

# REGULATORY AGENDA

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## Education Department

Pursuant to section 202-d of the State Administrative Procedure Act, the State Education Department presents its regulatory agenda for calendar year 2012. 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 2012 Regulatory Agenda.

### OFFICE OF P-12 EDUCATION

Amendment of section 100.1(a) of the Commissioner's Regulations relating to the definition of a unit of study. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.1(b) of the Commissioner's Regulations relating to the definition of a unit of credit. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2 of the Commissioner's Regulations relating to general school requirements. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(c) of the Commissioner's Regulations relating to Instruction in civility, citizenship and character education, to implement the Dignity for All Students Act. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of 100.2(l) of the Commissioner's Regulations relating to codes of conduct, to implement the Dignity for All Students Act. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Addition of section 100.2(jj) of the Commissioner's Regulations relating to Designated Dignity Act Coordinator and professional development relating to the Dignity for All Students Act. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 125 of the Commissioner's Regulations relating to the requirements for the voluntary registration of nonpublic nursery schools and kindergartens. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 100.2 of the Commissioner's Regulations to revise the accountability determinations and the school report card to reflect any changes that may be required in the event that New York submits and is approved to receive an Elementary and Secondary Education Act waiver. 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 revise the procedure for registration of public schools. 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 revise the annual high school and graduation rate cohort in order to conform with recent amendments to New York State's accountability plan under the No Child Left Behind Act. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(x) of the Commissioner's Regulations, 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 100.2(gg) of the Commissioner's Regulations to revise and update provisions on Violent and Disruptive Incident Reporting (VADIR) and to implement the reporting requirements under the Dignity for All Students Act. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(b) of the Commissioner's Regulations relating to program requirements in grades five and six. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(c) of the Commissioner's Regulations relating to unit of study requirements in grades seven and eight. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(d) of the Commissioner's Regulations relating to grade eight acceleration for diploma credit. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(h) of the Commissioner's Regulations relating to models for Middle Level Education. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5(a), (b) and (c) of the Commissioner's Regulations relating to graduation and diploma requirements. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5(a)(5)(i) of the Commissioner's Regulations relating to the State Assessment System. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5(d) of the Commissioner's Regulations relating to Career and Technical Education programs. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations relating to the Concussion Management Awareness Act (L. 2011, Ch. 496). A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations relating to the instructional reporting and improvement system. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations relating to the Early Warning System and the use of standardized student-level attendance

rules. 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 and implement Chapter 101 of the Laws of 2010, relating to 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 relating 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 relating to procedures regarding 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 of section 119.1(e) of the Commissioner's Regulations relating to financing of charter schools. 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, as may be appropriate and 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 of section 144.11 of the Commissioner's Regulations to eliminate requirement that school districts have an Early Grade Class Size Reduction Plan. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 154 of Commissioner's Regulations regarding the identification of and provision of services to Limited English Proficient students. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.2(b) of the Commissioner's Regulations relating to written policies for the declassification of students with disabilities, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.2(g) of the Commissioner's Regulations relating to special education space requirements plans, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.3(a) and (c) of the Commissioner's Regulations relating to the membership of the Committee on Special Education (CSE), Subcommittee on Special Education, and Committee on Preschool Special Education, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 200.4(i) and 200.5(a) of the Commissioner's Regulations relating to written notice upon graduation or aging out and the development of adult service recommendations for students with disabilities placed in residential schools, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 200.4(b) and 200.16 regarding the timeline to complete an initial evaluation of a student suspected of having a disability. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.4(b) to repeal the requirement that a school psychologist prepare a written report of his/her determination of the need to administer an individual psychological evaluation for a reevaluation of a student with a disability. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.5(b) of the Commissioner's Regulations relating to parental consent for initial provision of special education services in a 12-month special service and/or program, as may be nec-

essary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.5(b)(1)(iii) of the Commissioner's Regulations relating to parental consent to access a parent's public benefits or insurance, as may be necessary to conform to federal regulations. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.5(c) of the Commissioner's Regulations relating to written notice to parents regarding CSE and Subcommittee meetings, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to sections 200.5(h) and (j) relating to mediation and impartial due process hearings for students with disabilities parentally placed in private schools, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.5(j) of the Commissioner's Regulations relating to impartial hearing procedures including impartial hearing officer qualifications, consolidation of multiple due process hearing requests for the same student, prehearing conferences, extensions and timelines to render a decision and withdrawals of impartial hearing requests.

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's responsibilities for a student with disability placed 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 200.7 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 to section 200.7(d) of the Commissioner's Regulations relating to the approval of the Commissioner of Education on an appointment of a student with a disability to a State-supported school and evaluations conducted by State-supported schools, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.16 of the Commissioner's Regulations relating to parent selection of a preschool evaluator, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.20 of the Commissioner's Regulations relating to public school districts as preschool evaluators, as may be necessary to conform to changes to State statute. 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 any of the above proposed amendments by contacting:

Ken Slentz

Deputy Commissioner P-12

New York State Education Department

State Education Building, Room 2M West

89 Washington Avenue

Albany, New York 12234

(518) 474-3862

nysedp12@mail.nysed.gov

OFFICE OF HIGHER EDUCATION

Amendment to Part 30 of the Regents Rules relating to alignment

of tenure areas to certain certification areas. A rural area flexibility analysis may be required.

Amendment to Part 80 of the Commissioner's Regulations relating to changes to the requirements for certification examinations for teachers. A rural area flexibility analysis may be required.

Amendment of section 80-3.10 of the Commissioner's Regulations to clarify that the School District Leader certificate is the only certificate required for a Superintendent also performing the roles of principal or business official in small school districts. A rural area flexibility analysis may be required.

Amendment of Parts 80 and 83 of the Commissioner's Regulations regarding moral character hearings and regarding the applicability to coaches of moral character and background check requirements. A rural area flexibility analysis may be required.

Amendment to Part 87 of the Commissioner's Regulations relating to elimination of oral arguments in Part 87 appeals. A rural area flexibility analysis may be required.

Amendment of section 87.5 of the Commissioner's Regulations regarding due process procedures for criminal history record check for prospective school employees and applicants for certification. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendments to section 100.2 of the Commissioner's Regulations and Subpart 30-2 of the Regents Rules to clarify and make technical amendments to regulations relating to teacher and principal evaluation system and possible amendments to these sections in light of pending litigation. 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 implement the teacher and principal career ladders. A rural area flexibility analysis may be required.

Amendment of Part 52 of the Commissioner's Regulations, relating to registration of curricula. A rural area flexibility analysis may be required.

Agency Representative

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

John D'Agati

Deputy Commissioner for the Office of Higher Education

New York State Education Department

Office of Higher Education

Room 977, Education Building Annex

89 Washington Avenue

Albany, New York 12234

(518) 486-3633

sroberso@nysed.mail.gov

OFFICE OF THE PROFESSIONS

Amendment of Part 29 of the Regents Rules relating to definitions of unprofessional conduct in the public accountancy and certified public accountancy professions. A regulatory flexibility analysis for small businesses and 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. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Parts 52 and 79 of the Commissioner's Regulations relating to authorization for the practice of polysomnographic technology. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 52 and Subpart 79-8 of the Commissioner's Regulations relating to educational requirements for licensure in medical physics. A rural area flexibility analysis may be required.

Amendment of Part 59 of the Commissioner's Regulations and Part 29 of the Regents Rules to implement chapter 581 of the Laws of 2011 relating to waivers from corporate practice for certain providers of

preschool special education and early intervention services. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 60 of the Commissioner's Regulations relating to the standards and procedures to be applied in assessing applications by international medical schools for approval to place their students in long-term clinical clerkships in New York State. A rural area flexibility analysis may be required.

Amendment of Part 61 of the Commissioner's Regulations relating to dental anesthesia certification. 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 occupational therapy assistants. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Subpart 79-1 of the Commissioner's Regulations relating to the professional study of and the licensing examination in landscape architecture. A rural area flexibility analysis may be required.

Agency Representative:

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

Douglas E. Lentivech

Deputy Commissioner for the Professions

New York State Education Department

Office of the Professions

89 Washington Avenue

West Wing, Second Floor - Education Building

Albany, NY 12234

(518) 486-1765

opopr@mail.nysed.gov

OFFICE OF CULTURAL EDUCATION

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.

Agency Representative

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

Bernard A. Margolis

State Librarian and Assistant Commissioner for Libraries

New York State Education Department

New York State Library

Room 10C34

Albany, NY 12230

(518) 474-5930

bmargolis@mail.nysed.gov

Amendment of sections 189.1 and 189.3 of the Commissioner's regulations relating to the Documentary Heritage program, to revise procedures for the award of grants and for the provision of field services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 188 of the Commissioner's Regulations related to state government archives and records management to update the agency fee list to match the current organizational structure of executive branch agencies. 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 any of the above proposed amendments by contacting:

Christine Ward

Assistant Commissioner for the State Archives

9A49 Cultural Education Center

Albany, New York 12230  
(518) 473-7091

OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)

BUREAU OF PROPRIETARY SCHOOL SUPERVISION

Amendment of Part 126 of the Commissioner's Regulations to change the title of schools supervised from "Private Trade and Correspondence Schools" to "Licensed Private Career Schools and Certified English as a Second Language Schools." It removes the distinction between licensed private schools, registered business schools, and computer training facilities. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to remove the subjects taught in a registered business school or computer training facility as they no longer apply. ESL schools and requirements for licensing are added. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to specifically include that schools teaching personal training as schools requiring licensing. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to clarify the parameters for offering of workshops or trade shows without licensure. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to reflect the new school application fee of \$5,000 and the increased fees for renewal application fees. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to add the new category of candidacy schools and the requirements for being a candidacy school. This will offer institutions the ability to continue operation while seeking licensure. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to raise the requirement to submit audited financial statements to schools with \$500,000 gross tuition income or above. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations adds an additional condition under which the Commissioner might deny, suspend, revoke, or decline to renew a license. This permits the Commissioner to review financial viability of the school in order to reduce the threat to student tuition funds, school closure, and the Tuition Reimbursement Account (TRA). A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations permits the Commissioner to review a school report on its financial health and to identify methods of restoring viability while the school has been placed on probation. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to eliminate the transfer of ownership for schools. Rather, a new school application will be required for any ownership transfer of 25 percent or more to prevent 'flipping'. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to redefine the calculation of tuition assessment based on length of licensure to clarify the current guidelines. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to prescribe loan disbursement based on cost of program to protect both the student and the TRA. Excluded are credit card payments or personal payment by another party. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to add additional entrance requirements for shorter courses to inform higher-

end certification courses where students already have specific prerequisites. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to require that all catalogs include a weekly tuition liability chart to show students what liability they have if they drop out. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to institute a fee for curriculum review to reflect the resources dedicated to this function. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to lift the restrictions on teacher licensure so that a licensed teacher may teach at any school. This will reduce the number of unlicensed teachers and improve their employability. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to define under what circumstances a student at a candidate school may file a complaint. Students at candidate schools must receive disclosure that the protections afforded students at licensed schools do not apply to them. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to increase fines for civil penalties and administrative sanctions. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to permit the director to apply for an agent license at no additional cost as part of the licensing process. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to increase the cost of an agent certification, while adding another year to the length of the certification. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to permit the Department to effect teach out agreements in the event that the closing school has not done so. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to expand the items that are reimbursable through the TRA at the time of school closure to include reimbursement for fees and book charges. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to clarify what action is taken if the TRA falls below a certain amount and rises above a certain amount. It defines the suspension and the resumption of tuition assessment, and to what schools this pertains. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to provide for the Commissioner to use up to \$200,000 for the purpose of securing and scanning of closed school records to provide better student access to the records. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to require the Office of the State Comptroller (OSC) to perform its audit of the TRA on a bi-annual basis, rather than yearly basis. An audited statement will be required. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 126 of the Commissioner's Regulations to install term limits for the Advisory Council members, with the provision that they may be re-elected. 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 amendment by contacting:

Carole W. Yates, Director  
 ACCES—Proprietary School Supervision  
 99 Washington Avenue  
 One Commerce Plaza, Room 1613  
 Albany, NY 12234  
 Vocational Rehabilitation

Amendment of Parts 246, 247 and 248 of the Commissioner's Regulations relating to the State vocational rehabilitation and independent living programs, as necessary, to eliminate references to the former Office of Vocational and Educational Services for Individuals with Disabilities. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Amendment of Parts 246 and 247 of the Commissioner's Regulations relating to the State 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 flexibility analysis may be required. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Agency representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

Frank Coco, CRC  
 Manager, VR Policy and Partnerships  
 Office of Adult Career and Continuing Education Services  
 Room 1603, One Commerce Plaza  
 Albany, New York 12234  
 (518) 474-3946  
 fcoco@mail.nysed.gov  
 Adult Education Programs and Policy

Amendment of section 100.8 of the Commissioner's Regulations to provide for the opportunity for adult students to earn a local High School Equivalency Diploma based upon experimental programs approved by the commissioner until June 30, 2013, after which date such boards may no longer award a local high school equivalency diploma. This will create an additional option and pathway for adult students while phasing out the local diploma. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Amendment of section 100.7 of the Commissioner's Regulations to allow veterans of certain armed conflicts to be awarded a high school diploma based on the knowledge and experience gained while in service, consistent with Education Law section 305(29). A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Agency Representative:

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

Mark Leinung,  
 Director – Adult Education Programs and Policy  
 Adult Career and Continuing Education Services  
 New York State Education Department  
 Room 1622, One Commerce Plaza  
 Albany, NY 12234  
 (518) 474-8892  
 mleinung@mail.nysed.gov  
 OFFICE OF STATE REVIEW

Amendment of 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 procedures regarding state review

proceedings; 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 of 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 of section 279.3 of the Commissioner's Regulations, relating to service of an answer. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.4 of the Commissioner's Regulations, relating to the initiation and scope 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 of section 279.5 of the Commissioner's Regulations, relating to the content and 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 of 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 of 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 of 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 of section 279.9 of the Commissioner's Regulations, relating to content and submission 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 of 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 of 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 of section 279.12 of the Commissioner's Regulations, clarifying provisions relating to the finality of state review officer decisions. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of 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 any of the above proposed amendments by contacting:

Justyn P. Bates  
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 US EPA. This rulemaking will not require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact (NESHAPS): Steve Yarrington, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3254. Telephone: 518-402-8403. E-mail: [airregs@gw.dec.state.ny.us](mailto: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 or revised National Ambient Air Quality Standards (NAAQS). Part 200 will also be amended to remove references to former nonattainment areas that are now meeting the NAAQS. This rulemaking will not require a Regulatory Flexibility for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Robert Bielawa, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3251. Telephone: 518-402-8396. E-mail: [airregs@gw.dec.state.ny.us](mailto: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: Mark Lanzafame, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3254. Telephone: 518-402-8403. E-mail: [airregs@gw.dec.state.ny.us](mailto: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 revised to include additional and more restrictive volatile organic compound (VOC) limits. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Ona Papageorgiou, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3251. Telephone: 518-402-8396. E-mail: [airregs@gw.dec.state.ny.us](mailto: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, NY 12233-3259. Telephone: 518-402-8402. E-mail: [airregs@gw.dec.state.ny.us](mailto:airregs@gw.dec.state.ny.us) Please include the Part number when emailing.

6 NYCRR Part 217, Motor Vehicle Emissions. The regulation will be amended to include clarifications to the idling prohibition for heavy duty vehicles. 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, NY 12233-3255. Telephone: 518-402-8292. E-mail: [airregs@gw.dec.state.ny.us](mailto: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 low emission vehicle standards; adopt new aftermarket and used catalytic converter requirements; adopt new vehicle emissions warranty and recall 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, P.E., NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3255, Telephone: 518-402-8292. E-mail: [airregs@gw.dec.state.ny.us](mailto:airregs@gw.dec.state.ny.us) Please include the Part number when emailing.

6 NYCRR Part 219, Incinerators. Subpart 219-9, Emission Guidelines and Compliance Schedules for Existing Sewage Sludge Incineration Units, is being proposed to comply with guidelines recently issued by EPA. 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, NY 12233-3254. Telephone: (518) 402-8403. E-mail: [airregs@gw.dec.state.ny.us](mailto: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, NY 12233-3251. Telephone: 518-402-8396. E-mail: [airregs@gw.dec.state.ny.us](mailto: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 revisions entail the lowering of the sulfur-in-fuel limits for all distillate and residual oils sold, purchased, and/or used in portable (not including non-road engines) or stationary sources in New York State. These revisions will also include the removal of "out-of-date" sulfur-in-fuel tables, expired source specific variances, coal and coke variance for emission sources that fire coal and coke greater than one million Btu per hour in New York City, Nassau, Rockland, and Westchester, and the correction of typographical errors. 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, NY 12233-3254. Telephone: 518-402-8403. E-mail: [airregs@gw.dec.state.ny.us](mailto: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 NY 12233-3255, Telephone: 518-402-8292, E-mail: [airregs@gw.dec.state.ny.us](mailto:airregs@gw.dec.state.ny.us) Please include the Subpart number when emailing.

6 NYCRR Part 228, Surface Coating Processes. EPA issued six CTGs between 1996 and 2008 that apply to surface coating operations.

The existing rule will be amended to include new volatile organic compounds emissions standards for the surface coating operations addressed in the CTG documents. 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, NY 12233-3254. Telephone: 518-402-8403. E-Mail: [airregs@gw.dec.state.ny.us](mailto: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; require new vapor leak detection equipment; and remove Stage II requirements. 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, NY 12233-3254. Telephone: 518-402-8403. E-mail: [airregs@gw.dec.state.ny.us](mailto:airregs@gw.dec.state.ny.us) Please include the Part number when emailing.

6 NYCRR Part 232, Dry Cleaning. The existing regulation that became effective May 15, 1997 will be updated to provide for administrative streamlining and consistency with any new federal requirements. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Eric Wade, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3254. Telephone: 518-402-8403. E-mail: [airregs@gw.dec.state.ny.us](mailto: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: Kenneth Newkirk, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3251. Telephone: 518-402-8396. E-mail: [airregs@gw.dec.state.ny.us](mailto:airregs@gw.dec.state.ny.us) Please include the Part number when emailing.

6 NYCRR Parts 237 and 238, Acid Deposition Reduction Budget Trading Programs. These rules will be repealed because they have been superseded by the Clean Air Interstate Rules (CAIR), Parts 243, 244 and 245. New Parts 237 and 238 will be developed to implement the New York State provisions of EPA's new Cross State Air Pollution Rule. 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, NY 12233-3251. Telephone: 518-402-8396. E-mail: [airregs@gw.dec.state.ny.us](mailto:airregs@gw.dec.state.ny.us) Please include the Part number when emailing.

6 NYCRR Part 240, Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved under Title 23 U.S.C. or the Federal Transit Laws. 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, NY 12233-3251. Telephone: 518-402-8396. E-mail: [airregs@gw.dec.state.ny.us](mailto:airregs@gw.dec.state.ny.us) Please include the Part number when emailing.

6 NYCRR Part 242, CO<sub>2</sub> Budget Trading Program. The Regional Greenhouse Gas Initiative (RGGI) Participating States are currently undertaking comprehensive Program Review. Part 242 may be revised, based in part on any recommendations coming out of the RGGI Program Review. 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, NY 12233-3251. Telephone: 518-402-8396. E-mail: [airregs@gw.dec.state.ny.us](mailto:airregs@gw.dec.state.ny.us) Please include the Part number when emailing.

6 NYCRR Part 247, Outdoor Wood-Fired Hydronic Heaters. This regulation may be amended to revise 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, NY 12233-3254. Telephone: 518-402-8403. E-mail: [airregs@gw.dec.state.ny.us](mailto:airregs@gw.dec.state.ny.us) Please include the Part number when emailing.

6 NYCRR Part 248, Use of Ultra Low Sulfur Diesel Fuel and Best Available Retrofit Technology for Heavy Duty Vehicles. The existing regulation will be revised to incorporate changes in the Environmental Conservation Law regarding compliance deadlines and applicability changes brought about by two court decisions. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: James Bologna, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3255. Telephone: 518-402-8292. E-mail: [airregs@gw.dec.state.ny.us](mailto:airregs@gw.dec.state.ny.us) Please include the Part number when emailing.

6 NYCRR Part 251, CO<sub>2</sub> Emission Performance Standards for Major Electric Generating Facilities. The Legislature recently passed the "Power NY Act" (A.8510/S.5844; chapter 388, laws of 2011), which includes the reauthorization of Public Service Law Article X, regarding the siting of power plants. This regulation must be promulgated by the Department by August 3, 2012, pursuant to the statutory text. 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, NY 12233-3254. Telephone: 518-402-8403. E-mail: [airregs@gw.dec.state.ny.us](mailto: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 the main text of Part 617. Part 617 has not been revised or updated since July 12, 2000, with the exception a February 2005 amendment requiring electronic posting of draft and final environmental impact statements to a publicly accessible Internet Web site. It is anticipated that through public review and stakeholder involvement, updates and revisions will occur to the Type I and Type II lists of actions, as well as other procedural activities within SEQRA. In addition, amendment of the main text of Part 617 will allow timely consideration of topic areas and newly emerged issues being reviewed as part of the revisions currently underway to the SEQRA Environmental Assessment Forms (EAF's). Contact: Robert Ewing or Kent Sanders, NYS Department of Environmental Conservation, 625 Broadway, 4th Floor, Albany, NY 12233-1750. Telephone: 518-402-9167. E-mail: [depprmt@gw.dec.state.ny.us](mailto:depprmt@gw.dec.state.ny.us)

#### DIVISION OF ENVIRONMENTAL REMEDIATION

6 NYCRR Parts 612, 613, and 614, Petroleum Bulk Storage Regulation. DEC proposes to repeal Parts 612-614 and replace with Part 613 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 DEC to prevent contamination of surface and ground waters, public drinking water supplies, and natural resources by petroleum bulk storage (PBS) facilities; (4) improve the consistency and clarity of language directing the administration of the PBS program; (5) enhance monitoring, maintenance and equipment requirements to prevent leaks and spills; and (6) adjust the definitions of petroleum

and facility pursuant to recent changes in Environmental Conservation Law section 17-1003. This rulemaking will require 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, Albany, New York 12233-7020. Telephone: 518-402-9543. E-mail: derweb@gw.dec.state.ny.us. Please include the Part numbers in the subject line when e-mailing.

6 NYCRR Parts 595, 596, 597, 598, and 599, Chemical Bulk Storage Regulation. DEC proposes to repeal Parts 595-599 and replace with Parts 597 and 598 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 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; (5) enhance monitoring, maintenance and equipment requirements to prevent leaks and spills; and (6) revise the Part 597 List of Hazardous Substances to reflect changes and updates on the State and federal levels. This rulemaking will require 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, Albany, New York 12233-7020. Telephone: 518-402-9543. E-mail: derweb@gw.dec.state.ny.us. Please include the Part numbers in the subject line when e-mailing.

6 NYCRR Part 570, Permitting of Liquefied Natural Gas (LNG) Facilities. 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; and recommends incorporation by reference of existing nationally recognized standards (National Fire Protection Association --- NFPA 52 and 59A). This rulemaking will require 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, Albany, NY 12233-7020. Telephone: 518-402-9543. E-mail: derweb@gw.dec.state.ny.us. Please include the Part number in the subject line when e-mailing.

6 NYCRR Part 610, Major Oil Storage Facility (MOSF) Regulation. DEC proposes to repeal Part 610 and replace with Part 613 to: (1) incorporate appropriate language from the New York State Department of Transportation regulations, 17 NYCRR Parts 30, 31 and 32, that pertains to the administration of the MOSF program, which has been solely handled by DEC since 1985; (2) repeal 17 NYCRR Parts 30, 31 and 32; (3) improve the consistency and clarity of language directing the administration of the MOSF program, which will make explicit in regulation the procedures set forth in DEC Program Policy DER-11, Procedures for Licensing Onshore Major Oil Storage Facilities; and (4) enhance monitoring, maintenance and equipment requirements to prevent leaks and spills. This rulemaking will require 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, Albany, New York 12233-7020. Telephone: 518-402-9543. E-mail: derweb@gw.dec.state.ny.us. Please include the Part number in the subject line when e-mailing.

6 NYCRR Parts 370, 371, 372, 373, 374, and 376, Update of the Hazardous Waste Management Regulations. DER plans to incorporate, as appropriate, federal rules from January 2002 to present; changes related to Standards for Hazardous Air Pollutants for Hazard-

ous Waste Combustors (MACT rules) from September 1999 to present; and State initiated changes, including clarifying language and corrections of errors found in the regulations. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments, and a Rural Area Flexibility Analysis. Contact: Deborah Aldrich, New York State Department of Environmental Conservation, Division of Environmental Remediation, 625 Broadway, Albany, NY 12233-7252. Telephone: 518-402-9711. E-mail: hwregs@gw.dec.state.ny.us

6 NYCRR Part 375 (Subparts 375-1 to 375-4, and 375-6), Environmental Remediation Programs. 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) incorporate soil cleanup objective (SCO) changes, if any, resulting from the statutorily required five year review; (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) review of the provisions applicable to the State Superfund Program, including, but not limited to, considering the need to make revisions to clarify the definition of "significant threat;" (6) consider opportunities to encourage the incorporation of sustainable remediation and development techniques into cleanup projects covered by this rule; and (7) 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 will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Robert Schick, New York State Department of Environmental Conservation, Division of Environmental Remediation, 625 Broadway, Albany, NY 12233-7011. Telephone: 518-402-9706. E-mail: derweb@gw.dec.state.ny.us. Please include the Part number when e-mailing.

6 NYCRR Part 380, Prevention and Control of Environmental Pollution by Radioactive Materials. This rulemaking will amend the Part 380 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 Environmental Remediation, 625 Broadway, Albany, New York 12233-7255. Telephone: 518-402-8579. E-mail: radregs@gw.dec.state.ny.us

6 NYCRR Part 384, Cleanup of Radioactively Contaminated Sites. This rule is being developed to adopt applicable sections of the federal Nuclear Regulatory Commission's (NRC) license termination rule (LTR), which establishes cleanup criteria for radiologically contaminated sites. Program staff is coordinating adoption of the LTR with the New York State 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 Environmental Remediation, 625 Broadway, Albany, NY 12233-7255. Telephone: 518-402-8579. E-mail: radregs@gw.dec.state.ny.us

#### DIVISION OF FISH, WILDLIFE AND MARINE RESOURCES

6 NYCRR Part 1, Hunting Regulations for Deer and Bear. Amendments to this part will be necessary to fully implement regulatory aspects of the Department's Statewide Deer Management Plan. This amendment will not require a Regulatory Flexibility Analysis for Small Businesses or a Rural Area Flexibility Analysis. Contact: Mary E. Bailey, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, NY 12233-4754. Telephone: 518-402-8879. E-mail: mebailey@gw.dec.state.ny.us

6 NYCRR Part 10, Sportfishing Regulations. Every two years the Department makes needed adjustments to the freshwater sportfishing regulations for the purposes of keeping the regulations up to date and current with management needs (including individual waters) and to provide for angling opportunity. This amendment will not require a Regulatory Flexibility Analysis for Small Businesses or a Rural Area Flexibility Analysis. Contact: Shaun Keeler, New York State Department of Environmental Conservation, Bureau of Fisheries, 625 Broadway, Albany, NY 12233. Telephone: 518-402-8928. E-mail: <mailto:swheins@gw.dec.state.ny.us> MACROBUTTON HtmlRcsAnchor sxkeeler@gw.dec.state.ny.us

6 NYCRR, Part 10, Sportfishing Regulations. These amendments pertain to the management of diadromous fishes in the Hudson and Delaware Rivers and are needed to remain in 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. They also comply with the requirements of Environmental Conservation Law regarding the management of anadromous species. The purpose of these regulations is to protect and to maintain the health of these fish stocks. This rule making will require a Regulatory Flexibility Analysis for Small Businesses and Local Government 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, NY 11733. Telephone: 631-444-0435. E-mail: [swheins@gw.dec.state.ny.us](mailto:swheins@gw.dec.state.ny.us). Please include the Part number when emailing.

6 NYCRR, Part 35, Licenses. The Department will propose to establish new reporting requirements for certain inland commercial fishery license holders, consistent with those in Part 40 for the same regulated species. Additional regulations will establish a commercial eel permit with reporting requirements statewide (Parts 40 and 35). This rule making will require a Regulatory Flexibility Analysis for Small Businesses and Local Government 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, NY 11733. Telephone: 631-444-0435. E-mail: [swheins@gw.dec.state.ny.us](mailto:swheins@gw.dec.state.ny.us). Please include the Part number when emailing.

6 NYCRR, Part 36, Gear and Operation of Gear. These amendments pertain to the management of diadromous fishes in the Hudson River and are needed to maintain compliance with fishery management plans developed by the Atlantic States Marine Fisheries Commission (ASMFC) or as directed in the Federal Sustainable Fisheries Act for such species. They also comply with the requirements of Environmental Conservation Law regarding the management of anadromous species. This rule making will require a Regulatory Flexibility Analysis for Small Businesses and Local Government 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, NY 11733. Telephone: 631-444-0435. E-mail: [swheins@gw.dec.state.ny.us](mailto:swheins@gw.dec.state.ny.us). Please include the Part number when emailing.

6 NYCRR Part 40, Marine Fish. The Department proposes to amend regulations pertaining to the management of marine and diadromous fishes, including sharks, to maintain compliance with fishery management plans developed by the Atlantic States Marine Fisheries Commission (ASMFC), with the requirements of Environmental Conservation Law or pursuant to the Federal Sustainable Fisheries Act for such species. Proposed amendments will also provide compliance with National Marine Fisheries Service requirements and other federal laws. The Department proposes to amend the regulations to define what methods are allowed for recreational anglers to take fish. The Department proposes to amend reporting and record keeping requirements for State licensed harvesters; and to create a definition for proof of residency and establish the requirement for providing such proof of residency when obtaining marine license and permits. The Department will seek to amend 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 and make changes to striped bass commercial fishing permit reissuance and striped bass commercial permit tag provisions. New regulations will be proposed to 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. The Department seeks to adopt regulations to establish a commercial eel permit with reporting requirements statewide, and to extend coverage by the general provisions of this part to include Rockland and Putnam Counties and ensure that commercial possession is covered statewide. The proposed amendments will adopt changes to the shipping, labeling and packing requirements to require harvester's fishing vessel trip report numbers on labels for quota managed species and adopt regulations to clarify provision for records retention by food fish shippers and dealers. This rule making will require a Regulatory Flexibility Analysis for Small Businesses and Local Government 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, NY 11733. Telephone: 631-444-0435. E-mail: [swheins@gw.dec.state.ny.us](mailto:swheins@gw.dec.state.ny.us). Please include the Part number when emailing.

6 NYCRR Part 41, Sanitary Condition of Shellfish Lands. As necessary, the Department will 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 (open) for the taking of shellfish. Shellfish are defined in law as oysters, scallops, and all kinds of clams and mussels. This rule making will require a Regulatory Flexibility Analysis for Small Businesses and Local Government 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](mailto:wghastba@gw.dec.state.ny.us). Please include the Part number when emailing.

6 NYCRR Part 42, Sanitary Control over Shellfish. The Department proposes to amend regulations pertaining to the sanitary, record keeping, and reporting requirements for shellfish harvesters and shippers needed to comply with the guidelines of the National Shellfish Sanitation Program (NSSP), the federal regulations regarding interstate shipment of shellfish, and the Environmental Conservation Law. The proposed regulations will modify the descriptions of allowable activities under each category of shellfish shipper consistent with the NSSP and the Environmental Conservation Law and amend and clarify descriptions of shellfish harvest areas to clearly delineate geographical sites where shellfish are harvested. Contact: Susan Ritchie, 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: 631-444-0494. E-mail: [sxritchi@gw.dec.state.ny.us](mailto:sxritchi@gw.dec.state.ny.us). Please include the Part number when emailing.

6 NYCRR Part 43, Surfclam/Ocean Quahog Fishery Management. The Department seeks to 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 and allow for the orderly implementation of any changes to the Environmental Conservation Law for the surfclam fishery. All amendments may describe changes to permit requirements and eligibility, harvest limits, gear restrictions, record keeping, and reporting requirements. This rule making will require a Regulatory Flexibility Analysis for Small Businesses and Local Government 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, NY 11733. Telephone: 631-444-0496. E-mail: [dabarnes@gw.dec.state.ny.us](mailto:dabarnes@gw.dec.state.ny.us). Please include the Part number when emailing.

6 NYCRR Part 44, Lobsters and Crabs. The Department proposes

to amend regulations pertaining to the management of lobsters, decapod crabs and horseshoe crabs to maintain the health of such species and to prevent the introduction of exotic crustacean species. These proposed regulations will comply with fishery management plans developed by the Atlantic State Marine Fisheries Commission (ASMFC) for the species and with requirements of the Environmental Conservation Law. The proposed regulations will include general provisions consistent with those found in Part 40. The proposed amendments will allow for flexibility in the type of vent used in crab traps and establish open crab dredge seasons and areas. Rule makings will be proposed to clarify current language and remove unnecessary regulations. Horseshoe crabs regulations will be proposed to allow more control over the harvest and storage of horseshoe crabs. Based on the outcome of Addendum XVII to the ASMFC lobster management plan, lobster regulations will be proposed to modify the minimum and maximum carapace length and/or establish an open season. This rule making will require a Regulatory Flexibility Analysis for Small Businesses and Local Government 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, NY 11733. Telephone: 631-444-0435. E-mail: swheins@gw.dec.state.ny.us. Please include the Part number when emailing.

6 NYCRR Part 48, Marine Hatcheries, On-Bottom and Off-Bottom Culture of Marine Plant and Animal Life. The Department proposes to amend regulations pertaining to the harvest and sale of cultivated (farm-raised) bay scallops and oysters for consumption or resale. These proposed regulations will update this part and ensure it remains consistent with Part 49 by creating an aquaculture exemption for sale of certain cultured (farm-raised) shellfish products that are less than legal size and offered for sale during the closed wild harvest season. This rule making will require a Regulatory Flexibility Analysis for Small Businesses and Local Government 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, NY 11733. Telephone: 631-444-0483. E-mail: dabarnes@gw.dec.state.ny.us. Please include the Part number when emailing.

6 NYCRR Part 49, Shellfish Management. The Department seeks to adopt regulations for the management of hard clams, soft or steamer clams and razor clams as provided for 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. The Department seeks to amend regulations to provide for an aquaculture exemption to the size and season for harvest and sale of bay scallops that will not apply to those scallops that are cultured under a permit issued by the Department. This rule making will require a Regulatory Flexibility Analysis for Small Businesses and Local Government 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, NY 11733. Telephone: 631-444-0483. E-mail: dabarnes@gw.dec.state.ny.us. Please include the Part number when emailing.

6 NYCRR Part 50, Miscellaneous Marine Species. The Department seeks to adopt new regulations for the protection and management of various other marine species. The immediate need is for the adoption of regulations for the protection and management of whelks (also known as conch, *Busycon* spp). These regulations will include size limits, reporting requirements for harvesters and dealers, specifications for marking and placement of whelk fishing gear, and other regulations necessary to manage the whelk fishery. This rule making will require a Regulatory Flexibility Analysis for Small Businesses and Local Government as well as a Rural Area Flexibility Analysis. Contact: Stephen W. Heins, New York State Department of Environmental Conservation, Bureau of Marine Resources, 205 N. Belle Mead

Road, Suite 1, East Setauket, NY 11733. Telephone: 631-444-0435. E-mail: swheins@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 155, Transporting Black Bass Raised in Private Hatcheries. This amendment will not require a Regulatory Flexibility Analysis for Small Businesses or a Rural Area Flexibility Analysis. Contact: Phil Hulbert, New York State Department of Environmental Conservation, Bureau of Fisheries, 625 Broadway, Albany, NY 12233. Telephone: 518-402-8894. E-mail: pxhulber@gw.dec.state.ny.us

6 NYCRR Part 173, Falconry. Amendment of Part 173 is necessary because the US 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. Each State, tribe, or territory that wishes to allow the practice of falconry must work with the Service to ensure correct operation of electronic reporting of take of raptors from the wild, and must then certify to the Director Service that it is in compliance with the new Federal regulations. Any State certified to allow falconry under the Federal falconry regulations in § 21.28, 21.29, and 22.24 of 50 CFR prior to the effective date may continue to allow falconry under those provisions until the US Fish and Wildlife Service approves that States recertification, or until January 1, 2014. Falconry shall not be permitted in a State or territory or by a Tribe after January 1, 2014, until that State, tribe, or territory develops a permitting program that the Director has certified to be in compliance with these regulations. This amendment will not require a Regulatory Flexibility Analysis for Small Business 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, NY 12233-4752. Telephone: 518-402-8987. E-mail: jetherri@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 175, Special Licenses and Permits – Definitions and Uniform Procedures. This amendment is necessary to update and enhance the regulation for administrative and enforcement procedures. We need to include provisions for additional statutory amendments that have occurred since the regulations were last amended, and to clarify standards and criteria for agency actions on applications and licenses. This amendment may require a Regulatory Flexibility Analysis for Small Businesses 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, NY 12233-4752. Telephone: 518-402-8997. E-mail: jetherri@gw.dec.state.ny.us Please include the Part number when emailing.

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 Environmental Conservation Law 11-0512 and 11-0103(6)(e)(5). The statutory language in ECL 11-0512 and 11-0103(6)(e)(5) provides the opportunity for the private possession of animals that are or should be considered too dangerous for possession outside bona fide zoological gardens. In addition, the proposed amendments to Part 180.1 will provide a list of species that have been found to be too dangerous to the public or to the fish and wildlife resources of the state to be possessed in any facility except a bona fide zoological garden certified by the American Zoological Association. This amendment may require a Regulatory Flexibility Analysis for Small Businesses 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, NY 12233-4752. Telephone: 518-402-8997. E-mail: jetherri@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR Part 182, Endangered and Threatened Species. Statutory Authority: ECL 11-0535. This regulation implements the State Endangered Species Act by providing definitions, listing protected species and defining a permitting process for addressing impacts to protected species. Part 182 will be amended to modify the list of endangered and threatened species based on the Department's assessment of species status and recovery, and to clarify definitions to improve the implementation of the regulations. This rule making will

require a Regulatory Flexibility Analysis for Small Businesses and Local Government as well as a Rural Area Flexibility Analysis. Contact: Mary E. Bailey, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, NY 12233-4754, Telephone: 518-402-8879. E-mail: mebailey@gw.dec.state.ny.us

6 NYCRR Part 664, Freshwater Wetlands Mapping and Classification Regulations. This rule making will update and clarify freshwater wetlands mapping and classification standards to reflect a greater understanding of wetland science. In addition, there will be changes to facilitate more efficient map amendments where errors are detected on the maps. This rule making 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, NY, 12233. Telephone 518-402-8853. E-mail: rajacobs@gw.dec.state.ny.us Please include the Part number when emailing.

6 NYCRR - New Regulation, Venomous Reptile Exhibition. Promulgation of new regulation is necessary to address statutory requirements of Environmental Conservation Law 11-0512(2)(b) and 11-0103(6)(e)(5). The statute authorizes exhibition of venomous reptiles and these regulations are needed to provide for the issuance of permits. This amendment may require a Regulatory Flexibility Analysis for Small Businesses 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, NY 12233-4752. Telephone: 518-402-8997. E-mail: jetherri@gw.dec.state.ny.us Please include the Part number when emailing.

#### OFFICE OF GENERAL COUNSEL

6 NYCRR Part 487, Analyzing Environmental Justice Issues in Siting Major Electric Generating Facilities Pursuant to Public Service Law Article 10. The Department is proposing a new 6 NYCRR Part 487 pursuant to the Legislature's enactment of a new Article 10 siting procedure in the Public Service Law to certificate the construction and operation of major electric generating facilities (Chapter 388, Laws of 2011). Pursuant to this legislation, new Part 487 will require that a person applying to the Article 10 Siting Board to obtain an Article 10 certificate shall conduct an evaluation of any significant and adverse disproportionate environmental impacts of the proposed facility, such as air emissions. The analysis will require that an applicant conduct a cumulative air quality impact analysis and identify the community where the facility is to be located and compare it with the county where the community is located, and with adjacent communities. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis. Contact: Melvin Norris, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-1500. Telephone: (518) 402-8556. E-mail: minorris@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 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, First Floor, Albany, New York 12233-1550. E-mail, jtmcclym@gw.dec.state.ny.us

6 NYCRR Part 624, Permit Hearing Procedures. The Office of Hearings and Mediation Services proposes to 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 a Rural Regulatory Flexibility Analysis. Contact: Louis A. Alexander, New York State

Department of Environmental Conservation, Office of Hearings and Mediation Services, 625 Broadway, 14th Floor, Albany, New York 12233-1010. E-mail, laalexan@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 interim appeals to the Commissioner from issues rulings by the administrative law judges. This rulemaking may require a Regulatory Flexibility Analysis for Small Businesses, 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, 14th Floor, Albany, New York 12233-1010. E-mail, laalexan@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. A Regulatory Flexibility Analysis and a Rural Area Flexibility Analysis are not required for this rulemaking. Contact: Peter J. Frank, NYS Department of Environmental Conservation, Bureau of Forest Preserve Management, 625 Broadway, Albany, NY 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. A Regulatory Flexibility Analysis and a Rural Area Flexibility Analysis are not required for this rulemaking. Contact: Peter J. Frank, NYS Department of Environmental Conservation, Bureau of Forest Preserve Management, 625 Broadway, Albany, NY 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 Saint Regis Canoe Area from overuse by applying restrictions to group size, camping, camp fires and other activities. A Regulatory Flexibility Analysis and a Rural Area Flexibility Analysis are not required for this rulemaking. Contact: Peter J. Frank, NYS Department of Environmental Conservation, Bureau of Forest Preserve Management, 625 Broadway, Albany, NY 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 and a Rural Area Flexibility Analysis are not required for this rulemaking. Contact: Peter J. Frank, NYS Department of Environmental Conservation, Bureau of Forest Preserve Management, 625 Broadway, Albany, NY 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. A Regulatory Flexibility Analysis and a Rural Area Flexibility Analysis are not required for this rulemaking. Contact: Peter J. Frank, NYS Department of Environmental Conservation, Bureau of Forest Preserve Management, 625 Broadway, Albany, NY 12233-4254. Telephone: 518- 473-9518 E-mail: pjfrank@gw.dec.state.ny.us

6 NYCRR, Use of State Lands. Amend existing sections 190.0(14), 190.1(c) and 190.8(g). These amendments will clarify the intent of the existing regulation for the public and for those responsible for enforcement. A Regulatory Flexibility Analysis and a Rural Area Flexibility Analysis are not required for this rulemaking. Contact: Robert Messenger, NYS Department of Environmental Conservation, Bureau of State Land Management, 625 Broadway, Albany, NY 12233-4255 Telephone: 518- 402-9428 E-mail: rwmessen@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. A Regulatory Flexibility Analysis and a Rural Area Flexibility Analysis are not required for this rulemaking. Contact: Robert Messenger, NYS Department of Environmental Conservation, Bureau of State Land Management, 625 Broadway, Albany, NY 12233-4255, Telephone: 518-402-9428 E-mail: [rwmessen@gw.dec.state.ny.us](mailto:rwmessen@gw.dec.state.ny.us)

6 NYCRR Part 190, Lower Salmon River State Forest. Adopt a new section. These regulations are needed to control public use on lands to be acquired by the Department along the Salmon River in Oswego County. Because of the uniqueness of the area and its uses, specific regulations for the state forest will be developed that are not addressed in the existing Part 190 general regulations. A Regulatory Flexibility Analysis and a Rural Area Flexibility Analysis are not required for this rulemaking. Contact: Daniel Bishop, NYS Department of Environmental Conservation, Region 7 Sub-Office, 1285 Fisher Avenue, Cortland, NY 13045-1090, Telephone: 607-753-3095 E-mail: [dlbishop@gw.dec.state.ny.us](mailto:dlbishop@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. A Regulatory Flexibility Analysis and a Rural Area Flexibility Analysis are not required for this rulemaking. Contact: Robert Messenger, NYS Department of Environmental Conservation, Bureau of State Land Management, 625 Broadway, Albany, NY 12233-4255, Telephone: 518-402-9428 E-mail: [rwmessen@gw.dec.state.ny.us](mailto:rwmessen@gw.dec.state.ny.us)

6 NYCRR Part 199, Taxation of Forest Land. Amend Part 199, Taxation of Forest Land. A 2008 legislative amendment to Real Property Tax Law Section 480-a requires and directs the Department to amend its regulations implementing the Forest Tax Law to include "participation in a forest certification program ... recognized in the regulations of the Department." Additional amendments to the regulations will be considered to address concerns expressed and problems raised over the last 47 years by program participants and landowners who would like to participate, as well as to streamline and reduce DEC's administrative workload associated with this growing program. A Regulatory Flexibility Analysis and Rural Area Flexibility Analysis is not required for this rulemaking. Contact: Bruce Williamson, NYS Department of Environmental Conservation, Bureau of Private Land Services, 625 Broadway, Albany, NY 12233-4253 Telephone: 518-402-9425 E-mail: [bewillia@gw.dec.state.ny.us](mailto:bewillia@gw.dec.state.ny.us)

6 NYCRR Part 192, Forest Insect and Disease Control. Amend Section 192.5, Firewood Restrictions to Protect Forests from Invasive Species. Amend Section 192.5 and adopt a new Section 192.6, Quarantine Orders. These regulations are needed to clarify the existing regulation and to provide more effective enforcement of the firewood regulations and quarantine orders issued pursuant to Environmental Conservation Law, Section 9-1303. A Rural Area Flexibility Analysis is not required for this rulemaking. Contact: Bruce Williamson, NYS Department of Environmental Conservation, Bureau of Private Land Services, 625 Broadway, Albany, NY 12233-4253 Telephone: 518-402-9425 E-mail: [bewillia@gw.dec.state.ny.us](mailto: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. A Regulatory Flexibility Analysis and a Rural Area Flexibility Analysis are not required for this rulemaking. Contact: Doug Schmid, NYS Department of Environmental Conservation, Bureau of Private Land Services, 625 Broadway, Albany, NY 12233-4253 Telephone: 518-402-9425. E-mail: [daschmid@gw.dec.state.ny.us](mailto:daschmid@gw.dec.state.ny.us)

6 NYCRR Part 590, Payment of Expenses Upon Acquisition of Real Property. Amend Section 590.7, "In Lieu of" Moving Expenses for Business or Farm Occupants. These regulations are needed to be in compliance with the Marriage Equality Act. A Regulatory Flexibility Analysis and a Rural Area Flexibility Analysis are not required for this rulemaking. Contact: Keith Matteson, NYS Department of Environmental Conservation, Bureau of Real Property, 625 Broadway, Albany, NY 12233-4256 Telephone: 518 - 402-9442 E-mail: [bkmatte@gw.dec.state.ny.us](mailto:bkmatte@gw.dec.state.ny.us)

#### DIVISION OF MATERIALS MANAGEMENT

6 NYCRR, Part 325, Rules and Regulations Relating to the Application of Pesticides and Part 326, Registration and Classification of Pesticides. Part 325 will be amended, in part, to clarify and update existing regulations. Part 326 will be amended, in part, to clarify and update existing regulations and will include the federal requirements regarding removal of residues from pesticides containers prior to disposal or refilling. This rulemaking will also include the federal requirements for the Worker Protection Standard (WPS). This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments, and a Rural Area Flexibility Analysis. Contact: Maggie O'Neil, NYS Department of Environmental Conservation, Division of Materials Management, 625 Broadway, Albany, New York 12233-7254. Telephone: 518-402-8748. E-mail: [pestmgt@gw.dec.state.ny.us](mailto:pestmgt@gw.dec.state.ny.us)

6 NYCRR Part 360 Series, Solid Waste Management Facilities. This rulemaking will include technical amendments and 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, technologies or waste streams that are not currently specifically addressed within existing Part 360, including automobile dismantlers, pharmaceutical waste, electronic waste, dredge materials, biohazard incident waste, and yellow grease. 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, NYS Department of Environmental Conservation, Division of Materials Management, 625 Broadway, Albany, New York 12233-7253. Telephone: 518-402-8678. E-mail: [swreg@gw.dec.state.ny.us](mailto:swreg@gw.dec.state.ny.us)

6 NYCRR Part 367, Returnable Beverage Containers. This rulemaking will incorporate revisions to the statute that specifically changed and, in some cases, contradict the Part 367 regulations that were promulgated in 1983; reflect changes in the way the industry and the regulated community now complies with these regulations; and include changes that will lead to improved compliance and enforcement. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments, and a Rural Area Flexibility Analysis. Contact: Jennifer Kruman, NYS Department of Environmental Conservation, Division of Materials Management, 625 Broadway, Albany, New York 12233-7253. Telephone: 518-402-8706. E-mail: [nybottle@gw.dec.state.ny.us](mailto:nybottle@gw.dec.state.ny.us)

6 NYCRR Part 368, Product Stewardship and Labeling. This rulemaking will rename and include changes to the existing Recycling Emblem regulations in 6 NYCRR Part 368 to be consistent with national labeling guidelines for recycling terms. It will also include developing regulations for mercury-added consumer products, and product stewardship requirements for E-Waste, Cell Phones and Rechargeable Batteries - all resulting from legislation for these specific materials. This rulemaking will require a Regulatory Flexibility Analysis for Small Businesses and Local Governments, and a Rural Area Flexibility Analysis. Contact: Peter Pettit, NYS Department of Environmental Conservation, Division of Materials Management, 625 Broadway, Albany, New York 12233-7253. Telephone: 518-402-8706. E-mail: [pswr@gw.dec.state.ny.us](mailto:pswr@gw.dec.state.ny.us)

#### DIVISION OF WATER

6 NYCRR Parts 700 – 706 Water Quality Standards. Revisions will add/revise ambient water quality standards, standard-setting procedures, implementation procedures and other regulatory provisions. This rulemaking may require a Regulatory Flexibility Analysis for small businesses and a Rural Area Flexibility Analysis. Contact: Scott Stoner, Chief, Standards and Analytical Support Section, Bureau of Water Quality Management, Division of Water, NYSDEC, Albany, NY 12233-3502. Telephone 518-402-8193. E-mail: [sxstoner@gw.dec.state.ny.us](mailto:sxstoner@gw.dec.state.ny.us)

6 NYCRR Part 505, Coastal Erosion Management Regulations. Part 505 of 6 NYCRR was last amended in March 1988. Since that date, through the implementation of the program there have been a

number of areas identified which should be amended. These areas include clarifying definitions, providing new defined terms, and clarifying regulatory language regarding natural protective features areas. This rulemaking may require a Regulatory Flexibility Analysis for small businesses and a Rural Area Flexibility Analysis. Contact: Alan Fuchs, Director, Bureau of Water Permits, Division of Water, 625 Broadway, Albany, NY 12233-3505. Telephone: 518-402- 8185. E-mail: aafuchs@gw.dec.state.ny.us

6 NYCRR Part TBD, Water Well Registration and Reporting. A new Part will be developed in conjunction with ECL 15-1525 to establish registration, reporting, certification, and enforcement provisions. This rulemaking may require a Regulatory Flexibility Analysis for small businesses and a Rural Area Flexibility Analysis. Contact: Mike Holt, Section Chief, Bureau of Water Resource Management, Division of Water, 625 Broadway, Albany, New York 12233. Telephone: 518-402-8099. E-mail: mdholt@gw.dec.state.ny.us

6 NYCRR Part 485, State Pollutant Discharge Elimination System (SPDES) Program Fees. The SPDES program fees were recently changed through amendments to ECL Part 72-0602. Part 485 will be amended to conform to the SPDES fees in regulation to the fees in statute. This rulemaking may require a Regulatory Flexibility Analysis for small businesses and a Rural Area Flexibility Analysis. Contact: Koon Tang, Director, Bureau of Water Permits, Division of Water, 625 Broadway, Albany, NY 12233-3505. Telephone: 518-402-8111. E-mail: kstang@gw.dec.state.ny.us

6 NYCRR Part 500, Flood Plain Management Regulations Development Permits (BFP&DS). This Part of 6 NYCRR will be repealed. Changes made to ECL Article 36 in 1992 removed this requirement from law. This rulemaking may require a Regulatory Flexibility Analysis for small businesses and a Rural Area Flexibility Analysis. Contact: Alan Fuchs, Director, Bureau of Flood Protection and Dam Safety, Division of Water, 625 Broadway, Albany, NY 12233-3505. Telephone: 518-402- 8111. E-mail: aafuchs@gw.dec.state.ny.us

6 NYCRR Part 651, State Aid for Collection, Treatment and Disposal of Sewage - Cost of Operation and Maintenance of Sewage Treatment Plants. Due to a lack of appropriations for this program for several years, this Part of 6 NYCRR will be repealed. This rulemaking may require a Regulatory Flexibility Analysis for small businesses and a Rural Area Flexibility Analysis. Contact: Koon Tang, Director, Bureau of Water Permits, Division of Water, 625 Broadway, Albany, NY 12233-3505. Telephone: 518-402- 8111. E-mail: kstang@gw.dec.state.ny.us

6 NYCRR Part 750, State Pollutant Discharge Elimination System (SPDES) Permits. Revisions are necessary to add definitions, update references, incorporate new federal criteria and standards, and correct typographical errors. This rulemaking may require a Regulatory Flexibility Analysis for small businesses and a Rural Area Flexibility Analysis. Contact: Koon Tang, Director, Bureau of Water Permits, Division of Water, 625 Broadway, Albany, NY 12233-3505. Telephone: 518-402- 8111. E-mail: kstang@gw.dec.state.ny.us

6 NYCRR Part 830, Lake Champlain Drainage Basin. Revisions will reclassify surface waters as needed to provide water quality protection consistent with designated best usages, as well as the Clean Water Act (CWA) Section 101(a)(2) goals. This rulemaking may require a Regulatory Flexibility Analysis for small businesses and a Rural Area Flexibility Analysis. Contact: Scott Stoner, Chief, Standards and Analytical Support Section, Bureau of Water Quality Management, Division of Water, NYSDEC, Albany, NY 12233-3502. Telephone 518-402-8193. E-mail: sxstoner@gw.dec.state.ny.us

6 NYCRR Part 910, St. Lawrence River Drainage Basin. Revisions will reclassify surface waters as needed to provide water quality protection consistent with designated best usages, as well as the Clean Water Act (CWA) Section 101(a)(2) goals. This rulemaking may require a Regulatory Flexibility Analysis for small businesses and a Rural Area Flexibility Analysis. Contact: Scott Stoner, Chief, Standards and Analytical Support Section, Bureau of Water Quality Management, Division of Water, NYSDEC, Albany, NY 12233-3502. Telephone 518-402-8193. E-mail: sxstoner@gw.dec.state.ny.us

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

## Department of Financial Services

### I. Insurance Regulations

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 Department is presently considering proposing during the first half of 2012. Many of these items were previously published in the June 2011 Regulatory Agenda. Items that have been published in the State Register as "Proposed" actions are not included on the list. The 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 person identified in the item. For general inquiries about the Insurance Regulations included in the Department of Financial Services Regulatory Agenda, please contact:

Sam Wachtel  
Supervising Attorney  
New York State Department of Financial Services  
25 Beaver Street  
New York, NY 10004  
Telephone Number: (212) 480-5269

Copies of current regulations may be obtained from the Department's Public Affairs Bureau by writing to: Public Affairs Bureau, New York State Department of Financial Services, One State Street, New York, NY 10004, or by calling (212) 709-1691.

1. Summary description of proposal: Amendment to 11 NYCRR 83 (Financial Statement Filings and Accounting Practices and Procedures) (Regulation 172), in response to amendments to the Accounting Practices and Procedures Manual, including Statements of Statutory Accounting Principles (published by the National Association of Insurance Commissioners), which is incorporated by reference in the regulation. Agency Contact: Sam Wachtel, Supervising Attorney, Office of General Counsel - (212) 480-5269.

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

3. Summary description of proposal: Adoption of a new part to 11 NYCRR to address certain business practices in the title insurance industry and the supervision of title insurers authorized to write title insurance in this state. Agency Contact: Sapna Maloor, Senior Attorney, Office of General Counsel - (212) 480-4668.

4. Summary description of proposal: Adoption of a new part to 11 NYCRR (Regulation 195) to exercise the Superintendent's authority under section 316 of the Insurance Law to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission by electronic means, unless the insurer or other person or entity applies for, and the Superintendent grants, an exemption from the electronic filing requirement. Agency Contact: Barbara Kluger, Principal Attorney, Office of General Counsel - (212) 480-7211.

5. Summary description of proposal: Amendment of 11 NYCRR 216.6 (Unfair Claims Settlement Practices and Claim Cost Control Measures - Standards for prompt, fair and equitable settlements) (Regulation 64) to specifically address retained asset accounts established by life insurers and fraternal. Agency Contact: Sapna Maloor, Senior Attorney, Office of General Counsel - (212) 480-4668.

6. Summary description of proposal: Amendments to Title 11 to correct out-of-date references to the "Superintendent of Insurance", "Superintendent of Banks", "Insurance Department", "Banking

Department”, and “Banking Board” as a result of Part A of Chapter 62 of the Laws of 2011, which consolidated the Insurance and Banking Departments and created the Department of Financial Services. Agency Contact: Joana Lucashuk, Senior Attorney, Office of General Counsel - (212) 480-2125.

7. Summary description of proposal: Amendment of 11 NYCRR 216.6 (Unfair Claims Settlement Practices and Claim Cost Control Measures - Standards for prompt, fair and equitable settlements) (Regulation 64) to codify the Insurance Department’s current interpretation with regard to releases of liability. Agency Contact: Joana Lucashuk, Senior Attorney, Office of General Counsel - (212) 480-2125.

8. Summary description of proposal: Amendment of 11 NYCRR 71 (Legal Defense Costs in Liability Policies) (Regulation 107) to permit the inclusion of non-duty-to-defend provisions in directors and officers liability insurance policies under certain circumstances. Agency Contact: Brenda Gibbs, Senior Attorney, Office of General Counsel - (518) 408-3451.

9. Summary description of proposal: Amendment of 11 NYCRR 72 (Indemnification of Directors and Officers) (Regulation 110) to specify co-insurance and retention amounts for state credit unions and make technical corrections. Agency Contact: Brenda Gibbs, Senior Attorney, Office of General Counsel - (518) 408-3451.

10. Summary description of proposal: Amendment of 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, Deputy Superintendent for Accounting and International Affairs - (212) 480-2299.

11. Summary description of proposal: Amendment of 11 NYCRR 16 (Special Risk Insurance) (Regulation 86) to add to, and revise various risks in, the Class 2 Special Risk category, and make other changes (Free Trade Zone). Agency Contact: Hoda Nairooz, Principal Insurance Examiner, Property Bureau - (212) 480-5587.

12. 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”; amend rules related to the manner in which the organization designated by the Superintendent to administer the SUM arbitration program assesses the cost of the program to the insurance industry; and make various editorial revisions to the prescribed endorsement and other portions of the regulation to clarify the intent and application of the coverage. Agency Contact: Hoda Nairooz, Principal Insurance Examiner, Property Bureau - (212) 480-5587.

13. 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, to make other changes consistent therewith, and to revise the various sections of Regulation 134 to conform with the requirements of the Non-Admitted Reinsurance and Reform Act of 2010 (“NRRRA”). Agency Contact: Hoda Nairooz, Principal Insurance Examiner, Property Bureau - (212) 480-5587.

14. 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 the manner in which the organization designated by the Superintendent both administers the first party motor vehicle insurance arbitration programs and assesses the costs of these programs to the insurance industry. Agency Contact: Hoda Nairooz, Principal Insurance Examiner, Property Bureau - (212) 480-5587.

15. Summary description of proposal: Adoption of a new part to 11 NYCRR to provide clarification and rules regarding inland and ocean marine insurance. Agency Contact: Hoda Nairooz, Principal Insurance Examiner, Property Bureau - (212) 480-5587.

16. 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, among other things, provide notice and time frame requirements for third party claims. Agency Contact: Hoda Nairooz, Principal Insurance Examiner, Property Bureau - (212) 480-5587.

17. Summary description of proposal: Amendment of 11 NYCRR 80-1 (Holding Companies) (Regulation 52) to revise holding company filing requirements. Agency Contact: Hoda Nairooz, Principal Insurance Examiner, Property Bureau - (212) 480-5587.

18. 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: Hoda Nairooz, Principal Insurance Examiner, Property Bureau - (212) 480-5587.

19. Summary description of proposal: Adoption of a new part to 11 NYCRR to provide requirements regarding policies written to cover owner-controlled and contractor-controlled insurance programs (“wrap-ups”). Agency Contact: Hoda Nairooz, Principal Insurance Examiner, Property Bureau - (212) 480-5587.

20. Summary description of proposal: Amendment of 11 NYCRR 74 (Homeowner’s Insurance Disclosure Information) (Regulation 159) to provide minimum standards for the uniform use of mandatory hurricane deductibles in homeowner and dwelling fire (personal lines) policies. Agency Contact: Hoda Nairooz, Principal Insurance Examiner, Property Bureau - (212) 480-5587.

21. Summary description of proposal: Amendment of 11 NYCRR 19 (Homeowner’s Insurance; Application for Withdrawal from Marketplace) (Regulation 154) to revise the definition of “material reduction of volume of policies” to include a reduction in the net number of homeowner policies within a county. Agency Contact: Hoda Nairooz, Principal Insurance Examiner, Property Bureau - (212) 480-5587.

22. Summary description of proposal: Amendment of 11 NYCRR 27 (Excess Line Placements Governing Standards) (Regulation 41) to add coverages to the export list. Agency Contact: Hoda Nairooz, Principal Insurance Examiner, Property Bureau - (212) 480-5587.

23. Summary description of proposal: Amendment of 11 NYCRR 27 (Excess Line Placements Governing Standards) (Regulation 41) to revise the various sections of Regulation 41 to conform with the requirements of the Non-Admitted Reinsurance and Reform Act of 2010 (“NRRRA”). Agency Contact: Hoda Nairooz, Principal Insurance Examiner, Property Bureau - (212) 480-5587.

24. Summary description of proposal: Adoption of a new part to 11 NYCRR to specify additional types of groups made eligible for group travel insurance pursuant to section 3452 of the Insurance Law. Agency Contact: Hoda Nairooz, Supervising Insurance Examiner, Property Bureau - (212) 480-5587.

25. Summary description of proposal: Amendment of 11 NYCRR 125 (Credit for Reinsurance) (Regulation 20) to revise the introduction and provide clarification regarding certain provisions in the regulation. Agency Contact: Hoda Nairooz, Principal Insurance Examiner, Property Bureau - (212) 480-5587.

26. Summary description of proposal: Adoption of a new part to 11 NYCRR to set forth standards and procedures for the sale and purchase of annuities to ensure that annuities are suitable for the insurance needs and financial objectives of consumers. Agency Contact: Michael Maffei, Chief, Life Bureau - (212) 480-5027.

27. Summary description of proposal: Adoption of a new part to 11 NYCRR to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract. Agency Contact: Michael Maffei, Chief, Life Bureau - (212) 480-5027.

28. Summary description of proposal: Amendments of 11 NYCRR 136 (Standards for the Management of the New York City and New

York State Retirement Systems) (Regulation 85) to establish higher ethical standards, strengthen internal controls and governance, and enhance the operational transparency of the city and state retirement systems. Agency Contact: Michael Maffei, Chief, Life Bureau - (212) 480-5027.

29. Summary description of proposal: Amendment of 11 NYCRR 216 (Unfair Claims Settlement Practices And Claim Cost Control Measures) (Regulation 64) to require the performance of regular cross-checks of an insurer's life insurance policies, annuity contracts and retained asset accounts with the United States Social Security's Death Master File or any other database or service that is at least as comprehensive to identify any death benefit payments that may be due under life insurance policies, annuity contracts, or retained asset accounts as a result of the death of an insured or contract or account holder and to require insurers to request more detailed beneficiary information to facilitate locating and making payments to beneficiaries. Agency Contact: Dennis Fernez, Assistant Chief, Life Bureau - (212) 480-5032.

30. Summary description of proposal: Adoption of a new part to 11 NYCRR to adopt minimum surplus and disclosure requirements for fraternal benefit societies. Agency Contact: Ruth Gumaer, Supervising Insurance Examiner, Life Bureau - (212) 480-4763.

31. Summary description of proposal: Repeal of 11 NYCRR 380 (Viatical Settlements) (Regulation 148) and adoption of a new part to 11 NYCRR to implement Article 78 (Life Settlements) of the Insurance Law. Agency Contact: Ruth Gumaer, Supervising Insurance Examiner, Life Bureau - (212) 480-4763.

32. Summary description of proposal: Amendment of 11 NYCRR 94 (Valuation of Individual and Group Accident and Health Insurance Reserves) (Regulation 56) to reduce the lapse rate used to calculate reserves on long-term care policies. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau - (518) 474-7929.

33. Summary description of proposal: Amendment of 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 and make technical corrections to 42-2.11 dealing with nonforfeiture values for policies where the terms are affected by an index. Agency Contact: Thomas Hartman, Principal Actuary, Life Bureau - (518) 486-2126.

34. 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) 474-7929.

35. Summary description of proposal: Amendment of 11 NYCRR 50 (Separate Accounts and Separate Account Annuities) (Regulation 47) to establish revised standards for the operation of separate accounts, contract provisions and actuarial requirements to reflect statutory changes and recent innovations in product design and changes in contract administration of separate account annuity contracts. Agency Contact: Peter Dumar, Associate Insurance Attorney, Life Bureau - (518) 474-4552.

36. Summary description of proposal: Amendment of 11 NYCRR 53 (Life and Annuity Disclosure and Sales Illustration) (Regulation 74) to address the delivery and signature requirements when a life insurance sales illustration is shown on a computer, if no illustration is used in the sale or if the policy is applied for other than as illustrated; and 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 equity index products. Agency Contact: Deborah Kahn, Associate Insurance Attorney, Life Bureau - (518) 474-4552.

37. Summary description of proposal: Amendment of 11 NYCRR 98 (Valuation of Life Insurance Reserves) (Regulation 147) to establish or revise reserve standards for equity indexed life insurance plus other new product designs. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau - (518) 474-7929.

38. Summary description of proposal: Amendment of 11 NYCRR 57 (Smoker/Non smoker Mortality Tables For Use In Determining Minimum Nonforfeiture Benefits And Minimum Reserve Liabilities) (Regulation 113) to update requirements regarding smoker/non smoker classifications and mortality tables and to reflect the use of newer mortality tables. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau - (518) 474-7929.

39. Summary description of proposal: Amendment of 11 NYCRR 41 (Accelerated Payment of the Death Benefit under a Life Insurance Policy) (Regulation 143) to establish requirements for accelerated death benefits provided pursuant to section 1113(a)(1)(E) of the Insurance Law. Agency Contact: Kathleen Nelligan, Chief Insurance Attorney, Life Bureau - (518) 474-4552.

40. Summary description of proposal: Amendment of 11 NYCRR 99 (Valuation of Annuity, Single Premium Life Insurance, Guaranteed Interest Contract and Other Deposit Reserves) (Regulation 151) to update the reserve standards for variable annuities to reflect additional market volatility observed since the 2008 financial crisis and to establish reserve standards for using substandard annuity mortality tables in valuing impaired lives under individual single premium immediate annuities. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau - (518) 474-7929.

41. Summary description of proposal: Adoption of a new part to 11 NYCRR or amendment of existing parts of 11 NYCRR to implement changes required by the federal Patient Protection and Affordable Care Act of 2010. Agency Contact: Eileen Hayes, Assistant Chief, Health Bureau - (518) 486-7815.

42. 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 limit new enrollment in Healthy NY plans pursuant to the authority granted to the Superintendent by Section 4327(k) of the Insurance Law. Agency Contact: Patricia Patwell, Senior Attorney, Health Bureau - (518) 486-7815.

43. 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) or adoption of a new part to 11 NYCRR, to establish, in consultation with the commissioners of the Departments of Health and Education, standards of professionalism, supervision and relevant experience for those individuals providing behavioral health treatment for Autism Spectrum Disorder under the supervision of a certified behavior analyst. Agency Contact: Abby Nash, Senior Insurance Attorney, Health Bureau - (518) 473-7470.

44. 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 requirements for insurance policies that use a usual and customary or reasonable form of reimbursement. Agency Contact: Thomas Fusco, Supervising Insurance Attorney, Health Bureau - (518) 473-7470.

45. 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) or adoption of a new part to 11 NYCRR to clarify coverage of emergency services under health insurance policies that provide coverage for inpatient hospital care; to provide for enhanced disclosure of terms, conditions and parameters of health insurance coverage; and to establish standards for network adequacy in order to protect consumers from unexpected medical bills. Agency Contact: Lisette Johnson, Assistant Chief, Health Bureau - (518) 486-7815.

46. 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 experience data for student blanket accident and health insurance. Agency Contact: Sarah L. Allen, Associate Insurance Attorney, Health Bureau - (518) 486-7815.

47. 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) or adoption of a new part to 11 NYCRR to: 1) update minimum standards for Partnership and non-Partnership long term care coverages; 2) add new plan designs to the New York State Partnership for Long-Term Care Program; and 3) add disclosure requirements on the availability of Medicaid extended coverage for Partnership insureds who have non-New York State Partnership coverage and for New York Partnership insureds who relocate outside of New York. Agency Contact: Austin J. Rinella, Supervising Insurance Attorney, Health Bureau - (518) 486-7815.

48. 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.

49. 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 - (518) 473-7470.

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) to clarify extension of benefits requirements for individual, group and group remittance health insurance contracts. Agency Contact: Thomas Fusco, Supervising Insurance Attorney, Health Bureau - (518) 473-7470.

51. 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 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.

52. Summary description of proposal: Amendment of 11 NYCRR 58 (Minimum Standards for Form, Content, and Sale of Medicare Supplement Insurance, Including Standards of Full and Fair Disclosure) (Regulation 193) and Amendment of 11 NYCRR 215 (Advertisements of Accident and Health Insurance) (Regulation 34) 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.

53. 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 accident and health insurance policy forms and rate submissions, including the electronic filing of such submissions. Agency Contact: Doris Kullman, Supervising Insurance Attorney, Health Bureau - (518) 486-7815.

54. 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) or adoption of a new part to 11 NYCRR to: 1) establish requirements and standards for long term care insurers to notify the Department of Financial Services when insurers make available for purchase a long term care insurance form in New York State or when insurers discontinue selling a long term care insurance form in New York State; 2) 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 lapse/replacements and their due dates; 3) require notification and acknowledgement at the point of sale

of potential rate increases for long term care insurance; 4) establish minimum standards and/or requirements for long term care insurance products as new long term care financing options are enacted; and 5) establish procedures regarding external appeals of long term care insurance claims. Agency Contact: Austin J. Rinella, Supervising Insurance Attorney, Health Bureau - (518) 486-7815.

55. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish standards for insurer and HMO provider ranking programs. Agency Contact: Lisette Johnson, Assistant Chief, Health Bureau - (518) 486-7815.

56. 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.

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) to describe the circumstances under which a health insurance policy may impose a cost-sharing differential between x-rays and high-tech radiology services. Agency Contact: Thomas Fusco, Supervising Insurance Attorney, Health Bureau - (518) 473-7470.

58. 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, Assistant Chief Actuary, Health Bureau - (212) 480-7709.

59. 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.

60. Summary description of proposal: Adoption of a new part to 11 NYCRR (Regulation 35-B) to provide rules and guidelines to assure full disclosure of all relevant information in advertisements that describe or solicit the purchase of property/casualty insurance coverage, which are published, issued or distributed through various advertising media. Agency Contact: Joan Riddell, Supervising Insurance Examiner, Consumer Assistance Unit - (212) 480-4691.

61. Summary description of proposal: Amendment of 11 NYCRR 86.6 (Fraud Prevention Plans and Special Investigations Unit) (Regulation 95) to establish a requirement that any amendment to a fraud prevention plan that the Frauds Bureau had previously approved must be submitted to the Frauds Bureau within thirty days of its implementation. Agency Contact: Edward Ferrity, Counsel, Insurance Frauds Bureau - (212) 480-5683.

## II. Banking Regulations

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 3 of the NYCRR that the Department is presently considering proposing during the first half of 2012. Many of these items were previously published in the June 2011 Regulatory Agenda. Items that have been published in the State Register as "Proposed" actions are not included on the list. The 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 about the Banking Regulations included in the Department of Financial Services Regulatory Agenda, please contact:

Sam L. Abram

Assistant Counsel  
 New York State Department of Financial Services  
 One State Street  
 New York, NY 10004  
 Telephone Number: (212) 709-1658

Copies of current regulations may be obtained from the Department's Public Affairs Bureau by writing to: Public Affairs Bureau, New York State Department of Financial Services, One State Street, New York, NY 10004, or by calling (212) 709-1691.

1. New rules to implement the provisions of legislation addressing the mortgage foreclosure crisis in the state, including:

Rules governing the business conduct of mortgage loan servicers (Rules on this subject were adopted on an emergency basis most recently on October 20, 2011);

Rules determining the applicability of those mortgage loan servicer regulations to loans secured by interests in manufactured housing; and

Rules specifying disclosures to be made by mortgage brokers concerning compensation paid by borrowers and lenders, including amendments to capture changes in federal regulations.

2. Amendments to various regulations to conform to changes in Article 12-D of the Banking Law and to changes in the application process for mortgage bankers and brokers resulting from the requirements of the National Mortgage Licensing System and Registry.

3. Amendments to regulations regarding the Banking Development District (BDD) program to implement the provisions of recently enacted legislation and to address the recommendations of the Banking Department's May 2010 report assessing the effectiveness of the BDD program.

4. Amendments to regulations regarding compliance with the Community Reinvestment Act to provide more emphasis on qualitative factors as a way to encourage financial institutions to better respond to community credit needs.

5. Amendments to regulations to:

- codify the net worth requirements for check cashers;
- codify the net worth requirements and establish liquidity requirements for premium finance agencies;
- establish net worth and line of credit requirements for licensed lenders; and
- establish net worth requirements for sales finance companies.

6. Amendment to Part 38 of the General Regulations of the Banking Board to address inconsistency between those regulations and the new requirements of Truth-in-Lending Regulation and the Real Estate Settlement Procedures Act (Regulation X); incorporate certain disclosure requirements for brokers and bankers engaging in loan modification activity; add definition for table funding and enhance the advertising and misleading business conduct provisions.

7. Amendment to Part 41 of the General Regulations of the Banking Board to address threshold limits, and the impact of lender paid fees, and otherwise to conform with the requirements of Section 6-1 of the Banking Law.

8. Amendment to Part 79 of the General Regulations of the Banking Board to incorporate advertising requirements for reverse mortgage loans and clarify the applicability of disclosure and filing requirements for HUD-HECMS.

9. Amendment to Part 410 of the Superintendent's Regulations to clarify language on required notification to the Department; and incorporate provisions for termination of license and registration on failure to meet certain licensing standards (bond, line of credit, annual report).

10. Amendment to Part 413 of the Superintendent's Regulations to clarify requirements for mortgage brokers based on revision in the Department of Housing and Urban Development's Federal Housing Administration correspondent lender programs; including separate brokers' surety bonds and also when a broker must submit an application for authorization under that Part.

11. Amendment to Part 82 of the General Regulations of the Bank-

ing Board to effectuate amendments to Section 6-f of the Banking Law with respect to shared appreciation mortgages.

12. Adoption of new rules requiring that audited financial statements submitted to the Department be prepared by external auditors who do not also perform bookkeeping services for the audited entity.

13. Revision of Title 3, NYCRR to reflect changes in references to the former Superintendent of Banks, Banking Board and Banking Department effected by Part A of Chapter 62 of the Laws of 2011, which created the Department of Financial Services.

14. Amendment to Supervisory Procedure CB 117 in connection with the Department's consideration of adopting the interagency change of control application used by the federal financial institutions regulatory agencies.

## Department of Health

The following regulatory actions are under consideration for submission as a Notice of Proposed Rulemaking from January through June 2012:

### DESCRIPTION OF THE RULE SUBJECT MATTER

#### Title 10 NYCRR (Health)

Family Health Care Decisions Act - Promulgate regulations as required under Public Health Law section 2994-t (L. 2010, Ch. 8).

Statewide Health Information Network for New York (SHIN-NY) - Promulgate regulations as required under Public Health Law section 206(18-a)(b) (L. 2010, Ch. 58, Part A, § 11).

1.31 Disclosure of Confidential Cancer Information for Research Purposes - Amend the existing regulations which specifies that confidential cancer data can only be disclosed for governmental or government-sponsored research projects to be more consistent with current cancer research needs and sponsorship practices. The regulations will provide clearer definitions of the circumstances under which confidential cancer information can be released for research and non-research purposes.

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).

2.14 Communicable Diseases - Update the rabies regulations to be consistent with changes enacted to the Public Health Law (PHL). The regulations will provide definitions and requirements for reporting human exposures, confinement of animals exposing people to rabies, quarantine of animals exposed to rabies, and county responsibility for establishing provisions for animal control related to rabies.

5-1 Public Water Systems - Amend the regulations to incorporate mandatory federal regulations to improve control of microbial pathogens (federal LT2SWTR) while limiting risks associated with the formation of and exposure to disinfection byproducts (federal Stage 2 D/DBPR).

5-1 Public Water Systems - Amend the regulations to incorporate mandatory federal regulations to improve the control of lead and copper in public water supply systems. This will include the federal minor revisions and short-term revisions to the Lead and Copper Rule (LCR). To be included will be a restructuring of 5-1 Appendix C to update and simplify listings of analytical methods approved for drinking water, including lead and copper analyses.

5-1 Public Water Systems - Amend the regulations to update provisions pertaining to backflow device tester certification requirements; revise the provisions applicable to variances and exceptions and update and clarify specific code references.

14-1, 14-2, 14-4, 14-5 Food Protection - Modify the requirements to meet changing food service issues; exempt certain operators and rescind certain provisions, address the legislative mandate regarding food worker training courses.

16 Ionizing Radiation - Amend the regulations to be consistent with federal regulations and mandates applicable to medical and industrial use of radioactive material, radiation protection standards and license termination/decommissioning standards. Update and revise the qual-

ity assurance requirements for radiation therapy to align with current treatment delivery system technology to ensure patient safety and add a requirement for facility certification. Update the quality assurance requirements for diagnostic x-ray equipment, including computed tomography, to align with current equipment and imaging modalities to ensure patient safety. Consolidate current requirements in 12 NYCRR Part 38 (NYS DOL Ionizing Radiation) into 10 NYCRR Part 16, consistent with the merger of the NYS DOL Radiological Health unit into the DOH/CEH/BERP program in 2006.

19 Clinical Laboratory Directors - Revise qualifications for directors of clinical laboratories to recognize professional boards accepted as qualifying under the federal Clinical Laboratory Improvement Amendments (CLIA); and codify the definition of assistant director; and establish qualifications for directors of forensic identity and other categories not currently specified in the regulation.

22.3 Supplementary Reports of Certain Congenital Anomalies for Epidemiological Surveillance; Filing - Amend the regulations by requiring the reporting of children up to 10 years of age with certain birth defects to the Congenital Malformations Registry. This change will support an improved ability to accurately document prevalence rates for certain birth defects, such as fetal alcohol syndrome and Duchenne muscular dystrophy, which are often not diagnosed until a child is older. Improved surveillance will also help monitor the impact of any preventive measures.

22.7 Reportable Levels of Heavy Metals in Blood and Urine - Amend the regulations 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.

23.1 Sexually Transmitted Diseases - Amend the regulations to update the list of sexually transmitted diseases to change archaic terminology, to add Human Papilloma 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 regulations 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 regulations 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.

40-2 State Aid for Public Health Services: Counties and Cities - Amend the regulations to amend Subpart 40-2 to clarify eligible technical assistance activities pertaining to delivery of the Realty Subdivision program and Individual Water and Sewer programs.

40-2 and 40-3 State Aid for Public Health Services: Counties and Cities - Amend the regulations to repeal Subpart 40-3 and amend Subpart 40-2 to add new Subparts 40-2.240, 40-2.241, 40-2.250 and 40-2.251 to allow certified counties and New York City, when authorized by the Department to receive aid to implement Part 16 of the State Sanitary Code to inspect x-ray installations; and also to authorize New York City to license and inspect radioactive materials facilities.

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.

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, and enhancing monitoring and enforcement of restrictions on the sale of human tissue for transplant. In addition, update technical requirements to reflect advances in technology and changes in industry standards.

52-12 Therapeutic Cell Banks - Promulgate a new subpart addressing technical standards for the collection, processing, storage, and distribution of nucleated cells, including, but not limited to, mesenchymal cells, embryonic stem cells, dendritic cells, and stromal cells, intended for a therapeutic purpose other than hematopoietic reconstitution or reproduction.

57 Rabies - Dogs at Large in Rabies Areas - Delete this provision. It is outdated since rabies is endemic in wildlife in New York. Important provisions are being included in Section 2.14. This Part is no longer needed, and is proposed for deletion.

58-1 Clinical Laboratories - Revise laboratory personnel requirements to reflect industry standards; consolidate existing requirements for clarity; codify quality systems, performance testing and other requirements as necessary to align with federal CLIA standards; clarify assistant director responsibilities; establish standards for tracking and referral of critical agent and communicable disease specimens; and establish standards for demonstrating the technical and clinical validity of test methods.

58-2 Blood Banks - Amend the regulations to permit emergency medical technicians, with additional training, to administer transfusions during inter-facility transport; enhance donor and patient safeguards; update technical requirements; eliminate obsolete requirements; clarify regulatory intent; meet federal requirements as directed by the Centers for Medicare and Medicaid Services; provide regulated parties with greater flexibility in complying with regulations regarding emergency transfusions, qualifying donors over 75 and apheresis donors, and provide options for equivalent electronic records.

58-5 Hematopoietic Progenitor Cell Banks - Update requirements for donor suitability determination, infectious disease testing, and record keeping related to hematopoietic progenitor cell (HPC) donation and transplantation. Amend the regulations to require the HPC bank medical director to establish a policy regarding testing allogeneic donors for West Nile virus, Trypanosoma cruzi, and hemoglobinopathies.

63 HIV/AIDS Testing, Reporting and Confidentiality of HIV-Related Information - Amend relevant sections of Part 63 to be consistent with Chapter 308 of the Laws of 2010, the HIV Testing Law.

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. Redefine "in process" for students receiving mandated vaccinations and establish time limits for completion of needed immunizations.

66-3 Immunization - Amend the regulations to add Subpart 66-3 to Title 10 to require all health care personnel employed or affiliated with a health care facility, document as a precondition of employment and annually, immunizations for influenza virus. The requirement is subject to the availability of an adequate supply of the necessary vaccine and exemptions for medical contraindications. In addition, parallel regulatory changes are proposed to Sections 405.3 (hospitals), 751.6 (diagnostic and treatment facilities), 763.13 and 766.11 (home health agencies and programs), and 793.5 (hospices) of Title 10. Any facility defined as a hospital or diagnostic and treatment centers pur-

suant to PHL Article 28, home care agency within PHL Article 36, or hospice within PHL Article 40 will be required to comply with the referenced requirements detailed in Subpart 66-3.

68.6 Distributions from the Health Care Initiatives Pool for Poison Control Center Operations - Repeal previous regulations and add new regulations that revise the methodology for distributing Health Care Reform Act (HCRA) grant funding to Regional Poison Control Centers (RPCCs).

69-4 Early Intervention Program - Amendments may be needed to conform current state regulations to final federal regulations recently promulgated under Part C of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004. The final federal regulations became effective on October 28, 2011. Several areas of regulations may include Section 69-41.1, Definitions; Section 69-4.8, Evaluators/Screening, Evaluation, and Assessment Responsibilities; Section 69-4.11, Individualized Family Service Plan; Section 69-4.17, Procedural Safeguards; Section 69-4.20, Transition Planning; and, Section 69-4.23, Initial and Ongoing Eligibility Criteria. State compliance must be achieved by July 1, 2012, to ensure continued receipt of federal funds. Amendments may be proposed to ensure quality, consistency, and equity in access to early intervention services, including Section 69-4.4, Qualifications of Service Coordinators; Section 69-4.9, Standards for Provision of Services; and Section 69-4.12, Monitoring of Approved Providers. Amendments related to Section 69-4.30, Computation of Rates for Early Intervention Services, resulting from Department's continuing review of the program's reimbursement methodology may also be proposed. Additional amendments may be proposed if Title II A of Article 25 of Public Health Law on the Early Intervention Program, is revised in 2011.

69-8 Newborn Hearing Screening - Amend the regulations to specify follow-up where conditions of the screening are considered to contribute to invalid results; require reporting of individualized, identifiable data to the department; require staff involved in newborn hearing screenings to complete training; require that infants who fail an initial screening receive at least one additional screening prior to discharge; require that a re-screening post discharge from a facility occur within 8 weeks of discharge; require that an infant be referred to the early intervention program as an at-risk child, unless the parent objects, if the results of a follow-up outpatient screening are not returned to the facility within 45 days post discharge; require reporting to an electronic data system.

72-2 Body Piercing and Tattooing - 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 as well as changes that have occurred in the industry that should be reflected in the training programs.

74 Approval of Realty Subdivisions - Amend the regulations to update and clarify requirements for plan submittals and approvals of realty subdivisions.

75 Standards for Individual Water Supplies and Individual Sewage Treatment Systems and Appendix 75C - Individual Water Well Quality Standards - Amend the individual water supplies and sewage treatment system regulations to clarify design submittal and approval procedures; add new regulations for individual water wells in order 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.

80 Controlled Substances - Amend the regulations to allow for electronic transmission, documentation, record keeping and endorsement of controlled substance and hypodermic needle and syringe

prescriptions to allow for transfer of needle and hypodermic syringe prescriptions and eliminate the requirement for a written follow-up prescription for oral prescriptions (authorizations) for needles and syringes. Amend the regulations to permit prescribing of needles and syringes pursuant to a patient specific order form, as defined in State Education Law Section 6810 (7)(b). Amend Part 80 to update reporting requirements for Methadone Maintenance Treatment Programs enacted by Public Health Law Section 3352 statutory changes. Outline the training requirements associated with certification of Euthanasia Technicians (for animals) as required by Section 374 (3)(b) of the Agriculture and Markets Law. Amend the regulations to allow for interstate sharing of prescription monitoring program information.

80.131 and 80.137 Expanded Syringe Access Demonstration Program - Sale and possession of hypodermic syringes and hypodermic needles without a prescription under the Expanded Syringe Access Demonstration Project (ESAP) - Amend Section 3381 by removing "Demonstration" from the title of the program and formally adopt "Expanded Syringe Access Program" as the name of the program since the program has now been made permanent pursuant to Chapter 58 of the Laws of 2009.

81.5 Investigation and Determination - Amend the regulations to allow the NYS Department of Health to initiate an investigation within 2 working days to coincide with federal requirements for investigating a situation in which the provider's noncompliance with one or more requirements of participation has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

85.13 Physically Handicapped Children - Rescind the regulation thus eliminating the designation of the Physically Handicapped Children's Program speech and hearing centers as the only providers of hearing assessments to Medicaid eligible children.

86-1 Inpatient Hospital Reform - Amend the regulations to: establish a new methodology to address potentially preventable readmissions and complications; establish a methodology to deny Medicaid reimbursement for hospital acquired conditions, based on quality-related measures; establish a new payment methodology for hospital inpatient psychiatric services; implement revised APR-DRGs, Service Intensity Weights, cost outlier thresholds and average length of stay effective January 1, 2012; implement a statewide base price reduction in order to achieve targeted savings on an interim basis while the State consults with stakeholders to develop and implement a clinically sound approach to reducing inappropriate cesarean deliveries; grant approval of temporary adjustment to rates for hospitals subject to mergers, acquisitions or consolidations; change the Hospital Quality Contribution rate; and establish a methodology for episodic payments for Certified Home Health Agency services.

86-1.2 Accountant's Certification - Amend the regulations to require an accountant's certification of institutional cost reports only for years prior to 2010.

86-1.4 Institutional Cost Reports/Audits - Amend the regulations to establish a fee for filing institutional cost reports and to fund Department audits of medical facilities.

86-1.13-b Episodic Pricing System for Certified Home Health Agencies - Amend the regulations by adding a new section to make Medicaid payments for certified home health agencies based on 60-day episodes of care, with adjustments for patient acuity and regional wage differences.

86-1.31 Merged Rates - Amend the regulations to eliminate the requirement that a merger, acquisition or consolidation needs to occur on or after the year the rate is based upon in the case of a hospital receiving a temporary rate adjustment as a result of such merger, acquisition or consolidation. Amend the regulations to expand the temporary rate adjustment to hospital closures or hospitals affected by the closure, merger, acquisition or consolidation of another hospital.

86-2 Nursing Home Reform - Amend the regulations to establish a regional pricing model for nursing homes.

86-4.39 Computation of Rates for Methadone Maintenance Treatment Services In Freestanding Ambulatory Care Facilities and Hospital Outpatient Clinics - Amend the regulations to conform with changes made to OASAS regulations at Parts 822, 828 and 841 of 14 NYCRR to implement Ambulatory Patient Group (APG) billing methodology.

86-8.15 Outpatient Reform - Amend the regulations to establish a regional pricing model for outpatient services; grant approval of temporary adjustment to rates for hospital outpatient facilities, diagnostic and treatments centers and ambulatory surgery centers subject to mergers, acquisitions or consolidations.

86-8.7 APGs and Relative Rates - Amend the regulations to revise the October 2011 weights and add new hospital peer groups.

94.2 Physician Assistants - Amend the regulations to allow a Registered Physician Assistant to prescribe controlled substances, including Schedule II substances, for patient's under the care of the supervising physician in conformance with Public Health Law Section 3703(3).

98-1 Various Technical Amendments - Revise the regulations, making technical corrections: 1) 98-1.9(b)(3), requiring managed care organizations (MCOs) to provide assurances of continuing compliance with Article 49 of the Public Health Law, in addition to Article 44 and Part 98; 2) 98-1.11(h), restoring language that prohibits health maintenance organizations (HMOs) from discriminating in enrollments and services provisions; 3) 98-1.11(k)(4), clarifying that the MCO is responsible for monitoring contractors' fiscal stability; 4) 98-1.11(q), clarifying that MCOs must comply with Article 49 of the Public Health Law, in addition to Article 44 and Part 98; 5) 98-1.13(c)(iii), correcting a 2005 change which inadvertently limited provider contract assignments to within one year of promulgation of the rule to reflect that the rule applies prospectively; and 6) amending 98-1.5(6)(e)(2) the MCO management functions to reflect that if an independent practice association (IPA) is delegated MCO management functions, then a separate management contract is required and it must be separate from the delivery of service contract.

98-1.5 Application for a Certificate of Authority - Amend the regulations to require electronic submission of the managed care organization's provider network, consistent with the filing requirements in 98-1.16(j). Modify Section (b)(6)(vii)(e)(2) to specify that an independent provider association (IPA) performing management functions should have requirements detailed in a contract separate and apart from the IPA provider agreement.

98-1.6 Issuance of the Certificate of Authority - Amend the regulations to add a provision requiring managed care organizations (MCOs) 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.

98-1.11(b) & (e) Operational and Financial Requirements for MCOs - Amend the regulations to specify criteria that would be used to evaluate requests for approval of asset transfers or loans. Section 98-1.11(e) would be amended to temporarily lower the contingent reserve requirement applied to revenues from the Medicaid managed care and Family Health Plus programs.

98-1.13 Assurance of Access to Care - Amend the regulations to: 1) require that managed care organizations (MCOs) ensure each member has selected a primary care provider from which the member receives all primary care services; 2) address requirements related to subdivision 5-d to Section 4406-c which imposes a "cooling off" period after termination or non renewal of a contract between an MCO and a hospital; 3) amend regulations to clarify that certain out-of-network service denial notices must include internal MCO and external appeal rights afforded by Section 4904(1-a); and 4) promote consistency of initial adverse determination notices issued in accordance with Section 4903(5) by clarifying notice content requirements.

98-1.16(c) Preparation and Filing of Audited Financial Statements - Amend this part and new section 98-3 to establish standards for the preparation and filing of audited financial statements by PHSPs, HIV SNPs, and managed long term care plans that are consistent with the National Association of Insurance Commissioners (NAIC) model audit rules already adopted by the New York State Insurance Department for other insurers.

98-1.18(a) MCO Agreements - Amend the regulations to add this section as it applies to MCO agreements with licensed pharmacies and laboratories acting as benefit managers arranging for services, equipment and supplies.

98-2 External Appeals of Adverse Determinations - Amend the regulations to reflect changes to Article 49 of the Public Health Law made by Chapter 237 of the Laws of 2009, Chapter 451 of the Laws of 2007, Chapter 219 of the Laws of 2011 and the Patient Protection and Affordable Care Act (PPACA).

128 New York City Watershed Rules and Regulations - Amend the regulations to incorporate requirements intended to protect NYC's Watersheds and preserve NYC's Filtration Avoidance Determination by providing various limitations on watershed activities and construction.

400 All Facilities - General Requirements - Amend the regulations to require that Article 28 facilities make available to the public and others information regarding nurse staffing and patient outcomes.

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

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

400.18 Statewide Planning and Research Cooperative System (SPARCS) - Repeal Section 400.18 and add a new Section 400.18 to reflect current practices of SPARCS. New Section 400.18 will permit SPARCS to collect all other outpatient clinic data not presently being collected by SPARCS from general hospitals and diagnostic and treatment centers licensed under Article 28 of the Public Health Law. As a result of the changes to Section 400.18, the following will be repealed: Appendix C-2, Appendix C-3, Appendix C-5, Section 755.10, and Section 405.27. Section 407.5 and Section 400.14 will be amended to coordinate to the revised Section 400.18.

400.21 Advance Directives - Amend the regulations as required under Public Health Law Section 2994-t within Article 29-CC - Family Health Care Decisions Act. REPEAL identical provisions in 700.5.

400.25 Disclosure of Nursing Quality Indicators - Amend the regulations to create a new section 400.25 in response to Chapter 422 of the Laws of 2009, the Nursing Care Quality Protection Act. The law requires Article 28 facilities to disclose identified nursing quality indicator information upon request to any member of the public, any state agency licensing the facility or responsible for overseeing the delivery of services by the facility, or any organization accrediting the facility. The law requires promulgation of regulations to enable disclosure of this information to requestors.

402 Criminal History Record Check - Amend the regulations to provide specific timeframe requirements for scanning the fingerprints of covered employees.

403 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.

405 Pediatric Amendments - Amend the regulations to incorporate various pediatric amendments into the Hospital Minimum Standards provisions.

405.7 Patients' Rights - Amend the requirements limiting the use of physical restraints to be consistent with federal guidelines.

405.8 Incident Reporting - Amend the regulations to update the Department's New York Patient Occurrence Reporting and Tracking System (NYPORIS) 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.

405.11 Infection Control - Amend the regulations to conform to PHL Section 2819(2). The proposed regulation would define requirements for hospitals to report select hospital acquired infections using methods, definitions and protocols defined by the Department, ensures patient privacy in collection and release of data and creates standards for publication and release of the data reported.

405.19 Emergency Services - Amend the regulations to authorize and provide operating standards for observation units.

405.20 Outpatient Services - Amend the regulations to cross reference 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 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.

405.27 Information, Policy and Other Reporting Requirements - Amend the regulations to repeal this section because the authority for the reporting requirements are detailed in either Section 400.18 (SPARCS data) or section 86-1.2 and 86-1.3 (Uniform financial report and uniform statistical reports).

405.43 Orders Not to Resuscitate - Amend the regulations to repeal provisions which are no longer current as a result of the adoption of PHL Article 29-CC - Family Health Care Decisions Act. Section 400.21 Advance Directives provisions will be updated consistent with PHL Article 29-CC.

413.1 Consumer Information - Amend the regulations to provide flexibility in meeting the requirement that the Department issue to each nursing home consumer, information based on the findings from any onsite regulatory visit.

415.3(h) Resident Rights - Amend the regulations to require nursing home providers to issue a valid written transfer/discharge notice to the resident and his or her designated representative. Such notice shall include date of notice, resident's identity, effective date of proposed transfer/discharge, reason for proposed discharge or transfer, notice of the resident's right to an evidentiary hearing to appeal the proposed discharge, contact information for the NYS Long Term Care Ombudsman, contact information for the agency responsible for the protection and advocacy of individuals with mental illness or development disabilities, and notice of the resident's right to remain in the facility (except in cases of imminent danger), pending the appeal hearing decision. The proposed amendment outlines the Department's interim policy in effect since December 1, 2004.

425.18 Adult Day Health Care (Services for Registrants with Acquired Immune Deficiency Syndrome) - Amend the regulations to establish a step-down aftercare program for Adult Day Care Program enrollees achieving a level of physical and mental health stability to transition to a less intensive model.

600.1 - 600.7; 610.1 - 610.2; 620.1 - 620.3; 630.1; 640.2 - 640.3; 650.1 - 650.2; 670.1 - 670.6; 680.2; 680.4 - 680.6; 680.8 - 680.10, 705.9 - Amend the regulations to change references to the Public Health Council to the Public Health and Health Planning Council; and to delete references to the State Hospital Review and Planning Council.

700.5 Advance Directives - Amend the regulations to repeal this section because it is identical to the Advance Directives section in Section 400.21. As a result of the adoption of PHL Article 29-CC - Family Health Care Decisions Act, Section 400.21 Advance Directive provisions will be updated consistent with PHL Article 29-CC.

705.7, 708.1, 710.1, 710.2, 710.5 - Amend the regulations to change references to the State Hospital Review and Planning Council to the Public Health and Health Planning Council.

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

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

709.17 Long-term Ventilator Beds - Amend the regulations concerning the need methodology for ventilator beds in residential health care facilities (nursing homes).

710.1 Medical Facility Construction - Amend the regulations to reflect amendments to PHL 2802 that substitute written notice for limited review, CON administrative review and CON full review for projects confined to non-clinical infrastructure, repair and maintenance, and one-for-one equipment replacement.

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.

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

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

759 Adult Day Health Care (Services for Registrants with AIDS) - Amend the regulations to establish a step-down aftercare program for Adult Day Care Program enrollees achieving a level of physical and mental health stability to transition to a less intensive model.

760 and 761 Home Health Services - Amend the regulations to update the current need methodology for establishment of certified home health agencies and to reflect statutory modification of Certified Home Health Agency Charity Care program requirements.

763 Certified Home Health Agencies and 766 Licensed Home Health Services Agencies - Amend the regulations to require the plans of care and medical orders for patients of CHHAs or LHCSAs address the patient's need for palliative care.

766 Licensed Home Care Services Agencies - Amend the regulations to update and modernize provisions to improve service delivery, training and surveillance activities and to eliminate the requirement for a physician to serve on the quality improvement committee of LHCSAs.

790 Hospices - Add regulations implementing changes in the federal Conditions of Participation; expand the definition of terminal illness as a result of Chapter 441 of the Laws of 2011.

800 Emergency Medical Services (EMS) - General - Amend the regulations to conform with federal requirements/recommendations, current medical practice standards, and national safety standards. 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.

1001 Assisted Living Residences - Amend the regulations to address recent litigation settlements.

#### Title 18 NYCRR (Social Services)

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.

360-7.7 Payments of Deductibles and Coinsurance Under Title XVIII of the Social Security Act (Medicare) - Amend the regulations to align with recent changes to New York State social services law. This modification will align payment of Medicare Part B coinsurance with Medicaid coverage and Medicaid rates.

360-10 Medicaid Managed Care Program - Replace the existing regulations to conform to changes authorized by 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, 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 for these populations.

460 and 461 Adult Homes, Enriched Housing Programs and Residences for Adults - Amend the regulations to improve the health and safety of New York residents living in adult care facilities by expanding current DOH authority regarding penalties and suspensions of operating licenses, timeframes for inspections of facilities and written plan of corrections and requiring plans for quality assurance activities; amend the regulations regarding reporting to appropriate law enforcement authorities felony crimes committed against a resident; amend the regulations by providing for additional rights of residents of ACFs choosing their own health care providers and to be fully informed by the physicians; amend the regulations relating to the actions and reports of state representatives when acting in good faith; adding a section providing that an individual or entity which is not the duly approved operator of an ACF shall not participate in the total gross income or net revenue of such facility or residence; and clarifying rules regarding rental fees based on fair market value and charitable contribution of state monies, medical assistance payments or social security or supplemental security income.

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 legislative changes 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, including role of nurse practitioners and physician assistants.

505.3 Drugs - Amend the regulations to provide that women 17 years of age or older have access to emergency contraceptive without a prescription. This change will align the regulation with current standards of practice and federal FDA guidelines.

505.3(i) Drugs - Amend the regulations to allow the Department to require each enrolled pharmacy to report actual acquisition cost of a prescription drug to the Department in a manner specified by the Department. This will enable the Department to include Average Acquisition Cost (AAC), when available, in the Medicaid drug payment methodology, as required by SSL section 367-a 9(g)(b)(i).

505.11 Rehabilitation Services - Amend the regulations to align with State Education law, federal guidelines, and current standards of practice; clarify who can order rehabilitation services, particularly speech-language pathology services provided to Medicaid recipients; clarify supervision requirements for services provided "under the direction of" speech-language pathologists, occupational therapists, and physical therapists.

505.14 Personal Care Services Program - Amend the regulations to reflect statutory changes regarding limitations and definitions of services and recent federal audit findings.

505.15 Psychiatric Care - Amend Medicaid regulations to align with federal requirements regarding who may provide school supportive health services.

505.16 Case Management - Amend the regulations to reflect changes in program requirements.

505.18 Clinical Psychological Services - Amend the regulations to align with federal guidelines and current standards of practice and clarify which practitioners are qualified to provide services in the Preschool/School Supportive Health Services Program to Medicaid recipients.

505.23 Personal Emergency Response Services (PERS) - 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.

505.27 Chemical Dependence Services - Amend the regulations to conform with changes made to OASAS regulations at Parts 822, 828 and 841 of 14 NYCRR to implement Ambulatory Patient Group (APG) billing methodology and incorporate clinical and Medicaid billing standards.

505.28 Consumer Directed Personal Assistance Program (CDPAP) - Amend the regulations to reflect the statutory change regarding the limitation of housekeeping services to 8 hours weekly.

505.31(d)(e)(1) of Title 18 NYCRR Audiology, Hearing Aid Ser-

vices and Products - Amend the regulations to align Medicaid regulations with federal guidelines, State Education Law and current standards of practice and clarify who can order audiology services.

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## 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 39 "Possession, Handling, Storage and Transportation of Explosives" to provide for additional security measures for storage sites.

2. 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.

3. Amend Title 12 NYCRR Part 56 to clarify fire/life safety regulatory requirements at asbestos projects within New York State. This revision will also incorporate Asbestos Successor Law definitions and minor clarifications.

4. Amend Title 12 NYCRR Part 82 to increase the processing fees for Certificates of Competence for Blasters, Crane Operators, Laser Operators and Pyrotechnicians, as well as the fees charged for the certification of explosive magazines storage facilities.

5. Repeal Title 12 NYCRR Part 127 to remove procedures for the Special September Eleventh Bidders Registry. The statutory authority for this rule was deemed repealed September 1, 2008, pursuant to L. 2002 c. 350, § 12. The statute has not been extended.

6. Amend Title 12 NYCRR Part 146 to conform the notice requirements to the recently enacted Wage Theft Prevention Act, which went into effect on April 9, 2011.

7. Amend Title 12 NYCRR to add a new Part 198 to allow assurance organizations to satisfy the registration requirements of Article 31 of the Labor Law for the professional employer organizations who have retained the services of the assurance organization.

8. Amend Title 12 NYCRR Part 470, Part 472 (specifically, Sections 472.1 – 472.5 and 472.7 – 472.10), Part 473, Part 480 (specifically, Section 480.1 and 480.10), and Part 481 to bring those parts into conformity with changes in the Labor Law and/or federal law, as well as to clarify the terminology being used; conform to current practices and to repeal obsolete provisions.

9. Amend Title 12 NYCRR Section 471.1 to allow blanket elections of specified groups of employees for liability purposes and to amend regulations consistent with the purposes set forth in Executive Order 25.

10. Amend Title 12 NYCRR Section 472.6 to strengthen the notice requirements for transfers of business and to amend regulations consistent with the purposes set forth in Executive Order 25.

11. Amend Title 12 NYCRR Part 480 (specifically, Sections 480.2 – 480.9, 480.11, and 480.12) to make them consistent with the purposes set forth in Executive Order 25.

12. Amend Title 12 NYCRR Part 482 to broaden the Department's interpretations with regard to approvable training programs and providers for programs under Section 599 of the Labor Law.

13. Add a new Part 551 to Title 12 NYCRR to implement regulations required by Chapter 601 of the Laws of 2002 that provide for the Department to promulgate regulations describing the form and content of the financial records required by Section 211-a of the Labor Law as well as advisory regulations to State entities relating to the implemen-

tation of contractual and administrative measures to enforce Section 211-a.

14. Amend Title 12 NYCRR Part 601 to provide for the suspension of an Apprentice's training program due to military service, health issues, lack of work, etc. and to address conformity issues with federal regulations that are required to be addressed in order for NYS to be re-certified by USDOL to continue regulating NYS apprentice training programs.

15. Amend Title 12 NYCRR Part 700 to implement regulations required by 20 CFR 603 regarding public access to Unemployment Insurance Records.

16. 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.

17. 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.

18. Amend Title 12 NYCRR Part 800 to include provisions for operational safety for firefighters.

*To obtain information or submit written comments regarding this regulatory agenda, contact:* Pico Ben-Amotz, Esq., Acting Counsel, Department of Labor, Bldg. 12, State Office Campus, Counsel's Office, Rm. 508, Albany, NY 12240, or [regulations@labor.ny.gov](mailto:regulations@labor.ny.gov). When e-mailing, please include "Regulations – Regulatory Agenda" in the subject line. You may also reach this office by phone at, (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 regulations are under consideration by the OMIG for submission as a Notice of Proposed Rulemaking during the calendar year 2012, but for which a rulemaking proceeding has not yet been commenced.

Below is a brief description of the regulations, by subject matter, that are under review by the OMIG.

### Title 18 NYCRR (Social Services)

360-6.4 Restriction of recipient access to services (recipient restriction program) - Amend regulation in relation to restriction of recipient access to services (recipient restriction program).

514.4 Medicaid eligibility terminal (MET) - Amend regulation in relation to new and existing guidelines for the Medicaid eligibility terminal (MET).

514.5 Card swipe – Amend regulation in relation to identifying new guidelines and clarifying existing requirements for the card swipe program.

515.1 Scope and Definitions – Amend regulation in relation to new and existing definitions.

515.2 Unacceptable Practices – Revise regulation in relation to identifying new and clarify existing unacceptable practices under the medical assistance program.

515.4 Guidelines for Sanctions – Amend regulations pertaining to sanction guidelines and procedures.

515.5 Sanctions; Effect – Amend regulation in relation to the effect of sanctions.

515.6 Notification – Amend regulation to clarify notification procedures.

515.7 Immediate Sanctions – Revise regulation in relation to new and existing guidelines for immediate sanctions.

515.8 Mandatory Exclusions – Revise regulation in relation to new and existing guidelines for mandatory exclusions.

515.10 Reinstatement – Revise regulation in relation to new and existing guidelines and procedures for reinstatement.

517.2 Definitions – Amend regulation in relation to new and existing definitions.

517.3 Audit and Record Retention – Revise regulation in relation to audit and record retention requirements.

517.5 Draft Audit Report – Revise regulation in relation to Draft Audit Report procedures.

517.6 Final Audit Report – Revise regulation in relation to Final Audit Report procedures.

518.7 Withholding of Payments – Amend regulation to clarify guidelines and procedures for withholding payments.

519.1 Provider Hearings-Scope – Amend regulation to clarify the scope of the hearing process for providers of medical assistance.

519.5 Notice – Amend regulation to change mailing address and procedures for department notices.

519.7 Request for a Hearing – Amend regulation to clarify mailing address and procedures for hearing requests.

519.11 Scheduling and Adjourning Hearings – Amend regulation to clarify hearing procedures.

519.13 Examination of File Before Hearing – Amend regulation in relation to procedures for examination of a file before hearing.

Part 520 Tax Refund Offset for Overpayments of Medical Assistance – Revise regulations in relation to establishing and enforcing the tax refund offset procedures for overpayments of medical assistance.

Part 521 Provider Compliance Programs – Amend regulations in relation to provider compliance programs.

*Contact Person:* Office of the Medicaid Inspector General, Office of Counsel, 800 N. Pearl St., Albany, NY 12204, (518) 408-5803, Fax (518) 408-0536

## 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 2012. 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 create a new restriction, "medical variance," in order to comply with federal regulations regarding medical requirements for commercial driver license holders.

Amend Part 4 to provide that the supervising driver of a learner's permit holder must be at least 21 years of age.

Amend Part 6 to require all bus carriers enrolled under Article 19-A, to report to DMV, where applicable, their: legal business name, "doing business as" (d/b/a) name, federal employer identification number, US DOT number, NYDOT #, or a letter of explanation as to why they are not required to have a US or NY DOT number.

Amend Part 7 to: remove outdated content and provide clarity for pre-licensing course providers.

Amend Part 28, International Registration Plan to: conform Part 28 to Vehicle and Traffic Law provisions; update references to forms and schedules; clarify proof of ownership requirements; update requirements related to the federal Heavy Vehicle Use Tax and the NYS Highway Use Tax; update refund procedures; update terminology to reflect current practices; and make conforming changes to comply with the federal Performance and Registration Information System Management (PRISM).

Amend Parts 32 and 34 to change references to the State Insurance Department to the Department of Financial Services.

Amend Part 76, which governs the regulations for commercial drivers' schools, to clarify and update numerous provisions and to enhance DMV's oversight tools.

Amend Part 78, which governs the regulation of dealers, in relation to a "conditional" new motor vehicle dealer license and to create recordkeeping requirements for dealers using an electronic vehicle ownership reassignment system.

Amend Part 124 in relation to the adjournment of hearings in the Department's Traffic Violation Bureaus.

Amend Part 134 to authorize the Department to impose penalties against a Driving Driver Program that fails to comply with the law, regulations or procedures.

Amend Part 136 in relation to re-licensing after "permanent revocation" for multiple alcohol-related offenses.

Amend Part 155 in relation to proof that an appeal has been timely filed with the Appeals Board.

## Department of State

Pursuant to subdivision 1 of section 202-d of the State Administrative Procedure Act (SAPA), notice is hereby provided of the following rules that the Department of State is considering proposing but for which a rule making proceeding has not been commenced. All references are to Title 19 of the New York Code of Rules and Regulations unless otherwise noted. Regulatory plans of the Department of State are subject to change; the Department reserves the right to add, delete, or modify items appearing on the following list. As indicated in SAPA section 202-d(2), the Department of State is not required to propose for adoption any rule summarized in a regulatory agenda and may propose a rule for adoption that is not listed in a regulatory agenda.

This notice is also intended to further assure that small businesses, local governments, and public and private interests in rural areas are given the opportunity to participate in the rule making process, as provided for in sections 202-b and 202-bb of SAPA. Each rule listed below may require a regulatory flexibility analysis or a rural area impact statement pursuant to SAPA sections 202-b and 202-bb, respectively.

The public is welcome to send written comments regarding the Regulatory Agenda of the Department of State to the contact person at the end of this list.

### DIVISION OF CEMETERIES

#### Part 200

Considering adding new sections regarding various financial matters, such as permanent maintenance fund allocations, pre-need sales, trust fund reconciliations, and financial reports.

#### Section 201.17

Considering amending section 201.17 dealing with lawn crypts.

#### Section 201.19

Considering adding a new section to allow for the disposal of remains in pet cemeteries.

### DIVISION OF COASTAL RESOURCES

#### Parts 600 - 603

Considering amending the New York State Coastal and Inland Waterway Regulations affecting federal, state, local, and individual actions concerned with Article 42 of the New York State Executive Law ("Waterfront Revitalization of Coastal Areas and Inland Waterways") and implementation of the Federal Coastal Zone Management Act in New York as described in the New York Coastal Management Program.

### DIVISION OF CODE ENFORCEMENT AND ADMINISTRATION

#### Parts 910 and 911

Considering adding a new Chapter comprised of Parts 910 and 911 containing provisions relating to energy efficiency standards for appliances and equipment.

#### Chapter XXXII

Consider adding new Part(s) and/or amending existing Parts to establish rules, regulations, standards and procedures relating to (1) the approval of code enforcement training programs for code enforcement personnel charged with enforcement of the Uniform Fire Prevention and Building Code and/or the State Energy Conservation Construction Code and for certified code technicians (CCTs), and the revocation of such approvals; (2) minimum courses of study, attendance requirements, and equipment and facilities to be required for approved

code enforcement training programs for code enforcement personnel and CCTs; (3) minimum qualifications for instructors for approved code enforcement training programs for code enforcement personnel and CCTs; (4) the requirements of minimum basic training which code enforcement personnel and CCTs shall complete in order to be eligible for continued employment or permanent appointment, and the time within which such basic training must be completed following such appointment; (5) the requirements for in-service training programs designed to assist code enforcement personnel and CCTs in maintaining skills and being informed of technological advances; (6) categories or classifications of advanced in-service training programs and minimum courses of study and attendance requirements with respect to such categories or classifications; (7) granting exemptions from some or all of the foregoing provisions with respect to a county, city, town or village, and the revocation in whole or in part of such any exemption; (8) approval of code enforcement training programs for code enforcement personnel and CCTs, the issuance of certificates of approval to such programs, and the revocation of such approvals and certificates; (9) certification, as qualified, instructors for approved code enforcement training programs for code enforcement personnel and CCTs and the issuance of appropriate certificates to such instructors, and the revocation of such approvals and certificates; (10) certification of code enforcement personnel and CCTs who have satisfactorily completed basic training programs and in-service training programs, the issuance of appropriate certificates to such code enforcement personnel and CCTs, and the revocation of such certificates; and (11) measurement of the rate of compliance with the State Energy Conservation Construction Code, and requirements that such rate of compliance be measured on an annual basis; and otherwise to implement Chapter 560 of the Laws of 2010 and section 376-a of the Executive Law.

#### Part 1201

Consider amending this Part to provide that (1) where a county elects not to enforce the Uniform Code, the local government in which a county facility is situated shall be responsible for enforcement of the Uniform Code with respect to such facility and (2) where both a county and the local government in which a county facility is located have elected not to enforce the Uniform Code, the Secretary of State shall be responsible for enforcement of the Uniform Code with respect to such facility.

#### Part 1202

Considering amending this Part to make the provisions relating to the administration of the Uniform Fire Prevention and Building Code by the Department of State in certain local governments and counties substantially similar to the corresponding provisions in revised Part 1203 (which became effective on January 1, 2007), and to update the fee schedule currently contained in section 1202.7.

#### Part 1203

Considering amending this Part to (1) establish more appropriate inspection intervals for normally unoccupied buildings; (2) clarify the language found in this Part; (3) make such changes to this Part as may be required or appropriate to reflect the applicability of this Part to enforcement of the State Energy Conservation Construction Code; (4) make such other changes to this Part as may be required or appropriate to implement Chapter 560 of the Laws of 2010 and Section 376-a of the Executive Law; and (5) delete the requirement that local governments and counties file annual reports related to their code enforcement activities.

#### Part 1204

Considering amending this Part to make the provisions relating to the administration of the Uniform Fire Prevention and Building Code by State Agencies substantially similar to the corresponding provisions in revised Part 1203 (which became effective on January 1, 2007).

#### Part 1205

Considering amending this Part to (1) make the procedures for variances under the State Uniform Fire Prevention and Building Code applicable to variances under the State Energy Conservation Construction Code; (2) add new provisions relating to variances under the State Energy Conservation Construction Code; (3) revise procedures for ap-

peals on variance matters; (4) address reopening and rehearing of variance hearings; (5) establish procedures for decisions to be made on a written record; (6) revise and/or clarify the circumstances under which an appeal of a determination made by a code enforcement official may be filed under this Part; and (7) expand and clarify the circumstances under which a Uniform Code variance may be granted by Department of State staff without referral to a Regional Board of Review.

#### Part 1208

Considering amending provisions relating to the minimum qualifications of code enforcement personnel.

#### Part 1209

Considering amending this Part concerning factory manufactured housing to update it and increase fees for plan review and Insignias of Approval.

#### Part 1210

Considering updating and amending this Part concerning manufactured homes and the certification and training of manufacturers, retailers, installers and mechanics of manufactured homes.

#### Parts 1219-1228

Considering amending the Uniform Fire Prevention and Building Code (Uniform Code) to amend provisions applicable to abandoned buildings, make technical corrections to the updated version of the Uniform Code adopted in 2010, and otherwise update the provisions of the Uniform Code.

#### Part 1240

Considering amending the State Energy Conservation Construction Code (Energy Code) to make technical corrections to the updated version of the Energy Code adopted in 2010, make such changes as may be necessary or appropriate to implement Chapter 560 of the Laws of 2010, and otherwise update the provisions of the Energy Code.

#### Part 1260

Considering amending or repealing the provisions relating to Certificates of Acceptability.

#### DIVISION OF LICENSING SERVICES

##### Section 175.25

Considering revising the advertising regulations applicable to real estate brokers and salespeople.

#### Parts 175-179

Considering revising regulations applicable to real estate brokers and salespeople to account for statutory and industry changes, and to add clarity to existing regulations.

#### Parts 195-196

Considering revising regulations pertaining to alarm installers to add clarity and account for industry changes.

#### Part 197

Considering revising field-based training regulations for home inspectors to implement more stringent requirements.

#### Part 1102

Considering revising regulations pertaining to real estate appraisers in order to conform them with federal requirements for supervising appraisers and appraisal trainees.

#### DIVISION OF LOCAL GOVERNMENT SERVICES

##### Part 816

Considering adding a new Part 816 regarding the Local Government Performance and Efficiency Program.

#### STATE ATHLETIC COMMISSION

##### Part 217

Considering repealing obsolete sections of Part 217 regarding professional wrestling in order to achieve consistency with Title 25 of the Unconsolidated Laws.

##### Part 218

Considering adding a new Part 218 concerning special rules for review, addition, and removal of single-discipline martial arts sanctioning organizations in New York State.

To obtain information or submit written comments concerning any

item in the above Regulatory Agenda of the Department of State, please contact: David Treacy, Esq., Office of General Counsel, New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 1120, Albany, New York 12231-0001, (518) 474-6740.

## Office of Temporary and Disability Assistance

Pursuant to State Administrative Procedure Act (SAPA) § 202-d, 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 2012. SAPA § 202-d 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.

All references are to Title 18 of the New York Codes, Rules and Regulations (NYCRR) unless otherwise noted. The agenda items are organized pursuant to the Part of Title 18 NYCRR that most likely would be amended. However, the agenda items eventually could require amendments to different Parts than those listed below and/or to more than one Part of Title 18 NYCRR.

### PART 301 – Veteran Assistance

Amend regulations to replace gender-specific terms with gender-neutral terms.

#### Part 340 – Public Access to Department Records under Freedom of Information Law

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

#### Part 341 – Local Advisory Councils

Remove the regulatory requirement for social services districts to create and maintain local advisory councils.\*

#### Part 346 – Support Collection

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 existing regulation concerning process for applying for child support services to clarify process and require written application or signed petition and provision of necessary family information.\*

Update regulations to address State statutory amendments, and an exemption thereof, concerning property execution provisions.\*

Update regulations to address process changes to lottery intercept provisions.\*

#### Part 347 – Establishment of Paternity and Enforcement of Child Support

Update regulation pertaining to the calculation of basic child support obligations, repeal the child support standards chart, and further update regulation to reflect Chapter 182 of the Laws of 2010 as it pertains to the modification of child support orders.\*

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.\*

Update regulation setting forth definitions used in this Part.\*

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

Revise regulation pertaining to federal incentive payments.\*

Address annual service fee for never assistance cases and revise legal services section clarifying the responsibilities of an attorney who provides child support services on behalf of a local child support enforcement unit.\*

Promulgate regulations for establishing and enforcing medical support obligations.\*

Revise regulation concerning confidentiality of information based on September 26, 2008 federal final rule.\*

Revise regulation concerning case closure to add new criterion based on July 2, 2010 federal final rule.\*

Revise regulations concerning the provision of child support services in intergovernmental cases based on July 2, 2010 federal final rule.

#### Part 349 – General Provisions

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

#### Part 351 – Investigation and Eligibility

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

Delete the regulatory provisions relating to the Learnfare program.

Require social services districts to make all applicants for and recipients of public assistance aware of their option to receive information appropriate for victims of sexual assault consistent with Chapter 427 of the Laws of 2009.\*

#### Part 352 – Standards of Assistance

Amend regulations to establish new schedules for the standard of monthly need for determining eligibility for all categories of public assistance.

Authorize social services districts to provide shelter allowance supplements at local option to all Public Assistance households in order to prevent eviction and address homelessness.\*

Amend regulations governing Emergency Shelter Allowances to reflect Chapters 53 of the Laws of 2008 and 2009, Chapters 58 and 110 of the Laws of 2010, and Chapter 53 of the Laws of 2011.\*

Update regulations to comply with the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.\*

Amend regulations to implement a shared living reduction.\*

#### Part 358 – Fair Hearings

Eliminate the requirement that a fair hearing request concerning the Home Energy Assistance Program (HEAP) must be made within 105 days of the social services district's termination of the receipt of HEAP applications for the program year.\*

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

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

Amend the definition of the fair hearing record as it pertains to decisions without a hearing.\*

#### Part 366 – Child Assistance Program

Clarify that the poverty level for Child Assistance Program purposes is reported by the federal Department of Health and Human Services.

#### Part 384 – Automated Finger Imaging System

Clarify the finger imaging and other information that is retained for individuals applying for certain Public Assistance benefits.\*

#### Part 385 – Public Assistance and Food Stamp Employment Program Requirements

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 employment program provisions for notices of conciliation and notices of discontinuance or reduction to incorporate 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.\*

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 pursuant 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.

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 as required by federal regulations.\*

#### Part 387 – Food Stamps Program

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

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.\*

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

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

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.\*

Update regulations for the Food Stamp Transitional Benefits Alternative Program.\*

Amend regulations to expand the timeframe from five to seven calendar days for social services districts to process a food stamp application for applicant households eligible for expedited processing of said application.\*

Amend regulations to update the standard utility allowances for the Food Stamp Program\*

Amend regulations regarding what is a complete periodic report to require verification of income only if a change in income has been reported.\*

#### Part 388 – Food Assistance Program

Repeal provisions relating to the Food Assistance Program.

#### Part 393 – Home Energy Assistance Program

Amend HEAP regulations to reflect current practices and the provisions of the federally accepted HEAP State Plan.\*

It is not anticipated that small business regulation guides 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, Office of Temporary and Disability Assistance, 40 N. Pearl St., 16C, Albany, NY 12243, (518) 474-9779, e-mail: Jeanine.Behuniak@OTDA.state.ny.us. The regulatory agenda may be accessed on OTDA's website at [otda.ny.gov](http://otda.ny.gov)

## Workers' Compensation Board

Pursuant to section 202-d of the State Administrative Procedures Act, notice is hereby provided of the following rules which the Work-

ers' Compensation Board is considering proposing but for which a rule making proceeding has not been commenced. All references are to Title 12 of the New York Code of Rules and Regulations unless otherwise noted. The Workers' Compensation Board's regulatory plans are subject to change and the Board reserves the right to add, delete or modify any item herein. The Board is not required to propose for adoption any rule summarized in this regulatory agenda. In addition, the Board may propose a rule for adoption which was not under consideration at the time that this regulatory agenda was submitted for publication.

This notice is also 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 for in State Administrative Procedures Act sections 202-b and 202-bb. All of the rules described below may require a Regulatory Flexibility Analysis for Small Businesses and Local Governments and a Rural Area Flexibility Analysis pursuant to State Administrative Procedures Act sections 202-b and 202-bb, respectively.

The public is welcome to send written comments on the Workers' Compensation Board's Regulatory Agenda to the contact person at the end of this list.

The Chair and/or the Workers' Compensation Board are 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. 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 impose a penalty not to exceed \$10,000 and revoke the registration of an Independent Medical Examination (IME) Entity which has engaged in misconduct or upon a finding that an IME Entity has materially altered or caused to be altered an IME report.

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

4. 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.

5. Add Part 318 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).

6. Repeal and readopt 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, and amend the defenses a workers' compensation insurer may raise in response to a claim.

7. Add a new part 300.39 to establish rules for the cross-examination of medical witnesses and to repeal section 300.10(c).

8. Amend Parts 390 and 393 regarding the Aggregate Trust Fund to conform to the amendments to Workers' Compensation Law § 27, the decisions of the Board and the recent decision by the Court of Appeals in *Raynor v. Landmark Chrysler*, \_\_\_\_\_NY3d\_\_\_\_\_, 2011 NY Slip Op 8183 [2011].

9. 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 about or submit written comments concern-*

*ing any item in this Regulatory Agenda, contact:* Heather M. MacMaster, Associate Attorney, Workers' Compensation Board, 20 Park St., Rm. 401-A, Albany, NY 12207, (518) 486-9564, e-mail: regulations@wcb.state.ny.us

