

Action taken: On 12/19/13, the PSC adopted an order approving modifications to the Energy Efficiency Portfolio Standard (EEPS) program for the years 2014-2015.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Approving EEPS program changes for the years 2014-2015.

Purpose: To approve EEPS program changes for the years 2014 - 2015.

Substance of final rule: The Commission, on December 19, 2013, adopted an order approving modifications to the Energy Efficiency Portfolio Standard program for the years 2014-2015, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(07-M-0548SA78)

NOTICE OF ADOPTION

Denying, in Part, National Grid's Petition for Rehearing to Clarify Provisions Modifying SC-7 and SC-14

I.D. No. PSC-39-13-00013-A

Filing Date: 2013-12-26

Effective Date: 2013-12-26

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

Action taken: On 12/19/13, the PSC adopted an order denying, in part, a petition for rehearing filed by KeySpan (National Grid) Gas East Company d/b/a National Grid for clarification of the Commission's May 17, 2013 Order.

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

Subject: Denying, in part, National Grid's petition for rehearing to clarify provisions modifying SC-7 and SC-14.

Purpose: To deny, in part, National Grid's petition for rehearing to clarify provisions modifying SC-7 and SC-14.

Substance of final rule: The Commission, on December 19, 2013, adopted an order denying, in part, a petition for rehearing filed by KeySpan Gas East Company d/b/a National Grid for clarification of the Commission's May 17, 2013 Order modifying Service Classification numbers 7 and 14 related to electric generators that take transportation service, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25

cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-G-0063SA2)

NOTICE OF ADOPTION

Approving EEPS Program Changes for the Years 2014-2020

I.D. No. PSC-39-13-00018-A

Filing Date: 2013-12-26

Effective Date: 2013-12-26

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

Action taken: On 12/19/13, the PSC adopted an order approving modifications to the Energy Efficiency Portfolio Standard (EEPS) program for the years 2014-2020.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Approving EEPS program changes for the years 2014-2020.

Purpose: To approve EEPS program changes for the years 2014 - 2020.

Substance of final rule: The Commission, on December 19, 2013, adopted an order approving modifications to the Energy Efficiency Portfolio Standard program for the years 2014-2020, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(07-M-0548SA77)

NOTICE OF ADOPTION

Approving the Modifications of Lease of Real Property on Which a 2.5 MW Generator is Located

I.D. No. PSC-42-13-00009-A

Filing Date: 2013-12-31

Effective Date: 2013-12-31

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

Action taken: On 12/19/13, the PSC adopted an order approving a petition by Fishers Island Electric Corporation and Connecticut Municipal Electric Energy Cooperative to modify a lease of real property on which a 2.5 MW electric generator is located.

Statutory authority: Public Service Law, sections 5, 68 and 70

Subject: Approving the modifications of lease of real property on which a 2.5 MW generator is located.

Purpose: To approve the modifications of lease of real property on which a 2.5 MW generator is located.

Substance of final rule: The Commission, on December 19, 2013, adopted an order approving a petition filed by Fishers Island Electric Corporation and Connecticut Municipal Electric Energy Cooperative to modify a lease of real property on which a 2.5 MW electric generator is located, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(13-E-0300SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Standard Offer and Competitive PV Programs of the CST Within the Commission's RPS Program

I.D. No. PSC-02-14-00005-P

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

Proposed Action: The New York State Energy Research and Development Authority proposes that the Commission adopt Renewable Portfolio Customer-Sited Tier Photovoltaic (RPS CST PV) program budgets for 2016-2023, adopt PV program changes, and make them available statewide.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Standard offer and competitive PV programs of the CST within the Commission's RPS Program.

Purpose: To allow NYSERDA to make changes to the RPS CST PV program and to establish annual budgets for 2016-2023.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, the proposal of the New York State Energy Research and Development Authority (NYSERDA) that the Commission authorize new incentive funding for the Renewable Portfolio Standard (RPS) Customer-Sited Tier (CST) photovoltaic (PV) programs; authorize Long Island Power Authority (LIPA) residential and small commercial customers to participate in a statewide PV program; authorize the implementation of a Megawatt (MW) Block program based on NYSERDA's design proposed criteria; authorize additional funds to support program administration, evaluation and NYSERDA's cost recovery fee, and other related matters. In particular, the Commission is considering NYSERDA's "Petition NY-Sun 2016-2023 Funding Considerations And Other Program Implementation Considerations," which proposes future budgets and program changes for the Commission's RPS CST PV programs.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, 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.

(03-E-0188SP44)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Waiver of 16 NYCRR Sections 894.1 Through 894.4(b)(2)

I.D. No. PSC-02-14-00006-P

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

Proposed Action: The Public Service Commission is considering to approve, modify, or reject a petition from the Town of Hardenburgh, Ulster County, to waive 16 NYCRR Sections 894.1 through 894.4 pertaining to the franchising process.

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

Subject: Waiver of 16 NYCRR Sections 894.1 through 894.4(b)(2).

Purpose: To allow the Town of Hardenburgh, to waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify, or reject the Petition of the Town of Hardenburgh, Ulster County, to waive the requirements of 16 NYCRR Sections 894.1 through 894.4 to expedite the franchising process.

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: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, 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.

(13-V-0576SP1)