

REGULATORY AGENDA

Banking Department

First Half 2009

The New York State Banking Department is planning to seek comments on the following regulatory proposals:

1. Adoption of new regulations to implement the provisions of recently enacted legislation addressing the mortgage foreclosure crisis in the state.

Contact Person: Sam L. Abram, Secretary of the Banking Board, One State Street, New York, NY 10004, (212) 709-1658.

Education Department

Pursuant to section 202-d of the State Administrative Procedure Act, the State Education Department presents its regulatory agenda for calendar year 2009. All section and part references are to Title 8 of the New York Code of Rules and Regulations. The State Education Department reserves the right to add, delete or modify, without further notice, except as required by the State Administrative Procedure Act, any item or information presented herein as relating to the 2009 Regulatory Agenda.

OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to Distinguished Educators to define eligibility and establish selection process duties. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to the restructuring and reorganization of schools under registration review (SURR). A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to District Improvement Plans. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to superintendents' contracts. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 and Chapter 57 of the Laws of 2008 relating to full-day kindergarten and pre-kindergarten transition planning grants. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required. Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to pupils with limited English proficiency. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required. Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to student progress reports, school leadership and school progress report cards. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to conform provisions relating to Educationally Related Support Services Aid and Declassification Support Aid to the Laws of 2007. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 100 of the Commissioner's Regulations to conform to Chapter 57 of the Laws of 2007, relating to implementation of an interim growth model, subject to the approval of the U.S. Department of Education. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(p) of the Commissioner's Regulations to conform provisions related to implementation of differentiated accountability pilot as part of New York State's No Child Left Behind accountability workbook, subject to U.S. Department of Education's approval of New York State's proposal for participation in the U.S. Secretary of Education's pilot program. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2 (gg) of the Commissioner's Regulations to revise and update provisions on Violent and Disruptive Incident Reporting (VADIR). A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 110.6 of the Commissioner's Regulations relating to aidable summer school programs. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 135.4(c)(7)(i)(c)(2) and (3) and section 100.5 of the Commissioner's Regulations relating to requirements for teacher coaches and non-teacher coaches, and physical education graduation credit requirements for out-of-state transfer students. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required. Amendment of the Commissioner's Regulations relating to the duration of student competition in interscholastic athletics. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to teacher tenure, annual professional performance review under section 100.2(o) and the ability to use data to improve student performance. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to conform to Chapter 181 of the Laws of 2007 ('P.J.'s Law'), by promulgating regulations requiring school bus drivers and attendants on a bus transporting children with disabilities to complete training, at least once a year, on the special needs of children with disabilities. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 156 of the Commissioner's Regulations, regarding transportation, to revise and update the regulations. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 136 of the Commissioner's Regulations to

implement Chapter 672 of the Laws of 2008, regarding nebulizers in school buildings. A regulatory flexibility for local government and a rural area flexibility analysis may be required. Amendment of section 136.3 of the Commissioner's Regulations, relating to scoliosis screening. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 144.11 of the Commissioner's Regulations, relating to early grade class size. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations, relating to absentee ballots for boards of cooperative educational services (BOCES). A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations, relating to school district and BOCES name changes. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations, relating to school district financial management. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations regarding BOCES installment purchase contracts and leases. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations, relating to certified athletic trainers.

Amendment of Commissioner's Regulations relating to persistently dangerous schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Subpart 151-1 of the Commissioner's Regulations to allow teachers employed by eligible agencies collaboration with a school district to provide prekindergarten services to be employed without a bachelor's degree in early childhood education or a related field, or a teaching license or certificate valid for services in the childhood grades pursuant to 8 NYCRR Part 80, so long as the teacher has a written plan to obtain certification valid for service in the early childhood grades within 5 years of commencement of employment. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Subpart 151-1 of the Commissioner's Regulations, relating to Universal Pre-kindergarten aid, to implement Chapter 57 of the Laws of 2008. A regulatory flexibility for local government analysis and a rural area flexibility analysis may be required.

Amendment of section 100.2(x), relating to the education of homeless children. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 135.4(c)(7)(i)(c)(2) and (3) of the Commissioner's Regulations relating to requirements for teacher coaches and non-teacher coaches. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of 91.2 of the Commissioner's Regulations to revise and update provisions on the employment of a school library media specialist. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required. Amendment of Part 119 of the Commissioner's regulations to add a section pertaining to residency determinations of students attending charter schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 119 of the Commissioner's regulations to add a section pertaining to procedures relating to complaints brought pursuant to Education Law section 2855. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 119.1(e) relating to financing of charter schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of 164.2 (2)(g) of the Commissioner's Regulations to align the regulation with the requirements of the National Reporting

System (NRS) that was implemented in 1998. The NRS requires that final student information be submitted by October 31st following the July 31st closing of the school year. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of 100.7 of the Commissioner's Regulation to include more explicit terms of eligibility to take the GED. Currently Job Corp residents and home schooled students are not referenced to their eligibility. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above proposed amendments by contacting:

Johanna Duncan-Poitier

Senior Deputy Commissioner P-16

New York State Education Department

Office of Higher Education

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OFFICE OF HIGHER EDUCATION

Amendment of Part 30 of the Commissioner's Regulations to designate a tenure area for each of the several teacher certificate titles that did not exist prior to February 2, 2004. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 52 and Part 80 of the Commissioner's Regulations related to the requirements for teacher certification in special education. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 80 of the Commissioner's Regulations to establish a three-year limit for applications for teacher certification to remain active. A rural area flexibility analysis may be required.

Amendment of Part 80 of the Commissioner's Regulations to establish requirements for a certificate in educational interpreting. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required. Amendment of Part 80 of the Commissioner's Regulations to expand the scope of practice for holders of the School District Leader certificate and to establish a transitional certificate for School District Business Leaders. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 80 of the Commissioner's Regulations to add enhancements to the individual evaluation pathway for first teaching certificates.

Amendment of Part 80 of the Commissioner's Regulations related to the requirements for a Supplementary Certificate.

Amendment of Part 80 and section 100.2(dd) of the Commissioner's Regulations, relating to changes in district professional development plans to account for changes in regulations related to the certification of school leaders.

Amendment of section 145-2.15 of the Commissioner's Regulations to clarify the requirements for administration by higher education institutions and public postsecondary vocational institutions of Ability-to-Benefit tests to applicants for State student financial aid who lack a U.S. high school diploma.

Amendment of sections 3.47, 3.48 and 3.50 of the Rules of the Board of Regents to clarify the distinction between the liberal arts core of an undergraduate degree program and courses directed towards a specific occupational or professional objective; to institute a new degree title, Master of Studies in Law (M.S.L.), in the category of Specialized Degrees in Course; and to authorize community colleges to award the honorary degree titles listed under section 3.50(c).

Amendment of Part 80 of the Commissioner's Regulations to establish requirements for a transitional certificate in classroom teaching

titles in a demonstrated shortage area. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 52.21 of the Commissioner's Regulations, related to alternatives for candidates seeking certification in language other than English (LOTE). A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 52 and Part 80 of the Commissioner's Regulations, related to the requirements for teacher certification in Special Education. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to implement Chapter 41 of the Laws of 2007 regarding the Student Lending Accountability, Transparency and Enforcement Act (SLATE). A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 8 NYCRR 100.2(dd) and Part 80 of Commissioner's Regulations, relating to changes in district professional development plans to account for changes in regulations related to the certification of school leaders. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 87 of the Commissioner's Regulations relating to oral arguments. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative

Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting:

Johanna Duncan-Poitier

Senior Deputy Commissioner P-16

New York State Education Department

Office of Higher Education and Office of the Professions

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OFFICE OF THE PROFESSIONS

Amendment of section 3.57(b) of the Regents Rules, conferring the Doctor of Medicine degree, to eliminate the requirement of three years of licensed practice. A rural area flexibility analysis may be required.

Amendment of Part 17 of the Regents Rules to conform to the three member panel law. A rural area flexibility analysis may be required.

Amendment of Part 17 of the Regents Rules relating to the summary suspension procedure. A rural area flexibility analysis may be required.

Amendment of Part 18 of the Regents Rules relating to the provision of services to nurses with substance abuse problems. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 24 of the Regents Rules relating to the waiver of citizenship requirement for licensure in Veterinary Medicine, Dentistry, Dental Hygiene and Pharmacy. A rural area flexibility analysis may be required.

Amendment of Part 24 of the Regents Rules relating to the approval by the committee on the professions of three-year limited licenses in Dentistry, Dental Hygiene, Veterinary Medicine, Veterinary Technology, and Pharmacy. A rural area flexibility analysis may be required.

Amendment of Part 29 of the Regents Rules relating to the packaging and dispensing of certain pharmaceuticals and electronic record-keeping in pharmacies. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 29 of the Regents Rules relating to electronic recordkeeping. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required. Amendment of Part 29 of the Regents Rules relating to the use of identification badges for certain professionals. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 29 of the Regents Rules relating to unprofessional conduct in the profession of Public Accountancy. A rural area flexibility analysis may be required.

Amendment of Parts 52 and 77 of the Commissioner's Regulations relating to the educational standards necessary for licensure in Physical Therapy, including continuing education requirements. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 59 of the Commissioner's Regulations relating to the use of ID cards in lieu of registration certificates. A rural area flexibility analysis may be required.

Amendment of Part 59 of the Commissioner's Regulations relating to English language proficiency. A rural area flexibility analysis may be required.

Amendment of Part 63 of the Commissioner's Regulations relating to continuing education for pharmacists. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 63 of the Commissioner's Regulations relating to examination requirements for pharmacists. A rural area flexibility analysis may be required.

Amendment of Part 64 of the Commissioner's Regulations relating to the orders required for administering immunizations. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 70 of the Commissioner's Regulations relating to experience and examination requirements for licensure in Certified Public Accountancy and to competency requirements relating to the signing of financial statements. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 76 of the Commissioner's Regulations relating to the supervision of occupational therapy assistants. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 79 of the Commissioner's Regulations relating to supervision requirements in the Mental Health professions. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting:

Frank Muñoz

Associate Commissioner

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OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES

Amendment of sections 100.9 and 200.5 of the Commissioner's Regulations relating to high school individualized education program (IEP) diplomas. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 200.1 and 200.4(d) of the Commissioner's Regulations relating to declassification support services including testing accommodations, eligibility for the graduation safety net, and exemption from language other than English requirement. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to sections 200.1 and 200.13 relating to students with autism. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.2 of the Commissioner's Regulations relating to special education space requirements plans. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.5 of the Commissioner's Regulations, relating to a parent's right to withdraw consent for special education services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.6 of the Commissioner's Regulations relating to a school district placement of a student with a disability in an in-state or out-of-state private school. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 200.5(a), (c) and (l) of the Commissioner's Regulations relating to prior written notice, meeting notice and State complaint procedures. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 200.6, 200.7 and 200.20(a) of the Commissioner's Regulations relating to the program standards for private schools approved to serve students with disabilities. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.9 of the Commissioner's Regulations relating to rate-setting and tuition rates for approved programs for students with disabilities. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.15 of the Commissioner's Regulations relating to procedures for prevention of abuse, maltreatment or neglect of students in residential placements to align State regulations with Chapter 323 of the New York State Laws of 2008. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Parts 100 and 200 of the Commissioner's Regulations to make certain technical amendments, including corrections to cross citations, and as may be appropriate to conform to possible changes made to federal regulations this year. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to Part 246 of the Commissioner's Regulations establishes standards for personnel and services for contractual vocational rehabilitation services through community rehabilitation programs and other community providers. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to Parts 246 and 247 of the Commissioner's Regulations relating to the vocational rehabilitation program operated pursuant to Title I of the Rehabilitation Act, as may be appropriate in order to conform to possible changes made if Congress reauthorizes that act this year. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency representative:

Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting:

Rebecca Cort

Deputy Commissioner

New York State Education Department

Office of Vocational and Educational Services for Individuals with Disabilities

One Commerce Plaza, Room 1606

Albany, New York 12234

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OFFICE OF CULTURAL EDUCATION

Amendment to section 3.27 of the Regents Rules, relating to museum collections management. A rural area flexibility analysis may be required.

Amendments to section 3.27 of the Regents Rules, relating to chartering and registration of museums and historical societies with collections, and section 3.30 relating to incorporation and registration of historical societies without collections and cultural agencies, to add "planetarium" to the definition of "museum," make clear that the requirement for larger institutions to be open to the public 1,000 hours

a year applies to a museum or exhibit facility, add language that only institutions that have collecting as a stated purpose in their charter shall hold collections, add a reference to "board representation" in the requirements for geographically descriptive terms in a corporate name, and eliminate reference to "associations of teachers, students [and] graduates of educational institutions" from the definition of "cultural agency." A rural area flexibility analysis may be required.

Agency representative:

Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting:

Clifford A. Siegfried

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Amendment of Part 90 of the Commissioner's Regulations, relating to the library and library system programs and services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 90.3 of the Commissioner's Regulations, relating to the approval of public library systems, and coordinated outreach services, family literacy library services and adult literacy library services programs. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting:

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OFFICE OF MANAGEMENT SERVICES

A proposed amendment to section 119.1 of the Commissioner's regulations relating to school district payments to charter schools and procedures for requests for a State aid deduction upon nonpayment. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above-proposed amendment by contacting:

Burt Porter

Director of Education Finance

New York State Education Department

89 Washington Avenue

Room 139 EB

Albany, New York 12234

(518) 486-2422

OFFICE OF STATE REVIEW

Amendment to section 279.1 of the Commissioner's Regulations, relating to the incorporation and clarification of definitions and other provisions, as relevant to state-level review of hearings for students with disabilities, that are currently referenced in Parts 275 and 276; deletion of references to parts 275 and 276; clarification of the jurisdiction of a state review officer; and clarification regarding the authority of a state review officer to review manifestation determinations. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.2 of the Commissioner's Regulations,

relating to timelines for serving and filing a Notice of Intention to Seek Review; clarification of purpose of Notice of Intention to Seek review; clarification of timeframe in which to serve upon another party and file a Notice of Intention to Seek review; and addition of a notice of certification requirement. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.4 of the Commissioner's Regulations, relating to the initiation of a review and the timeliness of an appeal, clarify sufficiency of content and time in which to serve the petition for review and memorandum of law upon the opposing party; procedures for filing a petition for review with the Office of State Review; and add disclosure of whether a related action or proceeding is pending in another forum. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.5 of the Commissioner's Regulations, relating to the service of an answer and supporting papers upon the opposing party and filing with the Office of State Review. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.6 of the Commissioner's Regulations, relating to additional pleadings and new matters raised in an answer. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.7 of the Commissioner's Regulations, relating to verification of pleadings. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.8 of the Commissioner's Regulations, relating to the table of authorities, clarification of the requirement that pleadings be signed consistent with 22 NYCRR 130-1.1a(a); and submission of electronic copies of pleadings and memoranda of law. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required. Amendment to section 279.9 of the Commissioner's Regulations, relating to content of record; certification of record and clarification that 279.9(b) refers to complete record. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.10 of the Commissioner's Regulations, relating to requests for extensions of time and length of extensions permitted; submission of additional evidence; clarification of effect of agreements to extend the time in which to initiate a review. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.11 of the Commissioner's Regulations, relating to calculating date of mailing and type of mail. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.12 of the Commissioner's Regulations, relating to parties receiving copies of state review officer decisions. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.13 of the Commissioner's Regulations, relating to service of petition for review. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Addition of 279.15 of the Commissioner's Regulations, relating to definitions of terms in Part 279. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting:

Paul F. Kelly

Assistant Counsel and State Review Officer

Office of State Review

80 Wolf Road, 2nd Floor

Albany New York 12203

(518) 485-9373

Department of Environmental Conservation

DIVISION OF AIR RESOURCES

6 NYCRR Part 200, General Provisions. Part 200 will be amended to incorporate the national emission standards for hazardous air pollutants (NESHAPS) adopted by the United States Environmental Protection Agency as of July 1, 2008. This rulemaking will not require a Regulatory Flexibility Analysis for Small Businesses and Local Governments or a Rural Area Flexibility Analysis. Contact (NESHAPS): Steve Yarrington, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3254. Telephone: 518-402-8403. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 200, General Provisions. Part 200 will be amended to add new non-attainment areas as designated by the United States Environmental Protection Agency for areas in New York State that do not meet new National Ambient Air Quality Standards. Contact: Robert Bielawa, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3251. Telephone: 518-402-8396. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when e-mailing.

6 NYCRR Part 201, Permits and Registrations. Part 201 contains the basic application and permitting requirements for the construction, operation and modification of air contamination sources within the state. It is expected that Part 201 will be revised in the coming year. The purpose of the revisions will be to improve implementation by removing outdated requirements; clarifying permitting and application requirements, including those dealing with exemptions and capping; adding and/or amending definitions; enhancing permit requirements for minor sources; and correcting typographical errors. In addition, Part 201 will be modified in connection with the Prevention of Significant Deterioration (PSD) and New Source Review (NSR) rulemaking (Part 231) to ensure consistency between the regulations. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Michael Styk, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3254. Telephone: 518-402-8403. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 202, Emissions Verification. The Department is proposing to revise 6 NYCRR Subpart 202-2, Emission Statements to include the reporting of Greenhouse Gases (GHGs) as part of the annual emission statement process. The six GHGs include; Carbon Dioxide (CO₂), Methane (CH₄), nitrous oxide (N₂O), chlorofluorocarbons (CFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆). This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Michael Miliani, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3258. Telephone: 518-402-8401. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 204, No_x Budget Trading Program. These rules may be repealed in 2009 if the federal court of appeals leaves the Clean Air Interstate Rule (CAIR) in place pending remand to EPA to develop a revised rule. If the vacatur of CAIR is left intact, Parts 237 and 238 will be amended to include emission reductions expected from the CAIR program. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Michael Miliani, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3251. Telephone: 518-402-8396. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 205, Architectural and Industrial Maintenance (AIM) Coatings. The existing regulation will be updated to clarify some implementation issues that have arisen since it was adopted in 2003. This includes adding a category and VOC limit for driveway sealers and foundation coatings, removing the "most restrictive limit exception" for impacted immersion coatings, revising language to eliminate a loophole in the "default" limit provision, providing flexibility on labeling requirements for non-standard reusable containers,

and revising the reporting requirements to include products that are sold out of state and sold in containers of one liter or less. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Scott Griffin, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3251. Telephone: 518-402-8396. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 212, General Process Emission Sources. The existing regulation will be amended to set forth a new procedure for evaluating and reducing community air toxic impacts from stationary sources of air pollution. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Thomas Gentile, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3259. Telephone: 518-402-8402. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 212, General Process Emission Sources. A new Subpart, Asphalt Paving Production, will be added to regulate NO_x emissions and establish fuel sulfur limits for the production of asphalt paving. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Michael Jennings, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3254. Telephone: 518-402-8403. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 217, Motor Vehicle Emissions. The existing regulation will be amended to include revisions to the heavy duty diesel vehicle I&M test procedures and to reflect the anticipated adoption of Part 248, allowing for retrofitted vehicles to be exempt from annual testing, and will be modified to include light duty diesel vehicles in OBD testing statewide. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Anthony Tagliaferro, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3255, Telephone: 518-402-8292. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines. The existing regulation will be amended to incorporate revisions California has made to its emission control program to amend the Zero Emission Vehicle requirements; and to otherwise update various incorporation by reference citations included in the Low Emission Vehicle program. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Jeff Marshall, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3255, Telephone: 518-402-8292. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 219, Incinerators. Subparts 219-1, 219-2, 219-3, 219-4, 219-5, 219-6, 219-7 and 219-8 will be updated as necessary to clarify the operator training and certification requirements. Language and terminology will be revised to clarify and update the regulatory requirements. Subparts 219-5 and 219-6 will be phased out and applicable sources will be regulated under Subparts 219-2, 219-3 and 219-4. Lastly, combustion gas temperature and other operational issues will be re-evaluated. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Mark Lanzafame, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3254. Telephone: 518-402-8403. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 220, Portland Cement Plants. Part 220 is being revised to require updated NO_x RACT requirements for cement manufacturing and to add new NO_x RACT requirements for Glass manufacturing. Part 220 is also being revised to include federal best

available retrofit technology provisions for affected sources. Part 220 will be renamed and split into two Subparts: Portland Cement Plants and Glass Manufacturing Plants. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Rick Leone, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3254. Telephone: 518-402-8403. Email: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 222, Distributed Generation. This is a new regulation to establish emission standards for distributed generation. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: John Barnes, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3251. Telephone: 518-402-8396. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Subpart 225-1 Fuel Composition and Use - Sulfur Limitations. The existing regulation will be modified to lower the sulfur content of distillate fuel oil for all stationary sources (including home heating) and stationary internal combustion engines. In addition to sulfur content, this regulation will be updated to conform with the requirements of 6 NYCRR Part 201 Permits and Registrations. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Mike Jennings, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3254. Telephone: 518-402-8403. E-mail: airregs@gw.dec.state.ny.us Please include the Subpart number when emailing.

6 NYCRR Subpart 225-3 Fuel Composition and Use - Gasoline. The existing regulation will be amended to lower the maximum allowable summertime gasoline volatility as a control measure for complying with the federal 8 hour ozone National Ambient Air Quality Standards. Regulation of other gasoline properties that affect emissions of ozone precursors, and opting upstate counties into the federal reformulated gasoline program may also be considered. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: David Barnes, NYS Department of Environmental Conservation, 625 Broadway, Albany New York 12233-3255, Telephone: 518-402-8292, E-mail: airregs@gw.dec.state.ny.us Please include the Subpart number when emailing.

6 NYCRR Subpart 227-2, NO_x RACT. Subpart 227-2 is being revised to include new emission limitations for coal, oil and gas fired boilers at major facilities throughout the State. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Michael Jennings, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3254. Telephone: 518-402-8396. E-mail: airregs@gw.dec.state.ny.us Please include the Subpart number when emailing.

6 NYCRR Subpart 227-3, Pre-2003 Nitrogen Oxides Emissions Budget And Allowance Program. The existing rule will be repealed as it has been superceded by Part 204. New Subpart 227-3 is being proposed to include NO_x emission limitations at minor facilities. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Michael Jennings, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3254. Telephone: 518-402-8403. E-mail: airregs@gw.dec.state.ny.us Please include the Subpart number when emailing.

6 NYCRR Part 228, Surface Coating Processes. The existing rule will be amended to include new volatile organic compounds emissions standards for industrial adhesives and sealants. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Ralph Itzo, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3254. Telephone: 518-402-8403. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 230, Gasoline Dispensing Sites and Transport Vehicles. The existing rule will be amended to update and clarify testing requirements for gasoline dispensing sites (gas stations) and to conform more closely with new federal requirements and guidance. The regulation will also require prior notification to the department for each test. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Denise Prunier, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3254. Telephone: 518-402-8403. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 232, Dry Cleaning. The existing regulation that was adopted April 30, 1997 will be updated to provide for administrative streamlining. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Stephen Johnson, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3254. Telephone: 518-402-8403. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 234, Graphic Arts. The existing rule will be amended to include revised volatile organic compounds emissions standards for flexible packaging printing, offset lithographic printing and letterpress printing. These revisions are being made to comport with the Control Technique Guidelines developed by the United States Environmental Protection Agency and issued in September 2006. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: John Henkes, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3254. Telephone: 518-402-8403. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 235, Consumer Products. The existing regulation will be updated to implement additional Volatile Organic Compound (VOC) product content limits. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Arthur Robinson, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3251. Telephone: 518-402-8396. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 237, Acid Deposition Reduction NO_x Budget Trading Program, and 6 NYCRR Part 238, Acid Deposition SO₂ Budget Trading Program. If the vacatur of the Clean Air Interstate Rule is undisturbed by the federal court of appeals, Parts 237 and 238 will be amended to include emission reductions expected from the CAIR program. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Michael Miliani, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3251. Telephone: 518-402-8396. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 240, Determining Conformity of Transportation Plans, Programs and Projects. The existing regulation will be revised to address the January 24, 2008 amendments to 40 CFR Parts 51 and 93, the Federal Transportation Conformity rule. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Michael Sheehan, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3251. Telephone: 518-402-8396. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 241, General Prohibitions. This regulation will be amended to prohibit the use of cutback asphalt and to limit emulsified asphalts containing VOCs from May through September. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Ken Newkirk, NYS Department of Environmental

Conservation, 625 Broadway, Albany, New York 12233-3251. Telephone: 518-402-8396. Email: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Parts 243, 244, and 245 - Clean Air Interstate Rule. These rules will be revised to include the new federal provisions that exclude energy input from biomass fuel in the efficiency calculation and expand the cogeneration exemption provisions. Parts 243 and 244 are also being revised to include provisions that would provide for the sale of all of the NO_x allowances. If the court ruling vacating the CAIR program is undisturbed on further appeal, these rules will need to be repealed or modified in such a way as to comport with that legal ruling. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Michael Miliani, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3251. Telephone: 518-402-8396. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 247, Outdoor Wood-Fired Hydronic Heaters. This is a new regulation to establish siting and stack height criteria and emission standards for outdoor wood-fired hydronic heat systems. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: John Barnes, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3254. Telephone: 518-402-8403. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 249, Requirements for Stationary Sources Subject to Case-by-Case Best Available Retrofit Technology (BART) Determinations. This is a new rule intended to require "eligible sources" to conduct a BART analyses and implement any necessary retrofit controls. BART is one of the control strategies intended to reduce the emissions of visibility-impairing pollutants as a part of the Regional Haze SIP effort. The number of sources affected by this rule have been increased due to the pending vacatur of CAIR in 2008. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Scott Griffin, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3251. Telephone: 518-402-8396. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 251, CO₂ Emission Limitations for Combustion Installations and Gasification Sources. This is a new rule intended to require "eligible sources" to meet specific carbon dioxide emission limits. This is the first regulation in a series to require GHG emissions be controlled. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Michael Jennings, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3254. Telephone: 518-402-8396. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 252, Vehicle Global Warming Index Labels. This is a new regulation to establish requirements for global warming index labels for specified classes of new motor vehicles sold in New York State. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Jeff Marshall, NYS Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-3255. Telephone: 518-402-8292. E-mail: airregs@gw.dec.state.ny.us Please include the Part number when emailing.

DIVISION OF ENVIRONMENTAL PERMITS

6 NYCRR, Part 617, State Environmental Quality Review Act (SEQRA). The Division of Environmental Permits proposes to amend this Part to make changes to the Environmental Assessment Forms (EAF's). The EAF's are "model" forms which are used by almost all state and local agencies in the conduct of an environmental review under SEQRA, and appear as appendices to Part 617. Experience has shown that the forms have provided good service, but they could be improved by updating some topic areas, clarifying instructions, and addressing newly-emerging issues. In particular, the forms need to be

revised to provide a better basis for addressing administrative actions such as land use planning and the promulgation of regulations. Additionally, some of the information critical to making a proper environmental analysis of a physical project could be better organized. Questions need to be added to these forms to address emerging issues such as environmental justice, climate change (including both greenhouse gas generation and project adaptation to climate effects already occurring), and smart growth/quality communities. Also, the proposed amendment will revise the forms to eliminate the need for a separate form for a determination of significance. The Department does not at this time propose any amendments to the main text of Part 617. Contact: Betty Ann Hughes, NYS Department of Environmental Conservation, 625 Broadway, 4th Floor, Albany New York 12233-1750. Telephone: 518-402-9158. E-mail: bahughes@gw.dec.state.ny.us

6 NYCRR Part 638, Green Building Tax Credit (GBTC) The Division of Environmental Permits proposes to rescind 6 NYCRR Part 638 and issue a new part 6 NYCRR Part 638, Green Building Tax Credit regulations pursuant to § 10 of the Tax Law. Legislated changes - the Budget Bill of 2005 modified the existing GBTC legislation and added an additional \$25 million in credits to be given out through 2016. Existing regulations will be modified to reflect any changes per this legislation. Changes will include: the need to obtain a LEED (Leadership in Energy and Environmental Design) Gold Certification in order to be eligible to apply for the GBTC; commissioning, energy use modeling and annual reporting requirements will be met through LEED Gold standards and prerequisites, and other changes as DEC deems necessary.

This rulemaking will require a Regulatory Flexibility Analysis for small businesses and/or a Rural Area Flexibility Analysis. Contact: Dennis J. Lucia, Division of Environmental Permits, 4th Floor, 625 Broadway, Albany, New York 12233-1750. Phone (518) 402-9469. E-mail: djlucia@gw.dec.state.ny.us

DIVISION OF ENVIRONMENTAL REMEDIATION

6 NYCRR Part 375, Environmental Remediation Programs (subparts 375-1 to 375-4, and 375-6). The DEC proposes to amend subparts 375-1 to 375-4, and 375-6 to: (1) provide additional direction for issues that have been encountered since the rule was promulgated in December 2006; (2) provide additional guidance on processes so as to promote uniformity and consistency; (3) provide clarification of the definition of "brownfield," most specifically as it pertains to eligibility criteria; (4) add or revise multiple provisions to clarify issues that have arisen in the Brownfield Cleanup Program (BCP) in the course of implementing the program since 2006; (5) create a regulatory program to provide parties the opportunity for obtaining DEC oversight of remedial activities outside the BCP (i.e., a regulatory Voluntary Cleanup Program (VCP)); (6) review of the provisions applicable to the State Superfund Program (SSF), including, but not limited to, considering the need to make revisions to clarify the definition of "significant threat"; (7) consider opportunities to encourage the incorporation of sustainable remediation and development techniques into cleanup projects covered by this rule; and (8) correct scrivener's errors that have caused inconsistencies and created confusion, replace accidental omissions, and insert clarifications required for amendments to this regulation. This rulemaking requires a Regulatory Flexibility Analysis for small businesses and a Rural Area Flexibility Analysis. Contact: Robert Schick, New York State Department of Environmental Conservation, Division of Environmental Remediation, 625 Broadway, 11th Floor, Albany, New York 12233-7014. Telephone: 518-402-9662. E-mail: rxschick@gw.dec.state.ny.us

6 NYCRR Parts 612, 613, and 614, Petroleum Bulk Storage Regulation. The DEC proposes to amend Parts 612-614 to: (1) achieve equivalency with 40 CFR Part 280 (Underground Storage Tank regulations), which is needed in order for the State to receive delegation and to be able to apply the requirements of the regulations to the same universe of tanks as the United States Environmental Protection Agency; (2) comply with the federal Energy Policy Act of 2005 (a.k.a. federal Underground Storage Tank Compliance Act of 2005), which amends Subtitle I of the Resource Conservation and Recovery Act; (3) make explicit certain enforcement authority of the DEC to prevent contamination of surface and ground waters, public drinking water

supplies, and natural resources by petroleum bulk storage (PBS) facilities; and (4) improve the consistency and clarity of language directing the administration of the PBS program. This rulemaking requires a Regulatory Flexibility Analysis for small businesses and a Rural Area Flexibility Analysis. Contact: Russ Brauksieck, New York State Department of Environmental Conservation, Division of Environmental Remediation, 625 Broadway, 11th Floor, Albany, New York 12233-7020. Telephone: 518-402-9543. E-mail: rxbrauks@gw.dec.state.ny.us

6 NYCRR Parts 595, 596, 597, 598, and 599, Chemical Bulk Storage Regulation. The DEC proposes to amend Parts 595-599 to: (1) achieve equivalency with 40 CFR Part 280 (Underground Storage Tank regulations), which is needed in order for the State to receive delegation and to be able to apply the requirements of the regulations to the same universe of tanks as the United States Environmental Protection Agency; (2) comply with the federal Energy Policy Act of 2005 (a.k.a. federal Underground Storage Tank Compliance Act of 2005), which amends Subtitle I of the Resource Conservation and Recovery Act; (3) make explicit certain enforcement authority of the DEC to prevent contamination of surface and ground waters, public drinking water supplies, and natural resources by chemical bulk storage (CBS) facilities; (4) improve the consistency and clarity of language directing the administration of the CBS program; and (5) revise the Part 597 List of Hazardous Substances, making them more malleable and current to reflect changes and updates on the federal level. This rulemaking requires a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Russ Brauksieck, New York State Department of Environmental Conservation, Division of Environmental Remediation, 625 Broadway, 11th Floor, Albany, New York 12233-7020. Telephone: 518-402-9543. E-mail: rxbrauks@gw.dec.state.ny.us

6 NYCRR Part 570, Permitting of Liquefied Natural Gas (LNG) Facilities. The DEC proposes to develop and promulgate regulations covering the safe siting, construction, operation, and inspection of LNG facilities, as required by Article 23, Title 17 of the Environmental Conservation Law (ECL); and recommends incorporation by reference of existing nationally recognized standards (National Fire Protection Association --- NFPA 52 and 59A). This rulemaking requires a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Russ Brauksieck, New York State Department of Environmental Conservation, Division of Environmental Remediation, 625 Broadway, 11th Floor, Albany, New York 12233-7020. Telephone: 518-402-9543. E-mail: rxbrauks@gw.dec.state.ny.us

DIVISION OF FISH, WILDLIFE AND MARINE RESOURCES

6 NYCRR Part 608, Use and Protection of Waters Regulations. This rulemaking will update and clarify the Department's regulatory authority over activities in protected waterbodies and navigable waters of the state. The existing regulations have not been amended in 14 years and changes will be made to correct outdated information, and to make definitions and provisions more explicit. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments as well as a Rural Area Flexibility Analysis. Contact: Roy Jacobson, NYS Department of Environmental Conservation, Division of Fish, Wildlife and Marine Resources, 625 Broadway, Albany, New York, 12233-4756. Telephone 518-402-8853. E-mail: rajacobs@gw.dec.state.ny.us

6 NYCRR Part 663, Freshwater Wetlands Permit Requirements Regulations. This rulemaking will update the procedural requirements for various activities, clarifying whether they are exempt or jurisdictional under Freshwater Wetlands Act, and the level of compatibility those activities have for permit standards. Changes will also include additional clarification regarding the permit standards and compensatory mitigation. These changes are needed to update the regulation, which has been virtually unchanged in over 25 years. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Government as well as a Rural Area Flexibility Analysis. Contact: Roy Jacobson, NYS Department of Environmental Conservation, Division of Fish, Wildlife and Marine Resources, 625 Broadway, Albany, New York, 12233-4756. Telephone: 518-402-8853. E-mail: rajacobs@gw.dec.state.ny.us

6 NYCRR Part 664, Freshwater Wetlands Mapping and Classification Regulations. This rulemaking will make changes to how wetlands are mapped and classified to reflect greater understanding of the science of wetlands and of the State's resources and to update this rule, which is over 25 years old. In addition, there will be changes to facilitate more efficient map amendments where errors are detected on the maps. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments as well as a Rural Area Flexibility Analysis. Contact: Roy Jacobson, NYS Department of Environmental Conservation, Division of Fish, Wildlife and Marine Resources, 625 Broadway, Albany, New York, 12233-4756. Telephone 518-402-8853. E-mail: rajacobs@gw.dec.state.ny.us

6 NYCRR Part 10, Sportfishing Regulations. Amendment of these regulations are necessary to provide for modifications to freshwater sportfishing regulations, including repealing special regulations that are no longer needed and establishing special regulations deemed warranted as part of managing the State's freshwater fishery resources and providing for angling opportunity. Contact: Shaun Keeler, New York State Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, New York 12233-4753. Telephone: 518-402-8928. E-mail: sxkeeler@gw.dec.state.ny.us

6 NYCRR Part 59, State Boat-Launching Sites, Fishing Access Sites. The regulations will be amended to allow anglers to fish at sites from which boats can be launched. Contact: Ed Woltmann, New York State Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, New York 12233-4753. Telephone: 518-402-8893. E-mail: efwoltma@gw.dec.state.ny.us

6 NYCRR Part 10, Sportfishing Regulations. Amendments pertaining to the management of diadromous fishes in the Hudson and Delaware Rivers to maintain compliance with fishery management plans developed by the Atlantic States Marine Fisheries Commission or as directed in the Federal Sustainable Fisheries Act for such species and to maintain the health of these fish stocks. Amendments to comply with the requirements of ECL regarding the management of anadromous species. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments as well as a Rural Area Flexibility Analysis. Contact: Stephen W. Heins, New York State Department of Environmental Conservation, Bureau of Marine Resources, Finfish and Crustaceans Section, 205 N. Belle Meade Road, Suite 1, E. Setauket, New York 11733. Telephone: 631-444-0435. E-mail: swheins@gw.dec.state.ny.us .

6 NYCRR Part 35, Licenses. Establish new reporting requirements for certain inland commercial fishery license holders, consistent with those in Part 40 for the same regulated species. Adopt regulations setting up a commercial eel permit with reporting requirements state-wide (Parts 40 and 35). This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments as well as a Rural Area Flexibility Analysis. Contact: Stephen W. Heins, New York State Department of Environmental Conservation, Bureau of Marine Resources, Finfish and Crustaceans Section, 205 N. Belle Meade Road, Suite 1, E. Setauket, New York 11733. Telephone: 631-444-0435. E-mail: swheins@gw.dec.state.ny.us .

6 NYCRR Part 36, Gear and Operation of Gear. Amendments pertaining to the management of diadromous fishes in the Hudson River to maintain compliance with fishery management plans developed by the Atlantic States Marine Fisheries Commission or as directed in the Federal Sustainable Fisheries Act for such species and to maintain the health of these fish stocks. Changes to comply with the requirements of ECL regarding the management of anadromous species. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments as well as a Rural Area Flexibility Analysis. Contact: Stephen W. Heins, New York State Department of Environmental Conservation, Bureau of Marine Resources, Finfish and Crustaceans Section, 205 N. Belle Meade Road, Suite 1, E. Setauket, New York 11733. Telephone: 631-444-0435. E-mail: swheins@gw.dec.state.ny.us

6 NYCRR Part 40, Marine Fish. Amend regulations pertaining to the management of marine and diadromous fishes to maintain compli-

ance or consistency with fishery management plans developed by the Atlantic States Marine Fisheries Commission or pursuant to the Federal Sustainable Fisheries Act for such species and to maintain the health of these fish stocks. Amend regulations to comply with the requirements of ECL regarding permits, permit fees, and management of marine and anadromous species. Make changes to the regulations related to reporting and record keeping for foodfish license holders. Amend regulations to create a definition for proof of residency and establish the requirement for providing such proof of residency when obtaining marine license and permits. Amend regulations to prohibit the possession of fish when tending lobster gear within 500 feet of an artificial reef. Make changes to the regulations governing traps or pots related to escape vents, panels, marking and location restrictions to achieve consistency among gear types. Make changes in the striped bass and summer flounder commercial fishing special regulations to replace qualifications for permits with an acceptable substitute for 50 percent of earned income and tax records. Make changes in the summer flounder commercial fishing special regulations to add language for re-qualification similar to that in the striped bass commercial fishing special regulations. Amend regulations to make reporting requirement language consistent for managed marine species. Establish regulations setting up a commercial eel permit with reporting requirements state-wide. Adopt regulations to extend coverage by the general provisions of this part to include Rockland and Putnam Counties and ensure that commercial possession is covered statewide. Make changes to the tautog regulations to comply with pending amendments to the Atlantic States Marine Fisheries Commission Tautog Fishery Management Plan. Make changes to the shipping, labeling and packing requirements to require harvester's fishing vessel trip report numbers on labels for quota managed species. Adopt regulations to clarify provision for records retention by food fish shippers and dealers. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments as well as a Rural Area Flexibility Analysis. Contact: Stephen W. Heins, New York State Department of Environmental Conservation, Bureau of Marine Resources, Finfish and Crustaceans Section, 205 N. Belle Meade Road, Suite 1, E. Setauket, New York 11733. Telephone: 631-444-0435. E-mail: swheins@gw.dec.state.ny.us

6 NYCRR Part 41, Sanitary Condition of Shellfish Lands. As necessary, amend regulations that specify the classification (certified or uncertified) of shellfish lands. This is necessary to protect public health by designating lands that do not meet bacteriological water quality criteria as uncertified or closed to shellfish harvesting. Shellfish lands that meet the water quality criteria are designated as certified for the taking of shellfish (open). This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments as well as a Rural Area Flexibility Analysis. Contact: William Hastback, New York State Department of Environmental Conservation, Bureau of Marine Resources, Shellfisheries Section, 205 N. Belle Meade Road, Suite 1, East Setauket, New York 11733. Telephone: 631-444-0475. E-mail: wghastba@gw.dec.state.ny.us

6 NYCRR Part 43, Surfclam/Ocean Quahog Fishery Management. Amend regulations pertaining to the management of surfclams and ocean quahogs that are consistent with the provisions of fishery management plans adopted by the Department. All amendments may describe changes to permit requirements and eligibility, harvest limits, gear restrictions, record keeping, and reporting requirements. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments as well as a Rural Area Flexibility Analysis. Contact: Debra Barnes, New York State Department of Environmental Conservation, Bureau of Marine Resources, 205 N. Belle Mead Road, Suite 1, East Setauket, New York 11733. Telephone: 631-444-0496. E-mail: dabarnes@gw.dec.state.ny.us

6 NYCRR Part 44, Crustaceans. Amend regulations pertaining to the management of lobsters, crabs, and horseshoe crabs, consistent with any fishery management plans developed for the species, to maintain the health of such species, and to prevent the introduction of exotic crustacean species. Amend regulations to comply with requirements of ECL and Atlantic States Marine Fisheries Commission related to reporting, licensing, permitting and management of such species. Amend the regulations to include general provisions consis-

tent with that in Part 40. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments as well as a Rural Area Flexibility Analysis. Contact: Stephen W. Heins, New York State Department of Environmental Conservation, Bureau of Marine Resources, Finfish and Crustaceans Section, 205 N. Belle Meade Road, Suite 1, East Setauket, New York 11733. Telephone: 631-444-0435. E-mail: swheins@gw.dec.state.ny.us.

6 NYCRR Part 48, Marine Hatcheries, On-Bottom and Off-Bottom Culture of Marine Plant and Animal Life. Amend regulations to update this part and ensure it remains consistent with Part 49. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments as well as a Rural Area Flexibility Analysis. Contact: Debra Barnes, New York State Department of Environmental Conservation, Bureau of Marine Resources, 205 N. Belle Mead Road, Suite 1, East Setauket, New York 11733. Telephone: 631-444-0483. E-mail: dabarnes@gw.dec.state.ny.us

6 NYCRR Part 49, Shellfish Management. Adopt regulations for the management of hard clams, soft or steamer clams and razor clams as provided for in recently enacted legislation (Chapter 394, Laws of 2006). The management measures include provision for size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, requirements for permits and eligibility, record keeping and identification requirements, requirements on the amount and type of fishing effort and gear, and requirements relating to transportation, possession and sale. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments as well as a Rural Area Flexibility Analysis. Contact: Debra Barnes, New York State Department of Environmental Conservation, Bureau of Marine Resources, 205 N. Belle Mead Road, Suite 1, East Setauket, New York 11733. Telephone: 631-444-0483. E-mail: dabarnes@gw.dec.state.ny.us

6 NYCRR Part 182, Endangered and Threatened Species of Fish and Wildlife; Species of Special Concern. Amend regulation to address the requirements of ECL Section 11-0535, which establishes protection for both federally listed and state listed species. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments as well as a Rural Area Flexibility Analysis. Contact: Daniel Rosenblatt, New York State Department of Environmental Conservation, Bureau of Wildlife, 625 Broadway, Albany, New York 12233. Telephone: 518-402-8884. E-mail: drosenb@gw.dec.state.ny.us.

6 NYCRR Parts 54 and 79, Public use of Perch River, Wilson Hill, Upper and Lower Lakes, and Wildlife Management Areas. These amendments are needed to protect the natural resources of this WMAs, and to improve and manage public access. This amendment will not require a Regulatory Flexibility Analysis for Small Business or Local Governments or a Rural Area Flexibility Analysis. Contact: Gordon Batcheller, New York State Department of Environmental Conservation, Bureau of Wildlife, 625 Broadway, Albany, New York 12233-4754. Telephone 518-402-8885. E-mail: grbatcbe@gw.dec.state.ny.us

6 NYCRR Part 187, Miscellaneous Black Bear Regulations. Amendment of this regulation is necessary to protect public health and safety by prohibiting feeding of black bears and to provide for the training of hounds used to control black bear damage to farms. This amendment will not require a Regulatory Flexibility Analysis for Small Businesses or Local Governments or a Rural Area Flexibility Analysis. Contact: Gordon R. Batcheller, New York State Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, New York 12233-4754. Telephone: 518-402-8885. E-mail: grbatcbe@gw.dec.state.ny.us

6 NYCRR Part 6.3, Trapping. Amendment of these regulations are necessary to repeal several archaic provisions, to make several technical corrections to existing regulations, and to reform trapping methods to reflect state-of-the-art technology and practices. This amendment will not require a Regulatory Flexibility Analysis for Small Businesses or Local Governments or a Rural Area Flexibility Analysis. Contact: Gordon R. Batcheller, New York State Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, New York 12233-4754. Telephone: 518-402-8885. E-mail: grbatcbe@gw.dec.state.ny.us

6 NYCRR Part 1, Deer Management Assistance Permits. Amendment of this regulation is needed to improve deer management on private lands where deer are causing economic or ecological damage, or where landowners have site-specific management objectives for deer on their property. This amendment will not require a Regulatory Flexibility Analysis for Small Businesses or Local Governments or a Rural Area Flexibility Analysis. Contact: Gordon R. Batcheller, New York State Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, New York 12233-4754. Telephone: 518-402-8885. E-mail: grbatcbe@gw.dec.state.ny.us

6 NYCRR Part 1, Hunting Wild Turkey. This regulation is needed to establish a turkey hunting season on Long Island for the first time. This amendment will not require a Regulatory Flexibility Analysis for Small Businesses or Local Governments or a Rural Area Flexibility Analysis. Contact: Gordon R. Batcheller, New York State Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, New York 12233-4754. Telephone: 518-402-8885. E-mail: grbatcbe@gw.dec.state.ny.us

6 NYCRR Part 2, Migratory Game Birds. Amendment of this regulation is necessary to conform with federal regulations for hunting migratory game birds. This regulation will be done as an emergency/proposed. This amendment will not require a Regulatory Flexibility Analysis for Small Businesses or Local Governments or a Rural Area Flexibility Analysis. Contact: Gordon R. Batcheller, New York State Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, New York 12233-4754. Telephone: 518-402-8885. E-mail: grbatcbe@gw.dec.state.ny.us

6 NYCRR Part 4, Wildlife Management Unit Descriptions. This regulation is needed to revise wildlife management units to meet species management needs. This amendment will not require a Regulatory Flexibility Analysis for Small Businesses or Local Governments or a Rural Area Flexibility Analysis. Contact: Gordon R. Batcheller, New York State Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, New York 12233-4754. Telephone: 518-402-8885. E-mail: grbatcbe@gw.dec.state.ny.us

6 NYCRR Section 6.1, Managed Harvest of Beaver and River Otter. This regulation is needed to revise the beaver and river otter trapping open and closed season dates. This amendment will not require a Regulatory Flexibility Analysis for Small Businesses or Local Governments or a Rural Area Flexibility Analysis. Contact: Gordon R. Batcheller, New York State Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, New York 12233-4754. Telephone: 518-402-8885. E-mail: grbatcbe@gw.dec.state.ny.us

6 NYCRR Part 173, Falconry, Amendment of Part 173 is necessary because the United States Fish and Wildlife Service amended the Federal Falconry Rule, 50 CFR Parts 21 and 22, and the state regulation no longer conforms with the federal regulation for falconry. This amendment will not require a Regulatory Flexibility Analysis for Small Businesses or Local Governments or a Rural Area Flexibility Analysis. Contact: Joseph Therrien, New York State Department of Environmental Conservation, Division of Fish, Wildlife and Marine Resources, 625 Broadway, Albany, New York 12233-4752. Telephone: 518-402-8987. E-mail: jetherri@gw.dec.state.ny.us

6 NYCRR Part 180.1, Wildlife Dangerous To Health Or Welfare. Amendment of Part 180.1 or promulgation of a new regulation is necessary to address statutory requirements of ECL 11-0512 and 11-0103(6)(e)(5). This amendment may require a Regulatory Flexibility Analysis for Small Businesses and Local Governments but not a Rural Area Flexibility Analysis. Contact: Joseph Therrien, New York State Department of Environmental Conservation, Division of Fish, Wildlife and Marine Resources, 625 Broadway, Albany, New York 12233-4752. Telephone: 518-402-8987. E-mail: jetherri@gw.dec.state.ny.us

OFFICE OF GENERAL COUNSEL

6 NYCRR Part 616, Access to Records. The regulation will be amended to establish the position of Freedom of Information Law

(FOIL) Appeals Officer. The Appeals Officer will hear all FOIL appeals under the New York Freedom of Information Law (Public Officers Law § 84-90) for the denial of access to Department records, with the express exception of denial of access to records that are in the custody of the Department's Office of Hearings and Mediation Services (OHMS). The Department's Assistant Commissioner for the OHMS will remain the FOIL Appeals Officer for instances of denial of access to records that are in the custody of OHMS. The amended Rule also corrects the addresses for many of the Department's suboffices. The proposed changes are also necessary for the Department to implement amendments to the Public Officers Law, effective August 7, 2008, regarding the cost of reproduction of records. Contact: Dena Putnick, FOIL Appeals Officer, NYSDEC, Office of General Counsel, 625 Broadway, 14th Floor, Albany, New York 12233-1500. Telephone: 518-402-9522. E-mail: dnpntnic@gw.dec.state.ny.us

OFFICE OF HEARINGS AND MEDIATION SERVICES

6 NYCRR Part 622, Uniform Enforcement Hearing Procedures. The Office of Hearings and Mediation Services proposes to clarify procedures governing default procedures and motions for order without hearing, and make various typographical, technical and related corrections throughout. This rulemaking may require a Regulatory Flexibility Analysis for Small Businesses and Local Governments, and a Rural Regulatory Flexibility Analysis. Contact: James T. McClymonds, Chief Administrative Law Judge, New York State Department of Environmental Conservation, Office of Hearings and Mediation Services, 625 Broadway, Albany, New York 12233-1550. Telephone: 518-402-9003. E-mail: jtmcclym@gw.dec.state.ny.us

6 NYCRR Part 624, Permit Hearing Procedures. The Office of Hearings and Mediation Services proposes to amend the procedures governing appeals of administrative law judge rulings, clarify the procedures governing motion practice, establish procedures governing trade secrets and other confidential information in adjudicatory hearings, revise certain definitions and make various typographical, technical and related corrections. This rulemaking may require a Regulatory Flexibility Analysis for Small Businesses and Local Governments, and a Rural Regulatory Flexibility Analysis. Contact: Louis A. Alexander, New York State Department of Environmental Conservation, Office of Hearings and Mediation Services, 625 Broadway, Albany, New York 12233-1010. Telephone: 518-402-8537. E-mail: laalexan@gw.dec.state.ny.us

6 NYCRR Part 620, Procedures for Issuance of Summary Abatement Orders. The Office of Hearings and Mediation Services proposes to amend the regulations governing administrative hearings on summary abatement orders to make technical clarifications. This rulemaking may require a Regulatory Flexibility Analysis for Small Businesses and Local Governments, and a Rural Area Flexibility Analysis. Contact: James T. McClymonds, Chief Administrative Law Judge, New York State Department of Environmental Conservation, Office of Hearings and Mediation Services, 625 Broadway, Albany, New York 12233-1550. Telephone: 518-402-9003. E-mail: jtmcclym@gw.dec.state.ny.us

DIVISION OF LANDS AND FORESTS

6 NYCRR Part 190, Use of State Lands. Amend Section 190.13, Wilderness Areas in the Adirondack Park. These regulations will protect the natural resources in the Dix Mountain Wilderness Area from overuse by applying restrictions to camping and rock climbing. Contact: Peter J. Frank, New York State Department of Environmental Conservation, Bureau of Forest Preserve Management, 625 Broadway, Albany, New York 12233-4254. Telephone: 518-473-9518. E-mail: pjfrank@gw.dec.state.ny.us

6 NYCRR Part 190, Use of State Lands. Amend Section 190.13, Wilderness Areas in the Adirondack Park. These regulations will protect the natural resources in the Giant Mountain Wilderness Area from overuse by applying restrictions to camping. Contact: Peter J. Frank, New York State Department of Environmental Conservation, Bureau of Forest Preserve Management, 625 Broadway, Albany, New York 12233-4254. Telephone: 518-473-9518. E-mail: pjfrank@gw.dec.state.ny.us

6 NYCRR Part 190, Use of State Lands. Amend Section 190.0(10) by adding Indian Lake Islands administrative camping area to the list

of facilities covered by the regulations. A new section 190.7(21)(g) will also be added to provide the Department with the legal authority to enforce campground rules which include requiring all campers to register, limiting the number of people per site and the length of stay, establishing quiet hours and prohibiting the discharge of firearms. In addition, a new Subdivision will be added to 6 NYCRR 190.13 to protect the natural resources in the Siamese Ponds Wilderness Area from overuse by applying restrictions to camping. Contact: Peter J. Frank, New York State Department of Environmental Conservation, Bureau of Forest Preserve Management, 625 Broadway, Albany, New York 12233-4254. Telephone: 518-473-9518. E-mail: pjfrank@gw.dec.state.ny.us

6 NYCRR Part 190, Use of State Lands. Adoption of new Section 190.14, Prohibition of Motorized Equipment on Wilderness, Primitive and Canoe areas. These regulations will prohibit the use of motorized equipment in wilderness areas in the Adirondack and Catskill forest preserve, with certain exceptions. Contact: Peter J. Frank, New York State Department of Environmental Conservation, Bureau of Forest Preserve Management, 625 Broadway, Albany, New York 12233-4254. Telephone: 518-473-9518. E-mail: pjfrank@gw.dec.state.ny.us

6 NYCRR Part 190, Use of State Lands. Adoption of a new Section 190.34, Pine Lake Area, Shaker Mountain Wild Forest. These regulations will be used to manage this area and provide for public safety. A Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis are not required for this rulemaking. Contact: Peter J. Frank, New York State Department of Environmental Conservation, Bureau of Forest Preserve Management, 625 Broadway, Albany, New York 12233-4254. Telephone: 518-473-9518. E-mail: pjfrank@gw.dec.state.ny.us

6 NYCRR Part 196, Operation of Motorized Vehicles, Vessels and Aircraft in the Forest Preserve. Amend Section 196.7, Operation of Bicycles in the Adirondack Forest Preserve. This regulation will implement Adirondack Park State Land Master Plan guidelines for bicycle use. Contact: Peter J. Frank, New York State Department of Environmental Conservation, Bureau of Forest Preserve Management, 625 Broadway, Albany, New York 12233-4254. Telephone: 518-473-9518. E-mail: pjfrank@gw.dec.state.ny.us

6 NYCRR Part 196, Operation of Mechanically Propelled Vessels and Aircraft in the Forest Preserve. Adopt a new section to 6 NYCRR Part 196 to limit boat use to electric motors and motorless craft on Thirteenth Lake. Contact: Peter J. Frank, New York State Department of Environmental Conservation, Bureau of Forest Preserve Management, 625 Broadway, Albany, New York 12233-4254. Telephone: 518-473-9518. E-mail: pjfrank@gw.dec.state.ny.us

6 NYCRR Part 190, Use of State Lands. Adoption of a new Section 190.15, Public Use of Camp Santononi Historic Area. These regulations will protect historic structures and the landscape of the Camp Santononi Historic Area through management of public use. Contact: Charles Vandrei, New York State Department of Environmental Conservation, Bureau of State Land Management, 625 Broadway, Albany, New York 12233-4255. Telephone: 518-402-9428. E-mail: cevandrei@gw.dec.state.ny.us

6 NYCRR Part 190, Use of State Lands. Adoption of a new Section 190.36, Submerged Heritage Preserves in Lake George and Lake Champlain. These regulations are needed to protect underwater resources, such as shipwrecks and other submerged archaeological sites that are of recreational, aesthetic, and educational value, as well as regulate access to these sites, and create safe diving conditions. Contact: Charles Vandrei, New York State Department of Environmental Conservation, Bureau of State Land Management, 625 Broadway, Albany, New York 12233-4255. Telephone: 518-402-9428. E-mail: cevandrei@gw.dec.state.ny.us

6 NYCRR Part 190, Protection of Archaeological Resources on State Land. Adoption of a new Section to 6 NYCRR Part 190 to protect archaeological resources on state land by defining permit issuance procedures, defining violations and creation of a mechanism for reporting, investigating and prosecution of violations. A Regulatory Flexibility Analysis and a Rural Area Flexibility Analysis are not required for this rulemaking. Contact: Charles Vandrei, New York State Department of Environmental Conservation, Bureau of State

Land Management, 625 Broadway, Albany New York 12233-4254. Telephone: 518-402-9428. E-mail: cevandre@gw.dec.state.ny.us

6 NYCRR Part 190, Conservation Easements. Amendment of 6 NYCRR Section 190.12, East Branch of Fish Creek. These regulations will control public use to be in compliance with the terms of the conservation easement. Contact: Frank Dunstan, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-4255. Telephone: 518-402-9405. E-mail: fmdunsta@gw.dec.state.ny.us

6 NYCRR Part 190, Use of State Lands. Adopt a new Section to 6 NYCRR Part 190 to Facilitate the Management of the Otter Creek Trail System Assembly Area. These regulations will be used to effectively manage this area. Contact: David Forness, New York State Department of Environmental Conservation, Bureau of State Land Management, 625 Broadway, Albany, New York 12233-4255. Telephone: 518-402-9428. E-mail: dmfornes@gw.dec.state.ny.us

6 NYCRR Part 190, Use of State Lands. Adoption of a new section 190.10(d), Salmon River Falls Unique Area. These regulations are needed for the purpose of public protection. They will prohibit public use of the area from dusk to dawn, seasonally close the gorge trail, and prohibit hunting from this 112 acre parcel. Contact: David Forness, New York State Department of Environmental Conservation, Bureau of State Land Management, 625 Broadway, Albany, New York 12233-4255. Telephone: 518-402-9428. E-mail: dmfornes@gw.dec.state.ny.us

6 NYCRR Part 190, Use of State Lands. Adoption of a new section 190.10(e), Henderson Shores Unique Area. These regulations are needed to control public use to prevent overuse and inappropriate use of state lands. Contact: David Forness, New York State Department of Environmental Conservation, Bureau of State Land Management, 625 Broadway, Albany, New York 12233-4255. Telephone: 518-402-9428. E-mail: dmfornes@gw.dec.state.ny.us

6 NYCRR Part 194, Forest Practices. Amend Section 194.3 and adopt a new Section 194.4. These regulations will formalize existing guidelines for prescribed fire management activities. Contact: David Forness, New York State Department of Environmental Conservation, Bureau of State Land Management, 625 Broadway, Albany, New York 12233-4255. Telephone: 518-402-9428. E-mail: dmfornes@gw.dec.state.ny.us

6 NYCRR Part 190, Zoar Valley Multiple Use Area. Amend Section 190.25 to provide for public safety and enhance passive recreational use as proposed in the recently adopted unit management plan. Contact: David Forness, New York State Department of Environmental Conservation, Bureau of State Land Management, 625 Broadway, Albany, New York 12233-4255. Telephone: 518-402-9428. E-mail: dmfornes@gw.dec.state.ny.us

6 NYCRR Part 192, Forest Insect and Disease Control. Adopt a new Section 192.4, Restriction of Firewood Importation. These regulations are necessary to reduce the risk of transporting introduced or native forest pests in firewood. Many of the expanding infestations of introduced and native forest pests have been exacerbated by the unregulated movement of firewood. In particular, regulations restricting or defining the importation and use patterns for firewood in campsites on State land may be necessary to monitor and restrict the movement of several invasive pests currently residing in forests outside New York. Contact: Bruce Williamson, New York State Department of Environmental Conservation, Bureau of Private Land Services, 625 Broadway, Albany, New York 12233-4253. Telephone: 518-402-9425. E-mail: bewillia@gw.dec.state.ny.us

6 NYCRR Part 193, Trees and Plants. Amend Section 193.3, Protected Native Plants. These regulations are needed to update the current list by adding, deleting, re-naming and/or re-categorizing several listed plant species in accordance with more up-to-date taxonomy and knowledge of the population status of rare plants in the State. Contact: Jason Denham, New York State Department of Environmental Conservation, Bureau of Private Land Services, 625 Broadway, Albany, New York 12233-4253. Telephone: 518-402-9425. E-mail: jdenham@gw.dec.state.ny.us

6 NYCRR Part 590, Payment of Expenses Upon Acquisition of Real Property. Amend Part 590 to conform to the amended Federal

Uniform Relocation Assistance and Real Property Acquisition regulation for federal and federally assisted programs. This amendment will affect landowners forced to relocate because of acquisition of their properties for Department programs. Contact: John Keating, New York State Department of Environmental Conservation, Bureau of Real Property, 625 Broadway, Albany, New York 12233-4256. Telephone: 518-402-9442. E-mail: jpkeatin@gw.dec.state.ny.us

6 NYCRR Part 196.4, Operation of mechanically propelled vessels and aircraft in the forest preserve. Amend Section 196.4(d) with respect to the operation of aircraft on Lows Lake. Contact: Peter J. Frank, New York State Department of Environmental Conservation, Bureau of Forest Preserve Management, 625 Broadway, Albany, New York 12233-4254. Telephone: 518-473-9518. E-mail: pjfrank@gw.dec.state.ny.us

DIVISION OF SOLID AND HAZARDOUS MATERIALS

6 NYCRR, Parts 320, 325, 330, 360 and 370 Series, Pesticide Residue Removal and management of Unwanted Pesticides and Pesticide Containers. This rulemaking establishes new Part 330 to include, in a consolidated fashion, federal requirements (40 CFR Parts 156 and 165) regarding removal of residues from pesticides containers prior to disposal or refilling as well as the management of unwanted pesticides and containers. The rulemaking also amends existing State regulations for pesticides, solid waste, and hazardous waste management, to repeal provisions dealing with these subjects and add language to mesh with the federal rule and new Part 330. This includes language requiring disposal of unwanted pesticides and disposal or recycling of containers in accordance, as appropriate, with 6 NYCRR Part 360 or 6 NYCRR Part 370 Series, and prohibit land burial of such materials. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Mary A. Roy, New York State Department of Environmental Conservation, Division of Solid & Hazardous Materials, 625 Broadway, Albany, New York 12233-7254. Telephone: 518-402-8788. E-mail: pestcomp@gw.dec.state.ny.us

6 NYCRR Part 360, Coal Combustion Fly Ash (CCFA). This rulemaking removes the state's pre-determined beneficial use determination (BUD) which allows the use of coal combustion fly ash as a raw feed source of alumina in cement manufacturing. The rulemaking requires cement manufacturers who want to utilize CCFA in this manner to petition the Department for a case-specific BUD according to the requirements of 6 NYCRR 360-1.15(d), but does not directly ban the use of CCFA in cement manufacturing. The rulemaking also includes new language in 6 NYCRR Part 360-1.15(d)(2) specifying that the mercury loading from CCFA used as raw feed in cement manufacture must be comparable to virgin raw feed as determined by the Department. Finally, the rulemaking creates a 5-year sunset provision on all determinations granted for this use, guaranteeing that, while annual reports will be required for each granted BUD, such use will be fully reassessed at least every 5 years. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Richard Clarkson, New York State Department of Environmental Conservation, Division of Solid & Hazardous Materials, 625 Broadway, Albany, New York 12233-7253. Telephone: 518-402-8678. E-mail: swreg@gw.dec.state.ny.us

6 NYCRR Part 360, Solid Waste Management Facilities. This rulemaking will include technical amendments, clarifications, as well as legal and policy developments. Changes to all portions of the Part 360 series are expected, including Parts 364 and 369. The rulemaking will also incorporate solid waste management activities or waste streams that are not currently addressed within Part 360, including automobile dismantlers, dredge materials, biohazard incident waste, and flowable fill. The information contained in the current Part 360 will be subdivided into different parts to better organize solid waste topics, and will make future revisions to specific topics less burdensome. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Melissa Treers, New York State Department of Environmental Conservation, Division of Solid & Hazardous Materials, 625 Broadway, Albany, New York 12233-7253. Telephone: 518-402-8678. E-mail: swreg@gw.dec.state.ny.us

6 NYCRR Part 360 or 370 series, Labeling of Mercury-Added Consumer Products. These regulations will implement Section 27-2103 of the ECL, adopted by the State Legislature pursuant to Chapter 145, Laws of 2004. The law requires that mercury-added consumer products sold or offered for sale in this State by a distributor or retailer shall be labeled by the manufacturer for mercury content and proper disposal. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Christine Barnes, New York State Department of Environmental Conservation, Division of Solid & Hazardous Materials, 625 Broadway, Albany, New York 12233-7253. Telephone: 518-402-8705. E-mail: dshmwrr@gw.dec.state.ny.us

6 NYCRR Part 360 and 370 series, Management of Used Electronics. These regulations will adopt changes to the federal hazardous waste regulations concerning cathode ray tubes, incorporate solid waste management activities for used electronics that are not currently addressed within Part 360, and implement the Title 23 of the ECL, Wireless Telephone Recycling Act, by providing appropriate standards for collection of wireless telephones. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Michelle Ching, New York State DEC, Division of Solid & Hazardous Materials, 625 Broadway, Albany, New York 12233-7251. Telephone: 518-402-8633. E-mail: hwregs@gw.dec.state.ny.us

6 NYCRR Part 380 Series, Radioactive Materials Regulations. This rulemaking will amend the Part 380 series radioactive materials regulations to incorporate federal rule changes. In addition, several corrections and revisions not related to the federal rules will be done including: clarifying the regulations in a number of areas such as standards for issuance of a Part 380 permit and language in the variance provision, elimination of redundant provisions, and deletion of obsolete provisions. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Sandra Hinkel, New York State Department of Environmental Conservation, Division of Solid & Hazardous Materials, 625 Broadway, Albany, New York 12233-7255. Telephone: 518-402-8579. E-mail: radregs@gw.dec.state.ny.us

6 NYCRR Part 384, Radioactive Materials Regulations. This rule is being developed to adopt applicable sections of the federal NRC's license termination rule (LTR), which establishes cleanup criteria for radiologically contaminated sites. Program staff are coordinating adoption of the LTR with the Department of Health to ensure compatibility, as they also have to adopt applicable sections of this federal rule. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Timothy Rice, New York State Department of Environmental Conservation, Division of Solid & Hazardous Materials, 625 Broadway, Albany, New York 12233-7255. Telephone: 518-402-8579. E-mail: radregs@gw.dec.state.ny.us

DIVISION OF WATER

6 NYCRR Parts 608, 621 and 673. These regulations will be amended to implement Chapter 364, Laws of 1999, to expressly require all owners of dams - whether or not subject to DEC permit under ECL Section 15-0503 - to operate and maintain such structures in a safe condition. These regulations will set forth a dam safety program based on the requirements of Chapter 362. Chapter 364 provides relief from permitting requirements for the construction and repair of small dams while updating, clarifying and strengthening New York State regulations regarding dams and structures which impound waters, and shifts the Department's focus and resources from the permitting of small dams, which pose negligible safety risks, to the proper maintenance, repair, and emergency planning for dams which pose greater risks to public safety. Part 608, Use and Protection of Waters. This regulation will be amended to make changes to permit application procedures and requirements for the construction or alteration of dams and impoundment structures, as well as permit application review by Department staff. Part 621 (Uniform Procedures) will be amended to eliminate "minor" dam projects. Part 673 (Dam Safety Regulations) will be amended to be consistent with the Chapter 364 regarding dam owner responsibilities and Department oversight, including provisions for mandatory operation and maintenance plans,

mandatory emergency action plans for high hazard and intermediate hazard dams, financial security conditions for high hazards dams, and mandatory inspection requirements for high hazard and intermediate hazard dams. The revisions will also include mandatory penalties for failure to file the plans, failure to enact the plans, or falsification of records required under the plans. Contact: Mark Klotz, Acting Bureau Director, Bureau of Flood Protection and Dam Safety, Division of Water, 625 Broadway, Albany, New York 12233-3504. Telephone: 518-402-8185. E-mail: maklotz@gw.dec.state.ny.us

6 NYCRR Part 485, SPDES Program Fees. The SPDES program fees were changed in 2004 through amendments to the ECL Part 72-0602. The associated regulations in Part 485 have not been promulgated so as to be consistent. Contact: Alan Fuchs, Director, Bureau of Water Permits, Division of Water, 625 Broadway, Albany, New York 12233-3505. Telephone: 518-402-8111. E-mail: aafuchs@gw.dec.state.ny.us

6 NYCRR Part 750, State Pollutant Discharge Elimination System (SPDES) Permits. A five year review of Part 750 has resulted in a number of minor revisions being necessary to correct typographical errors, and update references. In addition, minor revisions are necessary to incorporate new federal criteria and standards. Contact: Alan Fuchs, Director, Bureau of Water Permits, Division of Water, 625 Broadway, Albany, New York 12233-3505. Telephone: 518-402-8111. E-mail: aafuchs@gw.dec.state.ny.us

6 NYCRR Part 649, Clean Water State Revolving Fund. Revise Part 649 to add a linked deposit program and revised project selection criteria. Contact: Robert Simson, Regulatory Coordinator, Division of Water, 625 Broadway, Albany, New York 12233. Telephone: 518-402-8271. E-mail: rjsimson@gw.dec.state.ny.us

The New York State Department of Environmental Conservation maintains an updated regulatory agenda on its website at <http://www.dec.ny.gov/regulations/36816.html>

Department of Health

The following regulatory actions are under consideration for submission as a Notice of Proposed Rulemaking during the calendar year January 2009:

DESCRIPTION OF THE RULE SUBJECT MATTER

Title 10 NYCRR (Health)

2.1 and 2.5 Communicable Diseases - Revise the list of reportable diseases in 10 NYCRR, section 2.1 to be consistent with those listed in section 2.5 (list of diseases for which physicians have a duty to submit specimens).

2.10(b) Communicable Diseases - Repeal the subdivision to make reporting for cases of chlamydia, gonorrhea and syphilis consistent with the reporting requirements for other communicable diseases or in Section 2.10, which require cases of syphilis, gonorrhea, chlamydia, lymphogranuloma venereum, and chancroid to be reported individually and by name.

2.14 Communicable Diseases - Update the rabies regulations to be consistent with changes enacted to the Public Health Law (PHL) in December 2002. The regulations will provide new definitions, clarification of requirements for reporting, exposure, vaccination, confinement and observation, quarantines, venues where public contact is encouraged or permitted, and animal capture.

2.19 Reporting Cases or Suspect Cases of Communicable Disease by Laboratories - Amend the regulations to require the utilization of the Electronic Clinical Laboratory Reporting System (ECLRS) by laboratories to meet their public health reporting requirements for communicable disease reporting.

5-1 Public Water Systems - Amend the regulation to incorporate applicable federal regulations to improve control of microbial pathogens (LT2ESWTR) while limiting risks associated with the formation of and exposure to disinfection byproducts (Stage 2 D/DBP); revise the provisions applicable to variances and exceptions; update provisions pertaining to control of lead and copper in public water supply systems; and update and clarify specific code references.

5-1 Public Water Systems - Amend the regulation to incorporate mandatory federal regulations to protect against microbial pathogens in drinking water from ground water sources.

5-6 Bottled and Bulk Water Standards - Amend the regulation to update and modify drinking water maximum contaminant levels.

7-1 Temporary Residences - Amend the regulation to remove campground specific requirements contained in 7-1.60, which are now contained in a separate Subpart 7-3. Amend and update fire safety requirements to reflect statewide applicability of the Uniform Fire Prevention and Building Code to new construction.

7-2 Children's Camp - Amend the regulations relating to Camp Aquatic Director and Camp Health Director qualifications; incorporate PHL requirements for screening of camp employees through the State Sex Offender Registry, and for supplying parents with meningococcal meningitis information; and include reflective triangles as an acceptable alternative to flares.

7-4 Mass Gatherings - Create a new Subpart to include the provisions for mass gatherings currently included as part of Subpart 7-1. Revise various sections to better address crowd control, camping and installation and maintenance of services and facilities.

14-1, 14-2, 14-4, 14-5 Food Protection - Modify the requirements to create a more user-friendly document; exempt certain operators and rescind certain provisions, address legislative mandates regarding food worker training courses and certification.

16 Ionizing Radiation - Add requirements for standards for decommissioning facilities licensed to use radioactive materials and amend the requirements for possession and use of radioactive materials to be consistent with federal regulations. Revise the reporting requirements for medical misadministrations of ionizing radiation to be consistent with NYPORTS reporting requirements. Consolidate Part 16 with Code Rule 38.

16.112 Fingerprinting and criminal background check requirements - Add regulations on fingerprinting and FBI criminal background checks for individuals allowed unescorted access to certain quantities of radioactive materials. These new regulations address US Nuclear Regulatory Commission (NRC) requirements for security of radioactive materials at licensed facilities.

17 Mobile Home Parks - Update regulations and consider revisions to include a change to the applicability of the regulation so that the regulations would only apply where adopted by county health departments.

19 Clinical Laboratory Directors - Revise qualifications for directors of comprehensive clinical laboratories to recognize professional boards accepted as qualifying under the federal Clinical Laboratory Improvement Amendments (CLIA); and codify the definition of assistant director; establish qualifications for directors of forensic identity testing.

22.7 Reportable levels of heavy metals in blood and urine - Amend the regulation to remove the threshold levels for reporting cadmium, mercury and arsenic. All laboratory tests for cadmium, mercury and arsenic will be submitted to enable case monitoring to assist in assessing interventions and education to reduce elevated exposures.

22.11 Reporting of pesticide poisoning - Amend the regulation to incorporate Poison Control Centers as a reporting entity to assist in identifying and intervening in pesticide poisoning cases who do not go to an emergency department or a physician.

23.1 Sexually Transmitted Diseases - Amend the regulation to update the list of sexually transmitted diseases to change archaic terminology, to add Human Papilloma Virus and Hepatitis B Virus to the list; and to remove Genital Herpes Simplex from the list of conditions which require free treatment.

23.2(d) Sexually Transmitted Diseases - Amend the regulation to modify the treatment requirements for Pelvic Inflammatory Disease to include permission for out-patient management through immediate referral.

23.2(e) Sexually Transmitted Diseases - Amend the regulatory list of conditions which may be treated with a written prescription to include

Yeast (Candida) Vaginitis, Bacterial Vaginosis, Pediculosis Pubis, and Scabies.

23.2(f) Sexually Transmitted Diseases - Add a new subsection providing for management and treatment of Genital Herpes Simplex and Human Papilloma Virus infection by either prescription or referral.

23.3 Sexually Transmitted Diseases - Amend the regulation to eliminate the section to be consistent with the reporting requirements of communicable diseases as written in Section 2.10, which requires cases of syphilis, gonorrhea, chlamydia, lymphogranuloma venereum, and chancroid to be reported individually and by name.

23.5 Sexually Transmissible Diseases - Create a new Section 23.5 to build a regulatory structure for the recently signed legislation allowing expedited partner therapy. This regulation will provide definitions of terms, create criteria for providers to determine when EPT should be used, protects providers from charges of unprofessional conduct when they employ EPT, and creates a mechanism to perform quality, assurance activities to assess the efficiency of the EPT system.

34 Health Care Practitioner Referrals and Laboratory Business Practices - Amend the regulation to align with federal compensation arrangement exceptions.

43-2 AIDS Drug Assistance Program - Amend the regulation to address the interrelated components of the HIV Uninsured Care Programs (ADAP, ADAP Plus, Home Care and ADAP Plus Insurance Continuation), tie income eligibility requirements to Federal Poverty Levels; and eliminate the inclusion of federally recognized retirement accounts as a viable resource for access to ongoing health care.

44 State Aid for Approved Vector Surveillance and Control Programs - Amend the regulations to update State aid provisions to be consistent with changes enacted to PHL in January 2007. The regulations will provide new and updated definitions, add new vector borne diseases, and clarify eligible local health department activities for arthropod-borne disease surveillance, control and prevention.

46-1-46.11 State Aid for Physically Handicapped Children - Update the regulation concerning administration of the Physically Handicapped Children's Program, including but not limited to, medical conditions considered for eligibility under the program, reimbursement, and approval of specialty centers for those conditions associated with newborn screening. The regulations will also be updated to reflect current organizational responsibility for the program.

48 Palliative Care - Establish provisions that set forth the standards for Palliative Care Certified Medical Schools and Palliative Care Certified Residency Programs.

52 Tissue Banks and Nontransplant Anatomic Banks - Revise requirements for procurement of tissue from deceased donors, including setting restrictions on banks' ownership and business relationships with funeral directors and funeral firms, and limiting recovery of tissue to hospitals and appropriately licensed banks.

53 State Revolving Fund Scoring Criteria - Revise scoring criteria to 1) promote projects intended to improve public water system security against terrorism/vandalism; 2) provide greater flexibility to the hardship eligibility criteria for disadvantaged public water systems.

55-2 Environmental Laboratories - Technical revisions to ELAP standards; establish qualifications for technical directors of laboratories conducting critical agent testing using technologies other than conventional microbiologic methods; and to establish certification requirements for laboratories that conduct critical agent testing using autonomous detection systems deployed in the field.

57 Rabies - The section will be deleted in order to eliminate obsolete administrative requirements for dogs at large in rabies designated areas.

58-1 Clinical Laboratories - Revise laboratory personnel requirements; consolidate existing requirements for clarity; codify quality systems, performance testing and other requirements as necessary to align with federal CLIA standards; redefine director to include sole qualification holder; establish standards for tracking and referral of critical agent and communicable disease specimens; and establish standards for laboratory verification of technical and clinical validity of test methods.

58-2 Blood Banks - Revise transfusion personnel requirements to permit advanced life support emergency medical technicians, with additional training, to monitor transfusions during inter-facility transport and to initiate additional units ordered by a physician; amend technical language, standard operating procedure requirements, and requirements for visual inspection of plasma derivatives; modify requirements for release of autologous blood that tests positive for an infectious disease marker; and amend regulations to provide flexibility for emergency transfusions and collection of components by apheresis equipment using FDA-approved procedures.

58-4 Direct Access Testing - Amend the regulation to establish record keeping and reporting standards for direct access testing, which is authorized by PHL Article V.

59 Chemical Analyses Of Blood, Urine, Breath Or Saliva For Alcoholic Content - Revise technical amendments to provisions for breath alcohol testing to simplify enforcement of Vehicle and Traffic Law; codify list of approved ignition interlock devices and delete references to expired pilot program; and codify the National Highway Traffic Safety Administration model specifications for device certification.

60-1.13 Vendor applicant enrollment criteria - Amend WIC regulations to remove specific vendor minimum stock quantity requirements and replace with regulations designating the application process and current vendor application form as the source for identifying mandatory stock items and quantities. This will facilitate the timely implementation of new federal regulations and allow for the prompt modification of enforceable requirements reflecting policy changes dictated by changes in the marketplace, new information in nutrition science or new federal/state policies without the need to amend the regulations. The Program is pursuing consensus making to expedite the modification of this rule.

63.8(j) HIV/AIDS Testing, Reporting and Confidentiality of HIV-Related Information - Remove the restriction on retention for more than one year after case closure of contact information collected in the course of public health contact notification activities. Keeping information beyond one year may increase the number of individuals located, learn of their exposure, receive HIV counseling and testing and, if infected, access care more quickly, thereby achieving better treatment outcomes.

63.8(m) HIV/AIDS Testing, Reporting and Confidentiality of HIV-Related Information - Remove barriers to disclosure of a source patient's HIV status when an occupationally exposed emergency responder or health care worker is HIV-infected. When Part 63.8(m) was written there was no medical need for information regarding the HIV-infection status of the source patient in cases in which the exposed person was known to be HIV-infected. Since that time, new information has become available about HIV infection, including that individuals may acquire more strains of HIV.

66-1.1 thru 66-1.10 and 66-2.1 through 66-2.9 Immunization - Update the regulations to be consistent with changes enacted to the PHL. The regulations will add pertussis, tetanus and pneumococcal disease to the list of required pre-school immunizations and also address the requirement that children receive a booster for varicella and tetanus, diphtheria and pertussis, by the time they enter sixth grade. Various regulatory changes are also proposed to update immunization recommendations to reflect current recommendations, including the requirement of a second dose of varicella and mumps vaccine. Language will also be added to clarify medical exemptions and annual school immunization survey requirements, and change physician diagnosis standards for measles and mumps to reflect the rarity of these diseases.

67-1 Lead Screening and Follow-up - Amend the regulations to reduce the capillary blood lead level at which a result must be confirmed by venous test from 15 mcg/dL to 10 mcg/dL; lower the blood lead level requiring environmental intervention and management from 20 mcg/dL to 15 mcg/dL; clarify that follow-up services are required for all children up to age 18 years; authorize appropriate blood lead testing by physician office laboratories and registrant laboratories, and require reporting of blood lead test results performed by these entities.

67-2 Lead Poisoning Control - Amend the regulations to be consistent with federal regulations and guidelines on environmental assessment and abatement.

67-3 Reporting of Blood Lead Levels - Amend the regulation to expand the definition of permitted laboratories to include registrant laboratories consistent with recently amended public health law; require electronic reporting of blood lead test results by all permitted laboratories in accordance with recently amended public health law; and expand the current requirement for immediate reporting of critical blood lead values (> 45 mcg/dL) to include children up to age 18 years.

69-4 Early Intervention Program - Amend regulations to be consistent with changes to the PHL. Conforming regulations will address new requirements related to transition procedures for children aging-out of the Early Intervention Program; procedures for individualized family service plan amendments; collection of insurance information and social security numbers from parents for eligible children; establishment of standards for evaluators, service coordinators, and providers of early intervention services; approval and periodic re-approval of evaluators, service coordinators, and providers of early intervention services who meet Department standards; Department auditing procedures; and, fiscal management and claiming standards.

69-4 Early Intervention Program - Add regulations to establish standards for behavioral aides, approval of providers, and paraprofessional reimbursement rates for delivery of intensive behavioral intervention services to children with autism spectrum disorders.

69-4 Early Intervention Program - Amend the regulations to include or clarify programmatic and reimbursement requirements for the program, including at a minimum the following: criteria for eligibility and ongoing eligibility; criteria and procedures for sanctioning and disqualification of evaluators, service coordinators, and providers of early intervention services; health and safety standards to be maintained by service providers; requirements for documentation of records and record retention; mediation and impartial hearing procedures; service taxonomy definitions; and, billing rules for early intervention services.

69-4 Early Intervention Program - Amend the regulations to establish Department fees for processing and approving applications from agencies and individual practitioners who are seeking State approval or re-approval to participate as providers in the State the Early Intervention Program (evaluations, service coordination services, and general/therapeutic and support services).

69-4 Early Intervention Program - Amend the regulations to conform current state regulations to final federal regulations under the Individuals with Disabilities Education Improvement Act of 2004, when issued (a notice of proposed rulemaking was issued on May 9, 2007, by the U.S. Department of Education).

72-1 Tanning Facilities - Amend the regulations to be consistent with previously and recently enacted changes to PHL Article 35-A regarding ultraviolet tanning devices. The regulations will provide definitions and requirements for permit, inspection and operation of tanning facilities.

72-2 Tattooing and Body Piercing - Amend the regulations to be consistent with Public Health Law Article 4-A, Regulation of Body Piercing and Tattooing. The regulations will provide definitions and requirements for permit, inspection, and operation of tattooing facilities and the licensing of tattoo artists.

73 Asbestos Safety Training Program Requirements - Amend the regulations to incorporate changes made by the New York State Department of Labor to Code Rule 56 and changes in the industry to reflect training practices.

74 Approval of Realty Subdivisions - Amend the regulations to revise or update standards for realty subdivision design and plan approval.

75A Wastewater Appendix Treatment Standards - Individual Household Systems - Amend the regulations to revise or update design standards to address clarification and new technology.

75C Individual Water Well Quality Standards - Add regulations to establish water quality reference standards for individual household wells.

77 Funeral Establishments, Registrations, Funeral Directing, and Misconduct - Amend the regulations to prohibit the recovery of tissue within a funeral establishment and not allow non-transplant anatomical banks to operate within such establishments or the requesting of consent for an anatomical donation by a funeral director or employees of a funeral firm.

77.3 Registered Residents - Amend the regulations regarding responsibilities of a sponsor.

80 Controlled Substances - Amend the regulations to authorize the use of ketamine hydrochloride and sodium pentobarbital in a schedule II formulation for euthanasia in an animal shelter; to require pharmacies to submit information to the Department indicating method of payment for a controlled substance prescription and whether the prescription was dispensed as an original or as a refill; and to require licensed distributors of controlled substances to submit information on controlled substances supplied to DEA registrants in New York. Amendments to the regulations will also provide practitioners with increased flexibility to prescribe controlled substances to treat chronic pain in conditions other than diseases and will also permit hospice patients to partial fill their controlled substance prescriptions for 60 days from the date of issue in order to better address their changing medication needs.

85.40 Hospitals and Related Facilities - Medical Assistance Benefits - Section 85.40 was developed to describe the PCAP standards for provision of comprehensive prenatal care to low income women. With the advent of the APG method of reimbursement, there will no longer be designated PCAP providers or a PCAP standard of care. Instead, this section of regulation will describe the comprehensive standard of prenatal care that will be required to be provided by all Medicaid providers of prenatal care services in NYS. Modifications of this section will ensure that it conforms to the revised and updated standards of care and that it applies to all Medicaid providers of prenatal care services.

86-1 Hospital Reimbursement - Update the Service Intensity Weights and Average Lengths of Stay in the All Patient Diagnostic Related Groups (AP-DRGs) patient classification system that is used for 2009 inpatient hospital rates.

86-1 Language Assistance Translation Services - Add regulations to create a distribution methodology that allocates funding to qualifying hospitals to ensure and enhance access for Medicaid patients requiring language assistance.

86-1 Regional Poison Control Centers - File a consensus rule change to eliminate language that allows undistributed funds to roll forward into the subsequent year's distributions.

86-2 Updating Criteria for Determining Nursing Home Hospital-Based Status - Amend the regulations to eliminate referencing the designation of hospital-based nursing homes by the federal government since the federal government no longer makes that distinction.

86-2 Behavioral Intervention Services - Add regulations to establish a distinct Medicaid payment rate for nursing facilities that operate a discrete unit to care for individuals with neurobehavioral challenges (identified as behavioral intervention step-down units) that no longer require the intensity of the secure specialized behavioral units already in regulation.

86-2 Nursing Home Reimbursement - Amend the regulation to update the cost base year used to compute the nursing facility rates from 1983 to 2004.

86-2 Dementia Pilot Demonstration Projects - Amend the regulations to allow funding for expenses associated with: administering and managing the Dementia Grants Program, planning and holding the Statewide Dementia Conference, conducting an evaluation of the Dementia Grants Program, and auditing contracts when the projects have been completed.

86-4 Ambulatory Care Data Collection (SPARCS) - Amend the regulations to authorize collection of medical record information for all patients in an ambulatory care setting.

86-4 Units of Service, Social Work Services in Article 28 Federally

Qualified Health Centers (FQHCs) - Amend the regulations to allow Medicaid threshold billings for individual clinical social worker psychotherapy services provided by licensed clinical social workers; clinical group psychotherapy services provided by a qualified clinician for groups of patients from two to eight in number; and off-site services delivered to FQHC patients under limited circumstances. Threshold billing of all psychotherapy services for clinics, FQHC and non-FQHC will be limited to no more than 15% of a clinic's total annual visits.

86-4.9 Units of Service, Social Work Services in Article 28 Clinics - Amend the regulations to allow Medicaid to reimburse for the services of Licensed Master Social Workers and Licensed Clinical Social Workers to provide individual psychotherapy services in Federally Qualified Health Centers.

86-8 Limited Home Care Services Agencies - File a consensus rule change to transfer the existing regulations from Subpart 86-8 to Subpart 86-9.

89 Practice of X-ray Technology - Revise the regulations to delete obsolete language, establish requirements for the practice of nuclear medicine technology and establish requirements for certification of radiographers who inject contrast media.

98-1.5 Application for a certificate of authority - Revise regulations to require electronic submission of the MCO's provider network, consistent with the filing requirements in 98-1.16(j).

98-1.6 Issuance of the certificate of authority - Revise regulations to add a provision requiring managed care organizations (MCO) to maintain a complete file on each request for health care services or benefits and associated appeals pursuant to Article 49 of the Public Health Law and federal law and regulations.

98-1.8 Continuance of a certificate of authority - Amend the regulations to clarify that managed care organizations must maintain compliance with the requirements of PHL Articles 44 and 49 and 10 NYCRR Part 98, including provisions related to initial application and certification standards, in order to maintain their certificate of authority.

98-1.13 Assurance of access to care - Amend the regulations to require that each member select a primary care provider from which the member receives all primary care services; to require that MCOs contracting with a medical group have a process whereby a new provider joining the group can receive payment for services rendered to enrollees until the credentialing process is completed for the new provider; to ensure an enrollee who is referred by an out-of-network provider to in-network services incurs no additional financial liability than they would normally incur had the services been referred by a participating provider; and to be consistent with changes to the PHL. Conforming regulations will address new requirements related to subdivision 5-c to Section 4406-c which imposes a "cooling off" period after the termination or non renewal of a contract between an Article 44 managed care organization and a hospital.

98-1.14 Enrollee services and grievance procedures - Amend the regulation to require MCOs to issue notice to enrollees upon approval, denial or failure to pay for a request for a covered benefit or referral when the determination is not subject to the provisions of PHL Article 49.

98-1.21 Fraud and abuse prevention plans and special investigation units - Amend the regulations to delete a requirement for MCOs to develop procedures for detecting repetitive fraud across plans; to expand and clarify requirements for a fraud and abuse awareness program to include a confidential toll free telephone number to report suspected cases of fraud and abuse; and, to expand and clarify the required content of the fraud and abuse detection manual to include all available guidance on identification and referral of suspected cases of fraud and abuse.

98-1 Various Technical Amendments - Revise regulations, making technical corrections to: 1) 98-1.2(oo), clarify the definition of "transitional period" such that it extends for at least 90 days; 2) 98-1.9(b)(3), require MCOs to provide assurances of continuing compliance with Article 49 of the Public Health Law, in addition to Article

44 and Part 98; 3) 98-1.11(h), restore language that prohibits HMOs from discriminating in enrollments and services provision (this language was inadvertently deleted when the regulation was revised); 4) 98-1.11(k)(4), clarify that the MCO is responsible for monitoring contractors' fiscal stability; 5) 98-1.11(p), clarify that MCOs must comply with Article 49 of the Public Health Law, in addition to Article 44 and Part 98; and, 6) 98-1.13(c)(iii), correct a 2005 change which inadvertently limited provider contract assignments to within one year of promulgation of the rule.

123 Conesus Lake Watershed Rules - Amend the regulations to incorporate rules to protect the public water supplies of the Villages of Avon and Geneseo and the Town of Livonia.

132 Canandaigua Lake Watershed Rules - Amend the regulations to incorporate rules intended to protect the public water supplies of the City of Canandaigua, Villages of Rushville, Palmyra and Newark, and the Town of Gorham.

400.9, 405.9, 763.5, 766.2 Standardized Transfer Information - Amend the regulations to mandate standardized patient information that must be documented at points of transfer to and from nursing homes, hospitals, CHHAs, LHCSAs ALP, ALR, ACF and EH.

400.15 and 700.4 The Role of the Licensed Practical Nurse (LPN) in Intravenous Therapy Procedures - Update the regulations to be consistent with the LPN scope of practice.

400.18 Statewide Planning and Research Cooperative System (SPARCS) - Amend the regulations to comprehensively update the requirements and conform to changes in related state laws.

402 Criminal History Record Check Program - Amend the regulations to permit third-party entity to submit fingerprint information directly to the Department rather than requiring provider submission, and require providers to submit fingerprint checks within a specified timeframe from hire date for prospective employees subject to criminal history record check requirements. Also, amend the regulations to require providers to open and respond to CHRC electronic correspondence within a specified timeframe.

405.3 Administration - Amend the regulations to add certain requirements for immunizations and TB testing for healthcare workers and to exempt telemedicine personnel from immunization requirements as a condition of employment.

405.7 Patients' Rights - Amend the regulations to specify that patients have the right to treatment without discrimination regardless of age.

405.8 Incident Reporting - Amend the regulations to update the Department's New York Patient Occurrence Reporting and Tracking System (NYPORTS) provisions for hospitals to reflect current practice.

405.9 Admission/Discharge - Revise regulations to clarify that all donor and procurement responsibilities must be carried out before a dead body is removed from a hospital and to ensure that history and physical requirements for admitted patients in accordance with revised federal regulations.

405.10 Medical Records - Amend the regulations to allow verbal orders to be authenticated by not only the ordering practitioner, but also by other practitioners responsible for the care of the patient within 48 hours rather than "as soon as possible," consistent with new federal requirements.

405.12 Surgical Services - Amend the regulations to specify that a registered professional nurse qualified in operating room nursing shall be present as the circulating nurse in each separate operating room where surgery is being performed for the duration of the surgical procedure.

405.20 Outpatient Services - Amend the regulations to review the possibility of cross referencing 752.2 for hospital based free standing emergency facilities.

405.22 Critical Care and Special Care Services - Update the regulations regarding the organ transplant center provisions and the cardiac services provisions (may be moved to another section in Part 405); and provide specific minimum standards for pediatric intensive care units (ICUs) similar to adult ICUs, recognizing differences between

adult and pediatric ICUs beyond just the size and weight of the patients.

415 Nurse Aide Registry - Amend the regulations to allow the Department to remove from the State's Nurse Aide Registry any individual found to have acquired nurse aide certification through fraudulent means.

415 Nurse Aide Training Program Licensure - Add regulations to authorize the Department of Health to license its nurse aide training program curriculum to only those entities with high quality training programs.

415 and 1001 Respite Availability - Amend the regulations to increase the availability and promote the use of nursing home and assisted living settings for respite use (companion piece for Title 18 – adult care facilities).

415.41 Neurobehavioral Step Down Unit Program - Amend the regulations to provide a new level of appropriate behavioral intervention care in skilled nursing facilities facilitating individual transition to least restrictive settings. This 3-part regulatory package will include amendments and updates of Life Safety and Architectural Standards for Neurobehavioral and Neurobehavioral Step Down Units pursuant to section 713-2.5 of Title 10 NYCRR and a new subdivision (x) of section 86-2.10 establishing a separate and distinct payment rate for residents meeting the criteria for section 415.41.

600.8 Criteria for Determining the Operation of Diagnostic or Treatment Center Under Article 28 of the Public Health Law - Amend the regulations, if necessary, regarding center operations.

708 Appropriateness Review - Revise regulations regarding the Trauma Center Designation Standards for consistency with the current practice of trauma care in New York State.

708 Appropriateness Review - Amend the regulations to provide standards for designating Percutaneous Coronary Intervention (PCI) capable hospitals that can meet the additional criteria needed to meet the emergency needs of patients with ST elevation myocardial infarctions (STEMIs) as measured on an EKG.

709 Cardiac Surgery and Cardiac Catheterization Laboratory Centers - Amend the regulations to update the need methodology for Cardiac Surgery and Cardiac Catheterization Laboratory Centers.

709 Determination of Public Need for Medical Facility Construction - Amend the regulations related to the liver and human heart transplantation services provisions.

709.3 Residential Health Care Facility Beds - Revise the regulations concerning the need methodology for residential health care facility (nursing home) beds.

709.13 Adult Day Health Care Program Needs Methodology - Amend the regulations to clarify the existing methodology for determining unmet need for adult day health care programs.

710.1 Certificate of Need - Update the regulations to reduce CON review requirements for first-time purchases of Magnetic Resonance Imagers (MRIs) from full CON review to administrative CON review. Review for certain categories of construction unrelated to clinical capacity will also be changed from administrative CON review to a more limited prior review. Review for the relocation of an extension clinic within the same service area and involving no change in clinical capacity or scope of services and costing less than \$3 million will be changed from administrative CON review to prior limited review. These amendments will enable Article 28 providers to undertake needed changes more efficiently in an increasingly changing health care market.

711, 712, 713, 715 and 716 Medical Facility Construction - Revise the regulations concerning the Medical Facilities Construction Code.

732 Worker's Compensation - Amend the regulation to reflect 2007 changes in the Worker's Compensation Law Sections 351 and 354 which allow the State Insurance Fund to contract with certified PPOs, by reducing network adequacy requirements, and by granting the Commissioner waiver authority if a plan cannot meet such requirements.

750-759 Treatment Center and Diagnostic Center Operation - Update

the regulations addressing the Department's New York Patient Occurrence Reporting and Tracking System (NYPORTS) provisions for Diagnostic and Treatment Centers to reflect current practice. Amend the regulations to add certain immunization requirements for health-care workers and to add to the list of accreditation organizations that free-standing or off-site hospital based ambulatory surgery centers may use for accreditation.

752-2 Up-Graded Diagnostic and Treatment Center Services - Revise the regulations, if necessary, which address freestanding emergency department classification.

757 Chronic Renal Dialysis Services - Revise the regulations to be consistent with new federal changes to 42 CFR regarding Medicare and Medicaid Programs; Conditions for Coverage for End-Stage Renal Disease Facilities.

760 and 761 Home Health Services - Amend the regulations to update the current need methodology for establishment of certified home health agencies.

766 Home Care Worker Registry - Amend the regulations to add a new section to develop and maintain a home care services worker registry of home care services workers.

766 Licensed Home Care Services Agencies - Amend the regulations to update and modernize provisions to improve service delivery, training and surveillance activities.

767 Home Medical Equipment - Add regulations which include provisions for licensing and oversight of Home Medical Equipment providers, pursuant to newly enacted statute.

790 Hospices - Add regulations implementing changes in the federal Conditions of Participation.

800 Emergency Medical Services - General - Add regulations related to the use and application by members of the public of automatic external defibrillators; codify regulatory requirements for Advance Life support First Response Agencies; codify regulatory requirements for Basic Life Support Providers; make updates to EMS certification and training regulations; and establish a new section on the mobilization and/or sharing of resources in the event of a declared disaster.

1000.1 Physician Profiling Definitions - Amend the regulations to define physician membership other than "board certification"; to provide definitions and requirements for physician information posted under the field "membership" on the physician profiling system; and to delete "The College of Family Physicians of Canada (CFPC)" from the current definition of "Board Certification".

1000.3 Malpractice Awards, Judgements, and Settlements - Amend the regulations to allow a physician to have 30 days within which to appeal the disclosure of the settlement information in the instance where physician has two or fewer settlements, and to clarify the circumstances under which a physician may be granted an extension because of physical incapacitation, etc.

Title 18 NYCRR (Social Services)

360-3.7 Presumptive Eligibility - Amend the regulation to modify and to remove specific references to PCAP, and substitute references to comprehensive prenatal care services provided under Medicaid. This section describes the availability of presumptive eligibility for Medicaid services.

360-4 Financial Eligibility - Amend the regulations to update Medicaid Extended Coverage pursuant to potential statutory changes to Section 367-f of the Social Services Law which would increase the amount of income that NYS Partnership for Long Term Care participants are allowed to retain when accessing Medicaid Extended Coverage.

360-6.7 Managed Care - Repeal the regulations to modify and consolidate with a new Part 360. The provisions describe the standards and processes by which managed care enrollees may disenroll from a managed care organization and will be revised to reflect Chapter 649 of the Laws of 1996 and Chapter 433 of the Laws of 1997.

360-7.3(c)(1) of Title 18 NYCRR and Part 85.13 of Title 10 NYCRR Use of Health, Hospital or Accident Insurance & Physically Handicapped Children's Program - Amend the regulations to eliminate the dual prior approval for certain services for Medicaid eligible children.

360-7.7 Payments of deductibles and coinsurance under title XVIII of the Social Security Act (Medicare) - Amend the regulations to reinforce the policy that Medicaid prior approval is not necessary if the item or service is covered by Medicare. If Medicare denies payment based on lack of medical necessity, Medicaid prior approval and/or reimbursement will not be considered. Services that are statutorily excluded from Medicare payment but covered by Medicaid would be payable if medically necessary.

360-7.12 Co-Payments by Recipients - Revise the regulation to conform with recently enacted statutory changes to Medicaid co-payments that eliminate the pharmacy co-payment exemption for managed care recipients, and increase the pharmacy co-payment \$.50 to \$1.00 for generic drugs, \$2.00 to \$3.00 for brand name drugs, and the annual cap from \$100 to \$200.

360-10 Medicaid Managed Care Program - Replace the existing regulations to conform to changes authorized by Chapter 165 of the Laws of 1991, Chapter 649 of the Laws of 1996 and Chapters 433 and 436 of the Laws of 1997. The proposed regulations will clarify provisions of law, provide clearer guidance regarding marketing and enrollment in the Medicaid managed care/Family Health Plus programs, add fair hearing rights and requirements specific to Medicaid managed care/Family Health Plus, require providers to accept payment from a managed care plan as payment in full and add provider prohibitions specific to the Medicaid managed care/Family Health Plus programs.

360-11 Medicaid Managed Care - Repeal the regulations describing the standards and processes by which special needs populations may obtain specialty care services with the Medicaid managed care program. It will be repealed because it was made obsolete by passage of Chapter 649 of the Laws of 1996 which authorized the development of Special Needs Plans (SNPs) for these populations.

485, 486, 487, 488 and 490 Adult Homes, Enriched Housing Programs and Residences for Adults - Amend the regulations to consolidate and streamline provisions relating to adult homes, enriched housing programs and residences for adults, to reflect recent past legislative and regulatory initiatives and the changing environments of these types of facilities. Amendments will provide clarification and consistency to residents, operators and the public with regards to adult care facilities.

486 Inspection Review Process for Adult Care Facilities - Revise the regulations to formalize the currently informal inspection review process, whereby operators can request an inspection review meeting after issuance of an inspection report but prior to the posting of the report on the Department's website.

487 and 488 Respite Availability - Amend the regulations to increase the availability and promote the use of adult home and enriched housing program settings for respite use (companion piece for Title 10 – nursing homes and assisted living residences).

487, 488 and 490 Temperature Standards for Adult Care Facilities - Amend the regulations to implement the provisions of the recently enacted statute with respect to an allowable temperature in all areas occupied by residents of adult homes, enriched housing programs and residences.

494 Retention Standards for Assisted Living Programs - Amend the regulations to allow individuals of such programs to "age-in-place," under certain conditions.

504.3(j) through (m) Medicaid Provider Responsibilities - Add three new sections to Part 504.3(j) through (l) defining the responsibility of Medicaid enrolled providers to treat Medicaid patients during federal or State declared emergencies. A fourth section (m) is added to clarify that Title XVIII Medicare enrollment is required for all providers eligible to participate in Medicare as a condition of enrollment in the New York State Medicaid Program.

505 Personal Emergency Response Services - Amend the regulations to allow for annual authorizations and to delete the requirement that authorization of PERS be contingent upon a reduction/elimination of personal care aide/home health aide hours.

505 Consumer Directed Personal Assistance Program - Amend the regulations to establish discrete Consumer Directed Personal Assistance Program (CDPAP) rules.

505.3 Pharmacy - Amend the regulations to identify Medicaid reimbursement associated with the reasonable administrative costs incurred by 340B covered entities or an authorized contract pharmacy when billing Medicaid at 340B prices.

505.3(b)(1) Drugs - Amend the regulation to eliminate the requirement for a prescription or fiscal order for the dispensing of over-the-counter emergency contraception for women 18 years or older.

505.5 Fiscal Orders - Change the fiscal order requirements for medical surgical supplies to allow filling within 60 days rather than 14 days of the date written, to reflect current policy; add fiscal order requirements for DME, orthotics, prosthetics and prescription footwear requiring that the order must be filled within 180 days unless otherwise stated by the Department; specifically define acceptable paper and electronic formats for fiscal orders.

505.5 Durable Medical Equipment - Amend the regulations to define the procedures for pursuing Medicaid Waiver reimbursement for Assistive Technology (AT) devices that do not meet the definition of DME and, therefore not covered by the Medicaid State Plan, including those AT devices that would be covered under federal EPSDT statute; also specify that exclusive utilization of HIPAA-compliant HCPCS codes and proper use of miscellaneous codes is required for prior approval and claims submission.

505.8 of Title 18 NYCRR and 85.33 of Title 10 NYCRR Private Duty Nursing Services - Amend the regulations to replace and update the current language controlling the amount, duration, and scope for the provision of private duty nursing services under the Medicaid Program.

505.11 Payment for Physical and Occupational Therapy Assistants - Amend the regulations to allow physical therapist assistants and occupational therapy assistants to provide rehabilitative health care services to Medicaid recipients, as a billable service, under the supervision of a licensed physical therapist and occupational therapist, respectively; revised regulations will allow Medicaid recipients continued access to physical and occupational therapy services utilizing occupational therapy assistants and physical therapist assistants as qualified professionals.

505.16 Case Management - Amend the regulation to reflect a change in the frequency of program monitoring by the Office of Mental Health.

505.23 Home Health Services - Consensus regulation to amend this section to reflect statutory changes and/or court ordered mandates that have been implemented.

505.25 Personalized Recovery Oriented Services (PROS) - Amend the regulations to reflect approved Title 14 OMH regulations for PROS, a comprehensive outpatient recovery oriented program for persons with severe and persistent mental illness.

505.31(d)(e)(1) of Title 18 NYCRR and Part 85.39 of Title 10 NYCRR Audiology, Hearing Aid Services and Products - Amend the regulations to eliminate the designation of the Physically Handicapped Children's Program speech and hearing centers as the only providers of hearing assessments to Medicaid eligible children.

506.2 and 506.6 Dental Vans - Amend the regulations, in light of increasing interest in Medicaid reimbursement for services provided in dental vans used as private offices, to define a mobile setting and allow a mobile setting as a valid dental place of service, and to specify what provider qualifications are necessary for use of dental vans.

506.4 of Title 18 NYCRR and Part 85.45 of Title 10 NYCRR Orthodontic Care - Amend the regulations to eliminate the Physically Handicapped Children's Program sole review role in the area of orthodontia; to remove the reference to panel orthodontists; and to update the qualifications for orthodontists and eligibility criteria for these services.

533.6(b)(1)ii Radiology Fee Components and 533.6(f) - Amend the reimbursement methodology for the professional component of radiol-

ogy services which currently is reimbursed at 40 percent of the radiology fee. Payment for radiology services for physicians will be based on a percent of the Medicare fee for that service. Amend the regulations to delete the section pertaining to the Radiology Fee Schedule, which is obsolete. The procedures and reimbursement fees approved by the Commissioner are found in the Physician Manual.

540.6 Billing for Medical Assistance - Revise the regulations to specifically state that Medicare enrollment, whenever possible, is a requirement for participation in the Medicaid program.

CONTACT PERSON:

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Insurance Department

Pursuant to Section 202-d of the State Administrative Procedure Act (SAPA), the following Regulatory Agenda is a list of the regulatory additions and amendments to Title 11 of the NYCRR that the Insurance Department is presently considering proposing during the first half of 2009. Many of these items were previously published in the June 2008 Regulatory Agenda. Items that have been published in the State Register as "Proposed" actions are not included on the list. The Insurance Department's regulatory plans are subject to change and the Department reserves the right to add to, delete from, or modify items on the Agenda without further notice.

This notice also is intended to provide small businesses, local governments and public and private interests in rural areas with the opportunity to participate in the rule making process, as provided by Sections 202-b and 202-bb of SAPA.

For inquiries pertaining to a specific item, please contact the agency contact person identified in the item. For general inquiries about the Insurance Department's Regulatory Agenda, please contact:

Sam Wachtel
Supervising Attorney
Office of General Counsel
New York State Insurance Department
25 Beaver Street
New York, N.Y. 10004
Telephone Number: 212-480-5269

Copies of current regulations may be obtained from the Department's Public Affairs Bureau by writing to the New York City address above, or by calling 212-480-2283.

1. Summary description of proposal: Adoption of a new part to 11 NYCRR to set forth, in broad terms, the principles to which licensees are expected to adhere in conducting their business in New York. Agency Contact: Paul Zuckerman, Assistant Deputy Superintendent & Counsel, Office of General Counsel (212) 480-5286.

2. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish requirements regarding disclosure of all sources and amounts of compensation received by licensed insurance producers. Agency Contact: Paul Zuckerman, Assistant Deputy Superintendent & Counsel, Office of General Counsel (212) 480-5286.

3. Summary description of proposal: Amendment of 11 NYCRR 20 (Brokers and Agents -General)(Regulation 29) to permit the use of internet and out-of-state banks for producer premium accounts. Agency Contact: Paul Zuckerman, Assistant Deputy Superintendent & Counsel, Office of General Counsel (212) 480-5286.

4. Summary Description of Proposal: Adoption of a new part to 11 NYCRR to address certain business practices in the title insurance industry and supervision of title insurers authorized to write title in-

urance in this state. Agency Contact: D. Monica Marsh, Associate Attorney, Office of General Counsel (212) 480-5298.

5. Summary Description of Proposal: Adoption of a new part to 11 NYCRR to address corporate governance practices and endure that supervised entities are in compliance with New York Insurance Law regarding gifts, entertainment and related travel. Agency Contact: Susan Donnellan, Deputy Superintendent (212) 480-2296.

6. Summary description of proposal: Amendment of 11 NYCRR 151 (Regulation 119) to implement Chapter 11 of the Laws of 2008, effective January 31, 2008, which established a new method for setting workers' compensation rates in New York. This legislation provides for a new, two-step process for establishing workers' compensation insurance rates. One component of the rate making process is the Superintendent's establishment, by regulation, of a loss cost multiplier (LCM). The amendment will also address other pertinent issues. Agency Contact: Sam Wachtel, Supervising Attorney, Office of General Counsel (212) 480-5269.

7. Summary description of proposal: Amendment to part 11 NYCRR 89 (Audited Financial Statements) (Regulation 118) to improve the Department's surveillance of the financial condition of insurers by requiring an annual audit of financial statements by independent certified public accountants, and the filing of audit reports and other related documents. Agency Contact: Joseph Fritsch, Director of Insurance Accounting Policy (212) 480-2299.

8. Summary description of proposal: Amendment of 11 NYCRR 60-2 (Supplementary Uninsured/Underinsured Motorists Insurance) (Regulation 35-D) to revise all references in Sections 60-2.3 and 60-2.4 from "AAA/American Arbitration Association" to "designated organization." Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

9. Summary description of proposal: Amendment of 11 NYCRR 301 (Purchasing Groups) (Regulation 134) to eliminate provisions referencing Affidavit Part B, which was originally required by 11 NYCRR 27 (Regulation 41) but has since been deleted from Regulation 41. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

10. Summary description of proposal: Amendment of 11 NYCRR 27 (Excess Line Placements Governing Standards) (Regulation 41) to establish procedures for the filing of required affidavits on a consolidated basis for "legitimate" group placements under 11 NYCRR 153 (Regulation 135) similar to those in place for Purchasing Groups under 11 NYCRR 301 (Regulation 134). Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

11. Summary description of proposal: Amendment of 11 NYCRR 65-1, 65-2, 65-3, 65-4 (Regulations Implementing the Comprehensive Motor Vehicle Insurance Reparations Act) (Regulations 68-A, 68-B, 68-C & 68-D) to revise No-fault endorsements and requirements for insurer claim practices and to amend rules related to both the manner in which the organization designated by the Superintendent administers the first party motor vehicle insurance arbitration programs and assesses the costs of these programs to the insurance industry. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

12. Summary description of proposal: Amendment of 11 NYCRR 68 (Charges for Professional Health Services) (Regulation 83) to adopt a fee schedule for health services rendered by licensed acupuncturists. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

13. Summary description of proposal: Amendment of 11 NYCRR 390 (Service Contracts) (Regulation 155) that will require all registered service contract providers to: file with the Superintendent annual audited financial statements, inclusive of the volume of service contract business written in New York; and provide clarification of the requirements and conditions for appointment of a claims trustee, the minimum affirmations and attestations in the use of a "parental guarantee" of a subsidiary Service Contract Provider ("SCP"), and specifications for the determination that an SCP is deemed insolvent. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

14. Summary of description of proposal: Adoption of a new part to

11 NYCRR to provide clarification and rules regarding inland and ocean marine insurance. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

15. Summary description of proposal: Amendment of 11 NYCRR 216 (Unfair Claims Settlement Practices and Claim Cost Control Measures) (Regulation 64) to update the entire regulation to, inter alia, provide notice and time frame requirements for third party claims. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

16. Summary description of proposal: Adoption of a new 11 NYCRR 65-5 (Regulation 68-E) and amendment of 11 NYCRR 68 (Regulation 83) to implement Chapter 424 of the laws of 2005 and thus create a process by which a health provider's authority to seek reimbursement for the treatment of No-Fault patients can be suspended or removed under certain circumstances. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

17. Summary of description of proposal: Amendment of 11 NYCRR 125 (Credit for Reinsurance from Unauthorized Insurers) (Regulation 20) to allow alternative credit for cessions to unauthorized reinsurers that maintain a minimum financial strength rating from the rating agencies. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

18. Summary of description of proposal: Adoption of a new part to 11 NYCRR to require authorized property/casualty insurers to establish reserve funds for payment of losses that occur in New York arising out of natural catastrophes. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

19. Summary of description of proposal: Amendment of 11 NYCRR 80-1 (Holding Companies) (Regulation 52) to increase property/casualty insurers' required threshold necessary to provide prior notice to the Superintendent concerning related party transactions; to establish that the Annual Holding Company Registration Statements may be filed electronically; and to allow the Superintendent to permit, at his discretion, alternatives to the audited financial statements when making filings pursuant to this Regulation. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

20. Summary description of proposal: Adoption of a new part to 11 NYCRR to require workers' compensation policies with high deductibles to collateralize the deductible amount selected by the policyholder in a form acceptable to the Superintendent. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

21. Summary description of proposal: Amendment of 11 NYCRR 68 (Charges for Professional Health Services) (Regulation 83) to adopt the fee schedule that will be implemented by the Workers' Compensation Board for health services rendered by licensed dentists. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

22. Summary description of proposal: Amendment to 11 NYCRR 152 (Physicians and Surgeons Professional Insurance Merit Rating Plan) (Regulation No. 124) to permit credits for successful completion of additional risk management programs (supplementary risk management programs). Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

24. Summary description of proposal: Amendment of 11 NYCRR 27 (Excess Line Placements Governing Standards) (Regulation 41) to increase the minimum capital and surplus requirements of excess line insurers. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

25. Summary description of proposal: Amendment of 11 NYCRR 27 (Excess Line Placements Governing Standards) (Regulation 41) to revise the Export List. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

26. Summary description of proposal: Adoption of a new 11 NYCRR 163 (Flexible Rating for Nonbusiness Automobile Insurance Policies) (Regulation No. 153) to implement Chapter 136 of the Laws of 2008, which created a flex-rating system that replaces the prior ap-

proval system with a blend of prior approval and competitive rating. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

27. Summary description of proposal: Amendment of 11 NYCRR 67 (Mandatory Underwriting Inspection Requirements for Private Passenger Automobiles) (Regulation 79) to include additional circumstances under which an insurer may voluntarily waive mandatory inspection of a motor vehicle for physical damage coverage, and to clarify that the use of digital photography and electronic access to inspection report data are permitted. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

28. Summary description of proposal: Adoption of a new part to 11 NYCRR to incorporate and implement the "best practices" procedures for financial guaranty insurers set forth in Department Circular Letter 19 (2008). Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

29. Summary description of proposal: Adoption of a new part to 11 NYCRR to set forth standards and procedures for the sale and purchase of life insurance and annuities to ensure that life insurance and annuities are suitable for the insurance needs and financial objectives of consumers, and to prohibit the sale of unsuitable life insurance and annuities to consumers. Agency Contact: Michael Maffei, Assistant Chief, Life Bureau (212) 480-5023.

30. Summary description of proposal: Amendment to part 11 NYCRR 136 (Standards for the Management of the New York City Retirement Systems) (Regulation 85) to establish high ethical standards, strengthen internal controls and governance, and enhance the operational transparency of the city retirement systems. Agency Contact: Michael Maffei, Assistant Chief, Life Bureau (212) 480-5023.

31. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish standards for the sale and servicing of insurance products to senior citizens. Agency Contact: Daniel Gumaer, Supervising Insurance Examiner, Life Bureau (212) 480-5040.

32. Summary description of proposal: Adoption of a new part to 11 NYCRR to adopt the NAIC Risk Based Capital standard and disclosure requirements for fraternal benefit societies. Agency Contact: Ruth Gumaer, Supervising Insurance Examiner, Life Bureau (212) 480-4763.

33. Summary description of proposal: Repeal of 11 NYCRR 135 (Reporting of Certain Financial Transactions and Reserve Liabilities by Public Employee Retirement Systems) (Regulation 67) to eliminate requirements relating to a previous annual statement form that no longer is in use. Agency Contact: Peter Kreuter, Assistant Chief Actuary, Life Bureau (212) 480-5328.

34. Summary description of proposal: Amendment to 11 NYCRR 95 (Regulations Governing an Actuarial Opinion and Memorandum) (Regulation 126) to add guidance regarding sensitivity tests, disclosure items, and other requirements related to asset adequacy analysis. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518) 474-5462.

35. Summary description of proposal: Amendment to 11 NYCRR 99 (Valuation of Annuity, Single Premium Life Insurance, Guaranteed Interest Contract and Other Deposit Reserves) (Regulation 151) to revise existing standards for variable annuities for life insurers so as to conform with recently adopted and pending NAIC standards. Agency Contact: Michael Cebula, Assistant Chief Actuary, Life Bureau (518) 474-6805.

36. Summary description of proposal: Amendment to 11 NYCRR 42 (Term Life Issuance and Renewal Restrictions; Nonforfeiture Values for Certain Life Insurance Policies) (Regulation 149) to provide requirements for life policies with intermediate endowment values. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau (518) 474-5462.

37. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish minimum standards for non-guaranteed elements of life and annuity insurance policies and to establish minimum standards for written criteria set by the board of directors or a committee thereof for determining non-guaranteed elements. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau (518) 474-5462.

38. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish minimum standards for form, content and sale of life insurance, annuities and funding agreements, including standards for full and fair disclosure. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau (518) 474-5462.

39. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish standards for self-support requirements for life insurance, annuities and funding agreements issued on an individual or group basis. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau (518) 474-5462.

40. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish standards for corporate governance for risk management, including requirements for board of directors' oversight of business and exposure limits. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau (518) 474-5462.

41. Summary description of proposal: Amendment of 11 NYCRR 54 (Variable Life Insurance) (Regulation 77) to provide for exceptional treatment of private placement variable life insurance, especially with respect to the deferral of payments for death benefits, surrender benefits and policy loans. Agency Contact: W. Joseph Shanley III, Senior Insurance Attorney, Life Bureau (518) 474-7668.

42. Summary description of proposal: Adoption of a new part to 11 NYCRR 48 (Key Person Company-Owned Life Insurance) (Regulation 180) to provide guidance to insurers in defining key persons for purpose of complying with Section 3205(a)(1)(B) and (d) of the Insurance Law. Agency Contact: Ralph D. Spaulding, Supervising Insurance Attorney, Life Bureau (518) 486-5258.

43. Summary description of proposal: Amendment to 11 NYCRR 53 (Life and Annuity Disclosure and Sales Illustration) (Regulation 74) to set forth the information mandated by Section 3209 of the Insurance Law, including the standards governing the content, format and use of sales illustrations and other disclosure requirements for fixed and/or variable annuity products, equity index products and funding agreements. Agency Contact: Peter Dumar, Associate Insurance Attorney, Life Bureau (518) 474-4552.

44. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish standards for a principles-based valuation of variable annuity reserves. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518) 474-5462.

45. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish standards for a principles-based valuation of reserves for certain life insurance products. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518) 474-5462.

46. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish minimum standards for reserve and nonforfeiture values for pre-need insurance. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518) 474-5462.

47. Summary description of proposal: Amendment to part 11 NYCRR 98 (Valuation of Life Insurance Reserves) (Regulation 147) to revise existing standards for term life insurance and universal life insurance products with secondary guarantees for life insurers in consideration of possible changes to NAIC standards, and to establish reserve standards for equity indexed life insurance. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518) 474-5462.

48. Summary description of proposal: Amendment to part 11 NYCRR 100 (Recognition of The 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits and Recognition and Application of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities) (Regulation 179) to adopt potential new mortality tables. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518) 474-5462.

49. Summary description of proposal: Amendment to 11 NYCRR 97 (Market Value Separate Accounts Funding Guaranteed Benefits; Separate Account Operations and Reserve Requirements) (Regulation 128) to update the reserve standards for group separate account products with guaranteed benefits, and to establish reserve standards for individual separate account products with guaranteed benefits. Agency Contact: Michael Cebula, Deputy Chief Actuary, Life Bureau (518) 474-7929.

50. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) and 11 NYCRR 360 (Open Enrollment and Community Rating of Individual and Small Group Health Insurance) (Regulation 145) to clarify the requirements for prior approval of forms and rates, including the establishment of rules for determining the rating methodology to be used for rating point-of-service products sold to large groups, and to clarify the application and effect of rolling rates and annual level subscriber rates. Agency Contact: Robert Solomon, Supervising Insurance Examiner, Health Bureau (212) 480-5246.

51. Summary description of proposal: Amendments of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62), 11 NYCRR 39 (Minimum Standards for the New York State Partnership for Long-Term Care Program) (Regulation 144) and adoption of a new Part to 11 NYCRR to: 1) update minimum standards for Partnership and non-Partnership long term care coverages; and 2) establish minimum standards and/or requirements for long term care insurance products as new long term care financing options are enacted. Agency Contact: Austin J. Rinella, Supervising Insurance Attorney, Health Bureau (518) 486-7815.

52. Summary description of proposal: Adoption of a new part to 11 NYCRR or amendment of existing parts of 11 NYCRR to: 1) establish standards so the internal appeal procedures of long term care insurers are stated in the form language of long term care insurance products; 2) establish requirements and standards for long term care insurers to notify the Insurance Department when the insurers make available for purchase a long term care insurance form in New York State or when the insurers discontinue selling a long term care insurance form in New York State; 3) state by amendment an update on the annual rescission report due date and to state the requirements of federal law for annual long term care reports on claims denials and lapses/replacements and their due dates; 4) establish rules and targeted penalties regarding deceptive advertising and/or deceptive marketing practices targeting senior citizens; 5) establish targeted penalties regarding untimely payment of long term care insurance claims; 6) establish procedures regarding external appeals of long term care insurance claims. Agency Contact: Austin J. Rinella, Supervising Insurance Attorney, Health Bureau (518) 486-7815.

53. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for the Form, Content, and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to: 1) establish criteria to require long term care insurers to blend the experience of closed blocks of long term care insurance with the experience of open blocks of long term care insurance to lessen or avoid premium rate spirals on closed blocks of long term care insurance; 2) require notification and acknowledgement at the point of sale of potential rate increases for long term care insurance; 3) expand the large group long term care insurance market by requiring group long term care insurers to: offer long term care coverage during a limited "open enrollment" period for certain large groups, offer spousal coverage under certain circumstances, and offer long term care insurance coverage at retirement. Agency Contact: Colleen M. Rumsey, Associate Insurance Attorney, Health Bureau (518) 486-7815.

54. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for the Form Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) and 11 NYCRR 360 (Rules to Assure an Orderly Implementation and Ongoing Operation of Open Enrollment and Community Rating of Individual and Small Group Health Insurance) (Regulation 145) to set forth requirements regarding the payment of commissions, fees and other compensation to agents and brokers. Agency Contact: Jeffrey Pohl, Associate Insurance Attorney, Health Bureau (518) 473-7470.

55. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for the Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to update the requirements for coordination of benefits (COB) among health insurance policies. Agency Contact: Mary Frances Sabo, Senior Insurance Attorney, Health Bureau (518) 473-7470.

56. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to clarify the dental exclusion in health insurance policies. Agency Contact: Abby Nash, Senior Insurance Attorney, Health Bureau (518) 473-7470.

57. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) and 11 NYCRR 360 (Rules to Assure an Orderly Implementation and Ongoing Operation of Open Enrollment and Community Rating of Individual and Small Group Health Insurance) (Regulation 145) to conform to the final regulations promulgated under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). Agency Contact: Jeffrey Pohl, Associate Insurance Attorney, Health Bureau (518) 473-7470.

58. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to clarify coverage of emergency services under health insurance policies that provide coverage for inpatient hospital care. Agency Contact: Thomas Fusco, Supervising Insurance Attorney, Health Bureau (716) 847-7618.

59. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to set forth requirements of notices of termination under group health insurance policies. Agency Contact: Thomas Fusco, Supervising Insurance Attorney, Health Bureau (716) 847-7618.

60. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to prohibit insurers and HMOs from treating services provided by providers that are participating in the health plan's network as out-of-network based upon the participation status of the admitting physician or other provider involved in the patient's treatment. Agency Contact: Thomas Fusco, Supervising Insurance Attorney, Health Bureau (716) 847-7618.

61. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to enable HMOs to offer a high deductible health plan to subscribers establishing a Health Savings Account. Agency Contact: Thomas Fusco, Supervising Insurance Attorney, Health Bureau (716) 847-7618.

62. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to establish minimum standards for prescription drug coverage written by Article 43 corporations, HMOs and commercial insurers. Agency Contact: Thomas Fusco, Supervising Insurance Attorney, Health Bureau (716) 847-7618.

63. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for the Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to establish requirements for insurance policies that use a usual and customary or reasonable form of reimbursement. Agency Contact: Thomas Fusco, Supervising Insurance Attorney, Health Bureau (716) 847-7618.

64. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to clarify coverage of newborn children under health insurance policies. Agency Contact: Thomas Fusco, Supervising Insurance Attorney, Health Bureau (716) 847-7618.

65. Summary description of proposal: Adoption of a new part to 11 NYCRR to provide for enhanced disclosure pursuant to sections 3217-a and 4324 of the Insurance Law. Agency Contact: Lisette Johnson, Assistant Chief, Health Bureau (518) 486-7815.

66. Summary description of proposal: Amendment of 11 NYCRR

52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62), and 11 NYCRR 410 (External Appeals of Adverse Determinations of Health Care Plans) (Regulation 166), and adoption of a new part to 11 NYCRR to: (1) establish standards for coverage determinations and benefit determinations, including standards for utilization review, internal appeals and grievances, with conformance to federal requirements; (2) establish new and revised standards and procedures for the external appeal process; and (3) implement the requirements of Chapter 451 of the Laws of 2007 regarding the cooling-off period for hospital contract terminations, pre-authorization requirements, and external appeals of out-of-network denials. Agency Contact: Lisette Johnson, Assistant Chief, Health Bureau (518) 486-7815.

67. Summary description of proposal: Adoption of a new part to 11 NYCRR to require every accident and health insurer and HMO to file annually with the Superintendent or designated statistical agent a statistical report showing a classification schedule of its premiums, losses and related expenses, as well as a list of the 100 most frequently used current procedure terminology (CPT) codes on all kinds or types of accident and health insurance business subject to the Insurance Law, and such other information as the Superintendent may deem necessary. Agency Contact: Lisette Johnson, Assistant Chief, Health Bureau (518) 486-7815.

68. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) and/or adoption of a new part to 11 NYCRR to establish an appeals process for disability claims. Agency Contact: Lisette Johnson, Assistant Chief, Health Bureau (518) 486-7815.

69. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish requirements for contracts between insurers and providers and to establish network adequacy requirements for EPO and PPO products. Agency Contact: Lisette Johnson, Assistant Chief, Health Bureau (518) 486-7815.

70. Summary description of proposal: Adoption of a new part to 11 NYCRR to standardize the forms and claims processes used by insurers and HMOs. Agency Contact: Lisette Johnson, Assistant Chief, Health Bureau (518) 486-7815.

71. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to clarify to insurers and HMOs the requirements of the alternate procedure for submission of rate increases or decreases set forth in Insurance Law sections 3231(e)(2)(A) or 4308(g), and to provide further clarification as to calculating and reporting loss ratios and issuing dividends or credits when using the alternate filing procedure as required by Insurance Law sections 3231(e)(2)(B) or 4308(h). Agency Contact: Lisette Johnson, Assistant Chief, Health Bureau (518) 486-7815.

72. Summary description of proposal: Amendment of 11 NYCRR 350 (Continuing Care Retirement Communities) (Regulation 140) to modify and clarify the actuarial reserve calculation, solvency testing, distribution allowances, fee adequacy, allowable investments, and needed filing requirements, in view of marketplace expansion in both the number and types of Continuing Care Retirement Communities. Agency Contact: Gary Teitel, Supervising Attorney, Health Bureau (212) 480-7709.

73. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to clarify extension of benefits and "no loss, no gain" requirements for individual, group and group remittance health insurance contracts. Agency Contact: Stephen Rings, Associate Insurance Attorney, Health Bureau (518) 486-7815.

74. Summary description of proposal: Adoption of a new part to 11 NYCRR to prohibit discretionary clauses in accident and health insurance policy forms and life insurance and annuity policy forms. Agency Contact: Stephen Rings, Associate Insurance Attorney, Health Bureau (518) 486-7815.

75. Summary description of proposal: Amendment of 11 NYCRR

52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to amend section 52.70(e)(2) to conform with Insurance Law section 3234(b) and permit individual underwriting in determining a person's eligibility for coverage under a group disability policy. Agency Contact: Stephen Rings, Associate Insurance Attorney, Health Bureau (518) 486-7815.

76. Summary description of proposal: Amendment of 11 NYCRR 83 (Financial Statement Filings and Accounting Practices and Procedures) (Regulation No. 172) to develop standards and guidelines for real estate appraisals and accounting methodologies under which Insurance Law Article 43 corporations and Public Health Law Article 44 Health Maintenance Organizations may evaluate real estate in ordinary course of business. Agency Contact: Kalo Daisy Wong, Principal Insurance Examiner, Health Bureau (212) 480-5062.

77. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to adopt changes to federal regulation relating to the modernization of Medicare supplement insurance. Agency Contact: Sarah L. Allen, Associate Insurance Attorney, Health Bureau (518) 486-7815.

78. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for the Form, Content, and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to prohibit cold call sales of Medicare supplement insurance, including door-to-door solicitation, direct in-person contact, and direct telephone calls without the prospective applicant initiating the contact. Agency Contact: Sarah L. Allen, Associate Insurance Attorney, Health Bureau (518) 486-7815.

79. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, including Standards of Full and Fair Disclosure) (Regulation 62) to clarify the procedures and requirements for filing of accident and health insurance policy forms and rate submissions, including electronic filing of such submissions. Agency Contact: Doris Kullman, Supervising Insurance Attorney, Health Bureau (518) 486-7815.

80. Summary Description of Proposal: Adoption of a new part to 11 NYCRR to establish requirements for evaluating, approving and regulating matters relating to premium rates, enrollee contracts and fiscal solvency of Managed Long Term Care Plans, including reserves, surplus and provider contracts to the extent such contracts relate to fiscal solvency matters. Agency Contact: Jose Joseph, Associate Insurance Examiner, Health Bureau (212) 480-3345.

81. Summary Description of Proposal: Amendment of 11 NYCRR 105 and 109 (Operating Expense Classification for Annual Statement Purposes / Allocation of Salaries and Other Expenses) (Regulation 30) to include Article 42 accident and health Insurers, Article 43 corporations and health maintenance organizations. Agency Contact: Charles Lovejoy, Supervising Insurance Examiner, Health Bureau (212) 480-5045.

82. Summary Description of Proposal: Amendment of 11 NYCRR 94 (Valuation of Individual and Group Accident and Health Insurance Reserves) (Regulation 56) to extend the requirements to Article 42 accident and health Insurers, Article 43 corporations and health maintenance organizations, and to clarify the minimum solvency requirements for accident and health Insurers. Agency Contact: Yvonne Rowser, Principal Insurance Examiner, Health Bureau (212) 480-3883.

83. Summary description of proposal: Amendment of 11 NYCRR 362 (The Healthy New York Program and the Direct Payment Stop Loss Relief Program) (Regulation 171) to adjust the plan year deductible for the Healthy NY high deductible health plan to comply with the federal minimums for a high deductible health plan, and to adjust the benefits. Agency Contact: Leigha Basini, Associate Insurance Attorney, Health Bureau (518) 486-7815.

84. Summary Description of Proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to adopt requirements for maintaining and monitoring of experience data for group insurance. Agency Contact: K. Gloria Dee, Supervising Actuary, Health Bureau (518) 473-7716.

85. Summary Description of proposal: Amendment of 11 NYCRR 28 (Professional Bail Bond Agents) (Regulation 42) to establish minimum recordkeeping requirements and identify prohibited charges in conjunction with (1) the issuance of a bail bond and (2) requiring collateral in order to secure the issuance of a bail bond. Agency Contact: John Chaskey, Supervising Examiner, Consumer Services Bureau (518) 474-4556.

86. Summary Description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to prohibit the use of door-to-door sales for Medicare Supplemental policies. Agency Contact: Laura Dillon, Principal Examiner, Consumer Services Bureau (518) 486-9105.

87. Summary Description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) and/or adoption of a new part to 11 NYCRR to establish an appeals process for long term care claims. Agency Contact: Laura Dillon, Principal Examiner, Consumer Services Bureau (518) 486-9105.

88. Summary Description of proposal: Adoption of a new part to 11 NYCRR to establish minimum standards for form and content of property and casualty insurance advertisements. Agency Contact: Barry Bistreich, Principal Examiner, Consumer Services Bureau (212) 480-5693.

89. Summary Description of proposal: Adoption of a new part to 11 NYCRR to provide that cancellation notices subject to section 3425 of the Insurance Law should include the date and hour of cancellation, the date of the notice, and, for nonpayment of premium cancellations, a statement informing the consumer that cancellation will not take place if the consumer makes timely payment of the premium. Agency Contact: John Capuano, Associate Examiner, Consumer Services Bureau (518) 486-9107.

90. Summary of description of proposal: Adoption of a new part to 11 NYCRR to provide rules and guidelines to assure full disclosure of all relevant information within advertisements which describe or solicit the purchase of property and casualty insurance coverage that are published, issued or distributed through various advertising media. Agency Contact: Barry Bistreich, Supervising Insurance Examiner, Consumer Services Bureau (212) 480-4693.

91. Summary description of proposal: Amendment of 11 NYCRR to set forth standards for banks, trust companies and security broker/dealers qualified to act as custodians for insurance company assets. Agency Contact: Jim Everett, Associate Counsel, Capital Markets Bureau (518) 408-1593.

92. Summary description of proposal: Amendment of 11 NYCRR to recognize Letters of Credit issued pursuant to International Chamber of Commerce Uniform Customs and Practice for Documentary Credits (ICC Publication No. 600) for various accounting purposes. Agency Contact: Jim Everett, Associate Counsel, Capital Markets Bureau (518) 408-1593.

93. Summary description of proposal: Adoption of a new part to 11 NYCRR to clarify certain statutory provisions as they apply to captive insurance companies licensed in the State of New York pursuant to article 70 of the Insurance Law. Agency Contact: Jody Wald, Captive Coordinator, Captive Insurance Group (212) 480-2757).

94. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish requirements regarding the submission of disaster preparedness related data, questionnaires and plans from property/casualty, life and health insurers. Agency Contact: Merline Smith, Supervising Insurance Examiner, Disaster Preparedness and Response Bureau (518) 408-3330.

Department of Labor

Pursuant to subdivision 1 of Section 202-d of the State Administrative Procedure Act, as amended by Chapter 635 of the Laws of 1995, notice is hereby provided of the following rules that the Department of Labor is considering proposing, but for which a rulemaking proceeding has not been commenced.

1. Amend Title 12 NYCRR Part 800 to incorporate by reference into

New York Occupational Safety and Health standards those safety and health standards adopted by the United States Department of Labor Occupational Safety and Health Administration.

2. Add language to Title 12 NYCRR, Chapter II, Subchapter E, regarding the Child Performer Advisory Board to Prevent Eating Disorders, as established by Chapter 675 of the Laws of 2007; and to establish regulations regarding the hours and conditions of work necessary to safeguard the health, education, morals and general welfare of child performers, as required by Chapter 89 of the Laws of 2008.
3. Amend Title 12 NYCRR Part 45 to implement regulations required by Chapter 368 of the Laws of 2006 requiring the Commissioner, in consultation with the Amusement Safety Advisory Board, to establish rules and regulations providing standards for the design, manufacture, testing, inspection, quality assurance and terminology of amusement devices. The rules and regulations will be consistent with the national standards for amusement devices, as established by the American Society of Testing and Materials.
4. Add language to Title 12 NYCRR Part 60 pursuant to Section 33 of Chapter 6 of the Laws of 2007, directing the Commissioner of Labor to develop a safety and loss prevention program that allows employers to voluntarily implement a safety incentive program, a drug and alcohol prevention program, or a return to work program in order to be eligible for a credit in their workers' compensation premiums. The Commissioner will also establish rules for the certification of safety and loss management specialists who will monitor all such incentive programs.
5. Amend Title 12 NYCRR Section 480.1 to make the rule consistent with the provisions in current minimum wage orders with regard to calculating the reasonable value of meals provided to an employee in establishing an employee's rate of pay.
6. Amend Title 12 NYCRR Section 481.1 to extend the deadline by which applications for dissolution of joint accounts for unemployment insurance tax purposes may be filed.
7. Repeal Section 470.2 of 12 NYCRR, regarding the date on which wages are deemed paid, to eliminate the inconsistency between this section and amendments to Section 516 of the Labor Law enacted in 1999.
8. Add a new Section to 12 NYCRR to implement regulations required by Chapter 433 of the laws of 2007, requiring employers to provide safety ropes and system components to firefighters.
9. Add a new Section to 12 NYCRR to establish an Advisory Council to gather information and advice from interested parties in assisting the Commissioner in developing unemployment insurance policies and legislation.
10. Amend Title 12 NYCRR Section 472.2 to update and expand the list of records required to be maintained by employers for Unemployment Insurance reporting and audit purposes.
11. Amend Title 12 NYCRR Section 23-8.5, which sets forth special provisions for crane operators, to revise the procedures regarding the administration of the practical examination and the conduct of hearings regarding the suspension, revocation, refusal to renew, or denial of a crane operator's certificate of competence.
12. Amend Title 12 NYCRR Part 32 "Ski Tows and Other Passenger Tramways" to remain consistent with national consensus standards as recommended to the Commissioner by the Passenger Tramway Advisory Council as provided for in Labor Law Article 2, Section 12-c(4).
13. Amend Title 12 NYCRR Part 39 "Possession, Handling, Storage and Transportation of Explosives to provide for additional security measures for storage sites.
14. Amend Title 12 NYCRR Part 601 to promulgate permanent changes to the Apprentice Training process developed under the moratorium on approval of new Apprentice Training programs and originally instituted as Emergency Regulations 10/15/08.

Such changes shall further include regulatory changes that have been mandated by Federal DOL since the Emergency Regulations were filed.

15. Amend Title 12 NYCRR by the addition of a new section promulgating regulations implementing New York State Labor Law Article 25-A requiring 90-day notice on certain mass layoffs and plant closings – i.e. State WARN Act.
16. Amend Title 12 NYCRR Part 700 to implement regulations required by 20 CFR 603 regarding public access to Unemployment Insurance Records.
17. Amend Title 12 NYCRR Part 23-8.5 to modify the requirements regarding crane operator examinations and administrative hearings for crane operators.
18. Amend Title 12 NYCRR Part 701 to revise the procedures for adjudicatory proceedings held by the Commissioner of Labor in those situations where no specific rule or regulation is applicable to the subject matter of the hearing. This Part does not apply to orders, determinations or rulings within the jurisdiction of the Industrial Board of Appeals, the Unemployment Insurance Appeal Board or any other board within the Department of Labor.
19. Amend Title 12 NYCRR to address the procedures for granting, renewing and revoking the occupational licenses listed in Article 28-D of the General Business Law. This includes crane operators, blasters and laser operators.
20. Amend Title 12 NYCRR Section 470.4 to give the Commissioner discretion in waiving interest and penalties on benefit overpayments in accordance with section 18 of the State Finance Law.
21. Amend Title 12 NYCRR Section 472.4 to remove the requirement that an employer who plans to shut down his business on a temporary, seasonal or permanent basis, and who wishes to be relieved of the request reporting requirements specified in subdivision 2 of section 575 of the Unemployment Insurance Law, provide notice prior to the date on which he seeks to be so relieved and report for the week in which such shutdown occurs, and for the 52 preceding weeks, separately for each week.
22. Repeal Title 12 NYCRR Section 480.10 to remove specific monetary provisions related to tips to “pinboys.”
23. Amend Title 12 NYCRR Part 482 to clarify update the procedures and expand the criteria for reviewing applications for career and related training.
24. Amend Title 12 NYCRR Section 472.8 relating to claims for unemployment insurance, to correct terminology and to remove references to in-person reporting.
25. Amend Title 12 NYCRR Section 472.5 to reflect the proper terminology, processes, and contact points for obtaining employees social security account numbers or individual taxpayer identification numbers.
26. Amend Title 12 NYCRR Sections 137 and 138 regarding minimum wage/meal allowances to bring the regulations into compliance with Article 19 of the Minimum Wage Act.

To obtain information or submit written comments regarding this regulatory agenda, contact Maria L. Colavito, Esq., Counsel, New York State Department of Labor, Building 12, State Office Campus, Counsel’s Office, Room 508, Albany, New York 12240, Maria.Colavito@labor.state.ny.us, (518) 457-4380.

This regulatory agenda was prepared and submitted by Teresa Stoklosa, Legal Assistant II, New York State Department of Labor, Building 12, State Campus, Counsel’s Office, Room 509, Albany, New York 12240, (518) 457-4380.

Office of Medicaid Inspector General

This is a continuing Regulatory Agenda. Updated Regulatory Agendas may be found at the website of the Office of the Medicaid Inspector General at <http://www.omig.state.ny.us>.

The following rules are under consideration for submission as a

Notice of Proposed Rulemaking during the calendar year January 2009:

DESCRIPTION OF THE RULE SUBJECT MATTER

Title 18 NYCRR (Social Services)

500.1 Introduction – Clarifies change of responsibilities from Department of Social Services to Department of Health.

500.2 How Provided – Clarifies change of responsibilities from Department of Social Services to Department of Health.

500.3 Reimbursement for Expenditures – Provides for reimbursement when expenditures are made and reimbursement claimed consistent with rules and regulations of governing, licensing, or regulating authorities, in accordance with federal conditions of participation and state minimum standards and with departmental regulations.

500.5 Reimbursement and Payment for Appointments Not Kept – Prohibits claims submission for appointments for medical care that are not kept.

515.1 Scope and Definitions – Changes references from Department of Social Services to Department of Health. Clarifies definition of fraud. Adds definitions of prime contract, prime contractor, prime contractor employee, subcontractor, and subcontractor employee.

515.2 Unacceptable Practices Includes within the scope of unacceptable practices violations of federal and state laws having a nexus to a person’s involvement in the medical assistance program. Also includes the submission of false claims, false statements, and failure to meet recognized standards. Also adds failure to report certain events; failing to disclose information during enrollment or re-enrollment; extortion; illegal gratuities; blackmail; improper claim filing; violations of PHL § 238; violations of 42 U.S.C. § 1395nn; engaging in conduct that constitutes certain crimes; failure of an HMO to furnish medically necessary care, supplies and services; failure to establish and maintain an effective compliance program; being involved in a “never event”; providers owned or controlled by a sanctioned person; providers owning or controlling sanctioned providers; substantial failure to comply with corrective action plans required by the department; failure to repay certain health profession educational loans; violations of maximum claims or charges for unenrolled providers; criminal convictions relating to obstruction of an investigation; engaging in certain billing practices; failing to make refunds in certain circumstances; contacting Medicaid beneficiaries in certain circumstances; and certain practices by HMOs as unacceptable practices. Clarifies bribes, kickbacks, fraud, abuse, and unacceptable recordkeeping. Adds abetting and conspiring to effect an unacceptable practice to the scope of conspiracy.

515.4 Guidelines for Sanctions – Adds factors to be considered in determining imposition of sanctions and the lengths of exclusions.

515.5 Sanctions; Effect – Clarifies the start and end dates for exclusions.

515.6 Notification – Clarifies address to which notices are mailed.

515.7 Immediate Sanctions – Provides for exclusion of person indicted of a non-felony crime relating to performance of management and administrative services or furnishing or billing for medical care, services or supplies. Adds exclusion for indictment or conviction of crime relating to unlawful involvement with controlled substances. Adds exclusion for indictment or conviction of crimes with nexus between criminal act and expected duties, responsibilities, or conduct of person in medical assistance program. Adds exclusion for failing to maintain required credentialing. Adds exclusion for failing to promptly repay overpayments under certain circumstances. Adds considerations for length of exclusion. Also allows OMIG to sanction for failing to grant immediate access to OMIG or MFCU to requested documents.

515.8 Mandatory Exclusions – Provides that the length of exclusion imposed under this section shall be no more than three nor less than one year.

515.10 Reinstatement – Clarifies when a provider may be reinstated. Adds factors to be considered for reinstatement. Clarifies procedure to appeal denial of reinstatement. Creates mechanism for limited employment without reinstatement at expiration of exclusion period.

516.1 Policy, Scope, and Definitions – Clarifies the definition of

“standards of the MA program”. Clarifies basis for monetary penalties. Clarifies identities of persons subject to monetary penalties.

516.2 Amount of Penalty – Based upon legislation, increase in amount of penalty.

516.3 Determination of the Amount of the Penalty – Modify consideration for penalty from actual effect to MA recipients to potential effect to MA recipients.

516.5 Effect and Enforcement of the Penalty – Based upon legislation, allows department to impose penalty and recover overpayments in certain circumstances. Allows department to recover overpayments and penalty from certain individuals causing overpayments.

518.1 Scope – Clarifies applicability and scope of recovery and withholding of payments or overpayments.

518.2 Definitions – Clarifies applicability of Part 516 definitions to Part 518.

518.3 Liability for Overpayments – Amends the identity of persons responsible for repaying overpayments to include individuals with authority to correct or stop filing of certain claims but who knowingly or negligently fail to do so. Clarifies that repayments are required for deficient care and restricts repayment to person providing deficient care. Extends responsibility for repayment for deficient care to costs associated with provision of care, services, or supplies provided as a result of the deficiency. Clarifies responsibility for overpayments involving rate-based providers. Clarifies joint and several liability for overpayments when there is a change in ownership or control of a provider. Adds person failing to timely report serial numbers of lost or stolen NYS prescription forms as responsibility for overpayments resulting from the use of those forms.

518.5 Recovery of Overpayments – Clarifies the scope of applicability of the procedure to recover overpayments.

518.7 Withholding of Payments – Clarifies the propriety of withholding of payment of past claims. Extends the period of withholding to six months or further if issuance of final report or notice is delayed as a result of certain provider actions.

519.1 Scope – Clarifies change of responsibilities from Department of Social Services to Department of Health.

519.4 Right to a Hearing – Clarifies scope of hearing rights.

519.5 Notice – Clarifies mailing address for notices.

519.7 Request for a Hearing – Corrects address for hearing requests. Provides for interpreters at hearings regardless of ability of person to afford one.

519.3 Examination of File Before Hearing – Provides for appellant or appellant’s representative to examine documents from audit file relevant to issues in dispute.

521.1 General Requirements and Scope – Adds new Part 521 regarding Provider Compliance Plans. Identifies types of providers required to adopt and implement compliance plans.

521.2 Definitions – Adds new part 521.2 incorporating definitions from Parts 504 and 515. Defines terms relevant to providers required to adopt and implement compliance plans.

521.3 Compliance Program Provider Duties – Adds new part 521.3 delineating provider duties regarding scope of compliance plans and certifications.

521.4 Determination of Adequacy of Compliance Program – Adds new part 521.4 providing for determinations of adequacy of compliance programs. Subjects providers to sanctions or penalties for failure of providers to have satisfactory compliance programs.

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Department of Motor Vehicles

Pursuant to Section 202-d of the State Administrative Procedure Act, the Department of Motor Vehicles presents its regulatory agenda

for 2009. All references are to Title 15 of the New York Code of Rules and Regulations. The Department reserves the right to add, delete or modify any item presented in this agenda.

Amend Part 3 to update the motorcycle training courses that may be completed in lieu of the DMV motorcycle road test, which is needed to obtain an M or MJ license. This Part would also be amended to establish regulations governing the Department’s Motorcycle Safety Program. Finally, Part 3 would be amended to make the definition of a metal coil consistent with the definition set forth in federal regulations.

Amend Part 6 in relation to the qualifications and disqualifications of bus and school bus drivers and requirements related to motor carriers subject to Vehicle and Traffic Law Article 19-A.

Amend Part 5 in relation to the Department’s criteria to approve motorists in the “low-vision” program and limit the acceptability of eye examinations performed by health professionals conducted more than two months prior to an application or renewal of a license.

Amend Part 16 to revise the criteria for the issuance of special license plates.

Amend Part 41 to conform New York State regulations regarding brake efficiency to federal standards, as set forth in 49 CFR 393.52 (commercial vehicle brake performance standards).

Amend Part 43 to conform New York State regulations regarding motor vehicle lighting to federal regulations, as set forth in 49 CFR 571.108.

Amend Part 51 to conform New York State regulations regarding tire specifications to federal standards, as set forth in 49 CFR Parts 469 and 571.

Amend Part 56 to allow more flexibility in relation to the mounting and use of strobe lights on school buses.

Amend Part 76 to clarify the requirements governing the regulation of driving schools and driving school instructors.

Amend Part 78, which governs the regulation of dealers, in relation to the following provisions: to require additional information on the Bill of Sale (MV-50), including complete vehicle identification information, the exact amount of the sale and information about the vehicle that was a “trade-in;” define the term “place of business;” allow for the use of electronic MV-50s and other forms, if appropriate; clarify the requirements for courtesy deliveries; clarify requirements related to emissions control devices; make the regulation consistent with statutory provisions involving motorcycle handlebars; clarify salvage vehicle disclosure requirements and revise procedures used to obtain the Salvage Certificate (MV-907A) form; provide for consistency with Part 79 regarding inspection requirements; strengthen requirements related to temporary dealer registrations; clarify the permissible uses of a transporter plates; clarify dealer recordkeeping requirements; clarify the specifications related to signs posted by dealers.

Amend Part 79, which governs the regulation of inspection stations and inspectors, in relation to the following: define certain terms related to vehicle inspections; provide for consistency with Part 78; consider increasing the fees that a station may charge a customer; clarify provisions related to heavy duty vehicle inspections; clarify and simplify procedures related to obtaining an appointment at an inspection station; establish additional requirements for the emissions inspection equipment; clarify procedures for returning inspection certificates to DMV and for properly indicating a voided certificate; clarify requirements related to official inspection station signs; clarify requirements related to brake equalization tests, tread depth, rear suspensions and steering components, speedometers and stop lamps; revise procedures in relation to the On Board Diagnostic Test II test; provide guidance about emission waivers.

Amend Part 82, which governs the regulation of repair shops, in relation to the following: repair shop registration fees; clarify the rules relating to the replacement of air bags; clarify the rules for charging a customer for storage of a vehicle in a repair shop.

Amend Part 103 to update the ATV training course protocols and curriculum.

Amend Part 123 to increase the fines paid by motorists in the Traffic Violations Bureau when pleading guilty by mail or in person.

Amend Part 134 to establish the criteria for the issuance of, and

restrictions related to, the special conditional license that may be issued to persons with multiple alcohol-related convictions whose driver's license are revoked for an extended period of time, pursuant to Vehicle and Traffic Law section 1193(2)(b)(12). Part 134 would also be amended to provide that a conditional license shall not be issued to a person whose record contains 25 or more negative units.

Amend Part 136 to include out-of-state alcohol-related incidents as part of the evaluation to determine whether an applicant should be re-licensed after revocation. Part 136 would also be amended to deny an application for re-licensing if the applicant is deemed to be a problem driver.

Amend Part 138 to make the requirements related to the classroom Point Insurance Reduction Program consistent, where appropriate, with the requirements for the on-line Point Insurance Reduction Program.

Office of Real Property Services

Pursuant to section 202-d of the State Administrative Procedure Act, the New York State Office of Real Property Services presents its regulatory agenda for calendar year 2009. The New York State Office of Real Property Services is developing proposals to amend the following rules:

Revisions to the minimum qualification standards for appointed assessors contained in section 188-2.2 of Title 9;

Revisions to the New York City assessor training rules contained in Subpart 188-8 of Title 9;

Revisions to the provisions concerning the entry of owners' names on assessment rolls in Part 190 of Title 9;

Revisions of the annual license fees for users of the Real Property System (RPS) contained in section 190-3.2 of Title 9;

Repeal of obsolete provisions in Subpart 191-3 of Title 9 relating to revised Residential Assessment Ratios;

Revisions to the agricultural assessment rules in section 194-1 of Title 9 to conform those definitions to recent statutory changes to Article 25-AA of the Agriculture and Markets Law;

Revisions to Part 197 of Title 9 to propose changes to annual charges for special franchise owners; and

Revisions to Part 200 of Title 9 to propose changes to annual charges for railroad owners.

To obtain information or submit written comments regarding this regulatory agenda, contact James J. O'Keeffe, Counsel, New York State Office of Real Property Services, 16 Sheridan Avenue, Albany, 12210-2714, (518) 474-8821. An updated regulatory agenda for the New York State Office of Real Property Services is available at <http://www.orps.state.ny.us/>.

Office of Temporary and Disability Assistance

Pursuant to section 202-d of the State Administrative Procedure Act (SAPA), the Office of Temporary and Disability Assistance (OTDA) is required to publish a regulatory agenda for those regulations that it is considering for publication in the *State Register*. Set forth below is an agenda for the first half of 2009. Section 202-d of SAPA does not preclude OTDA from proposing for adoption a regulation that is not described in the agenda, nor does it require OTDA to propose for adoption a regulation that is described in the agenda.

Center for Specialized Services

Amend regulations to implement an open request for proposals (RFP) process.*

Child Well-Being

Revise regulations for the distribution and assignment of child support collections to reflect the requirements of Chapter 57 of the Laws of 2008 and federal law and to conform with the Personal Responsibility Work Opportunity Reconciliation Act's elimination of excess current support.*

Amend references to child support standards chart to reflect annual change in the federal poverty income guidelines amount and the self-support reserve.

Establish guidelines for the local child support enforcement units to follow in determining whether and under what circumstances a passport, which has been revoked, denied or suspended by the US Department of State due to non-payment of child support, may be released.*

Revise desk review procedures addressing the accounting and disbursement of child support for certain current and former recipients of Public Assistance.*

Amend location definition and procedures concerning the financial investigation of a putative father to facilitate the establishment of a child support order.*

Revise regulation pertaining to federal incentive payments.*

Address annual service fee for never assistance cases and revise legal services section.*

Establish regulations for establishing and enforcing medical support obligations.*

Employment and Economic Supports

Clarify provisions concerning the submission of a social security number as a condition of eligibility for Public Assistance.*

Extend the deeming of an alien sponsor's income and resources to federally funded Safety Net Assistance.*

Provide consistency between the Family Assistance program and the Safety Net Assistance program concerning the treatment of loans, income and resources.*

Simplify the Public Assistance budgeting methodology for certain three generation households.*

Amend regulations to add timeliness provisions for reporting changes in income for Public Assistance.*

Amend Home Energy Assistance Program (HEAP) regulations to reflect current practices and the provisions of the federally accepted HEAP State Plan.*

Amend regulations to permit social services districts to suspend the enforcement of utility repayment agreements during periods of cold weather in order to provide districts with the flexibility to assist households.*

Revise assessment regulations to clarify that the requirements for exempt individuals in households without dependent children are consistent with those for exempt individuals in households with dependent children.*

Amend regulations governing assessments and work assignments for individuals who would benefit from enrollment in a work activity that includes instruction in adult basic education and preparation for attainment of a high school degree.*

Amend employment program provisions for notices of conciliation and notices of discontinuance or reduction to implement plain language requirements.*

Establish additional guidelines regarding work activity definitions and work documentation and verification procedures to make them consistent with standards required by federal regulations implementing the Deficit Reduction Act of 2005.*

Implement changes to participation rate regulations to conform to amendments to the Social Services Law which require social services districts to expand the countable work activities available to Safety Net Assistance participants without children to include community service programs, the provision of child care services to an individual participating in community service and time limited vocational education training, job search and job readiness assistance.*

Revise regulations for employment to comply with final federal regulations.*

Revise Food Stamp employment and training regulations to conform with federal regulations.*

Clarify how participation rates are calculated based on federal reporting requirements and clarify the calculation of two distinct Safety Net Assistance work participation rates.*

Correct a technical error in regulation related to good cause for failing to comply with work requirements.

Identify cases that may be excluded from participation rates pursu-

ant to federal Temporary Assistance for Needy Families (TANF) regulations.*

Repeal provisions which permit foster care parents and individuals who are caring for a disabled household member to be deemed as community service participants as required by federal regulations implementing the Deficit Reduction Act of 2005.

Authorize shift of certain cases to non-TANF Family Assistance or to non-MOE (non-Maintenance of Effort) Safety Net Assistance to facilitate implementation of changes made by the Deficit Reduction Act of 2005.*

Update the determination of Food Stamp eligibility regulations to include Supplemental Security Income (SSI) live-alone New York State Nutrition Improvement Program provisions and education grant exclusions.*

Delete Food Stamp monthly reporting/retrospective budgeting references and add provisions for change reporting.*

Delete provisions relating to Food Assistance Program.

Conform regulations concerning in-office interviews for Food Stamp applicants to federal requirements.*

Clarify the policy regarding claims establishment and the collection process for Food Stamp overpayments.*

Generally update Food Stamp regulations to conform to the Food, Conservation, and Energy Act of 2008 and to recent changes in the federal regulations.*

Amend regulations to accommodate the Statewide implementation of the Working Families Food Stamp Initiative.*

Amend regulations to reflect expanded categorical eligibility for the Food Stamp program.*

Amend Food Stamp reporting requirements for elderly and disabled persons.*

Update regulations for transitional food stamp benefits.*

Update regulation regarding the budgeting of households with both Public Assistance recipients and SSI recipients.

Amend regulations to eliminate the requirement that an application supplement be completed by adults who want to receive Safety Net Assistance after reaching the sixty-month time limit on TANF-funded assistance.*

Remove quarterly reporting as a district optional requirement for Public Assistance programs.*

Amend regulations to provide that a child who was a member of an overpaid assistance unit cannot be held liable for an overpayment to that assistance unit when he or she is added to someone else's assistance unit, later establishes his or her own assistance unit, or becomes an adult and is no longer receiving assistance.*

Amend regulations which govern Emergency Shelter Allowances to reflect Chapter 53 of the Laws of 2008.*

Amend regulations to define the social services districts' responsibility to provide temporary housing to sex offenders and to consider certain factors when making a determination about the appropriateness of a temporary housing placement.*

Update provisions regarding persons who are permanently residing in the United States under the color of law (PRUCOL).*

Delete the regulatory provisions relating to the Learnfare program.

Audit and Quality Improvement

Amend regulations governing intentional program violations to make the State's requirements for a ten year disqualification from the Food Stamp program consistent with the federal requirements set forth in the Code of Federal Regulations.*

Reimbursement and Claims

Amend maintenance assistance sections to reflect new program categories under Welfare Reform.*

Add a section on fiscal penalties/sanctions that may be applied to social services districts resulting from Welfare Reform requirements.*

Replace administrative cost cap section with new material regarding the Flexible Fund for Family Services (FFFS) and the Local Administration Fund (LAF).*

Amend employment section to reflect new program categories under Welfare Reform.*

Amend regulations concerning reimbursement claiming to reflect current Federal and State requirements and current State and local district practices.*

Technical Amendments

Update regulations concerning public access to records under the Freedom of Information Law to reflect statutory amendments.*

Update references to the employment program from 12 NYCRR Part 1300 to 18 NYCRR Part 385.

Revise Food Stamp regulations concerning the special definition of the "head of the household."**

Revise fair hearings regulation to clarify the distinction between the standard of proof required at the hearing and the standard required for judicial review.*

Amend fair hearing regulations to add provisions concerning a telephone hearings process.*

It is not anticipated that a small business guide will need to be developed for the proposals set forth in this agenda.

* The asterisks identify rules for which a regulatory flexibility analysis or a rural area flexibility analysis may be required.

Any questions or comments concerning the items listed in this agenda can be referred to Jeanine Stander Behuniak, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street 16C, Albany, New York 12243. Telephone: (518) 474-9779. E-mail: Jeanine.Behuniak@OTDA.state.ny.us. The regulatory agenda may be accessed on OTDA's website at www.otda.state.ny.us.

Workers' Compensation Board

Pursuant to section 202-d of the State Administrative Procedures Act, the Workers' Compensation Board presents its regulatory agenda for January 2009. All references are to Title 12 of the New York Code of Rules and Regulations. The Board reserves the right to add, delete or modify any item presented in this agenda.

All of the rules described below may require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis.

The Workers' Compensation Board is considering proposing the following rules:

1. Addition of Parts 440 and 442 to provide fee schedules to govern the cost of prescription medicines and durable medical equipment in order to control the cost of workers' compensation insurance. Additionally, such proposal would provide process and guidance for claimants, employers, insurance carriers, third party administrators and self-insured employers regarding the operation of pharmacy networks and the payment of prescription bills and durable medical equipment bills according to a uniform standard so that delays in reimbursement or payment to claimants or pharmacies are reduced or eliminated.

2. Addition of section 325-2.11 regarding the introduction of Diagnostic Networks, which shall include definitions of specified terms such as "reasonable distance from the claimant's residence or place of employment," descriptions of the notices that must be provided to employees and treating providers, and establish necessary processes. This rule will also amend any existing rules that would contradict this regulation.

3. Amend Subpart 325-1 to impose a penalty not to exceed \$10,000 and revoke the Entity's registration upon finding that an Independent Medical Examination (IME) Entity has materially altered or caused to be altered an IME report.

4. Amend Part 326 to implement procedures to temporarily suspend or revoke the authorization of a physician who is guilty of professional or other misconduct or incompetence or practice outside his/her scope with regard to rendering medical services.

5. Add provisions that establish an independent review & appeal by an outside agent or entity of the Board's choosing of any administrative law judge's determination to discontinue or suspend medical ser-

vices for a claimant who has surpassed his/her number of maximum benefit weeks before a final determination of the Board.

6. Add a new Part 308 to establish the method of calculating the cost of a workers' compensation policy for purposes of Workers' Compensation Law § 52(5) and § 131.

7. Add a new Part 309 to identify the business records that employers must keep and maintain in accordance with Workers' Compensation Law § 131 and § 141-a and establish the process for an application for redetermination of the issuance of a stop-work order.

8. Add a new Part 444 to establish a dental fee schedule, period of time in which dental bills must be paid, and the process for objecting to a dental bill.

9. Amend section 300.23 and add new section 300.35 regarding the suspension and revocation of benefits. Section 300.23 is amended to address the suspension of benefits when a claimant is incarcerated upon conviction of a felony and when the maximum number of benefit weeks have been reached after a claimant is classified as permanently partially disabled. Section 300.35 is added to establish the process by which benefits may resume after a claimant is released after being incarcerated upon conviction of a felony.

10. Add provisions that establish the use of medical treatment guidelines for the low back, cervical spine, shoulder and knee. The treatment guidelines are those recommended in the report of the Superintendent of Insurance dated December 3, 2007, and how they are to be used will be based upon the implementation standards set forth in the report from the Superintendent of Insurance from June 2007.

11. Add a new Part 304 to set forth the provisions governing the direct deposit of workers' compensation benefit payments.

12. Add a new Part 325-9, pursuant to Workers' Compensation Law sections 13 (e) and 20, to establish guidelines and parameters for the use of impartial medical specialists when an established claim requires an expert opinion or examination.

13. Amend Section 300.2 regarding independent medical examinations regarding the time period within which reports of such examinations must be filed with the Board and served on all others, procedures for review of records without an examination of a claimant, process to revoke the authorization of an independent medical examiner whose medical license has been restricted or Board Certification revoked, and process to rescind the registration of independent medical examination entities who engage in misconduct.

14. Amend Subparts 302-1 and 302-2 to revise the rules governing licensed representatives. The amendments will separate the provisions that apply to third-party administrators from those of licensed claimant representatives and address applications, duties, standards of conduct and licensure.

15. Amend Subpart 302-3 to establish rules for the licensing and conduct of group administrators of group self-insured trusts pursuant to Workers' Compensation Law § 50(3-a)(5).

16. Repeal and readopt Part 317 regarding group self-insured trusts to establish application procedures, qualifications, and responsibilities for any group of employers who wish to become, or have been approved to operate as, a group self-insurer.

17. Amend Section 310.2 regarding the process for imposing the penalty pursuant to Workers' Compensation Law § 110(4) on employers who fail or refuse to file the prescribed form for reporting a work related accident or exposure resulting injury or illness to the Board.

18. Amend Section 325-1.24 regarding the payment of medical bills to require the use of forms prescribed by the Chair of the Board to bill for medical treatment and object to such bills and to notify treating providers that a claim is controverted.

19. Amend Subparts 325-5 and 325-6 regarding the Health Insurer Matching Program to clarify the statute of limitations, set forth the timely filing of a reimbursement request, amend the defenses a workers' compensation insurer may raise in response to a claim and eliminate partial matches.

20. The Board will continue to review its rules in an effort to provide for clearer and more accurate references to Board policies and procedures, while also eliminating typographical errors and obsolete forms/practices, etc.

To obtain information or submit written comments regarding any of rules described in this regulatory agenda, contact Cheryl M. Wood, Special Counsel to the Chair, Workers' Compensation Board, 20 Park Street, Rm. 400, Albany, NY 12207, (518) 402-0869, e-mail: regulations@wcb.state.ny.us

