



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY,  
NY 12234

**TO:** The Honorable the Members of the Board of Regents

**FROM:** Richard J. Trautwein

**SUBJECT:** 2014 Regulatory Agenda

**DATE:** December 9, 2013

**AUTHORIZATION(S):**

Summary

Issue for Decision (Consent Agenda)

Should the Board of Regents approve the 2014 Regulatory Agenda?

Reason for Consideration

Required by State statute.

Proposed Handling

The 2014 Regulatory Agenda will be presented to the Full Board for approval at the December Regents meeting.

Background Information

Section 202-d of the State Administrative Procedure Act (SAPA) requires that the State Education Department publish, each year, a regulatory agenda in the first January issue, and in the last June issue, of the State Register. The 2014 regulatory agenda is a list and brief description of the subject matter of each rule the Department is considering proposing during 2014, but for which it has not yet submitted a Notice of Proposed Rule Making. SAPA §202-d(2) provides that nothing in the statute requires an agency to adopt a rule appearing in the regulatory agenda or precludes the Department from adopting a different rule from the one appearing in the regulatory

agenda. If we do seek to adopt additional rules that were not included in the 2014 regulatory agenda, the Department must indicate in the Notice of Proposed Rule Making that the rule was not under consideration when the regulatory agenda was submitted for publication.

The 2014 Regulatory Agenda is a planning document required under SAPA §202-d and provides notice to the public on regulations that the agency knows it may propose in the next 6 months. It is non-binding and does not commit the agency to adopting the listed regulations, nor does it preclude the agency from adopting regulations that are not on the list. Accordingly, Board of Regents approval of the Regulatory Agenda does not constitute approval of the listed regulations.

### Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That the 2014 Regulatory Agenda for the State Education Department be approved, as submitted.

### Timetable for Implementation

The 2014 Regulatory Agenda will be published in the State Register on January 8, 2014.

STATE EDUCATION DEPARTMENT  
2014 REGULATORY AGENDA

Pursuant to section 202-d of the State Administrative Procedure Act, the State Education Department presents its regulatory agenda for calendar year 2014. 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 2014 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 100.3 of the Commissioner's Regulations relating to the PreK-4 Program requirements to reflect the adoption of the Common Core Learning Standards. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4 of the Commissioner's Regulations relating to program requirements in grades 5-6 to reflect the adoption of the Common Core

Learning Standards. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5 of the Commissioner's Regulations to reflect the adoption of the Common Core Learning Standards in English Language Arts and Mathematics. 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 100.5 of the Commissioner's Regulations, relating to graduation requirements. A regulatory change may be required to allow for additional options for English language learners. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5 of the Commissioner's Regulations relating to diploma requirements for students pursuing a career/technical education program. 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 of the Commissioner's Regulations relating to implementation of the Seal of Biliteracy. Chapter 271 of the Laws of 2012 (Section 815 of Education Law) established the state Seal of Biliteracy to recognize high school graduates who have attained a high 2 level of proficiency in listening, speaking, reading, and writing in one or more languages in addition to English. The NYS Seal of Biliteracy will be awarded by the Commissioner to students who meet criteria established by the Board of Regents and attend schools in districts that voluntarily agree to participate in the program. The Seal of Biliteracy will be affixed to the high school diploma and transcript of graduating pupils attaining Seal criteria and must be made available to students at no cost. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.18 to revise the procedure for those districts seeking to open or modify a public school during a current school year as well as to address accountability issues resulting from the administration of new Grade 3-8 English

language arts and mathematics assessments. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Repeal of sections 100.14 and 100.15 of the Commissioner's Regulations relating to Excelsior Scholars Program and Grants for Summer Institutes for Mathematics and Science Teachers. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(dd) of the Commissioner's Regulations, relating to professional development hours. A regulatory change may be required to specific percentage of hours for professional development specific to the needs of ELLs and language acquisition. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 117 of the Commissioner's Regulations relating to initial identification and enrollment processes for English language learners. A regulatory change may be required to align to regulatory changes made to Part 154. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 117 of the Commissioner's Regulations pertaining to the screening of students to determine whether they are English language learners.

Amendment of Part 117 of the Commissioner's Regulations relating to diagnostic screening for students who are new entrants or who have low test scores in reading or mathematics. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 118 of the Commissioner's Regulations relating to implementation of waivers from specified provisions of the Elementary and Secondary Education Act of 1965, as amended, that have been granted by the Secretary of the U.S. Department of Education pursuant to section 9401 of the ESEA for purposes of ESEA flexibility pertaining to school and district accountability. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 120 of the Commissioner's Regulations relating to implementation of waivers from specified provisions of the Elementary and Secondary Education Act of 1965, as amended, that have been granted by the Secretary of the U.S. Department of Education pursuant to section 9401 of the ESEA for purposes of ESEA flexibility pertaining to Supplemental Educational Services and Public School Choice. 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 of section 151-1.3 of the Commissioner's Regulations relating to the Universal Pre-Kindergarten program. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

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

Amendment of the Commissioner's Regulations relating to the 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 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 136.3(b) to conform to Education Law section 901, as amended by the Laws of 2006, Ch. 58, pt. A-1, §57, which removed the exemption of the city school districts of Rochester and Buffalo from the requirement to provide school health services. 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 the 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 including administration of a new assessment to determine whether students are English language learners upon their first enrollment in a New York state school. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.



Development of a new Part of the Commissioner's Regulations to create identification, placement and program requirements for students who are English language learners in preschool.

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 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 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 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 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(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) of the Commissioner's Regulations 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 the statute of limitations for requesting an impartial hearing, 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 200.7 of the Commissioner's Regulations relating to conditions of approval and the program standards for private schools approved to serve students with disabilities. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.7(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 sections 200.9, 200.16 and 200.20 of the Commissioner's Regulations relating to the preschool rate-setting methodology and the approval of programs serving preschool students with disabilities. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.20(a) 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:

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Deputy Commissioner P-12

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## OFFICE OF HIGHER EDUCATION

Amendment of section 3.56 of Regents Rules to clarify requirements for out-of-state institutions of higher education that are seeking Regents permission to operate in New York. A rural area flexibility analysis may be required.

Amendment of 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 of Part 52 of the Commissioner's Regulations, relating to the registration of curricula of general academic and/or educator preparation programs, including pupil personnel education programs and the clinically rich teacher preparation program. A rural area flexibility analysis may be required.

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

Amendment of Part 80 of Commissioner's Regulations relating to the certification of bilingual teaching assistants, tenure areas for bilingual teaching assistants and bilingual teachers, and professional development requirements for teachers relating to the provision of instruction to English language learners. A regulatory flexibility analysis for local governments and a rural area flexibility analysis may be required.

Amendment of Part 80 of the Commissioner's Regulations relating to the certification requirements for pupil personnel service providers. A rural area flexibility analysis may be required.

Amendment of Part 80 of the Commissioner's Regulations relating to the discontinuance of the individual evaluation pathway to certification. A rural area flexibility analysis may be required.

Amendment of Part 80 of the Commissioner's Regulations relating to the requirements for a Transitional A certificate. A rural area flexibility analysis may be required.

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

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

Amendment of section 80-3.4 of the Commissioner's Regulations relating to education requirements for the professional certificate. A rural area flexibility analysis may be required.

Amendment of Part 83 of the Commissioner's Regulations to streamline moral character hearings. A regulatory flexibility analysis for local governments and a rural area flexibility analysis may be required.

Amendment of section 80-5.4 of the Commissioner's Regulations regarding clarification of the length of employment for substitute teachers. A rural area flexibility analysis may be required.

Amendment of section 100.2(dd) and section 80-3.6 of the Commissioner's Regulations to require professional development plans to include a description of

alignment to the Common Core Standards and to include as part of the 175 hour requirement, professional development and training on the Common Core Standards. A regulatory flexibility analysis for local governments and a rural area flexibility analysis may be required.

Amendment of Part 135 of the Commissioner's Regulations to clarify the due process procedures relative to coaching licenses. 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:

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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 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 60.8 of the Commissioner's Regulations relating to the segregation, in law, of physician assistants and specialist assistants and conversion of Physician Assistants from a registered profession to a licensed profession; retaining Specialist Assistants as a registered profession.

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 to Part 61 of the Commissioner's Regulations to allow dental hygienists working for a hospital, hospital based dental clinics, local health department dental clinics, school-based dental health centers, pursuant to a collaborative agreement with a licensed and registered dentist who has a formal relationship with the same hospital, to provide certain dental services that are currently provided under general supervision.

Amendment of Part 64 of the Commissioner's Regulations to create certification for Clinical Nurse Specialists and to protect the title "clinical nurse specialist" and the designation "CNS" to ensure that only those properly educated and prepared to be clinical nurse specialists hold themselves out as such.

Amendment of Part 74 of the Commissioner's Regulations to establish mandatory continuing education requirements for social workers. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Subparts 79-9, 79-10, 79-11, and 79-12 of the Commissioner's Regulations relating to the duration of limited permits for mental health practitioners. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Subparts 79-9, 79-10, 79-11, and 79-12 of the Commissioner's Regulations to establish mandatory continuing education requirements for mental health counselors, marriage and family therapists, creative arts therapists, and psychoanalysts. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 79 of the Commissioner's Regulations to create a new Subpart 79-17 to add a new profession entitled "Perfusionists"; to describe the scope of practice of a Perfusionist and to make Perfusion a title protected profession. 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 any of the above proposed amendments by contacting:

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Deputy Commissioner for the Professions

New York State Education Department



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#### 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  
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New York State Library  
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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.

Amendment of section 3.12 of the Rules of the Board of Regents, relating to Councils of the Board of Regents, to add the State Historical Records Advisory Board as a Regents advisory body.

Agency Representative:

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

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OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)

Amendment of Parts 246, 247 and 248 of the Commissioner's Regulations, regarding conforming and technical amendments pertaining to the vocational rehabilitation and independent living programs. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

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 Part 246 of the Commissioner's Regulations relating to sheltered workshop programs and community rehabilitation providers, as may be necessary to conform to federal regulations and to reflect new standards for services established in contracts. 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.

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

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Adult Education Programs and Policy

Amendment to Section 100.7 of the Commissioner's Regulations that would update and revise outdated provisions as well as authorize a process whereby assessments other than the approved and subsidized New York State High School Equivalency exam could be approved as an alternative pathway to a High School Equivalency Diploma. An independent expert panel of nationally recognized educational assessment specialists would review educational assessments which would have to demonstrate their alignment with Common Core Standards. 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 amendments by contacting:

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## 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:

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December 9, 2013

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