

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Farm Brewery and Farm Distillery Exemption

I.D. No. AAM-48-12-00001-P

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

Proposed Action: This is a consensus rule making to amend Part 276.4 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 251-z-4, 251-z-9

Subject: Farm brewery and farm distillery exemption.

Purpose: Provide farm breweries and farm distilleries with AML Article 20-C food processing license exemption.

Text of proposed rule: Subdivision (c) of section 276.4 of 1 NYCRR is amended to read as follows:

(c) Any establishment licensed as a: farm winery, pursuant to section 76-a of the Alcoholic Beverage Control Law[, or as]; a special farm winery, pursuant to section 76-d of said Law[.]; *a farm brewery, pursuant to section 51-a of said Law; or a farm distillery, pursuant to section 61 of said Law*, shall be exempt from licensing requirements of Article 20-C of the Agriculture and Markets Law, provided that:

(1) such establishment is maintained in a sanitary condition and follows the current good manufacturing practices set forth in Part 261 of this Title; and

(2) no other food processing operations for which licensing under Article 20-C of the Agriculture and Markets Law is required are being conducted at the establishment.

Text of proposed rule and any required statements and analyses may be obtained from: Stephen D. Stich, Director, Food Safety and Inspection, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-4492, email: stephen.stich@agriculture.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.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Consensus Rule Making Determination

This rule is proposed as a consensus rule, within the definition of that term in the State Administrative Procedure Act section 102(11) pursuant to the expectation that no person is likely to object to its adoption because it is non-controversial.

Agriculture and Markets Law § 251-z-4 authorizes the Commissioner of Agriculture and Markets to provide by regulation exemptions from licensing for small food processing establishments when he finds that such exemptions would avoid unnecessary regulation and assist in the administration of Article 20-C (Licensing and Food Processing Establishments) without impairing its purposes. Exempting farm breweries and farm distilleries from obtaining an Article 20-C food processing license implements this directive. Farm wineries are currently exempt from Article 20-C licenses but are still subject to food sanitation inspections by the Department. This amendment would treat farm breweries and farm distilleries consistent with farm wineries. These entities would also be subject to sanitation requirements.

There are approximately twenty-one farm distilleries in the state who are currently licensed by the Department pursuant to Article 20-C. Farm distilleries currently licensed under Article 20-C for the manufacture of distilled spirits will be exempt from having to renew their license at date of expiration. There are currently no farm breweries licensed by the Department. Since the proposed rule will relieve a regulatory burden upon farm breweries and farm distilleries, it is expected that no one is likely to object to the proposed amendment.

Job Impact Statement

The proposed rule will exempt farm breweries and farm distilleries from having to obtain food processing licenses, pursuant to Agriculture and Markets Law Article 20-C. The rule will eliminate a regulatory burden upon establishments already licensed by the State Liquor Authority from obtaining an Article 20-C license from the Department and, furthermore, will benefit New York's beer and spirits industry.

The proposed rule is expected to have a positive impact upon jobs and employment opportunities in the State's beer and spirits industry.

Department of Environmental Conservation

NOTICE OF ADOPTION

Water Withdrawal Permit, Reporting and Registration Program

I.D. No. ENV-47-11-00012-A

Filing No. 1132

Filing Date: 2012-11-13

Effective Date: 2013-04-01

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

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

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

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

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

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

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

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

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

The Department has now developed a Lost Policy Finder application

that offers a free-of-charge service to assist in locating unclaimed benefits on policies insuring the life of, or owned by, the deceased and accounts that are established under or as a result of such policies.

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

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

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

Job Impact Statement

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

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

NOTICE OF ADOPTION

The Healthy New York Program

I.D. No. DFS-23-12-00003-A

Filing No. 1136

Filing Date: 2012-11-13

Effective Date: 2012-11-28

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

Action taken: Amendment of Part 362 (Regulation 171) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 301 and 302; and Insurance Law, sections 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4326 and 4327

Subject: The Healthy New York Program.

Purpose: To mitigate large premium increases for current enrollees in Healthy NY by limiting new enrollees to the high deductible plan.

Text or summary was published in the June 6, 2012 issue of the Register, I.D. No. DFS-23-12-00003-P.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Credit for Reinsurance

I.D. No. DFS-48-12-00004-P

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

Proposed Action: Amendment of Part 125 (Regulations 17, 20 and 20-A) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 307(a), 308, 1301(a)(9), (c) and 1308

Subject: Credit for Reinsurance.

Purpose: Establish rules governing when an authorized ceding insurer may take credit on its balance sheet for a reinsurance recoverable.

Substance of proposed rule (Full text is posted at the following State website: <http://www.dfs.ny.gov>): The following is a summary of the substance of the amendment to the rule:

Section 125.4 is amended by repealing the current Section 125.4(h) and enacting a new Section 125.4(h). Substantively, the new Section 125.4(h) does not differ extensively from the repealed provision; rather, the new provision conforms New York's regulatory language more closely to that of the National Association of Insurance Commissioner's recently adopted Credit for Reinsurance Model Law and Model Regulation. The new Section 125.4(h), similar to the provision that it replaces, provides an alternative method for allowing ceding insurers balance sheet credit for cessions to unauthorized assuming insurers. This section adjusts the credit that a ceding insurer may take in its financial statement based upon the financial strength of the unauthorized assuming insurer. In order to allow the ceding insurer to take full credit for the reinsurance without the assuming insurer posting 100% collateral, the unauthorized assuming insurer in the transaction must:

- 1) maintain a minimum net worth of \$250 million;
- 2) be authorized and meet the standards of solvency and capital adequacy in its domiciliary jurisdiction;
- 3) have a credit rating from at least two rating agencies;
- 4) file documents with the Superintendent evidencing its financial condition; and
- 5) have been assigned a rating from the Superintendent authorizing the ceding insurer to take credit for the reinsurance without the assuming insurer posting 100% collateral.

The reinsurance contract itself must contain an insolvency clause, a funding clause, a designation of a person in New York or the ceding insurer's domestic state for service of process, a requirement that any disputes will be subject to United States courts and laws, and a requirement that the unauthorized assuming insurer will notify the ceding insurer of any changes in its license status or any change in its rating from a credit rating agency.

While this alternative credit for cessions to unauthorized assuming insurers will reduce the collateral requirement in a manner that corresponds to the financial strength of the unauthorized assuming insurer, where an order of rehabilitation, liquidation or conservation is entered against the ceding insurer, the unauthorized assuming insurer must, as a general matter, post full collateral for all outstanding liabilities owed to the ceding insurer.

Section 125.5 is amended to conform certain language to that of section 125.4(h) as revised.

Section 125.7 is amended to conform certain language to that of section 125.4(h) as revised.

Section 125.8 is amended to conform certain language to that of section 125.4(h) as revised.

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

Data, views or arguments may be submitted to: Michael Campanelli, New York State Department of Financial Services, 25 Beaver Street, New York, NY 10004, (212) 480-5290, email: michael.campanelli@dfs.ny.gov

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

Regulatory Impact Statement

1. Statutory authority: Financial Services Law sections 202 and 302 and Insurance Law sections 301, 307(a), 308, 332, 1301(a)(9), 1301(c), and 1308.

The above-cited Financial Services Law and Insurance Law sections establish the Superintendent's authority to promulgate regulations governing when an authorized ceding insurer (i.e., an insurer authorized or licensed to do business in New York) may take credit on its balance sheet for reinsurance recoverable from an assuming insurer not authorized in this state.

Financial Services Law section 202 establishes the office of the Superintendent. Financial Services Law section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded to him by the Insurance Law and prescribe regulations interpreting the Insurance Law.

Insurance Law section 307(a) requires an insurer doing business in this state to file an annual statement, in a form and containing such matters as shall be prescribed by the Superintendent, with the office of the Superintendent.

Insurance Law section 308 vests the Superintendent with the authority to require an authorized insurer to file reports relating to the insurer's transactions, financial condition or any matter connected therewith.

Insurance Law sections 1301(a)(9) and (c) and 1308 authorize the Superintendent to prescribe by regulation the conditions under which an au-

thorized ceding insurer may be allowed credit as an asset or a deduction from loss and unearned premium reserves, for reinsurance recoverable from an assuming insurer not authorized to do an insurance business in this state.

2. Legislative objectives: Article 13 of the Insurance Law establishes minimum standards for the assets of insurers, including when an authorized ceding insurer may take credit on its balance sheet for reinsurance recoverable from an assuming insurer not authorized to do an insurance business in this state.

3. Needs and benefits: Reinsurance is insurance for an insurer. It is a means of redistributing risk throughout the global insurance industry. Often, an insurer will transfer (or "cede") part or all of its risk to another party (the "assuming insurer"). The assuming insurer is ultimately responsible for paying its part of those ceded claims. The ceding insurer is given credit on its balance sheet for the business ceded to an assuming insurer recognized by New York. This allows the ceding insurer to reduce its reserves and increase the number of policies it can write. Prior to the promulgation of the Tenth Amendment to Regulations 17, 20, and 20-A (the "Tenth Amendment"), the ability to take credit for ceded claims was very limited where the assuming insurer, irrespective of its financial strength, was not authorized to do business in New York. Generally, a ceding insurer could not take credit for reinsurance from an unauthorized insurer unless the unauthorized assuming insurer posted collateral equal to 100% of its obligations to the ceding insurer. The promulgation of the Tenth Amendment provided an alternative regime that allowed highly capitalized unauthorized assuming insurers to dispense with all or part of the collateral posting requirement, depending upon the strength of their credit rating. This Eleventh Amendment continues the regime with slight refinements intended to align the regulation more closely with the NAIC's recently adopted Credit for Reinsurance Model Law and Model Regulation.

Adoption of this amended rule will maintain and improve upon the Tenth Amendment's reduction of reinsurance transactional costs and increase in reinsurance capacity. It also will keep New York aligned with the global insurance markets and worldwide accounting standards governing reinsurance contracts. Most jurisdictions outside the U.S. do not require non-domestic assuming insurers to post collateral in order for authorized ceding insurers to take credit. Under the Eleventh Amendment, the most financially healthy assuming insurers need not post collateral, or at least not 100% collateral. The Eleventh Amendment will continue to level the playing field among assuming insurers by predicating credit for reinsurance principally on financial strength, not geography. Assuming insurers with strong credit ratings will post less collateral than those with weak ratings.

On November 6, 2011, the National Association of Insurance Commissioners ("NAIC") adopted a revised Credit for Reinsurance Model Law and a revised Credit for Reinsurance Model Regulation (the "Model Law and Model Regulation") as developed by the NAIC's Reinsurance Task Force. The Department actively participated in the NAIC Reinsurance Task Force's efforts. The Eleventh Amendment is consistent with the Model Law and Regulation to the extent that they are consistent with the needs of the New York insurance market.

The proposed rule also reflects the purpose of the Dodd-Frank Wall Street Reform and Consumer Protection Act [Public Law 111-203; 7/21/10] (hereinafter, the "Dodd-Frank Act") which preempts certain state laws relating to reinsurance ceded by authorized non-domestic insurers.

4. Costs: The proposed rule does not impose additional costs upon assuming insurers. The rule also does not impose additional costs upon the Department of Financial Services or other state government agencies or local governments. Nor is it expected that either the Department of Financial Services or regulated entities will directly incur additional costs.

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

6. Paperwork: Assuming insurers seeking to be designated as "certified reinsurers" by the Superintendent, which status will allow ceding insurers to take credit for reinsurance without the assuming reinsurer having to post 100% collateral, must file certain documents annually with the Superintendent. However, these documents should be readily available, since they serve purposes relating to regulation of the unauthorized assuming insurers by other entities.

7. Duplication: This amendment will not duplicate any existing state or federal rule. The Eleventh Amendment is aimed at making New York's rules consistent with the NAIC's recently adopted Model Law and Model Regulation, to the extent that they are consistent with the needs of the New York insurance market.

8. Alternatives: As a substantive matter, the Eleventh Amendment essentially consists of only minor adjustments to the rule as amended by the Tenth Amendment. These adjustments were aimed at more closely conforming the rule to the NAIC Model Law and Model Regulation. Ac-

cordingly, there were no possible alternatives for the Department to consider.

9. Federal standards: There are no minimum federal standards for the same or similar subject areas. The regulation is consistent with the Dodd-Frank Act inasmuch as that legislation preempts the state from denying credit for reinsurance of a ceding insurer whose state of domicile is an NAIC-accredited state, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk. See Pub. Law 111-203, § 532.

10. Compliance schedule: Once the amended regulation is adopted, regulated parties will be able to comply immediately. Any reinsurer currently complying with the provisions of 11 NYCRR § 125.4(h) as promulgated by the Tenth Amendment will be deemed to be in compliance with the requirements of the Eleventh Amendment, provided that such reinsurer successfully applies to the Superintendent for status as a certified reinsurer prior to July 1, 2013. Accordingly, this proposal will apply to new or renewed reinsurance contracts effective on or after July 1, 2011.

Regulatory Flexibility Analysis

The Department of Financial Services (the "Department") finds that this rule would not impose reporting, recordkeeping or other requirements on small businesses. This rule applies to ceding insurers authorized to do business in New York State, as well as unauthorized assuming insurers. The rule establishes certain requirements for ceding insurers domiciled in New York and for foreign authorized ceding insurers that are domiciled in a state that is neither NAIC-accredited nor has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and does not recognize credit for reinsurance for the insurer's ceded risk. The rule also establishes standards for assuming insurers, in order to enable ceding insurers to take credit on their balance sheets for risks ceded to assuming insurers.

The Department has reviewed the filed Reports on Examination and Annual Statements of authorized insurers and the trustee surpluses of alien insurers subject to this amendment, and believes that none of them comes within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because there are none which are both independently owned and have under 100 employees.

This rule also is not expected to have any adverse economic impact on local governments, and does not impose reporting, recordkeeping or other compliance requirements on local governments. The basis for this finding is that this rule is directed at ceding insurers and assuming insurers, none of which is a local government.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This amendment applies to domestic ceding insurers and reinsurers that are not authorized to do business in New York State ("assuming insurers") and addresses whether a ceding insurer may take credit on its balance sheet, as an asset or deduction from reserves, for reinsurance recoverable from an assuming reinsurer. The amendment establishes certain requirements for assuming insurers that wish to obtain status as a certified reinsurer from the Superintendent. The ceding insurers 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: An assuming insurer applying for status as a certified reinsurer from the Superintendent, which status will allow a ceding insurer to take credit for reinsurance without the assuming insurer having to post 100% collateral, must file certain documents annually with the Superintendent. However, these documents should be readily available, since they serve purposes relating to regulation of the assuming insurers by other entities.

There are no other additional paperwork requirements specific to ceding insurers that are based in rural areas.

3. Costs: This rule imposes no additional costs for ceding insurers, including those based in rural areas.

4. Minimizing adverse impact: This rule applies uniformly to regulated parties that do business in both rural and nonrural areas of New York State. This rule provides certain minor refinements intended to further level the playing field for all reinsurers, continuing the Department's efforts to keep New York competitive while bringing the state into the 21st century of financial services regulation.

5. Rural area participation: In developing this rule, which makes only minor substantive changes to the existing regulation, the Department conducted limited outreach by contacting insurers, reinsurers, trade groups, other regulators, and other interested parties, including those located or domiciled in rural areas.

Job Impact Statement

The proposed amendment should have no negative impact on jobs or economic opportunities in New York State. The amendment applies to re-

insurance contracts, and modifies slightly the framework by which a ceding insurer may take credit on its balance sheet, as an asset or deduction from reserves, for reinsurance recoverable from any unauthorized assuming insurer that maintains a sufficiently high interactive financial strength rating from at least two rating agencies. In addition, the Superintendent must evaluate the unauthorized assuming insurer and determine the proper amount of collateral to be maintained by the assuming insurer for the ceding insurer to take credit on its balance sheet.

While ceding insurers may change their choice of assuming insurers to ensure that they receive credit as an asset or deduction from reserves for such reinsurance, the amendment will not change the fact that authorized insurers need to obtain such reinsurance.

The proposal requires an unauthorized assuming insurer applying to the Superintendent for status as a certified reinsurer, which status will allow a ceding insurer to take credit for reinsurance without the assuming reinsurer having to post 100% collateral, to file certain documents annually with the Superintendent.

Thus, there should be no negative impact on jobs or economic opportunities in New York State.

Department of Health

EMERGENCY RULE MAKING

Nursing Home Sprinklers

I.D. No. HLT-36-12-00005-E

Filing No. 1130

Filing Date: 2012-11-09

Effective Date: 2012-11-09

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

Action taken: Addition of section 86-2.41 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to ensure financially challenged nursing homes can secure the loans required to finance and perform the necessary work required to purchase and install a Federally compliant sprinkler system on or before August 13, 2013. Providing nursing homes as much time as possible to meet the Federal requirements will protect the health and safety of nursing homes residents by maintaining access to care and ensuring that financially distressed nursing homes avoid penalties for non-compliance (i.e., civil monetary penalties, the denial of Medicare and Medicaid payment for new admissions, and the termination of Medicaid and Medicare provider certifications).

Subject: Nursing Home Sprinklers.

Purpose: To assist eligible nursing homes with accessing credit markets to finance the costs of installing automatic sprinkler systems.

Text of emergency rule: Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2803(2) of the Public Health Law, Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended by adding a new section 86-2.41 to be effective upon filing with the Secretary of State, to read as follows:

86-2.41 Sprinkler systems

(a) *Subject to the availability of federal financial participation, the capital cost components of the rates of eligible residential health care facilities for periods on and after the effective date of this regulation shall be adjusted in accordance with the following:*

(1) *For the purposes of this section, eligible facilities are those facilities which the commissioner determines are financially distressed in terms of their being unable to finance, at terms acceptable to the commissioner, the installation of automatic sprinkler systems, in conformity with the provisions of federal regulations set forth in 42 CFR 483.70(a)(8). In making such determinations of eligibility the commissioner shall consider information obtained from a facility's cost report, other more recent financial information to be provided by the facility, and such other information as may be required by the commissioner, including, but not limited to:*

(i) *operating profits and losses;*