

RULE REVIEW

Department of Agriculture and Markets

Pursuant to Section 207 of the State Administrative Procedure Act, notice is hereby provided of the following rules which the Department of Agriculture and Markets intends to review in 2008. Public comment on the continuation or modification of these regulations will be accepted until April 1, 2008. All section and Part references are to Title 1 of the New York Code of Rules and Regulations. Sections 139.2 & 139.3

Control of the Asian Long Horned Beetle.

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

The continuation of this regulation is necessary to preserve the Asian Long Horned Beetle quarantine in certain areas of Brooklyn, Queens and Manhattan, New York and to maintain the current list of regulated host material. The quarantine area has been repeatedly expanded in an effort to control the spread of the beetle, most recently in 2007. The rule added four new host materials and deleted eight hosts based on USDA tests. The movement of host materials is regulated as part of the Department's control efforts.

Section 221

Method of sale, delicatessen products

Statutory authority: Agriculture and Markets Law Sections 16(1), 179(2), and 189.

The continuation of this regulation is necessary to maintain the smaller price label size for delicatessen products. The regulation dictates the size of the information required to be posted for delicatessen products and commodities in bulk. The smaller size allows groceries and delicatessens with limited space to post all the required information and promotes the objective of adequately informing consumers of the price of these products offered for retail sale.

Part 45

Avian Influenza

Statutory authority: Agriculture and Markets Law sections 16 and 72.

The continuation of this regulation is necessary to maintain requirements for the movement of live poultry. Although the definition of a poultry distributor was later deleted, the restriction on movement of live poultry from a poultry market is still in effect. The restriction is necessary to help prevent the spread of avian influenza through the live poultry markets in the New York City metropolitan area.

Comments should be addressed to:

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Banking Department

Review of Existing Rules — 2008

Pursuant to Section 207 of the State Administrative Procedure Act, Review of Existing Rules, notice is hereby given of the following rules which the Banking Department will be reviewing this year to determine whether they should be continued or modified. These rules were adopted in 2003.

Adoption of new Part 306 of the Superintendent's Regulations, 3 NYCRR (Corporate Governance Vacancies on the Board of Directors)

- a. Description of rule: Specifies the maximum number of vacancies on the board of directors of a bank, trust company, stock-form savings bank and stock-form savings and loan association that may be left unfilled.
- b. Legal basis for the rule: Banking Law Section 7005(1)(b).
- c. Need for the rule: Implements legislation providing greater flexibility for financial institutions to leave vacant directorships unfilled until the next shareholders' meeting in appropriate circumstances.

Adoption of new Part 307 of the Superintendent's Regulations, 3 NYCRR (Corporate Governance Actions Permitted to be Taken by Unanimous Written Consent of the Board of Directors)

- a. Description of rule: Lists the actions that can be taken by unanimous written consent of the board of directors of a bank, trust company, safe deposit company, investment company, mutual trust investment company, stock-form savings bank or stock-form savings and loan association without a meeting.
- b. Legal basis for the rule: Banking Law Section 7008(3).
- c. Need for the rule: Implements legislation enabling boards of directors of financial institutions to act by unanimous written consent without a meeting in appropriate circumstances.

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:

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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

years 2003 and 1998 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.

A. CALENDAR YEAR 2003

OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

Section 100.2(x) – Homeless Children and Youth.

Description of Rule: The rule codifies the process for the enrollment and registration of homeless children in New York State public schools. The rule defines the terms and criteria used to designate and qualify homeless children and prescribes the steps to be taken during the enrollment procedures.

Need for Rule: The rule is needed to conform the Commissioner's Regulations to the amendments to Subtitle B of Title VII of the federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.) that were enacted pursuant to the federal No Child Left Behind Act of 2001 (NCLB) [Pub.L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of federal funds. The State Education Department anticipates amending the regulations during the 2008 calendar year to incorporate a new definition for unaccompanied youth.

Legal Basis for Rule: Education Law §§101, 207, 215, 305(1) and (2), 3202(1) and (8), 3205(1), 3209(7) and 3713(1) and (2).

Part 154 – Students With Limited English Proficiency.

Description of Rule: The rule establishes criteria for the identification and assessment of students with limited English proficiency (LEP) through use of, respectively, the Language Assessment Battery-Revised test and the New York State English as a Second Language Test; establishment of curriculum and reporting requirements for such students; and updates of provisions in the regulations concerning such students.

Need for Rule: The rule is necessary to conform the Commissioner's Regulations, relating to students with limited English proficiency, to the federal No Child Left Behind Act of 2001 (NCLB), which requires that the English proficiency of all LEP students be measured annually as part of the school accountability provisions of the Act. The U.S. Department of Education has approved the use of the new New York State English as a Second Language Achievement Test (NYSESLAT) as the required measure for LEP students. In addition to amending the Commissioner's Regulations to reflect use of the NYSESLAT, the rule is also necessary to reflect use of the Language Assessment Battery-Revised (LAB-R) for purposes of initial identification of LEP students. The rule requires local educational agencies (LEAs) to assess the LEP student's English language proficiency level for purposes of initial identification and continued eligibility, using the LAB-R and the NYSESLAT, respectively. The results of these tests will be reported in terms of designated levels of proficiency, not percentile scores. Since the current standard (40th percentile) established in the Commissioner's Regulations is not consistent with these designated proficiency levels, it is necessary to amend the regulations to conform to the use of the LAB-R and NYSESLAT and thereby ensure the proper identification and assessment of LEP students, and the reporting of data concerning such students and those students who are entitled to receive bilingual or English as a second language instruction. School districts are required to comply with Part 154 requirements as a condition to their receipt of State Limited English Proficiency Aid and, for a large number of districts, as a condition to their receipt of other State Categorical funds and Title III, Part A LEP and Immigrant funds under The No Child Left Behind Act of 2001.

The rule also provides that the learning standards for English language arts and English as a second language serve as the basis for the ELA and ESL curricula, thus strengthening and improving the bilingual education and freestanding ESL for LEP students. The amendment is geared to secure opportunities for LEP students to achieve the same educational goals and standards as the general school population. The rule is also necessary to update certain references and to delete certain outdated references and provisions.

Legal Basis for Rule: Education Law §§207(not subdivided), 215(not subdivided), 2117(1), 3204(2), (2-a), (3) and (6), 3602(10) and (22), and 3713(1) and (2).

Sections 120.3 and 120.4 – No Child Left Behind Act of 2001 (NCLB - Pub.L. 107-110).

Description of Rule: The rule conforms Part 120 of the Commissioner's Regulations to Federal regulations and guidance implementing the public school choice and supplemental educational services provisions of the NCLB.

Need for Rule: The rule is needed to establish procedures for implementation of the public school choice provisions of NCLB section 1116(b)(1)(E). Pursuant to the NCLB, a Title I LEA that has a school in school improvement, corrective action or restructuring status must provide all students enrolled in such school with the option to transfer to another school, not in such status, served by the LEA. The State is required to comply with the requirements of the NCLB as a condition to its receipt of federal Title I ESEA funds.

Legal Basis for Rule: Education Law §§101, 207, 215, 305(1),(2), and (33), 2802(7) and 3713(1) and (2).

Section 135.4 – Certified Athletic Trainers.

Description of Rule: The rule requires athletic trainers employed by school districts to be certified by New York State pursuant to Article 162 of the Education Law and to more specifically detail the scope of duties and responsibilities of Athletic Trainers employed by school districts.

Need for Rule: The previous regulations did not reflect provisions for New York State Certification of certified athletic trainers pursuant to Article 162 of the Education Law, thereby decreasing the incentive for some trainers to obtain such certification and for schools to hire qualified personnel. The rule allows New York State Education Department oversight and control over the professional practice of certification related to athletic trainers in high schools, and enables school districts to hire the most qualified candidates for athletic trainer positions.

Legal Basis for Rule: Education Law §§101, 207, 305(1) and (2), 803(5), 917(1) and (2), 3204(2), 8351 and 8352.

Section 156.3 – Requirements for school bus drivers, monitors and attendants.

Description of Rule: The rule defines and establishes qualifications for the positions of school bus monitor and attendant; and enacts certain technical amendments relating to school bus drivers.

Need for Rule: The rule is needed to implement the statutory requirements of Chapters 472 and 529 of the Laws of 2002, and to provide cost savings and mandate relief. The rule ensures the safety of the 2.3 million students transported on school buses each day in the State by implementing Chapter 529 of the Laws of 2003, which requires the Commissioner to determine and define the qualifications and training for school bus monitors and attendants. The rule is also necessary to implement Chapter 472 of the Laws of 2003, which requires the Commissioner to promulgate regulations requiring school bus safety training and instruction related to the special needs of students.

The State Education Department anticipates amendments in 2008 to expand upon the training requirements for school bus drivers, monitors and attendants to complete training, at least once a year, on

the special needs of children with a disability, as required by Chapter 181 of the Laws of 2007.

Legal Basis for Rule: Education Law §§207(not subdivided) and 3624 (not subdivided), and Vehicle and Traffic Law §§509-g (1) and 1229-d (3) and Chapters 472, 529 and 600 of the Laws of 2002.

Section 120.5 – No Child Left Behind Act (NCLB) – Persistently Dangerous Schools.

Description of Rule: The rule ensures State and local educational agency (LEA) compliance with the NCLB by establishing criteria relating to the identification and designation of persistently dangerous public schools.

Need for Rule: The rule is needed to ensure State and local educational agency (LEA) compliance with the NCLB by establishing criteria relating to the identification and designation of persistently dangerous public schools. The State and LEA are required to comply with the requirements of the NCLB as a condition to their receipt of federal Title I ESEA funds.

Legal Basis for Rule: Education Law §§101, 207, 215, 305(1), (2) and (33), 2802(7) and 3713(1) and (2).

Section 100.2(m) – No Child Left Behind Act (NCLB) – public reporting requirements.

Description of Rule: The rule establishes criteria and procedures to ensure State and local educational agency compliance with the provisions of the No Child Left Behind Act (NCLB) relating to public reporting requirements.

Need for Rule: The rule is needed to ensure State and local educational agencies (LEAs) compliance with the NCLB in order that they may be eligible to receive federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA). NCLB section 1111(h)(2)(A)(i), (20 USC section 6311[h][2]), requires that, for LEAs receiving assistance under Title I of the ESEA, an annual LEA report card be prepared and disseminated. NCLB section 1111(h)(2)(B) requires the State to ensure that each LEA collects appropriate data and includes in the LEA's annual report card the information described in the annual State report card under NCLB section 1111(h)(1)(C), as applied to the LEA and each school served by the LEA, and certain additional information specified in NCLB section 1111(h)(2)(B)(i) and (ii).

Legal Basis for Rule: Education Law §§101, 207, 215, 305(1) and (2), 309, 1608(6), 1716(6), 2554(24), 2590-e(23), 2590-g(21), 2601-a(7) and 3713(1) and (2).

Section 100.2(p) – No Child Left Behind Act (NCLB) – school/district accountability.

Description of Rule: The rule establishes criteria and procedures to ensure State and local educational agency compliance with the provisions of the NCLB relating to academic standards and school and school district accountability.

Need for Rule: The rule is needed to ensure State and local educational agencies (LEAs) compliance with the NCLB in order that they may be eligible to receive federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA). NCLB section 1111(b)(2) requires each state that receives funds to demonstrate, as part of its State Plan, that the state has developed and is implementing a single, statewide accountability system to ensure that all LEAs, public elementary schools and public high schools make adequate yearly progress (AYP). Each state must implement a set of yearly student academic assessments in specified subject areas that will be used as the primary means of determining the yearly performance of the state and each LEA and school in the state in enabling all children to meet the State's academic achievement standards.

Legal Basis for Rule: Education Law §§101, 207, 215, 305(1), (2) and (20), 309 and 3713(1) and (2).

Section 100.2(bb) – No Child Left Behind Act (NCLB) – school district data reporting requirements.

Description of Rule: The rule establishes criteria and procedures to ensure State and local educational agency compliance with the provisions of the NCLB relating to public reporting requirements.

Need for Rule: The rule is needed to ensure State and local educational agencies (LEAs) compliance with the NCLB in order that they may be eligible to receive federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA). NCLB section 1111(h)(2)(A)(i), (20 USC section 6311[h][2]), requires that, for LEAs receiving assistance under Title I of the ESEA, an annual LEA report card be prepared and disseminated. NCLB section 1111(h)(1), (20 USC section 6311[h][1]), requires a state, that receives assistance under Title I of the ESEA, to prepare and disseminate an annual State report card that includes the information specified in NCLB section 1111(h)(1)(C) and (D). NCLB section 1111(h)(2)(A)(i), (20 USC section 6311[h][2]), requires that, for LEAs receiving assistance under Title I of the ESEA, an annual LEA report card be prepared and disseminated. NCLB section 1111(h)(2)(B) requires the State to ensure that each LEA collects appropriate data and includes in the LEA's annual report card the information described in the annual State report card under NCLB section 1111(h)(1)(C), as applied to the LEA and each school served by the LEA, and certain additional information specified in NCLB section 1111(h)(2)(B)(i) and (ii). The rule prescribes the data reporting requirements necessary for the preparation of the annual State and the annual LEA report cards.

Legal Basis for Rule: Education Law §§101, 207, 215, 305(1) and (2), 309, 1608(6), 1716(6), 2554(24), 2590-e(23), 2590-g(21), 2601-a(7) and 3713(1) and (2).

Section 119.3 – No Child Left Behind Act (NCLB) – charter school reporting requirements.

Description of Rule: The rule establishes criteria and procedures to ensure State and charter school compliance with the provisions of the NCLB relating to public reporting requirements.

Need for Rule: The rule is needed to ensure State and local educational agencies (LEAs), including school districts, BOCES and Charter schools, compliance with the NCLB in order that they may be eligible to receive federal funds under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA). NCLB section 1111(h)(2)(A)(i), (20 USC section 6311[h][2]), requires that, for LEAs receiving assistance under Title I of the ESEA, an annual LEA report card be prepared and disseminated. NCLB section 1111(h)(2)(B) requires the State to ensure that each LEA collects appropriate data and includes in the LEA's annual report card the information described in the annual State report card under NCLB section 1111(h)(1)(C), as applied to the LEA and each school served by the LEA, and certain additional information specified in NCLB section 1111(h)(2)(B)(i) and (ii).

Legal Basis for Rule: Education Law §§207, 2857(2) and 3713(1) and (2).

Section 156.3 – Requirements for school bus monitors and attendants.

Description of Rule: The rule conforms the Commissioner's Regulations to Chapter 159 of the Laws of 2003 by clarifying the training and testing requirements for school bus monitors and attendants.

Need for Rule: The rule is needed to conform the Commissioner's Regulations to the provisions of Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003. Consistent with the statute, section 156.3(c)(4) has been revised to provide that CPR instruction shall be given where such skills are required as part of the individualized education plan prepared for the student, and to further provide that any person employed as a school bus attendant serving pupils with a disabling condition on January 1,

2004 shall comply with VTL section 1229-d(3) by July 1, 2004 and that any person hired after January 1, 2004 shall complete training, instruction and testing prior to assuming their duties as a school bus attendant serving pupils with a disabling condition.

Legal Basis for Rule: Education Law §§207 and 3624 and Vehicle and Traffic Law §1229-d(3) and Chapter 159 of the Laws of 2003.

Section 100.5 – State Assessments and Graduation and Diploma Requirements.

Description of Rule: This rule revised the graduation and diploma requirements that were first adopted by the Board of Regents in July 1999 to help ensure that all students in the State's public schools have the skills, knowledge and understandings they need to succeed in the next century. The proposed changes were necessary to implement revisions to policy adopted by the Board of Regents in October 2003.

Need for Rule: Under the previous regulations, the minimum passing score on five required Regents examinations rises from 55 to 65 for those students who entered grade 9 in the 2001-2002 school year and thereafter. The revised policy continues to allow a passing score of 55-64 on the five required Regents examinations as an option to meet local diploma requirements. This provision will be in effect for all students in high school who entered grade 9 in the school years 2000-2001, 2001-2002, 2002-2003, and 2003-2004, and for those current eighth grade students who enter grade 9 in the 2004-2005 school year. The extension of this option will give students and schools more time to improve achievement while keeping the educational system moving forward toward the goal of higher achievement for all students.

In addition, the amendment extended the existing safety net for all students with disabilities entering grade 9 prior to the 2010-11 school year. Under this safety net, students with disabilities who fail to pass a required Regents examination may meet local diploma requirements by taking and passing the corresponding Regents Competency Test.

The amendment also made technical changes to clarify the requirements relating to mathematics and visual arts and/or music, dance or theatre alternatives. The mathematics requirements need revision and clarification because previous language would not allow students who took Course III after January 2003 to be eligible for a Regents Diploma or Regents Diploma with Advanced Designation. Course I phased out in January 2002, Course II phased out in January 2003, and Course III will phase out in January 2004. The visual arts and/or music, dance, or theatre unit of credit requirement needs to be revised to allow students who entered grade 9 after 2001 with course options, such as participating in a school's major performing group or in an advanced out-of-school art or music activity, which previous classes of students have used to satisfy Regents Diploma requirements.

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

Section 107.2 – Driver Education.

Description of Rule: The rule establishes a certification process by driver education courses of the amount of time a holder of a class DJ or class MJ learner's permit has spent operating a motor vehicle while under the immediate supervision of a driver education teacher.

Need for Rule: The rule is needed to implement Education Law section 806-a, as added by Chapter 644 of the Laws of 2002, by establishing a certification process by driver education courses of the amount of time a holder of a class DJ or class MJ learner's permit has spent operating a motor vehicle while under the immediate supervision of a driver education teacher. The rule provides that the driver education teacher in a driver and traffic safety education course approved by the Commissioner shall, upon the request of his or her student who is the holder of a class DJ or class MJ learner's permit, certify on a form prescribed by the Commissioner of Motor Vehicles, the number of hours such student has spent operating a motor vehicle

while under the immediate supervision of such driver education teacher.

Legal Basis for Rule: Education Law §§207, 305(1) and (2) and 806-a(2) and §13 of Chapter 644 of the Laws of 2002

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:

Johanna Duncan-Poitier

Senior Deputy Commissioner of Education P-16

New York State Education Department

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OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES

Sections 247.1, 247.2, 247.3 and 247.4 – Vocational Rehabilitation Program.

Description of Rule: The rule conforms the Commissioner's Regulations pertaining to the Department's operation of the vocational rehabilitation program to recent amendments to the Federal vocational rehabilitation regulations governing that program, and makes certain technical corrections.

Need for Rule: In recent years, The State Education Department's Office of Vocational and Educational Services for Individuals with Disabilities (VESID) has implemented mediation as part of its due process system. The time to arrange and conduct a mediation session impinges upon the deadline for arranging for an impartial hearing. The previous Commissioner's regulation reflected the 4 day time limit contained in the original, draft Federal regulation. When that regulation was finalized, the Secretary of Education discussed the need to allow time for mediation and also cited the overwhelming, nationwide support for extending that 45 day period. This rule allows VESID to use mediation, when appropriate, while preserving a due process system that is timely, quick and equitable. The rule also restates the criteria for determining eligibility in terms of the standards in the Commissioner's regulations, and eliminates an obsolete reference to the possible review of a hearing officer decision by the deputy commissioner, that is no longer available under Federal law. In addition, the title of section 247.3 is revised to reflect the addition of mediation as a dispute resolution tool.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided) and 1004(1).

Sections 200.1, 200.4, 200.16 and 201.10 – Vocational Rehabilitation Program.

Description of Rule: The rule aligns the State regulations with Federal regulations and technical amendments relating to special education.

Need for Rule: The rule is necessary to align State regulations consistent with Part 300 of the Code of Federal Regulations relating to the definition of mediator and to make technical corrections to the definition of independent educational evaluations, the contents of the individualized education program (IEP) for preschool students and to certain cross citations.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 3214(3), 4403(3), 4404(not subdivided) and 4410(5).

Sections 155.1, 155.2, 155.12, 155.15 and 200.2 – Special Education Space Requirements Plans.

Description of Rule: The rule ensures the provision of appropriate long-term education space for students with disabilities in the least restrictive environment.

Need for Rule: The rule is necessary to ensure the provision of appropriate long-term education space for students with disabilities; to expand opportunities for students with disabilities to be educated in settings with nondisabled students, while reducing the number of classrooms in separate settings where opportunities for interaction with nondisabled peers are limited or nonexistent; and to establish connections between the statutory requirements relating to school district plans of service, special education space requirements plans and approvals of aid for construction, remodeling and new leases from BOCES and school districts.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2), 403-a(1)-(6), 1950(17), 3602(3), (6) and (10), 4402(1) and 4403(3).

Section 200.5(b) – Parental consent for special education services.

Description of Rule: The rule conforms the Commissioner's Regulations to the federal Individuals with Disabilities Education Act and its implementing regulations by repealing the requirement that a school district initiate an impartial hearing when a parent does not provide consent for the initial provision of special education services.

Need for Rule: The rule is necessary to conform the Commissioner's Regulations to the parental consent provisions of section 614(a) of Part B of the Individuals with Disabilities Education Act (IDEA) and 34 CFR 300.505, as clarified in recent guidance received from the U.S. Department of Education. The U.S. Department of Education has informed the State Education Department that Part B of the IDEA requires parental consent for the initial provision of special education and related services and does not permit public agencies to use the IDEA due process hearing procedures to override a parental refusal to consent to the initial provision of special education and related services. The rule is necessary to conform the Commissioner's Regulations to federal requirements by repealing provisions in section 200.5(b)(1)(ii) and (iii) that require, in the event that a parent does not grant consent for an initial provision of special education services within 30 days of a notice of recommendation, a board of education to initiate an impartial hearing to determine if the provision of special education services is warranted without parental consent.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2), and (20), 3713(1) and (2), 4402(1)(b)(2) and (3) and (2)(a), 4403(3) and 4404(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

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OFFICE OF HIGHER EDUCATION

Section 80-5.16 – Requirements for the transitional E certificate for teachers of specific occupational subjects.

Description of Rule: Section 80-5.10 establishes a Modified Temporary License for issuance to schools seeking to employ classroom teachers in demonstrated shortage areas. The regulation specifies degree, testing, and semester hour requirements for

candidates. Modified temporary licenses are valid for one year, and the regulation limits issuance to the 2003-2004 and 2004-2005 school years. Because of the time limit established in regulation, modified temporary licenses are no longer issued.

Need for Rule: Because of the time limit established in regulation, modified temporary licenses are no longer routinely issued. There are, however, candidates waiting processing of applications that were filed during the appropriate time frame, but who need to complete certain requirements. These applicants will be eligible for the Modified Temporary License once those requirements are met. The regulation, therefore, continues to be needed.

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

Sections 3.47 and 3.50 – Authorization of degrees.

Description of Rule: The rule authorizes the conferral in New York State of the degree, Bachelor of Social Work (B.S.W.), for completion of a baccalaureate program in social work.

Need for Rule: Section 3.50 lists the titles and abbreviations of degrees authorized to be conferred in New York State and Section 3.47(c) classifies such degrees. The amendment arose from an institution of higher education's request to confer the Bachelor of Social Work (B.S.W.) degree for completion of a baccalaureate program in social work. The degree is commonly used in other states, and the amendment benefits students in New York by affording them the opportunity to earn a baccalaureate degree that is specific to the field of social work. Since the amendment benefits New York students and was supported by the State Board for Social Work and representatives of professional associations and institutions of higher education, the regulation will be continued without modification.

Legal Basis for Rule: Education Law §§207, 210, 218(1), and 224(4).

Section 52.21(b)(2) – Requirements for teacher education programs.

Description of Rule: This rule relates to accreditation requirements for teacher education programs. The rule extended the date by which registered programs for the preparation of classroom teachers must achieve accreditation. For programs registered on or before September 1, 2001, the deadline was extended from December 31, 2004, to December 31, 2006. Section 52.21(b)(2)(iv)(c) was amended effective July 13, 2006, to provide an exception to the amended deadline for programs awaiting an accreditation decision or who are operating under a corrective action plan.

Need for Rule: Due to administrative demands on the accrediting organizations, some of those teacher preparation programs continue to await accreditation decisions as the amended deadline approaches. Emergency action is expected in December 2007 to amend the exception. The emergency action is needed to ensure the continuing ability of the impacted colleges to offer their teacher education programs and to protect the interests of teacher education students at those institutions.

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

Section 52.21 – Requirements for educational leadership programs.

Description of Rule: The rule improves the preparation of education leaders in New York State by establishing new requirements for college programs that prepare school building leaders, school district leaders, and school district business leaders.

Need for Rule: Section 52.21(c) was amended effective July 13, 2006, to clarify and strengthen requirements relating to the three educational leadership certifications. For registered School Building Leader (SBL) programs only, the 2006 amendment specified that programs must inform applicants, in writing, prior to admission, that the Department requires candidates to have completed three years of

classroom teaching service and/or pupil personnel service experience, in public or non-public schools N-12, to qualify for initial SBL certification.

For registered School District Leader (SDL) programs only, the 2006 amendment specified that programs must inform applicants in writing, prior to admission, that the Department requires candidates to have completed three years of classroom teaching service and/or educational leadership service and/or pupil personnel service experience, in public or non-public schools N-12, to qualify for professional SDL certification.

The 2006 amendment pertaining to SDL certification also specified that candidates serving as school district leaders under "Transitional D" certificates must complete all program requirements to be recommended for professional SDL certification and that programs must support and supervise candidates as they complete the experience needed for professional certification. As a result of the 2006 amendment, the requirements for recommending candidates for SDL professional certification (alternative route) are described under Section 52.21(c)(4)(vii) of the Commissioner's Regulations, in lieu of the repealed subparagraph (viii) of that Part.

For registered SDL and School District Business Leader (SDBL) programs, the 2006 amendment required non-certification SDL and SBL companion programs to meet all requirements for the respective certificates, except for completion of the certification exam. In addition, the 2006 amendment specified that the requirement to achieve a satisfactory level of performance on the New York State assessment for SDL or SDBL certification shall be waived if the candidate completes the registered SDL or SDBL program prior to the availability of the appropriate New York State assessment.

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

Section 80-5.10 – Modified temporary licenses for classroom teaching.

Description of Rule: Section 80-5.10 establishes a Modified Temporary License for issuance to schools seeking to employ classroom teachers in demonstrated shortage areas. The regulation specifies degree, testing, and semester hour requirements for candidates. Modified temporary licenses are valid for one year, and the regulation limits issuance to the 2003-2004 and 2004-2005 school years. Because of the time limit established in regulation, modified temporary licenses are no longer issued.

Need for Rule: Because of the time limit established in regulation, modified temporary licenses are no longer routinely issued. There are, however, candidates waiting processing of applications that were filed during the appropriate time frame, but who need to complete certain requirements. These applicants will be eligible for the Modified Temporary License once those requirements are met. The regulation, therefore, continues to be needed.

Legal Basis for Rule: Education Law §§207, 305(1), (2) and (7), 3004(1) and 3006(1)(b) and (c) and (2)(a)(iii), 3009(1) and 3010.

Section 100.2(dd) – Mentoring Programs at School Districts and BOCES.

Description of Rule: The amendment to Section 100.2(dd) requires that school district and BOCES professional development plans include a mentoring program to both support new classroom teachers holding Initial certificates, and to allow them to meet the mentored experience requirement for the Professional certificate. The regulation establishes required elements of the mentoring programs as well as documentation requirements for districts and BOCES. It is in effect for district professional development plans covering the period February 2, 2004 and thereafter.

Need for Rule: Mentoring continues to be a requirement for second level teacher certification and mentoring continues to be a priority area in the Regents and Education Department's teaching policy.

Legal Basis for Rule: Education Law §§207, 215, 305(1), (2) and (7), 3004(1) and 3604(8).

Sections 80-3.3, 80-3.7, 80-4.3, and 84.4 – Individual Evaluation Requirements and other Requirements for Certification in the Classroom Teaching Service.

Description of Rule: The amendment establishes requirements for certification in classroom teaching titles and extensions through individual evaluation of candidates, in lieu of completion of a teacher education program. It specifies degree, coursework, and experience requirements. The changes apply to applicants for certification after February 1, 2004. A sunset date for individual evaluation of February 1, 2007 for childhood education certificates and February 1, 2009 for other classroom teaching certificates also was included. At the time of adoption, the amendment was critical to the Department's ability to certify a sufficient number of properly qualified candidates to fill vacant teaching positions in the State's public schools.

Need for Rule: As the second sunset date approaches, shortages in certain subjects and geographic regions persist. Therefore, the Department will conduct a review of the individual evaluation provision in the coming year, in order to decide whether it should be reinstated, modified, or replaced by another mechanism to address the State's continuing shortage of qualified and certified teachers.

The amendment also streamlines examination requirements for candidates who already hold a classroom teaching certificate and apply for an additional certificate, and removes a provision that would establish additional requirements for candidates who have not applied for the Initial certificate within two years of completing his or her teacher education program. The changes apply to applicants for certification after February 1, 2004. The requirements were eliminated because they were judged to be unnecessary and their removal would help alleviate the shortage of certified teachers in New York State.

Legal Basis for Rule: Education Law §§207, 305(1), (2) and (7), 3004(1) and 3006(1)(b).

Agency Representative:

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

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Albany, New York 12234
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OFFICE OF THE PROFESSIONS

Sections 29.7(c), 63.6 and 63.8 – Pharmacy and the registration of New York pharmacies and Nonresident Establishments.

Description of Rule: The rule establishes requirements for the registration of nonresident establishments that ship, mail, or deliver prescription drugs and/or devices into New York State, remove unnecessary requirements for faxing a prescription to a New York pharmacy that is under contract to a hospital or nursing home, and delete outdated references to registered stores in the regulations.

Need for Rule: The rule is needed to establish standards for the registration of nonresident establishments that are pharmacies, and wholesalers and manufacturers of prescription drugs and devices, in accordance with section 6808-b of the Education Law, including the requirements that a nonresident establishment must meet in order to be registered in New York; standards and procedures for taking disciplinary action against a nonresident establishment, including revoking or suspending the registration of such establishments; to

define a standard for an exception to the registration requirement for nonresident establishments that engage in isolated transactions in New York; to remove an unnecessary registration requirement for New York pharmacies; to delete unnecessary requirements for faxing a prescription to a pharmacy serving as a vendor of pharmaceutical services, based upon a contractual arrangement with an institution, such as a hospital or nursing home; and to remove outdated requirements for the registration of registered stores, since these stores no longer exist, and the statutory authority to register them was repealed by Chapter 538 of the Laws of 2001.

Legal basis for rule: Education Law §§207, 6504, 6506(1), 6507(2)(a), 6509(9), 6801, 6808(1) and 6808-b(2), (4)(c),(6), (8) and (9).

Section 52.31 and Subpart 79-8 – Professional Licensure in Medical Physics.

Description of Rule: The rule implements the provisions of Article 166 of the Education Law by establishing the education, experience, and examination requirements for licensure as a medical physicist; requirements for granting licensure without examination for prescribed individuals with experience in the field; requirements for granting limited permits and licensure by endorsement, and standards for registered college programs that lead to licensure in this profession.

Need for Rule: Chapter 495 of the Laws of 2001 added a new Article 166 to the Education Law. Article 166 of the Education Law establishes medical physics as a licensed profession in New York State. The rule is needed to implement Article 166 of the Education Law by establishing specific education, experience, and examination requirements that an applicant for licensure in a specialty area of medical physics must meet. In addition, in accordance with the requirements of Article 166 of the Education Law, the rule is needed to set forth standards for registered college programs that lead to licensure in a specialty area of medical physics. As required by statute, the rule is also needed to prescribe requirements, including educational requirements, for licensure as a professional medical physicist without examination under a "grandparenting" provision in the statute, available to individuals who have prescribed experience in the field and file an application for licensure by August 25, 2004.

Legal Basis for Rule: Education Law §§207, 6501, 6504, 6507(1), 2(a), (3)(a), and (4)(a) and (b), 6508(1) and (2), 8701(2) and (3), 8702(1), (2), (3), and (4), 8703, 8705(2), (3), and (4), 8706(3), and 8708(1) and (2).

Sections 61.2 and 61.18 – Residency option pathway for dental licensure.

Description of Rule: The rule establishes requirements for a residency option pathway for dental licensure that would permit a candidate to substitute successful completion of an acceptable dental residency program for the licensure examination in clinical dentistry.

Need for Rule: In accordance with statute, the residency program must include an outcome assessment evaluation of the resident's competence to practice dentistry, acceptable to the State Education Department. The rule is needed to establish requirements for that outcome assessment evaluation. In addition, the rule is needed to establish requirements that define and clarify the residency programs that may be successfully completed by a candidate in lieu of the clinical licensing examination.

Legal Basis for Rule: Education Law §§207, 6506(1), 6507(2)(a), 6601(not subdivided) and 6604(3) and (4).

Sections 52.10, 72.1[c], 72.2[b] and [c], 72.4, and 72.6 - Licensure of Psychologists.

Description of rule: The rule establishes requirements for limited permits to practice psychology, remove outdated registration requirements for educational programs leading to licensure in this profession, delete a provision concerning professional study for

admission to the licensure examination, and repeal the regulatory definition of the practice of psychology which is now established in statute.

Need for rule: The amendment is needed to implement the requirements of Chapter 676 of the Laws of 2002. This Chapter established a new route for obtaining a limited permit to practice psychology in section 7604(1-a) of the Education Law. This route permits an individual who has arranged for an acceptable supervised experience required for licensure to obtain a limited permit to participate in the experience.

Legal Basis for Rule: Sections 207(not subdivided), 210(not subdivided), 6506(1), 6507(2)(a) and (4)(a), 7601-a(1) and (2), 7603(2), and 7604(1) and (1-a) of the Education Law.

Sections 29.7(a), 63.6(b) and 63.8(b) – The practice of pharmacy and the registration of pharmacies.

Description of Rule: The rule establishes requirements relating to the counseling of patients by pharmacists and the maintenance of drug retail price lists by pharmacies.

Need for Rule: The rule requires that a pharmacist or pharmacy intern shall counsel patients in specified cases when prescriptions are delivered to the patient on the premises of the pharmacy. Such requirement is applicable in cases in which a prescription is dispensed for the first time for a new patient of the pharmacy or a prescription for a new medication for an existing patient of the pharmacy and/or a change in the dose, strength, route of administration or directions for use of an existing prescription previously dispensed for an existing patient of the pharmacy. The previous rule required the pharmacist or pharmacy intern to offer counseling to every patient for whom a prescription is delivered on the premises of the pharmacy. The rule is needed to improve efficiency in pharmacy practice, while strengthening the requirement in instances when counseling is appropriate. The rule is also needed to implement the requirements of section 6826 of the Education Law concerning drug retail price lists that must be maintained by pharmacies and made available to any person upon request. The rule is needed to specify the content of the sign that must be posted in the pharmacy advising the public of the retail drug price list and notice requirements for pharmacies that offer to dispense prescription drugs to consumers through an Internet website and/or through mail order.

Legal Basis for Rule: Education Law §§207, 6504, 6506(1), 6507(2)(a), 6509(9), 6801, 6806, 6808-b(2) and (6) and 6826(6).

Sections 61.9 and 61.13 – The practice of the profession of certified dental assisting and the profession of dental hygiene.

Description of Rule: The rule establishes additional dental supportive services that certified dental assistants may perform while under the direct personal supervision of a licensed dentist, and additional services that licensed dental hygienists may perform in the practice of dental hygiene while under the supervision of a licensed dentist as prescribed.

Need for Rule: Education Law section 6608 authorizes the Commissioner of Education to establish in regulation additional dental supportive services that a certified dental assistant may perform in the practice of certified dental assisting. The rule is needed to establish such appropriate additional dental supportive services that may be performed by certified dental assistants. The rule will benefit dental practice in the State by enabling the licensed dentist to use his or her staff more efficiently. The dentist will be able to delegate appropriate dental supportive services to trained staff, under the dentist's direct personal supervision. The State Board for Dentistry recommended that these additional supportive services be added to the scope of practice for certified dental assisting. In accordance with section 6608 of Education Law, all dental supportive services within the scope of practice of certified dental assisting may be performed by registered

dental hygienists while under a dentist's supervision as defined in Regulations of the Commissioner of Education. Therefore, the rule is also needed to include the additional services in the scope of practice of dental hygiene and to establish the appropriate level of supervision for those services. The rule was subsequently modified in 2007.

Legal Basis for Rule: Education Law §§207, 6506(1), 6507(2)(a), 6606(1) and (2) and 6608.

Section 63.7(c)(1) – Mandatory continuing education for licensed pharmacists.

Description of Rule: The rule requires licensed pharmacists to complete, as part of the existing 45-hour continuing education requirement that they must complete in each registration period, at least three hours in the processing and strategies that may be used to reduce medication and/or prescription errors.

Need for Rule: The rule specifies certain necessary areas of continuing education to foster safe pharmacy practice.

Legal Basis for Rule: Education Law §§207, 6502(1), 6504, 6507(2)(a) and 6827(2).

Sections 52.9 and 61.17 – Dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate.

Description of Rule: The rule establishes procedures and education and training requirements for licensed dental hygienists to be certified to administer and monitor local infiltration anesthesia and nitrous oxide analgesia in the practice of dental hygiene under the personal supervision of a licensed dentist and requirements that college programs must meet to be registered by the State Education Department as leading to certification in this field.

Need for Rule: The rule is needed to ensure that licensed dental hygienists receive education and training sufficient to ensure the competent administration and monitoring of local infiltration anesthesia and nitrous oxide analgesia in the practice of dental hygiene. In addition, the rule is needed to establish standards for college programs leading to certification in this field. The amendment establishes specific content requirements for such programs.

Legal Basis for Rule: Education Law §§207, 6506(1), 6507(2)(a), 6605-b(1),(2) and (3) and 6606.

Sections 52.15 and 78.4 – Licensure in Massage Therapy.

Description of Rule: The rule clarifies clock hour requirements for programs leading to licensure in massage therapy and requirements for the endorsement of a license in massage therapy issued by another state, country, or territory.

Need for Rule: The rule is needed to clarify the intent of the Commissioner's regulations. It requires programs leading to licensure in massage therapy to include at least 1,000 clock hours of classroom instruction or the semester equivalent. The previous language of the regulation required the program to include 1,000 hours (50 minutes each) of classroom instruction. This led to confusion because the State Education Department has required programs leading to licensure to include at least 1,000 clock hours of classroom instruction. All such programs have met this requirement. The rule is needed to conform the language of the regulation to existing practice.

Legal Basis for Rule: Education Law §§207, 210, 6506(1) and (6), 6507(2)(a) and (4)(a), 7802 and 7804(2).

Section 68.11 – Mandatory Continuing Education Requirements for Professional Engineers.

Description of Rule: The rule sets forth the continuing education requirements and standards that licensed professional engineers must meet to be registered to practice in New York State and requirements for approval of sponsors of such continuing education.

Need for Rule: The rule is needed to clarify and implement the requirements of section 7211 of the Education Law, as added by Chapter 146 of the Laws of 2002. As required by statute, the rule is also needed to establish continuing education requirements when there

is a lapse in practice, requirements for licensees under conditional registration, and standards for the approval of sponsors of continuing education to licensed professional engineers. In addition, the rule is needed to establish a fee for the review by the State Education Department of sponsors of courses of learning or self-study programs in order to defray the cost of such review.

Legal Basis for Rule: Education Law §§207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1), 7211(1)(a),(b),(c) and (d), (2),(3),(4),(5), and (6) and §2 of Chapter 146 of the Laws of 2002.

Sections 70.3 and 70.6 – The Examination for Licensure as a Certified Public Accountant and Mandatory Continuing Education Requirements for Licensed Certified Public Accountants and Public Accountants.

Description of Rule: The rule establishes standards for the examination required for licensure as a certified public accountant, continuing education requirements that licensed certified public accountants and public accountants must meet to be registered to practice in New York State, and requirements for sponsors of the continuing education.

Need for Rule: The rule conforms the New York State licensing examination requirements to national standards for certified public accountancy, and allows New York State to continue to use the national examination as the licensing examination for certified public accountants.

The rule was modified in 2006. The 2003 rule specified that a candidate would carry conditional credit for a section passed for "18 months from the actual date the candidate took that section of the examination." Given candidates real life experience with late score reporting and difficulty scheduling to sit for exams in certain weeks of each testing window, the rule was modified to allow the candidate to carry credit until the end of the testing window which is 18 months after the candidates first sat for that section of the exam. It was also modified to allow the reporting of numeric scores. As written, with the implementation of computer-based testing in April 2004, scores had been reported on a pass/fail basis.

Legal Basis for Rule: Education Law §§207, 6501, 6502(1), 6504, 6507(2)(a) and (3)(a), 6508(2), 7404(1)(4), 7409(1)(a), (b) and (c) and 7409(2) and (4).

Section 68.12 – Mandatory Continuing Education Requirements for Licensed Land Surveyors.

Description of Rule: The rule sets forth the continuing education requirements and standards that licensed land surveyors must meet to be registered to practice in New York State and requirements for approval of sponsors of such continuing education.

Need for Rule: The rule is needed to clarify and implement the requirements of section 7212 of the Education Law, as added by Chapter 135 of the Laws of 2002 and renumbered and amended by Chapter 410 of the Laws of 2003. As required by statute, the proposed rule is also needed to establish continuing education requirements when there is a lapse in practice, requirements for licensees under conditional registration, and standards for the approval of sponsors of continuing education to licensed land surveyors. In addition, the rule is needed to establish a fee for the review by the State Education Department of sponsors of courses of learning or self-study programs in order to defray the cost of such review.

Legal Basis for Rule: Education Law §§207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1), 7212(1)(a),(b),(c) and (d), (2),(3),(4),(5), and (6) and §1 of Chapter 410 of the Laws of 2003.

Agency Representative:

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

Frank Muñoz

Associate Commissioner

New York State Education Department
Office of the Professions
89 Washington Avenue
West Wing, Second Floor - Education Building
Albany, NY 12234

OFFICE OF CULTURAL EDUCATION

Part 179 – Apportionment of Funds to Educational Broadcast Councils.

Description of Rule: Apportionment of Funds to Educational Broadcast Councils.

Need for Rule: The rule is necessary to prescribe requirements regarding how the annual appropriation for public television is apportioned among New York's nine funded public television stations; to specify the reporting requirements to remain eligible to receive public funding; and to update language from "instructional" services to "educational telecommunications" services to reflect the current practices and trends in public broadcasting in New York State.

Legal Basis for Rule: Education Law §§207(not subdivided) and 236(3), (4) and (5).

Agency Representative:

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

Liz Hood

Director of Educational Television and Public Broadcasting
Office of Educational Television and Public Broadcasting
Room 10A75

Cultural Education Center

Albany, NY 12230

LHOOD@mail.nysed.gov

Sections 185.5 and 185.11 – Local Government Records Management.

Description of Rule: The rule makes necessary changes and additions in order to update Records Retention and Disposition Schedule MU-1 and corrects the name and address of the State Archives to which one can submit requests for records retention and disposition schedules.

Need for Rule: The rule revised Records Retention and Disposition Schedule MU-1, thus providing cities, towns, villages and fire districts with means to dispose of records not listed on the previous schedule, to maintain voluminous records no longer than the records are needed, and to make the schedule easier to understand. In addition, the rule is needed to provide the correct name and address of the State Archives to ensure that requests for copies of records retention and disposition schedules are handled in a timely manner.

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

Agency Representative:

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

Christine Ward

Assistant Commissioner for the State Archives

New York State Education Department

New York State Archives

Room 9A49

Cultural Education Center

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OFFICE OF MANAGEMENT SERVICES

Sections 3.8 and 3.9 – Chief of Staff and Chief Operating Officer of the State Education Department.

Description of Rule: The rule provides for the appointment of a chief of staff; to specify the duties of the chief of staff and the chief

operating officer; and to designate the chief of staff as the deputy commissioner of education as specified in Education Law section 101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

Need for Rule: The rule is needed to conform the Rules of the Board of Regents to changes made in the internal organization of the Department.

Legal Basis for Rule: Education Law §101.

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

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legal@mail.nysed.gov

OFFICE OF STATE REVIEW

Part 279 – State Review of Impartial Hearing Officer Determinations Regarding Services for Students With Disabilities.

Description of Rule: The rule clarifies procedures for practice on State level review of Impartial Hearing Officer determinations for students with disabilities.

Need for Rule: The rule is needed to expedite and otherwise facilitate the processing of petitions for review to State Review Officers.

Legal Basis for Rule: Education Law §§101, 207, 311, 4403(1) and (3), 4404(2) and 4410(13).

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:

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Office of State Review

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B. CALENDAR YEAR 1998

OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

Section 100.12 Instructional Computer Technology Plans.

Description of Rule: the regulation prescribes criteria for school districts to develop instructional computer technology plans, which include provisions for the maintenance and repair of equipment and provisions for related professional development.

Need for Rule: instructional computer technology plans are required for the use of instructional computer technology equipment funded pursuant to section 3602(26-a) of the Education Law, the federal ESEA Title III Technology Literacy Challenge Fund and the federal Telecommunications Act E-Rate Discounts.

Legal Basis for Rule: Education Law sections 207, 3602(26-a) and section 53 of Part A of section 1 of Chapter 436 of the Laws of 1997. Part 151 and 156.7 Universal Pre-Kindergarten Programs

Description of Rule: The regulation establishes program components, staff qualifications, program design, application procedures, transition rules, transportation provisions, and a required competitive process, in order to implement the universal prekindergarten program beginning with the 1998-99 school year.

Need for Rule: The regulation is necessary to comply with section 58 of Part A of section 1 Chapter 436 of the Laws of 1997.

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

155.16 Energy Performance Contracts

Description of Rule: The regulation establishes criteria for the development and approval of energy performance contracts of school districts and BOCES in accordance with Energy Law section 9-103(8) and in consultation with the State Energy Research and Development Authority and enables school districts and BOCES to reduce energy consumption and improve efficiency.

Need for Rule: The regulation is necessary to comply with sections 1 and 78 of Part A of section 1 of Chapter 436 of the Laws of 1997.

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

100.7(i) and 116.4 Alternative High School Equivalency Preparation Programs

Description of Rule: The regulation makes residential facilities operated by the State Office of Children and Family Services eligible to operate approved alternative high school equivalency preparation programs for students at least 16 years of age and under the age of 18. It also permits students in these facilities to take the GED test at the same age as students in local school districts or BOCES. It allows students to be eligible to take the GED test when they are released from these facilities should they be unable or unwilling to return to the public school system. The regulation was amended in 1999 to expand the age range of students and subdivision 100.7 (i) was renumbered as subdivision 100.7 (h).

Need for Rule: the rule ensures equal access for students in facilities operated by the Office of Children and Family Services to participate in programs leading to a high school equivalency diploma.

Legal Basis for Rule: Education Law sections 207, 208, 209 and 3205(1), (2) and (3).

100.13 Operating Standards Aid

Description of Rule: The regulation requires school districts to develop and maintain an Operating Standards Aid plan to assist students to achieve the high learning standards and may use operating standards aid in conjunction with other resources to help students improve. Each plan shall be approved by the board of education by July 31st and a district may incorporate the required elements of such a plan in a comprehensive district educational plan.

Need for Rule: The regulation is necessary to comply with section 92 of Chapter 58 of the Laws of 1998.

Legal Basis for Rule: Education Law sections 207, 3602(38) and section 92 of Chapter 58 of the Laws of 1998.

144.11 Early Grade Class Size

Description of Rule: The regulation sets forth the requirements for awarding grants to provide for a reduction in class size in grades kindergarten, one, two and three as a means of improving student academic performance.

Need for Rule: The regulation is necessary to comply with section 57 of Part A of section 1 of Chapter 436 of the Laws of 1997.

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

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:

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Senior Deputy Commissioner of Education P-16

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OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES

Section 200.1 (gg) – Definition of related services.

Description of Rule: The rule adds "orientation and mobility services" to the definition of related services.

Need for Rule: The rule is needed in order to ensure that the list of related services in regulation is consistent with the related services specified in section 4401 of the Education Law.

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

Section 200.1(oo) – Definition of supplementary aids and services.

Description of Rule: The rule defines "supplementary aids and services" as defined in 34 CFR section 300.28.

Need for Rule: This rule clarifies the definition of "supplementary aids and services," consistent with federal regulations, which must be documented on a student's individualized education program (IEP).

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

Section 200.1(ss) – Definition of transition services.

Description of Rule: The rule adds "related services" to the list of coordinated set of activities for transition services.

Need for Rule: The rule is necessary to comply with Education Law section 4401(9) that includes related services in the definition of transition services.

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

Section 200.4 – Procedures for referral, evaluation, IEP development, placement and review.

Description of Rule: This rule specifies that the IEP include measurable annual goals, short-term objectives and benchmarks to enable the student to be involved in and progress in the general curriculum and meeting each of the student's other educational needs that result from the disability; supplementary aids and services to be provided to the student, or on behalf of the student, specify the student's participation in State or local assessments and participation in regular education programs (or, for preschool students, participation in appropriate activities with age-appropriate nondisabled peers); a statement of the program modifications or supports for school personnel that will be provided for the student to advance toward the annual goals, to be involved in the general curriculum and to participate in extracurricular and other nonacademic activities; for students age 14 and updated annually, a statement of the transition service needs of the student that focuses on the student's courses of study; and a statement of how the student's parents will be regularly informed of their child's progress. This rule also requires that the Committee on Special Education shall, in the development of the IEP, consider special factors including a student's needs relating to behavior, communication, limited English proficiency, instruction in and use of Braille, and assistive technology.

Need for Rule: This rule is necessary to comply with federal regulations regarding the required components of a student's IEP.

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

Section 200.5(a) – Procedural safeguards notice.

Description of Rule: This rule adds a cross citation to section 615 of the Individuals with Disabilities Act (IDEA) relating to the award of attorney's fees in a due process appeal.

Need for Rule: This rule is necessary since IDEA specifies how the amount of attorney's fees are to be based, the prohibition and reduction of attorneys' fees and related costs for certain service; conditions for the exception to the prohibition and reduction of such fees.

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

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

Description of Rule: This rule corrects the cross citation to paragraph (4) of section 200.4 of the Regulations of the Commissioner relating to the procedures for referral, evaluation, IEP development, placement and review.

Need for Rule: This rule is necessary to correct the cross citation in section 200.4 of the Regulations of the Commissioner.

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

Section 200.16(d) – Preschool programs.

Description of Rule: This rule corrects cross citations to section 200.4(c)(2) and (3) of the Regulations of the Commissioner relating to the required components of an IEP for a preschool student with a disability.

Need for Rule: This rule is necessary to correct a cross citation to section 200.4 of the Regulations of the Commissioner.

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

Section 200.2(e) – Impartial hearing officers.

Description of Rule: This rule specifies that the appointment of impartial hearing officers (IHO) must be made on a rotational basis from an alphabetical list of IHOs who are certified by the Commissioner of Education and who are available to service in the district.

Need for Rule: This rule, subsequently amended effective September 1, 2001 and January 10, 2002, is necessary to ensure compliance with federal regulations which requires that impartial hearing officers be selected in a rotational manner.

Legal Basis for Rule: Education Law sections 207 and 4404(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 CULTURAL EDUCATION

3.27 and 3.30 Museums and Historical Societies chartering and registration

Description of Rule: Every Regents-chartered museum and historical society must adopt a collections management policy which conforms to generally accepted professional and ethical standards; collecting must follow the specific purposes of the institution as enumerated in its charter; only those institutions which have collecting as one of the stated purposes in their charter shall hold collections; donors must be given a clear understanding of what will happen to their gifts to the collection; and the use of funds derived from the sale (deaccession) of collections is restricted to acquisition, preservation, protection or care of collections, with certain exceptions if warranted.

Need for Rule: The rule protects collections, the public and chartered institutions by ensuring that artifacts held in trust for the public are gathered, maintained, preserved and made available

according to accepted professional and ethical standards, including standards enumerated by the American Association of Museums, the American Association for State and Local History, and the International Council of Museums. Adoption of a Collection Management Policy means that each institution will collect only as appropriate to its corporate purposes; the public will be informed as to what each institution collects; each institution's trustees and staff will have a framework in which to make informed decisions about adding items to and removing items from the collection; and the temptation is removed to sell collections in order to finance general operations rather than to enhance or protect the collection.

Legal Basis for Rule: Education Law sections 207 and 216.

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:

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(518) 473-3131

dpalmqui@mail.nysed.gov

90.2(a)(9) Library Registration

Description of Rule: To provide minimum standards for equipment that better accommodates rapidly changing developments in new technology.

Need for Rule: The Commissioner of Education has determined that revisions were necessary in the part of the regulation relating to equipment because the current language did not reflect the technological environment in which libraries exist today. The rule eliminated the requirement for a microform reader, as many smaller, rural libraries found this requirement expensive and duplicative. The rule also requires public and association libraries to have the capability to provide telefacsimile transmissions and electronic communications, rather than requiring a specific type of equipment to perform those functions.

Legal Basis for Rule: Education Law sections 207, 215, 254 and 273(1)(f)(5).

90.3 Public Library System Plan of Service

Description of Rule: the rule requires each public library system to include in its plan of service a direct access provision for the total library resources within the system to all individuals residing within the system boundaries, and procedures for modification of its direct access conditions. The plan of service also includes procedures whereby libraries may modify direct access conditions of the system or of individual libraries.

Need for Rule: The rule reaffirms the commitment of no direct charge to an individual for public library services, requires a specific plan from the public library system for providing library services to unserved and underserved areas, helps reduce the burdens on overused libraries, allows flexibility for library systems to respond to local patterns of use and modify free direct access at the public library system level, and provides a procedure for waivers when remedies were needed outside of those listed in the regulation.

Legal Basis for Rule: Education Law sections 207, 254, 255(1), (2) and (3), 272(1)(g) and (h) and 273(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:

Janet M. Welch
State Librarian and Assistant Commissioner for Libraries
New York State Education Department

Office of Cultural Education
 Room 10C34
 Albany, NY 12230
 (518) 474-5930
 Jwelch2@mail.nysed.gov

179.2 Operating Aid to Public Broadcasting Councils

Description of Rule: the rule amended the provision of the Commissioner's Regulations regarding public broadcasting council organization and funding to allow two or more councils to consolidate into one council and to provide for an up to 3 year transition period during which time the newly consolidated council receives the amount of State operational aid the individual councils would have received if they had not consolidated. In 1998, subsection (e) was added to address what would happen if two or more public television stations were to merge.

Need for Rule: the rule eliminates disincentives for the consolidation of public broadcasting councils, and thereby encourages the consolidation of councils, resulting in increased efficiency and cost savings to the State.

Legal Basis for Rule: Education Law sections 207, 263(3) and 263(4).

Agency Representative:

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

Liz Hood
 Director of Educational Television and Public Broadcasting
 Office of Educational Television and Public Broadcasting
 Room 10A75
 Cultural Education Center
 Albany, NY 12230
 LHOOD@mail.nysed.gov

OFFICE OF THE PROFESSIONS

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

Description: These sections of Regents Rules were amended to authorize the conferral of a new degree, Master of Physical Therapy (M.P.T.), for completion of a professionally oriented master's degree program in physical therapy and to conform the abbreviations of three professional pharmacy degrees to current national usage.

Need for Rule: The need for schools to be able to award the M.P.T. degree arose from a request by a university to offer a physical therapy program leading to this degree. The M.P.T. degree benefits students by affording them the opportunity to earn a degree specific to the profession of physical therapy. The amendment to conform the abbreviations of the three professional pharmacy degrees to nationally accepted usage was proposed by the State Board of pharmacy, pharmacy educators, and licensed professionals in New York State.

Legal Basis for Rule: Education Law sections 207, 210, 218(1); 224(4); and 6734(b).

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

Description: This rule sets forth in regulations the existing standards for registered programs leading to licensure in ophthalmic dispensing and certification in the fitting of contact lenses; strengthen the alternative training and experience requirements for applicants who have not completed a registered program in ophthalmic dispensing or its equivalent; and clarify the examination requirements for licensure and certification.

Need for Rule: the rule is needed to strengthen the alternative training and experience requirements for applicants who have not completed a registered program in ophthalmic dispensing by ensuring adherence to a common curriculum which has been determined by a

national body of opticians to be equivalent to the didactic course work provided in registered programs in ophthalmic dispensing. The requirement of on-site supervision by a licensee is needed to ensure the on-site presence of a licensed practitioner when services are provided by an applicant-trainee. Moreover, the provision requiring a ratio of one applicant-trainee to one supervising licensee will ensure that appropriate and adequate supervision and training is provided to the applicant. Finally, limiting renewal of the training permit to a maximum of three years will help to ensure that supervisors provide appropriate learning experiences for an applicant-trainee within a reasonable time period.

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

Section 66.5 - Phase Two Therapeutic Pharmaceutical Agents.

Description: This rule implements requirements relating to the certification of optometrists, to use phase two therapeutic pharmaceutical agents, including clarifying clinical training requirements, examination requirements, reporting requirements and continuing education requirements.

Need for Rule: The regulation is needed to implement section 7101-a of Education Law. The regulation establishes standards for clinical training and the examination necessary for certification, establishes requirements for the reporting of the use of phase two drugs, and establishes requirements for continuing education.

Legal Basis for Rule: Education Law sections 207, 6502(1), 6504, 6507(2)(a)(3)(a) and 4(a), 6508(1) and (2), 7101, 7101-a(1)(f), (3), (4), (7), (9), (9a) and (11); and Ch. 517, L. 1995, sections 3 and 4(b).

Section 67.6 - Ophthalmic Dispensing Continuing Education Requirements.

Description: This rule specifies the manner in which licensed ophthalmic dispensers and those certified to dispense contact lenses shall meet the continuing education requirements specified in Education Law for triennial registration. This regulation includes provisions for exemptions, conditional registrations and other procedures necessary to implement the law.

Need for Rule: The regulation is needed to implement Education Law section 7128 by establishing standards for what constitutes acceptable formal continuing education, educational requirements when there is a lapse in practice, requirements for licensees under conditional registration and standards for the approval of sponsors of continuing education to licensed ophthalmic dispenser.

Legal Basis for Rule: Education Law sections 207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1) and 7128(1) - (6).

Section 52.13, 70.1 and 70.2 - Public Accountancy Education and Licensure Requirements.

Description: This regulation relates to education and licensure requirements in the profession of public accountancy. The purpose of the proposed measure is to set forth in regulations the standards for registered programs leading to licensure in public accountancy that, on or after August 1, 2004, require 150 hours of collegiate study in specified content areas, the requirement that individuals who apply for licensure in public accountancy on or after August 1, 2009 must complete a registered 150-hour program or the equivalent, and the reduction of the experience requirement from two years to one year for applicants who complete a 150-hour registered program in public accountancy or its equivalent.

Need for Rule: The regulation is necessary to strengthen the education requirements for licensure to accommodate licensees' need for core competencies required to practice public accountancy in today's complex business world. Such education will ensure the applicant's balanced educational preparation in content areas of professional accountancy, general business, and liberal arts and

sciences. It will also prepare applicants with such necessary skills as logical thinking, effective writing, ethics, judgment, and quantitative skills. The requirement of one-year experience will suffice an applicant with such preparation for entry into the public accountancy profession.

Legal Basis for Rule: Education Law sections 207, 210, 6501, 6504, 6506(1), 6507(2)(a) and (4)(a), 6508(1) and 7404(1)(2) and (1)(3).

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

Description: This rule establishes fee requirements for the filing of petitions for restoration of professional licenses that have been revoked or surrendered.

Need for Rule: The Board of Regents is authorized to restore a license which has been revoked (Education Law §6511). This rule is necessary to implement the processes by which the Board of Regents considers petitions for the restoration of a professional license that was either revoked or surrendered.

Legal Basis for Rule: Education Law sections 207, 6504, 6506(1) and (10), 6508(4) and 6511.

Section 52.29, 63.1, 63.4 and 63.5 - Pharmacy Education and Licensure Requirements.

Description: These regulations define educational and examination requirements for licensure in the profession of pharmacy. The regulations provide curriculum detail, define what constitutes an acceptable accrediting body, and provide a basis for licensure of pharmacists that graduate from non-accredited programs.

Need for Rule: The rule provides needed clarity since there are no other definitions of an acceptable educational curriculum for pharmacists in New York State. Additionally, the rule is required as a foundation for comparison of foreign non-accredited programs of study.

Legal Basis for Rule: Education Law sections 207, 210, 6501, 6506(6), 6507(2)(a) and (4)(a), 6508(1), 6805(1)(2) and 6806(1).

Agency Representative:

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

Frank Muñoz

Associate Commissioner

New York State Education Department

Office of the Professions

89 Washington Avenue

West Wing, Second Floor - Education Building

Albany, NY 12234

OFFICE OF HIGHER EDUCATION

27-1.1 Higher Education Opportunity Program

Description of Rule: the rule revised the criteria for determining student economic eligibility for the Higher Education Opportunity Program.

Need for Rule: the rule is needed in order to update the criteria for student eligibility by (1) taking into account inflationary conditions and changes in annual income; (2) accounting for New York State and local taxes and regional maintenance costs and (3) assuring consistency across the State-supported postsecondary opportunity programs and the continuing linkage of these eligibility criteria to federally approved needs analysis techniques. The rule also updated the names of government offices and programs referred to in the economic criteria.

Legal Basis for rule: Education Law sections 207 and 6451(1).

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

Description of Rule: the rule eliminated, beginning September 1, 1998, the issuance of the certificate of qualification (CQ) to candidates eligible for provisional teacher certification. The CQ originally provided an additional five years for persons who completed teacher

preparation programs to secure employment, at which time he or she surrendered the CQ for a provisional certificate.

Need for Rule: the CQ is no longer needed because in the early 1990s, provisional teaching certificates became renewable for an additional five years beyond their initial five year issuance period, thereby fulfilling the purpose the CQ once served.

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

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

Description of Rule: the rule eliminated the National Teacher Examination (NTE) Core Battery tests as an option to candidates, for teacher certification in certain specified areas, to satisfy the examination requirement for eligibility for a provisional and/or permanent teaching certificate in certain subjects. The option was eliminated for provisional or permanent certification in the occupational subjects; provisional certification in special education, teaching the deaf and hearing-impaired, the blind and partially sighted, and the speech and hearing handicapped; provisional certification in reading; provisional certification in school media specialist, school media specialist (library) and school media specialist (educational communications); and provisional certification in special subjects: art, business and distributive education (general), dance, home economics (general), health, music, physical education, recreation, speech and technology education. Candidates must instead satisfy the examination requirement by satisfactory performance on the liberal arts and sciences (LAST) portion and the written assessment of teaching skills (ATS-W) portion of the New York State Teacher Certification Examinations (NYSTCE).

Need for Rule: the rule is needed to make uniform the testing requirements for all candidates for teacher certification. With the implementation of the NYSTCE program in 1993, a series of regulatory amendments was begun to require the new NYSTCE exams for all candidates for certification. The amendment completes the process for all teacher certification areas. The NYSTCE program is customized for New York State and the tests align closely with student learning standards that the Board of Regents adopted for kindergarten through twelfth grade students in the State's public schools. The data compiled on candidates taking the NYSTCE tests are made available, with candidates' consent, to institutions that prepare teachers. Institutions use this information to review their teacher education programs and to advise students. The data is also used by the Regents and the State Education Department to formulate teacher education and certification policy. In addition, a uniform testing standard is easier to administer by the Department and would prevent confusion on the part of candidates, and eliminate a significant amount of paperwork and speed the processing of certifications for teachers.

Legal Basis for rule: Education Law sections 207, 305(1), 3004(1) 145-9 Scholarships for Academic Excellence Program

Description of Rule: the rule changed the name of the Merit Scholarship for Academic Excellence program to the Scholarships for Academic Excellence program and corrected a citation to the Education Law relating to the school allocation formula for the scholarship program.

Need for Rule: the rule is necessary to comply with the statutory name of the scholarship program and to provide a correct citation to the Education Law relating to the school allocation formula set forth in statute. Section 83 of Part C of Chapter 58 of the Laws of 1998 amended sections 605-a and 670-b of the Education Law to change the name of the Merit Scholarships for Academic Excellence to the Scholarships for Academic Excellence.

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

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

Description of Rule: the rule replaced the then existing Teacher Education, Certification and Practice Board with a new State Professional Standards and Practices Board for Teaching, which serves in an advisory capacity to the Regents and the Commissioner on matters related to teacher preparation, certification, practice and discipline of certificate holders contained in Part 83.

Need for Rule: the rule implemented one of the recommendations of the Regents Task Force on Teaching, as adopted by the Board of Regents on July 17, 1998 and reflects the State Professional Standards and Practices Board for Teaching's assumption of the duties of the now defunct Teacher Education, Certification and Practice Board.

Legal Basis for rule: Education Law sections 207, 305(1) and 3004(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:

Johanna Duncan-Poitier
Senior Deputy Commissioner of Education P-16
New York State Education Department
Office of Higher Education and Office of the Professions
89 Washington Avenue
West Wing, Second Floor Mezzanine - EB
Albany, New York 12234
(518) 474-3862
p16education@mail.nysed.gov

Department of Environmental Conservation

The following rules were adopted by the NYS Department of Environmental Conservation (Department) during 2003, 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 200, General Provisions. Statutory Authority: Environmental Conservation Law, Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 19-0306, 19-0311, 19-0319, 70-0109, and 71-2103. This Part contains general provisions that apply to many of the Part 200 series of regulations. This Part is often updated and modified and there is currently an amendment to Part 200 proposed. This rule was last amended and updated effective October 20, 2007.

6 NYCRR Part 205, Architectural and Industrial Maintenance (AIM) Coatings. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301 and 19-0305. The existing regulation that was adopted November 21, 2003 (effective January 1, 2005) as required by EPA was revised in 2007 (effective June 7, 2007). This rule was adopted to control VOC emissions from AIM coatings. VOCs are a precursor to ozone and the control of VOCs will result in lower ozone levels throughout the state, including the nonattainment areas. The rule will be updated in 2008 to make some minor rule changes in order to clarify some implementation issues that have arisen since it was revised in 2003.

6 NYCRR Part 210, Emissions and Labeling Requirements for Personal Water Craft. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0301, 19-0306. Part 210 adopts California emissions and labeling requirements for personal

water craft sold in New York State, in order to reduce emissions of hydrocarbons and NOx. This regulation is listed on the January 2008 Regulatory Agenda.

6 NYCRR Part 226, Solvent Metal Cleaning Processes. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305. This rule regulates the emissions of volatile organic compounds (VOCs) from the use of industrial solvents used to clean metallic products and/or components. This rule lists specifications for the design of the equipment which contains the solvents used in metal cleaning processes in order to reduce their exposure to the atmosphere. The department does not see a need to update this rule, as the department does not anticipate new equipment designs, which would result in a reasonable decrease in VOC emissions.

6 NYCRR Part 228, Surface Coating Processes. Statutory Authority: Environmental Conservation Law Sections 3-0301, 19-0301, 19-0303. This rule regulates the emissions of volatile organic compounds (VOCs) from the application of paints and coatings in industrial settings. The regulated facilities have the option to only use paint that meet a certain VOC content limit, or they may install air pollution control devices to reduce the emissions of VOCs to a certain level. This rule is listed on the January 2008 Regulatory Agenda, and will be updated to include the industrial use of adhesives and sealants which also are a significant source of VOC emissions. Facilities will have the same two options listed above for coatings to comply with this regulation.

6 NYCRR Part 237, Acid Deposition Reduction NOx Budget Trading Program, and 6 NYCRR Part 238, Acid Deposition Reduction SO2 Budget Trading Program. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, and 19-0311. These regulations were first promulgated on April 17, 2003 to control acid rain precursors, NOx and SO2, from electricity generating units greater than 25 MW. Reducing these air pollutants will improve air quality and reduce acid deposition. These rules were challenged and overturned by the New York State Supreme Court of Albany County. These rules were amended and re-adopted in 2004. These rules will be repealed in 2008 if the federal Clean Air Interstate Rules survive the on-going legal challenges and the Parts 243, 244 and 245 trading programs adopted in 2007 are unaffected.

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 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.

Regulatory Coordinator for the Division of Fish, Wildlife & Marine Resources is Rose Diana, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233. Telephone: (518) 402-8985. E-mail: rtdiana@gw.dec.state.ny.us

DIVISION OF LANDS AND FORESTS

6 NYCRR Section 196.4, Operation of Mechanically Propelled Vessels and Aircraft in the Forest Preserve. Environmental Conservation Law sections 1-0101(3)(b), 1-0101(3)(d), 3-0301(1)(d), 3-0301(1)(I), 3-0301(2)(m), 9-0105(1), and 11-0303. This rule is needed since it establishes consistency with the language in the Adirondack Park State Land Master Plan. No amendments to this rule are planned for this year since implementation has been satisfactory. There is no need for the Department to modify this rule from its present form.

Regulatory Coordinator for the Division of Lands & Forests is Linda

Kashdan-Schrom, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4250. Telephone: 518-402-9405. E-mail: Irkashda@gw.dec.state.ny.us

DIVISION OF SOLID AND HAZARDOUS MATERIALS

6 NYCRR Part 325 - Commercial Lawn Care Application. Statutory authority: ECL Sections 33-1001, 33-1003, 33-1005, and Subdivisions 33-0905.5(a) and (b). This rule implements Title 10 of Article 33 of the Environmental Conservation Law regarding the commercial lawn application of pesticides. Requirements include use of written contracts and posting of visual notification markers. No further action is planned.

6 NYCRR, Parts 360, 364, and 621 - Biosolids. Statutory authority: ECL Sections 1-0101, 3-0301, 27-0101, 27-0106, 27-0301, 27-0303, 27-0305, 27-0307, 27-0703, 70-0107 and 3-0301 (2)(m). Amended the regulations governing the beneficial use of organic waste through land application, composting, and other means. Revisions were necessary to incorporate promulgated federal regulations, address technological developments, and policy and legal developments that had occurred since the previous major revision in 1988. Minor clarifications and a change in location within the regulations are being considered as part of the 6 NYCRR Part 360 - Solid Waste Management Facilities rulemaking presently in development.

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

DIVISION OF WATER

6 NYCRR PART 750 State Pollutant Discharge Elimination System (SPDES) Permits

Statutory authority: Environmental Conservation Law (ECL) Article 3, Title 3; Article 15; Article 17, Titles 3,5,7,8; Article 21; Article 70, Title 1; Article 71, Title 19. New York State Penal Code, Articles 175 and 210. Public Health Law, Section 502. Federal Water Pollution Control Act (33 U.S.C. 1251, et seq.).

(a) New York State has a state program that has been approved by the United States Environmental Protection Agency for the control of wastewater and stormwater discharges in accordance with the Act. Under New York State law the program is known as the State Pollutant Discharge Elimination System (SPDES) and is broader in scope than that required by the Act in that it controls point source discharges to groundwaters as well as surface waters. Typographical errors and minor revisions are needed to update references are necessary to incorporate new federal criteria and standards. A new rule making is anticipated to begin development in the coming year. (Please see Division of Water's Regulatory Agenda for 2008)

Regulatory Coordinator for the Division of Water is Robert Simson, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3500. Telephone: 518-402-8271. E-mail: rjsimson@gw.dec.state.ny.us

Department of Health

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 Katherine Ceroalo, Bureau of House Counsel, Regulatory Affairs Unit, Corning Tower, Room 2438, Empire State Plaza, Albany, NY 12237.

Amendment to Section 2.1 (Effects of Smallpox Vaccination)

Statutory Authority:

Public Health Law Section 225(4) and (5)(a), (g), and (h) authorize the Public Health Council to establish, and from time to time amend,

the Sanitary Code with respect to preserving and improving public health in the State and to designate those communicable diseases deemed dangerous to public health. Further, the Public Health Council is authorized to establish the reporting standards associated with such reports, and those diseases for which specimens shall be submitted to approved laboratories.

Description of the regulation:

Cases of vaccinia infection due to contact transmission or other complications resulting from vaccination must be reported immediately to the local health department (which would then notify the Department).

In the event that a reimplementation of smallpox vaccination is necessary, it is critical that adverse events due to vaccination be reported, monitored and treated. This requirement must remain in place as an important piece of the response to a bioterrorism event in NYS. The regulation should continue without modification.

Amendment of Part 2.1(a), (b) and (c), 2.5, 2.10 (Reportable Communicable Disease List and Quarantine Authority)

Statutory Authority:

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

Description of the regulation:

Part 2.1(a) is a list of diseases physicians are required report and 2.5 for which physicians need to submit specimens for laboratory examination. New diseases/infections of substantial public health importance need to be added to the list of communicable diseases that require reporting to public health authorities and/or specimen submission for laboratory testing. These changes will facilitate the diagnosis and treatment of disease and implementation of preventive measures to stop the spread of disease.

The regulation should be modified to require the reporting of new diseases of public health importance and the submission of needed laboratory specimens.

Amendment to Subpart 5-1 of Title 10 (Public Water Systems - Revised MCL - Propylene Glycol)

Statutory Authority:

Public Health Law, Section 225

Description of the regulation:

This regulation revises the Maximum Contaminant Level (MCL) for Propylene Glycol that is delivered to any user of a public water system to 1.0 mg/L. The amendment should continue without modification.

Amendment to Subpart 5-1 of Title 10 (Public Water Systems - Revised MCL - MTBE)

Statutory Authority:

Public Health Law, Section 225

Description of the regulation:

This regulation revises the Maximum Contaminant Level (MCL) for Methyl-tertiary-butyl-ether that is delivered to any user of a public water system to 0.010 mg/L. The amendment should continue without modification.

Amendments to Subpart 58-8 (HIV Testing)

Statutory Authority:

Public Health Law section 576 (4) authorizes the Department of Health to adopt, and amend rules and regulations to implement the provisions of Public Health Law Article 5, Title V, and ensure high quality clinical laboratory services, including testing related to HIV. Public Health Law section 2786 authorizes the Department to promulgate regulations concerning the implementation of article 27-F of the Public

Health Law, which, among other things, protects the confidentiality of information concerning whether an individual has been the subject of an HIV related test.

Description of the regulation:

Subpart 58-8 promotes the public health, safety and welfare by establishing minimum standards for clinical laboratory testing and reporting of test results to detect human immunodeficiency virus (HIV) and to monitor infected individuals. These amendments should continue.

Amendment to Sections 66-1.1 and 66-1.3 (Seventh Grade Hepatitis B School Entry)

Statutory Authority:

Public Health Law, Section 2164

Description of the regulation:

The rule requires children entering the seventh grade to receive adequate doses of hepatitis B vaccine.

Hepatitis B is a serious, vaccine preventable disease that can lead to liver cancer. According to the Centers for Disease Control and Prevention approximately 70% of hepatitis B infections occur in late adolescence and early adulthood. It is very important that children attending NY schools who have not been vaccinated against hepatitis B in infancy receive this immunization before they reach the age when they are most likely to become infected. The rule should continue without modification.

Amendment to Sections 66-1.1 and 66-1.3 (Varicella Vaccine for School Entry)

Statutory Authority:

Public Health Law, Section 2164

Description of the regulation:

The rule requires all children entering kindergarten to have received adequate doses of varicella (chickenpox) vaccine.

Varicella, or chickenpox, is a highly contagious and potentially serious vaccine preventable disease that was once a common illness in young children. Use of the vaccine to prevent varicella has significantly reduced the incidence of this disease in recent years. Children attending school in NY must be protected against this disease, as it is easily transmitted in a school setting. In addition, if an individual reaches adolescence or adulthood without having been vaccinated, the occurrence of natural disease could have even more serious consequences. The rule should continue without modification.

Amendment of Section 69-1.2 (Newborn Screening-Testing for Phenylketonuria & Other Diseases and Conditions)

Statutory Authority:

Public Health Law, section 2500-a

Description of the regulation:

The regulation designates diseases or conditions for the state's newborn screening panel, in accordance to the Department's mandate to prevent infant and child mortality, morbidity, and diseases and disorders of childhood, in keeping with the Legislature's public health aims of early identification and timely medical intervention for all the State's youngest citizens. The amendment should be retained.

Amendments to Part 1000

Statutory Authority:

Public Health Law, Section 2995-a

Description of the regulation:

The rule sets forth the requirements for collecting and presenting information on New York's licensed and registered physicians for purposes of the New York State Physician Profile. Modifications are needed to this rule to define physician membership other than "board certification" and update definition of "board certification", clarify the circumstances under which a physician may be granted an extension to submit additional medical malpractice appeal information because of physical incapacitation, etc, and add the requirement that physicians

must notify the department at least annually if there are no changes in profile information.

Title 10 NYCRR - Ten Year Review

Amendment to Subpart 5-1 of Title 10 (Public Water Systems)

Statutory Authority:

Public Health Law, Section 225

Description of the regulation:

The rule incorporated federal drinking water standards for certain organic and inorganic chemicals (pesticides and herbicides) that are permissible in water that is delivered to any user of a public water system. The continuation of the rule is necessary for the proper oversight of regulated public water supply systems.

Amendment to Subparts 6-1 and 6-2 (Swimming Pools and Bathing Beaches)

Statutory Authority:

Public Health Law, Sections 225(5) and 1340-1342

Description of the regulation:

The revisions to the regulations (1) clarify lifesaving equipment requirements; (2) provide flexibility in determining the number of toilet and handwashing facilities at swimming pools and bathing beaches and guidelines for the determining the location of such facilities at bathing beaches; (3) accept ozone as a supplement to chlorine or bromine disinfection systems; and (4) require installation of a minimum of two main drains at pools and spas, which provides additional protection for bathers against suction entrapment and hair entanglement. The amendments should continue without modification.

Amendment to Subpart 58-2 (Blood Banks)

Statutory Authority:

The Council on Human Blood and Transfusion Services is authorized by Section 3121(5) of the Public Health Law to enact, amend and repeal rules and regulations establishing minimum standards for the collection, processing, fractionation, storage, distribution and supply of blood, subject to the approval of the Commissioner of Health.

Description of the regulation:

Subpart 58-2 is necessary to promote the public health, safety and welfare by establishing minimum standards for the proper collection, processing, fractionation, storage, distribution and supply of human blood or blood products for use in transfusion. The regulation is updated as needed; the most recent amendment, effective November 7, 2007, updated practice standards, lowered donor age, and recognizes advances in technology.

Amendment to Part 71 (Requirements for Vent-Free Gas Space Heating Appliances)

Statutory Authority:

Public Health Law, Section 206(1)(r).

Description of the regulation:

Section 322-c(ii)(a) of the General Business Law, as amended by Chapter 443 of the Laws of 1997, requires that unvented gas heaters meet or exceed "standards established by rules and regulations promulgated, and which may be periodically amended, by the department of health and approved by the state fire prevention and building code council." Section 206.1(r) of the Public Health Law, authorizes the Department of Health to "by rule and regulation, establish standards necessary and appropriate for the implementation of item (ii) of clause (a) of Section three hundred twenty-two-c of the general business law." The three requirements of this regulation are intended to provide consumers with information that will help them to select a vent-free heater with appropriate heat output and use the heater in an appropriate manner. The first requirement describes a shipping carton and point-of-sale label with language intended to minimize the potential for adverse health effects from the use of these heaters. The second requirement describes an emissions rating label that informs consumers about the performance of

each product relative to industry emission standards. The third requirement describes point-of-sale sizing guidelines that provide information on selecting a properly sized unit (in terms of heat output) and gives the general format of the information. Continuance of this regulation is necessary to minimize the potential for adverse health effects from the use of vent-free gas space heating appliances.

Amendment of Section 77.7 (Registered Residents - Funeral Directing)

Statutory Authority:

Section 3401(1) of the Public Health Law authorizes the Commissioner of Health to adopt rules and regulations not inconsistent with law as may be necessary in the performance of his/her duties and in the administration of Article 34 (Funeral Directing) of the Public Health Law and to govern and regulate the conduct and transaction of the business and practice of funeral directing, undertaking and embalming.

Section 3400(k) of the Public Health Law defines a "registered resident" in a manner consistent with the regulation.

Description of the regulation:

These amendments clarify the duties of registered residents in the practice of funeral directing and clarify the role of registered residents, funeral directors and undertakers regarding supervision of an interment or cremation. This clarification was necessary due to confusion among the funeral directing industry about what registered residents may do. By eliminating the confusion, the industry can better utilize this personnel resource and registered residents can find employment under appropriate supervision, for their mandated supervision period. Because the benefits of the regulatory amendment continue to be realized, continuance of the regulation is warranted. This regulation may be modified regarding responsibilities of sponsor.

Amendment of Sections 80.1, 80.46, 80.64, 80.67, 80.69, 80.70, 80.73 and 80.75 (Physician's Assistants Controlled Substances)

Statutory Authority:

The authority for the promulgation of these regulations comes in Public Health Law, Section 3701(1), (6) and 3308(2).

Description of the regulation:

The above regulations govern the prescribing, dispensing, and administration of controlled substances in a variety of circumstances. In 1998, the definitions of "authorized practitioner" and "practitioner" in 10 NYCRR Section 80.1(a) were amended to add physician assistants to the categories of licensed practitioners who can lawfully prescribe certain controlled substances in New York State. This change permits physician assistants to perform an activity for which they are well trained and it reduces unnecessary and time consuming physician involvement in this activity. This change had the support of medical as well as pharmaceutical professionals and no bad outcomes tied to this change have been reported. Corresponding amendments were made to other sections of this Part that were impacted by the expanded definition. None of the amendments affected the prescribing of the most dangerous controlled substances and/or the controlled substances that are most often the subject of misuse or abuse. In 2006, section 80.46 was further amended to bring into conformity with an amendment to Public Health Law, Section 3703(1). In this law a physician's assistant's written medical order for the administration of a controlled substance in a hospital setting is required to be countersigned by his or her supervising physician only if deemed necessary by the supervising physician or the hospital. Therefore, continuance of this regulation is warranted. This regulation should be retained.

Amendment of 86-1.88 (Distribution of Regional Professional Education Pools)

Statutory Authority:

Public Health Law, Section 2807-m

Description of the regulation:

Clarifies the definitions and data collection time frames for making distributions from the Regional Professional Education Pool to teaching general hospitals. Continue the rule without modification.

Amendment to 86-1.89 (Supplemental Distribution of Regional Professional Education Pools)

Statutory Authority:

Public Health Law, Section 2807-m(5)

Description of the regulation:

Describes the graduate medical education reform goals and methodology for receiving supplemental distributions from the Regional Professional Education Pool. The rule may be modified to reflect new statutory pool funding levels and reform goal criteria.

Amendment to Part 128 (New York City Watershed)

Statutory Authority:

Public Health Law, Section 1100

Description of the regulation:

The rule provided extensive regulations intended to protect NYC's Watersheds including the various reservoirs and tributaries by providing various limitations on activities and construction. The continuation of the rule is necessary to maintain protection of the New York City Watershed. Additional amendments of Part 128 are anticipated in 2008/2009 to implement necessary state and local regulatory needs.

Amendment of Section 405.4, 405.5 and 405.10 (Hospital Medical Records)

Statutory Authority:

The authority for the promulgation of this regulation is contained in Section 2803(2) of the Public Health Law which authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law, and to establish minimum standards governing the operation of health care facilities.

Description of the regulation:

These amendments are intended to establish criteria and safeguards for hospital usage of modern data communications technology and to update provisions for the acceptance of verbal orders. The amendments permit hospitals to use the most current electronic and computer technology for the transmission and storage of information. It includes safeguards for author identification/authentication and security and confidentiality of records. It also clarifies standards for the use of telephone orders. These are important advances in giving hospitals the flexibility to operate an effective and efficient medical records unit and continuance of these regulations is warranted. This regulation may be modified. This regulation is expected to be updated to allow verbal orders to be authenticated by not only the ordering practitioner, but also by other practitioners responsible for the care of the patient within 48 hours rather than "as soon as possible" consistent with new federal requirements.

Amendment of Sections 405.8 and 405.11 (Infection Control Standards and Reporting)

Statutory Authority:

The authority for the promulgation of this regulation is contained in Section 2803(2) of the Public Health Law which authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law, and to establish minimum standards governing the operation of health care facilities.

Description of the regulation:

These amendments are intended to streamline reporting requirements for infection outbreaks and reorganize and update infection control standards focusing on outcome rather than processes. Unnecessary

bureaucratic requirements have been eliminated so the regulations can focus on promotion of safe and effective infection control practices and appropriate reporting of untoward events.

Department of Health, Division of Epidemiology, Bureau of Communicable Disease Control staff support the regulation continuing without modification.

Amendment of Sections 405.20, 670.4, 709.5, 711.4, 711.10, 715.16, 755.1 and 755.2 (Ambulatory Surgery)

Statutory Authority:

Public Health Law, Sections 2801-a(10)(a) and 2803(2)(a).

Description of the regulation:

The regulation updates the need methodology for ambulatory surgery services and changes the definitions of hospital-based ambulatory surgery services and of extension clinics. These amendments promote efficiency, accessibility and quality in the operation of Ambulatory Surgery Centers. Continuation of the provisions of this regulation amendment is warranted.

Amendment of Paragraph 405.24(h) (Pet Therapy in Hospitals)

Statutory Authority:

The authority for the promulgation of this regulation is contained in Section 2803(2) of the Public Health Law which authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law, and to establish minimum standards governing the operation of health care facilities.

Description of the regulation:

This amendment establishes the parameters under which hospitals may establish and operate organized animal visitation or animal-assisted therapy programs. Such programs have proven to be of medical benefit to some patients; especially patients undergoing rehabilitation.

The regulations ensure that such programs are safe and consider the well-being of patients affected both directly and indirectly as well as the animals. Department of Health staff who review patient complaints and perform routine hospital surveys have not identified any problems associated with this regulation and the continuance of this regulation is warranted. This regulation should be retained.

Amendment of Paragraph 405.24(i) (Sterility Assurance)

Statutory Authority:

The authority for the promulgation of this regulation is contained in Section 2803(2) of the Public Health Law which authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law, and to establish minimum standards governing the operation of health care facilities.

Description of the regulation:

Under these regulations, hospitals are given the right to implement an alternative process of assuring the sterility of supplies and equipment known as "event related sterility assurance". Such process has been endorsed by the Association for the Advancement of Medical Instrumentation and the Joint Commission on the Accreditation of Healthcare Organizations as an effective way to ensure sterility of supplies and equipment. Since adoption of this amendment, Department of Health staff have not identified any problems related to the implementation of this process. Continuation of this regulation is warranted. This regulation should be retained.

Amendment of Section 415.37 and Repeal of 422 (Services for Residents with AIDS)

Statutory Authority:

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

Description of the regulation:

These regulations reflect the additional experience required of the health professionals to adequately care for residents with HIV/AIDS and the corresponding staffing levels for rendering such care. Continuance of these regulations is warranted.

Amendment of Section 710.1 (Project Cost Thresholds for CON Administrative Review and Full Review)

Statutory Authority:

Public Health Law, Sections 2802(2) and 2803(2)(a)

Description of the regulation:

The rule helped streamline and focus the CON process on project proposals that have a significant impact on how and where Article 28 providers deliver care. Continuance of these regulations is warranted.

Amendment of Section 710.1 (Conversion of Article 28 Beds)

Statutory Authority:

Public Health Law, Section 2803

Description of the regulation:

Reduce costs for providers by removing the requirement for CON review of bed conversions within certain categories of services for which the hospital is an approved provider. Continuance of these regulations is warranted.

Amendment of Section 710.1 (CON Requirements for Article 28 Extension Clinics)

Statutory Authority:

Public Health Law, Sections 2802(2) and 2803(2)(a)

Description of the regulation:

A review to permit CON administrative review for extension clinics regardless of location relative to the main facility. It removed a non-essential regulatory requirement applicable to extension clinics of hospitals and diagnostic and treatment centers. It promotes efficiency in the operation of such clinics services without compromising service quality. Continuance of this regulation is warranted.

Amendment of Parts 711, 712, 713, 714, 715 and 716 (Construction Regulations for Medical Facilities)

Statutory Authority:

Public Health Law, Sections 2803(1)(2803(2)

Description of the regulation:

The regulation updates referenced technical standards and allows providers greater flexibility in the design and construction of health care services. The regulations ensure that the initial construction of new medical facilities as well as their subsequent repair, maintenance, refurbishing and modernization conform to the latest architectural and engineering standards for the structure, dimensions and physical appointments of medical facility buildings. Continuance of these regulations is warranted.

Amendment of Subdivision 800.20(c) (EMS Curricula Approval/ Course Standards)

Statutory Authority:

The authority for promulgation of this regulation is contained in Section 3002(2) of the Public Health Law which authorizes the New York State Emergency Medical Services Council (SEMSCO), subject to approval by the Commissioner, to enact, amend and repeal rules and regulations establishing minimum standards for the training, examination and certification of prehospital care personnel.

Description of the regulation:

The regulations contained in Subdivision 800.20 establish the criteria for approval by the Department of EMS Course Sponsors (training academies) and standards by which Course Sponsors must provide prehospital education in New York State. This section also establishes the minimum standards for prehospital curricula for each level of prehospital certification. The regulations also describe EMS Course Sponsor responsibilities and standard operating procedures.

These regulations must continue to provide standards by which prehospital educational programs will be reviewed, approved and

continued in New York State. These standards establish minimum standards of operations, educational content and evaluation by which the Department approves and continues EMS training programs.

Title 18 NYCRR - Ten Year Review

Amendment of Section 505.2 (Gender Reassignment)

Statutory Authority:

This is consistent with the Legislature's objective of providing high-quality medical assistance services to recipients under the Medicaid program. The Department has the responsibility of allocating available resources and assuring that services available are safe and effective. These treatments have not been proven to be safe and effective over the long term, and therefore have been eliminated from the list of covered services under the Medicaid program.

Description of the regulation:

The purpose of this regulation is to exclude payment for care, services, drugs or supplies rendered for the purpose of gender reassignment (also known as transsexual surgery) or any care, services, drugs, or supplies intended to promote such treatment. It is recommended that this regulation be retained without modification.

Amendment of Section 505.10 (Medicaid Transportation)

Statutory Authority:

Social Services Law, Section 363 and Chapter 474 of the Laws of 1996

Description of the regulation:

The cited regulatory change clarified the ordering of Medicaid transportation services. The list of qualified orderers was expanded, as well as offering guidelines for the appropriate ordering of various modes of transportation. The change stated that the ordering practitioner should keep a record of the justification for the order, and that ordering practitioners may be subjected to monetary claims and/or program sanctions. The cited regulatory change clarified the Department's ability to establish reimbursement amounts for transportation services.

The cited regulatory change listed the documentation needed in order for ambulette services to receive payment.

These changes to the regulation did not impose new requirements on providers and orderers of transportation services. Rather, these changes clarified department policy, enabling providers and orderers to adhere to Medicaid rules. These changes should continue to be retained.

Amendment of Section 505.18 (Medicaid Billing for Certified School Counselors)

Statutory Authority:

Social Services Law, Section 368-d

Description of the regulation:

The regulation 505.18(b)(3), Medicaid Billing for Certified School Counselors should continue as written. Certified School Counselors will continue to be one of the allowable professional titles to provide psychological services to children receiving services listed on the Individualized Education Program. There has been no change in delivery of these services. There has also been no change in the Education Law that would warrant a change to this regulation.

Since the regulation was implemented in 1997 we have not had any experience that would warrant discontinuing or changing the regulation. The original justification still applies.

Paragraph 505.18(d)(3) specifies that payment is available for psychological services which are part of the development of, or furnished pursuant to an interim individualized family service plan provided by certain qualified personnel. The regulation is still necessary and applicable for purposes of the Early Intervention Program.

Insurance Department

Pursuant to Section 207 of the State Administrative Procedure Act (SAPA), the Insurance Department must review after five years, and

at five-year intervals thereafter, rules adopted on or after January 1, 1997. The purpose of the review is to determine whether the rules should be continued as adopted, or else modified. The Department invites public comment on the continuation or modification of the following rules, which were adopted in 2003.

- INS-31-02-00004-A (State Register of February 5, 2003) Amendment of Part 65-3 (Regulation 68-C (Motor Vehicle Insurance Repairs Act / Claims for PIP Benefits) of Title 11 NYCRR.

- INS-31-02-00005-A (State Register of February 5, 2003) Amendment of Part 65-4 (Regulation 68-D (Motor Vehicle Insurance Repairs Act / Arbitration) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, and article 51.

Regulation 68 sets forth provisions implementing Article 51 of the Insurance Law, popularly referred to as the No-Fault Law. The amendment to Regulation 68-C updated provisions relating to Personal Injury Benefits (PIP) to conform to changes in the requirements regarding the forms to be used by insureds, claimants and providers. The amendment to Regulation 68-D revised the rules and requirements applicable to the arbitration of no-fault claims.

In 2007, the Department adopted an amendment to subpart 65-3 of the regulation (INS-52-06-00006-A, State Register of March 14, 2007) that revised the standards regarding the responsibility of insurers to pay PIP benefits. In a consolidated action, the Department also adopted an amendment to subpart 65-4 of the regulation (INS-52-06-00007-A, State Register of March 14, 2007) to provide for special expedited arbitration when there is a dispute between multiple eligible insurers over which carrier has primary responsibility for the payment of first party benefits.

The Department's June 2007 Regulatory Agenda (published in the State Register of June 27, 2007) noted the Department's intent to amend subparts 65-3 and 65-4 to revise no-fault endorsements and requirements for insurer claim practices, and to adopt a new prescribed form that can be used only for the denial of health service benefits that do not involve any policy issues or statutory exclusions. The proposal would also amend rules related to both the manner in which the organization designated by the Superintendent administers the first party motor vehicle insurance arbitration programs and assesses the costs of these programs to the insurance industry.

- INS-50-02-00013-A (State Register of February 19, 2003) Amendment of Part 33 (Regulation 120) (Managing General Agents) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 308, 2101, 2102 and 2103.

Insurance Law Section 308 requires licensees to respond in writing to written inquiries or requests for reports, statements or data made by the Superintendent. Sections 2101, 2102 and 2103 vest the Superintendent with the authority to license and regulate the activities of agents, brokers and adjusters.

This amendment required that certain contract provisions be included in a written contract between an insurer and a managing general agent ("MGA"). The amendment implemented minimum provisions of the National Association of Insurance Commissioners' model law for MGAs, which had been adopted by several other states. These provisions help to ensure that an insurer maintains proper supervision over an MGA, and thus safeguard the interests of both insureds and the general public in protecting against abuses to insureds that may occur when another entity manages the affairs of the insurer.

The Department currently intends to continue the rule without modification, while continually monitoring it to ensure that the provisions continue to accomplish their intended purposes.

- INS-01-03-00011-A (State Register of March 26, 2003) Amendment 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; sections 4403, 4403-a, 4403-(c)(12) and 4408-a of the Public Health Law; and Chapter 599 of the Laws of 2002.

The purpose of this Part is to enhance the consistency of the accounting treatment of assets, liabilities, reserves, income and expenses by entities subject to the Part, by clearly setting forth the accounting practices and procedures to be followed in completing annual and quarterly financial statements required by law. Pursuant to the Insurance Law, the Superintendent is authorized to implement the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual ("Accounting Manual"), subject to any provisions in New York law or regulations that conflict with particular points in those rules. The Accounting Manual includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles (SSAPs). The Accounting Manual represents a codification of Statutory Accounting Principles.

This Part was originally promulgated in late 2000, and has been amended when the NAIC has adopted a revised version of the Accounting Manual, both to incorporate by reference the new Accounting Manual, and to update the conflicts and exceptions to the Accounting Manual. The Department is currently preparing an amendment to incorporate the 2007 edition of the Manual.

- INS-01-03-00020-A (State Register of April 2, 2003) Amendment of Part 125 (Regulation 20) (Credit for Reinsurance from Unauthorized Insurers) of Title 11 NYCRR.

- INS-04-03-00007-A (State Register of April 9, 2003) Amendment of Part 125 (Regulation 20) (Credit for Reinsurance from Unauthorized Insurers) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 307-a, 308, 1301(a)(14) and (c).

Insurance Law Sections 1301(a)(14) and 1301(c) vest the Superintendent with the authority to prescribe, by regulation, the conditions under which a ceding insurer may be allowed credit, as an asset or as a deduction from loss and unearned premium reserves, for reinsurance recoverable from an assuming insurer not authorized in this state.

The first amendment above implemented minimum provisions of the National Association of Insurance Commissioners' model law relating to "Credit for Reinsurance". By modifying the requirements regarding controlling when ceding insurers may take credit for certain reinsurance contracts, these provisions help to maintain the ceding insurer's financial stability, and thereby safeguard the interests of both insureds and the general public.

The second amendment above provided alien reinsurers with the means to secure their United States obligations through the establishment of a multi-beneficiary trust. Previously, the regulation required that funds held in such a trust to be in the form of cash or readily marketable securities. Since the requirement was originally established, the Department recognized the use of letters of credit as qualifying securities in a number of similar trust vehicles. In addition, the National Association of Insurance Commissioners amended its model regulation relating to "Credit for Reinsurance" to specifically permit certain alien assuming reinsurers to include, subject to specified conditions, letters of credit in trust funds held for the protection of the United States insurers and United States beneficiaries under reinsurance policies issued by such alien insurers. Modifying the requirements regarding alien reinsurers funding requirements to permit the use of letters of credit allowed alien reinsurers using multi-beneficiary trusts to reduce their cost of capital in a manner similar to other methods used by unauthorized reinsurers that use single-beneficiary trusts.

To assure that the marketable securities in the trust funds provided security adequate for the protection of the United States insurers and

United States beneficiaries under reinsurance policies issued by such alien insurers, the Department established standards for the quality of the marketable securities held in the trust. These qualitative standards were consistent with those required for the minimum capital and surplus investments and the reserve investments for licensed property/casualty insurers in New York State. Previously, as a condition of accreditation, the alien insurers were required to stipulate to hold marketable securities in the trust that met these standards.

The Department is currently developing a new amendment to the regulation. The current regulation requires a strongly capitalized non-New York authorized or accredited reinsurer to tie up capital by posting collateral while not imposing a similar burden on a New York authorized or accredited reinsurer. This amendment would level the playing field for all reinsurers, mitigate the risk that may exist under the present regulatory structure, and continue the Department's efforts to keep New York competitive while bringing the U.S. into the 21st century of financial services regulation.

- INS-53-02-00013-A (State Register of April 16, 2003) Amendment of Part 39 (Regulation 144) (Partnership for Long-Term Care Program) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 3201, 3217, 3221, 3229, 4235, 4237, and article 43; and Social Services Law, section 367-f.

By Chapter 454 of the Laws of 1989, as amended by Chapter 659 of the Laws of 1997, the Legislature enacted the Partnership for Long-Term Care Program ("the Program") to provide that citizens of New York State who purchase a long-term care insurance policy/certificate under the Program, and who exhaust benefits under such policy/certificate, will become eligible for long-term care protection through the New York State Medicaid program. Regulation 144 establishes the standards and requirements relating to the Program.

This amendment was necessary to comply with the minimum standards of the Program. All policies sold pursuant to this Program must include a provision guaranteeing lifetime inflation protection of at least five percent compounded on an annual calendar or policy year basis. The previously existing regulation set forth the minimum daily benefit standards for the 10-year period beginning January 1, 1993 and ending December 31, 2002. These minimum benefit standards are computed with a minimum annual increase of five percent. The amendment was necessary to set forth the daily minimum benefit amounts, computed using the five percent inflation protection, for the consecutive 10-year period beginning January 1, 2003 through December 31, 2012.

The increase in daily minimum benefit amounts benefited insureds under the Program who require long-term care services by providing a higher daily reimbursement rate to offset their nursing home or home care costs. The increased daily minimum amounts should encourage individuals to purchase Program coverage to offset potential long-term care costs.

In 2005, the Department adopted an amendment to Regulation 144 (INS-44-04-00003-A, State Register of January 26, 2005) to make various changes to and expand the New York State Partnership for Long Term Care Program.

The Department's June 2007 Regulatory Agenda (published in the State Register of June 27, 2007) noted the Department's intent to amend Regulation 144 to update minimum standards for Partnership and non-Partnership long term care coverages.

- INS-05-03-00002-A (State Register of April 16, 2003) Repeal of and addition of a new Part 98 (Regulation 147) (Life Insurance Reserve Requirements) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 1304, 1308, 4217, 4218, 4240, and 4517.

Section 1304 of the Insurance Law enables the Superintendent to require any additional reserves as necessary on account of policies,

certificates and contracts of insurer's authorized to transact life insurance, annuities, and accident and health insurance. Section 1308 of the Insurance Law describes when reinsurance is permitted, and the effect that reinsurance will have on reserves.

One major area of focus of the Insurance Law is the solvency of insurers doing business in New York. One way the Insurance Law seeks to ensure solvency is by requiring all insurers authorized to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders. This regulation is necessary 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 life insurance policies that do not have level premiums and/or level benefits. The law 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 that could jeopardize the security of policyholder funds.

The regulation required that reserves for term insurance and secondary guarantees on universal life, universal life-type products, and variable life products meet the same standards as reserves for level premium insurance. The regulation permitted the use of new select mortality factors and allowed the appointed actuary for a life insurer to apply certain percentages, called X factors, to modify the mortality bases for deficiency reserves, which gave domestic insurance companies and authorized foreign insurance companies the ability to compete in these markets with companies not so authorized.

In 2007, the Department adopted an amendment to Regulation 147 (INS-32-06-00004-A, State Register of January 10, 2007) to help ensure the solvency of life insurers doing business in New York. After the adoption of the prior version of the regulation, the Department became aware that some insurers had developed life insurance products that resulted in reserves being held that were lower than the reserves defined in the regulation, even though these products had similar death benefit and premium guarantees. To clarify the intent of the National Association of Insurance Commissioners' model regulation, NAIC Actuarial Guideline 38 was developed in 2002. The Guideline stated that new policy designs which are created to simply disguise guarantees provided by the policy must be reserved in a manner similar to more typical designs with similar guarantees. Section 98.4(u) of the prior version of the regulation also contained wording to address consistent reserving principles. The Department and other states became aware that, in spite of such wording, some insurers were creating new products in order to avoid the reserve methodologies described in the regulation. This revision adopted new reserve methodologies for various policy features that constitute guarantees, consistent with the principles of Insurance Law Section 4217.

The Department's June 2007 Regulatory Agenda (published in the State Register of June 27, 2007) noted the Department's intention to amend Regulation 147 to revise existing standards for universal life insurance products with secondary guarantees for life insurers in consideration of recently adopted and pending NAIC standards. The proposal was published in the State Register on October 17, 2007 (INS-42-07-00004-P), and will become permanent on December 26, 2007, upon publication in the State Register.

- INS-19-03-00001-A (State Register of July 23, 2003) Amendment of Part 60-1 (Regulation 35-A) (Minimum Provisions for Auto Liability Insurance / Supplemental Spousal Liability Insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 3420(a) and (g); Vehicle and Traffic Law, section 311; and L. 2002, ch. 584.

Insurance Law Section 3420(g), as amended by Chapter 584 of the Laws of 2002, required insurers to provide notification on an annual basis to insureds about the availability of supplemental spousal liability

insurance coverage, an explanation of such coverage, and the premium for such coverage. The law required the Superintendent to promulgate a regulation to provide guidelines to insurers for compliance with these requirements. This amendment provided the minimum requirements for such notification and sample notification language to be utilized by insurers.

The Department currently intends to continue the regulation without modification, while continuing to monitor the marketplace to ensure that the provisions continue to accomplish their intended purposes stated above, and remain consistent with related statutory and regulatory requirements.

In 2003, the Department also made numerous consensus amendments to Parts of 11 NYCRR to update regulations and statutory references contained therein to be consistent with the Insurance Law recodification and to eliminate numerous obsolete provisions.

The Department also invites public comment on the continuation or modification of the following rules that were adopted in 1998.

- INS-29-98-00001-A (State Register of November 10, 1998) Amendment of Part 160 (Regulation 57) (Responsibilities in Construction and Application of Rates) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301 2346 and 2346-a; and chs. 44 and 78, L. 1997.

The purpose of this amendment was to establish standards for actuarially appropriate reductions in rates of homeowners, commercial and public entity insurance premiums applicable to real property fitted or retrofitted with hurricane-resistant laminated glass windows or doors and to residential real property fitted or retrofitted with hurricane/storm shutters or equipped with deadbolt locks. In 2001, the regulation was amended (INS-43-00-00006-A, State Register of January 27, 2001) to provide for actuarially appropriate rate reductions of commercial motor vehicle insurance premiums for vehicles equipped with factory installed auxiliary running lamps.

The Department currently intends to continue the regulation without modification, while continuing to monitor the marketplace to ensure that the provisions continue to accomplish their intended purpose.

- INS-30-97-00058-A (State Register of August 12, 1998) Repeal of Part 51 and addition of a new Part 51 (Regulation 60) (Life Insurance Policies and Annuity Contracts) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301 2123, 2403 and 4226.

This regulation, originally promulgated on August 4, 1971, implements provisions of the Insurance Law by regulating the acts and practices of insurers, agents and other licensees of the Department with respect to the internal and external replacement of life insurance policies and annuity contracts. The new regulation established stronger requirements for agents and insurers in the replacement of existing life insurance policies and annuity contracts. It provides for greater disclosure to applicants of the impact of the purchase of new insurance by using values from existing insurance. In 2002, the regulation was amended (INS-50-02-00014-A, State Register of December 11, 2002) to implement the provisions of Chapter 505 of the Laws of 2000 and Chapter 13 of the Laws of 2002, which created a new type of broker's license, whereby brokers could sell life insurance and annuities.

The Department's June 2007 Regulatory Agenda (published in the State Register of June 27, 2007) expresses the Department's intention to update the regulation to allow for a preliminary disclosure statement that can be prepared without waiting twenty days for a response from the replaced insurer, and thus permit the application to be completed on the first visit.

In addition, the Department is presently considering further amendments to the regulation to simplify the required disclosure procedures, while also making the disclosure more comprehensible to applicants.

•INS-08-97-00002-A (State Register of April 15, 1998) Amendment of Part 52 (Regulation 62) (Health Insurance Specified Disease Coverage) of Title 11 NYCRR.

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

This regulation, first promulgated in 1972, establishes minimum standards for the form, content and sale of accident and health insurance. This amendment adopted minimum standards for the form, content and sale of specified disease coverage, such as cancer insurance, in New York State. This rule was the 22nd amendment to the original regulation, and the regulation has been amended 16 more times in succeeding years in response to the rapidly changing nature of the accident and health insurance market. The Department is currently developing other amendments to the regulation, but not with respect to specified disease coverage. The Department's June 2007 Regulatory Agenda (published in the State Register of June 27, 2007) includes 20 separate items that would amend Regulation 62.

•INS-05-98-00005-A (State Register of April 29, 1998) Amendment of Part 16 (Regulation 86) (Special Risk Insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 307, 308 and article 63.

Pursuant to authority granted the Superintendent in article 63 of the Insurance Law, this regulation, originally promulgated in 1978, specifies categories of risk that may be written in a "Free Trade Zone" exempt from policy form and rate filing requirements. This amendment established methods, procedures and reports for licensing, facilitating, monitoring and verifying compliance with the requirements of article 63 related to the writing of such risks, and added 34 more classifications of eligible risks that may be written in the Free Trade Zone. In 2002, the Department adopted an amendment to the regulation (INS-25-02-00005-A, State Register of September 11, 2002) adding additional categories of risk.

The Department currently intends to continue the regulation without modification, while continuing to monitor the marketplace to ensure that the provisions continue to accomplish their intended purposes.

•INS-05-97-00018-A (State Register of May 27, 1998) Amendment of Part 86 (Regulation 95) (Report of Suspected Insurance Frauds to Insurance Frauds Bureau; Required Warning Statements) of Title 11 NYCRR. Section 409 of the Insurance Law requires that insurers writing motor vehicle insurance, workers' compensation insurance or health insurance must implement a plan for the detection, investigation, and prevention of fraudulent insurance activities. This regulation, first promulgated in 1981, establishes specific requirements with which insurers must comply. The purpose of this amendment was to refine the required procedures for development of fraud detection plans and to require that they be filed with the Superintendent. In addition, this amendment requires an insurer to establish a Special Investigations Unit separate from its underwriting and claims functions to be responsible for fraud investigations. In 2002, the Department adopted an amendment to the regulation (INS-52-01-00002-A, State Register of May 1, 2002) revising (1) the category of insurers to which the regulation is applicable and (2) the qualifications for individuals employed as investigators by the Special Investigations Unit.

The Department currently intends to continue the regulation without modification, while continuing to monitor the marketplace to ensure that the provisions continue to accomplish their intended purposes.

•INS-46-97-00018-A (State Register of February 11, 1998) Amendment of section 70.8 and addition of section 70.19 (Regulation 101) (Medical Malpractice Insurance: Required Notices and Rate Modifications) of Title 11 NYCRR.

•INS-39-98-00014-A (State Register of January 6, 1999) Amendment of section 70.19 (Regulation 101) (Medical Malpractice Insurance: Required Notices and Rate Modifications) of Title 11 NYCRR.

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

The purpose of this amendment was to establish physicians and surgeons medical malpractice rates and surcharges for the policy year July 1, 1997 to June 30, 1998, as well as rules to collect and allocate surcharges to recover deficits based on past experience. Chapter 639 of the Laws of 1996 required the Superintendent to establish rates and surcharges for policies of primary and excess medical malpractice insurance, and required the submission of reports of experience for policy years July 1, 1985 through June 30, 1996. Subsequently, the Legislature continued the Superintendent's authority to establish rates for such insurance. This was done by amending the regulation for each policy year up to 2000-2001 (INS-15-01-00007-A, State Register of June 20, 2001). Since 2001, the Superintendent has established the rates without having to amend the regulation and this amendment remains historical in nature.

In addition, the regulation establishes requirements regarding policy provisions and coverage options that may, and must, be offered by insurers. The second amendment cited above modified requirements regarding the rates to be used by certain categories of medical malpractice insurers.

The Department currently intends to continue the rule without modification, while continuing to monitor the marketplace to ensure that the provisions continue to accomplish their intended purposes.

•INS-08-98-00004-A (State Register of August 5, 1998) Amendment of Part 152 (Regulation 124) (Physicians and Surgeons Professional Insurance Merit Rating Plan) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, and 2343(d) and (e).

The Insurance Law requires the Superintendent, by regulation, to establish a merit rating plan for physicians' professional liability insurance, and states that such plan may include malpractice insurance premium reductions for insured physicians who successfully complete an approved risk management course, subject to standards prescribed by the Superintendent by regulation. The regulation was originally promulgated in 1986. This amendment expands the number of merit rating plans that may be utilized by insurers, and also redefines the criteria for approved risk management programs. In 2002, the Department adopted an amendment to the regulation (INS-27-02-00001-A, State Register of July 3, 2002), again expanding the types of risk management courses that could be offered by insurers. This amendment recognizes the feasibility of offering such courses over the internet (as opposed to a classroom setting) and the legislative initiatives (L. 2002, ch. 1, part A, section 42 as amd. by L. 2002, ch. 82, part J, section 16) that required all physicians, surgeons and dentists participating in the excess medical malpractice program established by the Legislature to participate in a proactive risk management program. In 2007, the Department adopted an amendment to the regulation (INS-46-06-00011-A, State Register of January 24, 2007) to establish guidelines and requirements for medical malpractice merit rating plans and risk management plans, including internet-based risk management courses and other innovative risk-management vehicles.

•INS-21-98-00032-A (State Register of July 29, 1998) Amendment of Part 360 (Regulation 145) (Open Enrollment, community rating and portability of individual and small group health insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 3231, 3232, 3233, 4235, 4237, arts. 43 and 45; ch. 501, L. 1992 and ch. 661, L. 1997.

The federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) created federal standards for the individual and group health insurance markets. Chapter 661 of the Laws of 1997 amended the New York State Insurance Law and Public Health Law to bring state law into compliance with federal law, enhance existing state

enacted reforms and protections, and preserve state regulation of health insurance policies issued in New York State.

This amendment was necessary to make regulatory requirements consistent with the federal and state laws, and thereby provide guidance to insurers as to the minimum standards necessary to facilitate implementation and ensure compliance with the new laws. Subsequently, the regulation was again amended in 1998 (INS-21-98-00029-A, State Register of November 18, 1998) to clarify the fact that "specified disease coverage" was exempt from the market stabilization mechanisms applicable to individual and small group health insurance. The regulation also was amended in 2001 (INS-40-00-00001-A, State Register of January 3, 2001) to establish requirements regarding commissions and marketing practices in the sale of small group health insurance. The Department's June 2007 Regulatory Agenda (published in the State Register of June 27, 2007) expresses the Department's intention to update the regulation to reflect changes in the individual and small group health insurance market and to continue to ensure that the regulation conforms with all applicable state and federal statutes.

- INS-21-98-00033-A (State Register of July 29, 1998) Amendment of Section 361.2 (Regulation 146) (Market stabilization mechanisms for individual and small group health insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 1109, 3201, 3217, 3231, 3232, 3233, 4235, arts. 43 and 45; ch. 501, L. 1992 and ch. 661, L. 1997.

The federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) created federal standards for the individual and group health insurance markets. Chapter 661 of the Laws of 1997 amended the New York State Insurance Law and Public Health Law to bring state law into compliance with federal law, enhance existing state enacted reforms and protections, and preserve state regulation of health insurance policies issued in New York State.

This amendment was necessary to amend the definition of a small group health insurance policy. Subsequently, the regulation was again amended in 1998 (INS-21-98-00030-A, State Register of November 18, 1998) to clarify that "specified disease coverage" was exempt from the market stabilization mechanisms applicable to individual and small group health insurance. The regulation was also amended in 2000 (INS-39-00-00003-A, State Register of December 13, 2000) to phase out insurer and HMO required contributions to a distributions from demographic-based pools, modify required contributions to and distributions from specified medical condition pools, and expand the list of specified medical conditions. In 2002, the Department adopted an amendment to the regulation (INS-06-01-00005-A, State Register of May 22, 2002) to modify the mechanisms for determining required contributions to and distributions from market stabilization pools. In 2007, the Department proposed an amendment to the regulation (INS-41-07-00005-P, State Register of October 10, 2007) to modify the pooling methodology established in the prior amendment to Regulation 146, in order to provide a simplified approach and to increase uniformity and consistency in the methodologies used by insurers and health maintenance organizations when determining their contributions and/or distributions from the pools, and to help insurers and health maintenance organizations avoid reporting errors. The Department anticipates adopting this amendment in late 2007 or early 2008.

- INS-22-98-00005-A (State Register of October 28, 1998) Adoption of Part 400 (Regulation 156) (Certified Capital Companies) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, art. 14 and Tax Law, sections 11 and 1511; ch. 389, L. 1997 and Public Officers Law, section 89.

Chapter 389 of the Laws of 1997 added a new Section 11 of the Tax Law providing for the establishment of certified capital companies, and conferred on the Insurance Department the authority to certify and

regulate such entities. This regulation establishes an application procedure for entities wishing to become certified capital companies, a procedure for requesting tax credits, the method for allocation of such tax credits, and the requirements by which a certified capital company must abide in order to maintain its certification. The Department currently intends to continue the rule without modification, while continuing to monitor the marketplace to ensure that the provisions continue to accomplish their intended purposes.

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 years 1998 and 2003 which are subject to the cited SAPA section 207 five-year review of rules.

During calendar year 1998, OMRDD adopted eleven rules. Five of these were proposed and adopted as minor rule makings identified by the Department of State as MRD-43-97-00020; MRD-43-97-00021; MRD-43-97-00022; MRD-02-98-00027; and MRD-36-98-00007. As minor rule makings, these are exempted from the review requirements by subdivision (5) of SAPA section 207. The remaining six rule makings finalized during 1998 were identified and described as follows at the time the respective notices were first published in the *State Register*:

98-1. MRD-02-98-00026. Amendments to 14 NYCRR section 635-10.5. The purpose of these amendments was to establish a provision allowing the commissioner of OMRDD to authorize a one-time payment to reimburse providers for HCBS waiver prevocational and supported employment services delivered to persons newly eligible to receive such services as a result of the removal of a previous Federal restriction. These provisions were temporary features of the methodology which are no longer necessary. They have already been deleted.

98-2. MRD-03-98-00001. Amendments to 14 NYCRR sections 635-10.5 (HCBS Waiver Services), 671.7 (HCBS Waiver Community Residential Habilitation Services), 680.12 (Specialty Hospitals), 681.12 (Intermediate Care Facilities for persons with developmental disabilities), and 690.7 (Day Treatment Services for persons with developmental disabilities). These amendments establish trend factors to be applied (beginning January 1, 1998) 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.

98-3. MRD-11-98-00014. Amendments to 14 NYCRR sections 633.1 and 633.4 - Communication needs of non-English speaking persons seeking and/or receiving services under the auspices of OMRDD. The statutory authority for OMRDD's proposal and adoption of these amendments is in Mental Hygiene Law sections 13.07, 13.09(e), and 16.00. These amendments add provisions to ensure that providers of services to persons with developmental disabilities are aware of their responsibilities to meet the language/ communication needs of non-English speaking persons seeking or receiving services from providers operating under the auspices of OMRDD. These amendments must be maintained without modification because the regulations are required by Mental Hygiene Law section 13.09(e) which remains unchanged.

98-4. MRD-13-98-00004. Amendments to 14 NYCRR sections 635-10.5, 671.7, and 686.13 - Fee setting and financial reporting in OMRDD certified or operated home and community-based (HCBS) waiver services, HCBS waiver community residential habilitation services, and individualized residential alternative facilities. These amendments clarify that there can be no billing for therapeutic leave days for HCBS

waiver residential habilitation services provided in individualized residential alternative facilities. This clarification was necessary because the Federal Health Care Financing Agency (HCFA) clarified its policy on the reimbursement of such vacancies and held that a State cannot pay for therapeutic leave days for persons who reside in IRAs and receive residential habilitation services. Since this remains the policy of the Federal Centers for Medicare and Medicaid Services (CMS, formerly HCFA), the amendments must be maintained without modification.

98-5. MRD-15-98-00018. Amendments to sections 635-10.5 and 686.13 - Fee setting and financial reporting in home and community-based (HCBS) waiver services and individualized residential alternative (IRA) facilities. These amendments allow for the voluntary waiver by participating service providers of certain fee appeal and fee-setting provisions in order to facilitate the conversion of other existing facilities and services to IRAs with HCBS waiver services. These provisions are still a necessary part of the methodology and must be maintained without modification.

98-6. MRD-43-98-00006. The addition of new section 681.11 - Rate setting and financial reporting in voluntary agency operated intermediate care facilities for persons with developmental disabilities (ICF/DDs). This section eventually replaced previous section 681.13 for all ICF/DD facilities during the course of the 1998 calendar year. The new section established 1994 as a new base year for under 31-bed ICF/DD facilities and revised the cost category screens and other reimbursement provisions to reflect cost data and changes in spending patterns. OMRDD has since proposed and adopted a new section 681.14 which repeats this cyclical process of establishing a new base year and revised rate setting methodology for under 31-bed ICF/DD facilities. Section 681.11 (added during 1998) needed to remain in effect without modification until June 30, 2003, which is the end of the rate year for ICF/DD facilities in Region I. Effective July 1, 2003, new section 681.14 replaced section 681.11 for all ICF/DD facilities so that the amendment adopted in 1998 became obsolete. It has since been repealed (see item 03-3).

During calendar year 2003, OMRDD adopted and finalized five rules. These five rule makings were identified and described as follows at the time the respective notices were published in the *State Register*:

03-1. MRD-03-03-0001. Rate/fee setting in voluntary agency operated individualized residential alternative (IRA) facilities and home and community-based (HCBS) waiver services; HCBS waiver community residential habilitation services; clinic treatment facilities; specialty hospitals; intermediate care facilities for persons with developmental disabilities; and day treatment facilities serving persons with developmental disabilities. The amendments revise the methodologies used to calculate rates/fees of the referenced facilities or programs for the periods of Jan. 1, 2003 to Dec. 31, 2003 and July 1, 2003 to June 30, 2004 and establish trend factors to be applied within the context of the referenced reimbursement methodologies, effective January 1, 2003. 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.

03-2. MRD-13-03-00002. Amendments to section 633.10 of Title 14 NYCRR. Regulations to implement the Health Care Decisions Act for Persons with Mental Retardation. The statutory authority for this rule making is in Mental Hygiene Law, sections 13.07 and 13.09 and in section 1750-b of the Surrogates Court Procedure Act (SCPA) which required the commissioner of OMRDD to promulgate implementing regulations in order for a specific statutory provision to be effective. The amendments implement changes to section 1750-b of the SCPA by establishing a specific safeguarding process to ensure that, in accordance with the changes to the SCPA, appropriate health care decisions can be made for persons with mental retardation and

developmental disabilities who are terminally ill or who have other extremely serious medical conditions. More specifically, the regulations establish a process for OMRDD to determine whether physicians and psychologists are qualified to make decisions or provide consultation to the attending physician and include additional delineation of the responsibility of OMRDD and agencies operating OMRDD-certified residences when they receive notification of health care decisions that involve the withdrawal or withholding of life-sustaining treatment. The process implemented by the regulation remains pertinent and the regulations continue to be necessary. Therefore, the regulations need to be maintained without modification.

03-3. MRD-16-03-00026. Rate setting in voluntary agency operated intermediate care facilities for persons with developmental disabilities. The rule making completed the repeal of 14 NYCRR section 681.11 rendered obsolete by the adoption (in 2002) of new section 681.14 (MRD-44-02-00003-A). This rule making completed the updating of the ICF/DD reimbursement methodology which established calendar 1999 or 1999/2000 as a new base year and calendar 2003 or 2003/2004 as a new base period for under thirty-one bed ICF/DD facilities. The repeal of section 681.11 needs to be maintained since the old methodology is superseded by current section 681.14.

03-4. MRD-28-03-00010. Amendments to 14 NYCRR section 635-10.5. This rule making amended the methodology for reimbursement of Home and Community-Based Waiver services (HCBS) by establishing a unit of service and method for calculating the price of HCBS waiver hourly respite services provided in free-standing respite centers. These elements of the reimbursement methodology remain necessary and OMRDD intends to maintain the regulation without modification.

03-5. MRD-43-03-00046. Amendments to 14 NYCRR section 681.14. The amendments clarify certain provisions of the rate setting methodology for intermediate care facilities for persons with developmental disabilities. This methodology includes a desk audit feature to determine whether a provider's reported costs are atypical or non-recurring (e.g., expended only in the base year). The amendments include language to enable OMRDD to apply appropriate trend factors to the rates in effect on Dec. 30, 2002 and June 30, 2003 pending completion of the desk audit. The methodology also allows for the inclusion of certain day program services costs as add-ons in the ICF/DD rate of reimbursement. The amendments clarify that the appropriate trend factor to be applied to these ICF/DD day program elements shall be the trend factor used by OMRDD for day programs. Finally, establishment of the ICF/DD day services add-on is limited to the budgeted costs or the actual costs of providing these services. The amendments add language to specify that the add-on derived from actual costs shall be net of any surplus calculated per certified cost reports for that day services program. These changes continue to be relevant and OMRDD intends to maintain them without modification.

With the exception of the rule makings identified as items 98-3 and 03-2 for which the statutory authority was set forth in these respective paragraphs, the present mandated five-year reviews concern 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 1998 and 2003 rule makings beginning January 2, 2008.

This notice was prepared and submitted by:

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

Department of Motor Vehicles

As required by Chapter 262 of the Laws of 1996, the following is a list of rules that were adopted by the Department of Motor Vehicles in calendar year 2003 which must be reviewed in calendar year 2008. Public comment on the continuation or modification of these rules is invited. Comments may be directed to: The Department of Motor Vehicles, Counsel's Office, 6 ESP, Room 526, Albany, NY 12228.

MTV-52-02-00002 Part 56 Strobe Lights on School Buses

Analysis of the need for the rule: This regulation permits the installation of strobe lights on school buses. Since this device has proven to be a useful highway safety measure and enhances the protection of children on school buses, the regulation remains necessary.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) and 220.

MTV-53-02-00004 Part 3 Metal Coil Endorsement

Analysis of the need for the rule: This regulation was necessary for the establishment of the parameters of the metal coil endorsement, applicable to operators of commercial motor vehicles transporting metal coils weighing 5,000 pounds or more. The rule insures the safe transportation of metal coils in commercial vehicles. For that reason, the regulation remains necessary.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) and 501(2)(b)(ix).

MTV-01-03-00012 Part 78 Dealer and Transporter Plates

This regulation provides that a dealer who does not sell at least five motor vehicles during a 12 month period may not have dealer and transporter plates and must surrender any plates it has within 10 days of a demand by DMV for the plates. Failure to surrender the plates shall be a violation. This amendment was necessary to curb abuses of the use of dealer and transporter plates by motor vehicle dealers. The regulation remains necessary to curb such abuses.

Legal basis for rule: Vehicle and Traffic Law sections 215(a), 415(8) and 415(15).

MTV-22-03-00014 Part 79 Motor Vehicle Inspections

Analysis of the need for the rule: This regulated set forth the standards and requirements for the on board diagnostic (OBD) emissions test in New York State. The test applies to all motor vehicles of model year 1996 or newer. Since the OBD test represents the current testing standard and is required to maintain the State's compliance with the Federal Clean Air Act, the regulation remains necessary.

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

MTV-43-03-00002 Inspection Fees

This regulation increased the fees for motor vehicle inspection stickers. Since these fees remain in effect today, the regulation is still necessary.

Legal basis for rule: Vehicle and Traffic Law section 215(a), 301, 302, 304 and 305.

Office of Real Property Services

The following rule adoptions by the State Board of Real Property Services during 2003 will be reviewed during 2008 pursuant to SAPA section 207 to determine whether they should remain in effect as adopted or should be modified. Each is contained in Title 9 of the NYCRR. All rules will be subject of a review by the Office of Real Property Services

during 2008 prior to their submission to the State Board of Real Property Services for formal action. Part 188 – Reimbursement of Local Officials – RPS-49-02-00014-A, effective February 5, 2003. Statutory Authority – Real Property Tax Law. Section 202(1)(l), 318 and 1530, and Chapter 53 of the Laws of 2002.

In addition, the following rules, initially adopted in 1998, were reviewed during 2003 and were continued without modification by the State Board of Real Property Services on April 29, 2003:

Part 185 - General Administration of the State Board and State Office of Real Property Services – RPS-29-98-00008-A, effective November 25, 1998. Statutory basis - RPTL, § 202(1)(l), POL, §§ 87(1)(b), 94(2) and 96(1), ECL, § 8-0113(3) and SAPA, § 204.

Part 186 - Equalization Products - RPS - 29-98-00009-A, effective December 30, 1998. Statutory Basis - RPTL, articles 8, 12, 18 and 19 and sections 202(1)(l), 1314 and 1315.

Part 188 - Minimum Qualification Standards, Training and Certification of Local Assessment Administration Personnel - RPS - 29-98-00010-A, effective November 25, 1998. Statutory basis - RPTL, §§ 202(1)(l), 310, 312, 320, 322, 1530 and 1532.

Part 189 - Preparation and Maintenance of Tax Maps for Real Property Tax Administration - RPS - 29-98-00011-A, effective December 9, 1998. Statutory Basis - RPTL, §§ 202(1)(l) and 503(1)(b).

Part 190 - Requirements for Form and Preparation of Local Assessment Rolls - RPS - 29-98-00012-A, effective November 25, 1998. Statutory Basis - RPTL, §§ 202(1)(l) and 504(1).

Part 191 - Real Property Transfer Reports - RPS - 29-98-00013-A, effective November 25, 1998. Statutory Basis - RPL, § 333, RPTL, §§ 202(1)(l), 574, 738 and 1570.

Part 193 - Assessors' Reports to the State Board of Real Property Services - RPS - 29-98-00014-A, effective November 25, 1998. Statutory Basis - RPTL, §§ 202(1)(l) and 575.

Part 195 - Advisory Appraisals - RPS - 32-98-00007-A, effective December 9, 1998. Statutory Basis - RPTL, §§ 202(1)(l), 1536, 1544, 1546 and 1548.

Part 196 - Assessment of Oil and Gas Economic Units - RPS-32-98-00008-A, effective December 9, 1998. Statutory Basis - RPTL, §§ 202(1)(l) and 592.

Part 197 - Establishment of Assessments and Full Values of Special Franchises - RPS - 32- 98-00009-A, effective November 25, 1998. Statutory Basis - RPTL, § 202(1)(l) and Article 6.

Part 199 - Taxation of State Land - RPS - 32-98-00010-A, effective December 30, 1998. Statutory Basis - RPTL, Article 5, Title 2 and section 202(1)(l).

Part 200 - Establishment of Railroad Ceilings - RPS - 32-98-00011-A, effective December 9, 1998. Statutory Basis - RPTL, §§ 202(1)(l), (m), 489-q and 489-nn.

To obtain information or submit written comments regarding this review, contact James J. O'Keefe, Acting Counsel, New York State Office of Real Property Services, 16 Sheridan Avenue, Albany, NY 12210-2714, (518) 474-8821. Comments should be submitted by April 30, 2008.

Department of State

Five Year Review of Rules Adopted in Calendar Year 2003
Required to be Reviewed in Calendar Year 2008 and
Further Review of Rules Adopted by the Department of State
in Calendar Year 1998 Required to be Re-Reviewed
in Calendar Year 2008

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 2003 which must be reviewed in calendar year 2008. 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, 2008. Comments may be directed to: Nathan A. Hamm, Office of Counsel, Department of State, 41 State Street, Albany, New York 12231.

RULES ADOPTED IN 2003

DOS-53-02-00019 Continuing Education for Real Estate Brokers and Salespersons

Amended Part 177 of Title 19 NYCRR to update then existing rules for continuing education and provide for computer-based and distance learning

Analysis of the need for the rule: The rule was needed to provide standards for computer-based and distance learning courses. It also repealed several obsolete provisions of Part 177 of Title 19 NYCRR.

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

DOS-16-03-00003 Single-Door, Card-Access Entry Systems

Amended section 195.2(c) of Title 19 NYCRR to clarify when an alarm installer's license is not needed

Analysis of the need for the rule: The rule was needed to clarify for the alarm industry, local officials, and consumers that the installation, service, and maintenance of a single-door, card-access entry system does not require an alarm installer's license if the system does not detect and/or provide notification of intrusion, break-in, theft, movement, sound or fire.

Legal basis for the rule: General business Law, section 69-n(5)

As further required by section 207 of SAPA, the following is a list of rules which were adopted by the Department of State in calendar year 1998 which must be re-reviewed in calendar year 2008. 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, 2008. Comments may be directed to: Nathan A. Hamm, Office of Counsel, Department of State, 41 State Street, Albany, New York 12231.

DOS-46-97-00004 State Academy of Fire Science

Amended section 452.1 of Title 19 NYCRR to bring the fees charged by the State Academy of Fire Science closer to the State's actual costs for operating the Academy

Analysis of the need for the rule: The rule was needed because the Legislature intended the State Academy of Fire Science to be self-sustaining, however, it is not. The rule was intended to increase the amount of income generated by the Academy and thereby take a step toward making it self sustaining.

Legal basis for the rule: Executive Law, section 91.

DOS-48-97-00008 Approval of instructors for real estate courses

Amended section 176.11(b)(5) of Title 19 NYCRR to increase the points given to instructors for certain college degrees

Analysis of the need for the rule: The rule was needed because the Real Estate Board believed that the existing qualifying standards for instructors gave too little weight to academic achievements.

Legal basis for the rule: Real Property Law, section 442-k(3).

DOS-06-98-00001 On-line access

Added a new section 155.5 to Title 19 NYCRR which authorized on-line access to records relating to corporations and other business entities

Analysis of the need for the rule: The rule authorized on-line access to information concerning corporations and other business entities contained in the computerized information systems of the Division of Corporations of the Department of State. The rule made it possible to

complete business transactions requiring this information more quickly than ever before, resulting in immediate and substantial savings of time and expense to regulated parties.

Legal basis for the rule: Executive Law, sections 91 and 96(16).

DOS-09-98-00002 Qualifying education for certified residential real estate appraisers

Amended section 1103.8 of Title 19 NYCRR to conform New York Standards to Federal Standards

Analysis of the need for the rule: The rule was necessary to conform New York State standards for qualifying education for certified residential real estate appraisers to the Federal standards recommended by the Appraisal Qualification Board of the Appraisal Foundation.

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

DOS-11-98-00002 Corporation names

Repealed Parts 146, 147, 148, and 152 and added Part 156 to Title 19 NYCRR to modernize the current naming rules for business organizations

Analysis of the need for the rule: The rule was needed to reflect contemporary practices in the Division of Corporations of the Department of State concerning the naming rules for corporations, limited liability companies, and other business organizations.

Legal basis for the rule: Executive Law, section 91.

DOS-11-98-00003 Filing rule technical amendments

Repealed Parts 149, 151, and 153 and amended Parts 145, 150, 154, and 155 of Title 19 NYCRR to eliminate references to particular technologies, and to reflect statutory changes and current practices with respect to filings in the Division of Corporations of the Department of State

Analysis of the need for the rule: The rule was needed to reflect contemporary practices in the Division of Corporations of the Department of State concerning technologies employed to file and maintain records, and to amend existing regulations to reflect statutory changes and current practices.

Legal basis for the rule: Executive Law, section 91.

DOS-14-98-00004 Continuing education for real estate appraisers

Added a new Part 1107 to Title 19 NYCRR which implemented requirements of Executive Law, section 160-t

Analysis of the need for the rule: The rule was necessary because Executive Law section 160-t mandates that the Secretary of State adopt rules implementing the continuing education requirements which it establishes.

Legal basis for the rule: Executive Law, section 160-t(4).

DOS-29-98-00007 Continuing education for real estate appraisers

Amended Part 1107 of Title 19 NYCRR to increase the required hours from 20 hours to 28 hours biennially

Analysis of the need for the rule: The rule was needed to conform the continuing education requirement for State licensed and State certified real estate appraisers to a Federal standard which raised the required hours of instruction from 20 hours to 28 hours biennially.

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

DOS-41-98-00001 Trademarks and service marks

Repealed Parts 140, 141, and 142 and added a new Part 140 to Title 19 NYCRR to provide information and instruction on registering trademarks and service marks

Analysis of the need for the rule: The rule was needed to comply with those provisions of Article 24 of the General Business Law dealing with trademarks and service marks which require that the Department of State establish a classification of goods and services, and otherwise aid filers registering trademarks and service marks.

Legal basis for the rule: Executive Law, section 91; General Business Law, sections 360-I and 360-q.

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 rules, with certain exceptions, adopted on or after January 1, 1997, after five years, and, thereafter, at five year intervals. In 2008, the Department must review rules that were adopted during 2003 and 1998 to determine whether these rules should be retained as written or modified. Accordingly, the Department intends to review the following rules during 2008, and invites written comments on the continuation or modification of these rules in order to assist the Department in the required review. We will consider comments that are received by February 19, 2008.

1. 20 NYCRR Subchapter G of Chapter I (Stock Transfer Tax - formerly Subchapter G of Chapter III) Filed January 30, 1998; published/effective February 18, 1998. Need: This rule simplified and updated the Stock Transfer Tax regulations by removing outdated information, and consolidating and summarizing the language. The rule also provided for an alternative means for brokers to submit daily reports to a clearing corporation and provided for the manner in which they could certify such records. In addition, the rule addressed the rebate of the stock transfer tax provided for in section 280-a of the Tax Law. This rule was previously reviewed as part of the Department's 2003 Rule Review published in the State Register on January 8, 2003. As a result of that review of the 1998 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on June 25, 2003. Legal Basis: Tax Law, section 171, subd. First. (TAF-49-97-00004-A)

2. 20 NYCRR Section 528.2 (Application of Sales Tax Exemption to Marshmallows) Filed April 14, 1998; published April 29, 1998; effective June 1, 1998. Need: This rule deleted regulatory inconsistency in the imposition of sales tax on receipts from the sales of marshmallows and marshmallow bits by allowing for the interpretation of the exemption from sales tax on food to include receipts from the sales of marshmallows of all sizes. This rule was previously reviewed as part of the Department's 2003 Rule Review published in the State Register on January 8, 2003. As a result of that review of the 1998 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on April 30, 2003. Legal Basis: Tax Law, sections 171, subd. First; 1142(1); and 1250 (not subdivided). (TAF-07-98-00003-A)

3. 20 NYCRR Part 647 (Credit Line Mortgage) Filed June 23, 1998; published/effective July 8, 1998. Need: This rule reflects amendments made to Article 11 of the Tax Law by Chapters 489 and 490 of the Laws of 1996 that extended favorable tax treatment afforded certain residential credit line mortgages to all credit line mortgages securing a maximum principal indebtedness of less than \$3 million. This rule was previously reviewed as part of the Department's 2003 Rule Review published in the State Register on January 8, 2003. As a result of that review of the 1998 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on May 28, 2003. Legal Basis: Tax Law, sections 171, subd. First; 253-b(3); and 263(1)(a). (TAF-17-98-00004-A)

4. 20 NYCRR Part 2401 (Taxpayers Affected by Declared Disasters) Filed January 28, 1998; published February 18, 1998; effective January 28, 1998 (emergency adoption). Filed April 27, 1998; published May 13, 1998; effective April 27, 1998 (emergency readoption). Filed June 23, 1998; published July 8, 1998; effective June 23, 1998 (second emergency readoption). Filed July 22, 1998; published/effective August 12, 1998 (permanent adoption). Need: This rule was added to implement provisions of Chapter 8 of the Laws of 1998, which

authorized the Commissioner of Taxation and Finance to postpone certain tax deadlines for a period up to 90 days, without imposition of penalty and interest, for taxpayers determined to be affected by a disaster declared by the President or the Governor. This rule was previously reviewed as part of the Department's 2003 Rule Review published in the State Register on January 8, 2003. As a result of that review of the 1998 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on April 30, 2003. Legal Basis: Tax Law, sections 171, subd. First and Twenty-eighth. (TAF-19-98-00002-A)

5. 20 NYCRR Section 527.11(b)(7) (Social and Athletic Clubs) Filed October 7, 1998; published/effective October 28, 1998. Need: By amending Example 29, which illustrates athletic clubs, this rule eliminated the reference to fishing and hunting clubs as examples of athletic clubs whose dues and initiation fees are subject to sales tax and qualified the reference to boating clubs subject to such tax. This rule was previously reviewed as part of the Department's 2003 Rule Review published in the State Register on January 8, 2003. As a result of that review of the 1998 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on August 27, 2003. Legal Basis: Tax Law, sections 171, subd. First; 1142(1); and 1250 (not subdivided). (TAF- 32-98-00004-A)

6. 20 NYCRR Part 2400 (Action for Failure to Release a Lien) Filed December 23, 1997; published January 7, 1998; effective January 1, 1998 (emergency adoption). Filed February 25, 1998; effective January 1, 1998 and applicable to damages arising on or after January 1, 1998 (permanent adoption). Need: This rule implemented provisions of Chapter 577 of the Laws of 1997 and provides taxpayers with guidance on administrative review of a "notice of failure to release a lien". The rule also provides for the type of bond or other security which is acceptable to effectuate a release of lien. This rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002 (based on the emergency adoption), and part of the Department's 2007 Rule Review published in the State Register on January 3, 2007. As a result of those reviews, Rule Review notices indicating that the rule would be continued without modification was published in the State Register on July 10, 2002, and on August 22, 2007. We are reviewing this rule again in 2008 because the rule was permanently adopted in 1998 and is more appropriately reviewed based on the date of the permanent adoption. Legal Basis: Tax Law, sections 171, subd. First; and 3032(a) and (d), and section 56(j) of Chapter 577 of the Laws of 1997. (TAF-01-98-00007-A)

Any questions concerning the items listed in this rule review, or comments regarding the continuation of the rules being reviewed should be referred to: John W. Bartlett, Taxpayer Guidance Division, Department of Taxation and Finance, W.A. Harriman Campus, Building 9, Room 161, Albany, New York 12227. Telephone: (518) 457-2254, Email address: tax_regulations@tax.state.ny.us.

Office of Temporary and Disability Assistance

Pursuant to section 207 of the State Administrative Procedure Act (SAPA), the Office of Temporary and Disability Assistance (OTDA) must review at five-year intervals those regulations that were adopted on or after January 1, 1997. The purpose of the review is to determine whether the regulations should be retained as written or modified. On January 3, 2007, OTDA published in the State Register a list of regulations from Title 18 of the New York Codes, Rules and Regulations (NYCRR) that OTDA adopted in 2003 and 1997. Those regulations are set forth below.

a. Section 352.17(e) – establishes a reasonable administrative processing period in which a social services official is required to adjust a public assistance grant or calculate the amount of any overpayment of a public assistance grant as a result of new or increased earnings. Filed February 25, 2003; effective March 12, 2003. Legal basis: Social Services Law (SSL) sections 20(3)(d), 34(3)(f), 131(1), 131-a and 355(3). Those sections authorize OTDA to establish regulations to carry out its powers and duties, and they require OTDA to provide public assistance to needy persons who are determined to be eligible in accordance with the statutory standards of need.

b. Section 352.23(b) – establishes resource exemption levels for vehicles owned by public assistance recipients and authorizes social services districts to exempt as a resource any funds deposited in a bank account by such recipients if the account does not exceed a certain level and if the funds are used to purchase a first or used vehicle to enable the recipients to seek, obtain or maintain employment. Filed February 25, 2003; effective March 12, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), 131(1), 131-n and 355(3). SSL section 131-n sets forth the resources that are to be exempt and disregarded in calculating the amount of benefits of any household under any public assistance program, and that section authorizes OTDA to promulgate regulations it deems necessary to prevent the improper establishment and use of accounts for the purchase of first or replacement vehicles.

c. Sections 369.1, 372.2 and 372.4 – conform the emergency assistance to families (EAF) regulations to federal laws and regulations, eliminate the potential for federal penalties for incorrect use of funds in the EAF program, and remove unnecessary and restrictive limits on the amount of EAF that can be provided to repair an EAF recipient's home. Filed February 25, 2003; effective March 12, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), 350-j, 355(3) and 410-u; Social Security Act sections 404(a)(2), 408(a)(1)(A) and 409(a)(1)(A) and (B). The SSL sections require OTDA to promulgate regulations necessary for the carrying out of the provisions of the EAF program.

d. Sections 350.3(a), 387.1(e)(1), and 387.5(j) and (k) – limit the use of an authorized representative to persons who are unable to file an application for public assistance or food stamps. Filed May 19, 2003; effective June 4, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), 95, 131(1) and 355(3). Title 7, part 273, section 2, subdivision (n) of the Code of Federal Regulations. The SSL sections authorize OTDA to administer the federal food stamp program in this State.

e. Sections 352.22(e)(1) and 352.22(e)(2) – clarify the regulations concerning the treatment of trust funds and the eligibility for public assistance. The amendments revised the regulations concerning the treatment of trust assets for purposes of determining whether such assets can be used to provide for the basic maintenance needs of the trust beneficiary when such beneficiary is in receipt of or applies for public assistance. Filed July 28, 2003; effective August 13, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), 131(1), 131-n and 355(3). Those sections authorize OTDA to establish regulations defining income and resources.

f. Part 358 – makes technical changes that were primarily needed to conform the regulations concerning fair hearings to the Welfare Reform Act of 1997. The changes, in part, reflect the following: the creation of OTDA and the Office of Children and Family Services (OCFS); the responsibility of the Department of Health for the medical assistance program; the responsibility of the Department of Labor for the public assistance employment programs (subsequently repealed); the responsibility of OCFS for certain services programs; and the responsibility of the Office of Administrative Hearings within OTDA for conducting hearings on behalf of such agencies. The addition of section 358-5.9(e) concerns the issuance of subpoenas in fair hearings. Filed August 19, 2003; effective September 3, 2003. Legal basis: Chapter 436 of the Laws of 1997, constituting the Welfare Reform Act

of 1997. SSL sections 20(3)(d), 22(8) and 34(3)(f). These sections of SSL require OTDA to establish regulations for the administration of public assistance and care within the State and to promulgate regulations as may be necessary to implement the fair hearing provisions. Note: Numerous sections of Part 358 of 18 NYCRR have been subsequently amended.

g. Sections 387.14(a)(5)(i)(a)(1)-(3), 387.14(a)(5)(i)(b) and 387.14(a)(5)(ii)(c) – extend categorical eligibility for food stamps to recipients of safety net assistance. Filed August 19, 2003; effective September 3, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 95. Those sections authorize OTDA to administer the federal food stamp program in this State.

h. Sections 358-2.28, 358-2.29, 358-3.1(f), 387.7(a) and (g), 387.14(g)(1)(ii) and 387.17 – implement federal requirements concerning the food stamp application and certification processing requirements. Filed August 26, 2003; effective September 10, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 95. Title 7, part 273, sections 2, 10 and 12 of the Code of Federal Regulations. The SSL sections authorize OTDA to administer the federal food stamp program in this State. Note: Section 358-3.1 of 18 NYCRR has been subsequently amended.

i. Sections 358-3.3(e)(3), 387.14(a)(5)(ii)(b) and 387.17 – establish new requirements for reporting information to social services districts concerning eligibility for food stamps. Filed August 26, 2003; effective September 10, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 95. Title 7, part 273, sections 10 and 12 of the Code of Federal Regulations. The SSL sections authorize OTDA to administer the federal food stamp program in this State.

j. Section 387.17(a) – extends from twelve months to twenty-four months the food stamp certification period for households in which all adult members are elderly or disabled. Filed August 26, 2003; effective September 10, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 95. Title 7, part 273, section 10, subdivision (f) of the Code of Federal Regulations. The SSL sections authorize OTDA to administer the federal food stamp program in this State.

k. Section 352.20(c) – allows for the percentage earned income disregard to be provided to all safety net assistance cases that would be eligible for family assistance except for the imposition of the 60-month State limit on the receipt of family assistance. Filed September 9, 2003; effective September 24, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), 131-a(1), 131-a(8)(a)(iii), 158, 349 and 355(3). Those sections authorize OTDA to establish regulations for the administration of public assistance and care within the State.

l. Part 352 and section 381.3(c) – provide a shelter allowance that reflects the cost of acceptable quality housing; provide for a supplement to ensure that family units facing special circumstances may be kept together in a home-type setting; maintain strong incentives to work; insure fairness and equity in the provision of public benefits; and simplify grant administration. Filed July 22, 2003; effective November 1, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), 131(1), 131-a(2), 158, 349 and 355(3). Those sections authorize OTDA to establish regulations for the administration of public assistance and care within the State and to include within the standard of need an amount for shelter. Note: Sections 352.3 and 352.30 of 18 NYCRR have been subsequently amended.

m. Part 491 – eases the burden on social services districts and other operators of shelters for adults in relation to the operation of such shelters. Filed March 7, 1997; effective March 26, 1997. The regulatory amendments, among other things, expand the options for granting waivers of non-statutory requirements of Parts 485, 486 and 491 of 18 NYCRR relating to shelters for adults; eliminate the maximum capacity for shelters for adults; increase the time period during which a shelter for adults can be operated above the certified capacity and repeal environmental standards that are duplicative of local codes or other State requirements. Legal basis: SSL sections 20(3)(d), 34(3)(f), 460 and 461.

Those sections authorize OTDA to promulgate regulations concerning shelters for adults.

n. Section 350.3(c) – requires that an interview with an applicant for public assistance be scheduled within seven rather than five working days after an application is submitted. Filed March 27, 1997; effective April 16, 1997. The regulatory amendment will assist social services districts in the effective and efficient administration of public assistance programs by providing additional time for districts to schedule interviews with public assistance applicants. Legal basis: SSL sections 17, 20(3)(d), 34(3)(f), 158(a) and 355(3). Those sections authorize OTDA to promulgate regulations concerning the operation of the State's public assistance programs.

o. Parts 900 and 1000 – provide administrative flexibility to, and reduce the administrative burden on, social services districts and homeless shelter providers by consolidating and modifying existing requirements for family shelters and shelters for pregnant women. Filed August 22, 1997; effective September 10, 1997. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 153 and Chapter 562 of the Laws of 1953 and Chapter 53 of the Laws of 1992. Those sections and Chapter Laws authorize OTDA to promulgate regulations concerning reimbursement to social services districts concerning care provided to persons in shelters and homeless persons. Note: Part 1000 was repealed. Sections of Part 900 of 18 NYCRR have been subsequently amended.

p. Sections 358-3.7 and 358-4.2 – set forth standards for making documents available to appellants in fair hearings. Filed October 29, 1997; effective November 19, 1997. The regulatory amendments relieve social services districts from costly mandates by conforming Office regulations to federal requirements regarding the provision of copies of documents from the case file by social services districts to appellants at fair hearings. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 22(8). Those sections authorize OTDA to promulgate regulations concerning the conduct of fair hearings. Note: Section 358-4.2 of 18 NYCRR has been subsequently amended.

q. Section 347.10 – reflects the 1996 self-support reserve and child support standard chart. Filed May 9, 1997; effective May 28, 1997. The regulatory amendment will ensure that the social services districts and the family courts are advised of the correct amount of the 1996 self-support reserve when calculating the basic child support obligation for parties in child support proceedings. This is consistent with federal requirements that States implement child support standards that are used in the calculation of child support obligations and that the standards take into account the non-custodial parent's income. Legal basis: SSL sections 20(3)(d), 34(3)(f), 111-a and 111-i. Those sections authorize OTDA to promulgate regulations concerning child support standards. Note: Section 347.10 of 18 NYCRR has been subsequently amended.

As of December 10, 2007, OTDA has not yet received substantive comments in response to the above list. OTDA is in the process of amending section 347.10 of 18 NYCRR to reflect the revised poverty income guidelines amount, the revised self-support reserve, and the updated child support standards chart, which are used to calculate child support obligations. The notice of proposed rule making to amend section 347.10 of 18 NYCRR was published in the *State Register* on October 17, 2007. OTDA also is considering a technical amendment to section 358-4.2 to clarify a reference to the Office of Administrative Hearings. At this point, OTDA has determined that no additional modifications need to be made to its regulations adopted in 1997.

OTDA has determined that it should review again its regulations adopted in 2003 and review its regulations adopted in 1998. These regulations from 2003 and 1998, listed below, are subject to the provisions of section 207 of SAPA. The regulations must be reviewed to determine whether they should be retained as written or modified. OTDA invites written comments on the continuation or modification of these regulations in order to assist in the required review. We will consider only those comments that are received by March 1, 2008.

1. Section 352.17(e) – established a reasonable administrative processing period in which a social services official was required to adjust a public assistance grant or calculate the amount of any overpayment of a public assistance grant as a result of new or increased earnings. Filed February 25, 2003; effective March 12, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), 131(1), 131-a and 355(3). Those sections authorized OTDA to establish regulations to carry out its powers and duties, and they required OTDA to provide public assistance to needy persons who were determined to be eligible in accordance with the statutory standards of need.

2. Section 352.23(b) – established resource exemption levels for vehicles owned by public assistance recipients and authorized social services districts to exempt as a resource any funds deposited in a bank account by such recipients if the account did not exceed a certain level and if the funds were used to purchase a first or used vehicle to enable the recipients to seek, obtain or maintain employment. Filed February 25, 2003; effective March 12, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), 131(1), 131-n and 355(3). SSL section 131-n set forth the resources that were to be exempt and disregarded in calculating the amount of benefits of any household under any public assistance program, and that section authorized OTDA to promulgate regulations it deemed necessary to prevent the improper establishment and use of accounts for the purchase of first or replacement vehicles.

3. Sections 369.1, 372.2 and 372.4 – conformed the emergency assistance to families (EAF) regulations to federal laws and regulations, eliminated the potential for federal penalties for incorrect use of funds in the EAF program, and removed unnecessary and restrictive limits on the amount of EAF that can be provided to repair an EAF recipient's home. Filed February 25, 2003; effective March 12, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), 350-j, 355(3), and 410-u; Social Security Act sections 404(a)(2), 408(a)(1)(A) and 409(a)(1)(A) and (B). The SSL sections required OTDA to promulgate regulations necessary for the carrying out of the provisions of the EAF program.

4. Sections 350.3(a), 387.1(e)(1), and 387.5(j) and (k) – limited the use of an authorized representative to persons who were unable to file an application for public assistance or food stamps. Filed May 19, 2003; effective June 4, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), 95, 131(1), and 355(3). Title 7, part 273, section 2, subdivision (n) of the Code of Federal Regulations. The SSL sections authorized OTDA to administer the federal food stamp program in this State.

5. Sections 352.22(e)(1) and 352.22(e)(2) – clarified the regulations concerning the treatment of trust funds and the eligibility for public assistance. The amendments revised the regulations concerning the treatment of trust assets for purposes of determining whether such assets can be used to provide for the basic maintenance needs of the trust beneficiary when such beneficiary was in receipt of or applied for public assistance. Filed July 28, 2003; effective August 13, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), 131(1), 131-n and 355(3). Those sections authorized OTDA to establish regulations defining income and resources.

6. Part 358 – made technical changes that were primarily needed to conform the regulations concerning fair hearings to the Welfare Reform Act of 1997. The changes, in part, reflected the following: the creation of OTDA and the Office of Children and Family Services (OCFS); the responsibility of the Department of Health for the medical assistance program; the responsibility of the Department of Labor for the public assistance employment programs (subsequently repealed); the responsibility of OCFS for certain services programs; and the responsibility of the Office of Administrative Hearings within OTDA for conducting hearings on behalf of such agencies. The addition of section 358-5.9(e) concerned the issuance of subpoenas in fair hearings. Filed August 19, 2003; effective September 3, 2003. Legal basis: Chapter 436 of the Laws of 1997, constituting the Welfare Reform Act of 1997. SSL sections 20(3)(d), 22(8), and 34(3)(f). These sections of SSL required OTDA to

establish regulations for the administration of public assistance and care within the State and to promulgate regulations as may be necessary to implement the fair hearing provisions.

7. Sections 387.14(a)(5)(i)(a)(1)-(3), 387.14(a)(5)(i)(b) and 387.14(a)(5)(ii)(c) – extended categorical eligibility for food stamps to recipients of safety net assistance. Filed August 19, 2003; effective September 3, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), and 95. Those sections authorized OTDA to administer the federal food stamp program in this State.

8. Sections 358-2.28, 358-2.29, 358-3.1(f), 387.7(a) and (g), 387.14(g)(1)(ii) and 387.17 – implemented federal requirements concerning the food stamp application and certification processing requirements. Filed August 26, 2003; effective September 10, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), and 95. Title 7, part 273, sections 2, 10 and 12 of the Code of Federal Regulations. The SSL sections authorized OTDA to administer the federal food stamp program in this State.

9. Sections 358-3.3(e)(3), 387.14(a)(5)(ii)(b) and 387.17 – established new requirements for reporting information to social services districts concerning eligibility for food stamps. Filed August 26, 2003; effective September 10, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), and 95. Title 7, part 273, sections 10 and 12 of the Code of Federal Regulations. The SSL sections authorized OTDA to administer the federal food stamp program in this State.

10. Section 387.17(a) – extended from twelve months to twenty-four months the food stamp certification period for households in which all adult members are elderly or disabled. Filed August 26, 2003; effective September 10, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), and 95. Title 7, part 273, section 10, subdivision (f) of the Code of Federal Regulations. The SSL sections authorized OTDA to administer the federal food stamp program in this State.

11. Section 352.20(c) – allowed for the percentage earned income disregard to be provided to all safety net assistance cases that would be eligible for family assistance except for the imposition of the 60-month State limit on the receipt of family assistance. Filed September 9, 2003; effective September 24, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), 131-a(1), 131-a(8)(a)(iii), 158, 349 and 355(3). Those sections authorized OTDA to establish regulations for the administration of public assistance and care within the State.

12. Part 352 and section 381.3(c) – provided a shelter allowance that reflected the cost of acceptable quality housing; provided for a supplement to ensure that family units facing special circumstances may be kept together in a home-type setting; maintained strong incentives to work; insured fairness and equity in the provision of public benefits; affected household composition; and simplified grant administration. Filed July 22, 2003; effective November 1, 2003. Legal basis: SSL sections 20(3)(d), 34(3)(f), 131(1), 131-a(2), 158, 349 and 355(3). Those sections authorized OTDA to establish regulations for the administration of public assistance and care within the State and to include within the standard of need an amount for shelter.

13. Title of Part 358, sections 358-1.1 and 358-2.27, and Part 388 – implemented the food assistance program. Filed February 2, 1998; effective February 18, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 95(10). Section 95(10) of the SSL authorized OTDA to administer a Food Assistance program and to promulgate emergency regulations to implement the program.

14. Section 351.12 - implemented the learnfare program, whose purpose was to prevent children from dropping out of school and to improve the attendance of children in school. Filed February 5, 1998; effective February 25, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 131-y. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 131-y of the SSL required that OTDA have a program known as learnfare.

15. Repeal of section 352.17(b)(1)(iii) and amendment of sections 352.18, 352.19 and 352.20 - implemented provisions of Chapter 436 of the Laws of 1997 concerning the calculation of earned income disregards for recipients of public assistance. Chapter 436 of the Laws of 1997 revised certain income disregards used in calculating eligibility for public assistance. Filed April 9, 1998; effective April 22, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 131-a and Chapter 436 of the Laws of 1997. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 131-a of the SSL authorized monthly grants and allowances for recipients of public assistance.

16. Section 300.9 - implemented provisions of Chapter 436 of the Laws of 1997 concerning local flexibility incentive pilot programs to enable social services districts to develop and implement innovative, flexible and efficient human service programs. Filed April 7, 1998; effective April 22, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 36-b and Chapter 436 of the Laws of 1997. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 36-b of the SSL, added by Chapter 436 of the Laws of 1997, addressed local flexibility incentive pilot programs.

17. Sections 352.30 and Part 359 - imposed sanctions for intentional program violations in the family assistance and safety net assistance programs. Filed April 7, 1998; effective April 22, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 145-c and Chapter 436 of the Laws of 1997. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 145-c of the SSL, which was amended by Chapter 436 of the Laws of 1997, authorized OTDA to impose sanctions against persons who are found to have committed intentional program violations.

18. Section 350.1(d) - provided technical consistency and language clarity for the public assistance program. The amendment stated that references to "aid to dependent children" refer to "family assistance" and references to "home relief" refer to "safety net assistance." The amendment defined "public assistance" as referring to family assistance, safety net assistance and veteran assistance. Filed April 7, 1998; effective April 22, 1998. Legal basis: SSL sections 2, 20(3)(d) and 34(3)(f) and Chapter 436 of the Laws of 1997. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and Chapter 436 of the Laws of 1997 created the family assistance program and the safety net assistance program.

19. Sections 351.1(b)(2)(iv), 352.30(d)(2)-(4), 387.1(w) and 351.2(k) - prohibited the following persons from receiving assistance: unmarried persons under 18 years old who are with a child and who have not completed or are not attending high school; fugitive felons and probation and parole violators; persons convicted of illegally receiving duplicate benefits; and minors absent from their homes. Filed April 7, 1998; effective April 22, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f), and 131 and Chapter 436 of the Laws of 1997. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and Chapter 436 of the Laws of 1997 added new subdivisions (12), (14), (15) and (18) to section 131 of the SSL, which contained certain conditions for eligibility for public assistance.

20. Part 370 - provided the standards for the safety net assistance program. The amendments replaced the term "home relief" with "safety net assistance" throughout the Part. Many of the requirements for home relief remained under the safety net assistance program; however, the amendments added several new provisions for eligibility for, and the provision of, safety net assistance. Filed April 7, 1998; effective April 22, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f), 157, 158 and 159 and Chapter 436 of the Laws of 1997. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration

of public assistance and care, and sections 157, 158 and 159 of the SSL, which were amended by Chapter 436 of the Laws of 1997, authorized the safety net assistance program.

21. Sections 351.2, 384.1, 384.2(b) and (c), 384.3(a)(3)(i), 387.9(c) and 388.8 - required social services districts to fingerprint applicants for and recipients of safety net assistance, emergency safety net assistance, emergency assistance to needy families with children, public institutional care adults, family assistance, food stamps or food assistance benefits. Filed May 1, 1998; effective May 20, 1998. Legal basis: SSL sections 17, 20(3)(d), 34(3)(f), 131(1), 134-a, 139-a, 158(a) and 355(3) and Chapter 436 of the Laws of 1997. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and Chapter 436 of the Laws of 1997 amended the SSL to establish standards for eligibility for benefits including proof of identity.

22. Repeal of sections 349.3 and 352.33 and addition of new sections 349.3 and 352.33 - conformed the State's eligibility requirements for federally funded assistance to federal law, exercised federal options for the eligibility of certain persons, and set forth the requirements for eligibility for State funded programs. The amendments addressed the eligibility of non-citizens for family assistance, safety net assistance, food stamps, Title XX benefits and additional State payments in the supplemental security income program. The amendments established requirements for deeming the income of an alien's sponsor to the alien for purposes of eligibility for various programs. Filed June 2, 1998; effective June 17, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 122 and Chapter 436 of the Laws of 1997. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 122 of the SSL, which was added by Chapter 436 of the Laws of 1997, set forth citizenship and alien requirements.

23. Section 351.2(i) - required that applicants for or recipients of public assistance be screened for alcohol and/or drug abuse and attend appropriate treatment programs when necessary. Filed June 2, 1998; effective June 17, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 132 and Chapter 436 of the Laws of 1997. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 132 of the SSL, which was amended by Chapter 436 of the Laws of 1997, required screening for alcohol and/or substance abuse of all head of households and adult applicants for public assistance.

24. Section 352.23(a), (b) and (d) - provided for the exemption of income and resources for public assistance eligibility. Filed April 7, 1998; effective April 22, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 131-n and Chapter 436 of the Laws of 1997. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 131-n of the SSL, which was amended by Chapter 436 of the Laws of 1997, set forth certain exemptions of income and resources.

25. Section 352.5(e) - clarified the regulations concerning who must sign an agreement to repay emergency assistance provided to pay utility arrears. Filed May 20, 1998; effective June 10, 1998. Legal basis: SSL sections 17, 20(3)(d), 34(3)(f), 131(1), 131-s, 158 and 355(3). Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 131-s of the SSL addressed payments made for utility services.

26. Section 352.30 - provided sanctions for non-compliance with work rules and drug or alcohol screening. Filed June 2, 1998; effective June 17, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f), 132(4)(f) and 342 and Chapter 436 of the Laws of 1997. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 342 of the

SSL, which was added by Chapter 436 of the Laws of 1997, changed the penalty from an incremental reduction of benefits to a pro rata reduction of benefits for a failure to comply with the work requirements of 18 NYCRR Part 385. A similar penalty was imposed by section 132(4)(f) of the SSL, which was added by Chapter 436 of the Laws of 1997, on persons who failed to participate in a drug or alcohol screening program.

27. Section 353.2(a) and (b) - clarified that interim assistance subject to recovery may include family assistance if paid exclusively from State and local funds. Filed June 2, 1998; effective June 17, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f), and 349(B)(2). Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and Chapter 436 of the Laws of 1997 renamed the programs for which interim assistance may be recovered and made clear that interim assistance could be recovered from non-federally funded family assistance provided to persons, or households containing such persons, who are permanently disabled and awaiting determinations of eligibility for federal supplemental security income benefits. Section 349(B)(2) authorized OTDA to establish regulations to implement these provisions.

28. Section 352.21 - implemented the establishment of individual development accounts. Filed June 2, 1998; effective June 17, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 358(5). Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 358(5) of the SSL permitted individuals to accumulate funds in certain individual development accounts.

29. Section 357.3 - permitted social services officials to take the following actions: aid law enforcement officials with the address of a fleeing felon; report physical, mental or sexual abuse; and communicate with the federal immigration and naturalization services. Filed June 2, 1998; effective June 17, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 136. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 136 of the SSL did not preclude certain interaction with law enforcement agencies or the federal immigration and naturalization service.

30. Part 366 - implemented provisions of Chapter 436 of the Laws of 1997 concerning the child assistance program, which was a district optional component of the family assistance program designed to motivate family assistance recipients to take steps towards financial self-sufficiency. Filed June 2, 1998; effective June 17, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 131-z. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 131-z of the SSL authorized social services districts to operate a child assistance program, provided details regarding the child assistance program, and required that OTDA promulgate regulations for the operation of the child assistance program.

31. Part 369 - implemented provisions of Chapter 436 of the Laws of 1997 concerning eligibility for family assistance. The amendments replaced the term "aid to dependent children" with "family assistance" throughout the Part. Many of the requirements for aid to dependent children remained under the family assistance program; however, the amendments added several new provisions for eligibility for, and the provision of, family assistance. Filed June 2, 1998; effective June 17, 1998. Legal basis: SSL sections 2(18), 20(3)(d), 34(3)(f), 131(6), 344, 349 and 350(c)(2) and Chapter 436 of the Laws of 1997. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care. Section 2(18) of the SSL, as amended by Chapter 436 of the Laws of 1997, eliminated references to "aid to dependent children" and set forth the family assistance program. Section 131(6) of the SSL, as amended by Chapter 436 of the Laws of 1997, established the various living arrangements in which a minor parent may reside in order to receive family assistance

benefits. Sections 344 and 349 of the SSL, as added by Chapter 436 of the Laws of 1997, established and determined the eligibility requirements for the State's family assistance program. Section 350(c)(2) of the SSL, as amended by Chapter 436 of the Laws of 1997, set the time limit for receipt of family assistance benefits at sixty (60) months.

32. Sections 381.1 and 381.2 - implemented the statewide electronic benefit transfer system, which provided recipients increased security and convenience in accessing their benefits and also helped reduce benefit fraud. Filed June 2, 1998; effective June 17, 1998. Legal basis: SSL sections 20(3)(d), 21-a and 34(3)(f). Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 21-a of the SSL, as added by Chapter 436 of the Laws of 1997, required the implementation of an electronic benefit transfer system on a Statewide basis.

33. Sections 383.1 and 383.3 - implemented provisions concerning when the identification card of a public assistance recipient can be replaced. Filed June 2, 1998; effective June 17, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 131(19) and Chapter 436 of the Laws of 1997. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 131(19) of the SSL, as added by Chapter 436 of the Laws of 1997, concerned the replacement of identification cards.

34. Section 352.22(aa) - exempted payments to victims of Nazi persecution in determining eligibility for public assistance. Filed June 17, 1998; effective July 8, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 131-n(2). Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 131-n(2) of the SSL excluded reparation payments made to victims of Nazi persecution from consideration in determining eligibility for and the amount of benefits to be paid under certain public assistance programs.

35. Section 355.1(c) - required that social services districts provide all applicants for and recipients of public assistance whose households include a child five years of age or younger with information and a schedule regarding age-appropriate immunizations. The amendments also required that social services districts must provide such applicants and recipients with information about eligibility for free vaccinations for children. Filed June 17, 1998; effective July 8, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 131(13). Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 131(13) of the SSL, as added by Chapter 61 of the Laws of 1996, required social services districts to provide information and a schedule regarding age-appropriate immunizations to certain applicants for and recipients of public assistance.

36. Section 352.31(d)(5) - raised the threshold amount of public assistance to be recovered from \$35 to \$125. The amendment was intended to relieve social services districts from the administrative burden of collecting overpayment amounts which are so small that collection is not cost effective. Filed July 13, 1998; effective July 29, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 106-b. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 106-b of the SSL authorized social services districts to correct any overpayments or underpayments to a public assistance recipient. Any corrections must be done in a manner that is consistent with regulations of OTDA.

37. Sections 351.2(l), 347.5(g) and (h), 369.2(b)(1)(iv), 357.3(i), 358-3.1(b) and 358-3.3- implemented the domestic violence screening, assessment and referral program for applicants for and recipient of public assistance. The purpose of the program was to provide care, support, and protection to victims of domestic violence who were

applying for or receiving public assistance. Filed September 4, 1998; effective September 23, 1998. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 349-a. Sections 20(3)(d) and 34(3)(f) of the SSL required OTDA to establish regulations for the administration of public assistance and care, and section 349-a of the SSL, as added by Chapter 436 of the Laws of 1997, established the procedures for the State's domestic violence screening, assessment, and referral program.

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