

RULE REVIEW

DEPARTMENT OF AGRICULTURE AND MARKETS

Pursuant to Section 207 of the State Administrative Procedure Act, notice is hereby provided of the following rule which the Department of Agriculture and Markets intends to review in 2005. Public comment on the continuation or modification of this regulation will be accepted until March 31, 2005. All section and Part references are to Title 1 of the New York Code of Rules and Regulations.

Part 6 Sampling and Testing Milk for Component Content.

Statutory authority: Agriculture and Markets Law sections 16, 18, 46-a, 56 and 255.

The continuation of this regulation is necessary to retain the procedure for sampling and testing milk to assure that dairy farmers are accurately paid for milk produced by them.

Comments should be addressed to: Diane B. Smith, New York State Department of Agriculture and Markets, Counsel's Office, 10B Airline Drive, Albany, NY 12235, Phone: 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 is required to review regulations that were promulgated five years previously to determine whether to continue, consolidate or modify the regulations. For the reasons stated, review is not due of the following regulations originally promulgated in 2000:

1. 18 NYCRR sections 421.15(c), 421.19(e) and (g), 443.1(j), 443.3(a), (d), (e) and (o), 443.5(a), 443.7, 444.6, 444.9. Criminal history record checks. These regulations were originally adopted in 2000, and were subsequently reviewed and amended in 2002. Therefore, these regulations will be reviewed pursuant to SAPA Section 207 in 2007.

2. 18 NYCRR sections 415.1 and 415.9. Market Rates for Subsidized Child Care. These regulations were originally adopted in 2000, and were subsequently reviewed and amended in 2004. Therefore, these regulations will be reviewed pursuant to SAPA Section 207 in 2009.

Report of Prior Review of Existing Regulations

On January 1, 2004, OCFS published in the State Register, with its regulatory agenda, a list of regulations adopted by OCFS in 1999. 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 the following:

1. 18 NYCRR Parts 421, 426, 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 subsidies. 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 certain 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.

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, Room 135N, Rensselaer, NY 12144, Telephone: (518) 473-9551, Email address: GG5107@dfa.state.ny.us

DEPARTMENT OF CIVIL SERVICE

Pursuant to section 207 of the State Administrative Procedure Act (SAPA), notice is hereby provided of rules adopted by the New York State Civil Service Commission and the President of the New York State Civil Service Commission during calendar year 2000.

Contained herein is a brief description of each rule, including the statutory authority therefor; an assessment of public comment; and a statement setting forth the justification for the ongoing need for each rule and its continuation without further modification.

Amendment to Chapter I of Title 4 of NYCRR (Rules for the Classified Service)

Statutory Authority: Civil Service Law section 6

Description of the Regulation:

The resolution added a new subdivision (vii) to paragraph (2) of section (b) of Rule 4.5 to provide for a probationary term for the position of "Thruway Maintenance Worker" of not less than 26 weeks nor more than 52 weeks.

Assessment of Public Comment: No public comments have been received regarding this rule.

Action: The rule has functioned consistent with the purposes underlying its adoption and shall be continued without modification.

Amendments to Chapter II of Title 4 of NYCRR (Attendance Rules for Employees in New York State Departments and Institutions)

Statutory Authority: Civil Service Law section 6

Description of the Regulations:

The resolutions added new sections and amended existing sections of the Attendance Rules for non-managerial/confidential (Part 21 of 4 NYCRR) and managerial/confidential (Part 28 of 4 NYCRR) employees in New York State Departments and Institutions.

Amendments provided for supplemental military leave and military leave at reduced pay for employees federally ordered to active military duty (other than for training) related to United States participation in the NATO Kosovo intervention. A further amendment provided for the

establishment of special vacation leave for eligible employees who were denied use of earned vacation accruals due to required participation in Year 2000 computer compliance ("Y2K") activities.

Action: The benefits provided by such amendments to the Attendance Rules have expired and/or been superseded, and are consequently obsolete rules within the meaning of subdivision (5) of SAPA section 207. Inclusion herein is for solely for purposes of information.

Amendments to Chapter IV of 4 NYCRR (Regulations of the State Civil Service Commission [Commission's Regulations])

Statutory Authority: Section 6 of the Civil Service Law.

Description of the Regulations:

A new section 55.5 was added to the Commission's Regulations and the previous sections 55.5 and 55.6 were renumbered 55.6 and 55.7, respectively.

The new section 55.5 codified the long-standing Civil Service Commission practice of granting prior approval for certain examination rating keys, according to the conditions and standards set forth within such section, upon the request of the director of examinations or his or her designee.

Assessment of Public Comment: No public comments have been received regarding these rules.

Action: The rule has functioned consistent with the purposes underlying its adoption and shall be continued without modification.

Various amendments to the Appendices to the Rules for the Classified Service

Appendix 1 (Exempt Class)

Appendix 2 (Non-competitive Class)

Statutory Authority:

Appendix 1: Civil Service Law, sections 6 and 41; 4 NYCRR 2.1

Appendix 2: Civil Service Law, sections 6 and 42; 4 NYCRR 2.2

Description of the Regulations:

Civil Service Commission rules relating to the jurisdictional classification of positions were specifically exempted from compliance with Executive Order No. 20 review requirements by the Governor's Office of Regulatory Reform (GORR), upon a finding by GORR that such review lacked substantial benefit. Based upon this determination by GORR, and pursuant to subdivision (5) of section 207 of the State Administrative Procedure Act (SAPA), a full recitation of amendments to Appendices 1 and 2 to Title 4 of NYCRR adopted by the Civil Service Commission during calendar year 2000 is hereby omitted.

Requests for information and public comments may be directed to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail address: jxb25@cs.state.ny.us. All submissions should be forwarded within forty-five (45) days of the publication of this notice.

EDUCATION DEPARTMENT

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 that 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 2000 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 21.2(a) of the Regents Rules - definition of "textbook"

Description of Rule: the regulation provides a definition of Textbook for purposes of the New York State Textbook Loan Program and Textbook Aid and clarifies that certain materials in electronic format qualify for this program and aid.

Need for Rule: the regulation is necessary to implement Chapter 405 of the Laws of 1999, and ensures that there is a definition of qualifying courseware and other content-based instructional materials in an electronic format for purposes of Textbook aid.

Legal Basis for Rule: Education Law sections 207 and 701(2) and section 8 of Chapter 405 of the Laws of 1999.

Section 100.2(ff) of the Commissioner's Regulations - education and employment discharge planning for youth released from residential care of other State agencies

Description of Rule: the regulation requires that boards of education ensure the prompt enrollment and admittance to attendance of youths released or conditionally released from residential facilities operated by or under contract with the Office of Children and Family Services, the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities or a local department of social services, and that school district personnel cooperate with such facilities and agencies in facilitating such prompt enrollment.

Need for Rule: the regulation is necessary to implement the requirements of section 21 of Chapter 181 of the Laws of 2000, Safe Schools Against Violence Act (SAVE).

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (2), 112(1).

Section 100.2(c) of the Commissioner's Regulations - instruction in false reporting of crimes

Description of Rule: the regulation requires that instruction in fire and arson prevention include materials to educate children on the dangers of falsely reporting a criminal incident or impending explosion or fire emergency involving danger to life or property or impending catastrophe.

Need for Rule: the regulation is necessary to implement Chapter 207 of the Laws of 1999.

Legal Basis for Rule: Education Law sections 207 and 808(1) and Chapter 207 of the Laws of 1999.

Section 100.2(l) of the Commissioner's Regulations - school district code of conduct relating to Safe Schools Against Violence in Education Act

Description of Rule: the regulation requires school districts and BOCES to adopt codes of conduct for the maintenance of order on school property and at school functions, which govern the conduct of students, teachers and other school personnel as well as visitors.

Need for Rule: the regulation is necessary to implement sections 2 and 3 of Chapter 181 of the Laws of 2000, the Safe Schools Against Violence in Education Act (SAVE).

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (2), 2801(1) through (5) and 3214(3) and (3-a).

Sections 100.2, 100.3, 100.4 and 100.5 of the Commissioner's Regulations - technical changes to State Learning Standards, State Assessments and New Graduation and Diploma Requirements

Description of Rule: State learning standards, State assessments and graduation and diploma requirements.

Need for Rule: the regulation is necessary in that it corrected technical errors in citation of certain sections of the regulations and reinstated certain original language that was incorrectly stated or inadvertently revised in the amendments adopted by the Board of Regents in July 1999.

Legal Basis for Rule: Education Law sections 101, 207, 208, 209, 305(1) and (2), 308 and 309

Sections 100.2(m) and (p) and 100.7(h) and (i) of the Commissioner's Regulations - registration of public schools and school accountability performance criteria

Description of Rule: sections 100.2(m) and (p) and 100.7(h) and (i) of the Commissioner's Regulations establish criteria for school accountability; enable the Commissioner to designate school performance on State assessments on three levels; establish adequate yearly progress targets for schools and require improvement plans for schools that fail to make adequate programs; and use a cohort measure for high school accountability.

Need for Rule: the regulation is necessary to implement Regents policy and establishes school accountability criteria, designating schools as farthest from, below, or meeting school accountability performance criteria, consistent with policy adopted by the Board of Regents to ensure that all students in public schools have the skills, knowledge and understanding they need to succeed in the next century. The regulations were amended in July 2003 to align the State's System of Accountability for Student Success with the federal No Child Left Behind accountability requirements.

Legal Basis for Rule: Education Law sections 101, 207, 210, 215, 305(1), (2) and (20), 308, 309, 3204(2) and (2-9) and 4403(3)

Section 100.3(b)(2) of the Commissioner's Regulations - State Assessment requirements for students in grades pre-kindergarten through sixth

Description of Rule: section 100.3(b)(2) of the Commissioner's Regulations changes the date from November 2000 to November 2001 for administration in grade 5 of the new State elementary assessment in social studies and requires school districts to retest fifth grade students who scored at Level 1 of the State designated performance level on the English language arts and/or mathematics elementary level assessments administered in grade 4. Such students must receive at least one semester of academic intervention services and be retested using multiple sources of evidence, including, but not limited to, a commercial test or other external test determined by the school district to be a valid and reliable means of evaluating a student's progress in achieving the elementary level State learning standards in these subjects.

Need for Rule: the regulation is necessary to implement Regents policy to change the date for administration of the new State elementary assessment in social studies and to require school districts to retest fifth grade students who scored at Level 1 of the State designated performance level on the English language arts and/or mathematics elementary assessments administered in grade 4.

Legal Basis for Rule: Education Law sections 207, 208, 209, 305(1) and (2), 308, 309 and 3204(3)

Section 100.11 of the Commissioner's Regulations - school-based planning and shared decision-making in the NYC School District

Description of Rule: the regulation establishes standards for school-based planning and shared decision-making in the City School District of the City of New York.

Need for Rule: the regulation is necessary to align section 100.11 of the Commissioner's Regulations with the New York City governance system, as provided in Chapter 720 of the Laws of 1997, by providing for the exercise by community school district superintendents of certain functions relating to school-based planning and shared decision-making. The regulation insures that each community school district in the New York City school district will operate with a single, consistent school-based planning and shared decision-making plan.

Legal Basis for Rule: Education Law sections 101, 207, 215, 305(1) and (2), 308, 309, 2590-e(1) and (3), 2590-f(1) and (2) and 2590-h(15).

Section 119.3 of the Commissioner's Regulations - charter school report card

Description of Rule: the regulation specifies the academic and performance data items for charter school report cards. The regulation requires each charter school to submit an annual report by August 1 of each year for the preceding school year, one component of which is a charter school report card that includes measures of the school's comparative academic and fiscal performance.

Need for Rule: the regulation is necessary to implement Chapter 4 of the Laws of 1998.

Legal Basis for Rule: Education Law sections 207 and 2857(2) and Chapter 4 of the Laws of 1998.

Sections 151-1.4 and 151-1.8 of the Commissioner's Regulations - Universal Pre-Kindergarten Program.

Description of Rule: the regulation establishes standards for the implementation of summer programs as part of the Universal Pre-kindergarten Program.

Need for Rule: the regulation is necessary to comply with Chapter 405 of the Laws of 1999 to provide the option of a summer program when a school district is unable to operate a Universal Prekindergarten program during the regular school session.

Legal Basis for Rule: Education Law sections 101, 207, 3602-e(12) and section 39 of Part L of Chapter 405 of the Laws of 1999

Section 155.2 of the Commissioner's Regulations - school district construction plans and specifications

Description of Rule: the regulation requires the submittal of only one set of plans and specifications to the Office of Facilities Planning for review and approval pursuant to Education Law section 408.

Need for Rule: the amendment reduces duplicative documentation requirements and thereby streamlines the review process in the Office of Facilities Planning and provides mandate relief to school districts.

Legal Basis for Rule: Education Law sections 101, 207, 305(1), (2) and (19) and 408(1), (2) and (3).

Section 155.9 of the Commissioner's Regulations - State Environmental Quality Review and school district capital construction projects

Description of Rule: the regulation removed the State Education Department as the lead agency for purposes of the State Environmental Quality Review (SEQR) process.

Need for Rule: the responsibility for thorough environmental investigations and review more appropriately lies with the local governmental authority proposing a specific project, since that authority is directly familiar with the proposed site and its surroundings, and has a greater knowledge for the potential impact that may result from the project.

Legal Basis for Rule: Education Law sections 101, 207, 305(1), (2) and (19), 408(3) and 1950(4)(t) and Environmental Conservation Law sections 8-0113(3) and 8-0117(5).

Section 155.17 of the Commissioner's Regulations - school safety plans

Description of Rule: the regulation requires school districts to adopt district-wide school safety plans and building-level school safety plans.

Need for Rule: the regulation is necessary to implement Chapter 181 of the Laws of 2000 to improve school safety.

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (2) and 2801-a.

Section 155.22 of the Commissioner's Regulations - Qualified Zone Academy Bonds

Description of Rule: the regulation establishes the process by which local educational agencies gain access to a federal tax credit program concerning Qualified Zone Academy Bonds.

Need for Rule: the regulation is needed to establish the process for allocation of the State's qualified zone academy bond limitation amount pursuant to 26 USC section 1397E.

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (2) and 26 USC section 1397E.

Section 170.11 of the Commissioner's Regulations - school property tax report cards

Description of Rule: the regulation establishes procedures for the preparation of school property tax report cards. The regulation requires school districts to prepare an annual school tax report card and specified the format for the content, describes how it must be made available to the public and specifies when school districts must submit their school property tax report cards to the State Education Department.

Need for Rule: the regulation is necessary implement Chapter 405 of the Laws of 1999 and to make the calculation used for purposes of the display of the difference of Consumer Price Indexes consistent with the calculation used for the six-day budget notice and the calculation of the contingency budget cap.

Legal Basis for Rule: Education Law sections 207, 1608(7) and 1716(7) and sections 10-a and 10-b of Part L of Chapter 405 of the Laws of 1999.

Section 175.5 of the Commissioner's Regulations - use of Superintendent's conference days

Description of Rule: the regulation specifies the use of superintendent's conference days by public school districts and boards of cooperative educational services to satisfy a deficiency in the length of public school sessions for the instruction of pupils and to advance the implementation of standards and assessments.

Need for Rule: the regulation is necessary to implement section 44 of Chapter 405 of the Laws of 1999. The regulation ensures that a definition of qualifying staff development activities and the acceptable scheduling of such activities is available to determine the number of regularly scheduled days of session and days of authorized superintendents' conferences for purposes of State aid.

Legal Basis for Rule: Education Law sections 207 and 3604(8) and section 44 of Chapter 405 of the Laws of 1999.

Section 175.42 of the Commissioner's Regulations - aid to partitioned school districts

Description of Rule: the regulation provides a method of apportioning aid to school districts in the first year of reorganization, where a school district was partitioned pursuant to Education Law section 2818 after July 1st of the school year.

Need for Rule: the regulation is necessary to implement Chapter 405 of the Laws of 1999.

Legal Basis for Rule: Education Law sections 207 and 3602-f(5) and section 83-a of Part L of Chapter 405 of the Laws of 1999.

Section 175.44 of the Commissioner's Regulations - partial full day kindergarten conversion aid

Description of Rule: the regulation establishes standards for the receipt of full day kindergarten conversion aid by school districts that are converting to full day kindergarten but which are unable, due to limiting and extenuating circumstances, to serve all children who wish to attend a full day program.

Need for Rule: the regulation implements Education Law section 3602(12-a), as amended by section 12 of Part A of Chapter 60 of the Laws of 2000.

Legal Basis for Rule: Education Law sections 101, 207 and 3602 (12-a) and section 12 of Part A of Chapter 60 of the Laws of 2000.

Part 57 and section 100.2(dd) of the Commissioner's Regulations - approval of providers of coursework and training in school violence prevention and intervention

Description of Rule: the regulation establishes standards for approval of providers of course work or training in school violence prevention and intervention that is offered to candidates for a teachers' certificate of license in classroom teaching service, school service or administrative and supervisory service.

Need for Rule: the regulation is necessary to implement section 9 of Chapter 181 of the Laws of 2000, Safe Schools Against Violence in Education Act (SAVE).

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (2) and 3004(3).

OFFICE OF HIGHER EDUCATION

Section 52.21 of the Commissioner's Regulations - teacher education programs

Description of Rule: the regulation made technical corrections to requirements for teacher education programs.

Need for Rule: the regulation clarifies, corrects omissions in, and makes technical corrections to the requirements for teacher education programs adopted by the Board of Regents in September 1999 and makes the requirements more responsive to school staffing needs, while preserving the standards for preparing effective classroom teachers.

Legal Basis for Rule: Education Law sections 207, 210, 215, 305(1) and 3004(1)

Sections 52.21, 80-1.1, 80-3.4, 80-3.5, 80-5.13 and 80-5.14 - alternative teacher certification program

Description of Rule: the regulation defines alternative teacher certification requirements leading to the transitional B certificate and the provisional or initial certificate for all titles in the classroom teaching service; specifies the requirements for registration of such alternative teacher certification programs, and renames the transitional certificate for career changes and others holding a graduate academic or graduate academic or professional degree as the transitional C certificate and the transitional certificate for teaching a specific career and technical subject as the transitional A certificate.

Need for Rule: the regulation provides an alternative method for teacher candidates to obtain a provisional or initial teaching certificate and provides a means to alleviate teacher shortages in the public schools.

Legal Basis for Rule: Education Law sections 207, 210, 215, 305(1), (2) and (7), 3004(1) and 3006(1)

Sections 52.21, 80-1.4, 80-3.5 and 80-5.14 of the Commissioner's Regulations - requirements for teacher certification and teacher education programs concerning school violence prevention and intervention

Description of Rule: the regulation requires applicants for teaching certificates and licenses to have obtained at least two clock hours of course work or training in school violence prevention and intervention and to require registered teacher education programs to include such course work or training.

Need for Rule: the regulation is needed to implement the requirements of Education Law section 3004(3), as amended by Chapter 181 of the Laws of 2000, part of the Safe Schools Against Violence in Education Act (SAVE).

Legal Basis for Rule: Education Law sections 207, 210, 305(1), and 3004(1) and (3).

Sections 80.2, 80.6, 80.7, 80.8, 80.10, 80.15 and 80.16 of the Commissioner's Regulations - requirements for provisional teacher certification

Description of Rule: the regulation permits an out-of-state certified teacher to obtain a conditional provisional certificate to teach in New York State for two years.

Need for Rule: the regulation alleviates personnel shortages in New York State public schools by removing barriers for teachers who are certified to teach in other states to become provisionally certified to teach in New York State public schools. The opportunity to obtain provisional certificate sunset upon implementation of the reorganized Part 80 of the Commissioner's Regulations which established new certificate types and titles for classroom teachers, effective February 2, 2004. The Board of Regents subsequently adopted a new section 80-5.17 to provide a similar opportunity for appropriately certified teachers from other states to obtain a conditional initial certificate in the classroom teaching service to provide instruction in the public schools of New York. Holders of conditional initial certificates must take and pass all necessary certification examinations within two years of the issuance of such certificates.

Legal Basis for Rule: Education Law sections 305(1), (2) and (7), 3004(1), 3006(1), 3007(1) and 3030(1)

Part 80 and 100.2(dd) - requirements for teachers' certificates, teaching practice and professional development for teachers

Description of Rule: the regulation revised the certification requirements for the classroom teaching services and for teaching assistants, revamped certification titles, established professional development requirements for teachers and teaching assistants, and required school districts and BOCES to report and maintain records on professional development.

Need for Rule: these amendments are essential components in the implementation of the systemic teaching reforms embodied in the Task Force on Teaching's 1998 report New York's Commitment: Teaching to Higher Standards that was subsequently adopted as the policy of the State of New York by the Board of Regents. The requirements for the certification of classroom teachers has been recast to implement the Regents' policy and to conform to previous changes in section 52.21 of the Commissioner's Regulations on the registration of teacher education programs enacted in 1999. The standards embodied in these amendments provide essential direction to implement the sweeping teaching reforms recommended by the Task Force on Teaching and adopted by the Board of Regents in 1998.

Legal Basis for Rule: Education Law sections 101, 207, 215, 305(1), 3003(1), 3004(1), 3006(1)(b) and 3604(8)

Sections 83.4, 83.5 and 83.6 of the Commissioner's Regulations - penalties in moral character proceedings for certified teachers

Description of Rule: the regulation conforms the penalties available in moral character proceedings against an individual holding a teaching certificate with penalties established in statute.

Need for Rule: the regulation is necessary to implement section 12 of Chapter 181 of the Laws of 2000, the Safe Schools Against Violence in Education Act (SAVE).

Legal Basis for Rule: Education Law sections 207 and 305(7) and section 12 of Chapter 181 of the Laws of 2000.

Section 85.2 of the Commissioner's Regulations - Mentor Teacher-Internship Programs

Description of Rule: the regulation permits a school district or board of cooperative educational services seeking a variance allowing an evaluative role for mentors to be eligible for funding of a Mentor Teacher-Internship program, provided that the terms of the applicable collective bargaining agreement prescribe such activity.

Need for Rule: the regulation ensures that all qualified school districts and BOCES are given the opportunity to obtain funding for a mentoring program. Prior to this amendment, section 85.2 (d)(1) allowed a waiver to the clause calling for a non- evaluative role for mentors supported through mentor teacher internship programs defined in this section and Chapter 207 of the Laws of 1986 if such a role for mentors was described in an existing teachers' contract, but this provision lapsed on June 30, 1990. With renewed funding for this program by the NYS Legislation in 1997-98 and again in 2000 (and continuously thereafter), it is necessary to amend this section to continue this allowance in order not to exclude worthy projects which have existing teachers' contracts calling for evaluative roles for district mentor teachers.

Legal Basis for Rule: Education Law sections 207 and 3033(1) and (2).

Part 126 of the Commissioner's Regulations - requirements for licensed private schools and registered business schools/computer training facilities

Description of Rule: the regulation established requirements for licensed private schools and registered business schools/computer training facilities. The distinction between the terms diploma and certificate were eliminated. Previously, only students completing a program requiring high school graduation or its equivalent could receive diplomas. The maximum fee was changed from \$50 to \$100 or 10% of the tuition cost, whichever is less. The curriculum evaluation fees for evaluation by experts outside SED staff were increased. Rather than requiring prior approval of a school catalog as had been past

practice, a school may opt to submit an attestation that the catalog meets all of the requirements set forth in the regulations. The school is still responsible for meeting all of the catalog requirements set forth in regulations. Full Licenses for teachers and directors replaced Permanent Licenses. Administrative/Educational and Instructional Competence was added to the teacher and/or director qualifications for licensure. The definition of significant educational change was revised to bring it more in line with the actual operation of non-degree granting proprietary schools that seldom operate on the strict calendar terms, semesters, or quarters used by degree granting schools. Nationally recognized vendor approved curricula and teachers were included as a recognized process in order to adhere to new statute enacted August 31, 1999. Computer Training Facilities were made a separate category of schools as such were established by new statute enacted August 31, 1999. A Licensure Symbol for schools registered or licensed as non-degree granting proprietary schools was established and required in compliance with new statute enacted August 31, 1999.

Need for Rule: the regulation is necessary to implement Chapter 434 of the Laws of 1999. Changes in the teacher and director licensure requirements were needed to reflect changes in the industry and to mirror changes in personnel licensure requirements in the public school sector. The last change to personnel licensure regulations had been made six years prior (July 1994) and were minor at that time. Changes in fees and definitions were required to reflect the changing nature of the industry as no previous regulatory change had occurred in these areas in ten years (1990).

Legal Basis for Rule: Education Law sections 207, 5001(1), (2) and (4)(b), 5002(2)(c), (3)(c), (4)(c) and (e), (6)(a) and (c), and (7), 5003(1) (d) and 5007(10) and Chapter 434 of the Laws of 1999.

OFFICE OF THE PROFESSIONS

Section 59.2 of the Commissioner's Regulations - education requirements for professional licensure

Description of Rule: the regulation requires applicants for professional licensure who seek to meet the education requirement for licensure through programs that are not registered or accredited to submit adequate evidence of verification of their educational credentials by an acceptable independent credentials verification organization.

Need for Rule: the regulation is needed to ensure that only individuals who meet the educational requirements for licensure are licensed and to protect the public from attempts by individuals to submit fraudulent licensure credentials.

Legal Basis for Rule: Education Law sections 207, 6504 and 6507 (1), (2)(a) and (3)(a).

Section 61.10 of the Commissioner's Regulations - certification of licensed dentists in the use of conscious sedation, deep sedation or general anesthesia

Description of Rule: the regulation establishes educational and training requirements for licensed dentists to be certified to employ conscious sedation, deep sedation, or general anesthesia in the practice of dentistry at any location other than a general hospital, and to establish practice requirements for the use of conscious sedation, deep sedation, or general anesthesia by such licensed dentists.

Need for Rule: Education Law section 6605-a, as amended by Chapter 615 of the Laws of 1999, directs the Commissioner of Education to establish requirements in regulation.

Legal Basis for Rule: Education Law sections 207, 6506(1), 6507 (2)(a), 6601 and 6605-a(2).

Section 64.7 of the Commissioner's Regulations and section 29.14 of the Regents Rules - administration of immunization and anaphylaxis treatment agents b registered professional nurses.

Description of Rule: the regulation establishes requirements that registered professional nurses must meet to administer immunization and anaphylaxis treatment agents through non-patient specific orders and protocols, the immunization and anaphylaxis treatment agents that

may be administered, the requirements for orders and the protocols, and special requirements which define unprofessional conduct for the profession of nursing.

Need for Rule: Chapter 573 of the Laws of 1999 directs the Commissioner of Education to promulgate regulations concerning the administration of immunization and anaphylaxis treatment agents by registered professional nurses pursuant to non-patient specific orders of licensed physicians or certified nurse practitioners.

Legal Basis for Rule: Education Law sections 207, 6503(3), 6506(1) and (9), 6507(2)(a), 6509(9), 6527(6), 6807(3), 6902(1) and 6909(4) and (5).

Section 69.6 of the Commissioner's Regulations - mandatory continuing education for architects

Description of Rule: the regulation establishes continuing education requirements and standards for the registration of licensed architects.

Need for Rule: the regulation implements Education Law section 7308, as added by Chapter 521 of the Laws of 1999.

Legal Basis for Rule: Education Law sections 207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1) and 7308(1)(a), (b) and (c).

Section 70.6 of the Commissioner's Regulations - mandatory continuing education for public accountancy

Description of Rule: the regulation requires individuals licensed in public accountancy to participate in at least four contact hours of continuing education study in professional ethics during each triennial registration period and to prescribe that full contact hour credit would be given for interactive self-study programs used to fulfill the continuing education requirement.

Need for Rule: the regulation conforms the public accountancy continuing education requirements for self-study programs to the national authority's recommended guidelines and to ensure that licensees focus a portion of their continuing education on the subject of professional ethics.

Legal Basis for Rule: Education Law sections 207, 6502(1), 6504, 6507(2)(a) and 7409(1)(a)(2) and (4).

Sections 79-4.6 and 79-4.7 of the Commissioner's Regulations - mandatory continuing education for respiratory therapists and respiratory therapy technicians.

Description of Rule: the regulation establishes continuing education requirements and standards that licensed respiratory therapists and licensed respiratory therapy technicians must meet to be registered to practice in New York State and requirements for approval of sponsors of continuing education.

Need for Rule: the regulation clarifies and implements the requirements of Education Law sections 8504-a and 8510-a, as added by Chapter 505 of the Laws of 1999, by establishing standards for what constitutes acceptable formal continuing education, educational requirements when there is a lapse in practice, requirements for licensees under conditional registration, standards for the approval of sponsors of continuing education to licensed respiratory therapists and licensed respiratory therapy technicians, and the fee for the review of sponsors of continuing education to defray the cost of such review by the State Education Department.

Legal Basis for Rule: Education Law sections 207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1), 8504-a(1)(a), (b) and (c), (2) through (6), and 8510-a(1)(a)(b) and (c), (2) through (6).

OFFICE OF MANAGEMENT SERVICES

Part 281 of the Commissioner's Regulations - appeals to Commissioner of Education pursuant to Education Law section 3020(3) relating to employees or titles in the NYC School District

Description of Rule: the regulations establish procedures for appeals to the Commissioner of Education of certain disciplinary determinations for employees or titles in the City School District of the City of New York.

Need for Rule: the regulation is necessary to implement Chapter 3 of the Laws of 2000.

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (2), 308 and 3020(3) and Chapter 3 of the Laws of 2000.

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 of Parts 2 and 23 of Title 10 (Communicable Diseases)
Statutory Authority:

Public Health Law Section 225(4) and (5)(a), (g), and (h) authorizes the Public Health Council to establish, and from time to time amend, the Sanitary Code with respect to preserving and improving public health in the State and to designating those communicable diseases deemed dangerous to public health. Further, the Public Health Council is authorized to establish the reporting standards associated with such reports, and those diseases for which specimens shall be submitted to approved laboratories.

Description of the regulation:

The regulatory changes need to be continued without modification in order to protect the public health by controlling communicable diseases. Diseases/infections of substantial public health importance were added to the list of communicable diseases that must be reported to public health authorities and/or require specimen submission for laboratory testing. These changes facilitate the diagnosis and treatment of disease and implementation of preventive measures to stop the spread of disease. In addition, the regulation eliminated from both the reporting list and the list of diseases requiring specimen submission diseases that were no longer of significance. Clarification of rabies reporting and treatment procedures was also made.

Amendment of Subparts 6-1 and 6-2 of Title 10 (Swimming Pools and Bathing Beaches)

Statutory Authority:

Public Health Law, Section Sections 225(4) and 225(5)

Description of the regulation:

Prior to the amendments, the Code stated that temporary residence/campground bathing facilities that were not required to provide lifeguards for their bathing facilities in 1991 or 1992 may provide supervision through the use of patron use rules and signage or a responsible person, depending on the level of supervision required at that time. The amendments allow all temporary residence and campground operators, except those with ocean surf beaches, to select the level of supervision at swimming pools and bathing beaches operated as part of their temporary residence or campground, regardless of the supervision level provided in 1991 or 1992. As a result, the State Sanitary Code provides a uniform standard allowing the same opportunity for selection of bathing facility supervision at all regulated temporary residences and campgrounds in the state, eliminating the differential standards that existed in the State. Also, the amendments clarified the intent by adding parents or guardians to the adults allowed to accompany children less than 16 years of age to a bathing facility. The amendments should continue without change.

Amendment of Sections 12.2, 12.3, 12.13 and 23 of Title 10 (Regulation Affecting Nurse Practitioners, Licensed Nurses and Midwives)

Statutory Authority:

Public Health Law, Section 225.

Description of the regulation:

This proposal was adopted to bring these provisions into conformance with amendments of Articles 139 (Nursing) and 140 of the Education Law (Midwife Practice Act). Article 140 of the Education Law, enacted in 1992, defined and established licensure and practice standards for the practice of midwifery. Those amendments rendered several provisions of the Department's regulations either obsolete or inconsistent with the new law. This rule updated the Department's regulations and should be retained.

Repeal of Subpart 24-1 of Title 10 (AIDS Reporting)

Statutory Authority:

Public Health Law, Section 225(4) and 225(5)(a)

Description of the regulation:

Deletion of material superceded by Part 63 amendments requiring HIV and AIDS case reporting. The deletion continues to be appropriate and should continue without modification.

Amendment of Parts 36, 58, 66, 69, 82, 85 and 766 of Title 10 (Nurse Midwives)

Statutory Authority:

Public Health Law, Sections 576, 2164, 2500-a, 2522(6) and 4175; Social Services Law Sections 364(2) and 365-a.

Description of the regulation:

This proposal was adopted to bring these provisions into conformance with the amendments of Articles 139 (Nursing) and 140 of the Education Law (Midwife Practice Act). Article 140 of the Education Law, enacted in 1992 defined and established licensure and practice standards for the practice of midwifery. Those amendments rendered several provisions of the Department's regulations either obsolete or inconsistent with the new law. This rule updated the Department's regulations and should be retained.

Amendment of Part 52 of Title 10 (Tissue Banks and Non-Transplant Anatomic Banks)

Statutory Authority:

Article 43-B of the Public Health Law (PHL) establishes the Department's authority over the operation of tissue banks and nontransplant anatomic banks in New York State. PHL Article 43-B also mandates that the Department take action to preclude operation of substandard tissue banks and nontransplant anatomic banks. There are over 740 tissue banks and nontransplant anatomic banks licensed to operate in New York and subject to compliance with administrative and technical standards developed to protect the health, safety, and interests of donors and recipients, as well as individuals who handle bodies, body parts, organs, and tissues used in transplantation, research and education.

Description of the regulation:

The provisions in Part 52 are the basis for an active Department licensure and oversight program that has helped avoid adverse outcomes in tissue recipients in New York through the encouragement of quality initiatives undertaken by tissue banks and nontransplant anatomic banks. The Department's efforts to assess compliance with established regulations must be maintained through continuation of Part 52.

NOTE: Public comments on the existing rules are encouraged. Amendments to these regulations will be considered and developed based, in part, on the comments received. Proposal of additional technical requirements for nontransplant anatomic banks, including whole body acquisition and usage is already planned during calendar year 2005.

Amendment of Subpart 58-2 of Title 10 (Blood Bank Requirements)

Statutory Authority:

The New York State Council on Human Blood and Transfusion Services was established in 1973 by Article 31, Section 3121 of the Public Health Law. The Council is empowered to enact regulations governing the safety and adequacy (collection, processing, fractionation, storage, distribution, supply, and transfusion) of blood and blood products in New York State, subject to approval by the Commissioner. The Blood Resources Program provides staff and fiscal support to the

Blood Council. Staff assists in development of guidelines for the practice of transfusion medicine, and establishment of standards and regulations for the more than 400 facilities holding a NYS permit to provide blood services.

Description of the regulation:

Subpart 58-2 provides the basis for the Department's regulatory oversight of NYS-permitted blood banks that collect, process, test, label, store, distribute and/or transfuse blood and blood components. The Department's efforts to ensure the safety of the blood supply and monitor adverse reactions in donors and transfusion recipients must be maintained through continuation of Subpart 58-2.

NOTE: In order to keep pace with current technology, periodic amendments are necessary. Public comments are encouraged. Amendments already planned for proposal include technical amendments for the collection, testing, and storage of blood and blood components; the labeling of blood specimens intended for pre-transfusion testing and the calibration, temperature and record-keeping requirements of equipment, as well as the amendment of the qualifications of cytophesis collection site staff and lowering the blood donation age to age 16 with parental/guardian consent and notification of parent/guardian of positive test results.

Amendment of Part 63 of Title 10 (HIV/AIDS Testing, Reporting and Confidentiality of HIV Related Information)

Statutory Authority:

Public Health Law, Section 2786 and Article 21, Title III (Section 2139).

Description of the regulation:

This regulation describes the protocols and procedures required for HIV/AIDS testing, reporting and confidentiality of HIV related information. Amendments to the regulation were developed to make it consistent with the requirements of Article 21, Title III (section 2139), regarding newborn screening, partner notification, contact tracing and HIV reporting, thereby enabling regulatory implementation under this Part. This rule as currently written has proven effective in meeting the legislative intent and should continue without modification.

Addition of Section 68.6 of Title 10 (Distributions from the Health Care Initiatives Pool for Poison Control Center Operations)

Statutory Authority:

Public Health Law, Sections 2500-d(7) and 2807-1(l)(c)(iv)

Description of the regulation:

This regulation describes the methodology for distributing funds from the Health Care Initiatives Pool to regional poison control centers. The rule needs to continue without modification until the program legislation expires.

Amendment of Section 80.132 of Title 10 (Hypodermic Syringes and Needles)

Statutory Authority:

Public Health Law, Sections 3308 and 3381.

Description of the regulation:

This regulation allows licensed respiratory therapists, licensed respiratory therapist technicians, certified home health agencies, licensed home care services agencies, long term home health care programs and certified hospices to obtain needles and syringes without a prescription for use within the scope of their professions or activities. This regulation is necessary because without it, these practitioners and agencies cannot lawfully purchase and possess needles and syringes. Patients would be required to obtain a prescription from their practitioner and then have it filled at a pharmacy. This rule should be retained.

Amendment of Section 86-2.30 of Title 10 (PRI Instructions)

Statutory Authority:

Public Health Law, Sections 2803(2), 2807(3) and 2808

Description of the regulation:

This regulation modified the instructions for completing the PRI form to recognize certain medical treatments provided to persons newly

admitted as nursing facility residents, and services provided by nurse practitioners and physician assistants. The rule needs to continue without modification.

Amendment of Sections 401.1 and 710.1 of Title 10 (CON Requirements for Acute Care Beds and Major Medical Equipment)

Statutory Authority:

Public Health Law, Section 2803(2)

Description of the regulation:

Removal of Certificate of Need review of transfers of beds and equipment within established Article 28 hospital networks. This adoption should be continued without modification.

Amendment of Section 405.25 of Title 10 (Organ and Tissue Donation Anatomical Gifts)

Statutory Authority:

Public Health Law, Sections 2803 and 4351.

Description of the regulation:

Chapter 668 of the Laws of 1997 requires hospitals to contact their federally designated organ procurement organization (OPO) to make a determination of the suitability for organ, eye or tissue donation. The OPOs are required, when contacted, to contact the appropriate eye or tissue bank with respect to suitability for eye or tissue donation. The law also requires the hospital to designate who can initiate the request for donation. The previous regulations needed to be updated because they conflicted with Chapter 668 of the Laws of 1997 and this law also required the Department to develop regulations to implement it. Medicare Federal Conditions of Participation were also taken into consideration when this regulation was developed. This rule should be retained.

Amendment of Sections 600.3 and 710.5 of Title 10 (Requirements for Amendment of Approved CON Applications)

Statutory Authority:

Public Health Law, Sections 280-1-a(10)(a), 2808(2) and 2803(2)(a)

Description of the regulation:

Simplification of the Certificate of Need amendment process via amendment of the requirements for amendment of approved CON applications. This adoption should be continued without modification.

Amendment of Section 710.1 of Title 10 (CON Requirements for Acquisition of Major Medical Equipment)

Statutory Authority:

Public Health Law, Section 2808(2) and 2803(2)(a)

Description of the regulation:

An amendment of CON requirements for acquisition of major medical equipment to simplify the regulations governing the purchase of additional equipment and replacement of such equipment by Article 28 facilities. This addition should be continued without modification.

Title 18 NYCRR - Five Year Review

Amendment of Section 360-3.2 of Title 18 (Finger Imaging for Medicaid Applicants/Recipients)

Statutory Authority:

Chapter 436 of the Laws of 1997

Description of the regulation:

This regulatory amendment made finger imaging an eligibility requirement for adults who apply for Medicaid and who are subject to the photo identification requirements established by the Department of Health. The revision remains valid in order to implement Chapter 436 of the Laws of 1997 and should be retained without modification.

DIVISION OF HUMAN RIGHTS

Pursuant to §207 of the State Administrative Procedure Act, which requires that rules adopted on or after the effective date of §207 shall be reviewed after five years, the Division of Human Rights submits a list of rules for review. The following sections of the Division's Rules of Practice (9 NYCRR §465) and General Regulations (9 NYCRR

§466) have been in effect for five years.

1. The changes in §465 of the Division's Rules of Practice repealed certain of the Division's intake procedures adopted on November 3, 1995 and re-adopted intake procedures that previously had been in effect. The repeal and re-adoption were in response to a court order. The changes were authorized by sections 290.3, 293.2, 295.5 and 297 of the Human Rights Law.

Subdivision 1 of section 1 of Part 465 was repealed. This section defined the word "complaint" to mean a sworn legal document supported by information sufficient to indicate that the individual or organization filing such verified document had been aggrieved by an unlawful discriminatory practice and had actual knowledge of the facts alleged. "Complaint" is no longer separately defined.

Changes were also made to 465.3. §465.3(a)(1) re-adopted the sentence "Assistance in drafting and filing complaints shall be available to complainants at all regional offices in person, by telephone or by mail," and deleted the sentence "The regional office will provide technical assistance where appropriate." It also eliminated the phrase "or is underage."

§465.3(a)(3) re-adopted the sentence "On its own motion, or on the application of an interested person, the division may initiate its own complaint," and repealed the phrase "regarding unlawful discrimination against an individual or regarding a discriminatory policy or practice." §465.3(a)(4), which relates to multiple complainants, was re-adopted. Paragraph 3(a)(5) was renumbered 3(a)(6) and the words "allegedly aggrieved" were removed.

§465.3(b) re-adopted the provision that the complaint shall be "in writing either on a form promulgated by the division or on any paper suitable for a complaint."

Paragraph 3(c)(3) re-adopted the provision that a respondent may apply in writing to the division attorney after service of a notice of hearing, for a more definite or detailed statement, and provides for the method of making the determination that a more detailed statement is warranted.

The amendment provided that paragraph 6 of subdivision 465(c)(3) be repealed. This paragraph provided that a proffered complaint would not be accepted if based on an individual's mere speculation that discrimination had occurred, or if the individual provided information which contradicted an inference of discrimination, or if the proffered complaint was totally unbelievable on its face, or if the division lacked jurisdiction. The part of subdivision (f) of 465.3 that referenced repealed sections specified above was also repealed.

2. The Division also added to its General Regulations, 9 NYCRR 466, a new subsection 466.11, which provides employers and employees with information and direction in order to conform to the legislative requirements relative to reasonable accommodation in employment for persons with disabilities. The changes in the Division's General Regulations as they pertain to reasonable accommodation were made pursuant to the authority vested in the Division of Human Rights by sections 292.21, 292.21-e, 296.3 and 296.3-a, as added by L. 1997, ch. 269 of the Human Rights Law.

The full text of the Division's Rules of Practice and §466.11 of the Division's General Regulations is available on the Division of Human Rights website, www.dhr.state.ny.us.

The 45-day period of public comment will commence on January 5, 2005, and will terminate on February 21, 2005. Comments should be addressed to General Counsel Gina M. Lopez Summa at One Fordham Plaza, Bronx, NY 10458, or at the fax number (718) 741-8102. Comments may also be e-mailed to jstack@dhr.state.ny.us.

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 2000.

Consolidated Rulemakings adopting new regulations and amending existing regulations to implement the legislative purpose of Chapter 65, Laws of 1998.

INS-48-99-00004-A through 00010-A (State Register of March 22, 2000) (1) Amendment of Part 26 of Title 11 NYCRR (Regulation 25) (Independent Adjusters-Legal Services); (2) Amendment of Part 71 to Title 11 NYCRR (Regulation 107) (Legal Defense Costs in Liability Policies); (3) Amendment of Part 73 of Title 11 NYCRR (Regulation 121) (Legal Services Insurance/Claims Made Policies); (4) Amendment to Part 161 of Title 11 NYCRR (Regulation 129) (Flexible-Rating System/Legal Services Insurance); (5) Amendment of Part 260 of Title 11 NYCRR (Regulation 132) (Legal Services Plans); (6) Adoption of a New Part 261 to 11 NYCRR (Regulation 161) (Prepaid Legal Services); and (7) Adoption of a New Part 262 to 11 NYCRR (Regulation 162) (Legal Services Insurance).

Statutory Authorities for the several regulations: Insurance Law, sections 201, 301, 1116, article 23; and Chapter 65, Laws of 1998.

Prior to enactment of Chapter 65 of the Laws of 1998, Section 1116 of the Insurance Law authorized insurers to offer experimental plans of prepaid legal services insurance, and, except in connection with such plans, the Insurance Law did not authorize insurers to provide legal services insurance. Chapter 65 added a new paragraph 29 to Insurance Law Section 1113(a), effective April 1, 1999; setting forth a new kind of insurance entitled "legal services insurance." Legal services insurance means insurance providing legal services or reimbursement of the cost of legal services. Chapter 65 also amended section 1116 of the Insurance Law (retitled "Prepaid legal services plans and legal services insurance"). The new regulations and amendments to existing regulations implemented the legislative purpose of Chapter 65, Laws of 1998 to make affordable legal services insurance and prepaid legal services plans available in New York, subject to appropriate safeguards and limitations.

In 2002, the Department adopted an amendment to Part 71 (INS-52-01-00001-A, State Register of April 17, 2002) specifying coverages and risks that may be written on a defense costs within limits of liability basis. In 2003, the Department adopted amendments to Parts 261 and 262 and repealed Part 260 (INS-18-03-00001-A, State Register of August 13, 2003) to implement Chapter 28 of the Laws of 2003, which made permanent the provisions of the Insurance Law authorizing the writing of prepaid legal services plans and legal services insurance and repealing the authorization for the writing of experimental monoline legal services insurance. In 2004, the Department adopted an amendment to Part 26 (INS-48-03-00004-A, State Register of March 31, 2004) to conform language relating to notification of the Insurance Department of licensees change of address to reflect statutory changes implemented in Chapter 687 of the Laws of 2003.

The Department currently intends to continue the several regulations without modification, while continually monitoring the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements, except that the Department is considering amending Regulation 161 (Part 261) to eliminate the filing requirement for liability policies containing legal service insurance provisions if otherwise eligible for placement as special risk insurance pursuant to Article 63 of the Insurance Law.

INS-04-00-00011-A (State Register of April 26, 2000) Amendment of Part 50 (Regulation 47) (Separate Accounts and Separate Account Annuities) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 3201, 4240 and 4527.

New York Insurance Law § 4240 authorizes insurers to provide life insurance and annuity benefits which vary according to the investment experience of an insurer's separate account. This amendment to Part 50 allowed insurers to utilize additional methods in calculating variable annuity payments where such methods are determined by the Superintendent to be fair, equitable, reasonable and not less favorable to participants or annuitants than the methods previously employed. The amendment is consistent with the legislative objective of permitting insurers to provide variable annuity income payments to consumers that equitably reflect the investment performance of the separate account.

In 2002, the Department adopted an amendment to the regulation (INS-16-02-00002-A, State Register of June 26, 2002) to update the regulation and eliminate obsolete provisions. In the June, 2004 Regulatory Agenda (State Register of June 30, 2004) the Department stated its intention to amend the regulation to establish revised standards for the operation of separate accounts, contract provisions and actuarial requirements to reflect statutory changes and recent innovations in product design and changes in contract administration of separate account and variable annuity products. The Department is reaching out for comment from affected parties.

INS-20-00-00006-A (State Register of September 27, 2000) Amendment of Subpart 62-4.3 (Regulation 96) (Anti-Arson Application) of Title 11 NYCRR.

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

Insurance Law Section 3403 specifies the circumstances under which an anti-arson application must be completed by an applicant for a new or renewal policy or binder covering the perils of fire or explosion. Regulation 96 created the anti-arson application form that elicited the disclosure of certain types of information. The regulation also provides for cancellation of coverage if the application is not received within the statutorily mandated time frame.

Since 1981, when the statute was originally enacted, insurers have increased their ability to obtain the required information from other sources. Accordingly, a new subsection (h) to Insurance Law Section 3403 was enacted by Chapter 456 of the Laws of 1999 allowing the Superintendent to suspend or waive the requirement that the insurer use the anti-arson application upon renewal of policies if it is demonstrated that substantially equivalent information can be obtained by the insurer by other means. The amendment to the regulation adding a new § 62-4.3 establishes the procedure whereby an insurer may request such suspension or waiver.

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-13-00-00006-A (State Register of July 12, 2000) Amendment of Sections 70.8 and 70.21 (Regulation 101) (Medical Malpractice Insurance Rate Modifications, Provisional Rates, Required Policy Provisions And Availability Of Additional Coverages) 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 of the Insurance Law, and Chapter 147 of the Laws of 1999 as amended by Part JJ of Chapter 407 of the Laws of 1999.

This Amendment establishes physicians and surgeons medical malpractice insurance rates and appropriate surcharges for the policy year July 1, 1999 through June 30, 2000 and establishes rules to collect and allocate surcharges to recover deficits based on past experience. 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 2001 (INS-15-01-00007-A, State Register of June 20, 2001) to establish basic medical

malpractice rates and to address related concerns. The Department's June 2004 Regulatory Agenda (published in the State Register of June 30, 2004) 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-19-00-00002-A (State Register of August 2, 2000) Amendment of Section 126.3 (Regulation 114) (Trust Agreements) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, and 1301 (a)(14).

This amendment specifically permits a trust company to be the trustee under a trust agreement. Previously, the regulation required that the trustee be a bank which is either a member of the Federal Reserve or is New York State chartered.

The Department currently intends to continue the regulation without modification, while continually monitoring the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements.

INS-40-00-00001-A (State Register of January 3, 2001) Amendment of sections 360.10 and 360.11; renumbering of section 360.12 to 360.20; and adoption of new section 360.12 (Regulation 145) (Open Enrollment and Community Rating of Individual and Small Group Health Insurance) of Title 11.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 3232, 3233, 4235, 4237, arts. 43 and 45; and Chapter 501 of the Laws of 1992.

Chapter 501 of the Laws of 1992 was enacted to increase access to affordable health insurance coverage through mandatory community rating and open enrollment. This regulation was first promulgated in 1993 to ensure that the objectives of the legislation were realized. This amendment corrected two situations where the legislative objectives had not been fully implemented. It prohibits premium discounts and per case charges, both mechanisms that tended to result in coverage for smaller groups becoming more expensive and less accessible relative to larger groups. The amendment also prohibits insurers establishment of commission payment schedules that would make agents and brokers reluctant to spend time and resources selling and procuring coverage to smaller groups.

The Department's June 2004 Regulatory Agenda (published in the State Register of June 30, 2004) noted the Department's intent to amend Regulation 145 with regard to rate and form filings by Article 43 Corporations, HMOs, and commercial insurers that write accident and health insurance; to establish minimum standards for such products as managed care and point of service arrangements as well as other health insurance products as ongoing changes occur in the health insurance field; to make changes which may be required due to implementation of the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), Chapter 661 of the Laws of 1997 and other federal and state enactments; to establish minimum standards and requirements for specified disease coverage; to make changes to minimum standards for partnership coverages; and to implement Chapter 557 of the Laws of 2002 relating to health insurance coverage for individual proprietors.

INS-40-00-00001-A (State Register of December 13, 2000) Amendment of sections 361.1 through 361.5 (Regulation 146) (Establishment and Operation of Market Stabilization Mechanisms for Individual and Small Group Health Insurance and Medicare Supplement Insurance) of Title 11.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 3231, 3232, 3233, 4235, 4304, 4305, 4317, 4318,

4321, 4322, art. 45; and Chapter 501 of the Laws of 1992, and Chapter 504 of the Laws of 1995.

Chapter 501 of the Laws of 1992 established requirements for open enrollment, community rating and portability of individual and small group health insurance coverage, and provides for a pooling mechanism for individual and small group health insurance to ensure the stabilization of health insurance markets and premium rates. Chapter 504 of the Laws of 1995 specifically required the phase out of demographic based pooling mechanisms and the expansion of pooling processes designed to share the risk of or equalize high cost claims or the claims of high cost persons.

This amendment accomplished the legislative objective of Chapter 504, while also retaining and enhancing consumer protections contained in the regulation previously and assuring that coverage would be made available to all segments of the population at reasonable rates.

The Department's June 2004 Regulatory Agenda (published in the State Register of June 30, 2004) noted the Department's intent to amend Regulation 146 to establish minimum standards for such products as managed care and point of service arrangements as well as other health insurance products as ongoing changes occur in the health insurance field; to make changes which may be required due to implementation of the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), Chapter 661 of the Laws of 1997 and other federal and state enactments; to establish minimum standards and requirements for specified disease coverage; to make changes to minimum standards for partnership coverages; and to revise certain market stabilization mechanism requirements as required by Chapter 504 of the Laws of 1995.

INS-12-99-00001-A (State Register of October 18, 2000) Adoption of Part 310 (Regulation 167) (Product or System Group Policies) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 3446 and article 23 and Chapter 187 of the Laws of 1999.

Chapter 187 of the Laws of 1999 added a new section 3446 to the Insurance Law, permitting a group policy to be issued to a manufacturer, distributor, or installer of a product or system, or to a trustee on behalf of more than one manufacturer, distributor or installer. The policy insures persons who have purchased or own the product or system where the manufacturer, distributor or installer has represented that the product or system is designed to prevent loss or damage to property from a specific cause. The regulation implements the legislative purpose by establishing requirements for issuance of certificates to group members, payment of premium, and cancellation and renewal.

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.

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 2000, which the Department of Labor is reviewing:

1. Amendment to Title 12 NYCRR Part 800
 - a. Description of Rule: Public Employee Occupational Safety and Health Standards—Longshoring, Marine Terminal, and Gear Certification.
 - b. Statutory Authority: Labor Law, Section 27-a
 - c. Need for Rule: To incorporate by reference those safety and health standards adopted by the U.S. Department of Labor.
2. Amendment to Title 12 NYCRR Part

a. Description of Rule: Carnival, Fair and Amusement Park Safety Standards

b. Statutory Authority: Labor Law, Sections 21(11) and 870(i)

c. Need for Rule: To further protect the public from personal injuries while using or working with amusement devices.

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 22, 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 12240, diane.wehner@labor.state.ny.us, (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 rules which were adopted by OMH during calendar year 2000.

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, 2005, to: Dan Odell, Assistant Director, Bureau of Policy, Regulation and Legislation, Counsel's Office, NYS Office of Mental Health, 44 Holland Avenue, Albany, New York 12229. E-mail address: dodell@omh.state.ny.us.

II. Rule Review:

1. #OMH-14-00-00022: State Register Publication Date July 12, 2000.

Purpose: Adopts a new Part 510 to be added to 14 NYCRR to establish criteria regarding public access to Office of Mental Health records.

Analysis of Need: Part 510 establishes criteria under which the public may access the records related to agency decision making. The rule designated a Records Access Officer for the agency; established a process for requesting access to records; established a process to address requirements related to records containing trade secrets; established a process for granting or denying access to records; and established an appeal process in cases where access is denied.

Adoption of Part 510 was mandated by Article 9 of the Public Officers Law. Since adoption in 2000 over 440 requests have been processed under the standards set forth in this rule. While there has been litigation regarding decisions made by OMH regarding public access to agency records, since adoption in 2000, no issues or concerns regarding the standards established in this regulation have been raised.

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.

Public Officers Law Article 6, Section 87(b) mandates that each agency promulgate rules and regulations, in conformity with Article 6, pertaining to the availability of agency records and procedures to be followed regarding obtaining access to such records.

2. #OMH-16-00-00001-A: State Register Publication Date September 6, 2000.

Purpose: To adopt amendments to Parts 506, 587 and 595 to facilitate the implementation of Kendra's Law.

Analysis of Need: These amendments were adopted in order to carry out the provisions of Chapter 408 of the Laws of 1999, commonly known as "Kendra's Law", which establishes a system for Assisted

Outpatient Treatment (AOT). Under AOT, courts are authorized to issue orders requiring persons who meet the criteria for AOT to participate in outpatient mental health treatment. The purpose of these regulatory amendments is to facilitate the implementation of Kendra's Law by requiring that providers of service give high need individuals referred to such providers, the priority access to their programs called for in the statute, and that related requests for information and records are responded to without delay. Since adoption in 2000, no concerns or issues have been raised with regard to these amendments 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.

3. #OMH-34-00-00003-A: State Register Publication Date December 27, 2000.

Purpose: Amended §588.14(d)(4) to increase the maximum reimbursement for community support programs from \$100 to \$101.50.

Analysis of Need: This increase in the maximum reimbursement rate for community support programs was required to comply with the enacted budget for State Fiscal Year 2000-2001. This rule is still required to comply with the subsequent enacted state budgets. Since adoption in 2000, 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.

Chapter 54 of the Laws of 2000, the enacted State Budget for Fiscal Year 2000-2001 and subsequent state budgets, authorize this increase.

4. #OMH-25-00-00003: State Register Publication Date: October 25, 2000.

Purpose: Adopts an amendment to increase the supplemental reimbursement rate of Comprehensive Outpatient Programs (COPS) providers from \$83.20 to \$100.00.

Analysis of Need: This increase in the maximum supplemental rate available for a provider operating a licensed outpatient mental health clinic, day treatment or continuing date treatment program from \$83.20 to \$100.00 was required to conform to the enacted budget for State Fiscal Year 2000-2001 and subsequent enacted state budgets. Since adoption in 2000, 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.

Chapter 54 of the Laws of 2000, the enacted State Budget for Fiscal Year 2000-2001 and subsequent state budgets, authorize this increase.

5. #OMH-35-00-00017-A: State Register Publication Date: December 27, 2000.

Purpose: Adopts an amendment to 14 NYCRR Parts 588 and 592 to allow for the payment of supplemental reimbursement under the medical assistance programs for certain outpatient providers who are not eligible for funding as Comprehensive Outpatient Programs (COPS).

Analysis of Need: This amendment is required to allow for the payment to eligible providers of outpatient mental health services of supplemental reimbursement under the medical assistance program. Supplemental reimbursement was first made available to non-COPS providers by Chapter 54 of the Laws of 2000, the enacted budget for State Fiscal Year 2000-2001. This funding is available to certain

outpatient mental health providers who are not eligible to receive COPS funding. Since adoption in 2000, 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.

Chapter 54 of the Laws of 2000, the enacted State Budget for 2000-2001, and subsequent enacted budgets, provide for the supplemental outpatient funding authorized by this regulation.

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 2000, and which are subject to the cited SAPA section 207 five-year review of rules.

During calendar year 2000, OMRDD adopted seven rules. These seven rule makings were identified and described as follows at the time the respective notices were first published in the State Register:

1. MRD-06-99-00016 (State Register of 2/10/99). Amendments to 14 NYCRR adding a Subpart 635-6: Allowability of capital costs and costs of transactions with related parties. This regulation sets forth standards for the allowability of capital costs, moveable equipment and personal property, and whether the costs are pursuant to transactions with related parties. The regulation also sets forth rules for the allowability of costs of transactions with related parties. The regulation is applicable to all facilities and services funded by OMRDD. It is current and continues to be necessary so that it must be maintained, without modification, to govern these topics within the context of the respective reimbursement methodologies.

2. MRD-46-99-00008 (State Register of 11/17/99). Amendment of 14 NYCRR by the addition of Subpart 635-5: Reimbursement of Medicaid service coordination. This regulation replaces two previously existing means of reimbursement for service coordination in the OMRDD service system with a single streamlined Medicaid Service Coordination reimbursement methodology. The subpart implements a monthly fee paid to the provider for each consumer served. It standardizes payments, streamlines billing procedures and reduces billing paperwork. It remains current and needs to be maintained, without modification.

3. MRD-01-00-00007 (State Register of 1/05/00). Amendments to 14 NYCRR section 633.12: Objection to services process. These amendments clarify and supplement objection to services processes as applied to consumers receiving HCBS waiver services and require that consumers receive written notice of the provider's intent to reduce, suspend, or discontinue services, and of the mechanism for resolving an objection to the provider's proposed action. The amendments continue to be pertinent and must be maintained, without modification. The statutory authority for this specific rule making is found in Mental Hygiene Law, sections 13.07, 13.09 and 16.00.

4. MRD-03-00-00004 (State Register of 1/19/00). Amendments to 14 NYCRR sections 635-10.5 (HCBS Waiver Services), 671.7 (HCBS Waiver Community Residential Habilitation Services), 680.12 (Specialty Hospitals), 681.11 (Intermediate Care Facilities for persons with developmental disabilities), and 690.7 (Day Treatment Services for persons with developmental disabilities). These amendments establish trend factors to be applied (beginning January 1, 2000) within the context of the various rate/fee setting methodologies. Although specific trend factors are calculated annually, they are cumulative. They need to be maintained, without modification, to define how

OMRDD establishes current rates/fees of reimbursement for the affected facilities or services.

5. MRD-11-00-00006 (State Register of 3/15/00). Amendment of 14 NYCRR section 635-10.5: Reimbursement of HCBS waiver services known as plan of care support services and family education and training. The amendments set forth the requirements, and the means of reimbursement for these two HCBS waiver services. Neither the service standards nor the reimbursement method have changed, so that the rule needs to be maintained without modification.

6. MRD-13-00-00008 (State Register of 3/29/00). Amendments to 14 NYCRR section 81.10: Fees and Reimbursement Fees. These amendments revise the fee-setting methodology for facilities certified as schools for persons with mental retardation and developmental disabilities to include reimbursement provisions for facilities classified as integrated residential communities. These reimbursement provisions remain current, and should be maintained without modification.

7. MRD-29-00-00004 (State Register of 7/19/00). Amendments to 14 NYCRR sections 635-10.5 (HCBS Waiver Services), 671.7 (HCBS Waiver Community Residential Habilitation Services), 679.6 (Clinic Treatment facilities), and 690.7 (Day Treatment facilities for persons with developmental disabilities). These amendments revise the respective reimbursement methodologies used to calculate fees of the referenced facilities or programs to establish salary enhancement add-ons effective July 1, 2000. Consistent with Chapter 54 of the Laws of 2000, the revisions recognize the costs of a \$750.00 per full time equivalent annual salary increase, plus salary related fringe benefits, for the direct care and support workers of these facilities and service provider agencies. While the subject matter of these amendments may appear dated with respect to their specificity, the standards must be maintained without modification, as necessary elements of fee calculations going forward.

With the exception of the rule making summarized in paragraph no. 3 above, 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.

The public is invited to review and comment on OMRDD's proposed disposition regarding these 2000 rule makings beginning January 5, 2005.

Any written comments or inquiries for further information may be directed to the Regulatory Affairs Unit at the above address.

DEPARTMENT OF MOTOR VEHICLES

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 2000 which must be reviewed in calendar year 2005. Public comment on the continuation or modification of these rules is invited. Comments must be received within 45 days of the date of publication of this Notice. Comments may be directed to: The Department of Motor Vehicles, Counsel's Office, 6 ESP, Room 526, Albany, NY 12228.

MTV-29-99-00007 Part 106 Registration of Pick-Up Trucks

Analysis of the need for the rule: Prior to the adoption of this regulation, all unmodified pick-up trucks were registered in the commercial class. Since most parkway authorities exclude "commercial vehicles" from operating on parkways, the operator of pick-up trucks may not operate on these roadways. This regulation provides that a pick-up truck with an unladen weight of 5,000 pounds or less may be registered in the passenger class if such truck is used exclusively for non-commercial purposes and displays no business advertising. With the increasing number of consumers purchasing pick-up trucks for their

personal use, this proposal was a logical accommodation to their needs. In fact, in 2004, the Department raised the registration threshold from 5,000 pounds to 5,500 pounds.

Legal basis for rule: Vehicle and Traffic Law sections 215(a), 401(7) and 401(15).

MTV-42-99-00009 Part 134 Conditional License/Under 21

Analysis of the need for the rule: This regulation provides that a person under the age of 21 whose conditional license is revoked is credited for time served in conditional status, and does not have to serve the entire one year revocation, if such person completed the Drinking Driver Program (DDP). Prior to enactment of this regulation, if a person under the age of 21 had their conditional license revoked for a Vehicle and Traffic Law offense, the full period of revocation would be served even if they completed DDP. Thus, a person could commit a traffic infraction in the eleventh month of his or her revocation period, have their conditional license revoked, and have to serve the entire one year revocation period with no license. This regulation mitigates the harshness of this result by crediting time already served, from the date of the issuance of the conditional license until the date of the violation of the offense resulting in the revocation of the conditional license, if the person completed the DDP. This regulation is still necessary to address the situation referenced above.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) and 1196(7)(e).

MTV-12-00-00012 Part 138 Motor Vehicle Accident Prevention Course

Analysis of the need for the rule: The rule is still necessary to provide criteria for initial approval and continued administration of the Point Insurance Reduction Program (PIRP). The rule also sets forth the qualifications for instructors, standards for classrooms, course advertising and PIRP administration, as well as the bases for withdrawing approval of sponsoring agencies or delivery agencies.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 399-a, 399-b, 399-c, 399-d, 399-e, 399-f, and 399-g.

MTV-15-00-00004 Part 139 Chemical Test Refusals/Snowmobiles

This regulation establishes procedures for administrative hearings for snowmobile operators who refuse to submit to a chemical test. These procedures largely track those for refusals involving motor vehicle operators. Since the statutory requirement related to snowmobile refusals is still in effect, this regulation is still necessary.

Legal basis for rule: Vehicle and Traffic Law section 215(a) and section 25.24(6)(e) of the Parks, Recreation and Historic Preservation Law.

MTV-20-00-00010 Part 34 Insurance Information Enforcement System

Analysis of the need for the rule: This regulation established the procedures for the implementation of the Insurance Information Enforcement System (IIES). Pursuant to a statutory mandate, DMV was required to design a system for the electronic exchange of information between insurance companies and the Department. Insurers notify DMV of the addition and cancellation of automobile insurance coverage. This regulation is still necessary for the effective and efficient operation of the IIES system.

Legal basis for rule: Vehicle and Traffic Law sections 215(a), 313(2)(c), 313(4), and 370(1).

MTV-37-00-00021 Part 50 Protective Helmets for In-Line Skaters and Bicyclists

Analysis of the need for the rule: Chapter 457 of the Laws of 1999 required the Commissioner to promulgate regulations regarding helmet standards for bicyclists and in-line skaters. The Department incorporated by reference a standard promulgated by the United States Consumer Product Safety Commission at 16 CFR Part 1203 et. seq. This regulation is still necessary since the helmet standards remain valid.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 1238(2-a).

MTV-43-00-0004 Part 79 Site Location of Inspection Stations

Analysis of the need for the rule: This regulation requires an inspection station licensee to notify DMV 30 days prior to moving to a new site. This gives the Department sufficient time to investigate the site and determine whether it meets regulatory specifications. The regulation also gives DMV the authority to give such licensee a temporary permit if DMV has not completed its investigation within 30 days. Since this process benefits both licensees and DMV, this regulation should remain in effect.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 302(e), 303(a)(1), 303(a)(2) and 303(d)(1).

STATE BOARD OF REAL PROPERTY SERVICES

The following rule adoptions by the State Board of Real Property Services during 2000 will be reviewed during 2005 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. All rules will be subject of a review by the Office of Real Property Services during 2005 prior to their submission to the State Board of Real Property Services for formal action.

Part 188 – Minimum Qualification Standards, Training and Certification of Local Assessment Administration Personnel – Training Requirements for Local Assessment Personnel – RPS-09-00-00012, effective May 10, 2000. Statutory basis - Real Property Tax Law (RPTL), sections 202(1)(l), 310, 312 and 1530.

Part 190 – Assessment Rolls – License Fees – RPS-40-99-00008, effective January 26, 2000. Statutory basis – RPTL, section 202(1)(l) and State Finance Law section 97-kk.

Parts 190 Assessment Rolls and 192 State Assistance Program for Attainment of Standards for a System of Improved Real Property Tax Administration – Inventories of Property Characteristics - RPS-18-00-00008, effective August 30, 2000. Statutory Basis - RPTL, sections 202(1)(l), 500 and 501.

Part 191 – Real Property Transfers – Residential Assessment Ratios – RPS - 48-99-00003, effective March 1, 2000. Statutory basis – RPTL, sections 202(1)(l) and 738.

Part 201 – State Assistance for the Maintenance of a System of Improved Real Property Tax Administration – State Assistance to Local Assessing units – RPS – 09-00-00012, effective May 10, 2000. Statutory basis – RPTL sections 202(1)(l) and 1573.

To obtain information or submit written comments regarding this review, contact James J. O’Keeffe, Associate Attorney, New York State Office of Real Property Services, 16 Sheridan Avenue, Albany, 12210-2714, (518) 474-8821. Comments should be submitted by April 1, 2005.

DEPARTMENT OF TAXATION AND FINANCE

Pursuant to section 207 of the State Administrative Procedure Act (SAPA) 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 2005, the Department must review regulations that were adopted during 2000 to determine whether these regulations should be retained as written or modified. Accordingly, the Department intends to review the following regulations during 2005, 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 22, 2005.

1. 20 NYCRR Sections 75.1(f) (Agent's cigarette tax returns) and 75.5(a)(1) (Records to be kept by agents and others) Filed November 12, 1999; published December 1, 1999; effective November 12, 1999 (emergency adoption). Filed January 20, 2000; published/effective February 9, 2000 (permanent adoption). Need: These regulations were amended to implement requirements imposed upon the Department of Taxation and Finance by provisions of the then newly enacted Tobacco Escrow Funds Act (Public Health Law, Article 13-G). The enactment of this legislation was necessary so that New York State could meet certain obligations pursuant to the "Master Settlement Agreement" (entered into on November 23, 1998, by leading United States tobacco product manufacturers and forty-six states, including New York), thereby ensuring that New York would receive its apportioned amount of certain payments made pursuant to the Agreement by the tobacco product manufacturers participating in the Agreement. The Act required this department to promulgate regulations necessary to ascertain the amounts of State excise taxes paid on the cigarettes sold within the State of tobacco product manufacturers each year. Legal Basis: Tax Law sections 171, subd. First; 475 (not subdivided); Public Health Law, section 1399-oo, subd. (10); and L. 1999, ch. 536.

(TAF-48-99-00001-A)

2. 20 NYCRR Section 201.1 (Verification of income) Filed January 20, 2000; published/effective February 9, 2000. Need: These regulations were amended to change the provisions applicable to the information contained in responses by the Department to the Division of Housing and Community Renewal (DHCR) concerning requests for verification of income of certain tenants residing in rent regulated housing, as well as reflecting the statutory reduction in the related income threshold from \$250,000 to \$175,000. Legal Basis: Tax Law, sections 171, subd. First; 171-b(3)(a) and (b).

(TAF-48-99-00022-A)

3. 20 NYCRR Parts 70, 74, 79, 80 and 82 (New York Health Care Reform Act of 2000) Filed February 29, 2000; published March 15, 2000; effective February 29, 2000 (emergency adoption). Filed May 3, 2000; published/effective May 24, 2000 (permanent adoption). Need: These regulations were amended to reflect the statutory increase in the rate of New York State cigarette excise tax that was effective on March 1, 2000; to provide for commissions allowable to cigarette tax agents based upon the face value of cigarette tax stamps as of March 1, 2000; to effectuate the floor tax on cigarettes and unaffixed stamps in inventory as of the close of business on February 29, 2000; to reflect statutory changes to an agent's presumed cost of doing business; to reflect such changes in the various regulatory illustrations outlining the minimum prices at which cigarettes may be sold; and to more realistically reflect the basic cost of cigarettes in the cigarette marketing standards illustrations. (It is noted that portions of the subject regulations were subsequently amended based on Chapters 1 and 93 of the Laws of 2002, affecting both the New York State [TAF-13-02-00010-A] and the New York City [TAF-37-02-00005-A] rates of tax, respectively.) Legal Basis: Tax Law sections 171, subd. First; 475 (not subdivided); and L. 1999, ch. 1.

(TAF-11-00-00007-A)

4. 20 NYCRR Section 541.7 (Trash and debris removal) Filed June 12, 2000; published June 28, 2000; effective September 1, 2000. Need: This regulation was amended to authorize a contractor to purchase a trash and debris removal service exempt from sales tax as a purchase for resale when such service is an integral part of maintaining, servicing, or repairing real property by the contractor and includes conditions under which such service qualifies for the exemption. The amendments also clarified that neither the contractor nor the customer is liable for tax when such a service is purchased by the contractor in conjunction with the construction, demolition, or rehabilitation of real property in the performance of a capital improvement. Legal Basis: Tax Law sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided).

(TAF-16-00-00002-A)

5. 20 NYCRR Section 4-4.2 (Allocation - Dock Sales) Filed July 12, 2000; published/effective August 2, 2000. Need: This regulation responded to taxpayer concerns and changing business practices by providing a more reasonable approach to allocating receipts from the sale of tangible personal property. The regulation sets forth a destination rule for the allocation of dock sale receipts. Legal Basis: Tax Law sections, 171, subd. First; 210(3)(a)(2); and 1096(a).

(TAF-21-00-00001-A)

6. 20 NYCRR Section 60.1 (Returns and payments of tax on alcoholic beverages) Filed September 20, 2000; published October 11, 2000; effective for calendar years that began on and after January 1, 2001. Need: This regulation was amended to allow certain distributors that are micro-brewers or restaurant-brewers to file annual, rather than monthly, alcoholic beverage tax returns. Legal Basis: Tax Law sections 171, subd. First; 429(1); and 436 (not subdivided).

(TAF-31-00-00002-A)

7. 20 NYCRR Section 158.12 (Federal Preparer ID Numbers) Filed October 25, 2000; published/effective November 15, 2000. Need: This regulation extended the federal option to individual paid preparers to use federally assigned Preparer Tax Identification Numbers instead of social security numbers when an individual identifying number of a paid preparer is required on New York State income tax returns that they prepare. Legal Basis: Tax Law, sections 171, subd. First; 658(g)(1) and (2); and 697(a).

(TAF-36-00-00003-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 161, Albany, New York 12227. Telephone: (518) 457-2254, Email address: Diane_Ohanian@tax.state.ny.us.

OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

Pursuant to Chapter 262 of the Laws of 1996, the Office of Temporary and Disability Assistance (OTDA) must review at five-year intervals those regulations that were filed with the Department of State after 1997. The purpose of the review is to determine whether the regulations should be retained as written or modified. On December 31, 2003, OTDA published in the State Register with its regulatory agenda a list of regulations that OTDA adopted in 2000. That list is set forth below. After reviewing the regulations on that list, OTDA has determined that no modifications need to be made to those regulations. No comments were submitted in response to the listing of the regulations in the regulatory agenda.

1. Sections 352.31(a) and 352.31(d) - give guidance to social services districts with respect to counting the number of months a person has been in receipt of public assistance in circumstances when persons received such assistance during a period when those persons were ineligible therefor and the monies were recovered. Filed April 4, 2000; effective April 19, 2000. The regulations clarify how social services districts are to calculate the two year period of eligibility for persons in receipt of Family Assistance and the five year period of eligibility for persons in receipt of Safety Net Assistance when a month of assistance for which a person is ineligible is paid back to the social services district. Legal basis: Social Services Law sections 20(3)(d) and 34(3)(f). Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations for the operation of the State's public assistance programs.

2. Section 348.7 - clarifies when an applicant for public assistance must be referred to a front-end detection system unit. Filed May 2, 2000; effective May 17, 2000. The regulation requires a referral to a

front-end detection system unit when an applicant's expenses are current with no explanation. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f) and 134-b. Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations for the operation of the State's public assistance programs and the front-end detection system.

3. Part 310 and sections 313.1, 313.2, 603.1, 620.1 and 620.3 - eliminates the concept of State charges except in certain circumstances. Filed May 2, 2000; effective May 17, 2000. The amendments conform the Office's regulations with the requirements of the Social Services Law. Legal basis: Social Services Law sections 20(3)(d) and 34(3)(f) and Chapter 81 of the Laws of 1995 (sections 155-159 and 195-199). Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations for the operation of the State's public assistance programs; the Chapter Law eliminates the category of State charges but retains the 100 percent reimbursement by the State for the non-federal share of public assistance provided to Native Americans and their families while residing on reservations within the State.

4. Sections 393.4(c)(4) and 393.4(d)(1)(i) - conforms State regulations to federal requirements concerning the households that are eligible for regular benefits under the Home Energy Assistance Program. The eligibility requirements are related to alien and refugee status. Filed July 25, 2000; effective August 9, 2000. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f) and 97. Those sections authorize the Office of Temporary and Disability Assistance to administer the Low Income Home Energy Assistance Program in the State.

5. Section 352.23(b)(2) - specifies the value of an automobile that is exempted and disregarded when determining eligibility for public assistance. Filed August 8, 2000; effective August 23, 2000. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f) and 131-n. Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning eligibility for public assistance and provide that if an automobile is needed for a public assistance applicant or recipient to seek or retain employment or travel to and from work activities, the automobile exemption will be increased to an amount equal to two times the amount required to be exempted from consideration in determining eligibility for food stamps, or such other higher dollar value as the local social services district may elect to adopt.

6. Part 358 - conforms regulations of the Office of Temporary and Disability Assistance concerning fair hearings for employment related cases to regulations of the Department of Labor. Filed August 31, 2000; effective September 20, 2000. Legal basis: Social Services Law sections 20(3)(d), 22, 34(3)(f), and 337. Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning the conduct of fair hearings.

7. Section 397.11 - repeals a section of regulations concerning emergency shelter allowances in order to eliminate an unnecessary provision; language similar to that repealed is contained in 18 NYCRR 352.3(k). Filed September 12, 2000; effective September 27, 2000. Legal basis: Social Services Law sections 20(3)(d) and 34(3)(f) and Chapter 53 of the Laws of 1988 and subsequent budget bills. Those sections and budget bills, authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning emergency shelter allowances.

8. Section 393.4 - requires applicants for emergency benefits under the Home Energy Assistance Program (HEAP) to use available liquid resources to meet an emergency and removes a detailed list of criteria for the HEAP payment matrix. Filed September 28, 2000; effective October 18, 2000. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f) and 97. Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning HEAP.

9. Section 351.1 - requires information concerning the non-legally responsible caretaker relatives of children who receive public assistance

and information concerning the siblings of children who are receiving public assistance to be provided to social services officials. Filed December 26, 2000; effective January 10, 2001. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f) and 132. Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations that set forth methods for determining eligibility for public assistance.

10. Section 370.4 - exempts from the two year limit on receipt of Safety Net Assistance work subsidies paid to an employer or a third party for the cost of wages or benefits for a recipient when the payment equals the full amount of the recipient's Safety Net Assistance budget deficit. Filed December 26, 2000; effective January 10, 2001. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 158(a) and Article 5, Title 3. Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning the Safety Net Assistance program.

The following list represents those regulations that were adopted by OTDA in 2001 and subject to the provisions of section 207 of the State Administrative Procedure Act. The regulations must be reviewed to determine whether the regulations should be retained as written or modified. The OTDA invites written comments on the continuation or modification of these regulations in order to assist this Office in the required review. We will consider only those comments that are received by March 10, 2005.

1. Sections 359.3(a) and 359.9(g) - clarify existing regulations concerning intentional program violations so that they are consistent with State law and a Federal court decision. Filed January 10, 2001; effective January 31, 2001. Legal basis: Social Services Law 20(3)(d), 34(3)(f) and 145-c. Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning the imposition of sanctions against persons who are found to have committed intentional program violations. A person commits an intentional program violation when the person commits an act intended to mislead, misrepresent, conceal or withhold facts for the purpose of establishing or maintaining eligibility for public assistance.

2. Sections 381.4 and 381.7 - eliminate unnecessary language concerning when restricted and protective payments will be used. The language became unnecessary when the State enacted the Welfare Reform Act of 1997. Filed February 27, 2001; effective March 14, 2001. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 131-a(7) and 350-a. Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning the use of direct or protective payments.

3. Section 351.2 - conforms eligibility requirements for public assistance to existing policies and removes references to out-dated terminology. The amendments concern the resources that need to be evaluated according to their equity value and the amount of public assistance that will be deducted from the amount that would otherwise be provided to a household when certain persons fail to cooperate by furnishing information to the local child support enforcement unit. Filed July 12, 2001; effective August 1, 2001. Legal basis: Social Services Law, sections 20(3)(d), 34(3)(f), 158 and 349. Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning the State's public assistance programs.

4. Section 387.17 - clarifies existing policy of the Office of Temporary and Disability Assistance regarding time frames for providing an increase in food stamp benefits due to a change in household circumstances. The amendments conform Office regulations with Federal regulations at 7 CFR 273.12(c)(1)(i) and (ii). Filed July 12, 2001; effective August 1, 2001. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f) and 95. Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning the food stamp program.

5. Sections 352.11 and 352.31(d)(2) - permits recoupment of 10 percent for recipients of Safety Net Assistance and Family Assistance. The amendments achieve consistency in the recoupment policy between the Family Assistance and Safety Net Assistance programs and ease administrative burdens for social services districts. Filed August 28, 2001; effective December 1, 2001. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 158(1) and 355(3). Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning the operation of the State's public assistance programs.

6. Section 369.4(d)(7) - establishes uniform statewide standards for determining hardship under the Temporary Assistance for Needy Families (TANF) program for purposes of exempting certain households from the 60-month time limit for TANF eligibility. Filed November 13, 2001; effective November 28, 2001. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 350(2) and Article 5, Title 10. Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning exemptions from the 60-month time limit when an adult family member is unable to work because of a physical or mental impairment.

7. Section 800.2(m) - provides additional funds to existing homeless housing and assistance program projects. Filed November 28, 2001; effective December 19, 2001. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f) and Article 2-A, Title 1. Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning the homeless housing assistance program.

Any comments should be submitted to: Ronald Speier, Assistant Counsel, Office of Temporary and Disability Assistance, 40 North Pearl Street, 16th Floor, Albany, New York 12243, Telephone: (518) 474-6573