

RULE REVIEW

DEPARTMENT OF AGRICULTURE AND MARKETS REVIEW OF EXISTING REGULATIONS

Pursuant to Section 207 of the State Administrative Procedure Act, notice is hereby provided of the following rules which the Department of Agriculture and Markets intends to review in 2004. Public comment on the continuation or modification of these regulations will be accepted until March 31, 2004. All section and Part references are to Title 1 of the New York Code of Rules and Regulations.

Part 45 Movement of live poultry requirements to prevent the spread of avian influenza.

Statutory authority: Agriculture and Markets Law sections 16(1), 18(6), 72, 74 and 75.

The continuation of this regulation is necessary to prevent the spread of avian influenza through live poultry markets in the New York City Metropolitan area by limiting the markets' source of poultry to flocks which are free of disease.

Part 205 Cabbage Research and Development Program

Statutory authority: Agriculture and Markets Law sections 16(1), 18(6), 294 and 295.

The continuation of this regulation is necessary to retain the Cabbage Research and Development Program which aids cabbage growers in developing higher quality product to better compete in the market place and in combating various storage disorders, developing insect and disease control strategies and providing better food safety by the development of a HACCP program.

Sections 139.2 and 139.3 Asian Long Horned Beetle Quarantine.

Statutory authority: Agriculture and Markets Law sections 18, 164 and 167.

The continuation of this regulation is necessary to preserve the Asian Long Horned Beetle quarantine in certain areas of Brooklyn and Amityville, New York. The quarantine area has been repeatedly expanded in an effort to control the spread of the beetle, most recently in 2003.

Comments should be addressed to: Diane B. Smith, Agriculture and Markets, Counsel's Office, 1 Winners Circle, Albany, NY 12235, (518) 457-6468, e-mail: diane.smith@agmkt.state.ny.us

OFFICE OF CHILDREN AND FAMILY SERVICES

Review of Existing Regulations

Pursuant to SAPA Section 207, OCFS intends to review the regulations listed below during this year. Comments regarding the continuation or modification of these regulations will be accepted until February 29, 2004.

1. *18 NYCRR Parts 421, 426, 428, 430 and 431* [Foster Care and Adoption Standards relating to implementation of the Federal Adoption and Safe Families Act of 1997 (P.L. 105-89); Social Services Law sections 20, 34, 372-b and 409-f] Continuation of these regulations is required to enable the State of New York to comply with federal Title IV-E standards relating to foster care and adoption subsidy. The

regulatory standards involve the prohibition against the delaying or denying of the placement of foster children in otherwise suitable homes based on the geographic location of otherwise suitable prospective adoptive parent(s). The regulations impose requirements for the assessment and documentation of safety of children in relation to discharge to a parent or continued foster care. They also reflect other federally mandated assessments relating to children placed in out-of-state foster care settings. The regulations address steps agencies must take to achieve safe and permanent placements for children in foster care, including requirements relating to the filing of petitions to terminate parental rights.

Finally, the regulations require certain procedural safeguards relating to the development and dissemination of a child's service plan to the child's foster parent, caretaker relative or potential adoptive resource. Report of Prior Review of Existing Regulations.

On January 2, 2003, OCFS published in the State Register, with its regulatory agenda, a list of regulations that OCFS adopted in 1998. The regulatory sections reviewed are listed below. No comments were submitted in response to the listing of the regulations to be reviewed. After reviewing the regulations on that list, OCFS has determined that modifications need to be made to some of those regulations as follows.

1. 9 NYCRR Subpart 171-2: [Resident Mail: Executive Law sections 501 and 504] Continuation of this Subpart is necessary as it describes the policies and procedures governing correspondence to and from residents of facilities operated by OCFS, with the exception of Resident Privileged Mail, which is governed by Subpart 171-3. Subpart 171-2 remains on the OCFS regulatory agenda for revision to address issues raised by the OCFS Office of the Ombudsman. The provisions under consideration for revision pertain to notification to the residents that their mail was read, censored or withheld; exceptions to the prohibition on resident correspondence with incarcerated individuals; and to permit residents to use the grievance process to appeal a facility director's determination to limit incoming or outgoing mail.

2. 9 NYCRR Subpart 171-3: [Resident Privileged Mail: Executive Law sections 501 and 504]. Continuation of this Subpart is necessary as it describes the policies and procedures governing privileged mail sent and received by residents of facilities operated by OCFS. Privileged mail is correspondence to or from the resident's legal representative or attorney of record or certain governmental officials, such as United States or New York State government officials, legislative representatives, and the judiciary. After review, it was determined that no revisions are necessary.

3. 9 NYCRR Subpart 179-1 [Disciplinary Actions: Executive Law Sections 501, 504]. Continuation of Subpart 179-1 is necessary as it provides procedures for conducting hearings for violations of behavioral standards for the residents of secure facilities operated by OCFS. This Subpart remains on the OCFS regulatory agenda to amend the time period provided for a resident to submit comments regarding the Deputy Commissioner's review of a Facility Director's Proceeding and to add a provision requiring the creation of an electronic record of the hearing disposition. The longer resident comment period is necessary for OCFS to continue to be accredited by the American Correctional Association.

4. 9 NYCRR Subpart 179-4 [Resident Rules: Executive Law Sections 501, 504]. Continuation of Subpart 179-4 is necessary as it provides behavioral standards for residents of facilities operated by OCFS. This Subpart remains on the OCFS regulatory agenda to add prohibitions against certain gang related behaviors; to prohibit the throwing of food and certain bodily fluids; and to clarify the conspiracy sections of the riot prohibition.

Any questions or comments concerning the items listed in this agenda should be referred to:

Kathleen R. DeCataldo
 Director of Legislation and Special Projects
 Office of Children and Family Services
 52 Washington Street
 Rensselaer, NY 12144
 Telephone: (518) 473-9551
 Email address: GG5107@dfa.state.ny.us

EDUCATION DEPARTMENT

NOTICE OF REVIEW OF EXISTING RULES PURSUANT TO STATE ADMINISTRATIVE PROCEDURE ACT SECTION 207 (Calendar Year 1999)

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 its rules that were adopted during calendar year 1999 and invites public comment on the continuation or modification of such rules. All section and part references are to Title 8 of the New York Code of Rules and Regulations. Comments should be sent to the respective agency representative listed below for each particular rule, and must be received within 45 days of the date of publication of this Notice.

OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

Section 100.2(m) - Local Assistance Plans

Description of Rule: Section 100.2(m) of the Commissioner's Regulations specifies the requirements for public school reporting, including dissemination of public school report cards to the public and parents. The regulation also requires that school districts develop Local Assistance Plans for those schools that perform below benchmarks established by the Commissioner on selected State assessments.

Need for Rule: The regulation is intended to satisfy the public school reporting requirements of the No Child Left Behind (NCLB) Act, 20 USC section 6311(h)(2), and achieve the Regents goal that all educational institutions will meet Regents high performance standards. The regulations were last amended in August 2003 to bring them into alignment with the requirements of NCLB.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (19) and 309 (not subdivided).

Section 100.2(p) - Schools Under Registration Review

Description of Rule: Section 100.2(p) of the Commissioner's Regulations specifies the State's system for registration of public schools and school/district accountability. The regulations delineate the process for registration and revocation of registration of public schools, the criteria used to hold schools and districts accountable for student performance, the actions to be taken when schools or districts fail to meet standards and the process for recognizing high performing or rapidly improving schools and districts.

Need for Rule: The regulation is necessary to meet the requirements of the No Child Left Behind (NCLB) Act, 20 USC section 6316, relating to school and district accountability and achieve the Regents goal that

all educational institutions will meet Regents high performance standards. The regulations were last amended in August 2003 to bring them into alignment with the requirements of NCLB.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 215(not subdivided) and 305(1) and (2).

Part 119- Charter schools

Description of Rule: The rule describes the manner in which payments due to charter schools by public school districts are paid, and if necessary, recovered by the State, and the manner in which charter schools may provide retirement benefits for their employees.

Need for Rule: The rule is necessary to implement statutory requirements by establishing standards for the calculation of school district obligations to charter schools and the manner in which unpaid obligations will be recovered by the State for payment to charter schools. The rule also establishes standards for participation in public employee retirement systems by those charter schools electing to do so.

Legal Basis for Rule: Education Law section 207(not subdivided), 2854(c) and 2856(1) and (2), and Chapter 4 of the Laws of 1998.

Sections 155.1-155.21 - Comprehensive Public School Safety Program

Description of Rule: Sections 155.1-155.21 specify requirements for school districts to properly maintain, manage and improve public school facilities in order to provide sound educational environments for New York State's students, including the preparation of a five-year capital facilities plan that is updated annually; structural safety inspections; annual visual inspections; compliance with the Uniform Safety Standards for School Construction and Maintenance Projects and the Uniform Code of Public School Building Inspections, Safety Rating and Monitoring, and Comprehensive Public School Safety Program.

Need for Rule: The regulations are necessary to comply with Chapters 56 and 58 of the Laws of 1998.

Legal Basis for Rule: Education Law sections 207(not subdivided), 409-d(1) and (2), 409-e(1) through (4), 3602(3)(b) and 3641(4) and section 1 of Part B of Chapter 56 and sections 13 and 48 of Chapter 58 of the Laws of 1998.

Sections 100.1-100.9 - State Learning Standards and Assessments and Graduation and Diploma Requirements

Description of Rule: Sections 100.1-100.9 specify the State learning standards, the program and unit of study requirements and the assessment requirements for students at the elementary, middle and high school levels, including the requirements for high school graduation and earning a diploma.

Need for Rule: These regulations implement policy adopted by the Board of Regents.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 212(3), 215(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided), 911(not subdivided), 3204(2-a) and 4403(3).

Sections 154.2 through 154.5 - Limited English Proficiency

Description of Rule: Sections 154.2-154.5 specify the plan and program requirements for districts claiming State aid for the operation of programs for pupils with limited English proficiency.

Need for Rule: The rule requires school districts that are claiming State aid for the instruction of students with limited English proficiency (LEP) to increase the amount of time for English language instruction to strengthen and improve bilingual education and freestanding English as a second language programs to help LEP students meet Regents standards and pass the new State Assessments. The regulations were amended in April 2003 to conform to the accountability provisions of the federal No Child Left Behind Act and to establish criteria for the identification and assessment of students with limited English proficiency through the use of the Language Assessment Battery-Revised test and the New York State English as a Second Language test.

Legal Basis for Rule: Education Law sections 207(not subdivided), 215(not subdivided), 3204(2), (2-a), (3) and (6), and 3602(10) and (22). Sections 154.4(a) and 154.5 - Students with Limited English Proficiency

Description of Rule: The Rule allows schools with students with limited English proficiency in grades 7-12 a one year extension to the 2000-2001 school year to implement the additional English language requirements.

Need for Rule: The amendment to section 154.4(a) was necessary to extend until September 1, 1999, the deadline for submission of the plan prescribed in section 154.4(a) that describes how the additional time requirements for English language instruction will be implemented in their free-standing English as a second language and bilingual education programs during the 1999-2000 and 2000-2001 school years. The rule also specified that the additional time requirements for English language instruction set forth in section 154.2(f) and (g) be implemented in 1999-2000 for grades 7-12 and in 2000-2001 for grades K-6. The addition of section 154.5 established a procedure to grant a one-year extension to certain schools with LEP students in grades 7-12 to the 2000-2001 school year, to implement additional time requirements for English language instruction in their bilingual and free-standing English as a second language programs contained in subdivisions 154.2(f) and (g).

Legal Basis for Rule: Education Law sections 207(not subdivided), 215(not subdivided), 2117(1), 3204(2), (2-a), (3) and (6), 3602(10) and (22).

Agency Representative:

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

James A. Kadamus
Deputy Commissioner
New York State Education Department
Office of Elementary, Middle, Secondary and Continuing Education
Education Building Annex, Room 875
Albany, NY 12234
(518) 474-5915

OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES
FOR INDIVIDUALS WITH DISABILITIES

Section 200.1 Definitions

Description of Rule: The rule amended or added the following definitions relating to special education: adapted physical education, assistive technology device, assistive technology service, change in placement, child's teacher, consent, consultant teacher, days, functional behavioral assessment, general curriculum, individualized education program, mediator, native language, parent, parent counseling and training, preschool student with a disability, prior notice, regular education teacher, related services, school health services, special class, specially designed instruction, special education, special education provider, special education teacher, student with a disability and travel training.

Need for Rule: The rule is needed in order to ensure compliance with federal regulations 34 CFR sections 300.5, 300.6, 300.7, 300.8, 300.9, 300.16, 300.19, 300.20, 300.24, 300.26, 300.15 and 300.571.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1) - (11), 4403(3) and 4410(13).

Section 200.2 Board of Education Child Find Responsibilities

Description of Rule: The rule amended the requirements relating to procedures to locate, identify and evaluate all nonpublic private school students with disabilities.

Need for Rule: The rule is needed in order to ensure compliance with 34 CFR section 300.454.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1) - (11), 4403(3) and 4410(13).

Section 200.2(b) Written Policies of the Board of Education

Description of Rule: The rule added a requirement that the board of education adopt policies to ensure that students with disabilities be involved in and progress in the general education classes; establish a plan and policies for implementing schoolwide approaches and prereferral interventions prior to a referral for special education; and establish plans and policies for the appropriate declassification of students with disabilities.

Need for Rule: The rule is needed to align State regulations to State law which requires that schools provide prereferral supports and services to ensure appropriate referrals of students who need special education.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1) - (11), 4403(3), 4410(13) and 4402(b)(3) as amended by Chapter 405 of the Laws of 1999.

Section 200.2(c) District Plans

Description of Rule: The rule repealed the requirement for district plans for the period September 1, 1996 to September 1, 1998.

Need for Rule: The rule was no longer applicable as those dates had passed.

Legal Basis for Rule: Education Law sections 207(not subdivided), 3602, 4401(1) - (11), 4403(3), 4410(13).

Section 200.2(h) Local Comprehensive System of Personnel Development (CSPD) Plan

Description of Rule: The rule adds the requirement for each board of education to annually submit to the State Education Department a plan that demonstrates that all personnel providing services to students with disabilities are adequately trained.

Need for Rule: The rule is needed to ensure compliance with 34 CFR section 300.135, which requires that the State have in effect a comprehensive system of personnel development.

Legal Basis for Rule: 34 CFR section 300.135 and Education Law sections 207(not subdivided), 4401(1) - (11), 4402, 4403(3) and 4410(13).

Section 200.3 Committees on Special Education

Description of Rule: The rule amends the required membership of the Committee on Special Education (CSE), Committee on Preschool Special Education (CPSE) and the Subcommittee on Special Education to add members required by federal law and to provide that a parent of a student may decline the participation of the additional parent member.

Need for Rule: The rule is necessary to conform to federal regulations and State law relating to membership of the CSE, CPSE and Subcommittees.

Legal Basis for Rule: 34 CFR section 300.344 and Education Law sections 207(not subdivided), 4401(1)-(11), 4402(1)(b), 4403(3) and 4410(3).

Section 200.4(a) Referrals for Special Education Services

Description of Rule: The rule was amended relating to the withdrawal of a referral for special education to add that the building administrator and the parent could meet to determine if additional general education support services, including academic intervention services, could be provided to the student as an alternative to special education.

Need for Rule: The rule is necessary to align State regulations with Education Law section 4402 as amended by Chapter 405 of the Laws of 1999.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1)-(11), 4401-a as amended by Chapter 405 of the Laws of 1999, 4403(3) and 4410(13).

Section 200.4(b) Individual Evaluation

Description of Rule: The rule was amended to add that the individual evaluation include a variety of assessment tools and strategies, including information provided by the parent, to gather relevant functional and developmental information about the student and information related to enabling the student to participate and progress in the general education curriculum; and to add that the

evaluation must include a functional behavioral assessment for a student whose behavior impedes his or her learning or that of others.

Need for Rule: The rule is needed to conform State regulations to federal regulations relating to the required components of evaluations.

Legal Basis for Rule: 34 CFR section 300.532 and Education Law sections 207(not subdivided), 4401(1)-(11), 4403(3) and 4410(13).

Section 200.4(b)(4) and (5) Initial and Reevaluations

Description of Rule: The rule amended the requirements relating to the determination of needed evaluation data for initial and reevaluations of students with disabilities.

Need for Rule: The rule is needed to align State regulations to federal regulations in 34 CFR section 300.533.

Legal Basis for Rule: 34 CFR section 300.533 and Education Law sections 201(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13).

Section 200.4(b)(6) Evaluation Procedures

Description of Rule: The rule was amended to add that evaluations be administered by individuals who are knowledgeable about the test or procedures; that assessments not conducted under standard conditions must include a description of how the administration varied from standard administration; that no single procedure be used to determine a student's eligibility for special education; that evaluations must be comprehensive and use technically sound instruments; that assessment tools and strategies are used that provide relevant information to determine a student's educational needs; that a copy of the evaluation report be provided to the student's parent; that the procedures for evaluating students suspected of having a learning disability must be consistent with federal regulations; and that the procedures for conducting expedited evaluations must meet the requirements of section 201.6 of the Regulations of the Commissioner.

Need for Rule: The rule is necessary to conform to federal regulations in 34 CFR sections 300.532, 300.534 and 300.535.

Legal Basis for Rule: 34 CFR sections 300.532, 300.534 and 300.535 and Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13) of the Education Law.

Section 200.4(c) Eligibility Determinations

Description of Rule: The rule adds requirements relating to eligibility determinations for a student with a disability that the parent must be given a copy of the evaluation report and the documentation of eligibility; that a student may not be determined eligible for special education if the determinant factor is lack of instruction in reading or math or limited English proficiency; that a school must evaluate a student prior to declassification (which does not include prior to graduation or aging out).

Need for Rule: The rule is necessary to conform State regulations with federal regulations in 34 CFR section 300.534.

Legal Basis for Rule: 34 CFR section 300.534 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.4(d) IEP Recommendations

Description of Rule: The rule adds that, in developing the IEP, the Committee must consider the results of the initial or most recent evaluation, the student's strengths, the concerns of the parents, the student's results on State or districtwide assessments and other special considerations. The rule also adds that the IEP must include program modifications or supports for school personnel; testing accommodations a student needs in the administration of district-wide assessments and, consistent with Department policy, State assessments; and a statement of a particular device or service a student needs to receive a free appropriate public education.

Need for Rule: The rule is necessary to conform State regulations to federal regulations in 34 CFR section 300.346.

Legal Basis for Rule: 34 CFR 300.346 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.4(d)(4) IEP Development

Description of Rule: The rule added a requirement that a school

district use other methods to ensure participation by the private school or facility, such as individual or conference telephone calls, to ensure private school participation in an IEP meeting; and repeals the requirement that the Committee ensure the participation of a person knowledgeable about the individual evaluation conducted and the evaluation results for a student with a disability who has been evaluated for the first time.

Need for Rule: The rule regarding participation by private school representatives is necessary to conform to federal regulations in 34 CFR section 300.349. The rule regarding participation of a person knowledgeable about the evaluation is necessary to align State regulations to federal regulations in 34 CFR section 300.344, which requires each Committee meeting to include an individual who can interpret the instructional implications of evaluation results.

Legal Basis for Rule: 34 CFR sections 300.344 and 300.349 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.4(d)(4)(c) Least Restrictive Environment

Description of Rule: The rule added that, in selecting the least restrictive environment, consideration must be given to any potential harmful effect on the student or on the quality of services that he or she needs; and that a student with a disability may not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

Need for Rule: The rule is necessary to align State regulations to federal regulations in 34 CFR section 300.552.

Legal Basis for Rule: 34 CFR section 300.552 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.4(e) IEP Implementation

Description of Rule: The rule was amended to add that there may be no delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education to the student is being determined; and that teachers and other providers must have access to a copy of the student's IEP. (This later rule was amended in 2003 consistent with Chapter 408 of the Laws of 2003.)

Need for Rule: The rule is necessary to ensure IEP implementation in a timely manner consistent with the requirements in 34 CFR sections 300.301 and 300.342.

Legal Basis for Rule: 34 CFR sections 300.301 and 300.342 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.4(e) Annual Review and Reevaluations

Description of Rule: The rule was amended to require that a student's placement in the least restrictive environment be a consideration in the annual review and that the results of any reevaluation must be addressed by the CSE or CPSE in a meeting.

Need for Rule: The rule is necessary to align State regulations with federal regulations in 34 CFR sections 300.346, 300.535, 300.536 and 300.552.

Legal Basis for Rule: 34 CFR sections 300.346, 300.535, 300.536 and 300.552 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.4(g) IEP for a Student Placed in a Child Care Institution by other Agency

Description of Rule: This rule amended the requirements for IEP information developed by the school district where the student last attended.

Need for Rule: This rule is necessary to be consistent with amended section 200.4(d) of the Regulations of the Commissioner of Education.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.5 Due Process Procedures

Description of Rule: This rule repealed section 200.5 and replaced it with a new section 200.5 relating to prior notice, consent, notice of

meetings, parent participation in CSE meetings, confidentiality of personally identifiable data, procedural safeguards notice, independent educational evaluations, mediation, impartial hearings, appeal to a State review officer of the State Education Department, State complaint procedures and surrogate parents.

Need for Rule: The rule is necessary to align State regulations with federal law and regulations.

Legal Basis for Rule: 34 CFR sections 300.500 through 300.515 and Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3), 4404, 4404-a and 4410(13).

Section 200.6(a) Continuum of Services

Description of Rule: The rule was amended to add that special education services could be provided in a general education class.

Need for Rule: The rule was necessary to clarify that special education includes services that could be provided in a student's general education classes to ensure a student's placement in the least restrictive environment.

Legal Basis for Rule: 34 CFR sections 300.550 through 300.552 and Education Law sections 207(not subdivided), 4401(1) - (11), 4402, 4403(3) and 4410(13).

Section 200.6(d) Consultant Teacher Services

Description of Rule: The rule was amended to repeal the requirement that a student with a disability be enrolled full-time in general education classes in order to be provided consultant teacher services and to make a technical change to replace the term "occupational education" with "career and technical education."

Need for Rule: The rule was necessary to ensure students with disabilities are able to receive consultant teacher services, as appropriate, in combination with other special education services such as resource room and related services.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.6(e) Related Services

Description of Rule: The rule was amended to add that the location of the related services must be documented on the IEP.

Need for Rule: The rule is necessary to align State regulations with federal regulations at 34 CFR section 300.347.

Legal Basis for Rule: 34 CFR section 300.347 and Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13).

Section 200.6(g) Special Classes

Description of Rule: The rule was amended to add that a variance from the special class sizes for middle and secondary students can be implemented to the extent authorized by law, repealing references to the school years 1995-96 and 1996-97. The rule also added that a special class with 15 students in New York City could only be increased by one additional student through this variance process.

Need for Rule: The rule was necessary since the variance is applicable only to the extent that the Legislature extends the sunset provision and to comply with changes to State law. Therefore, any reference to a particular year required an annual amendment to State regulations.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4402(2)(d) and (6), 4403(3) and 4410(13).

Section 200.6(h) Home and Hospital Instruction

Description of Rule: The rule adds that a student with a disability on home and/or hospital instruction must receive instruction and related services as recommended on the IEP and that a student shall only be recommended for home and/or hospital instruction if that is the least restrictive environment for the student.

Need for Rule: The rule is necessary to ensure that the CSE considers the least restrictive environment and the unique needs of a student with a disability when making a home or hospital instruction recommendation.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.7 Approval of Private Schools for Students with Disabilities

Description of Rule: The rule was amended to add that the school conduct and discipline procedures in an approved school, a State-operated school and a State-supported school must be consistent with section 100.2(l) and Part 201 of the Commissioner's Regulations.

Need for Rule: The rule is necessary to conform to federal regulations 34 CFR sections 300.401 and 300.519 through 300.529.

Legal Basis for Rule: 34 CFR sections 300.401 and 300.519 through 300.529 and Education Law sections 207(not subdivided), 3214(3)(c), 4402, 4403(3) and 4410(13).

Section 200.7 State-Operated Schools

Description of Rule: The rule is amended to conform the required members of the multidisciplinary team of a State-operated school to the required members in federal regulations 34 CFR section 300.344 and to add that a parent of a child in a State-operated school may request mediation to resolve a dispute.

Need for Rule: The rule is necessary to ensure compliance with federal regulations 34 CFR sections 300.344 and 300.506.

Legal Basis for Rule: 34 CFR sections 300.344 and 300.506 and Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.8 State Assistance for Instruction of Students with Disabilities

Description of Rule: The rule was amended to make technical corrections to cross citations; to clarify the term "days" consistent with the amended definition in section 200.1 of the Commissioner's Regulations; and to replace the term "triennial evaluation" with the term "reevaluation."

Need for Rule: The rule is necessary to make technical corrections as a result of amendments to other sections of the regulations.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4402, 4403(3) and 4410(13).

Section 200.16(c) Individual Evaluation - Preschool Students with Disabilities

Description of Rule: The rule was amended to make technical corrections to cross citations and certain terms; to add that the summary report of the evaluation not include a recommendation as to location of services; to repeal the requirement that the parent must request the approved evaluator to provide the parent with a copy of the evaluation summary and to ensure that for purposes of eligibility and continuing eligibility determinations, the CPSE must provide a copy of the evaluation report and the documentation of eligibility to the parent.

Need for Rule: The rule is necessary to conform State regulations to 34 CFR section 300.534.

Legal Basis for Rule: 34 CFR section 300.534 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Section 200.16(d) Recommendation - Preschool Student with a Disability

Description of Rule: The rule was amended to make technical corrections to cross citations and certain terms and to add that the board of education must notify the parent if it sends the recommendation back to the CPSE.

Need for Rule: The rule is necessary to correct cross citations and ensure State regulations conform to State law.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Section 200.16(e) Annual Review - Preschool Student with a Disability

Description of Rule: The rule was amended to correct certain cross citations and terms.

Need for Rule: The rule is necessary to align cross citations with amended sections in the Regulations.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13).

Section 200.16(g) Procedural Due Process - Preschool Student with a Disability

Description of Rule: The rule was amended to require that a procedural safeguards notice be provided to a parent upon initial referral, each notification of an IEP meeting, upon reevaluation of the child and upon receipt of a request for an impartial hearing; and to require that the notice upon initial referral must request consent to the proposed evaluation and advise the parent of the right to consent or withhold consent to the evaluation and initial provision of services to a student not previously identified, and indicate that if the parent does not provide such consent, no further action will be taken by the CPSE until consent is obtained.

Need for Rule: The rule is necessary to clarify procedural safeguards and notice requirements as they relate to preschool students with disabilities.

Legal Basis for Rule: 34 CFR sections 300.500 through 300.505 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).
Section 200.16(g)(3) Notice of Meetings - Preschool Student with a Disability

Description of Rule: The rule was amended to require that a notice of a CSE meeting be provided consistent with section 200.5 of the Commissioner's Regulations.

Need for Rule: The rule is necessary to ensure the meeting notice is provided in accordance with section 200.4(c) of the Commissioner's Regulations.

Legal Basis for Rule: 34 CFR section 300.345 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Section 200.16(g)(7) Mediation - Preschool Student with a Disability

Description of Rule: The rule is amended to add that the board of education must ensure that mediation sessions are available to the parent of a preschool child.

Need for Rule: The rule is necessary to ensure compliance with 34 CFR section 300.506 and section 4404-a of the Education Law.

Legal Basis for Rule: 34 CFR section 300.506 and Education Law section 207(not subdivided), 4403(3) and 4404-a of the Education Law.
Section 200.16(g)(10) State Complaints - Preschool Student with a Disability

Description of Rule: The rule was amended to add to the procedural safeguards for preschool students that State complaint investigations shall be conducted in accordance with section 200.5(m) of the Commissioner's Regulations.

Need for Rule: The rule is necessary to ensure compliance with federal regulations in 34 CFR sections 300.660 through 300.662.

Legal Basis for Rule: 34 CFR sections 300.660 through 300.662 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).
Section 200.6(h) Continuum of Services - Preschool Student with a Disability

Description of Rule: The rule was amended to correct certain cross citations and terms.

Need for Rule: The rule is necessary to align this section with other amended sections of the Commissioner's Regulations.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1)-(11), 4402, 4403(3) and 4410(13).
Section 200.20 Approval, Operation and Administration of Preschool Programs

Description of Rule: The rule was amended to correct certain cross citations and the name of the State's special education office.

Need for Rule: The rule is necessary to align this section with other amended sections of Part 200 of the Commissioner's Regulations.

Legal Basis for Rule: Education Law sections 207(not subdivided), 4401(1)-(11), 4202, 4403(3) and 4410(13).

Part 201 - Procedural Safeguards for Students with Disabilities Subject to Discipline

Description of Rule: The rule was added to define terms relating to disciplinary actions of students with disabilities; to establish the requirements for CSEs to conduct functional behavioral assessments and develop and implement behavioral intervention plans for students with disabilities; to establish the requirements for CSEs to conduct manifestation determinations; to establish the protections for students presumed to have a disability for discipline purposes; to establish general procedures for suspensions and removals of students with disabilities, including parental notice, five school day suspensions or removals, 10 school day suspensions or removals, exceptions for patterns of suspensions or removals, and change in placement to an interim alternative educational setting (IAES) for behavior involving weapons, illegal drugs or controlled substances; authority of impartial hearing officers to order a change in placement to an IAES in a dangerous situation; coordination with superintendent's hearing and other due process procedures applicable to all students; provision of services during suspensions; and expedited due process hearings.

Need for Rule: The rule is necessary to align State regulations with federal regulations and State law relating to the discipline of a student with a disability.

Legal Basis for Rule: 34 CFR sections 300.121 and 300.519 through 300.529 and Education Law sections 207(not subdivided), 4403(3) and 3214(3)(c).

Part 247 - Vocational Rehabilitation Program

Description of Rule: This rule enacted certain amendments to Part 247 to conform State regulations relating to the vocational rehabilitation program to changes in federal law made in 1998 by the reauthorization of the Rehabilitation Act (Public Law 105-22).

Need for Rule: These regulations are necessary to ensure that the vocational rehabilitation program is conducted according to federal requirements set forth in the 1998 amendments to the Rehabilitation Act.

Legal Basis for Rule: Education Law sections 207(not subdivided) and 1004(1).

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:

Rebecca H. Cort

Interim Deputy Commissioner

Office of Vocational and Educational Services for Individuals with Disabilities

New York State Education Department

One Commerce Plaza, Room 1606

Albany, NY 12234

(518) 474-2714

OFFICE OF HIGHER EDUCATION

Amendment of Section 145-2.1 of the Regulations of the Commissioner of Education Relating to TAP for Part-Time Students with Disabilities

Description of Rule: Section 145-2.1(a)(4) defines part-time study for State student financial aid purposes (TAP, etc.) for students with disabilities, as defined in the federal Americans with Disabilities Act (42 USC 12102(2)), as enrollment for at least 3 but less than 12 semester hours per semester or the equivalent, or at least 2 but less than 8 semester hours per quarter. The Regents approved the amendment at their July 1999 meeting, to be effective September 1, 1999.

Need for Rule: Chapter 332 of the Laws of 1998 amended subdivision (4) of section 661 of the Education Law to eliminate the full-time attendance requirement for students with disabilities. The law did not specify the minimum course load that students with disabilities must carry. Section 145-2.1(a) defines part-time study as enrollment for at least six semester hours in a semester. However, the sponsors of Chapter 332 advised the State Education Department that the intent was

for students with disabilities to be eligible for TAP providing they enroll for at least three semester hours, necessitating the amendment to the regulation. Based on guidance from Office of Counsel, it was also necessary to include the reference to the federal statute contained in Education Law and specify that, to be eligible, students must be determined to be disabled in accordance with the Americans with Disabilities Act.

Legal Basis for Rule: Education Law sections 207(not subdivided) and 661(4)(d).

Section 52.21(b) of the Regulations of the Commissioner of Education - Registration of Programs for Preparing Classroom Teachers

Description of Rule: The addition of Section 52.21(b) provided specific standards for all teacher education programs registered in New York State leading to teacher certification. This regulation implemented the intent of the Regents 1998 policy paper "Teaching to Higher Standards: New York's Commitment." The following is a summary of the major requirements of this rule:

- A general education core in liberal arts and sciences is required for all classroom teachers.
- Preparation for teaching students to meet Regents learning standards is required for all classroom teachers.
- Preparation for teaching students with disabilities and students with limited English proficiency is required of all classroom teachers.
- Academic content preparation is also required for special education, literacy and ESL teachers.
- Ten days of diverse field experience is required prior to 40 school days of student teaching for all classroom teachers.
- All teacher education programs leading to certification in social studies shall include study of economics and government and at least 21 credit hours of history and geography to prepare teachers to teach to the new learning standards.
- Thirty-credit major in content area required for secondary teachers and teachers of special subjects.
- All programs for classroom teachers must be accredited.
- Eighty percent of all program completers of teacher education programs must pass the New York State Teacher Certification Examinations or the program may be subject to de-registration.

Need for Rule: In 1998, the Regents enacted "Teaching to Higher Standards: New York's Commitment." This policy statement provided the framework for sweeping changes to pre-service and in-service teacher education. In enacting these policy changes, the Regents were acknowledging the vital role played by the classroom teacher in improving student learning and achievement. The Regents believed there was a need to create a stronger linkage between the teacher preparation programs and the Regents learning standards for all students. In addition, it was important that all teachers be prepared to teach all students, especially students with disabilities and English language learners. As the State moved to establish rigorous learning standards for all students and increase graduation requirements, the Regents believed that such sweeping reforms can only be successful if all our students had access to highly qualified and certified teachers.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210(not subdivided), 215(not subdivided), 305(1) and 3004(1).

Amendment of Section 100.2(dd) of the Regulations of the Commissioner of Education Relating to Annual Professional Performance Reviews

Description of Rule: The purpose of the addition of Section 100.2(dd) of the Commissioner's Regulations is to require each school district and BOCES to establish a prescribed plan for the annual professional performance review of its teachers providing instructional services or pupil personnel services. The amendment requires the governing body of each school district and BOCES to adopt a plan for the annual professional performance review of its teachers providing instructional service or pupil personnel services by September 1, 2000.

The amendment prescribes criteria that school districts or BOCES must use for the evaluation of teachers providing instructional services in the following areas: content knowledge, preparation, instructional delivery, classroom management, student development, student assessment, collaboration, and reflective and responsive practice. Districts may supplement these State criteria with locally developed criteria, and the amendment permits a variance from the State criteria upon a finding by the Commissioner that the school district or BOCES has demonstrated a local model for the evaluation of teachers providing instructional services that has produced successful results. The amendment also requires the plan to describe the methods that the school district or BOCES employs to assess teachers' performance. The amendment requires the plan to describe how the school district or BOCES addresses the performance of teachers whose performance is evaluated as unsatisfactory, and requires the development of a teacher improvement plan for teachers so evaluated, which is to be developed by the district or BOCES in consultation with the teacher. In addition, the plan must describe how the school district or BOCES provides training in good practice for the conducting of performance evaluations to staff who perform them, or alternatively, shall state the fact that the school district or BOCES permits such personnel to participate in training in this subject offered by the State Education Department. Finally, pursuant to the Taylor Law, the amendment states that the procedures for the annual professional performance review are subject to collective bargaining.

Need for Rule: In 1998, the Regents enacted "Teaching to Higher Standards: New York's Commitment," which was the blueprint for the redesign of both pre-service and in-service teacher education in New York State. One of the critical components of this policy statement was to ensure that each teacher received a rigorous annual professional performance review which assessed the teacher's overall performance in the classroom. With the Regents sweeping reforms to K-12 educational system, they acknowledged the need to ensure that all teachers remain current and effective in the classroom to ensure that all students will attain the Regents learning standards and graduation requirements. The requirement for annual professional performance review was strengthened by ensuring that critical components of the teacher's practice in the classroom were assessed, on an annual basis, by the district. The more rigorous annual professional performance review was another component to ensure that teachers remain current and effective in the classroom.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2), and 3604(8). Section 100.2(o) of the Regulations of the Commissioner of Education - Professional Development Plans

Description of Rule: The rule requires each school district and BOCES to have a professional development plan, which describes how they will provide all of their teachers with substantial professional development opportunities. For plans covering the time period February 2, 2004 and thereafter, each school district or BOCES is required to describe in its plans how it will provide teachers it employs holding a professional certificate with opportunities to maintain such certificates in good standing based upon successfully completing 175 hours of professional development every five years. The intent is for school districts and BOCES to offer a menu of professional development opportunities to their teachers. Such opportunities may be in a variety of formats and offered by a variety of providers and include course work paid for by the school district or BOCES or the teacher, depending on local arrangements and how professional development offered outside the school day is collectively bargained. The amendment requires the professional development plan to be adopted by September 1, 2000 and annually thereafter. It requires the plan to be developed through collaboration with a professional development team, including the superintendent of schools or district superintendent or their designees,

school administrators, teachers, at least one parent and curriculum specialist, a representative of a higher education institution provided that a qualified candidate is available, and others. A majority of the members of the professional development team must be teachers selected by their collective bargaining unit. Among other items, the plan must describe the alignment of professional development with New York standards and assessments, student needs, teacher capacities, and include a needs analysis, goals, objectives, strategies, activities and evaluation standards. It must also describe the manner in which the school district or BOCES will measure the impact of professional development on student achievement and teachers' practices.

Need for Rule: In 1998, the Board of Regents enacted "Teaching to Higher Standards: New York's Commitment," which was the blueprint for the redesign of both teacher pre-service and in-service programs in New York State. The Regents recognized the need to ensure that all teachers remain current with their professions and be given professional development focused on their capacities and the needs of their students. The Regents were guided by research which demonstrated that professional development, when locally developed, and focusing on student learning needs did improve the quality of instruction and student achievement. The enactment of the requirement of professional development plans ensured that local districts would collaborate to develop meaningful professional development to meet the needs of their teachers and students.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2).

Part 86- Albert Shanker National Board for Professional Teacher Standards Certification Grant Programs

Description of Rule: Part 86 of the Regulations of the Commissioner of Education defines the rights, obligations, application procedures, and grant delimitations pertaining to the Albert Shanker Grant, pursuant to Education Law section 3004-a, establishing such grant to support and encourage qualified New York State teachers seeking a National Teaching Certificate from the National Board for Professional Teaching Standards (NBPTS.) The National Board for Professional Teaching Standards (NBPTS) is a nonprofit organization of teachers and other education stakeholders created in 1987 to assist in improving student learning through the establishment of higher, more rigorous standards of knowledge and performance for teachers. By defining and recognizing highly accomplished practice, a certificate awarded by the National Board attests that a teacher has been judged by his or her peers as one who meets meaningfully high and rigorous standards of knowledge and performance. He or she has demonstrated the ability, in a variety of settings, to make sound professional judgments about students' learning needs and to act effectively on those judgments. The NBPTS national teaching certificate has been recognized by many states as valid in lieu of a state teaching certificate and, in some, as worthy of a salary incrementation in recognition of ones' status as a "master teacher." The New York State Board of Regents accepts the NBPTS national teaching certificate in reciprocity towards a permanent NYS teaching certificate in a comparable subject title. Eligible teachers receiving the Shanker grant are awarded up to \$2,000 toward the \$2,300 registration fees in support of this effort. All but \$300 of such registration fees are paid directly to the National Board for Professional Teaching Standards by SED. Individual candidates or their employing school districts also may be reimbursed for prior, authorized fees paid and/or for other approved expenditures in support of this effort, including up to three days for substitute teacher salary reimbursements, to a maximum of an additional \$500 for each candidate.

Need for Rule: The Shanker Grants help support rigorous and meaningful professional development for teachers, whether or not they become Board certified. The National Board process (portfolio and assessment center activities) causes teachers to consider student work as a consequence of their own work according to NBPTS standards, and

the reinducted habits of analytical and reflective practice appear to translate reliably into perceptions of changed teaching behaviors stimulating the growth of teachers content knowledge, knowledge of child development, and actual employment of a broader array of more effective strategies to facilitate teaching and learning across diverse student populations. Continued Department support for Part 86 and the Albert Shanker Grant is consistent with current Regents policy initiatives, NCLB, and seemingly omnipresent efforts to raise and maintain standards for teaching and learning with a level of reliability heretofore unattained.

Legal Basis for Rule: Education Law sections 207(not subdivided) and 3004-a(4).

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:

Johanna Duncan-Poitier
Deputy Commissioner
Office of Higher Education and Office of the Professions
New York State Education Department
West Wing, Second Floor Mezzanine
Albany, NY 12234
(518) 474-3862

OFFICE OF THE PROFESSIONS

Sections 3.3, 3.9, 17.1, 17.2, 17.4, 17.5, 17.6, 17.7, 17.9, 28.2, 28.3 and 28.6 - Change in title of Chief Administrator of the Office of Professional Discipline and applicability of consent order and license surrender procedures to physicians, physician assistants and specialist assistants

Description of Rule: changed title of the chief administrator of the Office of Professional Discipline from "Executive Director of the Office of Professional Discipline" to "Director of the Office of Professional Discipline" and clarified the applicability of the consent order and license surrender procedures to physicians, physician assistants and specialist assistants.

Need for Rule: The rule is needed to implement a change in the internal organization of the Office of Professional Discipline. The rule also prescribes that the existing procedures set forth for physicians, physician assistants and specialist assistants are applicable to cases in which charges of professional misconduct were served on or before July 26, 1991, the effective date of Chapter 606 of the Laws of 1991. This is necessary because Chapter 606 provided the Department of Health with the responsibility for administering professional discipline proceedings against such licensees in cases served after that date.

Legal Basis for Rule: Education Law sections 104(not subdivided), 207(not subdivided) and 6506(1) and (8) and Chapter 606 of the Laws of 1991.

Sections 3.47 and 3.50 of the Commissioner's Regulations - Doctor of Audiology

Description of Rule: The rule authorizes the conferral of the Doctor of Audiology (Au.D.) degree, for completion of a professionally oriented doctoral program in audiology.

Need for Rule: The rule is necessary to prescribe requirements for the conferral of the Au.D. degree.

Legal Basis for the Rule: Education Law sections 207(not subdivided), 210(not subdivided), 218(1), 224(4) and 8206(2).

Sections 3.47 and 3.50 of the Commissioner's Regulations - Doctor of Physical Therapy

Description of Rule: The rule authorizes the conferral of the Doctor of Physical Therapy (D.P.T.) degree, for completion of a professionally oriented doctoral program in physical therapy.

Need for Rule: The rule is necessary to prescribe requirements for the conferral of the D.P.T. degree.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210(not subdivided), 218(1), 224(4) and 6734(b).

Sections 17.5, 17.6, 24.2 and 24.7 of the Rules of the Board of Regents - Professional discipline proceedings

Description of Rule: The rule clarified the role of the Committee on the Professions in consent order and license surrender procedures, which resolve charges of professional misconduct in disciplinary proceedings conducted pursuant to Title VIII of the Education Law.

Need for Rule: The rule codifies the existing procedures for the settling of cases of professional misconduct.

Legal Basis for Rule: Education Law sections 201(not subdivided), 6504(not subdivided), 6506(1), (4) and (10), and 6507(4)(h).

Sections 29.2 and 29.7 of the Rules of the Board of Regents and section 63.6 of the Commissioner's Regulations - Pharmacy

Description of Rule: The rule authorizes the electronic transmission of prescriptions and the transfer of prescriptions between pharmacies for refills; establishes requirements for the use of a common electronic database used to maintain dispensing information; removes outdated references in registration requirements for pharmacies; authorizes the waiver of regulations to permit demonstration projects; authorizes unlicensed persons to enter and retrieve prescription data, under the supervision of a pharmacist, and clarify their permitted duties; increases from one to two the number of unlicensed persons a pharmacist may supervise; amends requirements for the offering of counsel to patients by pharmacists or pharmacy interns; and updates titles of unlicensed health professions in Regents Rule section 29.2.

Need for Rule: The rule is needed to ensure that the public will be protected in its use of pharmaceutical services, while permitting pharmacies to employ recent developments in the electronic technologies. The requirements for the use of a common electronic file or database used to maintain dispensing information are needed to ensure the confidentiality of this information. The rule also frees pharmacists and pharmacy interns from routine tasks so they may have sufficient time to directly interact with patients, assess patient profiles and provide enhanced patient counseling. The rule is also needed to specify additional requirements for the offering of counseling by pharmacists and pharmacist assistants.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1) and (9), 6507(2)(a), 6509(9), 6801(not subdivided), 6803(not subdivided), 6804(a) and (b), 6806(1), 6808(2)(a)(3) and 6810(1).

Section 61.15 of the Commissioner's Regulations - Dentists

Description of Rule: The rule implements the provisions of Chapter 354 of the Laws of 1998, which amended Education Law section 6604-a(4), and clarifies qualifications of acceptable sponsors of continuing education for dentists.

Need for Rule: The rule establishes standards for the approval of sponsors of continuing education relating to facilities, equipment and financial and physical resources, and otherwise implements statutory provisions.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), and 6604-a(2) and (4).

Section 66.5 of the Commissioner's Regulations - Optometry

Description of Rule: The rule clarifies and implements the requirements of Education Law section 7101-a and Chapter 517 of the Laws of 1995, relating to the certification of optometrists to use phase two therapeutic pharmaceutical agents, including clarifying clinical training requirements, examination requirements, reporting requirements and continuing education requirements.

Need for Rule: The rule is necessary to implement statutory requirements.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6502(1), 6504(not subdivided), 6507(2)(a), (3)(a) and (4)(a), 6508(1) and (2), 7101(not subdivided), 7101-a(1)(f), (3)(4), (7), (9), (9-a) and (11), and sections 3 and 4(b) of Chapter 517 of the Laws of 1995.

Section 66.5 of the Commissioner's Regulations - Optometry

Description of Rule: The rule specified two additional classes of drugs that an optometrist who is certified to use phase two therapeutic pharmaceutical agents may use and prescribe to treat patients.

Need for Rule: The rule adds two additional drugs, carbonic anhydrase inhibitors and prostaglandin analogs, that demonstrate equivalence to a class of drugs that appropriately certified optometrists are now authorized to use to treat glaucoma.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6507(2)(a) and 7101-a(1)(f), (10)(c) and (12).
Section 75.1 of the Commissioner's Regulations - Speech Language Pathology and Audiology

Description of Rule: To prescribe the education requirements for licensure in speech-language pathology and/or audiology by adjusting the definition of study that is equivalent to a master's degree program in the field, permitting doctoral level graduates to qualify and redistributing the education practicum hours to be compatible with national standards.

Need for Rule: Adjusting the definition of study that is equivalent to a master's degree program in the field from a master's to a graduate degree permits candidates for licensure who have graduated from a doctoral program in the field without receiving a master's degree to become licensed under the education equivalency requirements without requiring those individuals to return to school to receive a master's degree. Redistribution of the education practicum hours to be compatible with national standards allows individuals who have completed education requirements at colleges or universities outside of New York State to be eligible for licensure in New York State without requiring those individuals to complete additional practicum hours.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1) and (10), 6507(2)(a) and 8206(2).

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:

Johanna Duncan-Poitier
Deputy Commissioner
Office of Higher Education and Office of the Professions
New York State Education Department
State Education Building
West Wing, Second Floor Mezzanine
Albany, NY 12234
(518) 474-3862

OFFICE OF MANAGEMENT SERVICES

Section 3.2 of the Commissioner's Regulations - Standing Committees of the Board of Regents

Description of Rule: to reorganize the committee structure of the Board of Regents to abolish the Committee on Administration, Law and Legislation (ALL) and to establish the Committee on Quality.

Need for Rule: The Board of Regents abolished the ALL Committee and established the Committee on Quality in 1999. The rule merely conforms the Regents Rules to this change in internal organization of the Board of Regents.

Legal Basis for Rule: Education Law section 207(not subdivided).

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:

Kathy A. Ahearn
Counsel and Deputy Commissioner for Legal Affairs
New York State Education Department
State Education Building, Room 148
Albany, NY 12234
(518) 474-6400
legal@mail.nysed.gov

Sections 187.1 and 187.2 of the Commissioner's Regulations - Freedom of Information Law and Personal Privacy Protection Law

Description of Rule: The rule amends the offices and office addresses within the State Education Department for submissions of requests under the Freedom of Information Law and the Personal Privacy Protection Law.

Need for Rule: The rule updated information relating to the State Education Department employee who is designated as the Department's Records Access Officer, responsible for ensuring compliance with the Freedom of Information Law and the Personal Privacy Protection Law (Articles 6 and 6-A of the Public Officers Law), and to update the addresses of the offices designated to receive requests for the Department's records.

Legal Basis for Rule: Education Law sections 207(not subdivided) and 305(6) and Public Officers Law sections 87(1)(b), 94(1)(j) and 94(2)(c).

Section 187.7 of the Commissioner's Regulations - Freedom of Information Law

Description of Rule: The rule revised the fee charged by the Department to produce computer records requested under the Freedom of Information Law.

Need for Rule: The rule changed the time-charge to reflect the actual cost incurred by the Department.

Legal Basis for Rule: Education Law sections 207(not subdivided) and 305(6) and Public Officers Law sections 87(1)(b).

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:

David Walsh
Chief Information Officer
New York State Education Department
Office of Management Services
State Education Building, Room 121
Albany, NY 12234
(518) 486-1702

OFFICE OF CULTURAL EDUCATION

Sections 185.5 and 185.11 of the Commissioner's Regulations - Local Government Records Management

Description of Rule: Revises Records Retention and Disposition Schedule MU-1.

Need for Rule: To make necessary changes and additions to update Records Retention and Disposition Schedule MU-1.

Legal Basis for Rule: Education Law section 207(not subdivided) and Arts and Cultural Affairs Law section 57.25(2).

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:

Christine Ward
Assistant Commissioner for the State Archives
New York State Education Department
State Archives
Room 9C35
Cultural Education Center
Empire State Plaza
Albany, NY 12230
(518) 474-6926

DEPARTMENT OF HEALTH

Title 10 NYCRR - Five Year Review

Pursuant to the State Administrative Procedure Act Section 207 and 202-d, the Department of Health invites public comment on the

continuation or modification of the following rules. Public comment should be submitted to William R. Johnson, Office of Regulatory Reform, Corning Tower, Room 2415, Empire State Plaza, Albany, NY 12237.

Amendment to Subparts 14-1, 14-2 and 14-4 of Title 10 (Food Service Regulations)

Statutory Authority:

Public Health Law, Section 225.

Description of the regulation:

The 1/8/97 amendments to these Subparts increased the cooking temperatures for ground meat to address the potential contamination from E. Coli 0157:H7. Currently these Subparts are undergoing another revision to provide a more user-friendly document, exempt certain types of operations, rescind Subpart 14-5, and define standards for food manager and worker training courses. The 1/8/97 amendments will not be modified.

Amendment of Section 16.58 of Title 10 (Fluoroscopic X-ray Systems)

Statutory Authority:

Public Health Law, Section 225.

Description of the regulation:

The amendment to Section 16.58 of Part 16 limited the radiation output of fluoroscopic x-ray tubes when the fluoroscopic unit was operating in the high-level control mode. There have been no technological or procedural changes that would necessitate further amendment or repeal of this section.

Addition of Subparts 47-3, 47-4, 47-5 and 47-6 to Part 47 of Title 10 (Primary Care Education and Training)

Statutory Authority:

Public Health Law, Sections 901, 903 and 904.

Description of the regulation:

These regulations effectively serve NYS DOH scholarship and loan repayment recipients who are fulfilling their service obligations under these programs. Because the benefits of the amendment continue to be realized, continuance of the regulation without change is warranted.

Amendment to Subpart 58-5 of Title 10 (Hematopoietic Progenitor Cell Banks)

Statutory Authority:

The Council on Human Blood and Transfusion Services is authorized by Section 3121(5) of the Public Health Law to enact, amend and repeal rules and regulations establishing minimum standards for the collection, processing, fractionation, storage, distribution and supply of blood, subject to the approval of the Commissioner of Health. Public Health Law Article 43-B also mandates Department oversight of tissue banks, including hematopoietic progenitor cell banks (HPC); Section 4365(7) reserves for the Council on Human Blood and Transfusion Services the authority to establish standards for HPC banking.

Description of the regulation:

Subpart 58-5 is necessary to promote the public health, safety and welfare by establishing minimum standards for the banking of hematopoietic progenitor cells (HPCs), which are immature blood cells. Amendment or repeal of these regulations is not proposed.

Amendment of Subpart 58-8 of Title 10 (HIV Testing of Newborns)

Statutory Authority:

Public Health Law section 576 (4) authorizes the Department of Health to adopt, and amend rules and regulations to implement the provisions of Public Health Law Article 5, Title V, and ensure high quality clinical laboratory services, including testing related to HIV, for New York State residents. Public Health Law section 2786 authorizes the Department to promulgate regulations concerning the implementation of article 27-F of the Public Health Law, which, among other things, protects the confidentiality of information concerning whether an individual has been the subject of an HIV related test.

Description of the regulation:

Subpart 58-8 is necessary to promote the public health, safety and welfare by establishing minimum standards for clinical laboratory testing and reporting of test results to detect human immunodeficiency virus (HIV) and to monitor infected individuals. Continuance of these regulations is warranted.

Amendment of Sections 80.67, 80.69, 80.73 and 80.74 (Addition of Prescription Information)

Statutory Authority:

The authority for this regulation is Public Health Law, Sections 3308(2) and 3338(4).

Description of the regulation:

This regulation allows pharmacists to complete certain missing information on an official New York State prescription. Allowing the pharmacist to add or change such information saves the patient from having to return to the practitioner who made out the prescription. It increases access of controlled substances to legitimate patients and helps to overcome perceived barriers. It also saves time for the prescriber and the pharmacist from return visits to both. Continuance of these regulations is warranted.

Amendment of Sections 80.67, 80.69, 80.71, and 80.72 (Three-Month Controlled Substance Medication for Attention Deficit Disorder Over Age 16)

Statutory Authority:

The authority for this regulation is Public Health Law, Section 3308(2).

Description of the regulation:

The purpose of these provisions is to establish consistent access to medication for all Attention Deficit Disorder patients. Such patients are often treated over the age of 16. This regulation allows patients of any age, and not just those under age 17, to obtain up to a 3-month supply of a controlled substance. Attention Deficit Hyperactivity Disorder (ADHD) has been proven to extend into adulthood and many requests were received to allow for the 3-month supply. Some prescription plans allow for one co-pay for a 3-month supply. This amendment has resulted in cost savings to the patient. Continuance of these regulations is warranted.

Repeal of Section 85.48 (Methadone Maintenance Treatment Program (MMTP) - Preferred Providers)

Statutory Authority:

The authority for this regulation is Section 364(2)(b) of the Social Services Law.

Description of the regulation:

Section 85.48, first adopted in 1993, established standards of care, staffing and reporting requirements, for MMTPs operated by physicians under Article 33 of the Public Health Law and Article 23 of the Mental Hygiene Law, who seek to become preferred providers. The intent was to permit such physician based MMTPs who agreed to provide the increased comprehensive services to access enhanced Medicaid fees. While it was a Department of Health (DOH) program, the impetus for the program as well as the source of additional funding for enhanced fees was the Office of Alcoholism and Substance Abuse Services (OASAS). OASAS requested repeal of Section 85.48 because due to local assistance budget reductions it determined that it no longer had the resources to fund this program. OASAS continues to find that it no longer has these resources and requests that this regulation continue to remain repealed.

Amendment of Section 86-6.6 (Hospice Supplemental Financial Assistance)

Statutory Authority:

Public Health Law, Section 4012-a.

Description of the regulation:

The regulation permanently extended the Hospice Supplemental Financial Assistance Program until the supporting program legislation expires. The rule needs to continue without modification until the

program legislation expires on July 1, 2006.

Repeal of Section 89.21 of Title 10 (Practice of X-ray Technology)

Statutory Authority:

Public Health Law, Sections 3504 and 3515.

Description of the regulation:

This section was repealed to remove an unwarranted and archaic restriction on out-of-state applicants for radiation therapy licensure in New York. There has been no change which would necessitate reinstatement of this section.

Amendment of Paragraph 415.14(a)(1) (Qualifications of Nursing Home Director of Food Services)

Statutory Authority:

Public Health Law section 2803(2) authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law, and to establish minimum standards governing the operation of health care facilities.

Description of the regulation:

The amendment modified a restrictive personnel qualification standard for the food service director which exceeded the federal requirements set forth at 42 CFR Section 483.35, and did not necessarily contribute to nursing home resident well-being. It also provided nursing home operators greater flexibility in the recruitment of a staff position. Based upon outcomes identified during nursing home surveillance activities, the amended regulation has not negatively impacted resident care. Continuance of this regulation is warranted.

Title 18 NYCRR - Five Year Review

Amendment of Sections 347.5, 369.1, 369.7, 370.2, 370.7 and 360-3.2 of Title 18 (Child Support-MA)

Statutory Authority:

The regulatory amendment to 360-3.2 implemented Chapter 398 of the Laws of 1997.

Description of the regulation:

The regulation revision enhanced child support enforcement efforts by requiring Medicaid applicants and recipients to assist in establishing, modifying and enforcing child support orders.

Section 360-3.2 was part of a regulatory package submitted by the Office of Temporary and Disability Assistance (OTDA). The revision remains valid in order to implement Chapter 398 of the Laws of 1997, and should be retained without modification.

The other regulatory amendments fall under the purview of OTDA. Therefore, we have no further comments on the amendments.

Amendment of Paragraph 505.5(d)(2) of Title 18 (Medicaid DME Pricing Methodology)

Statutory Authority:

Chapter 474 of the Laws of 1996.

Description of the regulation:

The subject paragraph amends Section 505.5 of Title 18 NYCRR to establish maximum reimbursable prices for standard items of durable medical equipment. This regulatory change was developed with the support and assistance of the State's durable medical equipment providers as a means to simplify billing procedures, to limit cost increases to Medicaid of durable medical equipment, and to minimize audit issues related to the determination of actual invoice cost for pricing.

The methodology remains appropriate and consistent with the payment policy of other medical care insurers. It is therefore recommended that this regulation be retained without modification.

INSURANCE DEPARTMENT

Pursuant to Section 207 of the State Administrative Procedure Act (SAPA), the Insurance Department must review after five years, and thereafter at five-year intervals, all regulations that were adopted on or

after January 1, 1997. The purpose of the review is to determine whether the regulations should be continued as adopted or modified. The Department invites public comment on the continuation or modification of the following rules that were adopted in 1999.

- INS-51-98-00011-A (State Register of May 12, 1999) Repeal of Part 185 and Adoption of a New Part 185 (Regulation 27-A) (Credit Life Insurance and Credit Accident and Health Insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 3201, 4205, 4216 and 4235.

Insurance Law Sections 4216 and 4235 authorize the writing of credit life insurance and credit accident and health insurance in New York. Under the prior version of the regulation there had been an exodus of insurers willing to write credit insurance in New York. The new regulation streamlined some of the requirements applicable to insurers offering these products and generally provided for a modest increase in rates with a resultant increase in expense margins. The new regulation balanced the dual legislative objectives of having the product available and providing insureds with fair value for their premium dollar. In 2001, the Department adopted an amendment to the regulation (INS-10-01-00004-A, State Register of May 30, 2001) modifying certain restrictions on age terminations of coverage and rates for vendor business. In 2003, the Department adopted an amendment to Part 185 (INS-50-02-00014-A, State Register of March 5, 2003) to recognize the creation of a new category of "broker" which can market and place such coverage. The Department currently intends to continue the rule without modification, while continually monitoring the availability and affordability of coverage.

- INS-16-99-00006-A (State Register of November 3, 1999) Amendment of Subpart 64-2 (Regulation 35-C) (Liability Insurance Covering All-Terrain Vehicles) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301 and 5103; Vehicle and Traffic Law, section 2407.

Section 2407 of the Vehicle and Traffic Law requires that all-terrain vehicles ("ATVs") operated in New York be covered by a policy of liability insurance, which includes No-Fault coverage mandated by Article 51 of the Insurance Law. The No-Fault insurance forms applicable to ATVs were incorporated into Insurance Department Regulation No. 68 (11 NYCRR 65), which was repealed and repromulgated simultaneously to Regulation 35-C. In 2001, the Department adopted an amendment to Regulation 35-C (INS-31-00-00030-A, State Register of August 22, 2001) to bring the regulation into conformity with an amendment to Regulation No. 68 regarding the required Personal Injury Protection Endorsement. In 2002, the Department adopted an amendment to the regulation (INS-25-02-00004-A, State Register of September 11, 2002) to update certain references in accordance with statutory amendments. The Department currently intends to continue the rule without modification, while continually monitoring the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements.

- INS-44-98-00006-A (State Register of January 27, 1999) Amendment of Subpart 60-2 (Regulation 35-D) (Supplementary Uninsured/Underinsured Motorists Coverage) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301 and 3420; and Chapter 568, Laws of 1997.

Insurance Law Section 3420 requires that motor vehicle liability insurance policyholders be given the opportunity to purchase Supplementary Uninsured/Underinsured Motorists ("SUM") coverage to protect against the possibility of an accident involving another motor vehicle whose owner or operator was negligent and who may have no liability insurance or have liability insurance with relatively low limits in comparison to the policyholder's own liability limits for bodily injury sustained by third-parties. In 1997, the legislature enacted legislation raising the limits of SUM coverage that must be offered to insureds and

making other significant changes to the way such coverage is provided. This amendment implemented the legislative change. In addition, this amendment established a standard policy form for SUM coverage, in order to eliminate ambiguity, minimize confusion and maximize utility. The Department currently intends to continue the rule without modification, while continually monitoring the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements.

- INS-11-99-00006-A (State Register of May 19, 1999) Amendment of Part 27 (Regulation 41) (Excess Line Placement Governing Standards) of Title 11 NYCRR.

Statutory Authority: Insurance Law, Sections 201, 301, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 5907, 5911 and 9102 of the Insurance Law, Chapter 225 of the Laws of 1997 and Chapter 282 of the Laws of 1998.

Regulation 41, originally promulgated in 1962, establishes standards for placements in the Excess Line insurance market through excess line brokers licensed by the Department. Chapter 225 of the Laws of 1997 amended the Insurance Law to allow excess line brokers to exercise binding authority and to execute an authority to bind coverage on behalf of an insurer not licensed or authorized to do business in this State. This amendment specifies what information must be included in the authority, which must be filed with the Excess Line Association of New York. In addition, the information contained in the authority must be submitted to the Insurance Department in a monthly report. The amendment also permits the Superintendent, subject to certain factors, to lower the amount of monies that must be maintained in a syndicate's trustee account. For subsequent amendments to Regulation 41 see below.

- INS-16-98-00004-A (State Register of June 2, 1999) Amendment of Part 27 (Regulation 41) (Excess Line Placement Governing Standards) of Title 11 NYCRR.

Statutory Authority: Insurance Law, Sections 201, 301, 2101, 2104, 2105, 2110, 2116, 2118, 2121, 2122, 2130, 3103, 5907, 5905, 5911 and 9102 of the Insurance Law, Chapter 225 of the Laws of 1997 and Chapter 282 of the Laws of 1998.

Prior to the enactment of Chapter 498 of the Laws of 1996, New York Insurance law § 2118 (McKinney 1999) required both the excess line broker and the insured to complete an affidavit affirming as true that the broker had advised the insured that coverage had been placed with an unauthorized insurer. Chapter 498 amended the statute to eliminate that requirement and replace it with specific requirements concerning information that must be disclosed by the broker to the insured prior to making a placement with an unauthorized insurer. This amendment conforms Regulation 41 to the statutory change. In addition, the amendment adopts trust deposit requirements for alien insurers that were adopted by the National Association of Insurance Commissioners at their September 1998 meeting. These requirements provide additional protection for New York policyholders whose insurance have been placed in the excess line market. In 2001, the Department adopted an amendment to the regulation (INS-13-01-00017-A, State Register of July 11, 2001). Section 1101(b) of the Insurance Law was amended by Chapter 597 of the Laws of 1999 to permit unauthorized insurers that are affiliated with an insurer licensed in this state, to have an office in this state to provide services to support its insurance business. Chapter 597 also amended Insurance Law Section 2117 to allow authorized insurers to provide support services, from an office in New York, to unauthorized affiliates, provided that the unauthorized insurer has satisfied all applicable requirements for placement by excess line brokers. Both sections of law require that any documents issued by unauthorized insurers from an office in this state contain a prominent notice that the insurer is not licensed in New York, in accordance with regulations promulgated by the Superintendent. The 2001 amendment established a mandatory and uniform notice instead of permitting each

insurer to establish its own notice. In 2003, the Department adopted an amendment to the regulation (INS-48-02-00004-A, State Register of February 19, 2003) to amend incorrect references to other sections of the regulation. The Department currently intends to continue the rule without modification, while continually monitoring the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements.

- INS-31-99-00017-A (State Register of November 3, 1999) Amendment of Part 52 (Regulation 62) (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) of Title 11 NYCRR.

Statutory Authority: Federal Social Security Act (42 U.S.C. section 1395ss) and Insurance Law, sections 201, 301, 3201, 3216, 3217, 3218, 3221, 3232, 4235, 4237 and article 43.

42 U.S.C. § 1395ss (1999) mandated federal statutory requirements for Medicare supplement insurance policies. States were required to establish a regulatory program that provided for the application and enforcement of standards with respect to such policies equal to or more stringent than the requirements described in such statute. The Federal statutory requirements were amended in 1997, Balanced Budget Act amendments of 1997, Pub. L. No. 105-33. States were required to make conforming changes to their regulations in order to maintain their accreditation from the National Association of Insurance Commissioners ("NAIC"). This amendment ensures that New York's Medicare Supplemental insurance program is in full compliance with the mandatory Federal standards as set forth in an NAIC model regulation to implement Medicare supplement minimum standards. For subsequent amendments to Regulation 62 see below.

- INS-29-99-00013-A (State Register of December 8, 1999) Amendment of Part 52 (Regulation 62) (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 3201, 3216, 3217, 3221, 3232, 4235, 4237 and article 43.

This amendment clarified the fact that the dental exclusion permitted by the regulation for health insurance policies does not extend to dental care or treatment necessary due to congenital disease or anomaly. In 2001, the Department adopted an amendment to the regulation (INS-01-01-00009-A, State Register of March 21, 2001). The enactment of the Federal Omnibus Budget Reconciliation Act of 1990 ("the Act") required the mandatory standardization and federal certification of policies of Medicare supplement insurance. As a result of the Act, states were required to amend their laws and regulations to conform to the federal standards for Medicare supplement insurance. The revisions contained in this amendment made technical corrections to New York's Medicare supplement regulation to ensure continued compliance with federal standards. In 2002, the Department adopted an amendment to the regulation (INS-13-02-00004-A, State Register of June 5, 2002). The revisions contained in this amendment merely make technical corrections to New York's Medicare supplement regulation to ensure continued compliance with federal standards. In 2003, the Department adopted an amendment to the regulation (INS-16-03-00004-A, State Register of July 16, 2003). The revisions contained in this amendment deleted obsolete language and updated the term "alcoholism" to "chemical dependence" to conform with amended statutory language.

The Department is currently considering amendments to Regulation 62 regarding a variety of health care insurance issues. The Department's Regulatory Agenda for June 2003 (June 25, 2003 State Register) contains 7 items that involve amendment of Regulation 62. The Department continually monitors the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements.

- INS-47-98-00007-A (State Register of September 15, 1999) Amendment of Part 216 (Regulation 64) (Unfair Claim Settlement

Practices) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 2601, 3411 and 3412.

Chapter 360 of the Laws of 1997 amended N.Y. Vehicle and Traffic Law § 429 (McKinney 1999) to require full disclosure of the applicable status of a motor vehicle to a potential purchaser of that vehicle. Specifically, it must be disclosed when a vehicle being transferred is rebuilt salvage and imposes a civil penalty on any person who knowingly and intentionally defrauds a purchaser by failing to make such disclosure. This amendment to Regulation 64 requires that, in certain instances, the insurer, when authorizing repair of a vehicle after a covered loss, must obtain the vehicle title from the owner and forward it to the Department of Motor Vehicles so it may be branded as "rebuilt salvage" and then returned to the vehicle owner. In 2003, the Department adopted an amendment to the regulation (INS-06-03-00003-A, State Register of April 23, 2003). The revisions contained in the 2003 amendment related to the rights of authorized drivers and insurers to inspect damaged rental vehicles, in conformance with Chapter 656 of the Laws of 2002. The Department continually monitors the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements.

- INS-16-99-00005-A (State Register of November 3, 1999) Repeal of Part 65 and Adoption of a New Part 65 (Regulation 68) (Regulations Implementing the Comprehensive Motor Vehicle Insurance and Repairs Act) of Title 11 NYCRR.

Regulation 68 contains provisions implementing Article 51 of the Insurance Law, known as the Comprehensive Motor Vehicle Insurance Repairs Act, popularly referred to as the No-Fault Law. The prior existing regulation was repealed and a new regulation promulgated in order to eliminate certain obsolete provisions and to reorganize the regulation so that it would be easier to utilize. In addition, substantive changes were made relating to policy conditions, no-fault claim processing provisions, optional arbitration procedures, mandatory arbitration procedures, and no-fault forms. The new regulation went into effect on February 1, 2000. In June of 2000 the new regulation was successfully challenged in *Medical Society v. Levin*, 185 Misc.2d 536 (Sup. Ct. N.Y. County 2000). In 2001, the Department adopted a new Regulation 68 (INS-31-00-00029-A, State Register of August 22, 2001). By its terms, the new Regulation 68 was to be effective as of September 1, 2001. Prior to the effective date of this regulation, litigation was commenced in Supreme Court, New York County, challenging the regulation. As a result of the litigation, the new regulation was revised. The final version of the new Regulation 68 became effective as of April 5, 2002. On October 21, 2003 the Court of Appeals ruled that the Superintendent was within his authority in promulgating the new regulation. The Department continually monitors the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements.

- INS-31-98-00024-A (State Register of February 10, 1999) Repeal of Part 53 and Adoption of a New Part 53 (Regulation 74) (Life and Annuity Cost Disclosure and Sales Illustration) of Title 11 NYCRR.

Regulation 74, which superseded the original Regulation 74 promulgated on December 30, 1982, established new rules for the form and content of the preliminary information documents, policy summaries and sales illustrations for life insurance policies and annuity contracts as required by Chapter 616 of the Laws of 1997. The Department continually monitors the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements. The Department's June 2003 Regulatory Agenda (published in the State Register of June 25, 2003) noted the Department's intent to amend Part 53 to set forth the information mandated by Section 3209 of the Insurance Law including the standards governing the content, format and use of sales illustrations and other disclosure requirements for fixed annuity products and funding agreements and

also to include changes that provide for enhanced disclosure to buyers of life insurance and annuity products.

- INS-22-99-00005-A (State Register of September 15, 1999) Amendment of subpart 62-4 (Regulation 96) (Anti-Arson Application) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, and 3403.

This amendment implemented a new two-tier anti-arson application that includes questions to be answered by applicants for new or renewal policies or binders covering the perils of fire or explosion. Since the regulation was first adopted in 1981, other sections of law applicable to such coverage had been amended, and certain requirements in Regulation 96 became inconsistent with the related provisions. This amendment brought the regulation into conformity with other applicable statutes and regulations. In 2000, the Department adopted an amendment to the regulation (INS-20-00-00006-A, State Register of September 27, 2000). This amendment, consistent with an amendment to Section 3403 of the Insurance Law, allows the Superintendent, upon application by the insurer, to suspend the requirement for an anti-arson application in certain defined circumstances. The Department continually monitors the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements. It currently intends to continue the rule without modification.

- INS-05-99-00003-A (State Register of April 7, 1999) Amendment of Part 70 (Regulation 101) (Medical Malpractice Insurance: Required Notices and Rate Modifications) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 1113(a)(13) and (14), 3426, 3436, 5504, 5907, 6302, 6303 and article 23; and Chapter 639, Laws of 1996; Chapters 161 and 261, Laws of 1997.

The purpose of this amendment was to establish physicians and surgeons medical malpractice rates and surcharges for the policy year July 1, 1998 to June 30, 1999. The Department reviews this regulation each year as part of the process of establishing premium rates for the succeeding year, if directed to do so by the legislature. The regulation is also monitored to ensure that the provisions remain consistent with other related statutory and regulatory requirements. The regulation was amended in 2000 (INS-13-00-00006-A, State Register of July 12, 2000) and 2001 (INS-15-01-00007-A, State Register of June 20, 2001) to establish basic medical malpractice rates and, when necessary, to address related concerns. The Department's June 2003 Regulatory Agenda (published in the State Register of June 25, 2003) noted the Department's intent to amend Regulation 101 to establish ongoing primary and excess physicians and surgeons liability insurance rates. Consideration is also being given to amendment of Sections 70.8(h), 70.9(l) and 70.9(m) which contain the instructions and forms used to report segregated and surcharge account information to the Insurance Department; and amendment of Section 70.13 which currently requires that medical malpractice insurers offer both occurrence and claims-made policies.

- INS-05-99-00004-A (State Register of April 28, 1999) Repeal of Part 162 (Regulation 131) (Data Reporting Requirements for Commercial Risk Insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, and 334; Chapter 579, Laws of 1998.

Regulation 131 had contained instructions to insurers regarding the type of statistical data and the form of submission for the annual report on commercial property/casualty insurance. Section 2 of Chapter 579 of the Laws of 1998 repealed the enabling legislation for this regulation and consequently the regulation was repealed.

- INS-52-98-00005-A (State Register of March 31, 1999) Adoption of Part 74 (Regulation 159) (Homeowners Insurance Disclosure Information) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, and 3445.

Chapter 44 of the Laws of 1998 added a new Section 3445 to the Insurance Law requiring the Superintendent to establish by regulation

disclosure requirements with respect to the operation of any deductible in a homeowners' insurance policy or dwelling fire personal lines policy that applies as the result of a windstorm. Regulation 159 provided standards for the uniform display of windstorm deductibles, which consist of hurricane and non-hurricane deductibles, in the policy declarations. The Regulation also provided the minimum provisions to be contained in the policyholder disclosure notice, which will explain the purpose and operation of the hurricane deductible and must accompany new and renewal policies containing such deductibles. The Department continually monitors the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements. It currently intends to continue the rule without modification.

- INS-12-99-00001-A (State Register of June 2, 1999) Adoption of Part 220 (Regulation 160) (Holocaust Victims Insurance Claims and Reports) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 2701(d), 2703(a)(2), 2710, article 27 and Chapter 259, Laws of 1998.

This regulation implements the provisions of Chapter 259 of the Laws of 1998, entitled the Holocaust Victims Insurance Act of 1998, which added a new Article 27 to the Insurance Law to provide a framework for the expeditious and equitable resolution of insurance claims by Holocaust victims (as defined in N.Y. Insurance Law §2701(a) (McKinney 1999)). The regulation contains the standards for diligent and expeditious investigation of claims; reporting requirements imposed on insurers organized, registered, accredited or licensed to do business in New York; standards for the making and assessment of claims; provisions for the use of alternative documentation; and methods for computing interest on proceeds. The Department continually monitors the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements. It currently intends to continue the rule without modification.

DEPARTMENT OF LABOR

Pursuant to subdivision 2 of section 207 of the State Administrative Procedure Act (SAPA), notice is hereby provided of the following rules adopted during calendar year 1999, which the Department of Labor is reviewing:

1. Amendment to Title 12 NYCRR Part 1300
 - a. Description of Rule: Establishes work programs for public assistance applicants and recipients.
 - b. Statutory Authority: Labor Law, Section 21
 - c. Need for Rule: To implement the work requirements for public assistance applicants and recipients and implement the transfer to the Department of Labor of responsibility for supervision of welfare work programs administered by social services districts.
2. Repeal Title 12 NYCRR Parts 160-166 and Creation of new Title 12 NYCRR Part 160
 - a. Description of Rule: Establishes a compulsory Workplace Safety and Loss Prevention Program
 - b. Statutory Authority: Labor Law, Article 13, Sections 351, 362; Article 2, Section 21
 - c. Need for Rule: Implements the legislative intent of article 13 of the Labor Law, which requires strict control, and gradual elimination of homework. It established procedures for the issuance of employer permits and homemaker certificate and provisions for the suspension and revocation of the permits and certificates. Establishes a procedure for the issuance of variations.
3. Amendment of Title 12 NYCRR Part 38
 - a. Description of Rule: Protection from Radiation
 - b. Statutory Authority: Labor Law, Section 27; General Business Law Section 483

- c. Need for Rule: Updates existing regulations to address the timely decommissioning of radiation facilities, safe construction and operation of large irradiators, standards for manufacture and distribution of radioactive products, and improve control of radiation sources in accord with recent changes to the Nuclear Regulatory Commission Rules.
4. Addition of Title 12 NYCRR Part 1100 (mistakenly listed as Part 1500)
- a. Description of Rule: Methodology for establishing a monthly "cost of living index" and annual county or appropriate multi-county "labor market composite wage rate".
- b. Statutory Authority: Labor Law, Section 21, subdivision 13
- c. Need for Rule: Provides cost indexes to the Education Department to be used to apportion school aid to districts throughout the State taking into account the variance in construction costs calculated on a county or appropriate multi-county basis.

The public is invited to comment on the continuation or modification of these rules. The last day for submission of comments regarding the above-mentioned rules is February 21, 2004. To obtain information or submit written comments concerning this notice, contact Diane Wallace Wehner, Legal Assistant II, New York State Department of Labor, Building 12, State Office Campus, Counsel's Office, Room 509, Albany, New York 1140, (518) 457-4380.

OFFICE OF MENTAL HEALTH

I. Background:

Section 207 of the State Administrative Procedure Act (SAPA) requires that any rule adopted by a State agency after 1996 be reviewed after five years, and thereafter, at five year intervals. The purpose of the review is to establish whether or not the rule should be continued or modified.

In accordance with this statutory requirement, the New York State Office of Mental Health (OMH) hereby gives notice of the one rule which was adopted by OMH during calendar year 1999. However, this notice also includes three rules which, although adopted prior to 1999, have not been previously reviewed by OMH.

The public is invited to review and comment on the continuation or modification of any or all of the listed rules. Comments should be submitted in writing, no later than March 31, 2004, to: Dan Odell, Assistant Director, Bureau of Policy, Regulation and Legislation, Counsel's Office, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229. Email address: dodell@omh.state.ny.us.

II. Rule Review:

1. #OMH-05-99-00007-A: State Register Publication Date: June 30, 1999.

Purpose: Adopts an amendment to 14 NYCRR Part 592 (Comprehensive Outpatient Programs) to streamline the regulation and update the methodology for supplemental reimbursement under the Medical Assistance Program.

Analysis of Need: This amendment provided clarifying language, streamlined the reimbursement process, and formally established reimbursement criteria to which providers had previously adhered since 1995. The changes were intended to eliminate duplicative, unclear and outdated standards. They did not, however, alter the reimbursement process by which programs received payment for services under the supplemental medicaid reimbursement program, nor did the changes introduce new obligations on providers. No issues or concerns have been raised within OMH or by regulated parties with regard to this amendment since its adoption in 1999.

Legal Base:

Mental Hygiene Law §7.09(b) grants the Commissioner the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Mental Hygiene Law §31.04(a) empowers the Commissioner to issue regulations setting standards for licensed programs for rendition of services for persons with mental illness.

Social Services Law §§364 and 364-a provide the Office of Mental Health with authority for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative agreements with the Department of Health.

2. #OMH-11-97-00023-A: State Register Publication Date: January 7, 1998.

Purpose: To adopt an amendment to 14 NYCRR Part 527 (Rights of Patients) with regard to the needs of non-English speaking persons seeking or receiving mental health services.

Analysis of Need: The purpose of this rule is to help facilitate the ability of non-English speaking persons seeking or receiving services in facilities licensed or operated by OMH to have full access to mental health services. Since its adoption in 1998, no concerns or issues have been raised with regard to this rule by regulated parties.

Legal Base:

Mental Hygiene Law (MHL) §7.09(i) directs the Commissioner to promulgate rules and regulations to address the communication needs of non-English speaking individuals seeking or receiving services in facilities operated by or licensed by OMH.

Mental Hygiene Law §31.04(a) empowers the Commissioner to issue regulations setting standards for licensed programs for rendition of services for persons with mental illness.

3. #OMH-08-17-96-00001-A: State Register Publication Date: April 2, 1997.

Purpose: Adopts an amendment to 14 NYCRR Part 27 (Quality of Care and Treatment) to provide explicit authorization for facilities to use seclusion with persons who have a dual diagnosis of mental illness and mental retardation.

Analysis of Need: This rule was one of several recommendations of the Office of Mental Health Task Force on Restraint and Seclusion, a committee comprised of senior clinicians from across the State, including those with experience in providing services to persons with a dual diagnosis of mental illness and mental retardation. The rule sets forth specific criteria for the use of seclusion for dually diagnosed persons, including one-to-one visual observation, a limit on the use of such interventions to facilities licensed or operated by the Office of Mental Health, and a requirement that its use be limited to emergency situations where all other emergency interventions have been determined to be inappropriate. Since its adoption in 1997, no concerns or issues have been raised with regard to this rule by regulated parties.

Legal Base:

Mental Hygiene Law §7.09(b) grants the Commissioner the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Mental Hygiene Law §31.04(a) empowers the Commissioner to issue regulations setting standards for licensed programs for rendition of services for persons with mental illness.

4. # OMH-19-97-00015-A: State Register Publication Date: July 23, 1997.

Purpose: To adopt an amendment to 14 NYCRR Part 552 (Audits of Office of Mental Health Licensed or Operated Facilities, Programs or Units).

Analysis of Need: Audits by OMH of providers of services are intended to identify ineligible expenses and unreported income that result in a need to recover state funding. In cases where overpayments are identified, OMH offers providers the opportunity to propose repayment plans, which are then evaluated for reasonableness and approved by OMH. This amendment permitted OMH to assess interest payments on overdue repayment plans for ineligible expenses and unreported income. These interest payments are generally assessed when a provider's repayment plan exceeds one year without justification acceptable to

OMH. Since its adoption in 1997, no concerns or issues have been raised with regard to this rule by regulated parties.

Legal Base:

Mental Hygiene Law §7.09(b) grants the Commissioner the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Mental Hygiene Law §31.04(a) empowers the Commissioner to issue regulations setting standards for licensed programs for rendition of services for persons with mental illness.

OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

The NYS Office of Mental Retardation and Developmental Disabilities (OMRDD) is submitting the following Regulatory Agenda in satisfaction of the requirements of the State Administrative Procedure Act (SAPA) section 207. The purpose of this agenda is to identify and discuss OMRDD rule makings finalized during calendar year 1999, and which are subject to the cited SAPA section 207 five-year review of rules.

During calendar year 1999, OMRDD adopted five rules. These five rule makings were identified and described as follows at the time the respective notices were first published in the State Register:

1. MRD-04-99-00001 (State Register of 1/27/99). Amendments to 14 NYCRR sections 635-10.5 (HCBS Waiver Services), 671.7 (HCBS Waiver Community Residential Habilitation Services), 680.12 (Specialty Hospitals), 681.12 (Intermediate Care Facilities for persons with developmental disabilities), and 690.7 (Day Treatment Services for persons with developmental disabilities). These amendments establish various trend factor and cost of living adjustment (COLA) provisions that were applied (beginning January 1, 1999) within the context of the various rate/fee setting methodologies. Although specific trend factors for the different types of facilities and services are calculated annually, they are cumulative. COLAs are also important elements of the reimbursement methodologies. They need to be maintained, without modification, as integral parts of the methodologies to define how OMRDD established current rates/fees of reimbursement for the affected facilities or services that year.

2. MRD-14-99-00011 (State Register of 4/7/99). Amendment of 14 NYCRR Part 681 to repeal the entire section 681.12 - Rate setting and financial reporting in voluntary agency operated intermediate care facilities for persons with developmental disabilities (ICF/DDs). OMRDD had previously proposed and adopted (effective January 1, 1999) a new section 681.11 as part of a cyclical process of establishing a new base year and revised rate setting methodology for under 31-bed ICF/DD facilities. Section 681.12 was therefore to become obsolete by the beginning of the rate cycle for Region I facilities in July 1 of 1999. The amendment to repeal section 681.12 was adopted effective July 1, 2003, and its repeal need not be revisited.

3. MRD-23-99-00011 (State Register of 6/9/99). Amendments to 14 NYCRR section 681.11 - Rate setting and financial reporting in voluntary agency operated intermediate care facilities for persons with developmental disabilities (ICF/DDs). These amendments were necessary to clarify the cost category standards (screens) contained in the section 681.11 under thirty-one bed ICF/DD rate setting methodology. The amendments specified that the regional screens corresponding to the actual geographic location of the particular ICF/DD facility were the ones that were to be applied. Section 681.11 has since been replaced by its successor section 681.14, and it contains the clarifications proposed and adopted in the 1999 rule making. The clarifying language continues to be pertinent so that OMRDD finds that these amendments adopted in 1999 should be maintained without modification in the successor section 681.14.

4. MRD-34-99-00006 (State Register of 8/25/99). Amendments to section 681.11 - Rate setting and financial reporting in voluntary agency operated intermediate care facilities for persons with developmental disabilities (ICF/DDs). These amendments allow for increased reimbursement for enhanced day training services received by certain residents of ICF/DD facilities, based upon documented need for more intensive day training. The provision to allow increased reimbursement for more intensive day training services is still necessary in the ICF/DD rate setting methodology. Therefore, OMRDD intends to maintain this provision without modification in the successor section 681.14.

5. MRD-43-99-00006 (State Register of 10/27/99). Amendment of section 671.7 - Reimbursement and fiscal reporting for HCBS waiver community residential habilitation services. This amendment provides for an increase in funding for supervised and supportive community residence facilities in the form of an add-on to the operating portion of the reimbursement fee for such facilities. As with trend factors, the amendment needs to be maintained, without modification, to define how the current fee for community residential facilities is established.

In summary, the present mandated five year-review concerns amendments which revise OMRDD's rate/fee setting methodologies. The legal basis for the adoption of these rules is in sections 13.07, 13.09 and 43.02 of the Mental Hygiene Law. In particular, section 43.02 of the Mental Hygiene Law sets forth OMRDD's responsibility for setting Medicaid rates for services in facilities licensed by OMRDD.

These various rate/fee setting methodologies describe and determine the way in which OMRDD calculates the reimbursements to voluntary providers of services. Each successive amendment constitutes a building block integral to each such methodology. For these reasons, OMRDD proposes to maintain the amendments, without modification and as adopted in 1999.

The public is invited to review and comment on OMRDD's proposed disposition regarding these 1999 rule makings beginning January 7, 2004.

Any written comments or inquiries for further information may be directed to the Regulatory Affairs Unit, Office of Counsel, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830

DEPARTMENT OF MOTOR VEHICLES

FIVE-YEAR REVIEW OF RULES ADOPTED IN CALENDAR YEAR 1999 REQUIRED TO BE REVIEWED IN CALENDAR YEAR 2004

As required by Chapter 262 of the Laws of 1996, the following is a list of rules which were adopted by the Department of Motor Vehicles in calendar year 1999 which must be reviewed in calendar year 2004. Public comment on the continuation or modification of these rules is invited. Comments may be directed to: The Department of Motor Vehicles, Counsel's Office, 6 ESP, Room 526, Albany, NY 12228.

MTV-47-98-00003 Part 6 Medical Qualifications of Bus Drivers
Analysis of the need for the rule: DMV adopted this regulation to clarify that all bus drivers must be alcohol and drug free. Since DMV continues to hold bus drivers to the highest highway safety standards, this regulation is necessary to uphold such standards.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 509-b and 509-g.

MTV-42-97-00013 Part 15 New York City Commercial Use Tax
Analysis of the need for the rule: This amendment authorizes DMV to collect a commercial motor vehicle use tax on behalf of New York City. This regulation was promulgated pursuant to Chapter 732 of the Laws of 1992 and NYC Local Law No. 57. DMV collects forty dollars for commercial vehicles weighing 10,000 lbs or less and \$400 for non-medallion taxicabs. Since NYC continues to need this revenue and has found that DMV can collect the tax more efficiently than City's

Department of Finance, this regulation is necessary to insure continued collection of the tax.

Legal basis for rule: Vehicle and Traffic Law sections 215(a), Chapter 1032 of the Laws of 1960, and Chapter 789 of the Laws of 1992.

MTV-49-98-00018 Parts 20 and 78 Rebuilt Salvage Vehicles

Analysis of the need for the rule: The amendments to Parts 20 and 78 put motor vehicle purchasers and dealers on notice as to whether a vehicle is deemed a salvage vehicle. Since the value of a vehicle is greatly diminished when it is branded salvage, consumers and dealers have the right to be informed of the vehicle's status. Since this remains a great concern to both consumers and dealers, this regulation continues to be necessary and beneficial.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) 2113(a), 2114(a), and 2126(b).

MTV-41-99-00003 Part 79 Heavy Duty Diesel Emissions Program

Analysis of the need for the rule: Chapter 621 of the laws of 1998 creates the Heavy Duty Vehicles Emissions Reduction Act, requiring all diesel powered vehicles with a gross vehicle weight rating of greater than 8,500 pounds to have an emissions inspection. The law was enacted because diesel powered vehicles pose a threat to the health and well being of the citizens of New York. This regulation establishes the specific emissions inspection requirements for diesel powered vehicles. Since Chapter 621 is still valid law, these regulations continue to be necessary to establish diesel emissions inspection procedures.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) and 301(f).

MTV-15-98-00017 Part 79 Motor Vehicle Inspection Procedures

Analysis of the need for the rule: In 1997, DMV adopted significant revisions to Part 79, implementing the High Enhanced Emissions Program in the New York Metropolitan Area and the Low Enhanced Emissions Program in the rest of the State. The 1999 amendments to Part 79 were primarily technical in nature and served as clarification to the 1997 amendments. The technical amendments repealed obsolete provisions, deleted repetitive sections, and clarified procedures required by inspection stations. This regulation is still necessary because it continues to reflect inspection station procedures. As requirements for the stations have changed over the past five years, appropriate amendments have been made to Part 79.

Legal basis for rule: Vehicle and Traffic Law sections 215(a), 301, 302, 303, 304, 304-a, 305, and 306.

MTV-47-98-00005 Display of windshield stickers

Analysis of need for the rule: The rule is still necessary to allow the Westchester Taxi and Limousine Commission to place a for-hire sticker on the windshield of for-hire vehicles. The sticker is intended to protect the safety of the residents of the county and to promote the improvement of for-hire services.

Legal basis for the rule: Vehicle and Traffic Law section 375(1).

MTV-14-99-00005 Placement of electronic toll collection tags

Analysis of the need for the rule: DMV adopted this regulation to permit E-Z Pass holders to place this receiver-transmitter device on their windshields. This regulation is still necessary, since E-Z Pass holders continue to need to place the device on the windshield.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 375(1).

OFFICE OF REAL PROPERTY SERVICES REVIEW OF EXISTING REGULATIONS

The following rule adoptions by the State Board of Real Property Services during 1999 will be reviewed during 2004 pursuant to SAPA section 207 to determine whether they should remain in effect as adopted or should be modified. Each is contained in Title 9 of the NYCRR. The first and third were amendments to existing regulations

as part of an initiative to simplify the rules of the State Board in conformance with Governor Pataki's Executive Order No. 2. Each continues to be part of the same program. The second amendment was a substantial revision to an existing requirement that was undertaken independently of the rules simplification initiative. All three rules will be subject of a review by the Office of Real Property Services during 2004 prior to their submission to the State Board of Real Property Services for formal action.

Part 187 – Informational Hearings, Adjudicatory Proceedings and Review Procedures – RPS-29-98-00015-A, effective January 6, 1999. Statutory basis - RPTL, sections 202(1)(l), 324 and 816, and SAPA, section 301(3).

Parts 190 and 192 – Inventory Standards of Property Characteristics - RPS - 08-99-00015-A, effective July 28, 1999. Statutory Basis - RPTL, sections 202(1)(l), 500 and 501.

Part 194 – Agricultural Assessment Program - RPS - 48-98-00001-A, effective April 14, 1999. Statutory basis – AML, section 307 and RPTL, sections 202(1)(l), 310.

To obtain information or submit written comments regarding this review, contact James J. O'Keefe, Associate Attorney, New York State Office of Real Property Services, 16 Sheridan Avenue, Albany, 12210-2714, (518) 474-8821

DEPARTMENT OF TAXATION AND FINANCE Regulation Continued Without Modification

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

As part of the current year review of regulations that were adopted during 1998 (pursuant to Chapter 262 of the Laws of 1996), the Department has reviewed Appendix 10-C of Title 20 NYCRR. The regulation provided City of New York withholding tables and other methods, applicable to wages and other compensation paid on and after January 1, 1999. The new tables and other methods reflected the expiration of the tax surcharge on residents of the City of New York. This regulation made various editorial changes and reduced the rate of New York City personal income tax on residents to be withheld from supplemental wages. The regulation was enacted so that employers would withhold from employee wages amounts that are substantially equivalent to the amount of taxes reasonably estimated to be due for the taxable year. Appendix 10-C has been repealed and enacted four times since this 1998 action. The statutory authority for the regulation is contained in Tax Law, sections 171, subd. First; 671(a)(1); 671(b)(1); 697(a), 1309 (not subdivided) and 1312(a); General City Law, section 8-A of the Model Local Law contained in section 25-m and section 25-n(e); Administrative Code of the City of New York, sections 11-1771(a), 11-1771(b), 11-1797(a), 11-1909 (not subdivided) and 11-1943 (not subdivided).

This regulation is being continued without modification because it provides necessary guidance to employers concerning the amounts that the employers should withhold from their employees' wages and other compensation.

A summary of the regulation was published in the Regulatory Agenda section of the January 8, 2003, edition of the State Register and republished in the Rule Review section of the January 22, 2003, issue.

The 2003 Regulatory Agenda was also posted to the Department's Website (http://www.tax.state.ny.us/pubs_and_bulls/Regulations/Regulatory_Agenda.htm) on January 8, 2003. The Department did not receive any public comments 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

DEPARTMENT OF TAXATION AND FINANCE

Pursuant to Chapter 262 of the Laws of 1996, the State Administrative Procedure Act (SAPA) was amended to add section 207 under which the Department of Taxation and Finance must review all regulations adopted on or after January 1, 1997, after five years, and, thereafter, at five year intervals. In 2004, the Department must review regulations that were adopted during 1999 to determine whether these regulations should be retained as written or modified. Accordingly, the Department intends to review the following regulations during 2004, and invites written comments on the continuation or modification of these regulations in order to assist the Department in the required review. We will consider comments that are received by February 23, 2004.

1. 20 NYCRR Sections 527.8(j) (Employee meals) and 527.9(g) (Employee lodging) Filed March 31, 1999; published/effective April 21, 1999. **Need:** This regulation was amended to delete burdensome and complex requirements that were no longer applicable. The amendments retained only the provisions that meals and lodging furnished by certain employers to employees are not subject to sales tax if the employers receive no cash (or other consideration) from the employees and the values of the meals and lodging are not included as income for the employees for income tax purposes. **Legal Basis:** Tax Law sections 171, subd. First; 1142(1); and 1250 (not subdivided). (TAF-06-99-00018-A)

2. 20 NYCRR Parts 6 and 21 (Conforming the Due Dates Short Period Reports) Filed June 15, 1999; published/effective June 30, 1999. **Need:** This regulation extended favorable treatment to taxpayers by conforming the due dates of certain general business and banking corporations' short period reports to those required for Federal income tax purposes. Specifically, the amendments conformed the due dates of short period reports required in cases where a taxpayer became part of or ceased to be part of a Federal consolidated group or changed from one Federal consolidated group to another. In addition, the amendments conformed the due date of a short period report required in the case of a taxpayer which was a target corporation for which an election had been made under section 338(h)(10) of the Internal Revenue Code. **Legal Basis:** Tax Law, sections 171, subd. First; 211.1; 1096(a); and 1462(a). (TAF-16-99-00002-A)

3. 20 NYCRR Part 5005 (Compromises under Subdivision Fifteenth of Section 171 of the Tax Law) Filed June 15, 1999; published/effective June 30, 1999. **Need:** This regulation codified the Department's policy in relation to offers in compromise of fixed and finally determined tax liabilities; and provided written guidance to taxpayers with respect to the grounds for an offer, the procedure for review and acceptance or rejection of an offer, and the criteria for rejection of an offer. **Legal Basis:** Tax Law, sections 171, subdivisions First, Fifteenth. (TAF-17-99-00005-A)

4. 20 NYCRR Part 2392 (Reasonable Cause - Abatement of Penalties) Filed July 26, 1999; published/effective August 11, 1999. **Need:** This regulation consolidated existing regulations regarding reasonable cause into one new Part 2392. This amendment applied to various penalties imposed by the Tax Law which allow for abatement upon a showing of reasonable cause and an absence of willful neglect. The consolidation provided a single source for taxpayers who file under multiple tax articles to obtain information regarding reasonable cause. In addition, the regulation outlined when a taxpayer's reliance on professional advice constitutes reasonable cause; and for purposes of the delinquency penalties also allowed an honest misunderstanding of fact or law or reasonable reliance on written advice, professional advice or other facts to be applicable, under certain circumstances, in establishing reasonable cause. **Legal Basis:** Tax Law, sections 171, subd. First; 171-a(8); 207-b; 219-a; 289-b(1)(c); 295 (not subdivided); 315; 433(1)(c); 436 (not subdivided); 475 (not subdivided); 481(1)(a)(iii); 509(7); 512(1)(c);

528(a); 697(a); 990(a); 1007(b); 1080(a); 1096(a); 1142(1) and (8); 1145(a)(1)(iii) and (a)(6); 1165 (not subdivided); 1250 (not subdivided); 1312(a); 1332(a); 1342 (not subdivided); 1415(a); 1468 (not subdivided); 1519 (not subdivided); and 1556 (not subdivided); and General City Law, section 25-n(e).

(TAF-22-99-00002-A)

5. 20 NYCRR Part 525 (Sales and Use Tax Regulations - General) Filed July 26, 1999; published/effective August 11, 1999. **Need:** This regulation updated and simplified the "general" provisions in Part 525 by deleting text that merely repeated the statute or that was superfluous, unnecessarily complex, or no longer applicable. **Legal Basis:** Tax Law sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided). (TAF-22-99-00001-A)

6. 20 NYCRR Part 4 (Allocation) Filed July 26, 1999; published/effective August 11, 1999. **Need:** This regulation amended Part 4 of the Article 9-A regulations, which deals with allocation, to repeal obsolete language and references contained in various sections of this Part, to make changes necessitated by legislative amendments and to make technical and clarifying amendments. **Legal Basis:** Tax Law, sections 171, subd. First; 210; 210(3)(a), (1), (2), (2)(B), (6), (7)(A), (8); 210(8); 1096(a). (TAF-22-99-00004-A)

7. 20 NYCRR Section 112.3(c)(2)(iv)("a") (Amendments to Pension Exclusion for Beneficiaries) Filed August 31, 1999; published/effective September 15, 1999. **Need:** This regulation extended the personal income tax pension and annuity exclusion to payments received by a beneficiary of a deceased pensioner on or after the date the decedent would have reached 59½ years of age. **Legal basis:** Tax Law, sections 171, subd. First; 612(c)(3-a) and 697(a).

(TAF-28-99-00014-A)

Any questions concerning the items listed in this agenda, or comments regarding the continuation of the regulations being reviewed should be referred to: Diane M. Ohanian, Technical Services Division, Department of Taxation and Finance, W.A. Harriman Campus, Building 9, Room 146, Albany, New York 12227. Telephone: (518) 457-2254, e-mail address: Diane_Ohanian@tax.state.ny.us