

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 2006. Public comment on the continuation or modification of this regulation will be accepted until March 31, 2006. All section and Part references are to Title 1 of the New York Code of Rules and Regulations.

Section 139.2 Control of the Asian Long Horned Beetle.

Statutory authority: Agriculture and Markets Law sections 18, 164 and 167, State Administrative Procedure Act section 202.

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

Comments should be addressed to: Diane B. Smith, New York State Agriculture and Markets, Counsel's Office, 10B Airline Dr., Albany, NY 12235, (518) 457-6468, e-mail: diane.smith@agmkt.state.ny.us

Banking Department

Pursuant to Section 207 of the State Administrative Procedure Act, Review of Existing Rules, notice is hereby given of the following rule which the Banking Department will be reviewing this year to determine whether it should be continued or modified. This rule was adopted in 2001.

3 NYCRR Part 6.6

- a. Description of rule: The rule reduces the mandated number of meetings of boards of directors and executive committees of certain banks and trust companies.
- b. Legal basis for the rule: Banking Law Section 14-g
- c. Need for the rule: Provides qualified State-chartered banks parity with national banks, and thus helps insure the continued competitiveness of the state charter.

Public comment on the continuation or modification of the above rule is invited. Comments must be received within 45 days of the date of publication of this notice. Comments should be submitted to:

Sam L. Abram
Secretary of the Banking Board
State of New York Banking Department
One State Street
New York, NY 10004
Telephone: (212) 709-1658
Email: sam.abram@banking.state.ny.us

Office of Children and Family Services

SAPA Section 207 Review and Analysis

Part 1 - Review of Existing Regulations

Pursuant to SAPA Section 207, the Office of Children and Family Services (OCFS) is required to review regulations that were promulgated five years previously to determine whether to continue, consolidate or modify the regulations. The following information relates to regulations promulgated during 2001 that must be reviewed during 2006:

1. Report of child abuse and maltreatment. 18 NYCRR sections 432.2(b)(3)(i) and (f)(3)(xxviii). The amendments relating to reports of child abuse and maltreatment implemented existing state law that remains in effect and continuation of the regulations is deemed necessary by OCFS.

2. Standards for providers of subsidized child care services. 18 NYCRR sections 415.4(a), (c), (f) and 415.8. The regulations establishing standards for providers of subsidized child care services were promulgated in response to changes in federal and state law that required minimum health and safety standards for providers of subsidized child care. These federal and state requirements remain in effect and continuation of the most of the regulations is deemed necessary by OCFS. However, OCFS has commenced a new rule making proposal to amend portions of section of 415.4(f) as well as sections 415.1 and 415.9 of 18 NYCRR.

3. Federal Adoption and Safe Families Act. 18 NYCRR 421.24(e)(2), 430.12(c), 431.9(e), 421.06(o)(5), 421.27(j) and 426.9. The amendments to regulations were required to comply with federal law that remains in effect and continuation of the regulations is deemed necessary by OCFS.

Public comments on the above are invited and will be accepted through February 21, 2006 and should be directed to: Kathleen R. DeCataldo, Esq., Director of Legislation and Special Projects, NYS Office of Children and Family Services, 52 Washington Street, Room 135N, Rensselaer, New York 12144. Email address: GG5107@ocfs.state.ny.us.

Part 2 - Report of Prior Review of Existing Regulations

No regulations were due for review in 2005.

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 2001 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 7.1 of the Regents Rules and section 135.4 of the Commissioner's Regulations, regarding professional coaching certificates

Description of Rule: Section 7.1 of the Regents Rules and section 135.4 of the Commissioner's Regulations establish a professional coaching certificate that is valid for three years to a candidate who has completed the first aid requirements as set forth in section 135.4 of the Commissioner's Regulations and three course requirements established for coaching by the State Education Department, and has a minimum of three years coaching experience in a specific sport in a New York State interschool athletic program. The professional coaching certificate may be renewed for an additional three-year period if the candidate meets the requirements of section 135.4 and has received a satisfactory evaluation by the principal or athletic director for each of the preceding three years that the candidate coached in the specific sport.

Need for Rule: the rule is necessary to comply with Regents policy. The rule provides flexibility to school districts to hire the most qualified candidates for interschool athletic coaching positions and to create a stable pool of qualified non-teacher coaching candidates to offset decreases in qualified certified teacher coaching candidates caused by teacher retirements.

Legal Basis for Rule: Education Law sections 101, 207, 212(3), 305(1) and (2), 803(5), 3006(1)(b) and (2)(a)(iii) and 3204(2).

Part 57 and section 100.2(dd)(2) of the Commissioner's Regulations, regarding training in school violence prevention and intervention

Description of Rule: Part 57 and section 100.2(dd)(2) of the Commissioner's Regulations establish standards for Department approval of providers of coursework or training in school violence prevention and intervention and require school districts and BOCES to include in their professional development plans provisions for training of employees holding a teaching certificate or license in the classroom teaching service, school service, or administrative and supervisory service in school violence prevention and intervention.

Need for Rule: the rule is necessary to comply with the Safe Schools Against Violence in Education Act signed into law in July 2000. The rule establishes standards for Department approval of providers of course work or training in school violence prevention, and requires school districts to include such training in their professional development plans.

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (2) and 3004(3) and section 9 of Chapter 181 of the Laws of 2000.

Section 100.2(gg), (bb) and (cc) of the Commissioner's Regulations, regarding the Uniform Violent Incident Reporting System

Description of Rule: Section 100.2(gg), (bb) and (cc) of the Commissioner's Regulations establishes a Uniform Violent Incident Reporting System for the reporting of violent or disruptive incidents by school districts, BOCES and county vocational education and extension boards; prescribes the manner by which a summary of information provided in the annual report on violent and disruptive incidents submitted to the Commissioner concerning these incidents will be incorporated in school district and BOCES report cards; and provides for the confidentiality of all personally identifiable information to ensure that any such information which is collected is used only for its intended purpose.

Need for Rule: the rule is necessary to comply with Chapter 181 of the Laws of 2000. A proposed amendment to section 100.2(gg) was published in the November 9, 2005 State Register to provide a ranking, standard for reporting, and more concise definition of reportable offenses to assure to the extent practicable that the reports are uniform and comparable throughout the State with respect to the type of incidents reported and the actions taken in response to such incidents. The proposed amendment also establishes the use of a school violence index as a comparative measure of the level of school violence in a school. It is anticipated that the proposed amendment will be presented to the Board of Regents for adoption at their January 9-10, 2005 meeting, with an effective date of February 1, 2006.

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (2) and 2802(2), (3), (4) and (6) and section 5 of Chapter 181 of the Laws of 2000.

Section 100.2(hh) of the Commissioner's Regulations, regarding reporting of Child Abuse in an educational setting

Description of Rule: Section 100.2(hh) of the Commissioner's Regulations requires school administrators and superintendents, upon receipt of a written report alleging that a child has been abused in an educational setting, to promptly provide the parent of the child with a written statement setting forth parental rights, responsibilities and procedures, and requires each school district and BOCES to establish and implement on an ongoing basis a training program regarding the procedures for reporting of child abuse in an educational setting for all current and new teachers, school nurses, school counselors, school psychologists, school social workers, school administrators, other personnel required to hold a teaching or administrative certificate or license, and school board members. Section 100.2(hh) of the Commissioner's Regulations was further modified to clarify that charter schools must also comply with these provisions.

Need for Rule: the rule is necessary to implement Chapter 180 of the Laws of 2000.

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (2), 1125(6), 1128(1), (2) and (3), 1128-a(1) and (2), 1132(2) and 3028-b and sections 12 and 13 of Chapter 180 of the Laws of 2000.

Section 100.5 and 100.2 of the Commissioner's Regulations, regarding Career and Technical Education programs and high school diploma requirements

Description of Rule: Section 100.5 and 100.2 of the Commissioner's Regulations create a process of program approval for career and technical education programs that will allow flexibility in the attainment of graduation requirements; provide for a diploma with a technical endorsement to be awarded to students who successfully complete certain requirements, including an industry-developed technical assessment of skills in a specific technical field; and correct technical errors concerning the units of credit for mathematics to meet graduation requirements.

Need for Rule: the rule is necessary to implement Regents policy. The rule establishes criteria by which school districts and BOCES may operate career and technical education programs approved by the Commissioner and award high school diplomas to students who successfully complete such programs. Approved programs will provide students pursuing career and technical education programs with flexibility in attaining required units of credit for graduation and will provide for a technical endorsement on a Regents diploma, Regents diploma with advanced designation or a local diploma upon completion of an approved program. The rule is also necessary to correct certain technical errors concerning the units of credit requirement for mathematics and certain citation errors.

Legal Basis for Rule: Education Law sections 101, 207, 208, 209, 215, 305(1) and (2), 308, 309 and 3204(3).

Section 100.5(a)(5) and (b)(7) of the Commissioner's Regulations, regarding the State assessment system and diploma requirements for students with disabilities

Description of Rule: Section 100.5(a)(5) and (b)(7) of the Commissioner's Regulations extended for four years the existing provisions that permit students with disabilities who enter grade nine in or after September 2001 and prior to September 2005, and who fail one or more of the Regents examinations in English, mathematics, United States history and government, global history and geography, and science required for high school graduation, to meet local diploma requirements by passing the respective Regents Competency Tests or their equivalent in these subject areas.

Need for Rule: the rule is necessary to implement Regents policy relating to State learning standards, State assessments and graduation and diploma requirements, to provide additional time to gather data on how students with disabilities are performing on required Regents examinations, including the effect of multiple tests, to increase the participation of students with disabilities in the general education curriculum, and to study the impact of academic intervention services for these students. In December 2003, the Board of Regents again amended section 100.5 to extend for an additional four years the provision permitting students with disabilities who fail one or more of the Regents examinations required for high school graduation, to meet local diploma requirements by passing the respective Regents Competency Tests or their equivalent in these subject areas. In July 2005, the Board of Regents adopted an amendment to section 100.5 to provide an additional safety net for all students with disabilities entering grade 9 in the 2005-06 school year, by allowing students with disabilities to meet local diploma requirements by achieving a passing score of 55-64 on the five required Regents examinations to meet local diploma requirements.

Legal Basis for Rule: Education Law sections 101, 207, 208, 209, 305(1) and (2), 308, 309, 3204(3) and 4403(3).

Sections 100.13 and 175.43 of the Commissioner's Regulations, regarding requirements and calculations for operating standards aid

Description of Rule: Sections 100.13 and 175.43 of the Commissioner's Regulations identifies the calculation used to determine whether school districts qualify for additional Operating Standards Aid, provided to recognize improvement in meeting Regents higher learning standards.

Need for Rule: the rule is necessary to comply with Chapter 60 of the Laws of 2000.

Legal Basis for Rule: Education Law sections 207 and 3602(38) and section 31 of Part A of Chapter 60 of the Laws of 2000.

Section 104.1 of the Commissioner's Regulations, regarding pupil attendance recordkeeping

Description of Rule: Section 104.1 of the Commissioner's Regulations requires each school district, BOCES, charter school, and county vocational educational extension board to adopt a comprehensive attendance policy; keep records of each pupil's presence, absence, tardiness and early departure in a register of attendance; record attendance of students in non-departmentalized kindergarten through grade 8 once per school day; record attendance in each period of scheduled instruction of students in grades 9-12 or in departmentalized schools at any grade level; record absences as excused or unexcused; establish local policy regarding student attendance and the awarding of course credit; annual review student attendance records and make revisions to the comprehensive attendance policy that are deemed necessary; and provide parents or persons in parental relation a summary of the attendance policy and each teacher with a copy of the attendance policy.

Need for Rule: the rule is needed to implement Regents policy to ensure effective school attendance programs by requiring that schools collect data through accurate attendance recordkeeping, and analyze attendance data to identify individual and group patterns so as to provide

programs and services that will assist each student to successfully meet higher academic standards.

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (2), 3024, 3205(1), (2) and (3), 3210(1) and (2) and 3211(1).

Section 110.6 of the Commissioner's Regulations, regarding summer school programs

Description of Rule: Section 110.6 of the Commissioner's Regulations establishes standards relating to aid for summer school programs and summer camp programs; provides aid to summer school programs designed to improve student performance in required academic subjects, to prepare students for Regents examinations, and to prepare students to retake parts of the Regents examinations; and provides aid to summer camps designated by the Chancellor of the New York City School District that provide summer school services for at least three hours per day by a certified teacher.

Need for Rule: the rule is necessary to implement Chapter 60 of the Laws of 2000. The rule establishes standards for the receipt of State aid for summer school programs and summer camp programs pursuant to Education Law section 3602(39), as added by section 32 of Chapter 60 of the Laws of 2000.

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (2), 308, 309 and 3602(39) and section 32 of Chapter 60 of the Laws of 2000.

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

Description of Rule: the rule establishes procedures for the reallocation of unused or unclaimed State limitation amount allocations of Qualified Zone Academy Bonds (QZABs).

Need for Rule: the rule is needed to establish a method for the Commissioner to reallocate any unused or unclaimed amounts of the State limitation amount for the issuance of QZABs so that such amounts may be applied towards qualified projects who otherwise would not be eligible to receive them.

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

Section 155.23 of the Commissioner's Regulations, regarding multi-year cost allowance for school district building aid

Description of Rule: Section 155.23 of the Commissioner's Regulations establishes the methodology school districts and BOCES must apply when establishing a multi-year cost allowance for computation of building aid and the procedures to appeal the determination.

Need for Rule: the rule is necessary to comply with chapter 60 of the Laws of 2000, which requires the Commissioner to promulgate regulations prescribing the methodology for establishing a multi-year cost allowance for the purpose of computation of building aid to school districts and to establish procedures for school districts to appeal a determination that a building has not been adequately maintained.

Legal Basis for Rule: Education Law sections 207 and 3602(6) and section 5 of Part A of Chapter 60 of the Laws of 2000.

Section 155.24 of the Commissioner's Regulations, regarding school pesticide neighbor notification

Description of Rule: Section 155.24 of the Commissioner's Regulations requires public school districts, nonpublic elementary and secondary schools, and BOCES to establish a pesticide notification procedure to provide information to staff who regularly work at school facilities, and to persons in parental relation to children regularly receiving instruction at school facilities, to inform them that pesticide products may be used periodically throughout the school year and how to register to receive 48-hour advance notification of certain applications. The rule also establishes a procedure for individuals to notify the State Education Department of any school's failure to comply with these requirements and authorizes the Commissioner to withhold State aid if schools fail to adopt notification procedures or otherwise fail to implement these requirements.

Need for Rule: the rule is necessary to implement Education Law section 409-h, as added by Chapter 285 of the Laws of 2000, by establishing the process by which the statute is implemented, including provisions relating to State notification and withholding of State aid with respect to a school's noncompliance with the statute.

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (2), 409(1) and 409-h(1) - (3) and section 6 of Chapter 285 of the Laws of 2000.

Sections 168.1, 168.2 and 168.6 of the Commissioner's Regulations, regarding Employment Preparation Education programs

Description of Rule: Sections 168.1, 168.2 and 168.6 of the Commissioner's Regulations establish criteria by which failure to demonstrate basic educational competencies is to be determined for the purpose of determining Employment Preparation Education Aid to enable school districts and BOCES to provide educational services to adults with limited basic skills who have previously been precluded for participating in the program.

Need for Rule: the rule is necessary to comply with Chapter 60 of the Laws of 2000.

Legal Basis for Rule: Education Law sections 101, 207 and 3602(24) (a-1) and section 23 of Chapter 60 of the Laws of 2000

Section 170.3(k) of the Commissioner's Regulations, regarding career education instructional equipment reserve fund

Description of Rule: Section 170.3(k) of the Commissioner's Regulations establishes procedures for the establishment, use, maintenance and liquidation of BOCES career education instructional equipment reserve funds.

Need for Rule: the rule is necessary to be consistent with Education Law section 1950(4)(ee).

Legal Basis for Rule: Education Law sections 207 and 1950(4)(ee).

Section 175.10 of the Commissioner's Regulations, regarding statute of limitations on State aid payments

Description of Rule: Section 175.10 of the Commissioner's Regulations changes the requirement for submitting claims for building aid so that it is consistent with other statute of limitation requirements for all State aid claims.

Need for Rule: the rule eliminates an inconsistency for submission of State aid claims for building aid, by requiring more timely annual submissions, consistent with current statute of limitation requirements for other State aid claims.

Legal Basis for Rule: Education Law sections 207 and 3602(6).

Agency Representative:

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

James A. Kadamus

Deputy Commissioner

New York State Education Department

Office of Elementary, Middle, Secondary and Continuing Education
Education Building Annex, Room 875

Albany, New York 12234

(518) 474-5915

OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES
FOR INDIVIDUALS WITH DISABILITIES

Sections 200.1, 200.2, 200.5 and 200.21 of the Commissioner's Regulations, regarding the impartial hearing process for students with disabilities

Description of Rule: the rule establishes requirements relating to the impartial hearing process for students with disabilities, including the qualifications of impartial hearing officers, procedures for the appointment of an impartial hearing officer, procedures to conduct the hearing, data reporting requirements and procedures for the suspension or revocation of the impartial hearing officer determination.

Section 200.1(x) was amended, regarding the definition of "impartial hearing officer" and the officer's qualifications. This section was amended again pursuant to a separate rule making in September 2001 to conform to the Individuals with Disabilities Education Improvement Act.

Section 200.2(b) was amended to provide that the board of education is responsible for administrative procedures to appoint an impartial hearing officer.

Section 200.2(e) was amended to establish procedures for the timely and impartial appointment of impartial hearing officers.

The amendment to section 200.5(i): (1) added that parental request for impartial hearings must be in writing; (2) clarified that school districts or parents may initiate an impartial hearing; (3) relocated language within regulation regarding board of education responsibilities to impartially appoint hearing officers using a rotational list, rescinding an impartial hearing officer and their reporting requirements to section 200.5; (4) required that impartial hearing officers only accept appointment if available to initiate the hearing within the first 14 days of being contacted; (5) established a five day rule for disclosing information at a hearing; (6) established a timeline for rendering and mailing a decision when an extension has been granted; and (7) required the impartial hearing officer's decision to include a statement that either party has the right to appeal the decision.

The amendment to section 200.21(b): (1) required that complaints regarding impartial hearing officers be made in a signed written statement to the Commissioner and contain documentation of the facts upon which the complaint is based; (2) established a process by which the investigation must occur; and (3) established actions the Commissioner may take when misconduct is determined, including suspension and revocation of hearing officer certification.

Need for Rule: the rule is needed to ensure that impartial hearings are conducted in a timely manner consistent with Federal requirements by individuals who have the necessary and appropriate procedural and content knowledge and background to conduct an impartial hearing related to special education.

Legal Basis for Rule: Education Law sections 101, 207, 4403(3), 4404(1) and 4410(13).

Sections 200.1-200.7, 200.13, 200.16, 201.7, 201.11, 276.1, 279.3, 279.8 and 100.6 of the Commissioner's Regulations, regarding conforming and technical amendments to implement IDEA

Description of Rule: the rule relates to definitions; board of education responsibilities; membership on Committees on Special Education; procedures for referral, evaluation, Individualized Education Program (IEP) development, placement and review; due process procedures; continuum of services; students with disabilities being educated in private schools and State-operated or State-supported schools; educational programs for students with autism; educational programs for preschool students with disabilities; general procedures for suspensions and removals of students with disabilities; expedited due process hearings; procedures for appeals to the State Review Office; rules of practice; and local certificates.

Section 200.1(dd) and (zz)(8) were amended regarding, respectively, the definition of "mediator" and "multiple disabilities."

Section 200.2(e)(1) was amended to replace the requirement that boards of education establish a list of the resumes of each impartial hearing officer with a requirement that boards of education establish a list that includes a statement of the qualification of each impartial hearing officer.

Section 200.3 was amended to clarify that the determination of knowledge or special expertise of persons appointed to be members of committees on special education, committees on preschool special education, and subcommittees on special education shall be made by the party who invited the individual to be members of the committee.

Section 200.4(b)(1) was amended to require that the individual evaluation of a referred preschool child be initiated by a committee on preschool special education and include a variety of assessment tools to gather relevant and functional data about the student and information related to enabling a preschool child to participate in appropriate activities.

Section 200.4(b)(4) was amended to clarify that a committee on special education shall arrange for an appropriate reevaluation of each student with a disability if conditions warrant a reevaluation or if the student's parent or teacher requests a reevaluation, but at least once every three years by a multidisciplinary team or group of persons. This provision was subsequently amended pursuant to a separate rule making, effective September 13, 2005, to conform to the Individuals with Disabilities Education Improvement Act to provide that unless the parties agree, a reevaluation could not occur more frequently than once per year and at least every three years.

Section 200.4(b)(6) was amended to add language requiring that materials and procedures used to assess a student with limited English proficiency measures the extent to which the student has a disability and needs special education, rather than measure the student's English language skills. This provision was subsequently amended pursuant to a separate rule making, effective September 13, 2005, to conform to the Individuals with Disabilities Education Improvement Act regarding the procedures used to assess a student with limited English proficiency.

Section 200.4(c)(4) was amended to clarify that a free appropriate public education must be available to any student with a disability who needs special education or related services, even though the student is advancing from grade to grade.

Section 200.4(d)(i)(c) to add language requiring that present levels of performance for students, age 15 or younger if determined appropriate, include a statement of the student's needs taking into account the student's preferences and interests, as they relate to transition from school to post-school activities. This provision was subsequently amended pursuant to a separate rule making, effective September 13, 2005, to conform to the Individuals with Disabilities Education Improvement Act to include other transition related components to the IEP.

Section 200.4(d)(2)(ix) adds language that requires that individualized education program recommendations include a statement of the student's projected post-school outcomes, based on the student's needs, preferences and interests, in the areas of employment, post secondary education and community living.

Section 200.4(e)(7) was amended to require school districts to provide special education and related services in accordance with the student's IEP and make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed in the student's IEP. This provision was subsequently amended pursuant to a separate rule making, effective September 13, 2005, to conform to the Individuals with Disabilities Education Improvement Act to repeal objectives or benchmarks for certain students with disabilities.

Section 200.4(f) was amended to require that for any meeting to develop, review or revise the IEP, the committee must consider the strengths of a student, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the student, the result of the student's performance on assessments and other special factors and revise the IEP as appropriate upon consideration of those factors.

Section 200.5(b) was amended to: (1) repeal language stating that parental consent is not required for a functional behavioral assessment; (2) add language allowing school districts to continue to pursue initial evaluations or reevaluations using the due process procedures if parents of students with disabilities refuse consent; and (3) add language clarifying that a school district may not use a parent's refusal to consent to one service or activity to deny the parent or child any other service, benefit or activity of the school district.

Section 200.5(d)(3) was amended to clarify that a school district may conduct a CSE meeting without a parent in attendance, if they are unable to convince the parent to attend, and that the school must keep detailed records of its attempts to contact a parent and the results of those attempts.

Section 200.5(h)(4) was amended to clarify that mediation is provided by community dispute resolution centers through a contract with the State Education Department.

Section 200.5(i)(4) was amended to clarify that except for preschool and expedited hearings, an impartial hearing officer shall render a decision, and mail a copy of the written, or at the option of the parent, electronic findings of fact and the decision to the parents, the board of education, and to the Office of Vocational and Educational Services for Individuals with Disabilities; and that the record of the findings of fact and the decision shall be provided at no cost to the parents.

Section 200.5(j) was amended to: (1) clarify that any party aggrieved by the finding of fact and the decisions of an impartial hearing officer may appeal to a State review officer of the State Education Department; (2) require that a copy of the written decision of a State review officer, or at the option of the parents, electronic findings of fact and decision, be mailed to each of the parties; and (3) clarify that the State review officer may grant extensions beyond the specified time period to either party.

Section 200.5(k)(1)(iii)(a) was amended to clarify that a complaint must be received within one year of the date of the alleged violation, except upon the finding that a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date that the written complaint is received.

Section 200.5(m)(3)(iv) was amended to require that a surrogate parent be assigned to a student for as long as a surrogate parent is required.

Section 200.6(g)(8) and section 200.13(d) were amended to change the term "parent counseling or education" to "parent counseling and training" as defined in section 200.1.

Section 200.7(b)(3) establishes that the content of a school conduct and discipline policy for an approved private school, a State-operated school or a State-supported school be consistent with the provisions of subparagraphs (a-d), (f) and (g) of paragraph (1) of section 100.2(l).

Section 200.16(c)(3) was amended to repeal language that allowed committees, prior to making any recommendation to place a preschool child in an approved program owned or operated by the agency which conducted the initial evaluation, to inform parents that the committee cannot proceed with the process to review the child's needs within the established timelines until an additional evaluation has been completed.

Section 200.16(h)(3)(iii) was amended to clarify that special classes for preschool students are to be provided on a half-day or full-day basis pursuant to sections 200.1(p), (q) and (v).

Section 201.7(b) was amended to clarify that the trustees or the board of education of any school district, a district superintendent of schools or a building principal with authority to suspend a student pursuant to Education Law section 3214(3)(b) and (g) have authority to order placement of a student with a disability into an appropriate interim alternative educational setting.

Section 201.11(a)(3) established that in reviewing a decision with respect to the manifestation determination, an impartial hearing officer must determine whether the school district has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with the requirements of section 201.4 of this Part.

Section 201.11(c) was amended to require an impartial hearing officer to mail a copy of the written, or at the option of the parents, electronic findings of fact and decisions to the parents, to the board of education, and to the Office of Vocational and Educational Services for

Individuals with Disabilities (VESID) of the State Education Department.

Section 276.1(c) was amended to make technical corrections as a result of amendments to other sections of the regulations.

Section 279.3, as amended: (1) repealed language allowing a State Review Officer to base his or her decision on statements contained in a petition, which are deemed to be true, if an answer to the allegations in a petition is not served and filed according to the provisions of such regulations; and (2) authorized a State Review Officer to make a decision, that is considered final unless an aggrieved party seeks judicial review.

Section 279.8, as amended: (1) repealed language stating that oral argument before a State review officer is not permitted; (2) added language giving a State Review Officer the authority to determine if oral argument is necessary and to direct that such argument be heard at a time and place reasonably convenient to the parties; (3) authorized the State Review Officer to seek additional oral testimony or documentary evidence if determined necessary; (4) clarified that hearings to take additional evidence will be conducted before a State Review Officer at a time and place reasonably convenient to both parties; and (5) ensures that the procedures at such hearings are consistent with the due process requirements of section 200.5(i)(3).

Section 100.6 was amended to make technical corrections to cross citations related to the definition of a student with a disability and to local certificates.

Need for Rule: the rule is needed to conform the Commissioner's Regulations to the federal regulations implementing the Individuals with Disabilities Education Act, strengthen the link between transition services and a student's movement from school to post-school activities and correct certain cross-citations.

Legal Basis for Rule: Education Law sections 101, 207, 3214(3), 4403(3) and (20), 4404(1) and (2) and 4410(13).

Sections 200.2 and 200.5 of the Commissioner's Regulations, regarding procedures for appointment of impartial hearing officers

Description of Rule: the rule establishes the time period for the board of education to appoint the impartial hearing officer and to ensure the State Education Department has the data to monitor the initiation and completion of impartial hearings.

Section 200.2(e) established additional procedures for boards of education to follow when appointing and rescinding appointments of impartial hearing officers and established hearing reporting procedures.

Section 200.5(i)(3)(i), as amended: (1) established that the board of education appoint an impartial hearing officer no later than five business days after receipt of the request for the hearing; (2) provided the board of education the authority to designate member(s) to appoint the impartial hearing officer; and (3) relocated language regarding rescinding the impartial hearing officer's appointment.

Need for Rule: the rule is necessary to ensure the timely conduct of impartial hearings as required by the federal Individuals with Disabilities Education Act.

Legal Basis for Rule: Education Law sections 101, 207, 4403(3), 4404(1) and 4410(13).

Sections 200.4 and 200.7 of the Commissioner's Regulations, regarding technical amendments to conform to State and federal requirements

Description of Rule: the rule enacts technical amendments relating to the information that must be included in the written referral of a student suspected of having a disability and corrects certain cross citations.

Section 200.4(a) was amended to require that a referral include a written description of the interventions and strategies used to remediate the student's performance prior to referral. The rule also provides that the building administrator may request a meeting with the parents to determine if the referred student would benefit from other services

designed to meet the learning needs of the student while maintaining the student in general education.

Section 200.4(d)(2)(iv) and section 200.7(d)(1)(ii) were amended to correct certain cross citations.

Need for Rule: the rule is needed to conform the Commissioner's Regulations to State and federal requirements and to correct certain cross citations.

Legal Basis for Rule: Education Law sections 101, 207, 4401-a(2) and 4403(3).

Part 247 of the Commissioner's Regulations, regarding conforming and technical amendments pertaining to the vocational rehabilitation program

Description of Rule: the rule enacts technical changes to conform the Commissioner's Regulations relating to the State vocational rehabilitation program to Title I of the Rehabilitation Act and the federal regulations promulgated under such Act.

Need for Rule: the rule is needed to conform to federal requirements.

Legal Basis for Rule: Education Law sections 101, 207 and 1004(1).

Agency Representative:

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

Rebecca H. Cort

Deputy Commissioner

New York State Education Department

Office of Vocational and Educational Services for Individuals with Disabilities

One Commerce Plaza, Room 1606

Albany, New York 12234

(518) 474-2714

OFFICE OF HIGHER EDUCATION

Section 3.12(d), Part 4, section 13.1 of the Regents Rules and Subpart 145-8 of the Commissioner's Regulations, regarding voluntary institutional accreditation for Title IV purposes

Description of Rule: the rule establishes standards and procedures that must be met by institutions of higher education that voluntarily seek institutional accreditation by the Commissioner of Education and the board of Regents for purposes of Title IV of the Higher Education Act of 1965, as amended, and deletes unnecessary provisions in the Rules of the Board of Regents and the Commissioner's Regulations.

Need for Rule: the rule is necessary to establish standards consistent with federal requirements to ensure that institutions that are accredited by the Commissioner of Education and the Board of Regents, for purposes of their participation in Title IV federal student aid programs, are quality institutions. The rule also removed unnecessary provisions in the Regents Rules relating to the role of the State Education Department as a State Postsecondary Review Entity. This role does not exist because the federal law authorizing the designation of such entities was not reauthorized. Section 13.1 were and Subpart 145-9 were subsequently repealed in a separate rule making, effective July 4, 2001.

Legal Basis for Rule: Education Law sections 207, 210, 214, 215 and 305(2).

Sections 4.2 and 4.5 of the Regents Rules, regarding voluntary institutional accreditation for Title IV purposes

Description of Rule: the rule clarifies the accreditation actions that may be taken pursuant to a voluntary institutional accreditation review of an institution of higher education for Title IV purposes, shortens timeframes for such review, and adds a new appeal procedure.

Need for Rule: the rule is needed to specify the accreditation actions that result from a review of an institution of higher education for Title IV purposes by the Commissioner and Board of Regents, to define the term "accreditation with conditions", to ensure that reviews are completed within a reasonable time period, and to comply with federal requirements for appeals of review determinations. Subparts 4.2 and 4.5

were renumbered to 4-1.2 and 4-5.2 pursuant to a separate rulemaking filed April 2002 and made effective May 16, 2002.

Legal Basis for Rule: Education Law sections 207, 210, 214 and 215.

Sections 52.21, 80-1.2 and 80-5.13 of the Commissioner's Regulations, regarding requirements for alternative teacher certification program.

Description of Rule: the rule establishes alternative teacher certification programs.

Section 52.21(b)(3)(xvi) establishes the authority for the Commissioner of Education to register teacher preparation programs leading to professional certificates for individuals, including career changers and others, holding transitional C certificates and appropriate graduate academic or graduate professional degrees. These programs allow qualified candidates to complete two school years of mentored teaching under the supervision of a faculty member from a teacher education institution in which the candidate is enrolled in a registered teacher preparation program. While teaching under the transitional C certificate, the candidate must complete a program of study that satisfied the requirements for initial certification in the subject area of the transitional C certificate.

Section 52.21(b)(3)(xvii) establishes the authority for the Commissioner of Education to register teacher preparation programs leading to initial/professional certificates for individuals, including career changers and recent college graduates, who will begin teaching under transitional B certificates. Applicants to the programs must hold baccalaureate or graduate degrees in an area appropriate to the transitional B certificate. Following completion of an introductory component, and while completing the registered teacher preparation program, candidates will teach with mentoring and supervision for a period up to three years.

Section 80-1.2 establishes the authority for the Commissioner of Education to issue transitional certificates as of September 1, 2004.

Section 80-5.13 establishes the requirements for the "Transitional B" certificate. The Transitional B certificate is issued to candidates enrolled in alternative teacher education programs registered under section 52.21. The regulation specifies qualifications for the Transitional B certificate, which authorizes the holder to teach in a specified school that has made a commitment of employment and mentoring, while enrolled in the alternative preparation program. Valid for three years, the Transitional B certificate leads to the first regular, or initial certificate, upon completion of the program.

Need for Rule: the rule is needed to increase the number of qualified individuals who will be attracted to teaching careers, improve the teacher preparation and mentoring provided through alternative teacher certification programs, and to extend the period of validity of transitional B certificates.

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

Section 80-1.11 and Part 87 of the Commissioner's Regulations, regarding fingerprinting and criminal history check of prospective school employees and applicants for teaching certification

Description of Rule: the rule establishes requirements and procedures for the fingerprinting and criminal history record check of prospective school employees and applicants for teaching certification in order to implement the requirements of Chapter 180 of the Laws of 2000.

Need for Rule: the rule is necessary to implement Chapter 180 of the Laws of 2000 to set forth requirements and procedures for fingerprinting and criminal history record checks of prospective school employees. The rule establishes requirements for applicants for certification, as well as the requirements for school employer's vis-à-vis prospective school employees. It also describes the Department's obligations with respect to issuing clearances for employment as well as due process considerations for individuals who may be denied clearance for employment. Additionally, the rule outlines the process for notifying school employers about subsequent arrests. Finally, it sets

forth the fee amount, who is obligated to pay the fee, and sets forth the rules surrounding the destruction of an individual's criminal history record.

Legal Basis for Rule: Education Law sections 207, 305(3)(a) and (b), 1604(39) and (40), 1709(39) and (40), 1804(9) and (10), 1950(4), (11) and (mm), 2503(18) and (19), 2554(25) and (26), 2854(3)(a-2) and (a-3), 3004-b(1) and (2), 3004-c, 3035(1), (3) and (4) and Chapter 180 of the Laws of 2000.

Agency Representative:

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

Johanna Duncan-Poitier

Deputy Commissioner

Office of Higher Education and Office of the Professions

New York State Education Department

State Education Building

West Wing, Second Floor Mezzanine

Albany, New York 12234

(518) 474-3862

OFFICE OF THE PROFESSIONS

Sections 52.30, 74.1, 74.2, 74.4 and 74.5 of the Commissioner's Regulations, regarding standards for licensure qualifying social work programs

Description of Rule: the rule establishes standards for licensure qualifying programs in social work, education and examination requirements for licensure, requirements for applicants for limited permits to practice as a certified social worker (CSW), and requirements that must be met by certified social workers to qualify for reimbursement under certain group health insurance policies for psychotherapy services.

Section 52.30 established the requirements for licensure qualifying programs leading to the professional preparation for a licensed CSW, including specific course area requirements. Section 52.30 was repealed in 2004 due to the implementation of the new statutory scheme that provided for two new licensed professions (Licensed Master Social Worker and Licensed Clinical Social Worker) and therefore required two new licensure-qualifying programs.

Section 74.1 established the requirements for acceptable professional study leading to the professional preparation for a licensed CSW, including those programs conforming to section 52.30 and other programs that were comparable. Section 74.1 was amended in 2004 due to the implementation of the new statutory scheme that provided for two new licensed professions (Licensed Master Social Worker and Licensed Clinical Social Worker) and therefore required two new licensure-qualifying programs.

Section 74.2 established the requirements for licensure qualifying professional examinations leading to the professional preparation for a licensed CSW. The section contained the specific subject areas of the examination and set forth the qualifications for admission to the examination. Section 74.2 was amended in 2004 due to the implementation of the new statutory scheme that provided for two new licensed professions (Licensed Master Social Worker and Licensed Clinical Social Worker) and therefore required two new licensure qualifying programs.

Section 74.4 established the requirements for receiving a limited permit to practice CSW while waiting to take the examination. The section required that applicants for limited permits must meet all other licensing requirements except for passing the exam. Section 74.4 was repealed in 2004 due to the implementation of the new statutory scheme that provided for two new licensed professions (Licensed Master Social Worker and Licensed Clinical Social Worker) and therefore required two new licensure qualifying programs.

Section 74.5 established the requirements leading to the CSW gaining authorization to seek certain reimbursement for services from insurance carriers. The section contained the specific experience requirements that a candidate must meet, primarily in the area of psychotherapy. Section 74.5 was amended in 2004 due to the implementation of the new statutory scheme that provided for two new licensed professions (Licensed Master Social Worker and Licensed Clinical Social Worker) and therefore required two new licensure-qualifying programs.

Need for Rule: the rule is needed to establish such standards to ensure the quality of social work programs that are registered or seeking registration, to set criteria to measure the acceptability of social work programs offered outside the United States and its territories, to allow certain master's degree programs, within limitations, to permit students to use advanced standing credit for meeting their requirements, to ensure that candidates have adequate educational preparation prior to taking the licensing examination, to enable an applicant who has met the education requirement in substance to obtain employment in the social work field, and to clarify supervised experience requirements that must be met to qualify for reimbursement under certain group health insurance policies for psychotherapy services.

Legal Basis for Rule: Education Law sections 207, 210, 6504, 6507(1),(2)(a), and (4)(a); 6508(1); 7703, 7704(2) and (4), 7705 and Insurance Law sections 3221(l)(4)(A) and (D) and 4303(i) and (n).

Agency Representative:

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

David Hamilton
Executive Secretary
State Board for Social Work and Mental Health Practitioners
State Education Department
State Education Building, 2nd Floor
Albany, New York 12234
(518) 474-3817, Ext. 450

Section 71.3 of the Commissioner's Regulations, regarding examination requirement for licensure as a certified shorthand reporter

Description of Rule: the rule changes the examination requirement for licensure as a certified shorthand reporter to reduce the amount of time the candidate must take dictation and to permit candidates to use transcription equipment to transcribe dictation.

Need for Rule: the rule is needed to conform to realistic testing requirements for the dictation portion of the licensure test, as recommended by the State Board for Certified Shorthand Reporting. The rule is also needed to update the examination to reflect current widespread use of computer assisted dictation equipment in the practice of certified shorthand reporter.

Legal Basis for Rule: Education Law sections 207, 6504, 6507(1), (2)(a) and (3)(a), 6508(1) and (2), 7503 and 7504(4).

Agency Representative:

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

Daniel Dustin
State Education Department
State Board for Accountancy and Certified Shorthand Reporting
State Education Building
Second Floor, East Wing
Albany, New York 12234
(518) 474-3817, Ext. 160

Section 75.4 of the Commissioner's Regulations, regarding mandatory continuing competency for speech-language pathologists and audiologists

Description of Rule: the rule establishes continuing competency requirements and standards that licensed speech-language pathologists and/or audiologists must meet to be registered to practice in New York State and requirements for sponsors of continuing education.

Section 75.4 established the continuing competency requirements for speech -language pathologists and/or audiology. This section was implemented as a result of a statutory requirement that all licensees in this area complete certain continuing competencies during each three year registration period. This rule specifically set forth the methods for meeting this requirement including professional study, self -study and independent study.

Need for Rule: the rule is needed to clarify and implement the requirements of Education Law section 8209, as added by Chapter 266 of the Laws of 2000.

Legal Basis for Rule: Education Law sections 207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1) and 8209(1)(a), (b) and (c), (2), (3), (4), (5) and (6) and Chapter 266 of the Laws of 2000.

Agency Representative:

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

Lawrence Demers
Executive Secretary
State Board for Speech, Language Pathology and Audiology,
Occupational Therapy, and Acupuncture
State Education Building Room 2W
Albany, New York 12234
(518) 474-3817, Ext. 100

OFFICE OF MANAGEMENT SERVICES

Section 3.31 of the Regents Rules, regarding removal of trustees of education corporations.

Description of Rule: the rule establishes procedures to be used in proceedings of the Board of Regents pursuant to Education Law section 226(4) to remove trustees of education corporations created by the Board of Regents, for misconduct, incapacity, neglect of duty and/or failure or refusal of the institution to carry into effect its educational purposes.

Need for Rule: the rule is needed to codify in the Regents Rules the procedures for removal of trustees of education corporations created by the Board of Regents, and thereby ensure the consistent, systemized practice with respect to such proceedings.

Legal Basis for Rule: Education Law section 101, 201, 202(1), 206, 207, 214, 215, 216 and 226(4).

Agency Representative:

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

Kathy A. Ahearn
Counsel and Deputy Commissioner for Legal Affairs
New York State Education Department
State Education Building, Room 112
Albany, New York 12234
(518) 474-6400
legal@mail.nysed.gov

Department of Environmental Conservation SAPA Section 207 – 5-year Rule Review

The following rules were adopted by the NYS Department of Environmental Conservation during 2001, and pursuant to SAPA Section 207 have been reviewed. Comments on the rules that are being amended this year should be directed to the contact person listed in the main body of the Regulatory Agenda. Comments on any rules that are

not being changed at this time will be accepted for 45 days and should be directed to the regulatory coordinator for the appropriate program, as listed below the rules.

DIVISION OF AIR RESOURCES

6 NYCRR Part 208, Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills. Statutory Authority: Environmental Conservation Law Sections 3-0301, 19-0301, 19-0303, 19-0305. This Part is New York State's version of the emission guidelines, required under federal regulation, 40 CFR 60 Subpart Cc, for Municipal Solid Waste Landfills. This Part was enacted in September 2001. It was amended in October 2004 to correct a technical error [specifically 208.6(d)(5) was renumbered to 208.6(e)]. No further changes are anticipated for this rule.

6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines. Statutory Authority: ECL Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103, and 71-2105. These rules were amended and updated effective December 16, 2004.

6 NYCRR Part 225-3, Fuel Composition and Use - Gasoline. Statutory Authority: Environmental Conservation Law §§ 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, and 19-0305. This rule limits summertime gasoline volatility (Reid Vapor Pressure, or RVP) to limit ozone precursor emissions. It also provides for wintertime gasoline volatility control in the New York City area as a contingency measure for maintenance of the carbon monoxide National Ambient Air Quality Standards (NAAQS). Summertime gasoline volatility control has taken on greater importance as large portions of upstate are designated nonattainment for the 8 hour ozone NAAQS. The carbon monoxide contingency measure contained in section 225-3.3(c) remains a necessary provision of the New York City areas carbon monoxide maintenance State Implementation Plan (SIP). This rule will be amended to require more stringent gasoline volatility controls as listed in the regulatory agenda.

Regulatory Coordinator for the Division of Air Resources is Laura Becker, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3250. Telephone: (518) 402-8451. E-mail: ljbecker@gw.dec.state.ny.us

DIVISION OF ENVIRONMENTAL PERMITS

6 NYCRR Part 617, The Division of Environmental Permits has reviewed Part 617, State Environmental Quality Review Regulations (SEQR) mandated by Article 8 of the Environmental Conservation Law and has determined that amendments will be necessary. The purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement. The regulation is included in the 2006 Regulatory Agenda for the Department of Environmental Conservation.

6 NYCRR Part 638, Green Buildings Tax Credit (GBTC). This regulation was adopted by the department in 2001. This regulation was adopted pursuant to section 19 of the Tax Law is intended to encourage building owners and developers to design, construct and operate buildings that are energy efficient, utilize recycled materials, provide clean air, and incorporate renewable and energy efficient power generation. A review of the regulation established that the regulation must be amended to update various codes, reflect any changes per Budget Bill of 2005 that modified the existing GBTC legislation and added an additional \$25 million in credits through 2016, and clarify certain sections of the regulation and clarify refrigeration tax credits.

Regulatory Coordinator for the Division of Environmental Permits is Charles B. Gardner, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-1750. Telephone: (518)-402-9154. E mail: cbgardne@gw.dec.state.ny.us

DIVISION OF FISH, WILDLIFE AND MARINE RESOURCES

6 NYCRR Chapter 1, Fish and Wildlife. Statutory Authority: Environmental Conservation Law Articles 11 and 13. This chapter regulates hunting, fishing and trapping; and commercial fishing and shellfishing in the marine environment. This Chapter is reviewed annually regarding season dates, take limits, manner of taking, and sanitary condition of the shellfish lands, and amendments are made as appropriate. This year's amendments and contact persons are listed above in the main body of the Regulatory Agenda.

Regulatory Coordinator for the Division of Fish, Wildlife & Marine Resources is Gordon R. Batcheller, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754. Telephone: (518) 402-8885. E-mail: grbatche@gw.dec.state.ny.us.

DIVISION OF LANDS AND FORESTS

6 NYCRR Section 190.13, Wilderness areas in the Adirondack Park, was finalized in April 2001. This rulemaking was adopted pursuant to ECL Sections 1-0101, 3-0301 and 9-0105, and Executive Law Section 816. Section 190.13 sets forth group size, camping, campfire, and other restrictions for specified zones in the High Peaks Wilderness Areas. The Department has determined after a review of 190.13 that this section will be amended by changing the requirement from all users to only overnight users who must acquire a self-issuing permit while in the Eastern High Peaks Zone (see the Division of Lands & Forests section of the 2006 Regulatory Agenda). All of the other provisions in Section 190.13 will remain as these restrictions have served their intended purpose of protecting the ecosystem and wilderness values of this area.

Regulatory Coordinator for the Division of Lands & Forests is Linda Kashdan-Schrom, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4250. Telephone: (518) 402-9405. E-mail: lrkashda@gw.dec.state.ny.us

DIVISION OF SOLID AND HAZARDOUS MATERIALS

6 NYCRR Part 325, Neighbor Notification of Certain Commercial Lawn Applications. Statutory Authority: Environmental Conservation Law, Article 33, title 10; and L. 2000, ch. 285. The regulation implemented the requirements of the Neighbor Notification Law of 2000, requiring posting of notification markers for residential lawn application, posting of signs at certain retail establishments, and mandating neighbor notification of certain commercial lawn applications. The rule is being implemented at the local level, dependent upon local ordinances. No further action is planned.

Regulatory Coordinator for the Division of Solid and Hazardous Materials is Deborah Aldrich, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-7250. Telephone: (518) 402-8730. E-mail: hwregs@gw.dec.state.ny.us.

DIVISION OF WATER

6 NYCRR Parts 855 - 859, 861, 862, 864, Lower Hudson River Drainage Basin; and Part 935, Upper East River and Long Island Sound within Queens, Bronx and Westchester Counties Drainage Basin Reclassification. Statutory Authority: Environmental Conservation Law (ECL) Sections 3-0301, 17-0310. This rulemaking reclassified waters in the Lower Hudson River and Upper East River and Long Island Sound within Queens, Bronx and Westchester Counties Drainage Basins to provide protection, consistent with their best usages. The rule will not be amended this year. The reason for not amending the rule is that it appropriately protects the attained best usages of waters in the Lower Hudson River and Upper East River and Long Island Sound within Queens, Bronx and Westchester Counties Drainage Basins, in compliance with the statutory authority under the Environmental Conservation Law and Section 101(a)(1) of the Clean Water Act.

Regulatory Coordinator for the Division of Water is Sarah Rickard, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3500. Telephone: (518) 402-8216. E-mail: serickar@gw.dec.state.ny.us

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 Subpart 5-1 - Public Water Systems – Annual Water Supply Statements

Statutory Authority:

Public Health Law, Section 225.

Description of the regulation:

This regulation provides a framework that water suppliers will use to give consumers information on their drinking water, including the water source, contaminants detected in finished water, health effects of contaminants when violations occur, likely sources of detected contaminants, and availability of source water assessments. By understanding their water supplies, customers, especially those with special health needs, can make informed decisions regarding their use of drinking water.

This regulation should continue without modification.

Amendment of Section 5-1.72 and Subpart 5-4 – Classification of Community and Transient Non-Community Water System Operators

Statutory Authority:

Public Health Law, Section 225.

Description of the regulation:

This regulation established that all community water systems (CWS) and nontransient noncommunity water systems (NTNCWS) serving 15 or more service connections or 25 or more persons have the appropriate certified operator(s). Owners of all CWS and NTNCWS must place the direct supervision of their water system, including each treatment plant and/or the distribution system, under the responsible charge of a water treatment operator(s) holding a valid certification equal to or greater than that required for the classification of the treatment plant and/or distribution system. All operating personnel making process control/system integrity decisions about water quality or quantity that effect public health must be appropriately certified and under the direction of an operator in responsible charge. A designated certified operator must be available during plant operation.

The regulation should continue without modification.

Addition of Subpart 7-3 - Campgrounds

Statutory Authority:

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

Description of the regulation:

Prior to the addition of Subpart 7-3, Campgrounds were regulated as a subset of temporary residences under Subpart 7-1. Many sections of Subpart 7-1 are not applicable or relevant to campgrounds. The new Subpart 7-3 contains only those sections applicable to campgrounds and clarifies and consolidates all regulations regarding the construction, operation and maintenance of campgrounds.

The regulation should continue without modification.

Amendment of Sections 16.10, 16.21, 16.40, 16.41 and 16.50 - Ionizing Radiation

Statutory Authority:

Public Health Law, Sections 225(5)(p) and (q).

Description of the regulation:

Part 16 of the State Sanitary Code was amended to revise the schedule for fees charged to radiation equipment facilities registered by the department and instituted new fees for radioactive material users who are issued licenses by the department. The fees are based on the type of facility registered or licensed by the Department. Larger facilities require more staff to regulate and are charged a higher fee while smaller facilities are charged a lesser fee. The fees help to support the regulatory program of the Bureau of Environmental Radiation Protection and are comparable with fees charged in other states and are less than the fees charged by the US Nuclear Regulatory Commission (NRC) for its radioactive material licensees. The fees are necessary in order to conduct a regulatory program which covers both radiation equipment and radioactive material and which meets the legislative mandate and maintains compatibility with NRC's program.

The regulation should continue without modification.

Amendment of Part 34 - Health Care Practitioner Referrals

Statutory Authority:

PHL section 238-a(1)(a) prohibits health practitioners from making referrals to providers of clinical laboratory services, x-ray or imaging services, pharmacy services, radiation therapy services and physical therapy services if a financial relationship exists between the practitioner, or a member of the practitioner's immediate family, and the provider. The Public Health Council is authorized, in PHL sections 238-a (2)(g) and 238-a (10), to adopt regulations, subject to approval of the Commissioner, to effectuate the purposes of the law.

PHL section 586 requires clinical laboratories to bill the test subject or other enumerated entities for laboratory testing performed. PHL section 587 specifies prohibited activities between ordering practitioners and laboratories. The New York State Public Health Council is authorized, in PHL sections 586(3) and 587(6), to adopt regulations, subject to the approval of the Commissioner of Health, to carry out the purposes of the statutes.

Description:

The Part 34 regulations are necessary to prohibit health service purveyors and practitioners from engaging in business arrangements with significant probability of improperly induced referrals while avoiding an interpretation of Public Health Law (PHL) Article 5 Title VI that prohibits arrangements with a benign, beneficial or forward looking effect. These regulations also bring existing New York State rules into harmony with federal Stark II law provisions defining exceptions to compensation arrangements. Absent such exceptions, State law would be in disparity with federal law and would subject regulated parties to a different set of standards with considerable potential to confuse and obfuscate compliance.

Amendment of Subpart 69-8 – Newborn Hearing Screening Program

Statutory Authority:

Section 2500-g of the Public Health Law and Chapter 585 of the Laws of 1999, required the Department to establish, in consultation with health care providers or their representatives, a program to screen newborn infants for hearing problems. The statute requires the program to incorporate consensus medical guidelines and protocols, reflecting the most cost-effective methods for detecting hearing problems as early as possible in an infant's life. The newborn hearing screening program must also provide for follow-up screening or care, when such follow-up is indicated by an initial screening. A mechanism for reimbursement for health care providers for performing newborn hearing screening services was also required to be established. Hospitals are required to designate an administrator responsible for administration of the institution's newborn hearing screening program.

Description:

Subpart 69-8 is needed to set forth the requirements upon all regulated parties, including hospitals and birthing centers responsible for administering newborn hearing screening programs. Subpart 69-8

defines relevant terms; sets forth general requirements for administration of the newborn hearing screening program and sets forth requirements for newborn hearing screening procedures, including requirements for follow-up of all infants for whom a referral for follow-up screening and care are warranted. The regulations also provide general requirements for institutions caring for infants that provide a referral for infants to obtain initial hearing screening subsequent to discharge from the hospital after birth (institutions with fewer than 400 births annually). Finally, the regulations set forth the responsibilities of institutions caring for infants in special circumstances, including requirements for newborn hearing screening when an infant is transferred from one facility to another such facility or when infants are medically unstable.

All existing requirements under Subpart 69-8 are necessary to ensure universal screening for hearing problems of all newborn infants in New York State. These regulations are needed to ensure hospitals and birth centers appropriately administer newborn hearing screening programs; ensure that newborn hearing screening is conducted by qualified personnel using appropriate equipment and clinical standards and procedures; and, ensure appropriate and timely follow-up of all infants with a hearing loss or potential for hearing loss. These regulations are also necessary to provide the Department with appropriate oversight of hospital newborn hearing screening programs, including collection and analyses of data on the effectiveness of newborn hearing screening. Subsequent to implementation of universal newborn hearing screening, data reported by hospitals to the Department indicate that 95% of all newborn infants in New York State are now screened for hearing loss.

No modifications are proposed to these regulations at this time.

Amendment of Sections 80.131 and 80.137 - Expanded Syringe Access Demonstration Program

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Section 3381(c) – Sale and possession of hypodermic syringes and hypodermic needles.

Description of the regulation:

This proposal was promulgated to implement Public Health Law Section 3381 regarding the sale of hypodermic needles and syringes without a prescription under the Expanded Syringe Access Demonstration Project (ESAP).

PHL Section 3381 went into effect on March 31, 2003 and will sunset on August 31, 2007. No modifications to the regulations are proposed at this time.

Amendment of Sections 80.73 and 80.74 - Partial Filling and Electronic Transmission of Prescriptions

Statutory Authority:

The authority for the promulgation of this regulation is contained in PHL Section 3333.

Description of the regulation:

Article 33 of the Public Health Law (Controlled Substances) was amended in 1999 converting the Official New York State triplicate prescription to a single part form. Pharmacy prescription data submission requirements were amended to provide for electronic transmission of data. The law also provided that a pharmacy could partially fill Official New York State prescriptions in certain specified circumstances. Regulations were developed to implement this law.

The regulation should continue without modification. Amendment of Section 86-1.89 – (Professional Education Supplemental Pool)

Statutory Authority:

Section 2807-m (5).

Description of the regulation:

Supplemental distributions of the regional professional education pools. The rule needs to continue without modification until the program legislation expires.

Addition of Subpart 98-2 (External Appeals of Adverse Determinations)

Statutory Authority:

Title II of Article 49 of the Public Health and Insurance Laws, which was enacted by the legislature as Chapter 586 of the Laws of 1998, established the right to an external appeal of a final adverse determination issued by an individual's health plan.

The Department has general authority to establish regulations interpreting the provisions of the Public Health Law. In addition, the external appeals statute requires the Department and SID to promulgate regulations to minimize unavoidable conflicts of interest, establish procedures for random assignment of external appeals to certified external appeal agents and develop a standard description of the external appeal program, including a form for initiation of an appeal. SID has promulgated essentially mirror regulations at Part 410 of Title 11 NYCRR.

In response to a lawsuit filed by the Hospital Association of New York State (HANYs), the State Supreme Court in 2002 annulled the definition of "designee" that was included in the regulations. The regulations were not revised to reflect the court's ruling.

Description of regulation:

The external appeals program provides enrollees of managed care plans and insured's the right to an objective, independent external appeal of a final adverse determination made by their health care plan. The legislature enacted this law in response to charges that health care plans were unilaterally denying health care services based on the health plan's determination that a requested treatment was not medically necessary and/or was experimental or investigational. The law was intended to strengthen the rights of consumers to challenge their health plans' decisions through an objective body of medical experts, at the health plan's expense.

Regulations at Subpart 98-2 remain a necessity for a number of reasons. First, a right is only a right to the extent that it is understood and accessible. The regulations establish requirements for a standard description of the program which is provided to enrollees and/or their designees to educate them concerning the scope and rules of the external appeals program, as well as enrollees' rights and obligations under the program. Further, the regulations ensure that the program is accessible to enrollees by clarifying eligibility criteria, providing some flexibility for preserving an enrollee's right to an external appeal when they submit an incomplete application and establishing time frames within which the State Insurance Department (SID) must act on an application and inform affected parties of its eligibility determination. Second, to ensure that the program is fair and objective, the regulations establish a process for certifying external appeal agents, including requirements for applicants to demonstrate that clinical peer reviewers will have no material conflicts of interest in assigned external appeals. This process ensures that only capable entities with a sufficient pool of clinical expertise may be certified to review external appeals. The regulations further establish a strong framework for minimizing the potential for conflicts of interest. Third, all parties must understand their respective responsibilities within the program for it to work effectively. The regulations clarify the responsibilities of health plans, certified external appeal agents and enrollees so that the integrity and timeliness of the external appeals program is ensured. The regulations also establish confidentiality requirements concerning enrollee medical records.

The rule should continue with modifications necessitated by the State Supreme Court ruling annulling the definition of "designee" and to clarify legislative intent regarding the liability of external appeal agents for determinations made by the agent.

Title 18 NYCRR - Five Year Review

Amendment to Section 505.14(b)(5)(v)(c)(1)-(10) of Title 18 - Personal Care Services

Statutory Authority:

Social Services Law (SSL) 363-1(1) provides that the Department is the "single state agency" responsible for supervising the administration of the State's medical assistance (Medicaid) plan. As such, the Department is responsible for adopting such regulations, not inconsistent with law, as many be necessary to implement SSL Title 11, Article 5, entitled "Medical Assistance for Needy Persons" [SSL 363-a(2)]. Section 201(1)(v) of the Public Health Law is in accord, providing the Department, as the Medicaid "single state agency", shall adopt such regulations as may be necessary to implement the State's Medicaid plan. Pursuant to SSL 365-1(2)(e), the State's Medicaid program includes personal care services.

Description of the regulation:

This section of the Personal Care Services regulations was amended to be compliant with a *Mayer v. Wing* court settlement; and, to help terminate the *Mayer* court's jurisdiction over the Department in this case.

Consistent with State policy, the *Mayer* case stands for the general principle that social services districts cannot arbitrarily or capriciously reduce or discontinue Medicaid recipients' personal care services. To the contrary, the districts must have a legitimate reason, grounded in law or regulation, to reduce or discontinue services. Further, the fair hearing notice must state the particular reason for the proposed reduction or discontinuance sufficient to apprise the recipient of the basis for the district's action. The *Mayer* court also ordered that districts may not use so-called task-based assessment plans when authorizing personal care services for any recipient whom the district has determined needs 24 hour care. Under the 1997 settlement in this case, the Department agreed to adopt regulations by November 1, 2001, that substantially complied with the court's various orders in this case. Although the regulations were new when added in 2001, their content should be familiar to all social services districts. The regulations essentially reiterate previous instructions that the Department issued to districts on the *Mayer* court order.

Higher Education Services Corporation (HESC)

Five-year Review of Rules Adopted in Calendar Year 2001
Required to Be Reviewed in Calendar Year 2006

As required by section 207 of the New York State Administrative Procedures Act (SAPA), the following is a list of rules which were adopted by HESC in calendar year 2001 that must be reviewed in calendar year 2006. Pursuant to section 207(5) of SAPA, the list does not include rules which were adopted as consensus rules, or rules which have been repealed. Public comment on the continuation or modification of these rules is invited and will be accepted until March 1, 2006. Comments may be sent to: David E. Reid, Deputy Counsel, Office of Counsel, Room 1350, 99 Washington Avenue, Albany, New York 12255.

8 NYCRR 2202.2 Establishes eligibility criteria and award limitations for the Tuition Assistance Program.

Legal basis for the rule: sections 653, 655, 663 and 667 of the New York State Education Law.

Necessity for the rule: This regulation is necessary because it defines the term "income" as a means of establishing eligibility. The regulation also establishes minimum and maximum limits on awards.

8 NYCRR 2202.7 Provides a schedule of award amounts for the Tuition Assistance Program.

Legal basis for the rule: sections 653, 655, 663 and 667 of the New York State Education Law.

Necessity for the rule: This regulation is necessary because it enumerates factors used by the corporation in determining award amounts.

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, rules that were adopted on or after January 1, 1997. The purpose of the review is to determine whether the rules 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 2001.

- INS-43-00-00006-A (State Register of January 17, 2001) Amendment of Part 160 (Regulation 57) (Responsibilities in Construction and Application of Rates) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, and 2336(h).

Insurance Law Section 2336(h) provides for premium reductions for certain commercial motor vehicles when such vehicles are equipped with factory-installed auxiliary running lamps. The statutory provision requires the Superintendent, after consultation with the Department of Motor Vehicles and the Department of Transportation, to promulgate regulations establishing the qualifications and standards for the approval, utilization and installation of such lamps. Chapter 475 of the Laws of 1998 added subsection (h) to Section 2336 in order to provide incentives to commercial risk insureds to reduce risk levels to their commercial motor vehicles and, as a result, receive a reduction in the applicable insurance premiums. This amendment of Regulation 57 implements the legislative objective of Chapter 475.

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. 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-46-00-00003-A (State Register of February 7, 2001) Adoption of Part 390 (Regulation 155) (Service Contracts) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 1101, 7911 and article 79.

Chapter 614 of the Laws of 1997 added a new Article 79 to the Insurance Law governing the making of service contracts by service contract providers, and service contract reimbursement insurance, which was added as a new kind of insurance under Section 1113(a)(28). Section 7911 specifically authorizes the Superintendent to promulgate regulations necessary to effectuate Article 79. Chapter 198 of the Laws of 1999 amended Section 1113(a)(28) of the Insurance Law to add indemnification coverage to the definition of service contract reimbursement insurance.

Prior to passage of Chapter 614, the service contract business was not regulated under the Insurance Law, though the making of service contracts by persons unrelated to the product ("third party") was generally considered to be the doing of an insurance business. Consequently, the making of such contracts without a license as an insurer constituted the doing of an insurance business without a license in violation of Section 1102 of the Insurance Law. Service contracts made by a manufacturer or retailer on products made or sold by the manufacturer or retailer ("first party") were generally considered to be warranties, which are exempt from the Insurance Law if made as merely incidental to another legitimate business or activity of the warrantor, and not done as a vocation.

The new article created a framework for regulating service contract providers. The new law also authorized service contract reimbursement

insurance, which is intended to provide one of the three forms of financial security required to ensure that the provider will meet its obligations. The regulation establishes rules governing and regulating the service contract business, and accomplishes several goals. It establishes a procedure for the registration of providers, including specifying minimum information necessary for the Superintendent to determine whether to register the provider. It establishes minimum provisions and requirements regarding service contract reimbursement insurance and service contracts. It also clarifies the relationship of mechanical breakdown insurance to service contracts.

In 2003, the Department adopted an amendment to the regulation (INS-48-02-00007-A, State Register of March 5, 2003) to update two references to the address of the Department's Albany office. The Department's June 2005 Regulatory Agenda (published in the State Register of June 29, 2005) noted the Department's intent to amend Regulation 155 to provide clarification of the requirements and conditions for appointment of a claims trustee, the minimum affirmations and attestations in the use of a "parental guarantee" of a subsidiary Service Contract Provider ("SCP") and specifications for the determination that an SCP is deemed insolvent.

- INS-47-99-00002-A (State Register of February 14, 2001) Adoption of Part 410 (Regulation 166) (External Appeals of Adverse Determinations of Health Care Plans) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3217-a, 3221, 4235, 4303, 4304, 4305, 4321, 4322, 4324, articles 47 and 49, Chapter 586 of the Laws of 1998.

Chapter 586 of the Laws of 1998 provided enrollees of managed care plans and insureds the right to an objective, independent external appeal of a final adverse determination made by their health care plan. The law was intended to provide consumers with the right to obtain a review of their health plans' decisions through an objective body of medical experts, at the health plan's expense.

The regulation, consistent with legislative intent, provides a description of the external appeal process, sets criteria for entities wishing to act as external appeal agents, and establishes a process whereby such entities can obtain such certification.

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-45-00-00009-A and INS-45-00-00010-A (State Register of February 28, 2001) Repeal of Part 58 (Regulation 117) (Mortality Tables) and Adoption of Part 99 (Regulation 151) (Valuation of Annuity, Single Premium Life Insurance, Guaranteed Interest Contract and Other Deposit Reserves) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 1304, 4217, 4240 and 4517.

The new regulation establishes an appropriate methodology to calculate and determine adequate reserves to help ensure the solvency of life insurers doing business in New York. The Insurance Law specifies mortality and interest standards but does not specify an explicit method to be used to value annuities, single premium life insurance policies, and guaranteed interest contracts, and relies on the Superintendent to specify the method. Without this regulation, there would be no standard method for valuing such products. This could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds.

With the adoption of Part 99 (Regulation 151), Part 58 of 11 NYCRR (Regulation 117) was repealed. Part 58 was repealed because its mortality tables for determining liabilities for annuities and pure endowments had been updated for new business and included in new Part 99.

The Department's June 2005 Regulatory Agenda (published in the State Register of June 29, 2005) noted the Department's intent to amend

Regulation 151 to revise existing standards for variable annuities for life insurers to be consistent with recently adopted and pending National Association of Insurance Commissioners standards.

- INS-51-00-00001-A (State Register of March 7, 2001) Adoption of Part 430 (Regulation 170) (Mechanism for the Equitable Distribution of Insureds Unable to Obtain Medical Malpractice Insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, and 5502, as amended by Chapter 147 of the Laws of 2000.

Insurance Law Section 5502, as amended by Chapter 147 of the Laws of 2000, directs the dissolution of the Medical Malpractice Insurance Association ("Association") at such time and under such conditions as the Superintendent deems proper, pursuant to a plan of dissolution approved by the Superintendent and requires that all policies of the Association expire or be transferred prior to such dissolution. The Association had written medical malpractice insurance for health care providers who were unable to secure such coverage in the voluntary market. This regulation establishes the New York Medical Malpractice Insurance Plan ("Plan") to provide for the equitable distribution required by the legislature. Through the Plan, an eligible health care provider as defined in the regulation, unable to obtain insurance in the voluntary market, is assigned to an insurer writing the appropriate coverage in the insured's geographical territory.

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-01-01-00009-A (State Register of March 21, 2001) Amendment of sections 52.22 and 52.63 (Regulation 62) (Minimum Standards for Form, Content, and Sale of Health Insurance, Including Standards for Full and Fair Disclosure) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 3201, 3216, 3217, 3218, 3221, 3231, 3232, 4235, 4237, art. 43 and Federal Social Security Act (42 U.S.C. section 1395ss).

The enactment of the Federal Omnibus Budget Reconciliation Act of 1990 ("the Act") required the mandatory standardization and federal certification of policies of Medicare supplement insurance. As a result of the Act, states were required to amend their laws and regulations to conform to the federal standards for Medicare supplement insurance. The revisions contained in this amendment made technical corrections to New York's Medicare supplement regulation to ensure continued compliance with federal standards.

In 2002, the Department adopted an amendment to section 52.22 of the regulation (INS-48-02-00007-A, State Register of March 5, 2003) to make minor revisions to some mandatory practices to be followed by insurers issuing Medicare supplement insurance policies to bring company practices into conformance with the Act.

The Department currently intends to continue the sections of the rule regarding Medicare supplement insurance without modification, while continually monitoring the regulation to ensure that the provisions remain consistent with related Federal and State statutory and regulatory requirements.

- INS-07-01-00001-A (State Register of May 9, 2001) Amendment of sections 89.1, 89.2 and 89.3 (Regulation 118) (Audited Financial Statements) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 307(b) and 4710(a)(2).

Section 307(b) of the Insurance Law provides for an audited financial statement of every licensed insurer, with certain exceptions, and of any subsidiary described therein together with an opinion of an independent certified public accountant on the financial statement of the insurer and any subsidiary to be filed on or before May 31st of each year. Section 307(b) was amended by Chapter 324 of the Laws of 1992

thereby necessitating amendment to Regulation 118 and to prescribe forms or otherwise make regulations.

Regulation 118 was originally promulgated in 1984 to implement the provisions of Section 307(b) of the Insurance Law. This amendment to the regulation implements the provisions of Section 307(b), as amended by Chapter 324 of the Laws of 1992. It enables the Insurance Department to continue to monitor the financial solvency of insurers licensed to do business in the State of New York.

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-06-01-00003-A (State Register of May 23, 2001) Adoption of Part 83 (Regulation 172) (Financial Statement Filings and Accounting Practices and Procedures) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-(c)(12) and 4408-a.

The purpose of this regulation is to enhance the consistency of the accounting treatment of assets, liabilities, reserves, income and expenses by entities subject hereto, by clearly setting forth the accounting practices and procedures to be followed in completing annual and quarterly financial statements required by law. Certain provisions of the Insurance Law provide that authorized insurers and other entities shall file financial statements annually and quarterly with the Superintendent, on forms prescribed by the Superintendent. Except in regard to filings made by Underwriters at Lloyd's, London, the Superintendent has prescribed forms and Annual and Quarterly Statement Instructions that are adopted from time to time by the National Association of Insurance Commissioners, as supplemented by additional New York forms and instructions. To assist in the completion of the Financial Statements, the National Association of Insurance Commissioners ("NAIC") also adopts and publishes from time to time certain policy, procedure and instruction manuals. One of these manuals, The Accounting Practices and Procedures Manual Effective January 1, 2001 as of March 2000 ("Accounting Manual") includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles. The Accounting Manual is incorporated by reference into this regulation.

The Accounting Manual was effective January 1, 2001. The Accounting Manual represents a codification of statutory accounting principles. The purpose of the codification of statutory accounting principles is to produce a comprehensive guide for regulators, insurers and auditors. Codification does not preempt state legislative and regulatory authority. Statutory financial statements will continue to be prepared on the basis of accounting practices prescribed or permitted by the states. Further, auditors will be permitted to continue to provide audit opinions on practices permitted by the Insurance Department of the state of domicile, even if those practices diverge from the codification standards. In some instances, a New York statute or regulation may preclude implementation of particular codification rules. In a few instances, for various reasons, the Department has not implemented the codification rule.

The regulation was amended twice in 2003 (INS-01-03-00011-A, State Register of March 26, 2003) and (INS-26-03-00003-A, State Register of September 24, 2003), and twice in 2004 (INS-03-04-00004-A, State Register of May 19, 2004) and (INS-22-04-00005-A, State Register of September 15, 2004) to conform the regulation to revisions to the Accounting Manual. The Department's June 2005 Regulatory Agenda (published in the State Register of June 29, 2005) noted the Department's intent to amend the regulation again to conform to the latest revisions to the Accounting Manual.

- INS-10-01-00004-A (State Register of May 30, 2001) Amendment of Part 185 (Regulation 27A) (Credit Life Insurance and Credit Accident and Health Insurance) of Title 11 NYCRR.

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

Insurance Law Sections 4216 and 4235 authorize credit life insurance and credit accident and health insurance as permitted coverages in this state. Section 4216(b)(3)(C) clearly indicates that the legislature intended that coverage could terminate because of the attainment of a specified age. One portion of this amendment removed a restriction on the use of age terminations.

Previously, the regulation specified the rates for vendor business. The most common examples of vendor business are automobile dealerships. The rates specified in the regulation for some blocks of vendor business were inadequate. Part of this amendment allows for the rates for blocks of vendor business to be based on their actual experience. Prior to this change coverage was not available at some vendors. Sections 4216 and 4235 also require that the premium not be unreasonable in relation to the benefits provided. This part of the amendment balances the legislative objective of having the product available with the legislative objective that the insured receive fair value for their premium dollar.

In 2002, the Department adopted an amendment to Regulation 27A (INS-50-02-00014-A, State Register of December 11, 2002) to conform to Chapter 505 of the Laws of 2000 and Chapter 13 of the Laws of 2002, which created a new type of "broker" license, defined in section 2104(b)(1)(A) of the Insurance Law, allowing brokers to write the coverages set out in this regulation.

- INS-15-01-00007-A (State Register of June 20, 2001) Amendment of section 70.8 and adoption of a new section 70.22 (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, 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 effective July 1, 2000 and establishes rules to collect and allocate surcharges to recover deficits based on past experience. The Department reviews this regulation each year to ensure that the provisions remain consistent with other related statutory and regulatory requirements.

The Department's June 2005 Regulatory Agenda (published in the State Register of June 29, 2005) noted the Department's intent to amend Regulation 101 to establish primary and excess physicians and surgeons liability insurance rates. The Agenda also note the Department's intention to amend sections 70.8(h), 70.9(l) and 70.9(m) or Part 70 (Regulation 101) which contain the instructions and forms used to report segregated and surcharge account information to the Insurance Department; and to amend section 70.13 which currently requires that medical malpractice insurers offer both occurrence and claims-made policies.

- INS-13-01-00017-A (State Register of July 11, 2001) Amendment of sections 27.0, 27.3 and 27.18 of Part 27 (Regulation 41) (Excess Line Placements Governing Standards) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 1101, 2105, 2117; Chapter 294 of the Laws of 1997, Chapter 597 of the Laws of 1999 and Chapter 578 of the Laws of 2000.

Section 1101(b) of the Insurance Law was amended by Chapter 597 of the Laws of 1999 to provide for a new paragraph (5). It permitted unauthorized insurers that are affiliated with an insurer licensed in this state, to have an office in this state to provide services to support its insurance business. Section 2117 was also amended by Chapter 597 of

the Laws of 1999 to provide for a new subsection (i) which allowed an authorized insurer to provide support services, from its office in New York, to unauthorized affiliates, provided that the unauthorized insurer has satisfied all applicable requirements for placement by excess line brokers. Both sections of law require that any documents issued by unauthorized insurers from an office in this state contain a prominent notice that the insurer is not licensed in New York, in accordance with regulations promulgated by the Superintendent.

This rule amended the regulation to ensure that consumers receive this information by establishing a mandatory and uniform notice instead of permitting each insurer to establish its own notice. Additionally, a notification to the Superintendent of the existence of the New York office of the unauthorized insurers is necessary in order to allow the Superintendent to properly regulate these activities.

In 2003, the Department adopted an amendment to Regulation 41 (INS-48-02-00013-A, State Register of February 19, 2003) to clarify the duties and responsibilities of excess line brokers, unauthorized insurers and the Excess Line Association with regard to excess line business placed in New York State. The Department's June 2005 Regulatory Agenda (published in the State Register of June 29, 2005) noted the Department's intent to amend Regulation 41 by revising Sections 27.17 and 27.18 to combining separate legends that appear in both sections of the regulation into one generic legend. The legends are stamped on the insurance documents by the excess line broker advising the insured that placement is being made with an insurer not licensed and subject to the safeguards of NY Insurance Department. The revision is being considered in order to facilitate the eventual conversion of ELANY's affidavit system into an electronic filing system. In addition, the Agenda notes the Department's intent to amend Regulation 41 in order to establish procedures for the filing of required affidavits on a consolidated basis for "legitimate" group placements (authorized by Insurance Regulation 135) similar to those in place for Purchasing Groups (Regulation 134).

- INS-39-00-00013-A (State Register of July 18, 2001) Adoption of Part 362 (Regulation 171) (The Healthy New York Program & the Direct Payment Stop Loss Relief Program) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4321, 4321-a, 4322, 4322-a, 4326 and 4327.

In 2001, a significant number of New York residents were without health insurance. Due in part to the rising cost of health insurance coverage, many small employers had been unable to provide such coverage to their employees. A large portion of New York State's uninsured population is made up of individuals employed in small businesses. The Legislature enacted Chapter 1 of the Laws of 1999 to provide for the Healthy New York Program which is an initiative designed to encourage small employers which do not currently provide health insurance coverage to their employees to offer such coverage and also designed to make coverage available to uninsured employees whose employers do not provide group health insurance coverage. By creating a standardized health insurance benefit package to be offered by all health maintenance organizations which is made more affordable through the availability of state funded stop loss reimbursement, more small employers and uninsured employed individuals were encouraged to purchase health insurance coverage. This regulation was necessary to clarify eligibility for the Healthy New York Program and to establish procedures for enrolling in the Healthy New York Program.

In 2004, the Department adopted an amendment to Regulation 171 (INS-46-03-00004-A, State Register of February 11, 2004) to encourage small employers that do not currently provide health insurance coverage to their employees to offer such coverage and to make coverage available to uninsured employees whose employers do not provide group health insurance coverage. To encourage the goals stated above,

the amendment clarified eligibility for the Healthy NY Program and simplified the application and administrative process for both enrollees and providers.

The Department's June 2005 Regulatory Agenda (published in the State Register of June 29, 2005) noted the Department's intent to amend Regulation 171 to adjust the stop loss standards and reimbursement corridors for Healthy NY, simplify Healthy NY eligibility and re-certification, improve and provide options with respect to Healthy NY benefits, clarify employer contribution requirements, allow insurers to reinsure Healthy NY business, ensure accurate reporting from Healthy NY insurers, and qualify Healthy NY as coverage eligible for a federal tax credit (available to certain individuals as defined in federal law). This amendment has been in effect on an emergency basis since March 28, 2003.

- INS-09-00-00003-A (State Register of August 22, 2001) Adoption of Part 101 (Regulation 164) (Standards for Financial Risk Transfer Agreements between Insurers and Health Care Providers) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 1102, 1109 and articles 32, 41, 42 and 43; Public Health Law, section 4403(1)(c).

Section 45 of Chapter 586 of the Laws of 1998 (the Law), commonly referred to as the external review law, gives the Commissioner of Health and the Superintendent of Insurance the authority to promulgate regulations to implement, inter alia, the financial risk transfer sections of the legislation. In particular, Sections 41-d and 41-e of the Law amended Sections 3217-b and 4325 of the Insurance Law to add a new paragraph (f) to each of those statutes. The amendments broadly discuss the requirement that no contract entered into between an insurer and a health care provider shall be enforceable if it includes terms that transfer financial risk to providers in a manner inconsistent with the provisions of Section 4403(1)(c) of the Public Health Law.

Chapter 586 of the Laws of 1998 gave the Superintendent of Insurance and the Commissioner of Health broad powers to promulgate regulations regarding all aspects of the Law, including provisions that apply to the transfer of financial risk in contracts between an insurer and a health care provider. Based on this grant of authority, a regulation was developed by the Insurance Department, in consultation with the Department of Health, to ensure that contractual arrangements between an insurer and a health care provider were consistent with Section 4403(1)(c) of the Public Health Law.

Regulation 164 establishes minimum requirements by which an insurer, as defined in the regulation, can assess the financial responsibility of a health care provider to ensure that such provider can fulfill its obligations under the financial risk transfer agreement. Previously, there were no regulatory requirements specifically addressing the method by which an insurer could determine the financial responsibility of the health care provider and adequately protect itself and its subscribers against the risk of default by the health care provider to fulfill its obligations under the financial risk transfer agreement.

In 2002, the Department adopted an amendment to Regulation 164 (INS-46-01-00023-A, State Register of January 30, 2002) to provide mechanisms to assess the financial responsibility and capability of health care providers to perform their obligations under certain financial risk sharing agreements and set forth standards pursuant to which providers may adequately demonstrate such responsibility and capability to insurers.

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-16-99-00006-A (State Register of August 22, 2001) Amendment of Subpart 64-2 (Regulation 35-C) (Liability Insurance Covering All-Terrain Vehicles) of Title 11 NYCRR.

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

Section 2407 of the Vehicle and Traffic Law requires that all-terrain-vehicles (ATV's) be covered by a policy of liability insurance, which includes no-fault coverage for the pedestrian victims of ATV accidents. This amendment incorporates the applicable no-fault insurance forms into Regulation 68, which was adopted simultaneously.

In 2002, the Department adopted an amendment to Regulation 35-C (INS-25-02-00004-A, State Register of September 11, 2002) to update certain references in accordance with statutory amendments. The Department currently intends to continue the rule without modification, while continually monitoring the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements.

In 2004, the Department adopted an amendment to the regulation (INS-08-04-00006-A, State Register of May 19, 2004) to amend required No-Fault claim forms to conform the fraud warning statement with the text as revised in the Fourth Amendment to Regulation 95 as then written in Part 86 of this Title; to correct any incorrect references, addresses and typographical errors; and to present the forms in a more easily readable format.

- INS-31-00-00029-A (State Register of August 22, 2001) Repeal of Part 65 (Regulation 68) and Adoption of the New Part 65 (Regulation 68) (Regulations Implementing the Comprehensive Motor Vehicle Insurance Reparations Act) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301 2601, 5521 and Article 51; Vehicle and Traffic Law, section 2407.

Regulation 68 contains provisions implementing Article 51 of the Insurance Law, known as the Comprehensive Motor Vehicle Insurance Reparations Act, popularly referred to as the no-fault law. No-fault insurance was introduced to rectify many problems that were inherent in the existing tort system utilized to settle claims, and to provide for prompt payment of health care and loss of earnings benefits. The no-fault insurance coverage endorsement contained in Regulation 35-C, which was incorporated into Regulation 68 by this revision, implemented Section 2407 of the Vehicle and Traffic law, which affords no-fault coverage to the pedestrian victims of ATV accidents.

The regulation reduced the time periods from 90 days to 30 days for notice of claim by claimants and from 180 days to 45 days for submission of health care claims respectively. The Department recognized that in rare circumstances, a claimant will not be able to provide notice or a medical provider may not be able to submit a claim within the new time periods. In light of such recognition, the Department repealed the former requirement that a provider or claimant show that compliance was impossible in order to file a claim outside of the time requirements, and replaced it with a more flexible "reasonableness" standard that allows additional time for notice or submission of a claim if reasonable justification is provided. These rules will discourage abusive claims practices and permit insurers to verify claims in a timelier manner while also providing adequate protection for injured persons consistent with the no-fault law. By reducing abusive behavior, insurance costs can be reduced, resulting in lower auto insurance costs for all New York motor vehicle insurance policyholders.

The regulation was also amended to reflect the transfer of the no-fault conciliation function from the Insurance Department to an organization designated by the Superintendent. By this amendment of the conciliation procedures, rather than diminishing its role in the process, the Department strengthened its regulatory function with respect to compliance with the no-fault insurance statutes. The Department will continue to monitor conciliation activity, and will identify potential problems by analyzing trends via reports to be generated regularly by the designated organization on all aspects of the conciliation function, such as (but not limited to), provider overcharges, dilatory claims handling by insurers and overutilization of the arbitration system

by claimants' representatives. Staff resources will be freed from the functions of file processing and will be in a position to focus on insurer compliance and reduction of the systemic costs of the no-fault insurance program, which should ultimately lead to cost savings to the state's automobile insurance consumers.

Prior to the effective date of this regulation (September 1, 2001), a lawsuit was filed in the New York State Supreme Court seeking a stay of enforcement of the revised regulation. Ultimately, the new Regulation 68 became effective as of April 5, 2002.

In 2003, the Department adopted consolidated amendments to subparts 65-3 (Regulation 65-C) and 65-4 (Regulation 65-D) (INS-31-02-00004-A and 31-02-00005-A, State Register of February 5, 2003) to update certain references in accordance with statutory amendments. Recognizing that disputes would occur involving the responsibility for payment of no-fault benefits, the Legislature included in Section 5106 of the Insurance Law the authority for the Superintendent of Insurance to promulgate or approve simplified arbitration procedures in order to expedite the payment of those benefits. Pursuant to that authority, the Department has implemented a financial assessment system in Regulation 68, which provides that insurers bear the operating costs of the arbitration system. Further pursuant to its statutory authority, the Department has revised the financial allocation process so that arbitrators may apportion costs to applicants in those cases where applicants have submitted frivolous claims without any factual or legal merit.

The amendment to Regulation 68-C updated provisions relating to Personal Injury Protection Benefits (PIP) in conformance with changes to requirements regarding forms to be used by insureds, claimants and providers. The amendment to Regulation 68-D revises the rules and requirements applicable to the arbitration of no-fault claims. It is intended to make the system more efficient for all participants.

In 2004, the Department adopted amendments to subpart 65-4 (Regulation 65-D) (INS-43-03-00003-A and 43-03-00005-A, State Register of February 4, 2004) to correct an erroneous cross reference and insert a requirement that was inadvertently not included in the previously revised regulation: the long-standing administrative procedure that the designated administrator of the No-Fault administration system will consult with the Insurance Department before making final determinations on requests to recuse an arbitrator for conflict of interest. The rule also provides that determinations shall be in writing and in a format approved by the Department.

Also in 2004, the Department adopted an amendment to subpart 65-3 (Regulation 65-C) (INS-08-04-00006-A, State Register of May 19, 2004) to conform the fraud warning statement contained in no-fault claim forms with the statutory language as contained in Regulation 95; amend any incorrect references and typographical errors; and present the forms in a more easily readable format.

In 2005, the Department adopted, on an emergency basis, amendments to subparts 65-3 (Regulation 65-C) and 65-4 (Regulation 65-D) (INS-42-05-00016-E and 42-05-00017-A, State Register of October 19, 2005) to conform the regulations to Chapter 452 of the Laws of 2005. The legislation codifies the rules contained within Insurance Department Regulation No. 68 that are applicable when multiple insurers may be responsible to the claimant for the processing of the claim for first party benefits. It also enhances the current arbitration procedures to include an expedited eligibility hearing option, when required, to designate the insurer for first party benefits.

The Department's June 2005 Regulatory Agenda (published in the State Register of June 29, 2005) noted the Department's intent to amend Regulation 68 to revise No-fault endorsements to clarify that insurers can perform peer reviews and medical examinations using licensed health practitioners, e.g., neurologist, acupuncturist, to revise requirements for insurer claim practices to assure that peer reviews and medical

examinations are performed by providers in the same discipline as the treating provider, e.g. neurologist reviews neurologist, acupuncturist reviews acupuncturist, and to revise insurer billing for the use of the No-fault arbitration system to quarterly and to permit an interest penalty to be imposed on insurers that do not pay their assessment timely.

- INS-45-00-00012-A (State Register of November 7, 2001) Amendment of Part 20 (Regulations 9, 18 and 29) (Brokers and Agents - General) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 1109, 2103, 2104, 2109, 2112, 2119, 2120 and 2121.

Insurance Law Sections 2119 and 2120 require that an agent/broker keep records which reasonably demonstrate moneys collected from insureds and that those records demonstrate the portion of those funds that are held on behalf of insurance companies that represent net premiums (premiums paid less commissions earned.) Section 2121 acknowledges that a broker who traditionally represents the insured will, for the collection of premium, be an agent of the insurer who delivers a contract.

This amendment underscores the requirement that insureds payments to Insurance Department licensees must be clearly identified in the agent's or broker's records and that those premiums, when so identified, will be deemed paid to the insurer for the protection of the insured. The amendment clarified what records are necessary in order to keep the regulated parties in compliance with the law. This allows the licensee, the company and the consumer to readily resolve questions and complaints without regulatory intervention.

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-48-00-00005-A (State Register of November 21, 2001) Adoption of Part 420 (Regulation 169) (Privacy of Consumer Financial and Health Information) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 308, 1505, 1608, 1712, 3217 and article 24.

Title V of the Gramm-Leach-Bliley Act ("GLBA"), enacted into law by Congress as P.L. 106-102, required all "financial institutions" (including persons engaged in the insurance business) to comply with the privacy requirements contained therein. Pursuant to Section 505, Title V and regulations prescribed thereunder "shall be enforced... by the applicable State insurance authority. . ." Failure by a state to establish rules for privacy of consumer and customer financial information precludes the state from overriding the consumer protection regulations prescribed by a Federal banking agency under Section 45(a) of the Federal Deposit Insurance Act.

Section 501 of GLBA states that it "is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customer's nonpublic personal information." The GLBA requires financial institutions to comply with certain obligations regarding disclosure of nonpublic personal information. State insurance authorities retain primary responsibility to regulate the activities of persons engaging in the business of insurance.

The regulation assures that individual consumers and customers will have an opportunity to prevent unwarranted disclosure of non-public personal financial and health information. Absent this regulation, licensees of the Department would remain subject to the provisions of GLBA, but they would not have sufficient guidance to protect them from litigation challenging their attempts at compliance. In addition, consumers would not be adequately protected because the Department would be unable to take action against licensees based upon violations of GLBA's provisions.

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.

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 2001, and which are subject to the cited SAPA section 207 five-year review of rules.

During calendar year 2001, OMRDD adopted four rules. These four rule makings were identified and described as follows at the time the respective notices were first published in the *State Register*:

1. MRD-03-01-00004 (*State Register* of 1/17/01). Amendments to 14 NYCRR sections 635-10.5 (HCBS Waiver Services), 671.7 (HCBS Waiver Community Residential Habilitation Services), 679.6 (Clinic Treatment Facilities), 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, 2001) 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.

2. MRD-07-00-00016 (*State Register* of 2/16/00). Amendments to 14 NYCRR subdivisions 635-10.4(d) and 635-10.5(d): Current service delivery and reimbursement standards applicable to the home and community-based services (HCBS) waiver service known as supported employment. The amendments combine two levels of supported employment services into one, and provide a reimbursement system utilizing a daily price based on regional costs. The sections, as amended, continue to reflect delivery and reimbursement of supported employment services provided under the auspices of OMRDD and must therefore be maintained, without modification.

3. MRD-24-01-00015 (*State Register* of 6/13/01). Amendments to 14 NYCRR subpart 635.10 and subdivision 635-10.5(d): Revision of reimbursement standards applicable to home and community-based services (HCBS) waiver services known as supported employment services. The amendments revise the reimbursement methodology for supported employment services to reflect current reimbursement practice. They are essentially superseded by the rule making summarized in number 4 below which contains substantially the same reimbursement provisions but with a different effective date.

4. MRD-42-01-00003 (*State Register* of 10/17/01). Amendments to 14 NYCRR subdivision 635-10.5(d): Amendments to 14 NYCRR subpart 635.10 and subdivision 635-10.5(d): Revision of reimbursement standards applicable to home and community-based services (HCBS) waiver services known as supported employment services. The amendments revise the reimbursement methodology for supported employment services to reflect current reimbursement practice. As stated above, this rule making readopts the reimbursement provisions (with some minor revisions) which were previously adopted by the rule summarized in number 3 above. The different effective date was made necessary by the need to conduct provider training which was delayed due to the tragic events of September 11, 2001. This rule is not duplicative.

tive of number 3 above, and the reimbursement provisions remain current and need to be maintained without modification.

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 2001 rule makings beginning January 4, 2006.

This notice was prepared and submitted by: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Counsel, Office of Mental Retardation and Developmental Disabilities, 44 Holland Avenue, Albany, New York 12229, Tel. (518) 474-1830, December 20, 2005.

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

Power Authority of the State of New York

Please be advised that, following a review of actions taken by the Power Authority of the State of New York (the "Authority") under State Administrative Procedure Act ("SAPA") in the year 2001, it has been determined that no rules were enacted during 2001 that are subject to the "five year review" requirements of SAPA §207. Therefore, the Authority will not be submitting a list of rules subject to the five-year review for publication in the New York *State Register*.

Public Service Commission

Pursuant to Section 207 of the State Administrative Procedure Act, Review of Existing Rules, notice is hereby provided of the following rules, which the Public Service Commission wishes to continue without modification. Comments are welcome on proposed continuation of the rules. Five copies of comments should be sent to: Jaclyn A. Brillling, Secretary, Public Service Commission, Three Empire State Plaza, Albany, New York 12223-1350 no later than 45 days from the date of this publication. Information about the rule may be obtained from: Maureen E. Farley, Assistant Counsel, Three Empire State Plaza, Albany, New York 12223-1350; (518) 474-1634.

1. Part 255

a. Description of rule:

The rule added several definitions to the Gas Safety rules, including: "abnormal operating condition", "evaluation", "qualified", and "covered tasks". The rule also added a new subsection entitled, "Operator Qualifications", which prescribes minimum requirements for individuals performing certain tasks on a pipeline facility.

b. Statutory authority:

PSL Sections 4(1), 65(1) and 66 (1).

c. No hearings or public meetings are scheduled.

d. The rule is in effect and will continue.

e. Need for and legal basis of rule:

The rule was adopted to conform Part 255 with federal requirements at 49 CFR Part 192, Transportation of Natural Gas, to promote gas pipeline safety. The legal basis of the rule is PSL Sections 4(1), 65(1) and 66 (1).

2. Part 753

a. Description of rule:

This rule added definitions of: "enforcement proceeding", "field citation", "notice of probable violation", "powered

equipment", "respondent", and "warning letter". The rule included procedures for emergency excavations and added a new subpart: 753-6 Enforcement Procedures.

b. Statutory authority: PSL Section 119-b, General Business Law Article 36.

c. No hearings or public meetings are scheduled.

d. The rule is in effect and will continue.

e. Need for and legal basis of rule:

The rule is necessary for continued gas pipeline safety. The legal basis of the rule is PSL Section 119-b and General Business Law, Article 36.

3. Part 93

a. Description of rule:

The rule allowed any energy service company or competitive meter service provider, subject to the Commission's consumer protection and oversight requirements, or any non-residential customer that qualifies for the host utility's mandatory time of use rates, to apply for approval of an electric meter type intended for use in New York State.

b. Statutory authority: PSL Section 67(1) and (4),

c. No hearings or public meetings are scheduled.

d. The rule is in effect and will continue.

e. Need for and legal basis of rule:

The rule is needed to continue allowing competitive companies to create and seek approval of electric meters. Competition will encourage innovation and creativity. The legal basis of the rule is PSL Section 67(1) and (4).

4. Part 3

a. Description of rule:

The rule added Section 3.5(g)(4) to the Commission's Rules of Procedure to allow parties to a proceeding to agree to service of documents electronically.

b. Statutory authority: PSL Sections 4(1) and 20(1).

c. No hearings or public meetings are scheduled.

d. The rule is in effect and will continue.

e. Need for and legal basis of rule:

The rule was adopted to allow parties to serve each other by electronic mail if they consent. The rule has saved time and money for parties to Commission proceedings. The savings and efficiency are beneficial and should continue. The legal basis of the rule is PSL Sections 4(1) and 20(1).

Board of Real Property Services

The following rule adoptions by the State Board of Real Property Services during 2001 will be reviewed during 2006 pursuant to SAP A 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 2006 prior to their submission to the State Board of Real Property Services for formal action.

Part 186 - State Equalization rates, Ratios and Adjustments - Procedures for Market Value Surveys conducted to establish equalization products- RPS-08-0 1-00004, effective May 9, 2001. Statutory basis - Real Property Tax Law (RPTL), sections 202(1)(l) and 1202.

Part 197 - Special Franchise Assessments - Reports by Special Franchise Owners and Review of Complaints - RPS-43-01-00007, effective January 31, 2001. Statutory basis - RPTL, sections 202(1)(l), 600, 604 and 612.

Part 201 - State Assistance for the Maintenance of a System of Improved Real Property Tax Administration - Payment of Maintenance Aid - RPS-51-01-00008, effective December 19, 2001. Statutory basis - RPTL sections 202(1)(l) and 1573.

To obtain information or submit written comments regarding this review, contact James J. Q'Keefe, 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 30, 2006.

Department of State

As required by section 207 of the State Administrative Procedure Act (SAPA), the following is a list of rules which were adopted by the Department of State in calendar year 2001 which must be reviewed in calendar year 2006. Pursuant to SAPA section 207(5), the list does not include rules which were adopted as consensus rules, or rules which have been repealed. Public comment on the continuation or modification of these rules is invited and will be accepted until March 1, 2006. Comments may be directed to: Nathan A. Hamm, Office of Counsel, The Department of State, 41 State Street, Albany, New York 12231.

(1) DOS-46-00-00001 Employee Identification Cards

Repealed section 195.11(a)(1) and added new section 195.11(a)(1) to Title 19 NYCRR to prescribe a new size and content for employee identification cards issued by licensed security and fire alarm installers

Analysis of the need for the rule: Section 69-m(1) of the General Business Law provides that a licensed security or fire alarm installer shall issue identification cards to employees who assist with the installation, servicing, or maintenance of alarm systems. Section 69-m(1) further provides that the identification card shall be in a form prescribed by the Secretary of State. The identification card required prior to the adoption of this rule was 2 inches by 3¼ inches with prescribed information printed on both sides of the card. Industry representatives indicated that the prescribed size of the card was not a standard size and that this made the card more expensive to produce than a card of standard size. These representatives also stated that the cost of producing the card would be reduced if information were not required to be printed on both of its sides. Consequently, at the recommendation of the Department of State's Security and Fire Alarm Advisory Committee, the Department adopted this rule, which prescribed a standard size card of 3⅝ inches by 2⅛ inches printed on one side only.

Legal basis for the rule: General Business Law, sections 69-m(1) and 69-n(5)

(2) DOS-46-00-00002 Maximum Experience Credit for Review Appraisals

Amended section 1102.4(c) of Title 19 NYCRR to provide that experience credit for review appraisals would not exceed 25 percent of the total experience required for licensing or certification of real estate appraisers

Analysis of the need for the rule: Prior to adoption of this rule, 19 NYCRR section 1102.4(c) provided that a review appraisal would be equivalent in terms of appraisal experience to 25 percent of the appraisal experience gained by preparing an appraisal report. Since performance of a review appraisal does not include performing the research and field work that are the basis for the reviewed appraisal report, this new rule as adopted limited the total experience that could be claimed by an applicant for review appraisal to no more than 25 percent of the total number of hours required for licensing or certification. This rule was intended to ensure that applicants have sufficient experience preparing appraisal reports.

Legal basis for the rule: Executive Law, section 160-d(1)(a)

(3) DOS-46-00-00016 Hearing Aids

Repealed Part 191 and added a new Part 192 to Title 19 NYCRR concerning registration and regulation of hearing aid dispensers and businesses engaged in dispensing hearing aids

Analysis of the need for the rule: Chapter 599 of the Laws of 1998, as amended by Chapter 133 of the Laws of 1999, repealed existing Article 37-A of the General Business Law and replaced it with a new Article 37-A entitled "Registration of Hearing Aid Dispensers." Chapter 301 of the Laws of 2000 made further technical amendments to Article 37-A. Adoption of a new Part 192 to Title 19 NYCRR was necessary to meet the requirement of General Business Law section 803 that the Secretary of State promulgate regulations necessary to effect the purposes of Article 37-A and to ensure the enforcement of its provisions.

Legal basis for the rule: General Business Law, section 803

(4) DOS-21-01-00003 State Cemetery Vandalism Restoration and Administration Fund

Amended section 200.11 of Title 19 NYCRR to establish procedures for public cemetery corporations to obtain monies from the State Cemetery Vandalism Restoration, Monument Repair or Removal, and Administration Fund to repair or remove monuments that create a dangerous condition

Analysis of the need for the rule: Section 1507(h) of the Not-for-Profit Corporation Law was amended by Chapter 380 of the Laws of 2000 to authorize payments from the State Cemetery Vandalism Restoration, Monument Repair or Removal, and Administration Fund to reimburse public cemetery corporations for the cost of repairing or removing monuments not owned by the corporation which create a dangerous condition. Not-for-Profit Corporation Law section 1504(h)(7) contains a requirement that the State Cemetery Board promulgate rules defining standards for maintenance of cemeteries as well as describing what type of out of repair or dilapidated monuments or other markers would qualify for payment for repair or removal by cemeteries.

Legal basis for the rule: Not-for-Profit Corporation Law, section 1504(c)(1)

(5) DOS-27-01-00004 Continuing Education for Real Estate Brokers and Salespersons

Amended section 177.8 of Title 19 NYCRR to prescribe attendance requirements for courses presented in a classroom setting and for courses that are computer based

Analysis of the need for the rule: Section 441(c)(3) of the Real Property Law provides that the Secretary of State shall promulgate rules establishing the method, content, setting, and supervision requirements of continuing education courses for real estate brokers and salespersons. This rule provides that provides that no student shall receive credit for any course presented in a classroom setting if the student is absent from the classroom for more than 10% of the time prescribed for the course. It also provides that a student must complete 100% of any computer based course. The rule thereby established a prescribed method, setting, and supervision requirement for the presentation of continuing education courses to real estate brokers and salespersons.

Legal basis for the rule: Real Property Law, section 441(3)(c)

(6) DOS-27-01-00005 Bail Enforcement Agents and their Employees

Amended Part 170 and section 172.3 of Title 19 NYCRR to provide for the licensing of bail enforcement agents

Analysis of the need for the rule: Chapter 562 of the Laws of 2000 provided for the licensing of bail enforcement agents. Section 13 of Chapter 562 authorized the Secretary of State to promulgate rules necessary to implement the provisions of Chapter 562. This rule merely implemented the nondiscretionary provisions of Chapter 562.

Legal basis for the rule: Section 13 of Chapter 562 of the Laws of 2000

(7) DOS-31-01-00001 Coastal Policies for Long Island Sound

Amended Part 600 of Title 19 NYCRR to implement the Long Island Sound Coastal Management Program

Analysis of the need for the rule: This rule was adopted to establish policies to which State agencies must adhere when they certify consistency of actions which are intended to be taken in the coastal area of

Long Island with the coastal policies found in Article 42 of the Executive Law. Among the matters concerning the Long Island Sound coastal area addressed by the rule are: overall development patterns, historical resources, visual quality and scenic resources, erosion and flood hazards, water quality and supply, ecosystem issues, air quality, solid waste and hazardous wastes, public access and recreation, water-dependent uses, living aquatic resources, agricultural lands, and energy and mineral resources.

Legal basis for the rule: Executive Law, sections 913 and 923

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, with certain exceptions, adopted on or after January 1, 1997, after five years, and, thereafter, at five year intervals. In 2006, the Department must review regulations that were adopted during 2001 to determine whether these regulations should be retained as written or modified. Accordingly, the Department intends to review the following regulations during 2006, 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 21, 2006.

1. 20 NYCRR Part 2402 (Taxpayer Record Retention Formats) Filed May 22, 2001; published June 6, 2001; effective May 22, 2001, and applicable to the retention of taxpayer records on and after June 1, 2001 (emergency adoption). Filed July 24, 2001; published/effective August 8, 2001 (permanent adoption). Need: The Department's Procedural Regulations were amended to add a new Part 2402 to ensure timely compliance with the record retention and electronic record-keeping provisions of the state Electronic Signatures and Records Act (State Technology Law, section 301 *et seq.*) and the federal Electronic Signatures in Global and National Commerce Act (15 USCS, section 7001 *et seq.*). Part 2402 provides for the voluntary use of electronic records by taxpayers and prescribes general standards applicable to the retention of electronic records that ensure that taxpayers who exercise this option are complying with their responsibilities under the Tax Law and under other applicable laws that are administered by the Commissioner. Conforming amendments were also made to sections 39.1, 51.2(f), 54.2, 56.1, 61.3, 68.4(e), 75.5(c), 158.3, 158.4, 267.3, 413.4, 417.1, 417.2(e), 418.1, 483.1, 483.5, 533.2, 538.4, and 542.1 of the regulations. Part 2402 is currently being reviewed and updated to take in account statutory changes made by Chapter 437 of the Laws of 2004. Legal Basis: Tax Law section 171, subds. First and Fourteenth.

(TAF-23-01-00043-A)

2. 20 NYCRR Part 530 (Tax Rates) Filed June 12, 2001; published June 27, 2001; effective December 1, 2001. Need: This regulation was amended to repeal the tax rates and bracket schedules which indicated the amount of sales tax to be collected for various amounts of sales prices and tax rates, and replace them with standard methodology for rounding the amount of sales tax to be collected to the nearest penny. Legal Basis: Tax Law sections 171, subd. First; 1132(b); 1142(1) and (8); and 1250 (not subdivided).

(TAF-17-01-00002-A)

3. 20 NYCRR Section 528.12 (The flags of the United States of America and the State of New York) Filed August 14, 2001; published August 29, 2001; effective September 1, 2001. Need: This regulation was amended to update the definition of the term "flag" and, accordingly, to exempt from State and local sales and use taxes flags that are made from materials in addition to cloth and those accessories that are used solely for the display of the flag and are sold with the flag for a

single charge. Legal Basis: Tax Law sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided).

(TAF-26-01-00017-A)

Any questions concerning the items listed in this agenda, or comments regarding the continuation of the regulations being reviewed should be referred to: John W. Bartlett, 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: John_Bartlett@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 January 5, 2005, OTDA published in the State Register with its regulatory agenda a list of regulations that OTDA adopted in 2001. 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 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.

The following list represents those regulations that were adopted by OTDA in 2002 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 February 20, 2006.

1. Section 350.4(a) and (b) - describes the circumstances when a person who is no longer eligible for Family Assistance because of the durational limits must apply for Safety Net Assistance in order to be eligible for such assistance. Filed March 22, 2002; effective April 10, 2002. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f) 131(1) and 355(3). Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning the administration of the State's public assistance programs.

2. Section 352.7(o) - describes the circumstances under which a social services district may remove a public assistance recipient to another state or country. Filed June 14, 2002; effective July 3, 2002. Legal basis: Social Services Law sections 23(3)(d), 34(3)(f) and 121. Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning the removal of a public assistance recipient to another state or country.

3. Part 393 - conforms the regulations concerning the Home Energy Assistance Program with current policies and procedures of the Office of Temporary and Disability Assistance. Filed August 19, 2002; effective September 4, 2002. 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 the Home Energy Assistance Program.

4. Part 373 - implements federal regulations concerning operation of the refugee cash assistance program and the refugee medical assistance program. Filed September 24, 2002; effective October 9, 2002. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f) 358(3) and 358(4). Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning refugee cash assistance and refugee medical assistance.

5. Section 351.2 - implement federal requirements concerning the establishment of domestic violence service plans and review of domestic violence waivers. Filed September 30, 2002; effective October 16, 2002. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 131-u and 349-a. Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning procedures to insure the protection of victims of domestic violence.

6. Section 352.31(b) - deletes an obsolete regulation concerning the use of income tax forms to verify the amount of contributions that are made to a public assistance applicant or recipient. Filed October 1, 2002; effective October 16, 2002. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 131(1) and 355(3). Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning the provision of public assistance.

7. Section 351.24 - permits social services districts to require public assistance recipients to report changes in income or household circumstances on something other than a quarterly basis. Filed October 8, 2002; effective October 23, 2002. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 131(1), 131-t and 355(3). Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning periodic reporting requirements.

8. Section 347.25 - implements a stipulation that requires the Office of Temporary and Disability Assistance to publish regulations on the conduct of desk reviews. The desk reviews involve an examination of public assistance and child support enforcement case records that will result in a written determination to the requestor of how the collections were distributed. Filed December 5, 2002; effective December 24, 2002. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f) and 111-a. Those sections authorize the Office of Temporary and Disability Assistance to promulgate regulations concerning child support.

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