

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 adopted during calendar years 1998, 1999 and 2004, which the Department of Agriculture and Markets intends to review in 2009. Public comment on the continuation or modification of these regulations will be accepted until March 31, 2009. All section and Part references are to Title 1 of the New York Code of Rules and Regulations.

Rules adopted in 1998:

Section 380.1

Farm Product Dealer License period.

Statutory Authority: Agriculture and Markets Law sections 16, 18, 248, and 250-i.

The continuation of this regulation is necessary to establish the license year for Farm Product Dealers as required by section 248 of the Agriculture and Markets Law. This section was amended in 2003 to remove an obsolete reference to a pro-rated fee.

Rules adopted in 1999 (10 year review):

Part 45

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

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

The continuation of this regulation is necessary to prevent the spread of avian influenza through live poultry markets in the New York City Metropolitan area by limiting the markets' source of poultry to flocks which are free of disease. This regulation was amended in 2005 to require additional sanitation practices, including cleaning and disinfecting of crates and trucks.

Part 205

Cabbage Research and Development Program

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

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

Sections 139.2 and 139.3

Asian Long Horned Beetle Quarantine.

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

The continuation of this regulation is necessary to preserve the Asian Long Horned Beetle quarantine in certain areas of Brooklyn and Amityville, New York. The quarantine area has been repeatedly expanded in an effort to control the spread of the beetle, most recently in 2007.

Rules adopted in 2004 (5 year review):

Part 271

Food offered for sale in retail stores.

Statutory Authority: Agriculture and Markets Law sections 16(1), 18(2),(6) and 214-b.

The continuation of this regulation is necessary to combat outbreaks of food borne illness by addressing five risk factors: improper holding temperature, inadequate cooling, contaminated equipment, unsafe food sources and poor personal hygiene. The regulation incorporates provisions of the federal food code focusing on five interventions to help prevent food borne illness as follows: time/temperature relationship, employee health, management knowledge, hands as a vehicle of contamination, and consumer education.

Parts 350 & 369

Standards for Conduct of Fairs.

Statutory Authority: Agriculture and Markets Law sections 16, 18, and 287.

The continuation of this regulation is necessary to allow local fairs to set the entry fee for exhibits, rather than requesting the Commissioner's permission if the fee exceeds ten percent of the first premium.

Comments should be addressed 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 2004 and 1999 and invites public comment on the continuation or modification of such rules. All section and part references are to Title 8 of the New York Code of Rules and Regulations. Comments should be sent to the respective agency representative listed below for each particular rule, and must be received within 45 days of the date of publication of this Notice.

A. CALENDAR YEAR 2004

OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

Section 156.3 – Nonpublic School Bus Drivers

Description of Rule: The rule conforms the Commissioner's Regulations to Chapter 270 of the Laws of 2003 by applying the school bus safety practices instruction and retraining requirements for public school bus drivers to nonpublic school bus drivers.

Need for Rule: The rule is needed to implement the statutory requirements of Chapter 270 of the Laws of 2003. The rule will help to insure the safety of the 2.3 million students transported on school buses each day in New York State by applying, as required by Chapter 270 of the Laws of 2003, school bus safety practices instruction and retraining requirements prescribed pursuant to Education Law section 3624 to drivers who operate transportation which is owned, leased or contracted for by private and parochial schools to the same extent as such requirements apply to drivers who operate transportation which is owned, leased or contracted for by public school districts.

Legal basis for rule: Education Law §§ 207, 305(34) and 3624 and Chapter 270 of the Laws of 2003.

Section 155.26 – Qualified Public Educational Facilities Bonds

Description of Rule: The rule establishes procedures, consistent with State and federal law, for the allocation of the State's qualified public educational facility bond limitation pursuant to 26 USC section 142(k).

Need for Rule: The rule is needed to implement the provisions of 26 USC section 142 by establishing the process for the allocation of the State's Qualified Public Educational Facilities (QPEF) bond limitation amount to local educational agencies within the State.

Legal basis for rule: Education Law §§ 101, 207, 305(1) and (2) and 3713(1) and (2) and 26 USC 142(a) and 142(k).

Section 164.1(g) – Education for Gainful Employment (EDGE) Program

Description of Rule: The rule updates the Commissioner's Regulations by replacing references to the job opportunities and basic skills (JOBS) program with references to the Education for Gainful Employment (EDGE) program.

Need for Rule: The rule is needed to replace references to the Jobs Opportunities and Basic Skills Training (JOBS) program and the Aid to Families with Dependent Children (AFDC) program with, respectively, the Education for Gainful Employment (EDGE) program and Temporary Assistance for Needy Families (TANF) program. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. Law 104-193) repealed the JOBS and AFDC programs, and created the TANF program. The rule sets forth the description, eligibility criteria and allowable activities for programs funded under the Welfare Education Program (WEP). A portion of WEP is sub-allocated for a match for TANF funds to create the EDGE program, which is administered in partnership with the State Department of Labor.

Legal basis for rule: Education Law §§ 207, 3713(1) and (2) and § 1 of Chapter 53 of the Laws of 2003.

Sections 8.2, 8.3 and 100.7 – Admission to and Passing Mark on Regents Examinations and College Credits to Meet High School Equivalency Diploma Requirements.

Description of Rule: The rule implements policy enacted by the Board of Regents relating to admission to and passing mark for

Regents examinations and high school equivalency diploma requirements.

Need for Rule: The rule requires principals of public schools to admit to Regents examinations a candidate who is a school district resident and who seeks to take such examinations for the purpose of meeting the requirements for an earned degree pursuant to Regents Rule section 3.47(a)(2). This provision is consistent with amendments to Regents Rules that establish an additional pathway for students beyond compulsory school age to earn a college degree by having passed and successfully completed all requirements for the following Regents examinations or the approved alternative assessments for these examinations: Comprehensive English, mathematics, U.S. history and government, global history and geography, and a science. The rule makes a technical change to add the citation in Regulations of the Commissioner of Education (section 100.5[a][5][i]) where there is an exception to the 65 passing mark on Regents examinations. The rule changes the subject distribution of the 24 college semester hours required for a pathway to earn a high school equivalency diploma. Provision is made to transition to the revised subject distribution that is anticipated to become effective September 30, 2004. The revised subject distribution will be consistent with recent amendments to Regents Rules relating to the satisfactory evidence candidates who are beyond compulsory school age must provide to degree-granting institutions to earn a college degree. The rule reduces the semester hour requirement in mathematics from six to three, eliminates the three semester hours in career and technical education and/or foreign languages, and allows a candidate to complete six semester hours in courses within the registered degree program.

Legal basis for rule: Education Law §§ 101, 207, 208, 209, 305, 308, 309 and 3204.

Section 100.8 – Local High School Equivalency Diploma

Description of Rule: The rule extends for three years the provision in the Commissioner's Regulations that allows boards of education specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner. The rule was subsequently amended to extend the provision through June 30, 2011.

Need for Rule: The rule is needed to allow the continuance of the External Diploma Program (EDP), which is a complete assessment program that allows adults to demonstrate and document the lasting outcomes and transferable skills for which a high school diploma is awarded. EDP is a competency-based, applied performance assessment system that expects adults to demonstrate their ability in a series of simulations that parallel job and life situations. Participants are evaluated against a criterion of excellence instead of by comparison with others. They take responsibility for acquiring instruction through existing community resources to achieve mastery of all the competencies required, plus an occupational or specialized skill.

Legal basis for rule: Education Law §§ 101, 207, 208, 209, 305(1) and (2), 309, and 3204(3).

Section 164.2 – Adult Literacy Education Aid

Description of Rule: The rule amends certain requirements for not-for-profit organizations applying for adult literacy education grants and to delete references to obsolete provisions.

Need for Rule: The rule is needed to provide not-for-profit organizations with increased flexibility in offering adult literacy education (ALE) programs, which are designated by the commissioner to serve persons who are receiving public assistance, who are unemployed, or who are economically or educationally disadvantaged, by deleting the 10-pupil minimum class size requirement and the requirement that ALE programs meet certain frequency and duration criteria set forth in section 168.3(b)(5) and (6), relating to Employment Preparation Education programs. This will extend eligibility for State aid to not-for-profit ALE providers serving small populations, such as in situations involving one-on-one tutoring or small groups of no more than 4 students, in which students receive between 1 to 3 hours of instruction per week. The rule also deletes obsolete references to section 167.3(b) and 167.4, which applied to programs funded under the federal Job Training Partnership Training Act, which Act was repealed by the Workforce Investment Act of 1998 (Pub.L. 105-220).

Legal basis for rule: Education Law § 207 and § 1 of Chapter 53 of the Laws of 2003.

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

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OFFICE OF HIGHER EDUCATION

80-3.3, 80-3.7, 80-4.3 and 80-4.4 Individual evaluation and other requirements for teacher certification

Description of rule: The rule establishes requirements for classroom teaching certification through the individual evaluation of candidates who have not completed registered teacher education programs, streamline examination requirements for candidates who already hold classroom teaching certification, establish coursework requirements for extensions and annotations of certificates, and remove unnecessary certification requirements. These new requirements apply to candidates who apply for certification in a classroom title after February 1, 2004.

Need for rule: The amendment is needed to streamline the current examination requirements for the issuance of additional certificates to individuals already holding a classroom teaching certification. In such cases, candidates need only pass the content specialty test in the area for which application is made because they have already shown pedagogical competence through meeting requirements for the original certificate. It also is needed to require a candidate for the initial certificate under Option B in a specific career and technical subject to pass the communication and quantitative skills test, which is a necessary assessment for these candidates who do not hold a college degree.

The amendment is needed to remove unnecessary provisions in Commissioner's regulations. It removes requirements applicable to candidates who complete out-of-state teacher education programs that are not registered by the State Education Department and not offered by an institution that is a party to the interstate agreement on the qualifications of educational personnel. It also removes education requirements for candidates who already hold certification in another area. These provisions will not be needed because the new individual evaluation requirements will apply.

Finally, the amendment is needed to remove 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 Department believes that these additional requirements are unnecessary and removing them will help alleviate the shortage of certified teachers in New York State.

Legal basis for rule: Education Law sections 207(not subdivided), 305(1), (2) and (7), 3004(1) and 3006(1)(b).

Sections 80-1.2, 80-2.12, 80-2.13, 80-3.1, 80-3.5, 80-4.3, 80-5.6 and 80-5.13 – Technical Changes in Requirements for Certification in the Classroom Teaching Service.

Description of Rule: The rule clarifies and corrects omissions in the new requirements for the certification of teachers in the classroom teaching service that became effective on February 2, 2004.

Need for Rule: The rule is needed to clarify the applicability of the new certification requirements for the classroom teaching service, providing that the new certification requirements will apply to candidates who apply for certification on or after February 2, 2004, unless an exception is otherwise specifically set forth in the regulations. This is needed because a number of exceptions are stated in Part 80 that would permit candidates to meet the old requirements. These candidates already hold some type of certification, and are on the path to certification under the old requirements.

The rule is needed to provide that candidates in the alternative certification programs who applied and qualified for a transitional B certificate on or before February 1, 2004 will be eligible to obtain a provisional certificate, upon meeting the requirements for the provisional certificate. Those applying and qualifying for the transitional B certification after February 1, 2004 will have to apply for the initial certificate and meet the new requirements. This change is necessary as matter of fairness to permit holders of the transitional B certificate who were already on track for obtaining a provisional certificate under the old requirements to obtain that certificate.

The rule is needed to update the name of the examination for teaching assistants, the "Assessment of Teaching Assistant Skills," and to specify the correct name for the examination required for an extension in bilingual education, the "bilingual extension assessment." In addition it is needed to clarify the language for the general science extension to indicate that study is required in "at least" two additional sciences, rather than in just two additional sciences.

Finally, the rule removes the requirement that a candidate for an extension in career awareness must hold a base teacher certificate in career and technical education. It also removes the requirement that holders of the transitional A certificate must be in a registered teacher education program. The transitional A certificates are in specific career and technical subjects within the field of agriculture, health or a trade (7-12) and are designed to permit career changes who hold an associate degree or high school education to enter the teaching field in these technical areas. The Department does not believe that either of the requirements proposed for removal are necessary.

Legal Basis for Rule: Education Law §§ 207, 305(1), (2), and (7), 3001(2), 3004(1), 3006(1)(b), 3009(1) and 3010.

Sections 80-1.3, 80-2.1, 80-3.8, 80-3.9 and 80-5.17 – Pathways to Certification in the Classroom Teaching Service.

Description of Rule: The rule clarifies and supplements the new requirements for the certification of classroom teachers that became effective on February 2, 2004.

Need for Rule: The rule is needed to clarify the citizenship requirement for certification consistent with recent statutory change. The rule implements the provisions of Education Law section 3001, which establishes exceptions to the citizenship requirement for teaching in the public schools of New York State. As permitted in section 3001 of the Education Law, the rule provides that a candidate who is not a citizen of the United States may qualify if the candidate is a lawful permanent resident of the United States. It also establishes a number of exceptions that would allow non-citizens to obtain time-limited teaching certificates.

The rule will permit candidates whose participation in a teacher preparation program was interrupted by active military service to have additional time to complete requirements under the teacher certification requirements in effect prior to February 2, 2004. This change is needed to accommodate such candidates who were on track for meeting the requirements for certification under the requirements that were in place at the time they were called to service for the country. The Department believes that these candidates should not be penalized for such service.

The rule renews two pathways to certification needed to meet teacher shortages. The first would permit licensed and registered speech-language pathologists to qualify for teaching certificates in speech and language disabilities (all grades) under an exception to the regular requirements. The second would permit certified out-of-state teachers to qualify for a "conditional" first level certificate, allowing holders two years to pass the New York State certification examination. Both pathways expired on February 1, 2004, and reinstatement is needed to meet teacher shortages.

The rule also permits individuals who were employed in a public school or other school requiring certification, as theater teachers for a prescribed period prior to February 2, 2004, to continue to teach without additional certification, provided the teacher holds a permanent certificate in the classroom teaching service. The new teacher certification requirements establish the new certificate title, theater (all grades). This title did not exist before February 2, 2004. The rule is needed as a matter of fairness to permit teachers who have recent employment as theater teachers to continue their employment.

Legal Basis for Rule: Education Law §§ 207, 305(1), (2), and (7), 3001(2), 3004(1) and (7), 3006(1)(b), 3009(1) and 3010.

Sections 3.47 and 100.10 – Requirements for the Conferral of a College Degree and the Home Instruction of Students of Compulsory Attendance Age and College Study.

Description of Rule: The rule establishes alternatives to the requirement that a candidate for a college degree hold a high school diploma, repeals the requirement that a student must have completed at least a four-year high school course or its equivalent prior to beginning degree study, requires students subject to compulsory education to obtain the approval of an appropriate school administrator prior to enrolling in college credit course work offered when the public school is in session, and establishes requirements relating to the home instruction of students of compulsory attendance age and college study.

Need for Rule: Currently, Regents Rules require candidates for a college degree to demonstrate that they have completed at least a four-year high school course or its equivalent, prior to obtaining the degree. The rule provides a number of alternative requirements that may be met instead of the holding of a high school diploma. Specifically, under the rule, the candidate for a degree who is beyond compulsory school age will be required to: hold a high school diploma, or have completed the equivalent of a four-year high school course as certified by the superintendent of schools or comparable chief school administrator, or hold a high school equivalency diploma, or have completed 24 semester hours of college course work in designated subjects, or have previously earned and been granted a college degree. The increasing variety of high school preparation, including by distance learning or through home instruction, has suggested that providing additional alternatives to the requirement that a candidate for a college degree hold a high school diploma would be helpful to students and colleges and universities in New York State. The proposed requirements provide needed flexibility in the regulation, permitting the candidate for a degree to demonstrate preliminary education through a variety of means. The rule does not extend these alternatives to a candidate for a degree who is of compulsory school age. Such a candidate must demonstrate to the college that he or she holds a high school diploma, or has completed a four-year high school course, as certified by the superintendent of schools or comparable chief school administrator. This requirement is necessary because students of compulsory school age must be in high school or home schooled, unless they have already completed high school study, as signified by holding the high school diploma or the certification by the superintendent of schools of completion of the high school course. The rule removes the requirement that a student must complete at least a four-year high school course, or its equivalent, prior to beginning the course of study for a college degree. The Department does not believe this requirement is necessary because section 52.2(d) of the Commissioner's regulations already requires colleges to take into account the capacity of the student to undertake the program of study in their admission requirements for each degree program. In addition, the change is needed to resolve a conflict in the Rules of the Board of Regents and the Regulations of the Commissioner of Education. Section 100.7 of Commissioner's Regulations permits a student to earn a high school equivalent diploma through college study as a recognized candidate for a degree, but the provision proposed for repeal appears to prohibit that study. The rule also requires students who are subject to compulsory education requirements to present the college with written approval from an appropriate school administrator that enrollment in college credit courses is approved, prior to college enrollment. This requirement does not apply when the college credit course is offered in its entirety outside the normal instructional year or hours of session of the public schools of the district of residence. This change provides a necessary link between the college and the school district for students subject to compulsory education. It helps to safeguard that these students are meeting the requirements for compulsory school attendance. Finally, the rule establishes an additional content requirement for individual home instruction plans (IHIPs) for home-schooled students. It requires the IHIP to include a statement regarding whether or not the child will enroll in college-level course work as part of the child's instruction and the subjects to be covered by such course work. This is needed to enable a home-schooled student subject to compul-

sory education requirements to easily demonstrate to the college that college-level study is authorized by the school district.

Legal Basis for Rule: Education Law §§ 207, 210, 218(1), 224(4), 3204(2), 3205(1), (2) and (3), 3210(2)(d), 3212(2)(d) and 3234(1).

Sections 80-3.6, 80-4.1, 80-4.3, 83.1, 83.3, 83.5, 87.5 and 87.6 – Title of the Executive Director of the Office of Teaching Initiatives and the Extension in Gifted Education of a Teaching Certificate.

Description of Rule: The rule updates the title of the head of the State Education Department's Office of Teaching Initiatives in various provisions of the Regulations of the Commissioner of Education and defers implementation of the effective date of the requirement for a gifted education extension of a teaching certificate.

Need for Rule: The rule is needed to conform the Regulations of the Commissioner of Education to changes made in the organization of the Office of Higher Education. Specifically, the former title of Executive Coordinator of the Office of Teaching has been changed to Executive Director of the Office of Teaching Initiatives. The rule updates references to this title in provisions of the Regulations of the Commissioner of Education relating to professional development for teachers holding a professional certificate, teacher moral character proceedings, and proceedings for the denial of clearance for employment or certification based upon a criminal history check. The rule is also needed to delay until September 1, 2005 the requirement that a teacher must hold a gifted education extension of a teaching certificate, or have obtained from the Department a statement of continued eligibility based upon employment in this field, in order to provide education for gifted pupils within a gifted and talented program which is funded pursuant to Education Law and in accordance with Part 142 of the Commissioner's Regulations. At the present time, there are insufficient options available for candidates to take the course work they need to have completed for this extension. Only eight colleges offer registered programs leading to the extension in gifted education. Currently, the Office of Higher Education is encouraging additional colleges across the State to offer the course work for the extension. The delay in the effective date is needed to permit colleges time to develop and offer the course work and candidates additional opportunities to complete it.

Legal Basis for Rule: Education Law §§ 207, 305(1), (2), and (7), 3001(2), 3004(1), 3004-c, 3006(1)(b), 3009(1), 3010 and 3035(3).

Sections 80-2.11, 80-5.18 and 80-5.19 – Creation of a supplementary certificate in the classroom teaching service and relocation of the requirements for teachers of adult, community and continuing education.

Description of Rule: The rule establishes a new teaching certificate, the supplementary certificate, to enable a teacher certified in one classroom teaching title, upon meeting prescribed requirements, to provide instruction in a different title in the classroom teaching service for which there is a demonstrated shortage of certified teachers; and to relocate existing requirements for teachers of adult, community and continuing education to another section of Commissioner's regulations.

Need for Rule: The rule is needed to facilitate the State's ability to address persistent shortages of certified teachers in certain subject matter areas, including but not limited to mathematics, the sciences, bilingual education, and special education, and in certain geographic areas of the State. The rule creates a practical mechanism for certified teachers in areas of oversupply to earn additional certificates in areas of need. The rule prescribes clearly defined standards to ensure the quality of the education and experience of teachers certified by this route. The proposed amendment is designed to support the Department's continuing efforts to certify a sufficient number of properly qualified candidates to fill vacant teaching positions in the State's public schools. The supplementary certificate will be valid for three years from its effective date and will not be renewable. This certificate will be limited to employment with an employing entity. The option to obtain the supplementary certificate will expire on September 1, 2009. The rule is also needed to relocate the existing requirements for teachers of adult, community and continuing education to a more appropriate section of the Regulations of the Commissioner of Education. The rule moves these requirements from section 80-2.11 to section 80-5.19 in a Subpart that deals with specialized credentials.

Legal Basis for Rule: Education Law §§ 207, 305(1), (2), and (7), 3001(2), 3004(1), 3006(1)(b), 3009(1) and 3010.

Section 120.6 – Qualifications for teachers and paraprofessionals under the No Child Left Behind Act of 2001.

Description of Rule: The rule incorporates by reference requirements of the No Child Left Behind Act of 2001 (NCLB) relating to qualifications of teachers and paraprofessionals in order to ensure that local educational agencies are in compliance with this Federal law. The rule will provide an underlying legal basis in State regulation for the State Education Department’s guidance to local educational agencies (school districts, boards of cooperative educational services, county vocational education and extension boards, and charter schools) on the NCLB requirements. The State Education Department has issued guidance documents to local educational agencies on this topic, and plans to continue to provide guidance on how local educational agencies may meet the requirements of the NCLB.

The NCLB requires teachers of core academic subjects to be “highly qualified.” The NCLB defines what this means, and provides that a teacher of core academic subjects who is not new to the profession may meet the requirement to be highly qualified, in part, through passing a high objective uniform State standard of evaluation (HOUSSE). The State Education Department has prescribed a HOUSSE for New York teachers of core academics who are not new to the profession. The HOUSSE is to be conducted by the local educational agency either during a pre-employment review or at the time of a teacher’s annual review.

Need for Rule: The rule is needed to require a local educational agency to provide a teacher of core academic subjects who is not new to the profession the opportunity to meet the NCLB requirement to be highly qualified, in part, through passing the HOUSSE. Without the HOUSSE, New York State could have difficulty complying with NCLB’s teacher quality requirements. This rule will ensure that local educational agencies use the HOUSSE when needed so that New York State will be in compliance with this Federal law.

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

Agency Representative:

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

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OFFICE OF THE PROFESSIONS

Sections 64.7 of the Commissioner’s Regulations - Nursing

Description of Rule: This rule establishes requirements governing the execution by registered professional nurses of non-patient specific orders of licensed physicians or certified nurse practitioners to administer purified protein derivative (PPD) mantoux tuberculin skin tests

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

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504 (not subdivided), 6506(1), 6507(2)(a), 6527(6)(c), 6909(4)(d) and (5).

Section 73.5 of the Commissioner’s Regulations - Chiropractic

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

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

Legal Basis for the Rule: Education Law sections 207(not subdivided), 212 (3), 6502(1), 6504(not subdivided), 6507(2)(a), 6508(1), and 6554-a.

Sections 52.30, 74.1, 74.2, 74.3, 74.4, 74.5, 74.6, 74.7, and 74.8 of the Commissioner’s Regulations – Social Work

Description of Rule: The rule sets forth requirements for licensure in the profession of social work, requirements for an authorization qualifying licensed clinical social workers for insurance reimbursement, and requirements relating to the supervision of licensed master social workers who provide licensed clinical social work services and for baccalaureate social workers who provide licensed master social work services.

Need for Rule: The rule is necessary to implement statutory requirements. Some of the sections have been amended since the 2004 amendment to make necessary adjustments.

Legal Basis for Rule: Education Law sections 207(not subdivided), 210(not subdivided), 6501(not subdivided), 6507(2)(a) and (3)(a), 7701(1)(d), 7704(1)(b) and (d) and (2)(b), (c), and (d), 7705(1), 7706(2) and (3), and 7707(4).

Sections 65.6 and 65.7 of the Commissioner’s Regulations - Podiatry

Description of Rule: The rule implements section 7006(4) of the Education Law by establishing the requirements pursuant to which an unlicensed assistant providing supportive services to a licensed podiatrist may x-ray a patient’s foot, while under the direct supervision of the licensed podiatrist, provided that the unlicensed assistant has completed an acceptable course of study, the content of which is set forth in the rule.

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

Legal Basis for Rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), and 7006(4).

Section 61.18 of the Commissioner’s Regulations - Dentistry

Description of Rule: The rule adjusts the requirements for the residency option pathway for dental licensure by deleting an unnecessary provision that required the dental residency program to be completed within a time frame of two years prior to application for licensure.

Need for Rule: The rule is needed as it has been determined that the originally imposed two year time frame is unnecessary, as the regulation contains other requirements that adequately verify that the applicant has completed the residency program and other licensed professions do not have similar time frames for completing residency programs.

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

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 VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES

Section 200.1(i) and (h) Definitions

Description of Rule: The rule corrected certain citations and terms and replaced references to the term “paraprofessional” with the term “supplementary school personnel” in the definitions of class size and paraprofessional.

Need for Rule: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal No Child Left Behind (NCLB) Act (Public Law 107-110).

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Section 200.2(b)(11)(iii) Written Policies of the Board of Education

Description of Rule: The rule replaced the reference to the term "paraprofessional" with the term "supplementary school personnel."

Need for Rule: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner's Regulations and the provisions of the federal NCLB (Public Law 107-110).

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

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

Description of the Rule: The rule replaced the reference to the term "paraprofessional" with the term "supplementary school personnel".

Need for Rule: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner's Regulations and the provisions of the federal NCLB (Public Law 107-110). (The rule was amended in 2005 to repeal requirements for CSPD plans and to require that schools include professional development activities for professional staff and supplementary school personnel staff working with students with disabilities in the professional development plan pursuant to section 100.2 of the Commissioner's Regulations.)

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Section 200.4(e)(3)(ii) and (iii) Individualized Education Program (IEP) Implementation

Description of the Rule: The rule replaced references to the term "paraprofessional" with the term "supplementary school personnel."

Need for Rule: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner's Regulations and the provisions of the federal NCLB (Public Law 107-110).

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Section 200.5(i)(3) Impartial Hearings

Description of the Rule: The rule clarified that the impartial hearing officer (IHO) may not accept appointment unless he or she is available to initiate the hearing within the first 14 days of being appointed; added that the hearing or a prehearing conference must be scheduled to begin within the first 14 days of the IHO's appointment, unless an extension is granted; added that the IHO may assist an unrepresented party by providing information relating only to the hearing process at all stages of the hearing and that nothing contained in the regulations is to be construed to impair or limit the authority of the IHO to ask questions of counsel or witnesses to clarify or complete the record; added that a prehearing conference with the parties may be scheduled, that such conference may be conducted by telephone, and that a transcript or a written summary of the prehearing conference must be entered into the record by the IHO; delineated the purposes of the prehearing conference; required, except as provided for in section 201.11, that each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing at least five business days prior to a hearing; added that the IHO, wherever practicable, must enter into the record a stipulation of facts and/or joint exhibits agreed to by the parties; added that the IHO may receive any oral, documentary or tangible evidence except that the IHO must exclude evidence that he or she determines to be irrelevant, immaterial, unreliable or unduly repetitious and that the IHO may receive testimony by telephone, provided that such testimony must be made under oath and must be subject to cross examination; added that the impartial hearing officer may limit examination of a witness by either party whose testimony the IHO determines to be irrelevant, immaterial or unduly repetitious; added that the IHO may limit the number of additional witnesses to avoid unduly repetitious testimony; added that the IHO may take direct testimony by affidavit in lieu of in-hearing testimony, provided that the witness giving such testimony must be made available for cross examination; added that the IHO may receive memoranda of law from the parties not to exceed 30 pages in length, with typed material in minimum 12 point type (footnotes

minimum 10 point type) and not exceeding 6 1/2 by 9 1/2 inches on each page, and added that each party will have up to one day to present its case unless the IHO determines that additional time is necessary for a full, fair disclosure of the facts required to arrive at a decision and that additional hearing days, if required, must be scheduled on consecutive days wherever practicable.

Need for Rule: The rule is necessary to prescribe procedures for the conduct of impartial hearings to comply with the Individuals with Disabilities Education Act (IDEA) and its implementing regulations.

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

Section 200.5(i)(4) Impartial Hearing Officer Decisions

Description of the Rule: The rule provides that in cases where extensions of time have been granted beyond the applicable required timelines, the decision must be rendered and mailed no later than 14 days from the date the IHO closes the record and the date the record is closed must be indicated in the decision; provides that each extension of time granted by the IHO must be for no more than 30 days; added that the IHO may grant a request for an extension only after fully considering the cumulative impact of the following factors: (a) the impact on the child's educational interest or well-being which might be occasioned by the delay; (b) the need of a party for additional time to prepare or present the party's position at the hearing in accordance with the requirements of due process; (c) any financial or other detrimental consequences likely to be suffered by a party in the event of delay; and (d) whether there has already been a delay in the proceeding through the actions of one of the parties; added that absent a compelling reason or a specific showing of substantial hardship, a request for an extension shall not be granted because of school vacations, a lack of availability resulting from the parties' and/or representatives' scheduling conflicts, settlement discussions between the parties or other similar reasons and that the agreement of the parties is not a sufficient basis for granting an extension; added that the IHO shall respond in writing to each request for an extension and the response shall become part of the record; added that the IHO may render an oral decision to an oral request for an extension, but must subsequently provide that decision in writing and include it as part of the record, and for each extension granted, the IHO must set a new date for rendering his or her decision and notify the parties in writing of such date; provided that the IHO shall determine when the record is closed and notify the parties of the date the record is closed; required the decision to reference the hearing record to support the findings of fact and that the IHO attach to the decision a list identifying each exhibit admitted into evidence by date, number of pages and exhibit number or letter; and required the decision to include an identification of all other items the IHO has entered into the record.

Need for Rule: The rule is necessary to prescribe procedures for the conduct of impartial hearings to comply with the IDEA and its implementing regulations.

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

Section 200.6(g)(4)(i)-(iii) Special Class Size for Students with Disabilities

Description of the Rule: The rule replaced references to the term "paraprofessional" with the term "supplementary school personnel."

Need for Rule: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner's Regulations and the provisions of the federal NCLB (Public Law 107-110). (The rule was amended in 2007 to re-letter section 200.6(g) to section 200.6(h).)

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 4403(3) and 4410(13).

Section 200.9(f)(2)(x) Tuition Reimbursement Methodology-Integrated Special Class Programs

Description of the Rule: The rule replaced references to the term "paraprofessional" with the term "supplementary school personnel."

Need for Rule: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner's Regulations and the provisions of the federal NCLB (Public Law 107-110).

Legal Basis for Rule: Education Law sections 101(not subdivided), 207 (not subdivided), 4403(3) and 4410(13).
Section 200.16(h)(3)(iii)(b) Special Education Programs and Services-Special Classes

Description of the Rule: The rule replaced the reference to the term “paraprofessional” with the term “supplementary school personnel.”

Need for Rule: The rule is necessary to ensure consistency with the provisions of section 80-5.6 of the Commissioner’s Regulations and the provisions of the federal NCLB (Public Law 107-110). (The rule was amended in 2005 to re-letter section 200.16(h) to section 200.16(i).)

Legal Basis for Rule: Education Law sections 101(not subdivided), 207 (not subdivided), 4403(3) and 4410(13).

OFFICE OF CULTURAL EDUCATION

Sections 185.5 and 185.12 - Local Government Records Management.

Description of Rule: The rule revises Records Retention and Disposition Schedule ED-1 to make needed changes and additions to minimum retention periods for records of school districts, boards of cooperative educational services, county vocational education and extension boards, and teacher resource and computer training centers.

Need for Rule: Section 57.25(2) of Arts and Cultural Affairs Law requires the commissioner of education to develop, adopt by regulation, issue and distribute to local governments records retention and disposition schedules establishing minimum legal retention periods. The issuance of such schedules constitutes formal consent by the commissioner to the disposition of records that have been maintained in excess of the retention periods set forth in the schedules. The 2004 revisions to the rule make necessary changes and additions to ensure that concerned local governments have up-to-date standards for records retention and disposition.

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

Agency Representative:

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

Christine Ward

Assistant Commissioner for the State Archives

New York State Archives

Room 9A49

Cultural Education Center

Albany, New York 12230

(518) 474-6926

cward@mail.nysed.gov

OFFICE OF MANAGEMENT SERVICES

Sections 3.2 and 4-1.5 – Standing Committees of the Board of Regents.

Description of Rule: The rule conforms the Rules of the Board of Regents to a recent reorganization of the committee structure of the Board of Regents, which merged the Committee on Higher and Professional Education and the Committee on Professional Practice, and merged the Committee on Elementary, Middle, Secondary and Continuing Education and the Committee on Vocational and Educational Services for Individuals with Disabilities.

Need for Rule: The rule is needed to ensure that the Board of Regents may more effectively meet its statutory responsibilities. The Committee on Higher and Professional Education and the Committee on Professional Practice have been merged into a Committee on Higher Education and Professional Practice. The Committee on Elementary, Middle, Secondary and Continuing Education and the Committee on Vocational and Educational Services for Individuals with Disabilities have been merged into a Committee on Elementary, Middle, Secondary and Continuing Education and Vocational and Educational Services for Individuals with Disabilities. This will reduce the time spent by members of the Board of Regents in committee meetings, reduce paperwork and multiple review of items, provide for the efficient review of numerous priority issues that otherwise overlap existing committee functions, and thereby permit the Regents to devote more time to full Board discussion of policy issues.

Legal Basis for Rule: Education Law § 207.

Sections 187.1, 187.2 and 187.3 – Inspection and Copying of Department Records.

Description of Rule: The rule conforms the Commissioner’s Regulations regarding Freedom of Information Law (FOIL) procedures to a Court decision interpreting Public Officers Law section 89(3); and to update the address of the Department’s records access officer and the addresses of several regional offices designated to receive requests for inspection and copies of Department records.

Need for Rule: The rule is needed to conform the Commissioner’s Regulations to Public Officers Law section 89(3) and the regulations promulgated by the Committee on Open Government, consistent with the holding in *Lecker v. New York City Board of Education*, 157 AD2d 486 (1st Dept). In that decision, the Court upheld a determination by the Supreme Court, New York County, that denied petitioner’s application for an order directing the New York City Board of Education to amend its regulations relating to FOIL to require the Board of Education to either grant or deny access to its records within 10 days after acknowledgment of receipt of the request for records. While noting that this requirement was contained in the regulations promulgated by the Committee on Open Government (21 NYCRR 1401.5[d]), the Court determined that such regulation was invalid as inconsistent with Public Officers Law section 89(3), which contains no such time limitation but merely requires that the person requesting a record be furnished with a statement of the “approximate date when such request will be granted or denied.” The Committee on Open Government subsequently amended section 1401.5 to remove the 10-day requirement. The amendment to section 187.4 of the Commissioner’s Regulations removes identical language imposing such 10-day requirement.

In addition, the amendments to sections 187.1 and 187.2 are necessary to update references to the address of the Department’s records access officer and the addresses of several regional offices designated to receive requests for inspection and copies of Department records.

Legal Basis for Rule: Education Law sections 207, 305(6) and Public Officers Law sections 87(1)(b) and 89(3).

Part 221 – Education Department Staff

Description of Rule: The rule deletes obsolete provisions relating to leaves of absence for State Education Department employees.

Need for Rule: The rule is needed to delete obsolete provisions that have been superseded by provisions in the Civil Service Law, federal law or collective bargaining agreements.

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (6).

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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OFFICE OF STATE REVIEW

Sections 200.5, 200.6 & 200.7 – Judicial Review of the Determination of the State Review Officer

Description of Rule: The rule aligns State regulations with section 4403(3) of the Education Law, as amended by Chapter 492 of the Laws of 2003, to ensure that a judicial appeal of a decision of the State review officer is by means of a proceeding in State Supreme Court pursuant to Article 4 of the Civil Practice Law and Rules.

Need for Rule: The rule is necessary to align the Commissioner’s Regulations with Education Law section 4404(3), as amended by Chapter 492 of the Laws of 2003. Chapter 492 amended section 4404(3) to provide that judicial review of the final determination or order of a State Review Officer be conducted in a proceeding pursuant

to Article 4 of the Civil Practice Law and Rules (CPLR) rather than pursuant to Article 78 of the CPLR. Judicial review under CPLR Article 4 ensures the State's compliance with the federal Individuals with Disabilities Education Act (IDEA) and its implementing regulations, which require that a review of the final determination or order be made on the entire record, with any additional evidence heard at the request of the party, and be based upon a preponderance of the evidence.

Legal Basis for Rule: Education Law sections 101, 207, 4403(3) and 4404(3), and Chapter 492 of the Laws of 2003.

Part 279.12 – State-Level Review of Impartial Hearing Officer Determinations

Description of Rule: The rule conforms the Regulations to the Federal Individuals with Disabilities Education Act (IDEA) and 34 CFR section 300.511, by deleting a provision authorizing the State Review Officer to extend the timelines for issuing a decision to allow additional time to review an extensive record on appeal.

Need for Rule: The U.S. Department of Education has notified the State Education Department that this provision is out of compliance with CFR section 300.511.

Legal Basis for Rule: Education Law sections 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:

Paul F. Kelly

Assistant Counsel and State Review Officer

Office of State Review

80 Wolf Road, 2nd Floor

Albany, New York 12203

B. CALENDAR YEAR 1999

OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

Section 100.2(m) - Local Assistance Plans

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

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

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

Section 100.2(p) - Schools Under Registration Review

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

Need for Rule: The regulation is necessary to meet the requirements of the No Child Left Behind (NCLB) Act, 20 USC section 6316, relating to school and district accountability and achieve the Regents goal that all educational institutions will meet Regents high performance standards. The regulations were last amended in August 2003 to bring them into alignment with the requirements of NCLB.

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

Part 119- Charter schools

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

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

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

Sections 155.1-155.21 - Comprehensive Public School Safety Program

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

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

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

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

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

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

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

Sections 154.2 through 154.5 - Limited English Proficiency

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

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

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

Sections 154.4(a) and 154.5 - Students with Limited English Proficiency

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

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

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

Agency Representative:

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

Johanna Duncan-Poitier

Senior Deputy Commissioner of Education P-16

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OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES
FOR INDIVIDUALS WITH DISABILITIES

Section 200.1 Definitions

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

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

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

Section 200.2 Board of Education Child Find Responsibilities

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

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

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

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

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

Need for Rule: The rule is needed to align State regulations to State

law which requires that schools provide prereferral supports and services to ensure appropriate referrals of students who need special education.

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

Section 200.2(c) District Plans

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

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

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

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

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

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

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

Section 200.3 Committees on Special Education

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

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

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

Section 200.4(a) Referrals for Special Education Services

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

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

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

Section 200.4(b) Individual Evaluation

Description of Rule: The rule was amended to add that the individual evaluation include a variety of assessment tools and strategies, including information provided by the parent, to gather relevant functional and developmental information about the student and information related to enabling the student to participate and progress in the general education curriculum; and to add that the evaluation must include a functional behavioral assessment for a student whose behavior impedes his or her learning or that of others.

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

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

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

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

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

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

Section 200.4(b)(6) Evaluation Procedures

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

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

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

Section 200.4(c) Eligibility Determinations

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

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

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

Section 200.4(d) IEP Recommendations

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

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

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

Section 200.4(d)(4) IEP Development

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

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

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

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

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

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

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

Section 200.4(e) IEP Implementation

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

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

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

Section 200.4(e) Annual Review and Reevaluations

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

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

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

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

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

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

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

Section 200.5 Due Process Procedures

Description of Rule: This rule repealed section 200.5 and replaced it with a new section 200.5 relating to prior notice, consent, notice of meetings, parent participation in CSE meetings, confidentiality of personally identifiable data, procedural safeguards notice, independent educational evaluations, mediation, impartial hearings, appeal to a State review officer of the State Education Department, State complaint procedures and surrogate parents.

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

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

Section 200.6(a) Continuum of Services

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

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

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

Section 200.6(d) Consultant Teacher Services

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

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

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

Section 200.6(e) Related Services

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

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

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

Section 200.6(g) Special Classes

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

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

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

Section 200.6(h) Home and Hospital Instruction

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

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

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

Section 200.7 Approval of Private Schools for Students with Disabilities

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

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

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

Section 200.7 State-Operated Schools

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

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

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

Section 200.8 State Assistance for Instruction of Students with Disabilities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Legal Basis for Rule: 34 CFR sections 300.500 through 300.505 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Section 200.16(g)(3) Notice of Meetings – Preschool Student with a Disability

Description of Rule: The rule was amended to require that a notice

of a CSE meeting be provided consistent with section 200.5 of the Commissioner's Regulations.

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

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

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

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

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

Legal Basis for Rule: 34 CFR section 300.506 and Education Law section 207(not subdivided), 4403(3) and 4404-a of the Education Law.

Section 200.16(g)(10) State Complaints – Preschool Student with a Disability

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

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

Legal Basis for Rule: 34 CFR sections 300.660 through 300.662 and Education Law sections 207(not subdivided), 4403(3) and 4410(13).

Section 200.6(h) Continuum of Services – Preschool Student with a Disability

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

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

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

Section 200.20 Approval, Operation and Administration of Preschool Programs

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

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

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

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

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

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

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

Part 247 – Vocational Rehabilitation Program

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

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

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

Agency Representative:

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

Rebecca H. Cort

Deputy Commissioner

New York State Education Department

Office of Vocational and Educational Services for Individuals with Disabilities

One Commerce Plaza, Room 1606

Albany, New York 12234

(518) 474-2714

OFFICE OF HIGHER EDUCATION

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

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

Need for Rule: Chapter 332 of the Laws of 1998 amended subdivision (4) of section 661 of the Education Law to eliminate the full-time attendance requirement for students with disabilities. The law did not specify the minimum course load that students with disabilities must carry. Section 145-2.1(a) defines part-time study as enrollment for at least six semester hours in a semester. However, the sponsors of Chapter 332 advised the State Education Department that the intent was for students with disabilities to be eligible for TAP providing they enroll for at least three semester hours, necessitating the amendment to the regulation. Based on guidance from Office of Counsel, it was also necessary to include the reference to the federal statute contained in Education Law and specify that, to be eligible, students must be determined to be disabled in accordance with the Americans with Disabilities Act.

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

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

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

- A general education core in liberal arts and sciences is required for all classroom teachers.
- Preparation for teaching students to meet Regents learning standards is required for all classroom teachers.
- Preparation for teaching students with disabilities and students with limited English proficiency is required of all classroom teachers.
- Academic content preparation is also required for special education, literacy and ESL teachers.
- Ten days of diverse field experience is required prior to 40 school days of student teaching for all classroom teachers.

- All teacher education programs leading to certification in social studies shall include study of economics and government and at least 21 credit hours of history and geography to prepare teachers to teach to the new learning standards.
- Thirty-credit major in content area required for secondary teachers and teachers of special subjects.
- All programs for classroom teachers must be accredited.
- Eighty percent of all program completers of teacher education programs must pass the New York State Teacher Certification Examinations or the program may be subject to de-registration.

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

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

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

Description of Rule: The purpose of the addition of Section 100.2(dd) of the Commissioner’s Regulations is to require each school district and BOCES to establish a prescribed plan for the annual professional performance review of its teachers providing instructional services or pupil personnel services. The amendment requires the governing body of each school district and BOCES to adopt a plan for the annual professional performance review of its teachers providing instructional service or pupil personnel services by September 1, 2000. The amendment prescribes criteria that school districts or BOCES must use for the evaluation of teachers providing instructional services in the following areas: content knowledge, preparation, instructional delivery, classroom management, student development, student assessment, collaboration, and reflective and responsive practice. Districts may supplement these State criteria with locally developed criteria, and the amendment permits a variance from the State criteria upon a finding by the Commissioner that the school district or BOCES has demonstrated a local model for the evaluation of teachers providing instructional services that has produced successful results. The amendment also requires the plan to describe the methods that the school district or BOCES employs to assess teachers’ performance. The amendment requires the plan to describe how the school district or BOCES addresses the performance of teachers whose performance is evaluated as unsatisfactory, and requires the development of a teacher improvement plan for teachers so evaluated, which is to be developed by the district or BOCES in consultation with the teacher. In addition, the plan must describe how the school district or BOCES provides training in good practice for the conducting of performance evaluations to staff who perform them, or alternatively, shall state the fact that the school district or BOCES permits such personnel to participate in training in this subject offered by the State Education Department. Finally, pursuant to the Taylor Law, the amendment states that the procedures for the annual professional performance review are subject to collective bargaining.

Need for Rule: In 1998, the Regents enacted “Teaching to Higher Standards: New York’s Commitment,” which was the blueprint for the redesign of both pre-service and in-service teacher education in New York State. One of the critical components of this policy statement was to ensure that each teacher received a rigorous annual professional performance review which assessed the teacher’s overall performance in the classroom. With the Regents sweeping reforms to K-12 educational system, they acknowledged the need to ensure that

all teachers remain current and effective in the classroom to ensure that all students will attain the Regents learning standards and graduation requirements. The requirement for annual professional performance review was strengthened by ensuring that critical components of the teacher’s practice in the classroom were assessed, on an annual basis, by the district. The more rigorous annual professional performance review was another component to ensure that teachers remain current and effective in the classroom.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2), and 3604(8).

Section 100.2(o) of the Regulations of the Commissioner of Education - Professional Development Plans

Description of Rule: The rule requires each school district and BOCES to have a professional development plan, which describes how they will provide all of their teachers with substantial professional development opportunities. For plans covering the time period February 2, 2004 and thereafter, each school district or BOCES is required to describe in its plans how it will provide teachers it employs holding a professional certificate with opportunities to maintain such certificates in good standing based upon successfully completing 175 hours of professional development every five years. The intent is for school districts and BOCES to offer a menu of professional development opportunities to their teachers. Such opportunities may be in a variety of formats and offered by a variety of providers and include course work paid for by the school district or BOCES or the teacher, depending on local arrangements and how professional development offered outside the school day is collectively bargained. The amendment requires the professional development plan to be adopted by September 1, 2000 and annually thereafter. It requires the plan to be developed through collaboration with a professional development team, including the superintendent of schools or district superintendent or their designees, school administrators, teachers, at least one parent and curriculum specialist, a representative of a higher education institution provided that a qualified candidate is available, and others. A majority of the members of the professional development team must be teachers selected by their collective bargaining unit. Among other items, the plan must describe the alignment of professional development with New York standards and assessments, student needs, teacher capacities, and include a needs analysis, goals, objectives, strategies, activities and evaluation standards. It must also describe the manner in which the school district or BOCES will measure the impact of professional development on student achievement and teachers’ practices.

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

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

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

Description of Rule: Part 86 of the Regulations of the Commissioner of Education defines the rights, obligations, application procedures, and grant delimitations pertaining to the Albert Shanker Grant, pursuant to Education Law section 3004-a, establishing such grant to support and encourage qualified New York State teachers seeking a National Teaching Certificate from the National Board for Professional Teaching Standards (NBPTS.) The National Board for Professional Teaching Standards (NBPTS) is a nonprofit organization of teachers and other education stakeholders created in 1987 to assist

in improving student learning through the establishment of higher, more rigorous standards of knowledge and performance for teachers. By defining and recognizing highly accomplished practice, a certificate awarded by the National Board attests that a teacher has been judged by his or her peers as one who meets meaningfully high and rigorous standards of knowledge and performance. He or she has demonstrated the ability, in a variety of settings, to make sound professional judgments about students' learning needs and to act effectively on those judgments. The NBPTS national teaching certificate has been recognized by many states as valid in lieu of a state teaching certificate and, in some, as worthy of a salary incrementation in recognition of ones' status as a "master teacher." The New York State Board of Regents accepts the NBPTS national teaching certificate in reciprocity towards a permanent NYS teaching certificate in a comparable subject title. Eligible teachers receiving the Shanker grant are awarded up to \$2,000 toward the \$2,300 registration fees in support of this effort. All but \$300 of such registration fees are paid directly to the National Board for Professional Teaching Standards by SED. Individual candidates or their employing school districts also may be reimbursed for prior, authorized fees paid and/or for other approved expenditures in support of this effort, including up to three days for substitute teacher salary reimbursements, to a maximum of an additional \$500 for each candidate.

Need for Rule: The Shanker Grants help support rigorous and meaningful professional development for teachers, whether or not they become Board certified. The National Board process (portfolio and assessment center activities) causes teachers to consider student work as a consequence of their own work according to NBPTS standards, and the reinducted habits of analytical and reflective practice appear to translate reliably into perceptions of changed teaching behaviors stimulating the growth of teachers content knowledge, knowledge of child development, and actual employment of a broader array of more effective strategies to facilitate teaching and learning across diverse student populations. Continued Department support for Part 86 and the Albert Shanker Grant is consistent with current Regents policy initiatives, NCLB, and seemingly omnipresent efforts to raise and maintain standards for teaching and learning with a level of reliability heretofore unattained.

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

Agency Representative:

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

Johanna Duncan-Poitier

Deputy Commissioner

Office of Higher Education and Office of the Professions

New York State Education Department

West Wing, Second Floor Mezzanine

Albany, New York 12234

(518) 474-3862

OFFICE OF THE PROFESSIONS

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

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

Need for Rule: The rule is needed to implement a change in the internal organization of the Office of Professional Discipline. The rule also prescribes that the existing procedures set forth for physicians, physician assistants and specialist assistants are applicable to cases in which charges of professional misconduct were served on or before July 26, 1991, the effective date of Chapter 606 of the Laws of 1991.

This is necessary because Chapter 606 provided the Department of Health with the responsibility for administering professional disciplinary proceedings against such licensees in cases served after that date, so that it is necessary to make clear that disciplinary proceedings for the three professions are not covered by the Education Department disciplinary procedures after that date.

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

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

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

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

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

Sections 3.47 and 3.50 of the Rules of the Board of Regents - Doctor of Physical Therapy

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

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

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

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

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

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

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

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

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

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

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

Section 61.15 of the Commissioner's Regulations - Dentists

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

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

Legal Basis for Rule: Education Law sections 207(not subdivided), 6502(1), 6504(not subdivided), 6507(2)(a), and 6604-a(2) and (4). Section 66.5 of the Commissioner's Regulations - Optometry

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

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

Legal Basis for Rule: Education Law sections 207(not subdivided), 6502(1), 6504(not subdivided), 6507(2)(a), (3)(a) and (4)(a), 6508(1) and (2), 7101(not subdivided), 7101-a(1)(f), (3)(4), (7), (9), (9-a) and (11), and sections 3 and 4(b) of Chapter 517 of the Laws of 1995. Section 66.5 of the Commissioner's Regulations - Optometry

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

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

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

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

Need for Rule: This rule has been extensively revised, effective October 9, 2008, to further update the requirements for licensure in speech language pathology and in audiology. The new rule aligned New York State licensing requirements with federal Medicaid requirements, expanded opportunities for qualified speech-language pathologists and audiologists in other jurisdiction to become licensed in New York state, and addressed shortages in the number of speech-language pathologists in New York State school districts.

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

Agency representative:

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

Frank Muñoz

Associate Commissioner

Office of the Professions

New York State Education Department

State Education Building

West Wing, Second Floor

Albany, NY 12234

(518) 486-1765

OFFICE OF MANAGEMENT SERVICES

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

Description of Rule: to reorganize the committee structure of the

Board of Regents to abolish the Committee on Administration, Law and Legislation (ALL) and to establish the Committee on Quality.

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

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

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

Kathy A. Ahearn

Counsel and Deputy Commissioner for Legal Affairs

New York State Education Department

State Education Building, Room 148

Albany, New York 12234

(518) 474-6400

legal@mail.nysed.gov

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

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

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

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

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

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

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

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

Agency Representative:

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

David Walsh

Chief Information Officer

New York State Education Department

Office of Management Services

State Education Building, Room 121

Albany, New York 12234

(518) 486-1702

OFFICE OF CULTURAL EDUCATION

Sections 185.5 and 185.11 - Local Government Records Management.

Description of Rule: The rule revises Records Retention and Disposition Schedule MU-1 to make needed changes and additions to minimum retention periods for records of cities, towns, villages and fire districts.

Need for Rule: Section 57.25(2) of Arts and Cultural Affairs Law requires the commissioner of education to develop, adopt by regulation, issue and distribute to local governments records retention and disposition schedules establishing minimum legal retention periods. The issuance of such schedules constitutes formal consent by the commissioner to the disposition of records that have been maintained in

excess of the retention periods set forth in the schedules. The 1999 revisions to the rule make necessary changes and additions to ensure that concerned local governments have up-to-date standards for records retention and disposition.

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

Agency Representative:

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

Christine Ward

Assistant Commissioner for the State Archives

New York State Archives

Room 9A49

Cultural Education Center

Albany, New York 12230

(518) 474-6926

cward@mail.nysed.gov

Department of Environmental Conservation

The following rules were adopted by the New York State Department of Environmental Conservation (Department or DEC) during 2004, 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 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103, and 71-2105. Part 218 adopts California emission standards for motor vehicles and engines sold in New York State in order to reduce criteria pollutant and greenhouse gas emissions. It is anticipated that this regulation will be amended and listed in the January 2009 Regulatory Agenda.

6 NYCRR Part 227-2, NOx RACT. Statutory Authority: Environmental Conservation Law Sections 19-0103, 19-0105, 19-0301 and 19-0305. This regulation is a major source control technology retrofit regulation for the control of NOx emissions from stationary combustion installations. This regulation is required under the Clean Air Act for states that are in non-attainment with the NAAQS for Ozone. It is anticipated that this regulation will be amended and listed in the January 2009 Regulatory Agenda.

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

DIVISION OF FISH, WILDLIFE AND MARINE RESOURCES

6 NYCRR Part 10, Rules and Regulations Pertaining to Freshwater Sportfishing. Statutory Authority: Environmental Conservation Law Sections 3-0301, 11-0303, 11-0305, 11-0317, 11-1301, 11-1303, 11-1316, and 11-1319. Sportfishing regulations are reviewed on a biannual basis (with a rulemaking filed every 2 years). Each of these rulemakings provides for a review of the existing sport fishing regulations, and results in adjustments, including dropping special requirements no longer warranted. A new rulemaking is anticipated in the coming year.

6 NYCRR Part 180, Fish Dangerous to Indigenous Fish Populations - Asian Carp and Snakehead. Statutory Authority: Environmental Conservation Law Sections 3-0301 and 11-0511. This regulation is consistent with the current federal government listing of these species as being injurious (i.e. introduction into waters is a threat to aquatic ecosystems). The continued absence of Asian carp in the waters of New York State supports the value of the current regulations. While

snakeheads have turned up in some waters of New York State, strong measures were taken in 2008 (DEC - Region 3) to eradicate their presence in an effort to protect other freshwater fish and aquatic systems. The regulations adopted in 2004 continue to be warranted in order to prevent further introduction. No further evaluation is warranted.

6 NYCRR Part 43, Surfclam Management. Statutory Authority: Environmental Conservation Law Sections 13-0308 and 13-0309. This regulation implemented the fishery management plan developed by the Department and the Surfclam/Ocean Quahog Management Advisory Board for Atlantic surfclams harvested from the Atlantic Ocean. This regulation will be amended in 2009 to reflect new changes in the surfclam management plan. Please refer to the 2009 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR Part 40, Marine Fish. Statutory Authority: Environmental Conservation Law Sections 11-1303 and 13-0339-a. New recreational limits were established in this regulation for Atlantic cod and haddock in New York State waters. This regulation was adopted to be consistent with federal regulations for these fish adopted by National Marine Fisheries Service. Part 40 will be amended in the spring of 2009 after National Marine Fisheries Service changes the federal marine fish regulations. Please refer to the 2009 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR Part 41, Sanitary Condition of Shellfish Lands. Statutory Authority: Environmental Conservation Law Sections 13-0307 and 13-0319. This regulation classified shellfish lands in Mecox Bay, Suffolk County, as uncertified and/or seasonally uncertified for shellfish harvest. Bacteriological water quality testing is an ongoing task. Shellfish lands will be reclassified depending on the results of the water quality studies. Part 41 will be amended as needed. Please refer to the 2009 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR Part 41, Sanitary Condition of Shellfish Lands. Statutory Authority: Environmental Conservation Law Sections 13-0307 and 13-0319. This regulation classified several shellfish lands in Shelter Island Sound, Pipes Cove and Wading River Creek, Mount Sinai Harbor, Port Jefferson Harbor and Flax Pond, all in Suffolk County, as uncertified and/or seasonally uncertified for shellfish harvest. Bacteriological water quality testing is an ongoing task. Shellfish lands will be reclassified depending on the results of the water quality studies. Part 41 will be amended as needed. Please refer to the 2009 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR Part 40, Marine Fish. Statutory Authority: Environmental Conservation Law Sections 13-0340-b, 13-0340-e and 13-0340-f. New recreational limits were established in regulation for summer flounder (fluke), scup and black sea bass in New York State waters. This regulation was adopted to be consistent with requirements of the Atlantic State Marine Fisheries Commission fishery management plans. Part 40 will be amended in the spring of 2009 right after National Marine Fisheries Service changes the federal marine fish regulations. Please refer to the 2009 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR Part 41, Sanitary Condition of Shellfish Lands. Statutory Authority: Environmental Conservation Law Sections 13-0307 and 13-0319. This regulation classified several shellfish lands in Great South Bay, Southold Bay, Cutchogue Harbor and Little Peconic Bay, all in Suffolk County, as uncertified or seasonally uncertified for shellfish harvest. Bacteriological water quality testing is an ongoing task. Shellfish lands will be reclassified depending on the results of the water quality studies. Part 41 will be amended as needed. Please refer to the 2009 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR Part 41, Sanitary Condition of Shellfish Lands. Statutory Authority: Environmental Conservation Law Sections 13-0307 and 13-0319. This regulation classified several shellfish lands in South Oyster Bay in Nassau County and Great South Bay and Nicoll Bay, in Suffolk County, as uncertified or seasonally uncertified for shellfish harvest. Bacteriological water quality testing is an ongoing task. Shellfish lands will be reclassified depending on the results of the water quality studies. Part 41 will be amended as needed. Please refer to the 2009 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR 1.40, Youth Hunt for Wild Turkey. Statutory Authority: Environmental Conservation Law Sections 11-0303, 11-0903 and 11-0905. To provide a 2 day youth hunt prior to the regular opening of the spring season. This rulemaking does not need to be amended since it is established as a regular part of turkey hunting.

6 NYCRR 2.20, 6.3, 180.10, Pelt Sealing and Reporting Requirements for Coyote and Marten Statutory Authority: Environmental Conservation Law Sections 11-0917 and 11-1103. This rulemaking makes it easier for hunters and trappers to report and collect biological data. No amendments are needed because the rule is established as a regular part of furbearer harvest procedures.

6 NYCRR Part 189, Importation of Wild or Captive Bred Cervids. Statutory Authority: Environmental Conservation Law Sections 3-0301, 11-0325 and 11-1905. This rulemaking authorizes the importation of captive cervids (members of the deer family) when the Department of Agriculture and Markets has issued a permit. It does not need to be amended because the rule is established as a regular part of the department's response plan to the detection of chronic wasting disease in New York State.

6 NYCRR 1.29, Archery Season for White-tailed Deer in Suffolk and Westchester Counties. Statutory Authority: Environmental Conservation Law 11-0903. This rulemaking established the open season dates for bowhunting deer. It does not need to be amended because the rule is established as a regular part of deer hunting in these counties.

6 NYCRR 1.22, Harvest of White-tailed Deer with Muzzleloading Firearms in the Northern Zone. Statutory Authority: Environmental Conservation Law Section 11-0907. This rulemaking adjusted the muzzleloading deer hunting regulations in northern New York. It does not need to be amended because it is established as a regular part of deer hunting in the Northern Zone.

6 NYCRR 6.1, Managed Harvest of Beaver and River Otter. Statutory Authority: Environmental Conservation Law Sections 11-0303, 11-1101 and 11-1103. This rulemaking was first established during the 2004-2005 license year and needs to be amended to reflect the current status of beaver populations in New York, and to consolidate season dates in similar areas of the state.

6 NYCRR 1.31, Bear Hunting in the Southern Zone. Statutory Authority: Environmental Conservation Law Section 11-0903. This rulemaking expanded the areas open for black bear hunting, and it does not need to be amended since the Department recently amended black bear hunting seasons effective for the 2008-2009 license year.

6 NYCRR 6.2, 6.3, Beaver Trapping Regulations. Statutory Authority: Environmental Conservation Law Sections 11-1101 and 11-1103. This rulemaking was adopted to reduce the accidental taking of river otter in body-gripping traps for set for beaver in areas closed to river otter trapping. It does not need to be amended since the rule continues to be needed to protect river otter.

6 NYCRR 2.30, Migratory Game Bird Hunting Regulations. Statutory Authority: Environmental Conservation Law Sections 1-0303, 11-0307, 11-0903, 11-0905, 11-0909 and 11-0917. This regulation adjusts the hunting areas, season dates, and bag limits for the 2004-2005 season. The rulemaking will be amended in 2009 to establish migratory game bird hunting regulations for the 2009-2010 hunting season.

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) 402-8981. E-mail: rtdiana@gw.dec.state.ny.us

DIVISION OF LANDS AND FORESTS

6 NYCRR Section 190.30, Otter Creek and Sand Bay State Forests. Environmental Conservation Law Sections 1-0101, 3-0301 and 9-0105. This rule is needed since it provides consistent management on two State forests. 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, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4250. Telephone: 518-402-9405. E-mail: lrkashda@gw.dec.state.ny.us

DIVISION OF WATER

6 NYCRR PART 750, State Pollutant Discharge Elimination System (SPDES) Permits. Statutory Authority: Environmental Conservation Law Article 3, Title 3; Article 15; Article 17, Titles 3,5,7 and 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.)). 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 federal 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 and are necessary to incorporate new federal criteria and standards. A new rulemaking is anticipated in the coming year. Please see Division of Water's Regulatory Agenda for 2008.

6 NYCRR PART 502, Floodplain Management Criteria for State Projects. Statutory Authority: Environmental Conservation Law Sections 1-0101 and 3-0301, Article 36. New York State has a state program that ensures that use of State lands and the siting, construction, administration and disposition of State-owned and State-financed facilities are conducted in ways that minimize flood hazards and losses. This regulation is required for the State of New York to continue its qualification as a participating community in the National Flood Insurance Program administered by the Federal Emergency Management Administration. Typographical errors and minor revisions are needed to update references and are necessary to incorporate new federal criteria and standards. A new rulemaking is anticipated to begin development within the next two years.

Regulatory Coordinator for the Division of Water is Robert Simson, New York State 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

Title 10 NYCRR - Five Year Review

Pursuant to the State Administrative Procedure Act Section 207 and 202-d, the Department of Health invites public comment on the continuation or modification of the following rules. Public comment should be submitted to Katherine Ceroalo, Bureau of House Counsel, Regulatory Affairs Unit, Corning Tower, Room 2438, Empire State Plaza, Albany, NY 12237.

Amendment of Sections 2.1 and 2.5 of Title 10 (Communicable Disease Reporting-Severe Acute Respiratory Syndrome (SARS))

Statutory Authority:

Public Health Law (PHL) § 206(1)

Description of the regulation:

Severe Acute Respiratory Syndrome (SARS) is a viral respiratory illness that was recognized as a global threat in March 2003, after first appearing in Southern China in November 2002. In 10 percent to 20 percent of cases, patients require mechanical ventilation. Most patients develop pneumonia. The primary way that SARS appears to spread is by close person-to-person contact. In 2003, SARS was added to the communicable disease list in 10 NYCRR.

Although there have been no SARS cases reported since July 2003, it remains critical to keep SARS as a reportable condition to ensure the immediate identification, reporting, and investigation of any possible new cases. If cases go unidentified, spread in the population could have significant public health consequences. The regulation should be continued without modification.

Amendment of Sections 2.1 and 2.5 of Title 10 (Communicable Diseases - Monkeypox)

Statutory Authority:

PHL §§ 225(4), 225(5)(a), (g), (h) and (i), and 206(1)

Description of the regulation:

Monkeypox is a viral disease from Africa that resembles smallpox

in humans and can be spread from animal to person or person to person through direct contact or respiratory droplets. Although human cases in the U.S. have not been seen since 2003 when this regulation was enacted, there is the possibility of cases occurring again in the future. Continuance of this regulation is warranted in order to improve reporting (Section 2.1) and laboratory testing (Section 2.5) of cases. The regulation should be continued without modification.

Amendments to Section 2.1(a) and addition of new Section 2.2(h) to Title 10 (Communicable Diseases - Arboviral Infection Reporting)

Statutory Authority:

PHL §§ 206(1) and 602.3

Description of the regulation:

This regulation was developed to simplify the requirements for reporting all arthropod-borne viral (arboviral) diseases rather than listing individual diseases with separate responses. This regulation grouped all of these, primarily mosquito-borne and potentially fatal diseases, into one inclusive term. As such, any potential confusion regarding responses to individual disease pathogens is minimized. The regulation should be continued without modification.

Amendment to various Sections in Part 5 of Title 10 (Public Notification, ByProducts and Interim Enhanced Surface Water Treatment Rule (SWTR) - Drinking Water)

Statutory Authority:

PHL § 225

Description of the regulation:

The amendment to various sections of Subpart 5-1 incorporated the requirements of the federal Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Stage 1 Disinfectants and Disinfection Byproducts Rule (DBP Rule) and the Public Notification Rule (PNR) which were promulgated by the United States Environmental Protection Agency. All of these rules are requirements of 40 CFR Part 141. As a condition of the New York State Department of Health's primacy, there must be state rules or other authority that are at least as stringent as 40 CFR Part 141 to assure that public water systems comply with the requirements of the IESWTR, DBP Rule, and the PNR. The amendment should continue without modification.

Amendment of Subpart 6-2 of Title 10 (Bathing Beaches)

Statutory Authority:

PHL § 225

Description of the Regulation:

The 6/23/04 amendments clarified the definition of "bathing" so that activities such as fishing, scuba diving and surf boarding were no longer prohibited at areas outside of regulated bathing beaches or at regulated bathing beaches when not open to bathing. The amendment also added enterococcus and E. coli as acceptable bacteriological indicator organisms to assess water quality at bathing beaches and clarified factors to be considered when determining if water quality creates a potential health hazard requiring closure of a beach. The regulation should continue without modification.

Amendment of Subpart 7-2 of Part 7 of Title 10 (Children's Camps)

Statutory Authority:

PHL §§ 225 and 1394

Description of the regulation:

The 9/29/04 amendments to Subpart 7-2 added standards for children's camp trips, swimming, incidental water immersion, on-site activities and bunk bed guardrails; clarified and added potable water standards; and updated and clarified obsolete wording and standards. Analysis of the rule identified the need for minor revisions to the 9/29/04 amendments pertaining to swimming, which are included in current amendments proposed for this Subpart. The other amendments to the rule should continue without modification.

Amendments to Section 16.58 of Part 16 of Title 10 (Fluoroscopic X-ray Equipment)

Statutory Authority:

PHL § 225

Description of the regulation:

The amendment to Section 16.58 of Part 16 updated the quality

control testing for fluoroscopic x-ray equipment. The requirements assure uniformity in testing and compliance with standards for image quality and patient doses. The amendment should continue without modification.

Amendment of Sections 55-2.1 through 55-1.12 of Subpart 55-2 of Title 10 (Environmental Laboratories)

Statutory Authority:

PHL § 502

Description of the regulation:

The rule establishes minimum standards for the certification and operation of environmental laboratories analyzing New York State samples, including personnel qualifications and quality systems standards for analytical processes and record keeping. A revision is under consideration to update technical standards.

Addition of new Sections 55-2.12 and 55-2.13 to Subpart 55-2 of Title 10 (Environmental Laboratory Standards)

Statutory Authority:

PHL § 502

Description of the regulation:

The two sections establish minimum standards for the certification and operation of environmental laboratories conducting chemical and microbiological analyses for critical agents, including personnel qualifications and quality systems standards for analytical processes and record keeping. A technical revision to establish qualifications for directors of laboratories conducting critical agent testing using technologies other than conventional microbiological methods; and to establish certification requirements for laboratories that conduct critical agent testing using autonomous detection systems deployed in the field is currently under review.

Amendment of Subpart 58-2 of Title 10 (Blood Banks)

Statutory Authority:

PHL § 3121(5)

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. In order to keep pace with current technology, periodic amendments are necessary. For example, an amendment is being drafted to update technical standards and provide for administration of blood by emergency medical technicians during interfacility transport. The rule was most recently amended in 2007 to update practice standards, lower donor age, and recognize advances in technology. Continuance of these regulations is warranted.

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

Statutory Authority:

PHL §§ 3121(5) and 4365(7)

Description of the regulation:

Subpart 58-5 is necessary to promote the public health, safety and welfare by establishing minimum standards for the banking of hematopoietic progenitor cells (HPCs), which are immature blood cells. Amendment of the standards is being considered to reflect advances in technology. Continuance of these regulations is warranted.

Amendment of Section 69-1.3(1)(2) of Part 69 of Title 10 (Expedited HIV Testing of Women and Newborns)

Statutory Authority:

PHL §§ 576, 2500-a, and 2522

Description of the regulation:

Subpart 96-1.3(1)(2) is necessary to promote the public health and welfare by ensuring that the HIV exposure status is available for all newborns for mothers who have not been tested for HIV during the current pregnancy or for whom HIV test results are not available at delivery. This allows providers and patients information that is critical for the timely and efficacious administration of antiretroviral medications to prevent mother-to-child HIV transmission should the mother be HIV-infected. This amendment should be continued.

Amendment of Section 80.86 and addition of a new Section 80.84 of Title 10 (Treatment of Opiate Dependence in the Outpatient Setting)

Statutory Authority:

PHL § 3308(2)

Description of the regulation:

This regulation allows the treatment of narcotic addiction in the outpatient setting, pursuant to the provisions of the federal Drug Addiction Treatment Act of 2000. Under the regulation, a qualified physician may treat narcotic addiction by issuing a prescription for buprenorphine, a controlled substance approved by the U.S. Food and Drug Administration and the New York State Department of Health for such treatment. The prescription may be dispensed to the patient by a pharmacist. Prior to the regulation, narcotic addiction could only be treated by enrollment in a Methadone Maintenance Treatment Program (MMTP). The regulation ensures effective addiction treatment in the confidentiality of an office setting for persons who may be unable or unwilling to seek treatment in a MMTP venue. The regulation protects the public health by resulting in more persons entering treatment. Continuance of these regulations is warranted.

Amendment to Section 85.21 of Title 10 and Section 505.3 of Title 18 (Smoking Cessation Products)

Statutory Authority:

Social Services Law (SSL) § 365-a(4)

Description of the regulation:

This regulation provides for inclusion of non-prescription smoking cessation drugs on the list of reimbursable drugs under the NYS medical assistance program. This regulation supports the DOH's commitment to curtail tobacco use and to encourage smoking cessation. There have been no changes that would necessitate further amendment or repeal of this section. Continuance of the regulation is warranted.

Amendments to Sections 86-1.62 and 86-1.63 of Title 10 (DRGs, SIWs, Trimpoints and Arithmetic Mean LOS)

Statutory Authority:

PHL §§ 2803(2), 2807(3), and 2807-c(3) and (4)

Description of the regulation:

An amendment to Section 86-1.62 is required (effective January 1, 2009) to update the All Patient Diagnostic Related Groups (AP-DRGs) patient classification system that will be used for 2009 inpatient hospital rates. Section 86-1.63 was previously amended effective January 1, 2008. Continuance of the regulation is warranted.

Amendment of Sections 88-2.1 and 88-2.2 of Part 88 of Title 10 (New York State Veterans' Home)

Statutory Authority:

PHL Article 4, Title 1 and PHL Article 26-A.

Description of the regulation:

The amendments to these sections were technical in nature by incorporating all the veterans' homes owned and operated by the NYS Department of Health. The Department currently owns and operates the Veterans' Homes at Batavia (Genesee County), Montrose (Westchester County), Oxford (Chenango County) and St. Albans (Queens County).

There have been no other technical or procedural changes that would necessitate further amendments or repeal of these sections. The benefits of this technical change to include all four veterans' homes as covered by this regulation continue to be realized. Continuance of the regulation is warranted.

Repeal of Section 131.1 of Part 131 and addition of new Section 131.1 of Title 10 (City of Syracuse Watershed Rules and Regulations)

Statutory Authority:

PHL § 1100

Description of the regulation:

The rule provides extensive regulations intended to protect Syracuse's Skaneateles Lake Watershed by providing various limitations on activities and construction. The continuation of the rule is necessary to maintain protection of Syracuse's Skaneateles Lake Watershed and for Syracuse to maintain filtration avoidance for this surface water source.

Amendment of Section 405.22 of Title 10 (Live Adult Liver Donation and Transplantation)

Statutory Authority:

PHL § 2803(2)

Description of the regulation:

This regulation set forth provisions to ensure that potential donors are competent, willing to donate, free from coercion, medically and psychosocially suitable, fully informed of the risks and benefits as a donor and understand the alternative treatments that may be available to the recipient. It also established minimum staffing requirements for live adult liver transplantation and the postoperative period. These provisions are being modified and updated to reflect current practice.

Amendment of Sections 405.24(h) and 415.29(l) of Title 10 (Standards for Animals in Health Care Facilities)

Statutory Authority:

PHL §§ 2803(2) and 2803-h

Description of the regulation:

This regulation was amended to be consistent with the federal Americans with Disabilities Act (ADA) and PHL § 2803-h which gives nursing homes the option to board animals. Service animals, not limited to guide dogs, for a disabled person are allowed, as long as they do not pose a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation and are not medically contraindicated. This regulation should be retained.

Repeal Parts 425-427 and addition of new Part 425 and amendment to Parts 711 and 713 of Title 10 (Adult Day Health Care)

Statutory Authority:

PHL § 2803(2)

Description of the Regulation:

Effective 3/17/2004, PHL § 2803(2) defines "adult day health care" as the health care services and activities provided to a group of registrants with functional impairments to maintain their health status and enable them to remain in the community. This program serves registrants, defined as a person (1) who is not a resident of a residential health care facility, is functionally impaired and not homebound, and requires supervision, monitoring, preventive, diagnostic, therapeutic, rehabilitative or palliative care or services but does not require continuous 24-hour-a-day inpatient care and services, except that where reference is made to the requirements of Part 415 of this Subchapter, the term resident as used in Part 415 shall mean registrant; (2) whose assessed social and health care needs can satisfactorily be met in whole or in part by the delivery of appropriate services in the community setting; and (3) who has been admitted to an adult day health care program based on an authorized practitioner's order and the adult day health care program's interdisciplinary comprehensive assessment. The program is defined as an approved adult day health care program located at a licensed residential health care facility or an approved extension site. Continuance of this regulation amendment is warranted.

Amendment of Section 700.2(b)(32) and (44) of Part 700 of Title 10 (Certification Requirements for Physical Therapist Assistants and Limited Permits for Physical Therapists)

Statutory Authority:

PHL § 2803(2) and Chapter 404 of the Laws of 2002

Description of the regulation:

This regulation amended the definitions in the State Hospital Code for "physical therapy assistants" and "physical therapists" to conform to definitions consistent with Chapter 404 of the Laws of 2002.

The law shortened the duration of a limited permit to practice physical therapy from 1 year to 6 months. The previous regulation was silent on the issue of limited permits. New language was also added to the definition for those individuals who are not yet licensed and registered with the Education Department that specifies that they be issued a valid limited permit by the Education Department. The law also added an examination for certification as a physical therapy assistant and provides for limited permits for physical therapy assistants

prior to certification. The physical therapy assistant definition added language specifying that they are licensed and currently registered with the New York State Education Department, or have been issued a valid limited permit by that Department. This regulation should be retained.

Amendment of Section 709.3 of Title 10 (Need Methodology for Residential Health Care Facility (RHCF) Beds)

Statutory Authority:

PHL § 2802

Description of regulation:

This regulation is being updated to reflect changes in demographics and in long-term care services that affect the public need for RHCF (nursing home) beds. A revised rule is expected to be issued for public comment before June 30, 2009.

Amendment of Section 800.26 of Part 800 of Title 10 (Emergency Ambulance Service Vehicle Equipment Requirements)

Statutory Authority:

PHL §§ 3011(4) and 3016

Description of the regulation:

This regulation describes an emergency ambulance service vehicle (EASV). These vehicles are either owned or operated by an ambulance service and designated for the purposes of responding to medical emergencies with personnel and/or equipment and supplies. The EASV is not to be used to transport patients. This amendment is intended to give ambulance agencies greater flexibility in deploying their equipment and personnel to the scene of a medical or traumatic emergency. Continuance of this regulation amendment is warranted.

Addition of a new Part 801 to Title 10 (Resuscitation Equipment in Public Places)

Statutory Authority:

PHL § 3000-D

Description of the regulation:

This regulation requires the owner or operator of a public place, as described in law and the regulation, to make available certain items of resuscitation equipment and make them readily accessible for use by either trained staff or the public during a medical emergency. It requires that the equipment be located in such place that it may be brought to a patron's side within three minutes of the onset of an event. Further, the regulations include requirements for appropriate signage indicating the availability of resuscitation equipment for emergency use and providing information on how to obtain cardiopulmonary resuscitation training. Continuance of these regulations is warranted.

Title 10 NYCRR - Ten Year Review

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

Statutory Authority:

PHL § 225

Description of the regulation:

The 1/8/97 amendments to these Subparts increased the cooking temperatures for ground meat to address the potential contamination from E.Coli 0157:H7. Currently these Subparts are undergoing another revision to provide a more user-friendly document, exempt certain types of operations, rescind Subpart 14-5, and define standards for food manager and worker training courses. The 1/8/97 amendments should be continued.

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

Statutory Authority:

PHL § 225

Description of the regulation:

The amendment to Section 16.58 of Part 16 limited the radiation output of fluoroscopic x-ray tubes when the fluoroscopic unit was operating in the high-level control mode. There have been no technological or procedural changes that would necessitate further amendment or repeal of this section. The amendment should continue without modification.

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

Statutory Authority:

PHL §§ 901, 903 and 904

Description of the regulation:

These regulations effectively served NYS DOH scholarship and loan repayment recipients who fulfilled their service obligations under these programs in the past. However, because the benefits of the amendment no longer continue to be realized, continuance of the regulation is not currently warranted.

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

Statutory Authority:

PHL §§ 3121(5) and 4365(7)

Description of the regulation:

Subpart 58-5 is necessary to promote the public health, safety and welfare by establishing minimum standards for the banking of hematopoietic progenitor cells (HPCs), which are immature blood cells. Amendment of the standards is being considered to reflect advances in technology. Continuance of these regulations is warranted.

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

Statutory Authority:

PHL §§ 576(4) and 2786

Description of the regulation:

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

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

Statutory Authority:

PHL §§ 3308(2) and 3338(3)

Description of the regulation:

This regulation allows pharmacists to complete certain missing or incorrect information on an official New York State prescription, upon receiving oral authorization to do so from the prescribing practitioner. Allowing the pharmacist to add or change such information saves the patient the inconvenience of having to return to the practitioner who issued the prescription. The regulation ensures access to controlled substances for legitimate medical use and saves practice time for the prescriber and the pharmacist resulting from return visits to each. Continuance of this regulation is warranted.

Amendment of Sections 80.67, 80.69, 80.71 and 80.72 (Three-Month Controlled Substance Medication)

Statutory Authority:

PHL § 3308(2)

Description of the regulation:

The regulations provide consistent access to medication for all patients being treated with controlled substances for attention deficit disorder (ADHD). This regulation allows patients of any age to obtain up to a 3-month supply of a controlled substance for treatment when prescribed by their practitioner since ADHD has been proven to extend into adulthood. Some prescription plans allow for a single co-pay for a 3-month supply. The amendment has resulted in significant cost savings to the patient. Continuance of this regulation is warranted.

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

PHL § 4012-a

Description of the regulation:

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

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

Statutory Authority:

PHL § 2803(2)

Description of the regulation:

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

Title 18 NYCRR - Five Year Review

Amendment of Section 486.5 of Part 486 of Title 18 (Non-Rectifiable Offenses in Adult Care Facilities)

Statutory Authority:

SSL §§ 460-d and 461

Description of the regulation:

The regulation allows for the imposition of civil penalties against adult care facilities (except those operated by a social services district) for violation of regulations related to adult care facilities or any order of the Department issued pursuant to Social Services Law § 460-d. Most penalties may be abated if rectified by the facility within 30 days. Subdivision (a)(4) of the regulation provides that penalties imposed because a violation endangered or resulted in harm to a resident may not be rectified so as to abate the penalty, if the endangerment or harm is the result of one of the following actions or failures to act by the facility:

- (i) Total or substantial failure of the facility’s fire protection or prevention systems or emergency evacuation procedures;
- (ii) Retention of a resident medically requiring placement in a nursing home when the operator has not made and cannot document efforts to secure an appropriate placement;
- (iii) Failure of the operator to take appropriate action in the event of a resident’s illness, accident, death or attempted suicide;
- (iv) Failure of the facility to provide supervision in accordance with the staffing requirements of the regulations;
- (v) Failure of systemic practices and procedures;
- (vi) Threats of retaliation or taking reprisals against a resident who participates in the investigation of a complaint or who is the subject of an action identified in a complaint.

This regulation enables the Department’s collection of civil penalties from facilities who fail to meet acceptable standards of resident care and supervision in these critical areas and also facilitates enforcement of basic resident protections and the prevention of endangerment and resident harm. Continuance of this regulation is warranted.

Repeal clause (a) of 505.14(h)(7)(iii) and add new clause (a); amendment of 505.14(h)(7)(iii)(b)(1); repeal of subclause (6) of 505.14(h)(7)(i)(a) and add new subclause (6),(i) and (ii) to Title 18 (Personal Care Services Reimbursement (BLTCR))

Statutory Authority:

SSL §§ 363-(a)(2) and 365a(2)(e)

Description of the regulation:

The rule revised Medicaid reimbursement regulations to include a two percent penalty when cost reports are submitted late, and instituted advance notification of January personal care rates. The rule should continue without modification.

Title 18 NYCRR - Ten Year Review

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

Statutory Authority:

Chapter 398 of the Laws of 1997

Description of the regulation:

The regulation revision enhanced child support enforcement efforts by requiring Medicaid applicants and recipients to assist in establishing, modifying and enforcing child support orders. Section 360-3.2 was part of a regulatory package submitted by the Office of Temporary and Disability Assistance (OTDA). The revision remains valid in order to implement Chapter 398 of the Laws of 1997. Continuance of this regulation is warranted.

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

Statutory Authority:

Chapter 474 of the Laws of 1996.

Description of the regulation:

The regulation establishes maximum reimbursable prices for standard items of durable medical equipment. This regulatory change was developed with the support and assistance of the State’s durable medical equipment providers as a means to simplify billing procedures, to limit cost increases to Medicaid of durable medical equipment, and to minimize audit issues related to the determination of actual invoice cost for pricing.

The methodology remains appropriate and consistent with the payment policy of other medical care insurers. This regulation should be retained without modification.

Insurance Department

Pursuant to Section 207 of the State Administrative Procedure Act (SAPA), the Insurance Department must review after five years, and 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 2004.

- INS-44-04-00003-A (State Register of January 26, 2005) Second Amendment to 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; Social Services Law 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 to Part 39 of 11 NYCRR was necessary to expand the plan design options under the New York State Partnership for Long-Term Care Program. Prior to the amendment, there was only one plan design offered.

The Department’s June 2008 Regulatory Agenda (published in the State Register of June 25, 2008) noted the Department’s intent to amend Part 39 to update minimum standards for Partnership and non-Partnership long term care coverages; and to establish minimum standards and/or requirements for long term care insurance products as new long term care financing options are enacted.

- INS-45-04-00002-A (State Register of February 2, 2005) Adoption of Part 217 (Regulation 178) (Prompt Payment of Health Insurance Claims) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 1109, 2403, 3224 and 3224-a.

Chapters 637 and 666 of the Laws of 1997, which amended the Insurance Law relating to the settlement of claims for health care and payment for health care services, took effect January 22, 1998. The legislation was intended to set timeframes within which insurers and health maintenance organizations (HMOs) must pay undisputed claims for health care services submitted by subscribers and health care providers. One area of continuing concern had been determining when a claim was deemed to be “clean,” and therefore ready for payment. This regulation created claims payment guidelines based on agreement with representatives of the industry on what was needed in order to determine when a health care insurance claim is considered complete and ready for payment. By its terms, the regulation is applicable only to claims submitted on paper.

The Department currently is preparing an amendment to Part 217 (with a coordinated amendment to Part 52) to facilitate the timely processing and payment of health insurance claims in those circumstances where the patient is covered by more than one policy issued by different insurers.

• INS-32-04-00006-A (State Register of October 27, 2004) Thirty-Second Amendment to Part 52 (Regulation 62) (Health Insurance / Infertility Coverage) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 1109, 3201, 3217, 3221, and 4303, and L. 2002, ch. 82.

Chapter 82 of the Laws of 2002 enhanced sections 3221(k)(6) and 4303(s) of the Insurance Law by adding coverage for procedures used to diagnose and treat infertility when certain conditions are met, and by adding a prescription drug benefit for coverage of prescription drugs approved by the federal Food and Drug Administration (FDA) for use in the diagnosis and treatment of infertility. The law directed the Superintendent, in consultation with the Commissioner of Health, to promulgate regulations that shall stipulate the guidelines and standards to be used in carrying out the mandates of the legislation.

This amendment directs insurers to use standards and guidelines no less favorable than those established and adopted by the American Society for Reproductive Medicine in relation to the determination of infertility, the identification of experimental procedures and treatments not covered for the diagnosis and treatment of infertility, the identification of the required training, experience and other standards for health care providers for the provision of procedures and treatments for the diagnosis and treatment of infertility, and the determination of appropriate medical candidates by the treating physician.

The Department is currently developing other amendments to the regulation, but not with respect to the diagnosis and treatment of infertility. The Department's June 2008 Regulatory Agenda (published in the State Register of June 25, 2008) includes 26 separate items that would amend Regulation 62.

• INS-12-04-00016-A (State Register of October 6, 2004) Twenty-Eighth Amendment to Part 68 (Regulation 83) (Charges for Professional Health Services) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 2601, 5221, and Article 51.

Chapter 892 of the Laws of 1977 recognized the necessity of establishing schedules of maximum permissible charges for professional health services payable as no-fault insurance benefits in order to contain the costs of no-fault insurance. In order to contain costs, the Superintendent is required to adopt those fee schedules that are promulgated by the Chair of the Workers' Compensation Board. In addition, the Superintendent may, after consulting with the Chair of the Workers' Compensation Board and the Commissioner of Health, establish fee schedules for those services for which schedules have not been prepared and established by the Workers' Compensation Board.

The Workers' Compensation Board fee schedules were initially adopted in 1977 and have been revised regularly since that time in order to reflect inflationary increases and to incorporate other necessary enhancements. Periodic revision of the fee schedules is a part of the ongoing process of keeping the fee schedules current and reflective of changes in the health care industry, which facilitates access to health care for motor vehicle accident victims while controlling costs. Similar modifications and improvements have also been applied to those fee schedules established by the Insurance Department for various health care services that are not covered by any fee schedule established by the Workers' Compensation Board.

The adoption by the Superintendent of an established fee schedule that is updated was necessary to reflect increased costs and newer products as they are developed. In addition, it provides for more timely payment of health care provider charges and results in a significant reduction in litigation costs that are incurred due to the variable nature of the current fee schedule rule previously used to establish these costs.

In 2008, the Department adopted an amendment to Part 68 (INS-02-08-00005-A, State Register of April 16, 2008) that repealed the fee schedules previously established by the Insurance Department for prescription drugs, durable medical equipment, medical/surgical supplies, orthopedic footwear, and orthotic and prosthetic appliances that are now covered by two fee schedules established by the Workers' Compensation Board, and clarifies that a pharmacy is deemed to be a provider of health services for purposes of eligibility for direct payments under Regulation 68-C (11 NYCRR Part 65-3).

The Department's June 2008 Regulatory Agenda (published in the State Register of June 25, 2008) includes separate items that would amend Regulation 68 to adopt a fee schedule for health services rendered by licensed acupuncturists, and to adopt the fee schedule that will be implemented by the Workers' Compensation Board for health services rendered by licensed dentists.

• In 2004, the Department also made numerous consensus amendments to Parts of 11 NYCRR to update regulations and statutory references contained therein to ensure consistency 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 1999.

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

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

Insurance Law sections 4216 and 4235 authorize the writing of credit life insurance and credit accident and health insurance in New York. A prior version of the regulation led to an exodus of insurers willing to write credit insurance in New York. The new regulation streamlined some of the requirements applicable to insurers offering these types of insurance and generally provided for a modest increase in rates with a resultant increase in expense margins. The new regulation balanced the dual legislative objectives of having the product available and providing insureds with fair value for their premium dollar. In 2001, the Department adopted an amendment to the regulation (INS-10-01-00004-A, State Register of May 30, 2001) modifying certain restrictions on age terminations of coverage and rates for vendor business.

In 2003, the Department adopted an amendment to Part 185 (INS-50-02-00014-A, State Register of March 5, 2003) to recognize the creation of a new category of "broker", which can market and place life insurance coverage. The Department currently intends to continue the rule without modification, while continuing to monitor the availability and affordability of coverage.

• INS-16-99-00006-A (State Register of September 15, 1999) Seventh Amendment of Subpart 62-4 (Regulation 96) (*Anti-Arson Application*) of Title 11 NYCRR.

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

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

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

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

Insurance Law section 3420 requires that motor vehicle liability insurance policyholders be given the opportunity to purchase Supplementary Uninsured/Underinsured Motorists ("SUM") coverage to protect against the possibility of an accident involving another motor vehicle whose owner or operator was negligent and who may have no liability insurance or have liability insurance with relatively low limits in comparison to the policyholder's own liability limits for bodily

injury sustained by third-parties. In 1997, the Legislature enacted a bill that raised the limits of SUM coverage that must be offered to insureds, and that made other significant changes to the way such coverage is provided. This amendment implemented the legislative change. In addition, this amendment established a standard policy form for SUM coverage, in order to eliminate ambiguity, minimize confusion and maximize utility.

The Department's June 2008 Regulatory Agenda (published in the State Register of June 25, 2008) includes an item that would revise all references in Sections 60-2.3 and 60-2.4 from "AAA/American Arbitration Association" to "designated organization." Otherwise, the Department currently intends to continue the rule without modification, while continuing to monitor the regulation to ensure that its provisions remain consistent with related statutory and regulatory requirements.

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

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

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

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

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

Prior to the enactment of Chapter 498 of the Laws of 1996, Insurance Law § 2118 required both the excess line broker and the insured to complete an affidavit affirming as true that the broker had advised the insured that coverage had been placed with an unauthorized insurer. Chapter 498 amended the statute to eliminate that requirement and replace it with specific requirements concerning information that must be disclosed by the broker to the insured prior to making a placement with an unauthorized insurer. This amendment conforms Regulation 41 to that statutory change. In addition, the amendment adopts trust deposit requirements for alien insurers that were adopted by the National Association of Insurance Commissioners (NAIC) at its September 1998 meeting. These requirements provide additional protection for New York policyholders whose insurance has been placed in the excess line market.

In 2001, the Department adopted an amendment to the regulation (INS-13-01-00017-A, State Register of July 11, 2001). Section 1101(b) of the Insurance Law was amended by Chapter 597 of the Laws of 1999 to permit unauthorized insurers that are affiliated with an insurer licensed in this state to have an office in this state to provide services to support its insurance business. Chapter 597 also amended Insurance Law Section 2117 to allow authorized insurers to provide support services, from an office in New York, to unauthorized affiliates, provided that the unauthorized insurer has satisfied all applicable requirements for placement by excess line brokers. Both sections of law require that any documents issued by unauthorized insurers from an office in this state contain a prominent notice that the insurer is not

licensed in New York, in accordance with regulations promulgated by the Superintendent. The 2001 amendment established a mandatory and uniform notice instead of permitting each insurer to establish its own notice.

In 2003, the Department adopted an amendment to the regulation (INS-48-02-00004-A, State Register of February 19, 2003) to amend incorrect references to other sections of the regulation.

In 2006, the Department adopted an amendment to the regulation (INS-52-05-00016-A, State Register of March 8, 2006) to restate the duty of an excess line broker to deliver a stamped declarations page or cover note evidencing insurance that is stamped by the excess line association.

In 2007, the Department adopted an amendment to the regulation (INS-40-07-00002-A, State Register of December 19, 2007) to change the amount of funds required to be held in trust by alien excess line insurers and an association of insurance underwriters. The rule also requires the report required by section 27.14(f) to be certified by an actuary.

The Department's June 2008 Regulatory Agenda (published in the State Register of June 25, 2008) included separate amendments to Regulation 41 to (1) establish procedures for the filing of required affidavits on a consolidated basis for "legitimate" group placements under 11 NYCRR 153 (Regulation 135) similar to those in place for Purchasing Groups under 11 NYCRR 301 (Regulation 134) and (2) revise the Export List.

The Department currently intends to continue the rule without any other modifications, while continuing to monitor the regulation to ensure that its provisions remain consistent with related statutory and regulatory requirements.

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

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

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

In 2001, the Department adopted an amendment to the regulation (INS-01-01-00009-A, State Register of March 21, 2001). The enactment of the Federal Omnibus Budget Reconciliation Act of 1990 ("the Act") required the mandatory standardization and federal certification of policies of Medicare supplement insurance. As a result of the Act, states were required to amend their laws and regulations to conform to the federal standards for Medicare supplement insurance. The revisions contained in the 2001 amendment made technical corrections to New York's Medicare supplement regulation to ensure continued compliance with federal standards.

In 2002, the Department adopted an amendment to the regulation (INS-13-02-00004-A, State Register of June 5, 2002). The revisions contained in the 2002 amendment made technical corrections to New York's Medicare supplement regulation to ensure continued compliance with federal standards.

The Department's June 2008 Regulatory Agenda (published in the State Register of June 25, 2008) includes an amendment to Regulation 62 with regard to Medicare Supplement Insurance which would: 1) establish minimum standards for such products as managed care, point of service arrangements, and other health insurance products, as ongo-

ing changes occur in the health insurance field; 2) establish minimum standards and requirements for specified disease coverage; 3) update minimum standards for Partnership and non-Partnership long term care coverages; and 4) establish minimum standards and/or requirements for long term care insurance products as new long term care financing options are enacted.

The Department currently intends to continue the rule without any other modifications, while continuing to monitor the regulation to ensure that its provisions remain consistent with related statutory and regulatory requirements.

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

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

This amendment clarified the fact that the dental exclusion permitted by the regulation for health insurance policies does not extend to dental care or treatment necessary due to congenital disease or anomaly.

The Department's June 2008 Regulatory Agenda (published in the State Register of June 25, 2008) includes 26 separate items that would amend Regulation 62, including one to clarify the dental exclusion in health insurance policies.

- INS-47-98-00007-A (State Register of September 15, 1999) Eighth Amendment of Part 216 (Regulation 64) (*Unfair Claim Settlement Practices*) of Title 11 NYCRR.

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

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

In 2004, the Department adopted a consensus amendment to the regulation (INS-20-04-00007-A, State Register of July 28, 2004) which replaced the references in section 216.8 to the National Insurance Crime Bureau (NICB) with an unspecified "central organization" designated by the Superintendent to receive and investigate automobile total losses. The central organization may also contract with another reporting entity acceptable to the Superintendent to assist it in executing its responsibilities pursuant to this Part.

The Department's June 2008 Regulatory Agenda (published in the State Register of June 25, 2008) includes an item updating the entire regulation to, inter alia, provide notice and time frame requirements for third party claims.

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

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

Regulation 68 contains provisions implementing Article 51 of the Insurance Law, known as the Comprehensive Motor Vehicle Insurance Repairs Act, and popularly referred to as the No-Fault Law. The prior existing regulation was repealed and a new regulation promulgated in order to eliminate certain obsolete provisions, and to reorganize the regulation for greater clarity. In addition, substantive

changes were made relating to policy conditions, no-fault claim processing provisions, optional arbitration procedures, mandatory arbitration procedures, and no-fault forms. The new regulation went into effect on February 1, 2000. In June 2000 the new regulation was successfully challenged in *Medical Society v. Levin*, 185 Misc.2d 536 (Sup. Ct. N.Y. County 2000), resulting in reinstatement of the prior version of the regulation. In 2001, the Department adopted a new Regulation 68 (INS-31-00-00029-A, State Register of August 22, 2001). By its terms, the new Regulation 68 was to be effective as of September 1, 2001. Prior to the effective date of this regulation, litigation was commenced in Supreme Court, New York County, challenging the regulation. As a result of the litigation, the new regulation was revised. The final version of the new Regulation 68 became effective as of April 5, 2002. On October 21, 2003 the Court of Appeals ruled that the Superintendent was within his authority in promulgating the new regulation.

In 2004, the Department adopted two consensus amendments to regulation 68-D (INS- 43-03-00003-A and INS-43-03-00005-A, State Register of February 4, 2004) to correct an erroneous cross-reference and insert an instruction that was inadvertently omitted from the prior amendment.

In 2004, the Department adopted an amendment to Regulation 68-C (INS- 08-04-00006-A, State Register of May 19, 2004) to conform the fraud warning statement contained in no-fault claim forms with the requirements of Regulations 95 and 64.

In 2007, the Department adopted an amendment to Regulation 68-C (INS-52-06-00006-A, State Register of March 14, 2007) to require insurers to issue no-fault denials with specific wording so that the applicants will be aware that they can apply for special expedited arbitration to resolve the issue of which eligible insurer is designated for first-party benefits.

In 2007, the Department adopted an amendment to Regulation 68-D (INS-52-06-00007-A, State Register of March 14, 2007) to provide the procedures for administration of the special expedited arbitration for disputes regarding the designation of the insurer for first-party benefits.

The Department's June 2008 Regulatory Agenda (published in the State Register of June 25, 2008) includes three items amending Regulation 68 to ensure that the provisions remain consistent with related statutory and regulatory requirements.

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

Statutory Authority: Insurance Law sections 201, 301, 308, 1313, 2123, 2208, 2405, 3201, 3203, 3209, 3219, 3222, 4221, 4223, 4226, 4231, 4232, 4240, 4510, 4511, 4513 and 4518; Banking Law section 263.

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

The Department's June 2008 Regulatory Agenda (published in the State Register of June 25, 2008) includes an item amending Regulation 74 to set forth the information mandated by Section 3209 of the Insurance Law, including the standards governing the content, format and use of sales illustrations and other disclosure requirements for fixed and/or variable annuity products and funding agreements.

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

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

This amendment implemented a new two-tier anti-arson application that includes questions to be answered by applicants for new or renewal policies or binders covering the perils of fire or explosion. Since the regulation was first adopted in 1981, other sections of law applicable to such coverage had been amended, and certain requirements in Regulation 96 became inconsistent with the related provisions. This amendment brought the regulation into conformity with applicable statutes and regulations. In 2000, the Department adopted an amendment to the regulation (INS-20-00-00006-A, State Register of September 27, 2000). That amendment, consistent with a change to section 3403 of the Insurance Law, allows the Superintendent, upon application by the insurer, to suspend the requirement for an anti-arson application in certain defined circumstances.

The Department continually monitors the regulation to ensure that its provisions remain consistent with related statutory and regulatory requirements. The Department currently intends to continue the rule without modification.

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

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

The purpose of this amendment was to establish physicians and surgeons medical malpractice rates and surcharges for the policy year July 1, 1998 to June 30, 1999. The Department reviews this regulation each year as part of its process of establishing premium rates for the succeeding year, if directed to do so by the legislature. The regulation also is monitored to ensure that its provisions remain consistent with other related statutory and regulatory requirements. The regulation was amended in 2000 (INS-13-00-00006-A, State Register of July 12, 2000) and 2001 (INS-15-01-00007-A, State Register of June 20, 2001) to establish basic medical malpractice rates and, when necessary, to address related concerns.

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

- INS-52-98-00005-A (State Register of March 30, 1999) Adoption of Part 74 (Regulation 159) (*Homeowners Insurance Disclosure Information*) of Title 11 NYCRR.

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

Chapter 44 of the Laws of 1998 added a new section 3445 to the Insurance Law that requires the Superintendent to establish by regulation disclosure requirements with respect to the operation of any deductible in a homeowners' insurance policy or dwelling fire personal lines policy that applies as the result of a windstorm. Regulation 159 provides standards for the uniform display of windstorm deductibles, which consist of hurricane and non-hurricane deductibles, in the policy declarations. The regulation also provides the minimum provisions to be contained in the policyholder disclosure notice, which explain the purpose and operation of the hurricane deductible and must accompany new and renewal policies containing such deductibles.

In 2007, the Department adopted an amendment to Regulation 159 (INS-21-07-00001-A, State Register of August 8, 2007) to set forth the minimum notification requirements pertaining to the notices required by Insurance Law sections 3425(e) and 5403(d).

The Department continually monitors the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements. It currently intends to continue the rule without modification.

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

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

This regulation implements the provisions of Chapter 259 of the

Laws of 1998, entitled the Holocaust Victims Insurance Act of 1998, which added a new Article 27 to the Insurance Law to provide a framework for the expeditious and equitable resolution of insurance claims by Holocaust victims (as defined in N.Y. Insurance Law § 2701(a) (McKinney 1999)). The regulation sets forth the standards for diligent and expeditious investigation of claims; reporting requirements for on insurers organized, registered, accredited or licensed to do business in New York; standards for the making and assessment of claims; provisions for the use of alternative documentation; and methods for computing interest on proceeds.

The Department continually monitors the regulation to ensure that its provisions remain consistent with related statutory and regulatory requirements. The Department currently intends to continue the rule without modification.

Department of Labor

Pursuant to subdivision 2 of section 207 of the State Administrative Procedure Act (SAPA), notice is hereby provided of the following rules adopted during calendar year 2003, which the Department of Labor is reviewing:

1. Amendment of Part 127 to Title 12 NYCRR
 - a. Description of Rule: Special September Eleventh Bidders Registry
 - b. Statutory Authority: Labor Law, section 349
 - c. Status of rule: The statutory authority for this Rule was deemed repealed September 1, 2008, pursuant to L.2002 c. 350, § 12. The statute has not been extended. Accordingly, this rule will be repealed.
2. Amendment of section 73.2 of Title 12 NYCRR
 - a. Description of Rule: Location and Hours for public access to Industrial Board of Appeals records.
 - b. Statutory Authority: Public Officers Law, art. 6; Labor Law, section 101.
 - c. Need for Rule: To provide mailing address to the public for Industrial Board of Appeals.
3. Amendments of Parts 137, 138, 141, 142, 143 and 190 of Title 12 NYCRR.
 - a. Description of Rule: Minimum Wage Allowances.
 - b. Statutory Authority: Labor Law, art. 19, sections 651-653; art. 19-A, section 673(1) and (2); and art. 2, section 21(11).
 - c. Need for Rule: To conform wage orders with statutory amendments.

The public is invited to comment on the continuation or modification of these rules. The last day for submission of comments regarding the above-mentioned rules is February 21, 2009. *To obtain information or submit written comments concerning this notice, contact:* Teresa Stoklosa, Legal Assistant 2, New York State Department of Labor, Counsel's Office, Room 509, Building 12, State Office Campus, Albany, New York 12240, teresa.stoklosa@labor.state.ny.us, (518) 457-4380.

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 1999 and 2004 which are subject to the cited SAPA section 207 five-year review of rules.

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

99-1. MRD-04-99-00001 (State Register of 1/27/99). Amendments to 14 NYCRR sections 635-10.5 (HCBS Waiver Services), 671.7

(HCBS Waiver Community Residential Habilitation Services), 680.12 (Specialty Hospitals), 681.12 (Intermediate Care Facilities for persons with developmental disabilities), and 690.7 (Day Treatment Services for persons with developmental disabilities). These amendments establish various trend factor and cost of living adjustment (COLA) provisions that were applied (beginning January 1, 1999) within the context of the various rate/fee setting methodologies. Although specific trend factors for the different types of facilities and services are calculated annually, they are cumulative. COLAs are also important elements of the reimbursement methodologies. With the exception of the amendment to 681.12, which section was later repealed in its entirety, these amendments need to be maintained, without modification, as integral parts of the methodologies to define how OMRDD established current rates/fees of reimbursement for the affected facilities or services that year.

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

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

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

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

During calendar year 2004, OMRDD adopted and finalized seven rules. Two of these rule makings were proposed and adopted as consensus rule makings identified by the Department of State as MRD-24-04-00008, Definition of Adevelopmental disability@; and MRD-34-04-00009, Obsolete service fee and rate schedules. As consensus rule makings, these are exempted from the review requirements by subdivision (5) of SAPA section 207. The remaining five rule makings finalized during 2004 were identified and described as follows at the time the respective notices were published in the State Register.

04-1 MRD-52-03-00003 (State Register of 12/31/03). Health Care

Decisions Act for Persons with Mental Retardation and Developmental Disabilities. 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.

04-2. MRD-03-04-00002 (State Register of 1/21/04). 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; 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, 2004 to Dec. 31, 2004 and July 1, 2004 to June 30, 2005 and establish trend factors to be applied within the context of the referenced reimbursement methodologies, effective January 1, 2004. 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.

04-3. MRD-16-04-00020 (State Register of 4/21/04). Fee setting for various HCBS waiver habilitation services provided under the auspices of OMRDD. These regulatory changes clarify provisions governing the reimbursement of HCBS waiver residential habilitation services, and make various other technical and conforming amendments to update affected glossary definitions. Specifically, the regulations clarify that residential habilitation and supported employment services must be provided and documented in accordance with the persons Individualized Service Plan (ISP) and with the relevant Residential Habilitation Services Plan or Supported Employment Plan. The regulations continue to be necessary and need to be maintained without modification.

04-4. MRD-39-04-00005. Amendments to 14 NYCRR section 635-10.5. Reimbursement of HCBS waiver services. The amendments establish an hourly unit of service for HCBS waiver respite services. This change to the methodology for setting prices of HCBS waiver respite services is current practice and OMRDD intends to maintain the regulation without modification.

04-5. MRD-42-04-00010. Amendments to 14 NYCRR section 681.14. Rate Setting for Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD). This rule making amended the methodology for reimbursement of under 31-bed ICF/DD facilities to implement an efficiency adjustment. These elements of the reimbursement methodology remain necessary and OMRDD intends to maintain the regulation without modification.

With the exception of the rule making identified as item 04-1 for which the statutory authority was discussed in the relevant paragraph, 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 pro-

posed disposition regarding these 1999 and 2004 rule makings beginning January 7, 2009.

Any written comments or inquiries for further information may be directed to the Regulatory Affairs Unit at: Office of Mental Retardation and Developmental Disabilities, 44 Holland Avenue, Albany, New York 12229, Tel. (518) 474-1830, e-mail: barbara.brundage@omr.state.ny.us

Department of Motor Vehicles

Five Year Review of Rules Adopted by the Department of Motor Vehicles in Calendar Year 2004 Required to be Reviewed in Calendar Year 2009

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 2004 which must be reviewed in calendar year 2009. Public comment on the continuation or modification of these rules is invited. Comments may be directed to: Department of Motor Vehicles, Counsel's Office, 6 ESP, Room 526, Albany, NY 12228.

MTV-27-03-00004 - Part 5 - Vision Testing

Analysis of the need for the rule: This regulation provides that an applicant for a license may have a health care professional certify that he/she meets the Department's vision requirements. The amendment provides that such professional may sign the DMV certification form within six months or one year of renewal, depending on the patient's condition. This flexibility gives health care professionals necessary discretion to address unique problems of their patients. Since such flexibility is still needed by professionals, the regulation remains necessary.

Legal basis for rule: Vehicle and Traffic Law, Sections 215(a) and 502(6)(a).

MTV-49-03-00015 - Part 78 - Dealer Document Fee

Analysis of the need for the rule: This regulation raised the fee a dealer may charge a customer for processing registration and title paperwork from no more than \$20 to no more than \$45. The fee was last raised in 1991. This fee increase was justified because the dealer's cost of doing business had increased over the years. Dealers complete about 15 documents with each transaction and comply with increasingly complex state laws. Since the cost of doing business has not diminished over the past five years, and, in fact, continues to rise, this regulation remains necessary.

Legal basis for the rule: Vehicle and Traffic Law, Section 215(a) and 415(9)(d).

MTV-04-04-00009 - Part 79 - Emissions Inspection Sticker Fees

Analysis of the need for the rule: This regulation raised the fee that inspection stations pay for each inspection sticker from \$4 to \$6. Inspection stations were allowed to pass the cost to their customers. The revenue generated from the sale of the stickers is deposited into the State's Clean Air Fund. Since this revenue remains critical to the State's ability to monitor the emissions testing program, this regulation is still necessary.

Legal basis for the rule: Vehicle and Traffic Law, Sections 215(a) and 305(a)(2).

MTV- 25-04-00023 - Part 79 - Emissions Inspections

Analysis of the need for the rule: The Clean Air Act of 1990 and its ensuing federal regulations required New York State to adopt an On Board Diagnostics II (OBDII) system for the inspection of motor vehicles by July 1, 2004. All 1996 and newer vehicles are subject to the OBD II inspection. Failure to adopt this regulation could have resulted in the loss of \$2 billion in federal highway funding. Since OBD II remains essential to compliance with the Clean Air Act and to this State's commitment to clean air, this regulation remains necessary.

Legal basis for the rule: Vehicle and Traffic Law, Sections 215(a), 301(a), 301(c), 301(d), 301(f), 302(a), 302(e), 304(b) and 304-a.

MTV-10-04-00023 - Part 134 - Drinking Driver Program Fees

Analysis of the need for rule: This regulation increased the enrollment fee for participating in the Drinking Driver Program (DDP) from no

more than \$175 to no more than \$225. (The participant also pays DMV a \$75 administrative fee). The enrollment fee was raised because the vast majority of DDP providers were operating at a deficit and requested the increase to adjust for the escalating cost of doing business. The previous increase was in 1996. Since the cost of providing DDP services has not diminished, this regulation remains necessary.

Legal basis for the rule: Vehicle and Traffic Law, Sections 215(a), 1196(1) and 1196(6).

MTV-12-04-0002 - Parts 134, 135 and 140 Limited Use Licenses

Analysis of the need for the rule: These amendments provided that a person is not eligible for a conditional, restricted or post-revocation conditional license (all "limited use" licenses) if such person held a class DJ or MJ license at the time of the violation that resulted in the suspension or revocation of the license. Class DJ and MJ licenses are issued to persons under 18 years of age who have little driving experience. For highway safety reasons, such persons should not be afforded the privileges of a limited use license if their license is suspended or revoked. Due to these continuing highway safety concerns, this regulation remains necessary.

Legal basis for the rule: Vehicle and Traffic Law, Sections 215(a), 530, 1196(7) and 1198.

MTV-18-04-00017 Part 106 - Registration of Pick-Up Trucks

Analysis of the need for the rule: The primary purpose of this amendment was to allow the registration of pick-up trucks in the passenger class if such truck weighed no more than 5,500 pounds and was used exclusively for non-commercial purposes. This regulation was supported by many pick-up truck owners and rental car companies who were forced to register the vehicle in the commercial class because the vehicle weighed more than 5,000 pounds, the previous passenger class threshold. The registration class is important, because vehicles with commercial plates are not permitted to operate on many of New York's parkways. Since prohibitions against vehicles with commercial plates operating on parkways still exist, this regulation remains necessary.

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

Public Service Commission

CASE 01-M-1806 –In the Matter of the Review of Existing Commission Rules and Regulations Pursuant to the State Administrative Procedure Act, § 207.

NOTICE OF PROPOSED CONTINUATION OF RULES

(Issued December 22, 2008)

NOTICE is hereby given that the Commission is reviewing rules listed on the attached Rule Review, as required by State Administrative Procedure Act, § 207. The rules were adopted in 1999 and 2004 and some of them are proposed to be continued without change. The rules include: 16 NYCRR § § 10.2(a)(4), 10.2(a)(5), 10.3(d)(1), 10.3(d)(12) (modified in 2007) and Part 262 (modified in 2005) relating to drug and alcohol testing rules for gas utility employees; 16 NYCRR § § 11.10, 11.12, 11.13, 11.15, 11.16, 11.17, 11.18, 11.20, 11.21 and 11.32 implementing the Home Energy Fair Practices Act and Energy Consumer Protection Act; 16 NYCRR § § 12.1 and 12.3 implementing Consumer Complaint Procedures against public utilities; 16 NYCRR § § 92.1(c), 92.1(f), 92.2(b), 92.2(k), 92.9(a), 92.9(b), 92.10(c), 92.11(c), 92.4(a), and 92.5 – 92.11 regarding electric metering and testing; 16 NYCRR § § 255.711 and 255.717, regarding the transmission of gas; 16 NYCRR Part 650, relating to regulations applicable to payphones; 16 NYCRR § § 720.1, 720.2, 720.3, 720.4, 720.5, 720.6, and 720.8, regarding construction and filing or tariffs schedules when two or more kinds of public service are affected.

Comments are welcome on the Rule Review. Any person wishing to comment should submit five copies to Jaclyn A. Brillling, Secretary, Public Service Commission, Three Empire State Plaza, Albany, New York 12223-1350 no later than February 23, 2009.

Pursuant to 207 of the State Administrative Procedure Act: Review

of Existing Rules, notice is hereby provided that the Public Service Commission wishes to continue the following rules adopted in 1999 and 2004 without modification or as revised. Comments are welcome on proposed continuation of the rules. Five copies of comments should be sent to: Jaclyn A. Brillling, Secretary, 3 Empire State Plaza, Albany, New York 12223-1350, within 30 days of the date of publication of this Notice. Information about the rules may be obtained from: John C. Graham, Assistant Counsel, 3 Empire State Plaza, Albany, New York 12223-1350; (518) 474-7687.

1. 16 NYCRR Part 650 (Cases 96-C-1174 and 93-C-0142)

a. Description of rules:

The rules implemented changes in the Federal Telecommunications Act of 1996 related to information that must be posted on payphones.

b. Statutory authority: PSL § § 90(3), 92(c) and 94(2).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need for and legal basis of rules:

The rules are needed to inform consumers about ownership of payphones, procedures for contacting emergency services, rates, and dispute resolution. The legal basis of the rules is PSL § § 90(3), 92(c) and 94(2)

2. 16 NYCRR Parts 10 and 262 (Case 97-G-0230) (modified in 2005).

a. Description of rules:

The rules provide for drug and alcohol testing for operators of pipeline facilities.

b. Statutory authority: PSL § § 65(1) and 66(1).

c. No hearings or public meetings are scheduled.

d. The rules, as revised, are in effect and should continue.

e. Need for and legal basis of rules:

The rules conform the State's pipeline safety regulations to the counterpart federal regulations, in the areas of drug and alcohol testing for pipeline operators. The most recent federal rules are incorporated in Part 10, as revised. The rules are needed for continued pipeline operation safety. The legal basis of the rules is PSL § § 65(1) and 66(1).

3. 16 NYCRR § § 165-167; 310-312; 663.1(d) (Case 98-M-0756).

a. Description of rules:

The rules eliminated duplicative record keeping for utilities that also report to the Federal Energy Regulatory Commission and updated the Commission's Uniform System of Accounts (USOA).

b. Statutory authority: PSL § § 66(4) and 95(2).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and should continue.

e. Need for and legal basis of rules:

The rules prescribe and require compliance with USOA regulations and reduce administrative burdens on utilities.

4. 16 NYCRR § § 720.1, 720.2, 720.3, 720.4, 720.5, 720.6 and 720.8 (Cases 97-M-0508; 97-G-1178).

a. Description of rules:

The rules repealed existing parts 136, 270, 430, 530, 630 and Appendix 5A and consolidated those parts into part 720, subchapter C. The rules allow for electronic filing of tariffs and streamlined existing tariff filing requirements.

b. Statutory authority: PSL § § 66(12), 80(10) and 92(1).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need for and legal basis of rules:

The rules allow for electronic tariff filing and streamline tariff filing requirements and should be continued.

5. 16 NYCRR § § 92.1(c), 92.1(f), 92.2(a), 92.2(b), 92.2(k), 92.9(a), 92.9(b), 92.10(c), 92.11(c), 92.4(a) and 92.5-92.11 (Case 02-E-0255).

a. Description of rules:

The rules recognize advances in technology and promote and encourage competitive metering.

b. Statutory authority: PSL § 67.

c. The rules are in effect and will continue.

d. Need for and legal basis of rules:

The rules extend the Commission's regulatory oversight of non-utility entities offering metering services to ensure a high degree of meter accuracy.

6. 16 NYCRR § § 255.711(c) and 255.717; 10.3(d)(1) and 10.3(d)(12) (amended 2007 (Case 02-G-0134)).

a. Description of rules:

The rules were amended in 2004 to bring the Commission's pipeline safety regulations into conformance with amendments to the counterpart federal regulations in 49 CFR Part 192.

b. Statutory authority: Public Service Law § § 4, 65 and 66.

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need for and legal basis of rules:

The rules set out pipeline repair procedures and are necessary for gas pipeline safety. The legal basis of the rules is PSL § 66(1).

7. 16 NYCRR § § 11.2-11.10, 11.12, 11.13, 11.15-11.18, 11.20, 11.21, and 11.32; 12.1, and 12.3 (Case 03-M-0117).

a. Description of rules:

The rules were amended in 2004 to implement and conform to amendments to the Home Energy Fair Practices Act, Public Service Law § § 30-52.

b. Statutory authority: Public Service Law § § 4(1), 30-53, 66 and 80(1).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need for and legal basis of rules:

The rules are needed for consumer protections for gas, electric and steam service customers, including applications for service, deposits, meter readings, and back billing. The legal basis of the rules is PSL § § 30-51, 66(1) and 80(1).

Racing and Wagering Board

Regulations Continued Without Modification

Pursuant to section 207(4) of the State Administrative Procedure Act, the New York State Racing and Wagering Board hereby gives notice of the following:

As part of the Board's 2008 review of regulations that were adopted during 1998 and 2003, it has reviewed several amendments that were made to the Board's amendments in those calendar years. The following amendments were reviewed:

- Amendments to 9 NYCRR Sections 4000-4004, 4008-4010, 4020, 4021, 4023, 4027-4031, 4033, 4037, 4038, 4040, 4041, to update references to statutes, agencies, addresses, commissions, regulations, and other outdated phrases. RWB-45-02-00007-A, adopted in 2003.
- Amendments to 9 NYCRR Sections 5600.2, 5602.5, 5603.1, 5603.5, 5604.1, 5606.2, 5606.10, 5607.2, 5607.5, 5607.20, 5609.1, 5610.1, 5624.1, 5624.2 and 5624.18, to provide flexibility to the Board, which will translate into more user-friendly form processing for licenses. RWB-50-02-00001-A, adopted in 2003.
- Amendments to 9 NYCRR Sections 5801.1, 5810.1, 5810.5, 5811.1, 5811.6, 5812.1, 5812.5, 5813.1, 5814.1-5814.4, 5814.14, 5815.2, 5815.5, 5815.18, 5821.1, 5821.2, 5822.9 and 5822.15, to provide flexibility to the Board, which will translate into more user-friendly form processing for licensees. RWB-50-02-00002-A, adopted in 2003.
- Amendments to 9 NYCRR Sections 4035.9, which amended the former rule by adding a provision that protects horses from abusive whipping by jockeys by establishing a maximum popper length. RWB-40-97-00002-A, adopted in 1998.
- Amendments to 9 NYCRR 4011.25, 4122.47 and 4127.16, to

provide flexibility for tracks and off-track betting corporations to offer pari-mutuel wagering formats, as defined in Chapter 9 of the Uniform Rules of Racing of the Association of Racing Commissions, International. RWB-40-97-00009-A, adopted in 1998.

- Amendments to 9 NYCRR 4029.8, to eliminate the 122lb top weight requirement and defer appropriate top weights to the discretion of the racing secretary RWB-23-98-00041-A, adopted in 1998.
- Amendments to 9 NYCRR Sections 4117.8, to establish a policy to protect standardbred horses from abusive whipping by drivers and conform to other racing jurisdictions. RWB-24-98-00006-A, adopted in 1998.
- Amendments to 9 NYCRR Sections 4032.1, 4032.4, to promote uniformity throughout the industry by prescribing the weight allowance for apprentice jockeys consistent with rules in effect throughout parts of the country. RWB-22-98-00013-A, adopted in 1998.
- Amendments to 9 NYCRR Sections 5603.7, 5607.15, 5607.28, 5608.1-5608.13, 5609.1, 5610.1, 5610.2, 5611.1, 5611.2, 5620.19, 5622.12, 5622.13, 5622.13, 5622.22, 5623.1, 5624.1, 5624.3, 5624.5 and 5624.21, to codify statutory amendments to the Games of Chance Laws enacted by Chapter 480 of the Laws of 1991, Chapter 177 of the Laws of 1994, Chapter 386 of the laws of 1995 and Chapter 309 of the Laws of 1996. The rules are necessary to ensure that bell jar games are distributed and played in accordance within constitutional and statutory as they apply to charitable gaming; that bell jar licensing and financial reporting procedures are established; that the sale and use of bell jar vending machines are conducted in accordance with constitutional and statutory limits; and that veterans' organizations are exempt from the Board requirement that one-third of their charitable gaming funds be donated to other charities. RWB-23-98-00005-A, adopted in 1998.

The Board has determined that these regulations should be continued without modification because there have been no changes in public policy or regulatory circumstances that would warrant modification to the rule.

A summary of the regulations was published in the Rule Review section of the October 15, 2008, issue of the *State Register*. The Board did not receive any public comment regarding these regulations.

For further information contact: Mark A. Stuart, Assistant Counsel, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305; (518) 395-5400.

Office of Real Property Services

Review of Existing Regulations

The following rule adoptions by the State Board of Real Property Services during 2004 will be reviewed during 2009 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 2009 prior to their submission to the State Board of Real Property Services for formal action.

Parts 186 and 193-Assessors' Reports and State Equalization Rates-RPS-05-04-00005-A, effective May 12, 2004. Statutory basis-RPTL, sections 202(1)(l), 575, 1200 and 1314(2).

Part 188-State Reimbursement of Expenses of Local Officials-RPS-48-04-00004-E, effective November 12, 2004. Statutory basis-RPTL, sections 202(1)(l), 318(4), 1530(4).

Part 190-Annual License Fees-RPS-06-04-00003-A, effective May 12, 2004. Statutory basis-RPTL, section 202(1)(l) and State Finance Law, section 99-kk.

Part 195-State Advisory Appraisals-RPS-06-04-00004-A, effective May 12, 2004. Statutory basis-RPTL, sections 202(1)(l) and 1544.

Part 200-Calculation of Railroad Ceilings-RPS-09-04-00005-A, effective May 12, 2004. Statutory basis-RPTL, sections 202(1)(l), 489-g(8) and 489-iii(9).

Part 201-State Assistance for Annual Assessment Programs-RPS-36-04-00002-A, effective November 24, 2004. Statutory basis-RPTL, sections 202(1)(l) and 1573(1)(a) and Chapter 53, Laws of 2004.

In addition, the following rules, initially adopted in 1999, were reviewed during 2004 and were continued without modification by the State Board of Real Property Services on June 15, 2004.

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

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

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

To obtain information or submit written comments regarding this review, contact James J. O'Keeffe, Counsel, New York State Office of Real Property Services, 16 Sheridan Avenue, Albany, 12210-2714, (518) 474-8821. Comments should be submitted by April 30, 2009.

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 2009, the Department must review rules that were adopted during 2004 and 1999 to determine whether these rules should be retained as written or modified. Accordingly, the Department intends to review the following rules during 2009, 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 23, 2009.

1. 20 NYCRR Sections 527.8(j) (Employee meals) and 527.9(g) (Employee lodging) Filed March 31, 1999; published/effective April 21, 1999. Need: This rule deleted complex requirements of the sales and use tax regulations regarding employee meals and lodging that were no longer applicable. The rule retained only the provisions that meals and lodging furnished by certain employers to employees are not subject to sales tax if the employers receive no cash (or other consideration) from the employees and the values of the meals and lodging are not included as income for the employees for income tax purposes. This rule was previously reviewed as part of the Department's 2004 Rule Review published in the *State Register* on January 7, 2004. As a result of that review of the 1999 rule, a Rule Review notice indicating that it would be continued without modification was published in the *State Register* on June 30, 2004. Legal Basis: Tax Law sections 171, subd. First; 1142(1); and 1250 (not subdivided). (TAF-06-99-00018-A)

2. 20 NYCRR Parts 6 and 21 (Conforming the Due Dates of Short Period Returns) Filed June 15, 1999; published/effective June 30, 1999. Need: This rule amended the business corporation franchise tax and the banking corporation franchise tax regulations to conform the due dates of certain general business and banking corporations' short period reports to those required for Federal income tax purposes. Specifically, the amendments conformed the due dates of short period reports required in cases where a taxpayer became part of or ceased to be part of a Federal consolidated group or changed from one Federal consolidated group to another. In addition, the amendments conformed the due date of a short period report required in the case of a taxpayer which was a target corporation for which an election had been made under section 338(h)(10) of the Internal Revenue Code. This rule was previously reviewed as part of the Department's 2004 Rule Review published in the *State Register* on January 7, 2004. As a result of that review of the 1999 rule, a Rule Review notice indicating that it would be continued without modification was published in the *State Register* on July 14, 2004. Legal Basis: Tax Law, sections 171, subd. First; 211.1; 1096(a); and 1462(a). (TAF-16-99-00002-A)

3. 20 NYCRR Part 5005 (Compromises under Subdivision Fifteen of Section 171 of the Tax Law) Filed June 15, 1999; published/effective June 30, 1999. Need: This rule amended the regulations regarding compromises to codify the Department's policy in relation to offers in compromise of fixed and finally determined tax liabilities. The rule provided written guidance to taxpayers with respect to the grounds for an offer, the procedure for review and acceptance or rejection of an offer, and the criteria for rejection of an offer. This rule was previously reviewed as part of the Department's 2004 Rule Review published in the State Register on January 7, 2004. As a result of that review, changes to section 5005.1 of the regulations were adopted based on a statutory change in 2002, which expanded the Commissioner's offers in compromise authority and increased the dollar threshold of which offers in compromise require prior approval by a Supreme Court Justice. (See TAF-30-05-00004-A; filed September 16, 2005; published/effective October 5, 2005.) The remaining amendments from the 1999 rule are subject to review in 2009. Legal Basis: Tax Law, sections 171, subdivisions First and Fifteenth. (TAF-17-99-00005-A)

4. 20 NYCRR Part 2392 (Reasonable Cause - Abatement of Penalties) Filed July 26, 1999; published/effective August 11, 1999. Need: This rule consolidated existing regulations regarding reasonable cause into one new Part 2392 of the procedural regulations. This amendment applied to various penalties imposed by the Tax Law that allow for abatement upon a showing of reasonable cause and an absence of willful neglect. The consolidation provided a single source for taxpayers who file under multiple tax articles to obtain information regarding reasonable cause. In addition, the rule outlined when a taxpayer's reliance on professional advice constitutes reasonable cause; and for purposes of the delinquency penalties also allowed an honest misunderstanding of fact or law or reasonable reliance on written advice, professional advice or other facts to be applicable, under certain circumstances, in establishing reasonable cause. This rule was previously reviewed as part of the Department's 2004 Rule Review published in the State Register on January 7, 2004. As a result of that review, changes to section 2392.1 of the regulations were adopted to add a citation for a penalty that was added to the Tax Law after the adoption of Part 2392 and to clarify that the general provisions for reasonable cause will apply to certain penalties imposed upon participants in the Electronic Funds Transfer programs for sales tax and withholding tax. (See TAF-45-04-00004-A; filed January 4, 2005; published/effective January 19, 2005.) The remaining amendments from the 1999 rule are subject to review in 2009. Legal Basis: Tax Law, sections 171, subd. First; 171-a(8); 207-b; 219-a; 289-b(1)(c); 295 (not subdivided); 315; 433(1)(c); 436 (not subdivided); 475 (not subdivided); 481(1)(a)(iii); 509(7); 512(1)(c); 528(a); 697(a); 990(a); 1007(b); 1080(a); 1096(a); 1142(1) and (8); 1145(a)(1)(iii) and (a)(6); 1165 (not subdivided); 1250 (not subdivided); 1312(a); 1332(a); 1342 (not subdivided); 1415(a); 1468 (not subdivided); 1519 (not subdivided); and 1556 (not subdivided); and General City Law, section 25-n(e). (TAF-22-99-00002-A)

5. 20 NYCRR Part 525 (Sales and Use Tax Regulations - General) Filed July 26, 1999; published/effective August 11, 1999. Need: This rule updated and simplified the "general" provisions in Part 525 of the sales and use tax regulations by deleting text that merely repeated the statute or that was superfluous, unnecessarily complex, or no longer applicable. This rule was previously reviewed as part of the Department's 2004 Rule Review published in the State Register on January 7, 2004. As a result of that review of the 1999 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on April 21, 2004. Legal Basis: Tax Law sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided). (TAF-22-99-00001-A)

6. 20 NYCRR Part 4 (Allocation) Filed July 26, 1999; published/effective August 11, 1999. Need: This regulation amended Part 4 of the business corporation franchise tax regulations, relating to allocation, to repeal obsolete language and references contained in various sections of this Part, to make changes necessitated by legislative amendments, and to make technical and clarifying amendments. This

rule was previously reviewed as part of the Department's 2004 Rule Review published in the State Register on January 7, 2004. As a result of that review of the 1999 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on July 21, 2004. Legal basis: Tax Law, sections 171, subd. First; 210; 210(3)(a), (1), (2), (2)(B), (6), (7)(A), (8); 210(8); and 1096(a). (TAF-22-99-00004-A)

7. 20 NYCRR Section 112.3(c)(2)(iv) ("a") (Amendments to Pension Exclusion for Beneficiaries) Filed August 31, 1999, published/effective September 15, 1999. Need: This rule extended the personal income tax pension and annuity exclusion to payments received by a beneficiary of a deceased pensioner on or after the date the decedent would have reached 59½ years of age. This rule was previously reviewed as part of the Department's 2004 Rule Review published in the State Register on January 7, 2004. As a result of that review of the 1999 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on June 9, 2004. Legal Basis: Tax Law sections 171, subdivision First; 612(c)(3-a); and 697(a). (TAF-28-99-00014-A)

8. 20 NYCRR Sections 1-3.2, 1-3.3 and 1-3.4 (Taxation of Foreign Corporations Participating in a Trade Show) Filed January 22, 2004; published/effective February 11, 2004 with the exception of the amendments relating to participation in a trade show or shows which apply to taxable years beginning on and after January 1, 2002. Need: This rule amended the business corporation franchise tax regulations to provide that limited participation in a trade show or shows in New York State is an activity that is deemed insufficient to subject a foreign corporation to the tax. The amendments also reflect various statutory and nonsubstantive technical changes. Legal basis: Tax Law, sections 171, subd. First, and 1096(a). (TAF-45-03-00003-A)

9. 20 NYCRR Parts 70, 72, 73, 74, 78, 82 and 85 (Registration of Wholesale Dealers of Cigarettes) Filed January 22, 2004; published/effective February 11, 2004, except for the amendments to sections 70.2 and 72.1, which were effective March 29, 2004. Need: This rule amended the cigarette tax and cigarette marketing standards regulations to require a licensed wholesale dealer of cigarettes that also sells cigarettes at retail to be registered as a retail dealer of cigarettes and display its certificate of registration as a retail dealer at each retail location. The rule also updates the regulation to reflect other statutory changes. Legal Basis: Tax Law, sections 171, subdivision First, 475 (not subdivided), 482-a, and 488. (TAF-45-03-00004-A)

10. 20 NYCRR Parts 113 (New York Deduction of a Resident Individual), 114 (New York Standard Deduction of a Resident Individual), and 115 (New York Itemized Deduction of a Resident Individual). Filed February 24, 2004; published/effective March 10, 2004. Need: This rule amends the personal income tax regulations to reflect the decision of the New York State Tax Appeals Tribunal in Matter of Shorter concerning the New York State deduction (standard or itemized) used in computing the New York taxable income of a resident individual. Legal Basis: Tax Law sections 171, subdivision First, and 697(a). (TAF-52-03-00024-A)

11. 20 NYCRR Part 163 (Estimated Tax Payments on Sales or Transfers of Real Property by Nonresident Taxpayers) Filed March 30, 2004; published/effective April 14, 2004. Need: This rule amends the personal income tax regulations relating to estimated tax payments on sales or transfers of real property by nonresident taxpayers required by section 663 of the Tax Law. Legal Basis: Tax Law, sections 171, subdivision First; 663, and 697(a). (TAF-06-04-00001-A)

12. 20 NYCRR Sections 528.7 and 528.22 (Farming and Commercial Horse Boarding Operations) Filed April 29, 2004; published/effective May 19, 2004. Need: This rule corrected dated sections of the sales and use tax regulations to reflect Chapter 407 of the Laws of 1999 and Chapters 63 and 472 of the Laws of 2000 as they pertained to farming and commercial horse boarding operations. Legal Basis:

Tax Law sections 171, subd. First; 1101(b)(19) and (20); 1105(c)(3)(vi) and (5)(iii); 1115(a)(6), (15), and (16); 1115(c)(2); 1142(1) and (8); and 1250 (not subdivided). (TAF-10-04-00025-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 2, 2008, 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 1998. Those regulations are set forth below:

Rules Adopted in 2003

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: Social Services Law (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 the 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.

Rules Adopted in 1998

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 were 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 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 heads 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) of the SSL 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.

As of March 1, 2008, OTDA had not received substantive comments regarding its Rule Review published in the *State Register* on January 2, 2008.

OTDA is proposing a number of amendments that may impact the regulatory changes that were adopted in 2003 and 1998. OTDA is in the process of amending section 352.3 of Title 18 NYCRR to set forth the new calculation of shelter allowances for individuals and families receiving public assistance and residing in city, State or federally aided public housing. The notice of proposed rule making to amend section 352.3 was published in the *State Register* on September 3, 2008. OTDA also is in the process of amending section 387.9(c) of Title 18 NYCRR to provide OTDA authority to waive the finger imaging requirements for certain groups of individuals and households applying for or receiving food stamp benefits. The notice of proposed rule making to amend section 387.9 (c) was published in the *State Register* on October 1, 2008. On November 5, 2008, OTDA filed a notice of emergency rule making with the Secretary of State to amend section 352.5(e) of Title 18 NYCRR. The emergency rule permitted social services districts to suspend the enforcement of utility repayment agreements during periods of cold weather in order to provide districts with the flexibility to assist households. The notice of emergency rule making was published in the *State Register* on November 26, 2008.

OTDA is considering a number of amendments that may impact the regulatory changes that were adopted in 2003 and 1998. OTDA is considering the following regulatory amendments: amend food stamp reporting requirements for elderly and disabled persons; amend regulations governing intentional program violations to make the State's requirements for a ten year disqualification from the food

stamp program consistent with federal requirements; update provisions regarding persons who are permanently residing in the United States under the color of law; extend the deeming of an alien sponsor's income and resources to federally funded safety net assistance; remove quarterly reporting as a district optional requirement for public assistance programs, which could necessitate amendments to Part 366 concerning the child assistance program; and delete the regulatory provisions relating to the food assistance program and to the Learnfare program. At this point, OTDA has determined that no additional modifications need to be made to its regulations adopted in 2003 and 1998.

OTDA has determined that in the ensuing calendar year, it should review its regulations from Title 18 NYCRR adopted in 2004 and 1999. These regulations from 2004 and 1999, 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, 2009.

Rules Adopted in 2004

- A) Sections 349.3 (a)(1)(iv), (vii), (2) and (b) and 352.33 were amended, and section 349.3(c) was added to implement changes to public assistance eligibility requirements for refugees, asylees and aliens as set forth in Chapter 214 of the Laws of 1998. Filed July 15, 2004; effective August 4, 2004. Legal basis: SSL sections 20(3)(d), 34(3)(f), 122, 131(1) and 355(3). Those sections authorized OTDA to promulgate regulations to carry out its powers and duties. These changes related to citizenship and alien status and incorporated federal clarification of certain definitions.
- B) Section 352.2 (b) was repealed; a new section 352.2 (b) was added; sections 352.3 (k)(3) and (i), 352.30 (a) and (f), and 352.31 (a)(2) were amended; and a new section 352.3(1) was added. These amendments required social services districts to consider the presence in the household of an adult or child receiving supplemental security income (SSI) who would, except for the receipt of SSI, be required to be included in the public assistance household when determining the household's standard of need. Filed June 22, 2004; effective July 7, 2004. Legal basis: SSL sections 20(3)(d), 34 (3)(f), 158, 349 and 355(3). Sections 20(3)(d), 34(3)(f) and 355(3) of the SSL authorized OTDA to promulgate regulations to carry out its powers and duties. Sections 158 and 349 of the SSL set forth eligibility requirements.
- C) Section 600.6 was renumbered, and a new section 600.6 was added to require social services districts to use the case management subsystem of the welfare management system for purposes of maintaining appropriate documentation to support their recovery and recoupment claims against public assistance recipients and to record all repayment of public assistance. Filed September 14, 2004; effective September 1, 2005. Legal basis: SSL sections 20(3)(d), 21, 21(2), 34(3)(f) and 82. Those sections authorized OTDA to promulgate regulations to carry out its powers and duties. These changes standardized local cash management processing by requiring social services districts to use the cash management subsystem of the Welfare Management System for receipt of cash and for refunds and recoveries of past expenditures, as well as for the collection and the tracking of overpayments.
- D) Section 352.20 (a) and (b) were amended to implement Chapter 246 of the Laws of 2002, concerning the exemption of the earned income of full-time and part-time students when determining eligibility for public assistance. Filed September 13, 2004; effective September 29, 2004. Legal basis: SSL sections 20(3)(d), 34(3)(f), 131-a(8), 158, 349, and 355(3). Those sections authorized OTDA to promulgate regulations to carry out its powers and duties. These changes amended the regulations to provide that all of the income earned by a dependent child receiving public assistance or for whom an application for such assistance has

been made, who is a full-time or part-time student attending a school, college or university or a course of vocational or technical training designed to fit him or her for gainful employment is exempt when determining eligibility for public assistance.

Rules Adopted in 1999

- E) Sections 347.5, 360-3.2, 369.1, 369.2, 369.7, 370.2 and 370.7 were amended to require child support enforcement workers, instead of public assistance or medical assistance workers, to determine whether a person is cooperating in pursuing child support and to require medical assistance applicants and recipients to cooperate in pursuing not only medical support, but also child support. Filed January 25, 1999; effective February 10, 1999. Legal basis: SSL sections 20(3)(d), 34(3)(f), 111-a and 364; Chapter 474 of the Laws of 1996. Those sections authorized OTDA to promulgate regulations to carry out its powers and duties. These changes implemented Public Law 104-193, regarding cooperation in pursuing child support by applicants for and recipients of public assistance and medical assistance. They also implemented Chapter 398 of the Laws of 1997 requiring applicants for and recipients of medical assistance to not only cooperate in establishing paternity and medical support orders for children born out of wedlock, but also to cooperate in establishing, modifying and enforcing support orders.
- F) Section 352.30 (d) was amended to implement provisions of Public Law 104-193 and Chapter 214 of the Laws of 1998. Filed December 22, 1998; effective January 6, 1999. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 131 (16). Those sections authorized OTDA to promulgate regulations to carry out its powers and duties. These changes conformed the regulations to changes in federal and State law, so that instead of a person being ineligible for public assistance when the person failed to comply with requirements to cooperate in establishing paternity or in establishing, modifying or enforcing a support order, that person's household benefit was reduced by 25%.
- G) Sections 372.1, 372.2, 372.4 and 372.6 were amended to conform the regulations to section 350-j of the SSL. Filed January 29, 1999; effective February 17, 1999. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 350-j; Section 38 of Part B of Chapter 436 of the Laws of 1997. Sections 20(3)(d) and 34(3)(f) of the SSL authorized OTDA to promulgate regulations to carry out its powers and duties. Section 350-j of the SSL required social services districts to provide emergency assistance to meet the emergency needs of a child or the household in which the child was living. Section 38 of Part B of Chapter 436 of the Laws of 1997 amended section 350-j of the SSL. EAF was provided to a family with emergency needs when the emergency resulted from a catastrophic occurrence or from a situation which threatened family stability and which caused the destitution of a child and/or the child's household.
- H) Part 900 was amended to conform the regulations which governed the operation of shelters for homeless families to section 352.35 of Title 18 NYCRR. Section 352.35 governed the provision of temporary housing assistance to persons who were homeless. Filed November 16, 1999; effective December 1, 1999. Legal basis: SSL sections 20(3)(d) and 34(3)(f); Chapter 562 of the Laws of 1953. Sections 20(3)(d) and 34(3)(f) of the SSL authorized OTDA to promulgate regulations to carry out its powers and duties. Chapter 562 of the Laws of 1953 authorized State reimbursement for care provided in shelters only when the shelters were operated in compliance with regulations of OTDA.
- I) Part 396 was added to implement provisions of section 131-r of the SSL concerning the interception of lottery awards to repay public assistance received. Filed June 28, 1999; effective July 14, 1999. Legal basis: SSL sections 20(3)(d), 34(3)(f) and 131-r. Sections 20(3)(d) and 34(3)(f) of the SSL authorized OTDA to promulgate regulations to carry out its powers and duties. Section 131-r of the SSL authorized OTDA to recoup any public assistance paid over the prior 10 years from recipients of such assistance who won lottery prizes of \$600 or more. The amount of assistance to be recovered could not exceed 50 percent of the lottery prize.
- J) Section 366.4(c)(2)(ii) was amended, and section 366.7(o) was added to clarify the eligibility requirements that must be met for a family in receipt of family assistance to participate in the child assistance program and to add the repair of heating equipment, cooking stoves and refrigerators to the list of special allowances to which child assistance program recipients could be entitled. Filed April 29, 1999; effective May 19, 1999. Legal basis: SSL sections 20(3)(d), 34(3)(f), 131-z and 355(3). Sections 20(3)(d) and 34(3)(f) of the SSL authorized OTDA to promulgate regulations to carry out its powers and duties. Section 131-z of the SSL established eligibility requirements for the child assistance program. Section 355(3) of the SSL authorized OTDA to promulgate regulations for the family assistance program.
- K) Section 351.7 was amended to provide social services districts the option of conducting supervisory reviews on all actions on public assistance cases or of conducting supervisory reviews on selected cases. Filed May 20, 1999; effective May 20, 1999. Legal basis: SSL sections 20(3)(d) and 34(3)(f). Sections 20(3)(d) and 34(3)(f) of the SSL authorized OTDA to promulgate regulations to carry out its powers and duties. If social services districts wished to review only a certain proportion of the cases, they could submit a plan to OTDA for approval setting forth requirements for supervisory review.
- L) Part 651 was amended to implement section 149 of Part B of Chapter 436 of the Laws of 1997, which required that OTDA and the Department of Labor (DOL) collect data related to the operation of public assistance programs including, but not limited to, information that must be submitted to the federal Department of Health and Human Services pursuant to Public Law 104-193. The rule set forth requirements for monthly reporting by social services districts to OTDA and DOL. Filed June 29, 1999; effective July 14, 1999. Legal basis: SSL sections 20(3)(d) and 34(3)(f); Section 149 of Part B of Chapter 436 of the Laws of 1997. Sections 20(3)(d) and 34(3)(f) of the SSL authorized OTDA to promulgate regulations to carry out its powers and duties.
- M) Section 352.22(c), (f), (w), (x) and (y) were amended, and section 352.22(bb) was added to implement the provisions of Public Law 104-204, which provided that allowances paid on behalf of the natural children of Vietnam veterans who suffered from spina bifida could not be considered when determining eligibility for any federally-financed program. Filed December 13, 1999; effective December 29, 1999. Legal basis: SSL sections 20(3)(d), 34(3)(f), 131(1), 131-n and 355(3). Sections 20(3)(d) and 34(3)(f) of the SSL authorized OTDA to promulgate regulations to carry out its powers and duties. Section 131(1) of the SSL required social services officials, insofar as funds were available for the purpose, to provide adequately for those unable to maintain themselves so that such persons could be restored to a condition of self-support or self-care. Section 131-n of the SSL provided that if federal law or regulations required the exemption or disregard of income or resources in determining need for family assistance, OTDA may by regulation require social services districts to exempt or disregard such income or resources. Section 355(3) of the SSL required OTDA to promulgate regulations so that allowances of family assistance could be granted to eligible individuals.

Any comments should be submitted to:

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