

# RULE REVIEW

## EDUCATION DEPARTMENT Review of Existing Rules Pursuant to State Administrative Procedure Act Section 207

Section 207 of the State Administrative Procedure Act (SAPA) requires that each State agency review, after five years and thereafter at five-year intervals, each of its rules which is adopted on or after January 1, 1997 to determine whether such rules should be modified or continued without modification.

Pursuant to SAPA section 207, the State Education Department submits the following list of rules that were adopted during calendar year 1998 that the Department has reviewed and determined should be continued without modification. All section and part references are to Title 8 of the New York Code of Rules and Regulations.

### OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

#### Section 100.12 Instructional Computer Technology Plans

Statutory authority: Education Law sections 207, 3602(26-a) and section 53 of Part A of section 1 of Chapter 436 of the Laws of 1997.

Justification for continuation without modification: The regulation is necessary to comply with section 53 of Part A of section 1 of Chapter 436 of the Laws of 1997. Further, the instructional computer technology plans are required for the use of instructional computer technology equipment funded pursuant to Education Law, the federal ESEA Title III Technology Literacy Challenge fund and the federal Telecommunications Act E-Rate Discounts.

Assessment of public comment: no comments were received.

#### Part 151 and 156.7 Universal Pre-Kindergarten Programs

Statutory authority: Education Law sections 101, 207, 3602(7)(d) and 3602-e and section 58 of Part A of section 1 of Chapter 436 of the Laws of 1997.

Justification for continuation without modification: The regulation is necessary to comply with section 58 of Part A of section 1 of Chapter 436 of the Laws of 1997.

Assessment of public comment: no comments were received.

#### 155.16 Energy Performance Contracts

Statutory authority: Education Law sections 101, 207 and 305(27), Energy Law section 9-103(8) and sections 1 and 78 of Part A of section 1 of Chapter 436 of the Laws of 1997.

Justification for continuation without modification: The regulation is necessary to comply with sections 1 and 78 of Part A of section 1 of Chapter 436 of the Laws of 1997. It should be noted that section 155.16 was renumbered to 155.20 in subsequent amendments to the Commissioner's Regulations.

Assessment of public comment: no comments were received.

#### 100.7(I) and 116.4 Alternative High School Equivalency Preparation Programs

Statutory authority: Education Law sections 207, 208, 209 and 3205(1), (2) and (3).

Justification for continuation without modification: The regulation is necessary to ensure equal access for students in facilities operated by

the Office of Children and Family Services to participate in programs leading to a high school equivalency diploma.

Assessment of public comment: no comments were received.

#### 100.13 Operating Standards Aid

Statutory authority: Education Law sections 207, 3602(38) and section 92 of Chapter 58 of the Laws of 1998.

Justification for continuation without modification: The regulation is necessary to comply with section 92 of Chapter 58 of the Laws of 1998.

Assessment of public comment: no comments were received.

#### 144.11 Early Grade Class Size

Statutory authority: Education Law sections 101, 207 and 3602(37) and section 57 of Part A of section 1 of Chapter 436 of the Laws of 1997.

Justification for continuation without modification: The regulation is necessary to comply with section 57 of Part A of section 1 of Chapter 436 of the Laws of 1997.

Assessment of public comment: no comments were received.

### OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES

#### Section 200.1 (gg) - Definition of related services

Statutory authority: Education Law sections 207, 4403(3) and 4410(13).

Justification for continuation without modification: The rule is needed in order to ensure that the list of related services in regulation is consistent with the related services specified in Education Law section 4401.

Assessment of public comment: no comments were received.

#### Section 200.1(oo) - Definition of supplementary aids and services

Statutory authority: Education Law sections 207, 4403(3) and 4410(13).

Justification for continuation without modification: This rule clarifies the definition of "supplementary aids and services," consistent with federal regulations, which must be documented on a student's individualized education program (IEP).

Assessment of public comment: no comments were received.

#### Section 200.1(ss) - Definition of transition services

Statutory authority: Education Law sections 207, 4403(3) and 4410(13).

Justification for continuation without modification: The rule is necessary to comply with Education Law section 4401(9) that includes related services in the definition of transition services.

Assessment of public comment: no comments were received.

#### Section 200.2(e) - Impartial hearing officers

Statutory authority: Education Law sections 207 and 4404(1).

Justification for continuation without modification: This rule, subsequently amended effective September 1, 2001 and January 10, 2002, is necessary to ensure compliance with federal regulations which require that impartial hearing officers be selected in a rotational manner.

Assessment of public comment: no comments were received.

Section 200.4 - Procedures for referral, evaluation, Individualized Education Program development, placement and review

Statutory authority: Education Law sections 207, 4403(3) and 4410(13).

Justification for continuation without modification: This rule is necessary to comply with federal regulations regarding the required components of a student's IEP.

Assessment of public comment: no comments were received.

Section 200.5(a) - Procedural safeguards notice

Statutory authority: Education Law sections 207, 4403(3) and 4410(13).

Justification for continuation without modification: This rule is necessary since IDEA specifies how the amount of attorneys' fees are to be based, the prohibition and reduction of attorneys' fees and related costs for certain service; conditions for the exception to the prohibition and reduction of such fees.

Assessment of public comment: no comments were received.

Section 200.7 - Application for admission to a State-supported school

Statutory authority: Education Law sections 207, 4403(3) and 4410(13).

Justification for continuation without modification: This rule is necessary to correct the cross citation in section 200.4 of the Commissioner's Regulations.

Assessment of public comment: no comments were received.

Section 200.16(d) - Preschool programs

Statutory authority: Education Law sections 207, 4403(3) and 4410(13).

Justification for continuation without modification: This rule is necessary to correct a cross citation to section 200.4 of the Commissioner's Regulations.

Assessment of public comment: no comments were received.

OFFICE OF THE PROFESSIONS

Sections 3.47 and 3.50 - Master of Physical Therapy Degree and Abbreviations of Pharmacy Degrees

Statutory authority: Education Law sections 207, 210, 218(1); 224(4) and 6734(b).

Justification for continuation without modification: Schools in New York State award the Master of Physical Therapy (M.P.T.) degree for completion of professionally oriented master's degree programs in physical therapy. The abbreviations of the three professional pharmacy degrees continue to conform to current national usage.

Assessment of public comment: no comments received.

Section 52.28 and Part 67 - Ophthalmic Dispensing Education and Licensure Requirements

Statutory authority: Education Law sections 207, 210, 6501, 6504, 6506(1), 6507(2)(a), (4)(a), 6508(1), 7121, 7124(a)(2) and (3) and (b) and 7125(c).

Justification for continuation without modification: This rule sets forth in regulations the existing standards for registered programs leading to licensure in ophthalmic dispensing and certification in the fitting of contact lenses; strengthens the alternative training and experience requirements for applicants who have not completed a registered program in ophthalmic dispensing or its equivalent; and clarifies the examination requirements for licensure and certification.

Assessment of public comment: since publication of its Review of Existing Rules, pursuant to State Administrative Procedure Act section 207, in the January 8, 2003 issue of the State Register, the State Education Department received the following comment:

COMMENT: The State Board received one call from the vendor that provides the Career Progression Program with concern that the Department was eliminating the program.

DEPARTMENT RESPONSE: The Department recommended the continuation of the rule and the program as an alternative to two-year education programs in ophthalmic dispensing.

Section 66.5 - Phase Two Therapeutic Pharmaceutical Agents

Statutory authority: Education Law sections 207, 6502(1), 6504, 6507(2)(a)(3)(a) and 4(a), 6508(1) and (2), 7101, 7101-a(1)(f), (3), (4), (7), (9), (9a) and (11); and Chapter 517 of the Laws of 1995, sections 3 and 4(b).

Justification for continuation without modification: The regulation is needed to implement section 7101-a of Education Law. The regulation establishes standards for clinical training and the examination necessary for certification, establishes requirements for the reporting of the use of phase two drugs, and establishes requirements for continuing education.

Assessment of public comment: no comments received.

Section 67.6 - Ophthalmic Dispensing Continuing Education Requirements

Statutory authority: Education Law sections 207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1) and 7128(1) - (6).

Justification for continuation without modification: The regulation is needed to implement Education Law section 7128 by establishing standards for what constitutes acceptable formal continuing education, educational requirements when there is a lapse in practice, requirements for licensees under conditional registration and standards for the approval of sponsors of continuing education to licensed ophthalmic dispensers.

Assessment of public comment: no comments received.

Sections 52.13, 70.1 and 70.2 - Public Accountancy Education and Licensure Requirements

Statutory authority: Education Law sections 207, 210, 6501, 6504, 6506(1), 6507(2)(a) and (4)(a), 6508(1) and 7404(1)(2) and (1)(3).

Justification for continuation without modification: The regulation is necessary to strengthen the education requirements for licensure to accommodate licensees' need for core competencies required to practice public accountancy in today's complex business world. Such education will ensure the applicant's balanced educational preparation in content areas of professional accountancy, general business, and liberal arts and sciences. It will also prepare applicants with such necessary skills as logical thinking, effective writing, ethics, judgment, and quantitative skills. The requirement of one-year experience will suffice an applicant with such preparation for entry into the public accountancy profession.

Assessment of public comment: no comments received.

Section 24.7 - Fee for Review of Application for Restoration of Professional License

Statutory authority: Education Law sections 207, 6504, 6506(1) and (10), 6508(4) and 6511.

Justification for continuation without modification: The Board of Regents is authorized to restore a license, which has been revoked (Education Law 6511). This rule is necessary to implement the processes by which the Board of Regents considers petitions for the restoration of a professional license that was either revoked or surrendered.

Assessment of public comment: no comments received.

Sections 52.29, 63.1, 63.4 and 63.5 - Pharmacy Education and Licensure Requirements

Statutory authority: Education Law sections 207, 210, 6501, 6506(6), 6507(2)(a) and (4)(a), 6508(1), 6805(1)(2) and 6806(1).

Justification for continuation without modification: The rule provides needed clarity since there are no other definitions of an acceptable educational curriculum for pharmacists in New York State. Additionally, the rule is required as a foundation for comparison of foreign non-accredited programs of study.

Assessment of public comment: no comments were received.

OFFICE OF CULTURAL EDUCATION

3.27 and 3.30 Museums and Historical Societies chartering and registration

Statutory authority: Education Law sections 207 and 216.

Justification for continuation without modification: The rules

specify certain minimal expectations of member institutions regarding the management of their collections, requiring every Regents-chartered museum and historical society to adopt a collection management policy which conforms to generally accepted professional and ethical standards; to ensure that collecting follows the specific purposes of the institution as enumerated in its charter; to give donors a clear understanding of what will happen to their gifts to the collection; and to specify that funds derived from the sale (deaccession) of collections be restricted to acquisition, preservation, protection or care of collections. The rules provide that the Regents may grant an exception to these restrictions, if warranted. The rules conform to standards enumerated by the American Association of Museums, the American Association for State and Local History, and the International Council of Museums. The rules in the past five years have protected collections and the public by ensuring that artifacts held in trust are gathered, maintained, preserved and made available according to accepted professional and ethical standards. As of May 2003, 91.7 percent of chartered institutions holding collections have complied with the rules and adopted a Collection Management Policy. In two or three cases known to State Museum staff, the revised rules and the requirement to follow a Collection Management Policy have deterred an institution from selling collections in order to raise general operating expenses. Since passage of the revised rules no one has expressed opposition or objection to the requirement that every collecting institution adopt a Collection Management Policy. Only one inquiry was received from an institution seeking an exception to the requirement that proceeds from deaccessioning be used only for collections; the Regents approved that application but the institution subsequently chose not to sell any assets.

Assessment of Public Comment: no comments were received.

#### 90.2(a)(9) Library Registration

Statutory authority: Education Law sections 207, 215, 254 and 273(1)(f)(5).

Justification for continuation without modification: The rule reflects the technological environment in which libraries exist today. The rule eliminated the requirement for a microform reader, as many smaller, rural libraries found this requirement expensive and duplicative. The rule also requires public and association libraries to have the capability to provide telefacsimile transmissions and electronic communications, rather than requiring a specific type of equipment to perform those functions.

Assessment of public comment: no comments were received.

#### 90.3 Public Library System Plan of Service

Statutory authority: Education Law sections 207, 254, 255(1), (2) and (3), 272(1)(g) and (h) and 273(1).

Justification for continuation without modification: The rule continues to allow sufficient flexibility for library systems to respond to local patterns of use and modify free direct access at the public library system level and helps reduce the burdens on overused libraries while at the same time reaffirming the commitment of no direct charge to an individual for public library services. The rule reaffirms the commitment of no direct charge to an individual for public library services, requires a specific plan from the public library system for providing library services to unserved and underserved areas, helps reduce the burdens on overused libraries, allows flexibility for library systems to respond to local patterns of use and modify free direct access at the public library system level, and provides a procedure for waivers when remedies were needed outside of those listed in the regulation.

Assessment of public comment: no comments were received.

#### 179.2 Operating Aid to Public Broadcasting Councils

Statutory authority: Education Law sections 207, 263(3) and 263(4).

Justification for continuation without modification: The rule is necessary to prescribe criteria for the apportionment of operating aid to public broadcasting councils. A complete revision of the entire Part 179 was approved by the Regents at the March 25, 2003 meeting of the

Full Board, effective April 17, 2003.

Assessment of public comment: no comments were received.

#### OFFICE OF HIGHER EDUCATION

##### 27-1.1 Higher Education Opportunity Program

Statutory authority: Education Law sections 207 and 6451(1).

Justification for continuation without modification: This rule is needed to update the student eligibility criteria by: 1) taking into account inflationary conditions and changes in annual income; 2) accounting for New York State and local taxes and regional maintenance costs, and 3) assuring consistency across the State-supported postsecondary opportunity programs and the continuing linkage of these eligibility criteria to federally approved needs analysis techniques. The rule also updated documentation titles referred to in the criteria. This rule was subsequently amended in September 2002, and such amendments made effective July 1, 2003, to further update the criteria for determining student economic eligibility and the names of government offices and programs referred to in the economic criteria.

Assessment of public comment: no comments were received.

##### 7.3 and 80.2(1) Teacher Certification: certificates of qualification

Statutory authority: Education Law sections 207, 305(1) and 3004(1).

Justification for continuation without modification: The certificate of qualification (CQ) is no longer needed because in the early 1990s, provisional teaching certificates became renewable for an additional five years beyond their initial five-year issuance period, thereby fulfilling the purposes the CQ served.

Assessment of public comment: no comments were received.

##### 80.5, 80.6, 80.7, 80.8 and 80.17 Teacher Certification: NTE Core Battery Tests

Statutory authority: Education Law sections 207, 305(1) and 3004(1).

Justification for continuation without modification: The rule is needed to make uniform the testing requirements for all candidates for teacher education. In implementing the 1993 New York State Teacher Certification Examinations (NYSTCE) program, a series of regulatory amendments was begun to require the new NYSTCE exams for all certification candidates. The amendment completed the process for all teacher certification areas.

Assessment of public comment: no comments were received.

##### 145-9 Scholarships for Academic Excellence Program

Statutory authority: Education Law sections 207, 605-a(1)(b), 670-b(1), section 12 of Chapter 309 of the Laws of 1996, and section 83 of Part C of Chapter 58 of the Laws of 1998.

Justification for continuation without modification: The rule changed the name of the Merit Scholarship for Academic Excellence program to the Scholarships for Academic Excellence program and corrected a citation to the Education Law relating to the school allocation formula for the scholarship program. The rule is necessary to comply with the statutory name of the scholarship program and to provide a correct citation to the Education Law relating to the school allocation formula set forth in statute. Section 83 of Part C of Chapter 58 of the Laws of 1998 amended sections 605-a and 670-b of the Education Law to change the name of the Merit Scholarships for Academic Excellence to the Scholarships for Academic Excellence.

Assessment of public comment: no comments were received.

##### 3.14, 83.2 and 83.4 State Professional Standards and Practices Board for Teaching

Statutory authority: Education Law sections 207, 305(1) and 3004(1).

Justification for continuation without modification: The rule replaced the then existing Teacher Education, Certification and Practice Board with a new State Professional Standards and Practices Board for Teaching, which serves in an advisory capacity to the Regents and the Commissioner on matters related to teacher preparation, certification, practice and discipline of certificate holders contained in Part 83. The rule implemented one of the recommendations of the Regents Task Force on Teaching, as adopted by the Board of Regents on July 17, 1998, and reflects the State Professional Standards and Practices Board for Teaching's assumption of the duties of the now defunct Teacher Education, Certification and Practice Board.

Assessment of public comment: no comments were received.

DEPARTMENT OF TAXATION AND FINANCE  
Regulation Continued Without Modification

Pursuant to section 207.4 of the State Administrative Procedure Act (SAPA), the Department of Taxation and Finance hereby gives notice of the following:

As part of the Departments 2003 review (pursuant to Chapter 262 of the Laws of 1996) of regulations that were adopted during 1998, the Department has reviewed 20 NYCRR Subchapter G of Chapter I (Stock Transfer Tax - formerly Subchapter G of Chapter III) concerning the New York State Stock Transfer Tax Regulations. The regulation simplified and updated the Stock Transfer Tax regulations by removing outdated information, and consolidating and summarizing the language. The regulation also provided for an alternative means for brokers to submit daily reports to a clearing corporation and provided for the manner in which they could certify such records. In addition, the regulation addressed the rebate of the stock transfer tax provided for in section 280-a of the Tax Law. The statutory authority of the rule is contained in section 171, subdivision First of the Tax Law.

This regulation is being continued without modification because it provides necessary guidance about reporting and certification of information and it addresses the statutory rebate of the tax. There have been no statutory amendments or changes in policy to warrant any modification of the regulation.

A summary of the regulation and a request for comments were published in the Regulatory Agenda section of the January 8, 2003, edition of the *New York State Register* ([http://www.tax.state.ny.us/pubs\\_and\\_bulls/Regulations/Regulatory\\_Agenda.htm](http://www.tax.state.ny.us/pubs_and_bulls/Regulations/Regulatory_Agenda.htm)) and again in the Rule Review section of the January 22, 2003, *State Register*. The Department did not receive any comments from the public regarding this regulation.

For further information contact: Diane M. Ohanian, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254