

# Memo

Date: June 19, 2014  
To: Kirstin L. Breiner, Legislative Regulation Review Committee  
From: N. Beth Cook  
Telephone: 860-297-3998  
Re: Substitute Pages – Risk Based Capital for Insurers  
Regulation No. 2014-016

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The Connecticut Insurance Department (“Department”) is submitting the attached substitute pages for the above-referenced regulations in accordance with the rule of the Legislative Regulation Review Committee.

The overall intent of the changes as provided and summarized below are to simplify the proposed revisions. These changes do not alter the original intent or statement of purpose.

The changes are as follows:

Pages 1-3: in section 38a-72-1, we had previously deleted definitions (f) through (o), inclusive and had inserted new definitions (f) through (p), inclusive and inserted a new definition for “Fraternal benefit society”. We have restored the original definitions, deleted the new “Fraternal benefit Society” and have revised the definition of “Life and/or health insurer” to include fraternal benefit societies.

Page 3: in section 38a-72-2(b) we have deleted the proposed addition of “or fraternal benefit society’s” following “insurer’s”.

Page 4: in section 38a-72-3(a)(1)(B) we have deleted the proposed addition of “or fraternal benefit society’s” following the first “insurer” and deleted “or society” after second “insurer”.

Page 5: in section 38a-72-6(b)(1) we have deleted the proposed addition of “or fraternal benefit society” following “insurer”.

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Thank you for your consideration. If there are any questions, please contact me at 860-297-3988 or at [beth.cook@ct.gov](mailto:beth.cook@ct.gov).

Sincerely,

A handwritten signature in blue ink that reads "N. Beth Cook". The signature is written in a cursive, slightly slanted style.

N. Beth Cook  
Counsel

**IMPORTANT:** Read instructions on back of last page (Certification Page) before completing this form. Failure to comply with instructions may cause disapproval of proposed Regulations

## State of Connecticut REGULATION of

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NAME OF AGENCY

Insurance Department

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### Concerning

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SUBJECT MATTER OF REGULATION

Risk Based Capital for Insurers

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### Section 1

Section 38a-72-1 to 38a-72-3, inclusive, of the Regulations of Connecticut State Agencies are amended to read as follows:

#### **Sec. 38a-72-1. Definitions**

As used in sections 38a-72-1 to 38a-72-13, inclusive, of the Regulations of Connecticut State Agencies:

- (a) “Adjusted RBC Report” means an RBC Report which has been adjusted by the commissioner in accordance with section 38a-72-2(e) of the Regulations of Connecticut State Agencies;
- (b) “Commissioner” means the Insurance Commissioner of the State of Connecticut;
- (c) “Corrective Order” means an order issued by the [commissioner]Commissioner specifying corrective actions which the [commissioner]Commissioner has determined are required;
- (d) “Domestic insurer” means any insurance company domiciled in Connecticut;
- (e) “Foreign insurer” means any insurance company that is licensed to do business in Connecticut under section 38a-41(a) of the Connecticut General Statutes but is not domiciled in Connecticut;
- (f) “NAIC” means the National Association of Insurance Commissioners;
- (g) [“Life and/or health insurer” means any insurance company licensed under section 38a-41 of the Connecticut General Statutes, or a licensed property and casualty insurer writing only accident and health insurance] “Life or health insurer” means any insurance company licenses under section 38a-41 of the Connecticut General Statutes, or as a licensed property and casualty insurer writing only accident and health insurance, or a fraternal benefit society which has the same meaning as provided in section 38a-595 of the Connecticut General Statutes and includes a society licensed under section 38a-601 of the Connecticut General Statutes;
- (h) “Property and casualty insurer” means any insurance company licensed under section 38a-41 of the Connecticut General Statutes but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers;
- (i) “Negative Trend” means, with respect to a life and/or health insurer, a negative trend over a period of time, as determined in accordance with the “Trend Test Calculation” included in the Life RBC Instructions;
- (j) “RBC” means risk based capital;
- (k) “RBC Instructions” means the RBC Report including risk-based capital instructions adopted by the NAIC, as such RBC Instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC;

(l) “RBC Level” means an insurer's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

(1) “Company Action Level RBC” means, with respect to any insurer, the product of 2.0 and its Authorized Control Level RBC;

(2) “Regulatory Action Level RBC” means the product of 1.5 and its Authorized Control Level RBC;

(3) “Authorized Control Level RBC” means the number determined under the risk-based capital formula in accordance with the RBC Instructions; and

(4) “Mandatory Control Level RBC” means the product of .70 and the Authorized Control Level RBC;

(m) “RBC Plan” means a comprehensive financial plan containing the elements specified in section 38a-72-3(b) of the Regulations of Connecticut State Agencies. If the commissioner rejects the RBC Plan, and it is revised by the insurer, with or without the commissioner's recommendation, the plan shall be called the “Revised RBC Plan”;

(n) “RBC Report” means the report required in section 38a-72-2 of the Regulations of Connecticut State Agencies; and

(o) “Total Adjusted Capital” means the sum of: an insurer's statutory capital and surplus; and such other items, if any, as the RBC Instructions may provide.

### **Sec. 38a-72-2. RBC reports**

(a) Every domestic insurer shall, on or prior to each March 1 (the “filing date”), prepare and submit to the [commissioner]Commissioner a report of its RBC Levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC Instructions. In addition, every domestic insurer shall file its RBC Report:

(1) With the NAIC in accordance with the RBC Instructions; and

(2) With the insurance commissioner in any state in which the insurer is authorized to do business, if the insurance commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC Report not later than the later of: fifteen (15) days from the receipt of notice to file its RBC Report with that state; or the filing date.

(b) A life [and/or]or health insurer's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account [(and may adjust for the covariance between[])]:

(1) The risk with respect to the insurer's assets;

(2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(3) The interest rate risk with respect to the insurer's business; and

(4) All other business risks and such other relevant risks as are set forth in the RBC instructions; determined in each case by applying the factors in the manner set forth in the RBC Instructions.

(c) A property and casualty insurer's RBC shall be determined in accordance with the formula set forth in the RBC Instructions. The formula shall take into account [(and may adjust for the covariance between[])]:

(1) Asset risk;

(2) Credit risk;

(3) Underwriting risk; and

(4) All other risks and such other relevant risks as are set forth in the RBC Instructions; determined in each case by applying the factors in the manner set forth in the RBC Instructions.

(d) An excess of capital over the amount produced by the risk-based capital requirements contained in sections 38a-72-1 to 38a-72-13, inclusive, of the Regulations of Connecticut State Agencies and the formulas, schedules and instructions referenced in said sections is desirable in the

business of insurance. Accordingly, insurers should seek to maintain capital above the RBC levels required by sections 38a-72-1 to 38a-72-13, inclusive, of the Regulations of Connecticut State Agencies. Additional capital is used and is useful in the insurance business and helps to secure an insurer against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in sections 38a-72-1 to 38a-72-13, inclusive, of the Regulations of Connecticut State Agencies.

(e) If a domestic insurer files an RBC Report which in the judgment of the [commissioner]Commissioner is inaccurate, then the [commissioner]Commissioner shall adjust the RBC Report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC Report as so adjusted is referred to as an “Adjusted RBC Report.”

### **Sec. 38a-72-3. Company action level event**

(a) “Company Action Level Event” means any of the following events:

(1) The filing of an RBC Report by an insurer which indicates that:

(A) The insurer's Total Adjusted Capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC;

(B) If a life [and/]or health insurer, the insurer has Total Adjusted Capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and [2.5]3.0 and has a Negative Trend; or

(C) If a property and casualty insurer, the insurer has Total Adjusted Capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the “Trend Test Calculation” included in the Property and Casualty RBC instructions:

(2) The notification by the [commissioner]Commissioner to the insurer of an Adjusted RBC Report that indicates the event in subdivision (1) of this subsection, provided the insurer does not challenge the Adjusted RBC Report under section 38a-72-7 of the Regulations of Connecticut State Agencies; or

(3) If, pursuant to section 38a-72-7 of the Regulations of Connecticut State Agencies, an insurer challenges an Adjusted RBC Report that indicates the event in subdivision (1) of this subsection, the notification by the [commissioner]Commissioner to the insurer that the [commissioner]Commissioner has, after a hearing, rejected the insurer's challenge.

(b) In the event of a Company Action Level Event, the insurer shall prepare and submit to the commissioner an RBC Plan which shall:

(1) Identify the conditions that contribute to the Company Action Level Event;

(2) Contain proposals of corrective actions that the insurer intends to take and would be expected to result in the elimination of the Company Action Level Event;

(3) Provide projections of the insurer's financial results in the current year and at least the four (4) succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital [and/]or surplus. (The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense and benefit component);

(4) Identify the key assumptions impacting the insurer's projections and the sensitivity of the projections to the assumptions; and

(5) Identify the quality of, and problems associated with, the insurer's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(c) The RBC Plan shall be submitted within forty-five (45) days of the Company Action Level Event; or if the insurer challenges an Adjusted RBC Report pursuant to section 38a-72-7 of the

Regulations of Connecticut State Agencies, within forty-five (45) days after notification to the insurer that the [commissioner]Commissioner has, after a hearing, rejected the insurer's challenge.

(d) Within sixty (60) days after the submission by an insurer of an RBC Plan to the [commissioner]Commissioner, the [commissioner]Commissioner shall notify the insurer whether the RBC plan shall be implemented or is, in the judgment of the commissioner, unsatisfactory. If the [commissioner]Commissioner determines that the RBC Plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination, and may set forth proposed revisions that will render the RBC Plan satisfactory, in the judgment of the [commissioner]Commissioner. Upon notification from the [commissioner]Commissioner, the insurer shall prepare a Revised RBC Plan, which may incorporate by reference any revisions proposed by the [commissioner]Commissioner, and shall submit the Revised RBC Plan to the [commissioner]Commissioner within forty-five (45) days after the notification from the [commissioner]Commissioner; or if the insurer challenges an Adjusted RBC Report pursuant to section 38a-72-7 of the Regulations of Connecticut State Agencies, within forty-five (45) days after notification to the insurer that the [commissioner]Commissioner has, after a hearing, rejected the insurer's challenge.

(e) In the event of a notification by the [commissioner]Commissioner to an insurer that the insurer's RBC Plan or Revised RBC Plan is unsatisfactory, the [commissioner]Commissioner may at the [commissioner]Commissioner's discretion, subject to the insurer's right to a hearing under section 38a-72-7 of the Regulations of Connecticut State Agencies, specify in the notification that the notification constitutes a Regulatory Action Level Event.

(f) Every domestic insurer that files an RBC Plan or Revised RBC Plan with the [commissioner]Commissioner shall file a copy of the RBC Plan or Revised RBC Plan with the insurance commissioner in any state in which the insurer is authorized to do business if:

(1) Such state has an RBC provision substantially similar to section 38a-72-8(a) of the Regulations of Connecticut State Agencies; and

(2) The insurance commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC Plan or Revised RBC Plan in that state no later than the later of:

(A) Fifteen (15) days after the receipt of notice to file a copy of its RBC Plan or Revised Plan with the state; or

(B) The date on which the RBC Plan or Revised RBC Plan is filed under subsections (c) and (d) of section 38a-72-3 of the Regulations of Connecticut State Agencies.

## **Section 2**

The Regulations of Connecticut State agencies are amended by adding section 38a-72-6 as follows:

### **Sec. 38a-72-6. Mandatory control level event**

(a) "Mandatory Control Level Event" means any of the following events:

(1) The filing of an RBC Report which indicates that the insurer's Total Adjusted Capital is less than its Mandatory Control Level RBC;

(2) Notification by the [commissioner]Commissioner to the insurer of an Adjusted RBC Report that indicates the event in subdivision (1) of this subsection, provided the insurer does not challenge the Adjusted RBC Report under section 38a-72-7 of the Regulations of Connecticut State Agencies; or

(3) If, pursuant to section 38a-72-7 of the Regulations of Connecticut State Agencies, the insurer challenges an Adjusted RBC Report that indicates the event in subdivision (1) of this subsection, notification by the [commissioner]Commissioner to the insurer that the [commissioner]Commissioner has, after a hearing, rejected the insurer's challenge.

(b) In the event of a Mandatory Control Level Event:

(1) With respect to a life [and/]or health insurer, the [commissioner]Commissioner shall take actions as are necessary to place the insurer under regulatory control under Chapter 704c of the General Statutes. In that event, the Mandatory Control Level Event shall be deemed sufficient grounds for the [commissioner]Commissioner to take action under Chapter 704c of the General Statutes, and the [commissioner]Commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in Chapter 704c of the Connecticut General Statutes. In the event the [commissioner]Commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to the protections of the provisions of Chapter 704c of the Connecticut General Statutes pertaining to summary proceedings. Notwithstanding any of the foregoing, the [commissioner]Commissioner may forego action for up to ninety (90) days after the Mandatory Control Level Event if the [commissioner]Commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety (90) day period.

(2) With respect to a property and casualty insurer, the [commissioner]Commissioner shall take such actions as are necessary to place the insurer under regulatory control under Chapter 704c of the General Statutes, or, in the case of an insurer which is writing no business and which is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the [commissioner]Commissioner. In either event, the Mandatory Control Event shall be deemed sufficient grounds for the [commissioner]Commissioner to take action under Chapter 704c of the Connecticut General Statutes and the [commissioner]Commissioner shall have the rights, powers and duties with respect to the insurer as are set forth in Chapter 704c of the Connecticut General Statutes. If the [commissioner]Commissioner takes actions pursuant to an Adjusted RBC Report, the insurer shall be entitled to the protections of the provisions of Chapter 704c of the Connecticut General Statutes pertaining to summary proceedings. Notwithstanding any of the foregoing, the [commissioner]Commissioner may forego action for up to ninety (90) days after the Mandatory Control Level Event if the [commissioner]Commissioner finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the ninety (90) day period.

## **Statement of Purpose**

*Pursuant to CGS Section 4-170(b)(3), "Each proposed regulation shall have a statement of its purpose following the final section of the regulation." Enter the statement here.*

The purpose of the requested revisions are to conform our current regulation to the updated NAIC Model.

### **A. The problems, issues or circumstances that the regulation proposes to address.**

This regulation establishes the standards for risk-based capital requirements for life insurers. The proposed amendment is to conform the Connecticut regulation to the NAIC Model by revising the trend test calculation and to expressly reference fraternal benefit societies offering life insurance in Connecticut. Fraternal benefit societies currently comply with the existing risk-based capital reporting provisions pursuant to the authority of Conn. Gen. Stat. §38a-614.

### **B. A summary of the main provisions of the regulation.**

The amendment provides for a trend test trigger for Company Action Level Events and expressly references fraternal benefit societies offering life insurance.

### **C. The legal effects of the regulation, including all ways that the regulation would change existing regulations or other laws.**

No other laws or regulations will be affected.

### **C. Impact on small businesses**

As required by Conn. Gen. Stat. § 4-168a, the Insurance Department considered the impact of the proposed amended regulations on small business, and in doing so, determined that the preparation of a regulatory flexibility analysis, as contemplated by this statute, was not needed. The amendments reflect activities to be undertaken by insurance companies offering annuity products which are not small businesses.

(Certification page—see Instructions on back)

**CERTIFICATION**

This certification statement must be completed in full.

**I hereby certify that the above Regulation(s)**

- 1) is/are (check all that apply)  adopted  amended  repealed by this agency pursuant to the following authority(ies): (complete all that apply)
- a. **Connecticut General Statutes section(s)** 38a-8, 38a-72a; 38a-614.
- b. **Public Act Number(s)** \_\_\_\_\_.  
 (Provide public act number(s) if the authorizing act has not yet been codified in the Connecticut General Statutes.)

**And I further certify**

- 2) that **Notice of Intent** to adopt, amend or repeal said regulation(s) was electronically submitted to the Secretary of the State on 3/11/14, and posted to the Secretary's regulations website on 3/13/14; (Insert dates notice was (a) emailed to the Secretary of the State and (b) posted on the Secretary's website, if notice and posting were required by CGS 4-168, as amended by PA 13-247 and PA 13-274.)
- 3) and that a public hearing regarding the proposed regulation(s) was held on \_\_\_\_\_ or  that no public hearing was held; (Insert date(s) of mandatory public hearing(s) held pursuant to CGS 4-168(a), as amended, or other applicable statute, and/or voluntary hearing, or if no hearing was held, check the box for that statement.)
- 4) and that notice of **Decision to Take Action** on said regulations was electronically submitted to the Secretary of the State on 4/24/14, and posted to the Secretary's regulations website on 4/25/14; (Insert dates notice was (a) emailed to the Secretary of the State and (b) posted on the Secretary's website, if notice and posting were required by CGS 4-168, as amended by PA 13-247 and PA 13-274.)
- 5) and that said regulation(s) is/are **EFFECTIVE** (check one, and complete as applicable)  
 When posted online by the Secretary of the State.

OR  on (insert date) \_\_\_\_\_.

6) SIGNED (Head of Board, Agency or Commission)	OFFICIAL TITLE, DULY AUTHORIZED	DATE
<i>[Signature]</i>	Commissioner	4/25/14

**APPROVED by the Attorney General as to legal sufficiency in accordance with CGS Section 4-169, as amended.**

DATE	SIGNED (Attorney General or AG's designated representative)	OFFICIAL TITLE, DULY AUTHORIZED
5/20/14	<i>[Signature]</i> Joseph Rubin	ASSOC. ATTY. GENERAL

Proposed regulations are **DEEMED APPROVED** by the Attorney General in accordance with CGS Section 4-169, as amended, if the Attorney General fails to give notice to the agency of any legal insufficiency within thirty (30) days of the receipt of the proposed regulation.

(For Regulation Review Committee Use ONLY)

- APPROVED  in WHOLE or WITH  technical corrections  deletions  substitute pages
- DEEMED APPROVED, pursuant CGS 4-170(c), as amended.
- Rejected without Prejudice  Disapproved, pursuant to CGS 4-170(c), as amended.

By the Legislative Regulation Review Committee in accordance with CGS Section 4-170, as amended	DATE	SIGNED (Administrator, Legislative Regulation Review Committee)

**In accordance with CGS Section 4-172, as amended by PA 13-247 and PA 13-274, one certified paper copy and one electronic copy with agency head certification statement received on the date(s) specified below.**

DATE	SIGNED (Secretary of the State)	BY

(For Secretary of the State Use ONLY)

Date Posted to SOTS Regulations Website:

Date Electronic Copy Forwarded to the Commission on Official Legal Publications:

SOTS file stamp:

## GENERAL INSTRUCTIONS

1. All regulations proposed for adoption, amendment or repeal, *except* emergency regulations, must be presented to the Attorney General for determination of legal sufficiency. (See CGS Section 4-169.)
2. After approval by the Attorney General, the original and one electronic copy (in Word format) of all regulations proposed for adoption, amendment or repeal must be presented to the Legislative Regulation Review Committee for its action. (See CGS Section 4-168, as amended by PA 13-247, section 28, and PA 13-274, and CGS Section 4-170.)
3. Each proposed regulation section must include the appropriate regulation section number and a section heading. (See CGS Section 4-172.)
4. New language added to an existing regulation must be in underlining or CAPITAL LETTERS, as determined by the Regulation Review Committee. (See CGS 4-170(b).)
5. Existing language to be deleted must be enclosed in [brackets]. (See CGS 4-170(b).)
6. A completely new regulation or a new section of an existing regulation must be preceded by the word "(NEW)" in capital letters. (See CGS Section 4-170(b).)
7. The proposed regulation must have a statement of its purpose following the final section of the regulation. (See CGS Section 4-170(b).)
8. The *Certification Statement* portion of this form must be completed, including all applicable information regarding notice submission and website posting date(s) and public hearing(s). (See more specific instructions below.)
9. Additional information regarding rules and procedures of the Legislative Regulation Review Committee can be found on the Committee's web site: <http://www.cga.ct.gov/rr/>.
10. A copy of the Legislative Commissioners' Regulations Drafting Manual is located on the LCO website at [http://www.cga.ct.gov/lco/pdfs/Regulations\\_Drafting\\_Manual.pdf](http://www.cga.ct.gov/lco/pdfs/Regulations_Drafting_Manual.pdf).

## CERTIFICATION STATEMENT INSTRUCTIONS

(Numbers below correspond to the numbered sections of the Certification Statement page)

1. a) Indicate whether the regulation contains newly adopted sections, amendments to existing sections, and/or repeals of existing sections. **Check all cases that apply.**  
b) Indicate the specific legal authority that permits or requires adoption, amendment or repeal of the regulation. If the relevant public act has been codified in the most current biennial edition of the *Connecticut General Statutes*, indicate the relevant statute number(s) instead of the public act number. If the public act has not yet been codified, indicate the relevant public act number.
2. An agency must electronically submit notice of its intent to adopt the regulation to the Secretary of the State at [regulations.sots@ct.gov](mailto:regulations.sots@ct.gov) for posting on the Secretary's regulations website. Enter both the date notice of intent was submitted to the Secretary of the State *and* the date the notice was posted on the Secretary's website. For emergency regulations, use Form Regs-1-E instead of this form. For non-substantive technical amendments and repeals adopted without prior notice or hearing as permitted by subsection (g) of CGS 4-168, use Form REGS-1-T instead of this form.
3. CGS 4-168(a), as amended by PA 13-247 and PA 13-274, prescribes requirements for holding a public hearing on proposed regulations. Enter the date(s) of all hearing(s) held under that section, if any, also enter the date(s) of any hearing(s) the agency was required to hold under the provisions of any other law; and enter the date(s) of any public hearing(s) the agency elected to hold voluntarily. If no public hearing was held, mark (X) the check box.
4. **NEW REQUIREMENT:** CGS 4-168(d), as amended by PA 13-247 and PA 13-274, prescribes requirements electronically submitting notice of decision to take action (proceed with adoption) of a proposed regulation for posting to the Secretary's regulations webpage. Enter both the date notice of decision was submitted to the Secretary of the State *and* the date the notice was posted on the Secretary's website.
5. As applicable, enter the specific effective date of the regulation; or indicate that it is effective upon posting online by the Secretary of the State. **Please note the important information below.**  
Permanent regulations adopted after July 1, 2013 are effective upon posting online by the Secretary of the State (SOTS), or at a *later* date specified by the agency, or at a *later* date if required by statute. See CGS 4-172(b). An effective date may not precede the date of posting online by SOTS, and it may not precede the effective date of the public act requiring or permitting the regulation.
6. Submit the original proposed regulation to your agency commissioner for signature.