

# RULE REVIEW

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## Department of Agriculture and Markets

Pursuant to Section 207 of the State Administrative Procedure Act, notice is hereby provided of the following rules which the Department of Agriculture and Markets intends to review in 2010. Public comment on the continuation or modification of these regulations will be accepted until March 31, 2010. All section and Part references are to Title 1 of the New York Code of Rules and Regulations.

### Part 6 Sampling and Testing Milk for Component Content.

Statutory Authority: Agriculture and Markets Law Sections 16, 18, 46-a, 56 and 255.

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

### Part 45 Sanitation Requirements for Poultry Dealers and Poultry Transporters.

Statutory Authority: Agriculture and Markets Law Sections 16, 18 and 72

The continuation of this regulation is necessary to retain an effective avian influenza control program by requiring a poultry transporter holding a valid domestic animal health permit who buys or sells poultry to be sold or offered for sale in a live poultry market, or transports poultry to a live poultry market, to have facilities that can be cleaned and disinfected on a year round basis; to possess and utilize mechanical crate washers to clean and disinfect crates between uses on a year round basis; to use all-season truck or vehicle wash facilities to clean and disinfect trucks or vehicles between uses on a year round basis; and to compile and maintain records of the dates and times that the crates and the trucks or vehicles were cleaned and disinfected. The regulation also clarifies the requirement that the certificate of veterinary inspection remain with the DAHP holder (i.e. poultry dealer or poultry transporter) and the invoice accompanies the poultry to the live poultry market.

#### Section 131.1 Pine Shoot Beetle Quarantine

The continuation of this regulation is necessary to provide a buffer between those counties that are infested with the pine shoot beetle and those that are not infested.

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

## Department of Civil Service

Pursuant to section 207 of the State Administrative Procedure Act (SAPA), notice is hereby provided of rules adopted by the New York State Civil Service Commission and the President of the New York State Civil Service Commission during calendar years 2000 and 2005.

Contained herein is a brief description of each rule, including the statutory authority therefor; and where appropriate, a statement setting forth the ongoing need for each rule without further modification.

2000

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

Statutory Authority: Civil Service Law section 6

Description of the Regulation:

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

Action: The rule has functioned consistent with the purposes underlying its adoption and the Department of Civil Service recommends continuation without modification.

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

Statutory Authority: Civil Service Law section 6

Description of the Regulations:

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

Amendments provided for supplemental military leave and military leave at reduced pay for employees federally ordered to active military duty (other than for training) related to United States participation in the NATO Kosovo intervention. A further amendment provided for the establishment of special vacation leave for eligible employees who were denied use of earned vacation accruals due to required participation in Year 2000 computer compliance ("Y2K") activities.

Action: The amendments have expired and consequently are obsolete rules within the meaning of subdivision (5) of SAPA section 207.

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

Statutory Authority: Section 6 of the Civil Service Law.

Description of the Regulations:

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

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

Action: The rule has functioned consistent with the purposes underlying its adoption and the Department of Civil Service recommends continuation without modification.

2005

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

Statutory Authority: Civil Service Law section 6

Description of the Regulation:

The resolution added a new paragraph (viii) to subdivision (1) of subsection (b) of Rule 4.5 to provide for a probationary term for the positions of “University Police Officer 1 and “University Police Officer 1 (Spanish Language)” of not less than 52 weeks nor more than 78 weeks.

Action: The rule has functioned consistent with the purposes underlying its adoption and the Department of Civil Service recommends continuation without modification.

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

Statutory Authority: Civil Service Law section 6

Description of the Regulations:

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

Amendments provided for supplemental military leave and military leave at reduced pay for employees federally ordered to active military duty (other than for training) related to the War on Terror, including military actions in Afghanistan and Iraq.

Action: The amendments have expired and been superseded, and are consequently obsolete rules within the meaning of subdivision (5) of SAPA section 207.

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

Appendix 1 (Exempt Class)

Appendix 2 (Non-competitive Class)

Statutory Authority:

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

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

Description of the Regulations:

Civil Service Commission rules relating to the jurisdictional classification of positions were specifically exempted from compliance with Executive Order No. 20 review requirements (as renewed by Governor Paterson) by the Governor’s Office of Regulatory Reform (GORR), upon a finding that such review lacked substantial benefit. Based upon this determination by GORR, and pursuant to subdivision (5) of section 207 of the State Administrative Procedure Act (SAPA), a full recitation of amendments to Appendices 1 and 2 to Title 4 of NYCRR adopted by the Civil Service Commission during calendar years 2000 and 2005 is hereby omitted.

Public Comments

There will be a forty-five (45) day public comment period following publication of this notice. *Requests for information and public comments regarding the foregoing may be directed to:* Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Alfred E. Smith Building, Albany, NY 12239, (518) 473-2624, e-mail address: judith.ratner@cs.state.ny.us

## Education Department

### NOTICE OF REVIEW OF EXISTING RULES PURSUANT TO STATE

ADMINISTRATIVE PROCEDURE ACT SECTION 207 (Calendar Years 2005 and 2000)

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 2005 and 2000 and invites public comment on the continuation or modification of such rules. All section and part references are to Title 8 of the New York Code of Rules and Regulations. Comments should be sent to the respective agency representative listed below for each particular rule, and must be received within 45 days of the date of publication of this Notice.

### OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

A. Calendar Year 2005

100.1(t) State Learning Standards for Mathematics

Description of Rule: The rule revised the definition of State learning standards for mathematics.

Need for Rule: The rule is necessary to modify the definition of the State learning standards for mathematics, consistent with policy enacted by the Board of Regents. The rule added the following provision: “Students will, through the integrated study of number sense and operations, algebra, geometry, measurement, and statistics and probability, understand the concepts of and become proficient with the skills of mathematics, communicate and reason mathematically and become problem solvers by using appropriate tools and strategies.”

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (2), 308, 309(not subdivided) and 3204(3).

125.1 Voluntary Registration of Nonpublic nursery schools and kindergartens

Description of Rule: The rule replaced the existing requirement in section 125.1(c) for annual visits of each registered nonpublic nursery school and kindergarten with a requirement that Department staff conduct annual visits of only those schools in the following categories: (i) schools with registration certificates that will expire during the year; (ii) schools operated by new applicants, including schools operated by new owners; schools located in newly constructed or renovated sites; and (iii) schools that require onsite technical assistance to alleviate regulatory non-compliance issues.

Need for Rule: The rule removed the requirement for annual visits by Department consultants to each of the registered schools, and replaced it with a visitation plan that is consistent with the current resources of the Department and the needs of the schools. The rule focuses on schools whose registration status may be in jeopardy for various reasons, by requiring annual site visits to the approximately twenty percent (30-40) of the schools that are in one or more of the following categories: (i) schools with registration certificates that will expire during the year; (ii) schools operated by new applicants, including schools operated by new owners; (iii) schools located in newly constructed or renovated sites; and (iv) schools that require onsite technical assistance to alleviate regulatory non-compliance issues.

The rule provides flexibility concerning the visits by Department staff to registered schools to determine compliance with regulatory requirements, and will allow the Department to provide more focused technical assistance and support to schools targeted for annual visits to ensure compliance with the Commissioner’s Regulations.

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

100.3, 100.4 & 80-5.12 Middle-level education

Description of Rule: The rule implements a Regents Policy Statement on Middle-level Education. Districts with low-performing schools are authorized to propose a program that strengthens core academic subjects and effective academic intervention services, and provides all students with exploratory subjects that address the learning standards, are of high interest to students, and further reinforce core academic learning (Model B). Low-performing schools receive regulatory relief from the prescribed time requirements for units of study in the exploratory courses in order to implement their proposed program. Districts with new or high-performing schools are authorized to submit proposals for restructuring the full educational program (Model C#1) or specific program refinements (Model C#2) and be granted relief from programmatic regulatory requirements. In addition, the rule authorizes districts under certain circumstances to apply for approval to implement an “Experiment in Organization” that provides for the flexible assign of certified teaching staff. The rule also made technical changes to align the Commissioner’s regulations with the State learning standards and clarifies testing requirements related to students with disabilities.

Need for Rule: The rule is necessary to implement Regents policy, and ensures that school districts have the flexibility they need to ensure that all students in State public schools are provided instruction in the

State learning standards areas and have the skills, knowledge, and understanding necessary for success. The rule provides school districts additional flexibility in meeting State intermediate learning standards and increasing student proficiency in English language arts and mathematics consistent with the federal No Child Left Behind Act.

Legal Basis for Rule: Education Law sections 101, 207, 208, 215, 305(1) and (2), 308(not subdivided), 309(not subdivided), 4403(3) and 3713(1) and (2).

#### 100.2(p) school and school district accountability

Description of Rule: The rule establishes criteria and procedures to ensure State and local educational agency compliance with the provisions of the federal No Child Left Behind Act of 2001 relating to academic standards and school/district accountability.

Need for Rule: The rule is in response to guidance provided by the U.S. Department of Education and is necessary to ensure consistency with NCLB accountability requirements and the Individuals with Disabilities Education Improvement Act of 2004 (Pub. L. 108-446). NCLB section 1111(b)(2) requires each state that receives funds to demonstrate, as part of its State Plan, that the state has developed and is implementing a single, statewide accountability system to ensure that all LEAs, public elementary schools and public high schools make adequate yearly progress (AYP). Each state must implement a set of yearly student academic assessments in specified subject areas that will be used as the primary means of determining the yearly performance of the state and each LEA and school in the state in enabling all children to meet the State's academic achievement standards.

Legal Basis for Rule: Education Law sections 101, 207, 210, 215, 305(1), (2) and (20), 309(not subdivided) and 3713(1) and (2)

#### 100.5 State assessments, graduation and diploma requirements

Description of Rule: The rule revised requirements for obtaining a Regents high school diploma, a Regents diploma with advanced designation, and a local high school diploma. The rule phased-in the 65 passing score on the five required Regents examinations to meet graduation requirements by requiring students who enter grade 9 in the 2005-06 school year to achieve 65 or above on two required Regents examinations and a score of 55 or above on the remaining three required Regents examinations, by requiring students who enter grade 9 in the 2006-07 school year to achieve 65 or above on three required Regents examinations and a score of 55 or above on the remaining two required Regents examinations, by requiring students who enter grade 9 in the 2007-08 school year to achieve 65 or higher on four required Regents examinations and a score of 55 on the one remaining required Regents examination, and by requiring students who enter grade 9 in the 2008-09 school year to achieve 65 on all five required Regents examinations.

The rule also establishes an appeal process for students who first enter grade 9 in September 2005 or thereafter and who fail, after at least two attempts, to attain a score of 65 or above on a required Regents examination for graduation. A standing committee chaired by the school principal would review all appeals within 10 days of submission and make a recommendation to the superintendent of the school district or, in the case of New York City, the Chancellor or his/her designee.

Need for Rule: The rule is necessary to implement revisions to policy adopted by the Board of Regents in June 2005. The rule revised the graduation and diploma requirements first adopted by the Board of Regents in July 1999, and subsequently revised in November 2003, to help ensure that all students in the State's public schools have the skills, knowledge and understandings they need to succeed in the next century.

Despite the significant increase in the number of students with disabilities taking Regents level courses and passing Regents examinations, there still is a significant gap between the performance of special education and general education students. Therefore, the rule provides an additional safety net for all students with disabilities entering grade 9 in the 2005-06 school year. Under this safety net, students with disabilities may achieve a passing score of 55-64 on the five required Regents examinations to meet local diploma requirements.

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

#### Part 105 Special act school districts

Description of Rule: The rule implements Chapters 628 and 629 of the Laws of 2004 by establishing procedures for the appointment by the Commissioner of Education of public members to the board of education of each Special Act school district, to ensure public accountability for educational services and use of public funds.

Need for Rule: The rule is necessary to implement Chapters 628 and 629 of the Laws of 2004 by adding a new Part 105 that establishes requirements for the appointment by the Commissioner of two public members to the board of education of each special act school district. Section 105.1 provides for definitions of terms used in the new Part. Section 105.2 establishes eligibility requirements for appointment as a public member. Section 105.3 establishes appointment procedures, term lengths, procedures to fill vacancies, and provides that public members, upon appointment, shall have all the rights, privileges, powers, duties and responsibilities of members of the board of education of a union free school district.

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (2), 308 and 309(not subdivided) and Chapters 628 and 629 of the Laws of 2004.

#### 175.5 Superintendent's conference days

Description of Rule: The rule permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001.

Need for Rule: The rating of students' performance on the State assessments is an effective way for teachers to learn the new learning standards and therefore constitutes permissible staff development activities relating to implementation of the new high learning standards and assessments, as authorized by Education Law section 3604(8). The rule provides school districts with additional flexibility and discretion to use this staff development function to fulfill their State test scoring requirements while minimizing impact on student instructional time.

Legal Basis for Rule: Education Law sections 101, 207 and 3604(8).

#### 136.1, 136.2 & 136.3 School health services

Description of Rule: The rule implements and otherwise conforms the Commissioner's Regulations to Chapter 477 of the Laws of 2004.

Need for Rule: The rule is necessary to implement and otherwise conform the Commissioner's Regulations to Chapter 477 of the Laws of 2004. School health services staff in New York State public schools will be able to provide services that are consistent with current standards in medical and health care practice and State law.

Legal Basis for Rule: Education Law sections 207; 901(1) and (2); 902(1), (2) and (3); 903(1) and (2); 904(1) and (2); 905(1), (2), (3) and (4); 906(1) and (2); 911(1); 913; 914(1) and Chapter 477 of the Laws of 2004.

#### 136.3 School health services

Description of Rule: The rule clarifies the accommodation for religious beliefs provision in the Commissioner's Regulations to ensure consistency with Public Health Law section 2164 and the Regulations of the Commissioner of Health and Chapter 477 of the Laws of 2004.

Need for Rule: The rule is necessary to conform the Commissioner's Regulations to the Regulations of the Department of Health and thereby ensure consistency with the legislative intent of Chapter 477 of the Laws of 2004. Section 136.3(a)(2) was also amended to ensure conformance to applicable legal requirements regarding disclosure of confidential information by adding the phrase "except where otherwise prohibited by law." In addition, section 136.3(a)(2) was amended to conform its provisions to Education Law section 904(1), as amended by Chapter 477 of the Laws of 2004, which provides for notification of "persons in parental relation" instead of "guardian" and provides for notification of "defective sight or hearing, or other physical disability."

Legal Basis for Rule: Education Law sections 207; 901(1) and (2); 902(1), (2) and (3); 903(1) and (2); 904(1) and (2); 905(1), (2), (3) and



(4); 906(1) and (2); 911(1); 913; 914(1) and Chapter 477 of the Laws of 2004.

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:

John B. King, Jr.

Senior Deputy Commissioner of Education P-12

New York State Education Department

Office of Elementary, Middle, Secondary and Continuing Education

89 Washington Avenue

West Wing, Second Floor Mezzanine - EB

Albany, New York 12234

nysedp12@mail.nysed.gov

OFFICE OF HIGHER EDUCATION

Sections 80-3.3(a)(1) and 52.21(b)(2)(i)(h) - Duration of Initial Teaching Certificate and Flexibility in Staffing of Teacher Preparation Programs.

Description of Rule: The rule increases the duration of the initial certificate for classroom teaching from three, or four years with extension, to five years.

Need for Rule: The rule is needed to extend the previous duration of the initial certificate, which was considered too short to provide new teachers with sufficient time to complete the master's degree program required for the professional certificate. The rule also provides teacher preparation programs that meet articulated standards of institutional accountability greater flexibility in the staffing of those programs

Legal Basis for Rule: Education Law § § 207; 210; 215; 305(1), (2), and (7); 3001(2); 3004(1); and 3006(1)(b).

Sections 3.47(d)(2) and 3.50 (b)(17)- Authorization of Degrees.

Description of Rule: The rule authorizes the conferral in New York State of the graduate professional degree of Doctor of Nursing Practice (D.N.P.) for completion of a practice oriented doctoral program in nursing.

Need for Rule: The rule arose from a request by Columbia University to offer a program in nursing leading to the Doctor of Nursing Practice degree. This degree provides an alternative to the existing doctoral programs in nursing (Ph.D. and D.N.S. degree programs) that are research oriented. The new degree benefits nurses who are interested in achieving a terminal degree that focuses on expert clinical practice. The Department expects the degree to be used primarily by, but not limited to, those programs that educate nurse practitioners and nurse-midwives.

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

Section 80-2.3(f) Certification and scope of practice in school social work

Description of Rule: The rule updates references to the titles of the new licensed professions in social work and the requirements for permanent certification in school social work and clarifies the scope of practice of certified school social workers in light of the new practice protected licensed professions in social work.

Need for Rule: The rule is needed to implement the statutory requirements of Chapter 2004 of the Laws of 2004. Effective September 1, 2004, social work became a practice protected profession under Article 154 of the Education Law, and the titles changed for individuals licensed in social work under Article 154 of the Education Law. The rule clarifies the scope of practice for holders of provisional or permanent certificates in school social work. The rule also updates these titles and requires the candidate for permanent certification to be licensed and registered by the State Education Department as a licensed master social worker or licensed clinical social worker.

Legal Basis for Rule: Education Law § § 207; 305(1), (2), and (7); 3001(2); 3004(1); 3006(1)(b); 3009(1); 3010; 7702(2)(a) and (3)(a); and 7706(5)(a).

Sections 52.21(b)(4), 80-4.1(a)(2) and 80-4.3(d) Teacher certification in gifted education.

Description of Rule: The rule requires candidates seeking to meet the education requirement for the extension in gifted education through equivalent coursework to complete 12 semester hours of coursework in specified subjects, rather than six. The rule clarifies the content of the education requirement for the extension, ensuring that coursework is focused specifically on preparing teachers for providing instruction and support to gifted students and adequately preparing candidates for the New York State certification examination.

Need for Rule: The rule clarifies and strengthens the education requirements for the extension of a teaching certificate in gifted education to better align with the competencies tested in the teacher certification examination for this extension as articulated in the examination's framework.

The rule also clarifies the content requirements for meeting the education requirement, either through a registered program or through equivalent course completion, and clarifies that the coursework must be specifically focused on training teachers for providing instruction and support to gifted students.

Legal Basis for Rule: Education Law sections 207; 210; 305(1), (2), and (7); 3001(2); 3004(1); 3006(1)(b); 3009(1); and 3010.

Sections 80-2.3(e)(1), 80-2.9(a)(5), and 80-4.3(a)(3) Bilingual school psychologists

Description of Rule: The rule establishes an expedited pathway for licensed psychologists who have demonstrated proficiency in a language other than English to obtain the first level certificate necessary to work as a school psychologist without first completing a college supervised internship in school psychology. In addition, the rule establishes an expedited pathway for holders of certificates in school psychology, speech and language disabilities, and for teaching the speech- and hearing-handicapped to be issued an extension to their certificate authorizing them to provide bilingual education services.

Need for Rule: The rule's purpose is to increase the number of bilingual certified school psychologists and teachers of students with speech and language disabilities to meet the needs of limited English speaking students with disabilities, so as to alleviate serious shortages of bilingual certified school psychologists and teachers of students with speech and language disabilities.

Legal Basis for Rule: Education Law sections 207; 210; 305(1), (2), and (7); 3001(2); 3004(1); 3006(1)(b); 3009(1); and 3010.

126.10(j) & 126.17(c) Monetary assessment of Proprietary Schools

Description of Rule: The rule specifies the existing method that the State Education Department uses for assessing new schools for the tuition reimbursement account and the proprietary vocational school supervision account.

Need for Rule: The rule clarifies requirements for the monetary assessment of new schools and for-profit English as a Second Language (ESL) Schools for the tuition reimbursement account and the proprietary vocational school supervision account.

Legal Basis for Rule: Education Law sections 207; 5001(1), (4)(e) and (f), and (9); and 5007 (10) and (12) of the Education Law.

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:

Joseph Frey

Deputy Commissioner for Higher Education

New York State Education Department

Office of Higher Education

Room 978, Education Building Annex

89 Washington Avenue

Albany, New York 12234

(518) 486-3633

sroberson@nysed.mail.gov

OFFICE OF THE PROFESSIONS

Section 52.32 and Subpart 79-9 of the Commissioner's Regulations - mental health counseling.

Description of Rule: the rule establishes professional education program registration standards; professional study, examination, experience, and limited permit requirements; provisions for the use of classification systems; and special provisions for the profession of mental health counseling.

Need for Rule: the rule is needed to implement the requirements of Article 163 of the Education Law, as added by Chapter 676 of the Laws of 2002.

Legal Basis for Rule: Education Law sections 207; 210; 6501; 6504; 6507(2)(a), (3)(a), and (4)(a); 6508(1); 8402(3)(b), (c), and (d); 8409; 8411(2)(a) and (b) and (3).

Section 52.33 and Subpart 79-10 of the Commissioner's Regulations - marriage and family therapy.

Description of Rule: the rule establishes professional education program registration standards; professional study, examination, experience, and limited permit requirements; provisions for the use of classification systems; and special provisions for the profession of marriage and family therapy.

Need for Rule: the rule implements the requirements of Article 163 of the Education Law, as added by Chapter 676 of the Laws of 2002.

Legal Basis for Rule: Education Law sections 207; 210; 6501; 6504; 6507(2)(a), (3)(a), and (4)(a); 6508(1); 8403(3)(b), (c), and (d); 8409; 8411(2)(a) and (b) and (3).

Section 52.34 and Subpart 79-11 of the Commissioner's Regulations - creative arts therapy.

Description of Rule: the rule establishes professional education program registration standards; professional study, examination, experience, and limited permit requirements; provisions for the use of classification systems; and special provisions for the profession of creative arts therapy.

Need for Rule: the rule implements the requirements of Article 163 of the Education Law, as added by Chapter 676 of the Laws of 2002.

Legal Basis for Rule: Education Law sections 207; 210; 6501; 6504; 6507(2)(a), (3)(a), and (4)(a); 6508(1); 8404(3)(b), (c), and (d); 8409; 8411(2)(a) and (b) and (3).

Section 52.35 and Subpart 79-12 of the Commissioner's Regulations - psychoanalysis.

Description of Rule: the rule establishes professional education program registration standards; professional study, examination, experience, and limited permit requirements; provisions for the use of classification systems; and special provisions for the profession of psychoanalysis.

Need for Rule: the rule implements the requirements of Article 163 of the Education Law, as added by Chapter 676 of the Laws of 2002.

Legal Basis for Rule: Education Law sections 207; 210; 6501; 6504; 6507(2)(a), (3)(a), and (4)(a); 6508(1); 8405(3)(b), (c), and (d); 8409; 8411(2)(a) and (b) and (3).

Sections 74.3, 74.4, 74.5, 74.6 and 74.8 of the Commissioner's Regulations - social work.

Description of Rule: the rule establishes regulatory requirements for licensure in licensed master social work and licensed clinical social work and for authorization qualifying licensed clinical social workers for certain insurance reimbursements.

Need for Rule: the rule establishes standards for licensure as a licensed master social worker or as a licensed clinical social worker, in accordance with changes in these requirements established by Chapter 230 of the Laws of 2004.

Legal Basis for Rule: Education Law sections 207; 6501; 6507(2)(a) and (3)(a); 7701(1); 7704(2)(b) and (c); 7705(1) and (2); 7706(3); and 7707(2) and (4); and Insurance Law sections 3221(l)(4)(A) and (D) and 4303(i) and (n).

Sections 29.2, 29.15 & 29.16 of Regents' Rules - unprofessional conduct in the social work and mental health professions.

Description of Rule: the rule establishes definitions of unprofessional conduct in the practice of the licensed professions of licensed master social work, licensed clinical social, creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis.

Need for Rule: the rule defines unprofessional conduct in accordance with the new statutory requirements in Article 163 of the Education Law relating to the social work professions and mental health practitioners.

Legal Basis for Rule: Education Law sections 207; 6504; 6506(1); 6509(9); 7701(1) and (2); 7702(1); 7708(1) and (2); 8402(1); 8403(1); 8404(1); 8405(1); and 8407(1) and (2).

Sections 50.2 and 59.9 of the Commissioner's Regulations - fees for licensee photo IDs.

Description of Rule: the rule establishes a fee for a photo identification card to be issued to those professionals licensed and registered pursuant to Title VIII of the Education Law who elect to receive one, and repeals an outdated fee provision.

Need for Rule: the rule establishes a fee to defray the costs of photo identification cards for licensed professionals who choose to obtain one.

Legal Basis for Rule: Education Law sections 207, 212, 6502(1), 6507(2)(a) and (4)(f).

Section 24.6 and Part 28 of Regents' Rules - prior disciplinary history.

Description of Rule: the rule establishes procedures for the State Education Department's evaluation of an applicant's prior disciplinary history in another jurisdiction to determine whether the applicant is qualified to practice a licensed profession in New York State under Title VIII of the Education Law.

Need for Rule: the rule is needed to implement sections 6506(6)(g) and 6507(5), as added by Chapter 239 of the Laws of 2004, that require the State Education Department to evaluate such prior disciplinary history and authorizes the Department to deny authorization to practice a licensed profession based upon such review.

Legal Basis for Rule: Education Law sections 207; 6504; 6506(1), (6)(h), and (10); and 6507(5).

Section 29.3 of Regents' Rules and sections 29.3, 68.3, 68.6, 68.11 & 68.12 - land surveying and engineering.

Description of Rule: the rule establishes a definition of unprofessional conduct in the profession of land surveying and licensing examination and continuing education requirements in land surveying and engineering.

Need for Rule: the rule implements the Board of Regents' authority to define unprofessional conduct in the licensed professions and the State Education Department's responsibility to establish requirements relating to professional examinations and continuing education requirements.

Legal Basis for Rule: Education Law sections 207; 6504; 6506(1); 6507(2)(a); 6509(9); 7206(1)(4); 7206-a(1)(4); 7211(1)(d) and (4); and 7212(4).

Sections 69.1, 69.2, and 69.6 of the Commissioner's Regulations - exam and continuing education for architects.

Description of Rule: the rule establishes requirements for the licensing examination in architecture and for continuing education that licensed architects must complete to be registered to practice this profession in New York State.

Need for Rule: the rule discontinues an unnecessary conditional admission requirement for the licensing examination. It also conforms licensing examination requirements to policy changes of the National Council of Architectural Registration Boards, the national organization that gives the licensing examination. Finally, the rule establishes standards for acceptable continuing education for architects, consistent with recent statutory changes.

Legal Basis for Rule: Education Law sections 207; 6506(1); 6507(2)(a); 7304(4); 7308(2) and (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:

Frank Muñoz

Deputy Commissioner for the Professions

Office of the Professions  
 New York State Education Department  
 State Education Building  
 West Wing, Second Floor  
 Albany, NY 12234  
 (518) 486-1765  
 opopr@mail.nysed.gov

#### OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES

Section 100.2(x)(4)(i),(iii) and (iv) and 100.2(x)(7)(xii) Education of homeless children

**Description of Rule:** The rule was amended to require a school district to: coordinate the transmittal of records for a student with a disability who is a homeless youth; provide comparable special education services to a homeless youth with a disability who enrolls in a school district; ensure the local educational agency liaison assists in the enrollment and educational placement through coordination with the Committee on Special Education (CSE) for a student with a disability who is a homeless youth; and coordinate the implementation of the homeless provisions with IDEA.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to the federal Individuals with Disabilities Education Act (IDEA), as amended by Pub L. 108-446.

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

#### Section 100.2(dd)(1)(iii) Professional Development Plan

**Description of Rule:** The rule was amended to require a school district to include in its professional development plans a description of professional development activities provided to school personnel who work with students with disabilities.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446.

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

#### Part 101 Exemptions from attendance

**Description of Rule:** The rule repealed Part 101 relating to exemption from attendance.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446.

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

#### Section 200.1 Definitions

**Description of Rule:** The rule conformed the definitions of assistive technology service, impartial hearing officer, mediator, parent, related services, school health services, special education, learning disability, surrogate parent and transition services; adds definitions of homeless youth, limited English proficiency, universal design and ward of the State, consistent with the federal definitions of these terms; and made technical amendments to the definitions of guardian ad litem, general curriculum and prior written notice.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446. (The rule was amended in 2007 to correct cross citations in the definition of a student with a learning disability and guardian ad litem and to revise the definitions of parent, related services, school health services and transition services consistent with IDEA and the October 2006 amendments to Part 300 of the Code of Federal Regulations (34 CFR), which implement IDEA. The rule was further amended in 2008 to revise the definitions of related services, school health services and transition services consistent with Chapter 378 of the New York State (NYS) Laws of 2007 and the IDEA 2004 statutes and regulations.)

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

Section 200.2(a), (b), (d), (e), (h) and (i) Board of Education Responsibilities

**Description of Rule:** The rule added child find requirements for students with disabilities who are homeless or wards of the State; added data requirements consistent with federal law; added new responsibilities relating to child find, evaluation, data collection and data reporting for students with disabilities placed in private elementary and secondary schools by their parents; required instructional materials to be in a format that meets the National Instructional Materials Accessibility Standard (NIMAS) as published in the federal Register; ensured that amendments to individualized education programs (IEPs) are disseminated consistent with Chapter 408 of the Laws of 2002 and recommendations made to IEPs without convening a meeting or by amending the IEP are provided to the board of education; repealed requirements for a comprehensive system of personnel development and required schools to include personnel development activities for staff working with students with disabilities in the professional development plan pursuant to section 100.2 of the Commissioner's Regulations; required boards of education and boards of cooperative educational services (BOCES) to establish written policies that identify the measurable steps it will take to recruit, hire, train and retain highly qualified personnel; required school districts to develop policies and procedures that describe the guidelines for the provision of appropriate accommodations necessary to measure the academic and functional performance of the student in the administration of district-wide assessments; and required a school district to identify how, to the extent feasible, it will use universal design principles in developing and administering any district-wide assessments.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446. (The rule was amended in 2007 to correct the federal cross citation relating to NIMAS consistent with IDEA and the October 2006 amendments to 34 CFR Part 300, which implement IDEA.)

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

Section 200.3 Committee on special education (CSE) and committee on preschool special education (CPSE)

**Description of Rule:** The rule required that not less than one regular education teacher and not less than one special education teacher or provider be members of the CSE, a subcommittee thereof, and the CPSE; and added, consistent with amendments made to section 4402 of the Education Law by Chapter 194 of the Laws of 2004, that the additional parent member on the CSE may be a parent of a student who has been declassified or who has graduated within the past five years.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446 and to NYS Education Law.

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7), 4410(13) and Chapter 194 of the NYS Laws of 2004.

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

**Description of Rule:** The rule conformed State regulations to federal law requirements relating to parental consent, individual evaluations and reevaluations, evaluation procedures, eligibility determinations including determinations of learning disabilities, IEP contents including transition services to be in effect beginning with the school year when the student turns age 15, the right of the parent to agree to alternative means of participation for CSE, subcommittee or CPSE meetings, annual review requirements, changes to the IEP after the annual review, and provision of services and transfer of records for students who transfer school districts.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446. (The rule was amended in 2007 to correct a cross citation and to conform State regulations relating to eligibility determinations including determinations of learning disabilities, IEP contents and provision of services and transfer of records for students who transfer school



districts consistent with IDEA and the October 2006 amendments to 34 CFR Part 300, which implement IDEA. The rule was further amended in 2008 to conform State regulations relating to reevaluations and changes to an IEP after the annual review consistent with Chapter 378 of the NYS Laws of 2007 and IDEA statutes and regulations.)

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

**Section 200.5 Due process procedures**

**Description of rule:** The rule conformed State due process requirements to federal law relating to prior written notice, consent, notice of meetings, parent participation in CSE meetings, procedural safeguards notice, mediation, due process hearing request notification requirements, resolution sessions, impartial hearings, appeals of the decision of the State review officer and surrogate parents.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446. (The rule was amended in 2007 to correct a cross citation and to conform State Regulations relating to prior written notice, consent, procedural safeguards notice, mediation, due process hearing request notification requirements, impartial hearings and resolution process consistent with IDEA and the October 2006 amendments to 34 CFR Part 300, which implement IDEA. The rule was further amended in 2009 to conform State regulations relating to consent to the December 2008 amendments to 34 CFR Part 300.)

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

**Section 200.6(m) Interim alternative educational setting (IAES)**

**Description of Rule:** The rule added IAES to the required continuum of services for students with disabilities.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446. (The rule was amended in 2007 to re-letter section 200.6(m) to section 200.6(n).)

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

**200.7(c)(4) and 200.7(d) Additional operational and administrative provisions related solely to private schools and Appointment of blind, deaf and severely physically disabled students to certain State-operated and State-supported schools**

**Description of Rule:** The rule conformed State requirements to federal law relating to CSE members and due process for student placements in State-operated and State-supported schools.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446.

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

**Section 200.14(d) and (e) Day treatment programs certified by the Office of Mental Health**

**Description of Rule:** The rule conformed the requirements for IEP development for students in day treatment programs to the amended requirements in section 200.4.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446.

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

**Section 200.16 Educational programs for preschool students with disabilities**

**Description of Rule:** The rule conformed State requirements to federal law relating to CPSE membership, individual evaluation, eligibility determinations, reevaluations, IEP development, annual reviews, changes to the IEP, procedural safeguards and due process procedures.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446.

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13). (The rule was amended in 2007 to conform State regulations relating to procedural safeguards consistent with IDEA and the October 2006 amendments to 34 CFR Part 300, which implement IDEA.)

**Section 201.2 Definitions relating to procedural safeguards for students with disabilities subject to discipline**

**Description of Rule:** The rule conformed the definition of IAES to federal law and added a definition of serious bodily injury.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446. (The rule was amended in 2007 to conform the definition of IAES consistent with the federal definition of this term.)

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

**Section 201.3 CSE responsibilities for functional behavioral assessments and behavioral intervention plans**

**Description of Rule:** The rule conformed the CSE responsibilities for functional behavioral assessments and behavioral intervention plans to federal law.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446. (The rule was amended in 2007 to repeal section 201.3 and add a new section 201.3 to conform State Regulations consistent with IDEA and the October 2006 amendments to 34 CFR Part 300, which implement IDEA.)

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

**Section 201.4 Manifestation determinations**

**Description of Rule:** The rule conformed State requirements to federal law relating to the establishment of a manifestation team and factors to determine if the behavior of a student was or was not a manifestation of the student's disability.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446. (The rule was amended in 2007 to conform State Regulations relating to manifestation determinations consistent with IDEA and the October 2006 amendments to 34 CFR Part 300, which implement IDEA.)

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

**Section 201.5 Students presumed to have a disability for discipline purposes**

**Description of Rule:** The rule revised the basis of knowledge as to whether a student is presumed to have a disability for discipline purposes to be consistent with federal law.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446.

**Legal Basis for Rule:** Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

**Section 201.7(d) and (e) General procedures for suspensions and removals of students with disabilities**

**Description of Rule:** The rule made technical changes relating to the manifestation team; added serious bodily injury as a reason school personnel may change a student's placement to an IAES; and provided that school personnel may consider unique circumstances for students with disabilities relating to discipline decisions.

**Need for Rule:** The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446. (The rule was amended in 2007 to correct a cross citation and to conform State regulations relating to the consideration of unique circumstances

for students with disabilities relating to discipline decisions consistent with IDEA and the October 2006 amendments to 34 CFR Part 300, which implement IDEA.)

Legal Basis for Rule: Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

Section 201.8 Authority of impartial hearing officer (IHO) to order a change in placement to an IAES in a dangerous situation

Description of Rule: The rule established the authority of an IHO to order a change of placement to an IAES, consistent with federal law.

Need for Rule: The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446. (The rule was amended in 2007 to conform State regulations relating to the authority of an IHO to order a change in placement to an IAES in a dangerous situation consistent with IDEA and the October 2006 amendments to 34 CFR Part 300, which implement IDEA.)

Legal Basis for Rule: Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

Section 201.9(b) and (c) Coordination with superintendent's hearing and other due process procedures applicable to all students

Description of Rule: The rule changed the coordination with a superintendent's hearing and other due process procedures applicable to all students to federal requirements.

Need for Rule: The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446.

Legal Basis for Rule: Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

201.10(c), (d) and (e) Provision of services during suspensions

Description of Rule: The rule defined services a student with a disability must receive during suspensions of 10 school days or more and that the IAES setting shall be determined by the CSE.

Need for Rule: The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446. (The rule was amended in 2007 to conform State regulations relating to the provision of services during suspensions consistent with IDEA and the October 2006 amendments to 34 CFR Part 300, which implement IDEA.)

Legal Basis for Rule: Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

Section 201.11(b) and (d) Expedited due process hearings

Description of Rule: The rule required the pendency setting for students with disabilities during expedited impartial hearings to be the IAES or other disciplinary setting.

Need for Rule: The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446. (The rule was amended in 2007 to make a technical correction and to re-letter section 201.11(d) to section 201.11(c).)

Legal Basis for Rule: Education Law sections 207(not subdivided), 3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) 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:

Rebecca H. Cort

Deputy Commissioner

New York State Education Department

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One Commerce Plaza, Room 1606

Albany, New York 12234

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## OFFICE OF MANAGEMENT SERVICES

100.2(x) & Parts 275 & 276 310 Appeals for Homeless

Description of Rule: The rule modifies the procedures concerning appeals involving homeless children that are brought pursuant to Education Law section 310 to ensure the rights of homeless individuals consistent with Federal statutes.

Need for Rule: The rule is necessary to conform the Commissioner's Regulations to the Federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended by the Federal No Child Left Behind Act of 2001 (NCLB) [Pub.L. 107-110]. The State is required to comply with the requirements of the McKinney-Vento Act and the NCLB as a condition to its receipt of Federal funds. The rule modifies the procedures concerning appeals involving homeless children that are brought pursuant to Education Law section 310 to ensure the rights of homeless individuals consistent with Federal statutes.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2), 310(not subdivided), 311(not subdivided), 3202(1) and (8), 3209(7), and 3713(1) and (2).

3.8 & 3.9 Chief of Staff and Counsel

Description of Rule: The rule provides for the position of Chief of Staff, to be appointed by the Board of Regents, and designates the Chief of Staff as the deputy commissioner of education as specified in Education Law section 101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

Need for Rule: The rule is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the State Education Department, resulting in the elimination of the position of Chief of Staff.

Legal Basis for Rule: Education Law section 101(not subdivided).

3.8, 3.9 & 3.15 Chief Operating Officer

Description of Rule: The rule repealed provisions relating to the duties and responsibilities of the Chief Operating Officer of the State Education Department

Need for Rule: The rule is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the State Education Department, resulting in the elimination of the position of Chief Operating Officer.

Legal Basis for Rule: Education Law section 101(not subdivided) and 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:

Erin M. O'Grady-Parent

Acting Counsel and Deputy Commissioner for Legal Affairs

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B. Calendar Year 2000

## OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Need for Rule: the rule is necessary to implement Regents policy and establishes school accountability criteria, designating schools as farthest from, below, or meeting school accountability performance criteria, consistent with policy adopted by the Board of Regents to ensure that all students in public schools have the skills, knowledge

and understanding they need to succeed in the next century. The rule was amended in July 2003 to align the State's System of Accountability for Student Success with the federal No Child Left Behind accountability requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Description of Rule: the rule establishes standards for the implementation of summer programs as part of the Universal Prekindergarten Program

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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:

John B. King, Jr.

Senior Deputy Commissioner of Education P-12

New York State Education Department

Office of Elementary, Middle, Secondary and Continuing Education

89 Washington Avenue

West Wing, Second Floor Mezzanine - EB

Albany, New York 12234

nysedp12@mail.nysed.gov

OFFICE OF HIGHER EDUCATION

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

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

Need for Rule: the rule clarifies, corrects omissions in, and makes technical corrections to the requirements for teacher education programs adopted by the Board of Regents in September 1999 and makes the requirements more responsive to school staffing needs,

while preserving the standards for preparing effective classroom teachers

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

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

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

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

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

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

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

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

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

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

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

Need for Rule: the rule alleviates personnel shortages in New York State public schools by removing barriers for teachers who are certified to teach in other states to become provisionally certified to teach in New York State public schools.

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

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

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

Need for Rule: the rule implemented Regents teaching policy embodied in the report "New York's Commitment: Teaching to Higher Standards. It strengthens teacher certification requirements and conform to Regents teacher education program standards, and ensure that all teachers are prepared to teach to the State learning standards.

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

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

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

Need for Rule: the rule is necessary to implement section 12 of

Chapter 181 of the Laws of 2000, the Safe Schools Against Violence in Education Act (SAVE).

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

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

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

Need for Rule: the rule ensures that all qualified school districts and BOCES are given the opportunity to obtain funding for a mentoring program.

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

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

Description of Rule: the rule established requirements for licensed private schools and registered business schools/computer training facilities.

Need for Rule: the rule is necessary to implement Chapter 434 of the Laws of 1999.

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

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

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

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

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

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

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

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

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

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

Description of Rule: the rule establishes requirements that registered professional nurses must meet to administer immunization and anaphylaxis treatment agents through non-patient specific orders and protocols, the immunization and anaphylaxis treatment agents that may be administered, the requirements for orders and the protocols, and special requirements which define unprofessional conduct for the profession of nursing.

Need for Rule: Chapter 573 of the Laws of 1999 directs the Commissioner of Education to promulgate regulations concerning the administration of immunization and anaphylaxis treatment agents by



registered professional nurses pursuant to non-patient specific orders of licensed physicians or certified nurse practitioners.

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

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

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

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

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

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

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

Need for Rule: the rule conforms the public accountancy continuing education requirements for self-study programs to the national authority's recommended guidelines and to ensure that licensees focus a portion of their continuing education on the subject of professional ethics. A recent amendment to the public accountancy regulations re-numbered the sections and eliminated the distinction between interactive and non-interactive continuing education.

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

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

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

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

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

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:

Joseph Frey

Deputy Commissioner for Higher Education

New York State Education Department

Office of Higher Education

Room 978, Education Building Annex

89 Washington Avenue

Albany, New York 12234

(518) 486-3633

sroberson@nysed.mail.gov

OFFICE OF THE PROFESSIONS

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

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

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

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

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

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

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

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

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

Description of Rule: the regulation establishes requirements that registered professional nurses must meet to administer immunization and anaphylaxis treatment agents through non-patient specific orders and protocols, the immunization and anaphylaxis treatment agents that may be administered, the requirements for orders and the protocols, and special requirements which define unprofessional conduct for the profession of nursing.

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

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

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

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

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

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

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

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

Need for Rule: the regulation conforms the public accountancy continuing education requirements for self-study programs to the national authority's recommended guidelines and to ensure that licensees focus a portion of their continuing education on the subject of professional ethics. A recent amendment to the public accountancy regulations renumbered the sections and eliminated the distinction between interactive and non-interactive continuing education.

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

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

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

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

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

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  
Deputy Commissioner for the Professions  
Office of the Professions  
New York State Education Department  
State Education Building  
West Wing, Second Floor  
Albany, NY 12234  
(518) 486-1765  
opopr@mail.nysed.gov

OFFICE OF MANAGEMENT SERVICES

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

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

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

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

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:

Erin M. O'Grady-Parent  
Acting Counsel and Deputy Commissioner for Legal Affairs  
New York State Education Department  
State Education Building, Room 112  
Albany, New York 12234  
(518) 474-6400  
legal@mail.nysed.gov

## Department of Environmental Conservation

The following rules were adopted by the New York State Department of Environmental Conservation (Department or DEC) during 2005, and pursuant to SAPA Section 207 have been reviewed. Com-

ments on the rules that are being amended this year should be directed to the contact person listed in the main body of the Regulatory Agenda. Comments on any rules that are not being changed at this time will be accepted for 45 days and should be directed to the regulatory coordinator for the appropriate program, as listed below the rules.

### DIVISION OF AIR RESOURCES

6 NYCRR Part 200, General Provisions. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, and 19-0305. This regulation establishes general air pollution control requirements. Section 200.10 of this regulation incorporates by reference federal standards and requirements. Through the incorporation by reference of the federal regulations NYS has the authority to implement and enforce these federal requirements. Section 200.10 of this regulation is being amended to update the list of federal National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations that are incorporated by reference. This regulation is listed in the January 2010 Regulatory Agenda.

6 NYCRR Part 202, Emissions Verification. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 71-2103, 71-2105 and 72-0303. This regulation is required by section 182(a)(3)(B) of the Clean Air Act and requires all major stationary sources to report air emissions to the NYS Department of Environmental Conservation on an annual basis. This regulation was listed in the January 2009 Regulatory Agenda.

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. This regulation is listed in the January 2010 Regulatory Agenda.

6 NYCRR Subpart 225-4, Motor Vehicle Diesel Fuel. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 71-2103, and 71-2105. Subpart 225-4 adopts federal standards for motor vehicle diesel fuel, including sulfur content standards to reduce criteria pollutant emissions and acid deposition related emissions. This regulation will not be amended at this time. The regulation is identical to federal regulations of motor vehicle diesel fuel and consequently imposes no additional burden on regulated parties, while allowing for State enforcement.

6 NYCRR Part 237, Acid Deposition Reduction NOx Budget Trading Program and 6 NYCRR Part 238, Acid Deposition Reduction SO2 Budget Trading Program. Statutory Authority: Environmental Conservation Law Sections 1-0101, 19-0103, 19-0105, 19-0301 and 19-0311. This regulation was listed in 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 ENVIRONMENTAL PERMITS

6 NYCRR Part 621, Uniform Procedures. Statutory Authority: Environmental Conservation Law Section 3-0301 and Article 70, and State Administrative Procedures Act Section 301. This regulation implements the permit application procedures for specified environmental permits. The Department does not anticipate making any further revisions to the 2005 amendments relating to Part 621. However, ECL Article 70 was amended to require application fees for freshwater and tidal wetland permits, and Part 621 will be revised accordingly.

Regulatory Coordinator for the Division of Environmental Permits is Christine Lyons, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-1750. Telephone: 518-402-9180; E-mail: calyons@gw.dec.state.ny.us

### DIVISION OF FISH, WILDLIFE AND MARINE RESOURCES

6 NYCRR 1.16 and 1.17, Managed Harvest of White-tailed Deer in New York State. This regulation changed the season timing and

chronology for the Southern Zone regular and archery deer seasons. The regulation became effective in the 2005 hunting season and is needed for the 2009-2010 hunting season. The department is currently evaluating public input received during a series of public meetings held in 2009 and may consider amendments to this regulation in the future.

6 NYCRR 2.30, Migratory Game Bird Hunting Regulations. Statutory Authority: Environmental Conservation Law 11-0303, 11-0307, 11-0903, 11-0905, 11-0909, 11-0917. This regulation adjusted the hunting areas, season dates, and bag limits for the 2005-2006 season. The rule making will be amended in 2010 to establish migratory game bird hunting regulations for the 2010-2011 hunting season.

6 NYCRR Part 6.1 and 6.2, Managed Harvest for Beaver, River Otter, Mink, and Muskrat. Environmental Conservation Law 11-0303, 11-1101, 11-1103. This rule making established trapping seasons for the 2005-2006 trapping seasons. Trapping seasons for these species were amended in 2009 for the 2009-2010 trapping seasons.

6 NYCRR 6.3, Beaver Trapping Regulations. Statutory Authority: Environmental Conservation Law 11-0303, 11-1101, 11-1103. This rule making was first established during the 2004-2005 license year to protect river otter. This regulation is still needed to protect river otter from being accidentally caught in beaver traps. No amendments are needed.

6 NYCRR Part 189, Chronic Wasting Disease. Statutory Authority: Environmental Conservation Law 3-0301, 11-0325, 11-1905. This rule making established a chronic wasting disease (CWD) containment area in 2005 to prevent the spread of CWD in New York. The department will be proposing amendments to this regulation in 2010 to more appropriately reflect current conditions based on the CWD monitoring program.

6 NYCRR Part 190, Bear-resistant Food Containers. Statutory Authority: Environmental Conservation Law 1-0101, 3-0301, and 9-0105. This rule making established a requirement to use a bear-resistant food canister in the Eastern High Peaks Wilderness Area of the Adirondack Park. The regulation continues to be needed to protect the public from nuisance black bears.

6 NYCRR Part 41, Sanitary Condition of Shellfish Lands. Statutory authority: ECL 13-0307, 13-0319. This regulation classified shellfish lands in Narrow Bay (Town of Brookhaven, Suffolk County) as seasonally uncertified for the harvest of shellfish. The closed area descriptions of other shellfish growing areas in the Towns of Brookhaven, Southampton, Babylon, Oyster Bay, Islip, Huntington and Smithtown (all Suffolk County) were clarified for harvesting and enforcement purposes. Bacteriological water quality testing is an ongoing task; shellfish growing area will be reclassified depending on the results of the water quality studies. Shellfish harvested from growing areas that fail to meet bacteriological water quality standards may cause illness in those individuals who consume them. Part 41 will be amended as needed. Please refer to the 2010 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR Part 40, Marine Fish. Statutory Authority: ECL 11-0303, 13-0340, 13-0340-b, 13-0340-c and 13-0340-f. New recreational limits were established in regulation for striped bass, summer flounder, scup (porgy), and bluefish in New York waters. These regulations were adopted to be consistent with the Atlantic States Marine Fisheries Commission (ASMFC) Fishery Management Plans (FMP) for the fish listed above. Atlantic States Marine Fisheries Commission provides cooperative management of the marine fisheries found within state waters along the Atlantic Coast. Atlantic States Marine Fisheries Commission seeks to promote healthy, self-sustaining populations for all Atlantic Coast fish and wise utilization of these resources. New York is a member state and must comply with the FMPs developed by ASMFC. These regulations are also necessary to comply with National Marine Fisheries Service regulations. Part 40 will be amended to meet the requirements of FMPs as ASMFC seeks to provide for the long-term health of these species and to comply with Federal regulations. Please refer to the 2010 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR Part 43, Surfclam Management. Statutory authority: ECL 13-0308, 13-0309. This regulation was adopted to allow the depart-

ment a onetime opportunity to adjust the 2005 annual harvest limit for Atlantic surfclams harvested from the Atlantic Ocean. This action would only be taken if the findings of the 2005 surfclam population assessment survey indicate that the surfclam population has remained stable and unaffected by harvest or adverse natural events. This regulation will be rescinded in 2010 to reflect new changes in the surfclam fishery management plan. Please refer to the 2010 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

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 196.4, Operation of Mechanically Propelled Vessels and Aircraft in the Forest Preserve, Environmental Conservation Law, sections 1-0101(3)(b), 1-0101(3)(d), 3-0301(1)(d), 3-0301(2)(m) and 9-0105(1). This regulation is being revised to comply with the 2009 Amendment to the Bog River Flow Complex Amendment/FSEIS to the 2002 Bog River Complex Unit Management Plan/EIS, relating to a permit restriction for and eventual prohibition of aircraft on Lows Lake. The notice of proposed rulemaking was filed with the Department of State for a December 2, 2009 publication date in the State Register for a 45 day public comment period.

6 NYCRR Sections 190.0(b)10 and new subdivision (f) of Section 190.3, Camping Sites, Environmental Conservation Law Sections 1-0101(3)(b), 3-0301(1)(b), 3-0301(1)(d), 3-0301(2)(m), 9-0105(1), 9-0105(3), Executive Law Section 816(3) and the Americans with Disabilities Act (ADA) (Public Law 101-336). This regulation is needed since it provides camping opportunities for people with disabilities. No amendments to this rule are planned for 2010 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

#### OFFICE OF HEARINGS AND MEDIATION SERVICES

6 NYCRR Part 616, Access to Records. Statutory authority: Environmental Conservation Law § 3-0301(2)(a); Public Officers Law § § 86, 87, 94. Part 616 establishes the Department's procedures implementing the Freedom of Information Law ("FOIL") (Public Officers Law article 6) and the Personal Privacy Protection Law (Public Officers Law article 6-A). Primary responsibility for implementing Part 616 was transferred to the Department's Office of General Counsel in 2008, and Part 616 was amended in 2009 to reflect the transfer.

Regulatory Coordinator for the Office of Hearings and Mediation Services is Helene Goldberger, Administrative Law Judge, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-1550. Telephone: 518-402-9003. E-mail: hggoldbe@gw.dec.state.ny.us

#### DIVISION OF SOLID AND HAZARDOUS MATERIALS

6 NYCRR Parts 372 and 373, Hazardous Waste Management Regulations, Project XL for Public Utilities. Statutory Authority: Article 3, Title 3; Article 27, Title 9 and Article 71, Title 27 of the Environmental Conservation Law (ECL). This rule provides flexible implementation of certain specific hazardous waste management regulations with respect to the management of certain hazardous wastes generated by public utilities in New York State. The exemption provided for in this rule expires on May 24, 2011. No further action is planned.

6 NYCRR Parts 370, 371, 372, 373, 374, 376, Hazardous Waste Management Regulations. Statutory Authority: Article 3, Title 3; Article 27, Titles 7 and 9; Article 70; and Article 71, Titles 27 and 35 of the Environmental Conservation Law (ECL). The amendments updated the regulations to incorporate nine federal rules between October 20, 1999 and January 22, 2002 to be consistent with, and at least as stringent as, federal regulations. In addition, typographical errors and inconsistencies discovered in the regulations were corrected.



Since this rulemaking, the hazardous waste regulations have continued to be amended to incorporate federal changes in specific areas. The next rulemaking action to adopt federal changes and State initiated changes into the State hazardous waste management regulations is included in this Regulatory Agenda notice.

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

## Department of Health

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

Amendment of Section 2.1(a) of Title 10 (Communicable Diseases-Addition of Laboratory Confirmed Influenza)

Statutory Authority:

Public Health Law (PHL) § § 225(4) and (5)(a), (g) and (h)

Description of the regulation:

This regulation added laboratory confirmed influenza to the NYS list of reportable communicable diseases. This initiative protected the public health by permitting closer monitoring of communicable diseases. This addition was the basis for the Department's enhanced monitoring of influenza and has been instrumental in the prompt identification and surveillance of unusual strains of influenza circulating in NYS such as the recent rapidly evolving novel A influenza H1N1 virus. Requiring laboratories to electronically submit confirmed influenza laboratory data via the NYSDOH electronic clinical laboratory reporting system (ECLRS) permitted adequate disease monitoring without unnecessarily burdening the disease reporting system. During the 2008-2009 influenza season there were 30,144 laboratory reports of confirmed influenza received via ECLRS which has more than doubled the number of cases previously reported. This data allowed the department to characterize the outbreak, watch for changes in transmission, monitor for antiviral resistance, determine geographic and temporal changes and mount an appropriate public health response. For these reasons, this regulation should be retained.

Revisions to Subparts 5-1, 5-2, Repeal existing Appendix 5-B and add a new Appendix 5-B, and addition of a new Appendix 5-D to Part 5 of Title 10 (Water Well Construction)

Statutory Authority:

PHL § § 201, 206(18), 225 and 1120

Description of the regulation:

Section 206 of Public Health Law was amended in 1999 to require the Department to promulgate standards for water wells, including drilling, construction, abandonment, repair, maintenance, water flow and pumps. Extensive outreach to water wells drillers, other interested parties and also to other states with long-standing water well programs was conducted to assure that all directives of the law were implemented. Appendix 5-B was promulgated, containing standards for all water supply wells, including both residential and public water supply wells. Appendix 5-D was promulgated to include supplementary and complimentary requirements for public water supply wells. Subparts 5-1 and 5-2 were revised to accommodate 5-B and 5-D as reference standards. These rules should be retained.

Amendment of Section 5-1.52 and 5-1.91 of Subpart 5-1 of Title 10 (Treatment, Monitoring and Reporting for Radionuclides)

Statutory Authority:

PHL § 225

Description of the regulation:

These referenced sections of Subpart 5-1 were amended to incorporate and reflect federal regulations promulgated by the U.S. Environmental Protection Agency. New maximum containment levels, monitoring frequencies, notification and compliance requirements for

various radionuclide contaminants were established, as were provisions for variances from specified treatment techniques. In order for the NYSDOH to maintain primacy for the Public Water Supervision Program and to insure continued public health protection, these regulations must continue to be implemented and enforced. Therefore, these rules must be retained.

Amendment of Sections 69-1.1, 69-1.2 and 69-1.3 of Subpart 69-1 of Title 10 (Newborn Screening Panel)

Statutory Authority:

PHL § 2500-a

Description of the regulation:

The regulation designates diseases or conditions which must be included in the state's newborn screening panel, and enumerates the responsibilities of the hospital CEO with regard to such screening, in accordance with the Department's mandate to prevent infant and child mortality, morbidity and diseases and disorders of childhood. The rule implemented the public health aims of early identification and timely medical intervention for all the State's youngest citizens. These rules should be retained.

Addition of new Subpart 69-9 to Title 10 (Standardized Autopsy Protocols for Unanticipated Infant Deaths)

Statutory Authority:

PHL § 4210, as amended by Chapter 58 of the Laws of 2002

Description of the regulation:

The regulation was established to:

- Ensure comprehensive postmortem examinations if infants who die suddenly and unexpectedly.
- Provide findings to correlate with the decedent's medical history.
- Provide findings to correlate with the death scene investigation.
- Develop documentation, that justifies the autopsy diagnoses.
- Establish accurate causes of death.
- Develop accurate vital statistics, information and records.
- Assist in prioritizing the allocation of health care resources.
- Fulfill criteria to make a diagnosis of Sudden Infant Death Syndrome (SIDS).
- Allow comparison of SIDS and sudden, unexpected death cases in different locales.

A review of Subpart 69-9, Standard Infant Autopsy Procedures, was conducted by the Division of Family Health. It was determined that the needs addressed by the regulation continue to exist. Therefore, it is recommended that the regulation be continued without modification.

Amendment of 86-1.89 of Part 86 of Title 10 (Supplemental Distributions of Regional Professional Education Pools)

Statutory Authority:

PHL § 2807-m(5)

Description of the regulation:

This rule established reform goals and specified the distribution methodology. This rule will be eliminated as part of the 2009/2010 Executive Budget implementation.

Addition of Subpart 86-8 of Part 86 of Title 10 (Rates of Payment for Limited Home Care Agencies)

Statutory Authority:

Laws of 1995, Chapter 81, section 105-d as amended by Laws of 1997, Chapter 433, section 69

Description of the regulation:

The rule establishes a rate of payment for limited home care services agencies to reduce Medicaid expenditures for certain personal care services furnished to eligible residents of an adult home or enriched housing program. It provides reimbursement directly to the limited home care services agency rather than an outside personal care provider or certified home health agency. The rule should continue without modification.

Amendment of Subpart 98-1 of Title 10 (Managed Care Organizations)

## Statutory Authority:

PHL Article 44

## Description of the regulation:

Article 44 was amended by Chapter 649 and 705 of the Laws of 1996, Chapter 433 of the Laws of 1997 and Chapter 659 of the Laws of 1997 in relation to Medicaid managed care, managed care consumer rights and managed long term care programs. The amendments changed the title and clarified the department's authority over specified forms of managed care organizations, including primary care partial capitation providers, HIV special needs plans and managed long term care plans. The regulations removed obsolete provisions and provided clearer guidance to the health care industry concerning certification and operational requirements for managed care organizations. This rule should be retained because the regulations are necessary for the operation of managed care programs in NYS.

Amendment of Sections 128-1.6 and 128-3.8 of Title 10 (New York City Watershed Rules and Regulations)

## Statutory Authority:

PHL § § 1100-1103

## Description of the regulation:

The Department adopted amendments to NYC's Watershed Rules and Regulations at New York City's request for the purpose of protecting the water quality of NYC reservoir sources. These amendments were also necessary for NYC to maintain the "filtration avoidance" issued by U.S. Environmental Protection Administration and NYS-DOH for the City's Catskill/Delaware sources. Due to recent federal and state regulatory changes and in order to implement new "filtration avoidance" mandates, these regulations should be retained, but amended. Proposed amendments are scheduled for publication in 2010.

Amendment of Section 131.1 of Title 10 (City of Syracuse-Watershed Rules and Regulations)

## Statutory Authority:

PHL § 1100

## Description of the regulation:

The Department adopted amendments to the City of Syracuse's Watershed Rules and Regulations at Syracuse's request for the purpose of protecting the water quality of Syracuse's Skaneateles Lake source. These amendments were also necessary for the City of Syracuse to maintain "filtration avoidance," previously issued by NYSDOH for this source. These regulations should be retained.

Addition of new Section 400.10 to Part 400; Addition of new subdivision (f) to 763.11, new subdivision (o) to 766.9 and new subdivision (n) to 793.1 of Title 10 (Health Provider Network (HPN) Access and Reporting Requirements)

## Statutory Authority:

PHL § § 2800, 2803, 3612 and 4010

## Description of the regulation:

This regulation required Article 28 facilities, home care facilities and hospices to establish and maintain health provider network (HPN) accounts with the Department of Health for the purpose of exchanging information with the Department in a rapid and efficient manner in times of emergency or urgent matters. The HPN is a secure web-based application that can be utilized by facilities to receive current and up-to-date information as well as submit data to specialized programs for reporting or surveillance purposes. In times of emergencies or urgent matters, such as disease outbreaks, it is imperative that facilities receive from and submit to the Department information in a rapid, efficient manner. The HPN, a free service, is the best means to ensure this exchange of information. These regulations should be retained.

Amendment of Section 400.18, Appendix C-4 & C-5 of 400.18 and Section 405.27 (Emergency Department Data Collection by SPARCS)

## Statutory Authority:

PHL § 2816

## Description of the regulation:

Section 400.18 regulates the operation of the Statewide Planning and Research Cooperative System (SPARCS). The Department

intends to repeal the current Section 400.18 and a new Section 400.18 will be promulgated. The reasons for the complete revision are to delete obsolete language and to update the regulation to reflect current practices. The new Section 400.18 will authorize SPARCS to collect all other outpatient data not currently being collected by SPARCS from general hospitals and diagnostic and treatment centers licensed under Article 28 of the Public Health Law. This rule must be retained until it is amended. Changes to Section 407.5 and Section 400.14 also will be submitted as companions to the new Section 400.18.

Amendment of Sections 405.21, 407.14, 708.2, 708.5, 711.4 and Addition of new Part 721 of Title 10 (Perinatal Regionalization)

## Statutory Authority:

PHL § § 2500, 2800, 2803(2) and 2803-j

## Description of the regulation:

These regulatory changes updated previous requirements for maternal and newborn care, and formalized perinatal regionalization and designation requirements. The new Part 721 was added to collect in one section all the regulations governing the perinatal regionalization system, which had been divided among several sections of the New York State Hospital Code. The regulatory changes also described the kinds of resources that should be available for different levels of hospitals, and deleted outdated appropriateness-review standards used in the 1985 designation of hospitals at different levels of high-risk neonatal care.

These regulations govern the perinatal regionalization system, in which Regional Perinatal Centers (RPCs) coordinate the perinatal delivery system within their region; provide critical care and transport of pregnant women and infants; provide specialty care, including pediatric open heart surgery; and oversight of quality improvement activities within affiliate hospitals. Perinatal regionalization plays a critical role in reducing maternal and newborn morbidity and mortality.

Section 405.21 for hospital-based perinatal services was amended to support perinatal regionalization efforts, and to clarify and simplify some other existing regulatory requirements.

Sections 407.14, 711.4(d)(21) and (e)(10) were amended to reflect the change in terminology in section 405.21 in which hospital-based "maternity and newborn" services began to be referred to as "perinatal" services.

Section 708.2(b)(6) and Section 708.5(f) were repealed since new Part 721 integrated the requirements for perinatal re-designation and regionalization in one section.

Part 721 defines the perinatal regionalization system including requirements for affiliation agreements between Levels I, II and III hospitals and regional perinatal centers (RPCs), staffing requirements and quality improvement activities. The regulations formalize the designation process, update the Department of Health expectations for resources to be available at each level of care, and clarify the relationship between Levels I, II, and III programs and RPCs.

These regulations are necessary and should continue without modification.

Amendment of Sections 703.6 and 710.1 of Title 10 (Part-Time Clinics)

## Statutory Authority:

PHL § 2803(2)

## Description of the regulation:

Since its issuance in 2005, the current regulation has proven adequate to help ensure that services provided in part-time clinics are appropriate to those settings, and that the number of these clinics is sufficient to promote access to needed care. The regulation has also guarded against the operation of an excess number of part-time clinics of the State, which occurred in some parts of the prior to the issuance of the current revised rule. The regulation should continue without modification.

Amendment of Sections 708.2, 708.5 and 709.16 of Title 10 (Review Criteria for Therapeutic Radiology)

## Statutory Authority:

PHL § 2803(2)

## Description of the regulation:

The regulation continues to reflect public need for therapeutic radiology devices as affected by prevailing medical practice in the use of these devices for curative and palliative care. The regulation should therefore continue without modification.

Amendment of Sections 709.16 and 709.17 of Title 10 (Need Methodology for Long-Term Ventilator Beds in Nursing Homes)

## Statutory Authority:

PHL § 2803(2)

## Description of the regulation:

Since its issuance in 2005, the current regulation has ensured that long-term ventilator beds are distributed throughout the State in a manner that both provided sufficient access to care and guarded against the costs associated with the operation and maintenance of beds in excess of those needed. The regulation should therefore continue without modification.

Amendment of Section 763.13, Section 766.11 and addition of new Section 400.32 to Title 10 and amendment of Section 505.14 of Title 18 (Criminal History Record Check)

## Statutory Authority:

PHL § § 201, 2803 and 3612 and Social Services Law (SSL) § 363-a

## Description of the regulation:

Section 400.23 related to the criminal history record check program and was repealed on 12/19/07. It was replaced by Section 402 which implemented the statutory criminal history record check programs defined in PHL Article 28-E. Sections 763.13, 766.11 of Title 10 and the amendment of Section 505.14 of Title 18 added a criminal background check requirement under Section 402. Although the CHRC program has been covered by emergency regulations since August 2006, permanent regulations became effective on December 2, 2009. No further regulatory or statutory action is required.

## Title 10 NYCRR - Ten Year Review

Amendment of Parts 2 and 23 of Title 10 (Communicable Diseases)

## Statutory Authority:

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

## Description of the regulation:

This regulation protected the public health by permitting closer monitoring of communicable diseases. Diseases and infections of substantial public health importance were added to the list of communicable diseases that must be reported to public health authorities and/or require specimen submission for laboratory testing. These changes facilitated the diagnosis and treatment of disease and implementation of preventive measures to stop the spread of disease. In addition, the regulation eliminated from both the reporting list and the list of diseases requiring specimen submission diseases that were no longer of significance. In addition to rabies, clarification of reporting, prevention and control measures and treatment procedures were also made for emerging infections such as West Nile virus, and Severe Acute Respiratory Syndrome (SARS). These regulations should be retained without modification.

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

## Statutory Authority:

PHL § § 225(4) and 225(5)

## Description of the regulation:

Prior to the amendments, the regulation stated that temporary residence/campground bathing facilities that were not required to provide lifeguards for their bathing facilities in 1991 or 1992 and may provide supervision through patron use rules and signage or a responsible person, depending on the level of supervision required at that time. The amendments allowed all temporary residence and campground operators, except those with ocean surf beaches, to select the level of supervision at swimming pools and bathing beaches operated as part of their temporary residence or campground, regardless of the supervision level provided in 1991 or 1992. As a result, regulation provided a uniform standard allowing the same opportunity for selec-

tion of bathing facility supervision at all regulated temporary residences and campgrounds in the state, eliminating the differential standards that existed in the State. Also, the amendments clarified the intent by adding parents or guardians to the adults allowed to accompany children less than 16 years of age to a bathing facility. The amendments should continue without change.

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

## Statutory Authority:

PHL § 225

## Description of the regulation:

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

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

## Statutory Authority:

PHL § § 225(4) and 225(5)(a)

## Description of the regulation:

This regulation deleted provisions to conform to Part 63 amendments requiring HIV and AIDS case reporting. The deletion continues to be necessary and should continue without modification.

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

## Statutory Authority:

PHL § § 576, 2164, 2500-a, 2522(6) and 4175; SSL § § 364(2) and 365-a

## Description of the regulation:

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

Amendment of Part 52 of Title 10 (Tissue Banks and Nontransplant Anatomic Banks)

## Statutory Authority:

Article 43-B of the PHL

## Description of the regulation:

This regulation details administrative and technical requirements pertaining to the collection, processing, storage, and distribution of tissue and nontransplant anatomic parts so as to protect the health of donors and recipients and advance the safety and utility of tissue and nontransplant anatomic parts for transplant, therapy, education, and research, as applicable. The regulations are consistent with scientific and technological advances, and must be retained.

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

## Statutory Authority:

PHL Article 31

## Description of the regulation:

Subpart 58-2 amendments provided technical standards for NYS-permitted blood banks that collect, process, store, distribute and/or transfuse blood and blood components, and laboratories that perform related testing. The Department's efforts to ensure the safety of the blood supply and prevent adverse reactions in donors and transfusion recipients must be maintained through continuation of Subpart 58-2.

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

## Statutory Authority:

PHL § § 2786 and 2139



## Description of the regulation:

This regulation described the protocols and procedures required for HIV/AIDS testing, reporting and confidentiality of HIV related information. Revisions to specific sections of Part 63 are being proposed currently. The regulation should be retained pending amendment.

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

## Statutory Authority:

PHL § § 2500-d(7) and 2807-1(l)(c)(iv)

## Description of the regulation:

This regulation described the methodology for distributing funds from the Health Care Initiatives Pool to regional poison control centers. The rule should continue without modification until the program legislation expires. No change required.

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

## Statutory Authority:

PHL § § 3308 and 3381

## Description of the regulation:

This regulation designates persons or classes of persons who may obtain and possess hypodermic needles and syringes without a prescription for use within the scope of their professions or activities, subject to additional conditions as specified. The regulation implements Public Health Law section 3381(l)(b), which authorizes the Commissioner to designate such persons, and eliminates unnecessary barriers in the provision of care to patients and animals. This rule should be retained.

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

## Statutory Authority:

PHL § § 2803(2), 2807(3) and 2808

## Description of the regulation:

This regulation modified the instructions for completing the PRI form to recognize certain medical treatments provided to persons newly admitted as nursing facility residents, and services provided by nurse practitioners and physician assistants. The rule needs to continue without modification.

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

## Statutory Authority:

PHL § 2803(2)

## Description of the regulation:

This regulation addressed the removal of certificate of need review of transfers of beds and equipment within established Article 28 hospital networks. This regulation should be continued without modification.

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

## Statutory Authority:

PHL § § 2803 and 4351

## Description of the regulation:

This regulation sets forth a hospital's responsibilities with regard to organ and tissue donation. It requires the hospital to establish appropriate protocols for contacting the proper organ procurement organizations (OPOs) when a patient is at or near death, and for selecting an OPO and eye and tissue banks, as well as a designated requester, with whom the hospital will work. It also provides additional procedural detail with regard to the hospital's obligations under current law with regard to the means by which the designated requester is selected, the means by which consent must be obtained for the donation, and determination of the patient's suitability for donation. Medicare Federal Conditions of Participation were considered when the regulation was developed, and the regulations reflect those conditions as well as the requirements of Article 43 of the Public Health Law. Accordingly, the regulations should be retained, although they should be further amended to reflect recent changes to Article 43 pursuant to Chapter 348 of the Laws of 2009.

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

## Statutory Authority:

PHL § § 280-1-a(10)(a), 2808(2) and 2803(2)(a)

## Description of the regulation:

This regulation simplified the certificate of need (CON) process related to the requirements for amendment of approved CON applications. This regulation should be continued without modification.

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

## Statutory Authority:

PHL § § 2808(2) and 2803(2)(a)

## Description of the regulation:

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

## Title 18 NYCRR - Five Year Review

Amendment of 360-4.10(a)(9) of Title 18 (Spousal Impoverishment Budgeting)

## Statutory Authority:

SSL § 366-c (2)(d)

## Description of the regulation:

This regulation clarified that the community spouse's pension/retirement funds are resources of the community spouse which are to be included for purposes of determining the community spouse resource allowance and determining the institutionalized spouse's Medicaid eligibility. These funds are considered otherwise available to the community spouse under spousal impoverishment budgeting rules. This regulation should continue without modification.

Amendment of Section 486.2 and 486.5 of Part 486 of Title 18 (Adult Care Facility Inspection Reports)

## Statutory Authority:

SSL § § 460 and 461

## Description of the regulation:

These amendments changed the requirement that an adult care facility inspection report include areas where the facility met or exceeded compliance with regulation and also steps for rectification of violations. The amendment provides that a report need only include a statement attesting that areas reviewed are deemed to be in compliance with applicable requirements if no violation is noted. The report may also include directions as may be appropriate as to the manner and time in which compliance with applicable requirements of law and regulation of the Department shall be effected. The regulations must be retained.

Addition of new subdivision (k) to Section 487.12, new subdivision (m) to Section 488.12 and new subdivision (k) to Section 490.12 of Title 18 (Health Provider Network (HPN) Access and Reporting Requirements - Adult Facilities)

## Statutory Authority:

SSL § § 460 and 461

## Description of the regulation:

This regulation required adult homes, enriched housing programs and residences for adults to establish and maintain health provider network (HPN) accounts with the Department of Health for the purpose of exchanging information with the Department in a rapid and efficient manner in times of emergency or urgent matters. The HPN is a secure web-based application that can be utilized by facilities to receive current and up-to-date information as well as submit data to specialized programs for reporting or surveillance purposes. In times of emergencies or urgent matters, such as disease outbreaks, it is imperative that facilities exchange information with the Department in a rapid, efficient manner. The HPN, a free service, is the best means to ensure this exchange of information. This regulation should be retained.

Amendment of Section 505.5 of Part 505 of Title 18 (Medicaid Enteral Nutrition Reimbursement Methodology)

Statutory Authority:

PHL § 230(1)(a)

Description of the regulation:

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

Title 18 NYCRR - Ten Year Review

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

Statutory Authority:

Chapter 436 of the Laws of 1997

Description of the regulation:

This regulatory amendment made finger imaging an eligibility requirement for adults who apply for Medicaid and who are subject to the photo identification requirements established by the Department of Health. Chapter 58 of the Laws of 2009 eliminated the finger imaging requirement for Medicaid applicants/recipients. This amendment needs to be repealed.

## 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 2005.

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 2009 Regulatory Agenda (published in the State Register of June 24, 2009) 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 New York 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

for determining 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.

Effective December 27, 2006, the Department adopted an amendment to Part 217 (INS-41-06-00006-A, State Register of December 26, 2006) to update the claim payment guidelines for determining when a health care insurance claim is considered complete and ready for payment.

Effective July 15, 2009, the Department adopted an amendment to Part 217 (with a coordinated amendment to Part 52) (INS-52-08-00006-A, State Register of April 1, 2009) 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-35-05-00002-A (State Register of December 7, 2005) First Amendment to Part 41 (Regulation 143) (Accelerated Payment of Death Benefits under a Life Insurance Policy) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 1113, 1304, 3201, 3209, 4217 and 4517.

Chapter 537 of the Laws of 2000 added sections 1113 (a)(1)(C) and (D) to the New York Insurance Law, allowing insurers to offer an insured the option of accelerating the death benefit under a life insurance policy when the insured is chronically ill and may need additional financial resources to assist with meeting long term needs and expenses. Access to the death benefit of a life insurance policy provides an alternate way for insureds to meet increasing long term care needs and related expenses. The legislation also required that the accelerated death benefit payments for chronic illness be federally tax-qualified. The standards set forth by this regulation provide consumers with proper disclosure about this benefit, and have helped to ensure the favorable federal tax treatment for the payment of the benefits.

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

INS-27-05-00005-A (State Register of September 7, 2005) 34th Amendment to 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, 3231, 3232, 4235, 4237 and Article 43 of the Insurance Law.

The federal Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) included a number of changes to the standardized Medicare supplement insurance plans. The Act charged the National Association of Insurance Commissioners-, specifically, the Senior Issues Task Force- with the task of updating the standards for Medicare supplement insurance. This updating of standards was accomplished through adoption of a revised Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act on September 8, 2004. This amendment conforms Regulation 62 to the requirements of the MMA.

The Department's Regulatory Agenda for June 2009 (June 24, 2009 State Register) sets forth 16 items pertaining to amendment of Regulation 62, including one to establish minimum standards for prescription drug coverage written by Article 43 corporations, HMOs; and commercial insurers.

The Department also invites public comment on the continuation or modification of the following rules, which were adopted in 2000.

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

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

New York Insurance Law section 4240 authorizes insurers to provide life insurance and annuity benefits that vary according to the investment experience of an insurer's separate account. This amendment to Regulation 47 allows insurers to utilize additional methods in

calculating variable annuity payments where the Superintendent has determined the methods to be fair, equitable, reasonable and not less favorable to participants or annuitants than the methods previously employed. The amendment is consistent with the legislative objective of permitting insurers to provide variable annuity income payments to consumers that equitably reflect the investment performance of the separate account.

In 2002, the Department adopted a further amendment to the regulation (INS-16-02-00002-A, State Register of June 26, 2002) to eliminate obsolete provisions. The Department currently intends to continue the rule without modification, while monitoring the regulation to ensure that its provisions remain consistent with statutory and regulatory requirements.

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

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

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

Chapter 456 of the Laws of 1999 added a new subsection to Insurance Law section 3403, which allows the Superintendent to suspend or waive the requirement that the insurer use the anti-arson application upon renewal of policies if substantially equivalent information can be obtained by the insurer by other means. The 2000 amendment to Regulation 96 establishes a procedure whereby an insurer may request such suspension or waiver.

In 2003, the Department adopted a further amendment to the regulation (INS-22-03-00011-A, State Register of August 27, 2003) to delete obsolete language and name references, update the language in warning statements to conform to statutory amendments regarding commission of a fraudulent insurance act, and conform the types of insureds and applicants for insurance who must receive the warning.

The Department's Regulatory Agenda for June 2009 (June 24, 2009 State Register) notes the Department's intent to amend 11 NYCRR 86.6 to establish a requirement that any amendment to a fraud prevention plan that the Frauds Bureau has previously approved must be submitted to the Frauds Bureau within thirty days of its implementation.

INS-13-00-00006-A (State Register of July 12, 2000) Amendment of Sections 70.8 and 70.21 (Regulation 101) (Medical Malpractice Insurance Rate Modifications, Provisional Rates, Required Policy Provisions And Availability Of Additional Coverages) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 1113(a)(13) and (14), 3426, 3436, 5504, 5907, 6302, 6303 and Article 23 of the Insurance Law; and Chapter 147 of the Laws of 1999 as amended by Part JJ of Chapter 407 of the Laws of 1999.

This amendment established physicians and surgeons medical malpractice insurance rates and appropriate surcharges for the policy year July 1, 1999 through June 30, 2000 and establishes rules to collect and allocate surcharges to recover deficits based on past experience. The Department reviews this regulation each year as part of the process of establishing premium rates for the succeeding year. The regulation was amended in 2001 (INS-15-01-00007-A, State Register of June 20, 2001) to establish basic medical malpractice rates and address related concerns.

Since 2001, the Superintendent has continued to establish physicians and surgeons medical malpractice insurance rates and appropriate surcharges pursuant to Section 40 of chapter 266 of the laws of 1986. The Superintendent's authority has been extended annually by the Legislature. Most recently, Chapter 216 of the Laws of 2009 mandated that the Superintendent shall not establish or approve any increase in physicians and surgeons medical malpractice insurance rates for the period commencing July 1, 2009 and ending December 31, 2010.

The Department currently intends to continue the rule without modification, as it provides historical background regarding physicians and surgeons medical malpractice insurance premiums and other statutory and regulatory requirements.

INS-19-00-00002-A (State Register of August 2, 2000) Amendment of Section 126.3 (Regulation 114) (Trust Agreements) of Title 11 NYCRR.

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

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

The Department's Regulatory Agenda for June 2009 (June 24, 2009 State Register) noted the Department's intent to amend the regulation to set forth standards for banks, trust companies and security broker/dealers qualified to act as custodians for insurance company assets.

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

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

Chapter 501 of the Laws of 1992 was enacted to increase access to affordable health insurance coverage through mandatory community rating and open enrollment. This regulation was first promulgated in 1993 to ensure that the objectives of the legislation were realized. This amendment prohibits premium discounts and per case charges - mechanisms that tended to result in coverage for smaller groups becoming more expensive and less accessible relative to larger groups. The amendment also prohibits insurers from establishing commission payment schedules that would make agents and brokers reluctant to spend time and resources selling and procuring coverage to smaller groups.

The Department's June 2009 Regulatory Agenda (June 24, 2009 State Register) noted the Department's intent to amend Regulation 145 (with related amendments to other regulations) to: clarify the requirements for prior approval of forms and rates, including the establishment of rules for determining the rating methodology to be used for rating point-of-service products sold to large groups; clarify the application and effect of rolling rates and annual level subscriber rates; set forth requirements regarding the payment of commissions, fees and other compensation to agents and brokers necessary to conform to the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated thereunder; and conform to changes in federal regulations relating to the modernization of Medicare supplement insurance.

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

Statutory authority: Insurance Law sections 201, 301, 1109, 3201, 3216, 3217, 3221, 3231, 3232, 3233, 4235, 4304, 4305, 4317, 4318, 4321, 4322, art. 45; and Chapter 501 of the Laws of 1992, and Chapter 504 of the Laws of 1995.

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

This amendment furthered the legislative objectives of Chapter 504, while also retaining and enhancing consumer protections, by assuring



that coverage is made available to all segments of the population at reasonable rates.

In 2008, the Department adopted an amendment to the regulation (INS-22-03-00011-A, State Register of June 25, 2008) to phase out the existing market stabilization pool. Payments, collections and data reports were not required in 2005, and the new pooling methodology established by the amendment was established in 2006 and became fully operational in 2008.

The Department's June 2009 Regulatory Agenda (June 24, 2009 State Register) noted the Department's intent to amend Regulation 146 (with related amendment to other regulations) to conform to changes in federal regulations relating to the modernization of Medicare supplement insurance.

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

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

Chapter 187 of the Laws of 1999 added a new section 3446 to the Insurance Law, which permits a group policy to be issued to a manufacturer, distributor, or installer of a product or system, or to a trustee on behalf of more than one manufacturer, distributor or installer. The regulation implements Insurance Law section 3446 by establishing requirements for issuance of certificates to group members, payment of premium, and cancellation and renewal.

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

## Department of Labor

Pursuant to subdivision 2 of section 207 of the State Administrative Procedure Act (SAPA), notice is hereby provided of the following rules adopted during calendar year 2004, which the Department of Labor is reviewing:

### 1. Amendment of section 1300.9 of Title 12 NYCRR

a. Description of Rule: Work Study, Internship, Externships, or Working Placements for Non-Graduate Students Receiving Public Assistance

b. Statutory Authority: Social Services Law, sections 335-b, 336 and 336-c as amended by L.2000, ch. 534; L. 2002, ch. 100; L.2004, ch. 83; Social Services Law, section 337 as amended by L. 1997, ch. 436; Labor Law, section 21 as amended by L. 1997, ch. 436.

c. Status of Rule: This rule was repealed, such repeal being filed February 28, 2006, and effective as of March 15, 2006.

### 2. Amendment 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, Section 652 and art. 2, section 21

c. Need for Rule: To conform the wage orders with statutory amendments.

### 3. Amendment of Part 82 of Title 12 NYCRR.

a. Description of Rule: License, Registration, Inspection and Filing Fees of the Division of Safety and Health.

b. Statutory Authority: Labor Law, sections 21,11, 23, 27, 200, 202, 202-c, 204, 458, 462, 867; and General Business Law, section 483.

c. Need for Rule: To increase several fee categories to ensure efficient administration, on-site inspections and issuance of certificates and licenses and more accurately cover the current processing and inspection costs and expenses.

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 20, 2010. 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](mailto:teresa.stoklosa@labor.state.ny.us), (518) 457-4380.

## Office of Mental Health

### I. Background:

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

In accordance with this statutory requirement, the New York State Office of Mental Health (OMH) hereby gives notice of the rules which were adopted by OMH during the calendar years 2005 and 2000. Note: Rulemakings which resulted in repeal of a Part, emergency and consensus rulemakings, and other rules which have expired are not subject to rule review.

The public is invited to review and comment on the continuation or modification of any or all of the listed rules. Comments should be submitted in writing, no later than March 8, 2010, to Sue Watson, Office of Counsel, Bureau of Policy, Regulation and Legislation, NYS Office of Mental Health, 44 Holland Avenue, Albany, New York 12229 or via e-mail at [swatson@omh.state.ny.us](mailto:swatson@omh.state.ny.us).

### II. Rule Review:

1. #OMH-12-05-00002-A Residential Treatment Facilities for Children and Youth. State Register Publication Date: March 23, 2005; Adopted: June 8, 2005.

Purpose: Amendment of Section 584.5(e) of Title 14 NYCRR to continue the temporary increase in the capacity of certain residential treatment facilities (RTF) to serve the needs of emotionally disturbed children and youth.

Analysis of Need: In 2000, the Office of Mental Health determined that an increase was needed in the existing RTF capacity serving children and youth with serious emotional disturbance who reside in New York City. At that time, the regulations in effect specified RTF bed capacity serving primarily New York City residents could be temporarily increased until September 30, 2004, by up to ten additional beds over the maximum of 56 per facility otherwise allowed by the regulation. Due to development delays in the implementation of residential alternatives, the expiration date was subsequently changed to September 30, 2007. Therefore, the amendment was required to permit the continued necessary increase in RFT capacity until September 30, 2007. The issue has been the subject of review over subsequent years and has resulted in several changes in the expiration date. The current amendment filed in 2007 extends the expiration date until September 30, 2010.

Legal Base: Sections 7.09(b), 31.04(a)(2) and 31.26(b) of the Mental Hygiene Law grant the Commissioner the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction, to set standards of quality and adequacy of facility, and to adopt regulations governing residential treatment facilities for children and youth, respectively.

2. #OMH-04-05-00004-A Pre-Admission Certification for Residential Treatment Facilities for Children and Youth. State Register Publication Date: January 26, 2005; Continued: July 13, 2005; Adopted: August 31, 2005.

Purpose: Amendment of Part 583 of Title 14 NYCRR to revise the pre-admission certification process.

Analysis of Need: Chapter 947 of the Laws of 1981 authorized the establishment of Residential Treatment Facilities (RTFs). The legislation established procedures for admission to RTFs, designated pre-admission certification committees (PACC) to carry out these procedures, and provided for advisory boards to the PACC. The purpose of the PACC is to ensure uniform access to RTFs for children and youth, regardless of the current placement or source of referral of an individual child. The purpose of the amendments to Part 583 was to improve the operation of the PACC by:

- Extending the period of time after which the PACC must reconfirm its determination of eligibility of a child awaiting admission to a RTF from 45 days to 60 days. It required that this reconfirmation include a request for an update of the child's status, including the child's clinical status, current placement and willingness and ability to be admitted if offered a placement. It further mandated that the PACC's deci-

sion be unanimous, be made in writing, and include the physician's signature.

- Amending eligibility requirements for children who are temporarily unavailable. If a child, who had been found eligible for RTF placement, became unavailable for such admission for a period of less than 30 days, then the child's eligibility is considered temporarily suspended. The child may then be restored to eligible status on the date such temporary suspension ends.

- Setting forth the circumstances under which the PACC must decertify a child, who had been previously certified as eligible for placement, from that eligibility status and related notice requirements regarding this decision.

Legal Base: Sections 7.09(b), 31.04(a)(2) and 31.26(b) of the Mental Hygiene Law grant the Commissioner the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction, to set standards of quality and adequacy of facilities, and to adopt regulations governing Residential Treatment Facilities for Children and Youth, respectively.

3. #OMH-09-05-00003-A Personalized Recovery-Oriented Services. State Register Publication Date: March 2, 2005; Continued: August 24, 2005; Adopted: December 21, 2005.

Purpose: To establish standards for personalized recovery-oriented services.

Analysis of Need: The rule established a new licensed program category for Personalized Recovery-Oriented Services (PROS) programs. The purpose of a PROS program is to assist individuals in their recovery from the disabling effects of mental illness through the coordinated delivery of a customized array of rehabilitation, treatment and support services. Such services are available both in traditional program settings and in off-site locations where individuals live, learn, work and socialize. Providers are expected to create a therapeutic environment which fosters awareness, hopefulness and motivation for recovery while supporting a harm reduction philosophy.

Legal Base: Subdivision (b) of Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Subdivision (a) of Section 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the rendition of services for persons with mental illness. Section 41.05 of the Mental Hygiene Law provides that a local governmental unit shall direct and administer a local comprehensive planning process for its geographic area in which all providers of service shall participate and cooperate through the development of integrated systems of care and treatment for people with mental illness. Subdivision (a) of Section 43.02 of the Mental Hygiene Law provides that payments under the Medical Assistance Program for services approved by the Office of Mental Health shall be at rates certified by the Commissioner and approved by the Director of the Division of Budget. Subdivision (b) of Section 43.02 of the Mental Hygiene Law gives the Commissioner authority to request from operators of facilities licensed by OMH such financial, statistical and program information as the Commissioner may determine to be necessary. Subdivision (c) of Section 43.02 of the Mental Hygiene Law gives the Commissioner the authority to adopt rules and regulations relating to methodologies used in establishment of schedules of rates for services. Sections 364(3) and 364a(1) of the Social Services Law give OMH the responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

4. #OMH-16-00-00001-A Operation of Outpatient Programs and Operation of Residential Programs for Adults. Adoption: September 6, 2000.

Purpose: To facilitate the implementation of the provisions of Kendra's Law.

Analysis of Need: Kendra's Law established a system for assisted outpatient treatment (AOT), under which courts are authorized to issue orders requiring persons who meet the criteria for AOT to participate in treatment. The purpose of the regulatory amendments was to

facilitate the implementation of Kendra's Law by requiring providers of service to give priority access to individuals enrolled in assisted outpatient treatment programs and requiring providers of service to notify an individual's case manager and director of the assisted outpatient treatment program of the discharge of an individual who is also enrolled in an assisted outpatient treatment program.

Legal Base: Section 7.09 of the Mental Hygiene Law grants the Commissioner the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Section 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the rendition of services for persons with mental illness. Chapter 408 of the Laws of 1999, commonly known as "Kendra's Law", established a system for assisted outpatient treatment.

## 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 2000 and 2005 which are subject to the cited SAPA section 207 five-year review of rules.

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

00-1. MRD-06-99-00016 (State Register of 2/10/99). Amendments to 14 NYCRR adding a Subpart 635-6: Allowability of capital costs and costs of transactions with related parties. This regulation sets forth standards for the allowability of capital costs, moveable equipment and personal property, and whether the costs are pursuant to transactions with related parties. The regulation also sets forth rules for the allowability of costs of transactions with related parties. The regulation is applicable to all facilities and services funded by OMRDD. It is current and continues to be necessary so that it must be maintained, without modification, to govern these topics within the context of the respective reimbursement methodologies.

00-2. MRD-46-99-00008 (State Register of 11/17/99). Amendment of 14 NYCRR by the addition of Subpart 635-5: Reimbursement of Medicaid service coordination. This regulation replaces two previously existing means of reimbursement for service coordination in the OMRDD service system with a single streamlined Medicaid Service Coordination reimbursement methodology. The subpart implements a monthly fee paid to the provider for each individual served. It standardizes payments, streamlines billing procedures and reduces billing paperwork. It remains current and needs to be maintained, without modification.

00-3. MRD-01-00-00007 (State Register of 1/05/00). Amendments to 14 NYCRR section 633.12: Objection to services process. These amendments clarify and supplement objection to services processes as applied to individuals receiving HCBS waiver services and require that individuals receive written notice of the provider's intent to reduce, suspend, or discontinue services, and of the mechanism for resolving an objection to the provider's proposed action. The amendments continue to be pertinent and must be maintained, without modification.

The statutory authority for this specific rule making is found in Mental Hygiene Law, sections 13.07, 13.09 and 16.00. Most notably, Section 16.00 of the Mental Hygiene Law enables the commissioner of OMRDD to regulate and assure the consistent high quality of services provided within the state to its citizens with developmental disabilities.

00-4. MRD-03-00-00004 (State Register of 1/19/00). Amendments to 14 NYCRR sections 635-10.5 (HCBS Waiver Services), 671.7 (HCBS Waiver Community Residential Habilitation Services), 680.12 (Specialty Hospitals), 681.11 (Intermediate Care Facilities for persons with developmental disabilities), and 690.7 (Day Treatment Services)

for persons with developmental disabilities). These amendments establish trend factors to be applied (beginning January 1, 2000) within the context of the various rate/fee setting methodologies. Although specific trend factors are calculated annually, they are cumulative. They need to be maintained, without modification, to define how OMRDD establishes current rates/fees of reimbursement for the affected facilities or services.

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

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

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

During calendar year 2005, OMRDD finalized eight rules. One of these rule makings was proposed and adopted as a consensus rule making identified by the Department of State as MRD-31-05-00008 (State Register of 8/3/05), to conform management of personal allowance funds to requirements of the Social Security Administration. As a consensus rule making, it is exempted from the review requirements by subdivision (5) of SAPA section 207. The remaining seven rule makings finalized during 2005 were identified and described as follows at the time the respective notices were published in the State Register:

05-1 MRD-43-04-00004 (State Register of 10/27/04). Responsibility for home health aide and personal care services in certain residential facilities and day programs. The amendments specify that home health aide and personal care services cannot be separately billed to Medicaid for persons residing in an IRA or community residence and for persons attending day treatment and day habilitation programs. Instead, it is the responsibility of the provider to purchase these services or provide them itself. This continues to be the policy in New York State and the regulations need to be maintained without modification.

05-2. MRD-03-05-00008 (State Register of 1/19/05) 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, 2005 to Dec. 31, 2005 and July 1, 2005 to June 30, 2006 and establish trend factors to be applied within the context of the referenced reimbursement methodologies, effective January 1, 2005. Although specific trend factors are calculated annually, they are cumulative. The other changes to the methodologies also remain current and they need to be maintained, without modification,

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

05-3. MRD-07-05-00024 (State Register of 2/16/05). Rate/Fee setting in voluntary agency operated IRA facilities and HCBS waiver services and for ICF/DD facilities. The amendments revise the reimbursement methodologies to establish a supplemental trend factor for calendar 2004 and 2004-2005 rate/fee periods. 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.

05-4. MRD-38-05-00010 (State Register of 9/21/05). Amendments to 14 NYCRR section 633.11. Expansion of the list of surrogate decision-makers who are authorized to make informed consent decisions, when professional medical treatment is recommended for a person who lives in an OMRDD operated or certified residence and the person does not have the capacity to make the decision for herself or himself. The amendments add actively involved siblings, actively involved family members and the Willowbrook Consumer Advisory Board to the existing list of surrogates authorized to make informed consent decisions. The list of authorized surrogate decision-makers is necessary and OMRDD intends to maintain the regulation without modification.

The statutory authority for this specific rule making is found in Mental Hygiene Law, sections 13.07, 13.09 and 16.00. Most notably, Section 16.00 of the Mental Hygiene Law enables the commissioner of OMRDD to regulate and assure the consistent high quality of services provided within the state to its mentally retarded and developmentally disabled citizens.

05-5. MRD-42-05-00014 (State Register of 10/19/05). Amendments to 14 NYCRR sections 635-10.5, 671.7, 679.6, 680.12, 681.14, and 690.7. The amendments revise the various rate/fee setting methodologies to include a health benefit funding initiative. The amendments implement a funding initiative that will enable agencies which operate facilities and provide services under the auspices of OMRDD to address the health care costs of their employees. OMRDD has been consistently building on this funding initiative so that the regulations remain an indispensable element of the reimbursement methodologies and OMRDD intends to maintain them without modification.

05-6. MRD-42-05-00015 (State Register of 10/19/05). Amendments to 14 NYCRR section 635-10.5, Fee setting for HCBS waiver day habilitation services provided under the auspices of OMRDD. The amendments implement an efficiency adjustment applicable to the reimbursement of HCBS waiver day habilitation services. The changes need to be maintained, without modification, to define how OMRDD establishes current rates/fees of reimbursement for HCBS waiver day habilitation services.

05-7. MRD-43-05-00017 (State Register of 10/26/05). Amendments to 14 NYCRR section 635-10.5, Fee setting for HCBS waiver day habilitation services. The reimbursement methodologies for HCBS waiver day habilitation and prevocational services are revised to create new definitions of billing units of service, establish statewide regulatory standards for the service duration associated with each billing unit, and enhance provider accountability; establish clear standards to document the provision of services; and simplify the price setting methodologies. The regulations adopted in 2005 continue to be necessary and should remain without further modification.

With the exception of the rule makings identified as item 00-3 and 05-4 above, 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 proposed disposition regarding these 2000 and 2005 rule makings beginning January 6, 2010.



Any written comments or inquiries for further information may be directed to the Regulatory Affairs Unit at the address below: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Counsel, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (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 2005 Required to Be Reviewed in Calendar Year 2010

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 2005 which must be reviewed in calendar year 2010. Public comment on the continuation or modification of these rules is invited. Comments may be directed to: The Department of Motor Vehicles, Counsel's Office, 6 ESP, Room 526, Albany, NY 12228.

MTV-08-05-00012 Part 79 Motor Vehicle Inspections.

Analysis of the need for the rule: This regulation was necessary to comply with the Federal Clean Air Act of 1990 and the accompanying regulations at 40 CFR Part 51.351 in order to avoid the loss of two billion dollars in federal highway funding. This regulation implements a statewide OBD II (on board diagnostics) emissions testing program for all 1996 and later light-duty vehicles. Since the OBD II testing is still mandated by federal law, this regulation remains necessary.

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

MTV-17-05-00008 Part 134 Conditional license eligibility.

Analysis of the need for the rule: This regulation provides that a person is ineligible for a conditional license if he or she has a prior administrative finding of a violation of section 1192-a of the Vehicle and Traffic Law, commonly known as the Zero Tolerance Law. This amendment was necessary to conform to Chapter 196 of the Laws of 1996 that established such law, which in part established conditional license eligibility for Zero Tolerance offenders. Since the pertinent statutory provisions remain in effect, this regulation is still valid.

Legal basis for rule: Vehicle and Traffic Law sections 215(a), 1196(4) and 1196(7)(a).

## Public Service Commission

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 2000 and 2005 without modification or as revised. Comments are welcome on proposed continuation of the rules. Any person wishing to comment should submit an original to Hon. Jaclyn A. Brillinger, Secretary to the New York State Public Service Commission, Three Empire State Plaza, Albany, New York 12223-1350 and electronically to secretary@dps.state.ny.us, 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 § § 602.1 - 602.10, 603.1 - 603.5, and 644.2 (Case No. 97-C-0139)

a. Description of rules:

The rules revised former standards relating to telephone service quality and customer service.

b. Statutory authority: PSL § § 4(1) 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 required to protect against deterioration in telephone service quality and customer service, to provide streamlined standards, and to reduce regulatory burdens that could hinder further development of competition.

The legal basis of the rules are PSL § § 4(1) and 94(2).

2. 16 NYCRR § § 10 and 259 (Case No. 04-G-0544) (modified 1982)

a. Description of rules:

The rules conform Liquefied Natural Gas (LNG) safety regulations to federal regulations.

b. Statutory authority: PSL § 66

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 are necessary to inform LNG facilities of minimum safety standards prescribed by federal rules, update reporting protocol, and incorporate by reference new codes and standards.

The legal basis of the rules is PSL § 66.

3. 16 NYCRR § § 890-899 (Case No. 01-V-0381)

a. Description of rules:

These rules were enacted to reflect changes in the regulatory environment since the adoption of prior rules in the 1970s. The rules, inter alia, retained prior customer service standards, changed the maximum franchise term, streamlined certain reporting requirements, revised technical standards, required Emergency Alert System activation, and incorporated Federal standards for franchise renewal, dispute mediation and rates.

b. Statutory authority: PSL § § 215, 216, 221, 222, and 224-a

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 are needed to streamline cable regulation, maintain consumer protections, and conform Commission rules to Federal law and to the Commission's regulatory practices for other utilities.

The legal basis of the rules are PSL § § 215, 216, 221, 222, and 224-a.

4. 16 NYCRR § § 10 and 255 (Case No. 04-G-1016)

a. Description of rules:

The rules bring gas safety regulations into accord with federal regulations and updates codes and standards that are incorporated by reference.

b. Statutory authority: PSL § § 66, 4(1), 5(1), 65(1), and 66(2)

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 are essential to prescribe minimum requirements for an integrity management program on gas transmission lines by designating elements of an effective integrity management program, and promulgate the training and knowledge criterion for pipeline supervisors.

The legal basis of the rules are PSL § § 66, 4(1), 5(1), 65(1), and 66(2).

5. 16 NYCRR § § 10 and 255 (Case No. 02-G-0133)

a. Description of rules:

The rules update regulations and associated standards incorporated by reference regarding drug and alcohol testing of employees at natural gas and liquid petroleum pipeline facilities.

b. Statutory authority: PSL § § 66, 4(1), 5(1), 65(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 are a necessary safety device to prevent accidents and injuries resulting from drug and alcohol misuse on natural gas and liquid petroleum pipelines by requiring random drug and alcohol tests, setting policy for employees that refuse testing or test positive, and expansion of the alcohol misuse program.

The legal basis of the rules are PSL § § 66, 4(1), 5(1), 65(1).

6. 16 NYCRR § § 10 and 255 (Case No. 04-G-1201)

a. Description of rules:

The rules update pipeline safety regulations and the associated codes and standards incorporated by reference.

- b. Statutory authority: PSL § 66
- 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 are a necessary update to the safety regulations for the transmission and distribution of gas relevant to pipe repair and corrosion control, valve maintenance records, and welding inspector qualifications.

The legal basis of the rules is PSL § 66.

- 7. 16 NYCRR § 5.8(e) and 6 (Case No. 05-M-0603)

- a. Description of rules:

The rules implement safeguards to limit access to information on critical infrastructure and confidential commercial information in the department's possession.

- b. Statutory authority: PSL § 4(1), 20(1), POL § 87(1)(b), and 94(2)

- 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 are necessary to limit the scope of discovery demands by restricting access to records pertaining to critical infrastructure, confidential commercial information, and trade secrets.

The legal basis of the rules are PSL § 4(1), 20(1), POL § 87(1)(b), and 94(2).

- 8. 16 NYCRR § 85-2 (Case No. 05-M-0679)

- a. Description of rules:

The rules update Department legal procedures and apply to all electric and fuel gas transmission lines over 10 miles long.

- b. Statutory authority: PSL § 4(1), and 20(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 are necessary updates relevant to proper filing of documents with the Department, the intervention of third parties in department proceedings, and notice to stakeholders.

The legal basis of the rules is PSL § 4(1), and 20(1).

## Office of Real Property Services

### Review of Existing Regulations

The following rule adoptions by the State Board of Real Property Services during 2005 will be reviewed during 2010 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 2010 prior to their submission to the State Board of Real Property Services for formal action.

Part 185-Notice of Public Condemnation Hearings -RPS-14-05-00003-A, effective July 6, 2005. Statutory basis-Real Property Tax Law [RPTL], section 202(1)(q).

Part 188-State Reimbursement of Expenses of Local Officials-RPS-14-05-00004-A, effective June 29, 2005. Statutory basis-RPTL, sections 202(1)(l), 318(4), 1530(3)(f) and L.2004, ch. 53.

In addition, the following rules, initially adopted in 2000, were reviewed during 2005 and were continued without modification by the State Board of Real Property Services on June 14, 2005.

Part 188-Minimum Qualification Standards, Training and Certification of Local Administration Personnel-Training Requirements for Local Assessment Personnel-RPS-09-00-00012, effective May 12, 2000. Statutory basis-Real Property Tax Law [RPTL], sections 202(1)(l), 310, 312 and 1530.

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

Part 190-Assessment Rolls-RPS-18-00-00008 effective August 30, 2000. Statutory Basis-RPTL, sections 202(1)(l), 500 and 501.

Part 191-Real Property Transfers-Residential Assessment Ratios-RPS-48-99-00003, effective March 1, 2000. Statutory basis-RPTL, sections 202(1)(l) and 738 (Sections 191-3.1(d) and 191-3.2 repealed-RPS-52-08-00007 effective April 15, 2009 (L.2008, ch. 78).

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

*To obtain information or submit written comments regarding this review, contact:* Gayle A. Everitt, Senior Attorney, New York State Office of Real Property Services, 16 Sheridan Avenue, Albany, 12210-2714, (518) 474-8821. Comments should be submitted by April 1, 2010

## Department of State

FIVE YEAR REVIEW OF RULES ADOPTED BY THE DEPARTMENT OF STATE IN CALENDAR YEAR 2005 REQUIRED TO BE REVIEWED IN CALENDAR YEAR 2010 AND FURTHER REVIEW OF RULES ADOPTED BY THE DEPARTMENT OF STATE IN CALENDAR YEAR 2000 REQUIRED TO BE REVIEWED IN CALENDAR YEAR 2010

As required by section 207 of the State Administrative Procedure Act (SAPA), the following is a list of rules which were adopted by the Department of State in calendar year 2005 which must be reviewed in calendar year 2010. The list does not include rules which were adopted as consensus rules [see SAPA section 207(5)], rules which have been repealed, or rules which were subsequently amended. Public comment on the continuation or modification of these rules is invited and will be accepted until February 20, 2010. Comments may be directed to: David Treacy, Office of General Counsel, New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 1120, Albany, New York 12231-0001.

### RULES ADOPTED IN 2005

- (1) DOS-34-04-00010 Administration and Enforcement of the Uniform Code

NOTE: effective January 1, 2007

Repealed Part 1203 and added new part 1203 to Title 19 NYCRR to revise the minimum standards applicable to a program for administration and enforcement of the Uniform Fire Prevention and Building Code.

Analysis of the need for the rule: Section 381 of the Executive Law directs the Secretary of State to promulgate rules and regulations prescribing minimum standards for administration and enforcement of the Uniform Fire Prevention and Building Code. This rule contains revised standards to reflect amendments to the Uniform Fire Prevention and Building Code.

This rule is in the process of being amended.

Legal basis for the rule: Executive Law, section 381

- (2) DOS-50-04-00006 Cease and Desist Zone for Real Estate Brokers and Salespersons

Amended section 175.17(c)(2) of Title 19 NYCRR to establish a cease and desist zone in Community Districts 9, 10, 11 and 12 of the Bronx.

Analysis of the need for the rule: Section 442-h(3)(a) of the Real Property Law authorizes the Secretary of State to establish a cease and desist zone upon determining that some homeowners in a defined area are subject to intense and repeated solicitation by real estate brokers and salespersons to list their homes for sale. Such determination was made within Community Districts 9, 10, 11 and 12 of the Bronx.

This rule is in the process of being analyzed to determine if it should be retained, amended or repealed.

Legal basis for the rule: Real Property Law, sections 442-h(3)(a) and (c)

- (3) DOS-50-04-00007 Cease and Desist Zone for Real Estate Brokers and Salespersons

Amended section 175.17(c)(2) of Title 19 NYCRR to establish a cease and desist zone in the Borough of Queens

Analysis of the need for the rule: Section 442-h(3)(a) of the Real Property Law authorizes the Secretary of State to establish a cease and desist zone upon determining that some homeowners in a defined area are subject to intense and repeated solicitation by real estate brokers and salespersons to list their homes for sale. Such determination was made within the Borough of Queens.

This rule is in the process of being analyzed to determine if it should be retained, amended or repealed.

Legal basis for the rule: Real Property Law, sections 442-h(3)(a) and (c)

(4) DOS-38-05-00003 Shared Municipal Services Incentive Awards

Added Part 814 to Title 19 NYCRR to satisfy requirements of section 54(10)(H) of the State Finance Law.

Analysis of the need for the rule: Section 54(10)(H) of the State Finance Law directed the Secretary of State to adopt rules and regulations to implement a competitive grant program established by the same section of law. The rule is still needed because some of these grants remain outstanding.

Legal basis for the rule: State Finance Law, section 54(10)(H)

#### RULES ADOPTED IN 2000

As further required by section 207 of SAPA, the following is a list of rules which were adopted by the Department of State in calendar year 2000 which must be re-reviewed in calendar year 2010. The list does not include rules which were adopted as consensus rules [see SAPA section 207(5)], rules which have been repealed, or rules which were subsequently amended. Public comment on the continuation or modification of these rules is invited and will be accepted until February 20, 2010. Comments may be directed to: David Treacy, Office of General Counsel, New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 1120, Albany, New York 12231-0001.

(1) DOS-09-99-00001 Cosmetology License

Added section 162.4 to Title 19 NYCRR to establish qualifying education requirements for a cosmetology license.

Analysis of the need for the rule: Article 27 of the General Business Law requires cosmetologists to meet certain minimum standards of training and competence in order to ensure the health, safety, and welfare of the public. This rule addressed this requirement by requiring new applicants to complete a 1000 hour curriculum in order to qualify for a cosmetology license. The rule was promulgated by the Secretary of State after consultation with the Appearance Enhancement Advisory Committee and the State Education Department.

Legal basis for the rule: General Business Law, section 404

(2) DOS-15-99-00005 Games of Chance

Repealed sections 132.1 and 132.2, and added sections 132.1, 132.2, 132.4, and 132.5 to Title 19 NYCRR to clarify and modernize the rules dealing with the use of games of chance to sell commodities.

Analysis of the need for the rule: General Business Law section 369-e requires that persons, firms, and corporations which use games of chance to sell commodities must make a filing with the Department of State if the total announced value of prizes offered is in excess of five thousand dollars. The legislative objective of this section was to decrease the likelihood of prizes not being awarded when games of chance are used to sell commodities. The rule is necessary to clarify when a filing must be made with the Department and to preserve the protections for prizewinners contained in General Business Law section 369-e.

Legal basis for the rule: General Business Law, section 369-e; Executive Law, section 91

(3) DOS-05-00-00000 Boxer-Promoter Contracts, Special Rules for Professional Boxing Championship Bouts, and the Standing Eight Count.

Amended Parts 205, 208, 212, 215, and 216 of Title 19 NYCRR concerning boxer-promoter contracts, special rules for professional boxing championship bouts, and the standing eight count

Analysis of the need for the rule: The rule reformed the process for

selection, licensing, and compensation of judges in professional boxing championship bouts; protects boxers by imposing additional requirements on boxer-promoter contracts; established new disclosure rules for organizations sanctioning professional boxing championships; and protects the health and safety of boxers.

Legal basis for the rule: Unconsolidated Laws, section 8901

(4) DOS-07-00-00001 Information Posting by Public Not-for-Profit Cemeteries

Repealed the existing section 201.7 and added a new section 201.7 to Title 19 NYCRR concerning information required to be posted by public not-for-profit cemeteries regulated by the State Cemetery Board.

Analysis of the need for the rule: The rule requires each public not-for-profit cemetery which does not have its main office on or adjacent to the cemetery premises to post a notice at the main entrance to the cemetery which states the name, title, and office telephone number of the superintendent or other person with primary responsibility for the operation of the cemetery. The rule is necessary to ensure that the public has a means of making those individuals responsible for the operation of these cemeteries (many of which are small and run by volunteers) aware of instances of vandalism and other issues affecting the operation of these cemeteries.

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

(5) DOS-12-00-00008 Cease and Desist Zones

Amended section 175.17(c)(2) of Title 19 NYCRR to establish a cease and desist zone in the community districts 9, 10, 11, and 12 of the Bronx.

Analysis of the need for the rule: Certain homeowners in the above mentioned Bronx communities requested relief from intense pressure and repeated solicitations from real estate brokers and salespersons to list their homes for sale. These homeowners had no practical means of stopping these unwanted and intrusive solicitations other than establishment of a cease-and-desist zone. This rule authorizes homeowners in the designated communities to file an "owner's statement" with the Department of State which indicates a desire not be solicited. These filings, which were published by the Department of State in cease-and-desist lists, provide those homeowners who did not wish to be solicited with an effective and practical means of notifying real estate brokers and salespersons that they do not wish to be contacted.

This rule is in the process of being analyzed to determine if it should be retained, amended or repealed.

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

(6) DOS-12-00-00011 Cease and Desist Zones

Amended section 175.17(c)(2) of Title 19 NYCRR to establish a cease and desist zone in the County of Queens

Analysis of the need for the rule: Certain homeowners in the County of Queens requested relief from intense pressure and repeated solicitations from real estate brokers and salespersons to list their homes for sale. These homeowners had no practical means of stopping these unwanted and intrusive solicitations other than establishment of a cease-and-desist zone. This rule authorizes homeowners in the designated communities to file an "owner's statement" with the Department of State which indicates a desire not be solicited. These filings, which were published by the Department of State in cease-and-desist lists, provide those homeowners who did not wish to be solicited with an effective and practical means of notifying real estate brokers and salespersons that they do not wish to be contacted.

This rule is in the process of being analyzed to determine if it should be retained, amended or repealed.

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

(7) DOS-20-00-00003 Definitions in Relation to Security and Fire Alarm Systems

Amended section 195.1 of Title 19 NYCRR to clarify the meaning of terms in relation to security and fire alarm systems and add a new definition

Analysis of the need for the rule: Article 6-D of the General Business Law concerns security and fire alarm systems. Article 6-D



contains several terms are vague and not precise. The rule is needed to clarify the definitions of these terms and thereby ensure proper understanding and compliance with the provisions of Article 6-D by regulated parties.

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

## 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 2010, the Department must review rules that were adopted during 2005 and 2000 to determine whether these rules should be retained as written or modified. Accordingly, the Department intends to review the following rules during 2010, 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 22, 2010.

1. 20 NYCRR Sections 75.1(f) (Agent's cigarette tax returns) and 75.5(a)(1) (Records to be kept by agents and others). Filed November 12, 1999; published December 1, 1999; effective November 12, 1999 (emergency adoption). Filed January 20, 2000; published/effective February 9, 2000 (permanent adoption). Need: This rule implemented requirements imposed upon the Department of Taxation and Finance by provisions of the Tobacco Escrow Funds Act (Public Health Law, Article 13-G), which are necessary for New York State to meet certain obligations pursuant to the "Master Settlement Agreement" (entered into on November 23, 1998, by leading United States tobacco product manufacturers and forty-six states, including New York), to ensure that New York receives its apportioned amount of certain payments made pursuant to the Agreement by the tobacco product manufacturers participating in the Agreement. The Act required the Department to promulgate regulations necessary to ascertain the amounts of State excise taxes paid on the cigarettes sold within the State of tobacco product manufacturers each year. This rule was previously reviewed as part of the Department's 2005 Rule Review published in the State Register on January 5, 2005. As a result of that review of the 2000 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on August 3, 2005. Legal Basis: Tax Law sections 171, subd. First; 475 (not subdivided); Public Health Law, section 1399-oo, subd. (10); and L. 1999, ch. 536.

(TAF-48-99-00001-A)

2. 20 NYCRR Section 201.1 (Income verification). Filed January 20, 2000; published/effective February 9, 2000. Need: This rule provided authorization for the Department to provide the Division of Housing and Community Renewal with information as to whether the income of tenants residing in housing accommodations subject to rent regulation exceeded a statutory threshold for each of the immediately preceding two calendar years, rather than the previously authorized cumulative information for both such years. The rule also reflected the statutory reduction in the income threshold from \$250,000 to \$175,000. This rule was previously reviewed as part of the Department's 2005 Rule Review published in the State Register on January 5, 2005. As a result of that review of the 2000 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on February 8, 2006. Legal Basis: Tax Law sections 171 subd. First and 171-b(3)(a); Chapter 116, Laws of 1997.

(TAF-48-99-00022-A)

3. 20 NYCRR Parts 70, 74, 79, 80 and 82 (New York Health Care Reform Act of 2000). Filed February 29, 2000; published March 15, 2000; effective February 29, 2000 (emergency adoption). Filed May 3, 2000; published/effective May 24, 2000 (permanent adoption). Need: This rule was amended to reflect the statutory increase in the rate of New York State cigarette excise tax that was effective on March 1, 2000; to provide for commissions allowable to cigarette tax agents based upon the face value of cigarette tax stamps as of March 1, 2000; to effectuate the floor tax on cigarettes and unaffixed stamps in inventory as of the close of business on February 29, 2000; to reflect statu-

tory changes to an agent's presumed cost of doing business; to reflect such changes in the various regulatory illustrations outlining the minimum prices at which cigarettes may be sold; and to more realistically reflect the basic cost of cigarettes in the cigarette marketing standards illustrations. (It is noted that portions of the subject rules were subsequently amended based on Chapters 1 and 93 of the Laws of 2002, affecting both the New York State [TAF-13-02-00010-A] and the New York City [TAF-37-02-00005-A] rates of tax, and Chapter 57 of the Laws of 2008, Part RR-1, affecting the New York State rate of tax [TAF-24-08-00006-A] respectively.) This rule was previously reviewed as part of the Department's 2005 Rule Review published in the State Register on January 5, 2005. As a result of that review of the 2000 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on July 6, 2005. Legal Basis: Tax Law sections 171, subd. First; 475 (not subdivided); and L. 1999, ch. 1.

(TAF-11-00-00007-A)

4. 20 NYCRR Section 541.7 (Trash and debris removal). Filed June 12, 2000; published June 28, 2000; effective September 1, 2000. Need: This rule was amended to authorize a contractor to purchase a trash and debris removal service exempt from sales tax as a purchase for resale when the service is an integral part of maintaining, servicing, or repairing real property by the contractor and includes conditions under which the service qualifies for the exemption. The rule also clarifies that neither the contractor nor the customer is liable for tax when such a service is purchased by the contractor in conjunction with the construction, demolition, or rehabilitation of real property in the performance of a capital improvement. This rule was previously reviewed as part of the Department's 2005 Rule Review published in the State Register on January 5, 2005. As a result of that review of the 2000 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on July 6, 2005. Legal Basis: Tax Law sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided).

(TAF-16-00-00002-A)

5. 20 NYCRR Section 4-4.2 (Allocation – Dock Sales). Filed July 12, 2000; published/effective August 2, 2000. Need: This rule sets forth a destination rule for the allocation of receipts for purposes of determining the business allocation percentage under the business corporation franchise tax where a customer picks up goods from a taxpayer's place of business (dock sales). This rule was previously reviewed as part of the Department's 2005 Rule Review published in the State Register on January 5, 2005. As a result of that review of the 2000 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on June 29, 2005. Legal Basis: Tax Law, sections 171, subd. First; 210(3)(a)(2); and 1096(a).

(TAF-21-00-00001-A)

6. 20 NYCRR Section 60.1 (Returns and payments of tax on alcoholic beverages). Filed September 20, 2000; published October 11, 2000; effective for calendar years that began on and after January 1, 2001. Need: This rule allowed certain distributors that are micro-brewers or restaurant-brewers to file annual, rather than monthly, alcoholic beverage tax returns. This rule was previously reviewed as part of the Department's 2005 Rule Review published in the State Register on January 5, 2005. As a result of that review of the 2000 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on September 7, 2005. Legal Basis: Tax Law sections 171, subd. First; 429(1); and 436 (not subdivided).

(TAF-31-00-00002-A)

7. 20 NYCRR Section 158.12 (Paid preparer ID number). Filed October 25, 2000; published/effective November 15, 2000. Need: This rule reflected the Federal option extended to individual paid preparers to use federally assigned preparer tax identification numbers instead of social security numbers when an individual identifying number of a paid preparer is required on income tax returns that they prepare. The rule provided that paid preparers may use their Federal identification number, rather than their social security number, when preparing New York State returns. This rule was previously reviewed as part of the

Department's 2005 Rule Review published in the State Register on January 5, 2005. As a result of that review of the 2000 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on February 8, 2006. Legal Basis: Tax Law sections 171, subd. First, 658(g)(1) and (2) and 697(a). (TAF-36-00-00003-A)

8. 20 NYCRR Sections 534.4(a) and (b) and 534.10 (Refunds and credits for vessel operators engaged in local transit service). Filed November 29, 2004; published December 15, 2004; effective November 29, 2004 (emergency adoption). Filed February 7, 2005; published/effective February 23, 2005 (permanent adoption). Need: This rule made permanent the emergency measure that implemented Part M of Chapter 60 of the Laws of 2004, which provides that certain refunds and credits of sales and compensating use taxes are allowed for vessel operators engaged in local transit service. Part M required the Commissioner of Taxation and Finance to define the implementing terms "local transit service," "vessel hours," and "total hours operated" by rule. Legal Basis: Tax Law sections 171, subd. First; 1119(b); 1142(1) and (8); 1250 (not subdivided); and L. 2004, ch.60, Part M. (TAF-50-04-00004-A)

9. 20 NYCRR Sections 153.6 and 158.12 (Requirements applicable to tax return preparers). Filed May 24, 2005; published/effective June 8, 2005. Need: This rule removed the manual signature requirement for tax return preparers from the personal income tax regulations. Legal Basis: Tax Law sections 171, subd. First, 658(g), and 697(a). (TAF-14-05-00002-A)

10. 20 NYCRR Part 5000 (Compromises under Subdivision Eighteenth-A of Section 171 of the Tax Law) and Part 5005 (Compromises under Subdivision Fifteenth of Section 171 of the Tax Law). Filed September 16, 2005; published/effective October 5, 2005. Need: This rule was amended to reflect existing Department policy and legislative amendments and to make technical corrections concerning offers in compromise. Legal Basis: Tax Law, sections 171, subdivisions First, Fifteenth, and Eighteenth-A. (TAF-30-05-00004-A)

11. 20 NYCRR Sections 171.4(b)(1) (Supplemental wages), 251.1(b) (Supplemental wages, City of Yonkers), and 291.1(b) (Supplemental wages, City of New York); Appendixes 10, 10-A, and 10-C. Filed November 22, 2005; published/effective December 7, 2005. Need: This rule repealed Appendixes 10, 10-A, and 10-C to provide new New York State, City of Yonkers, and City of New York withholding tables and other methods applicable to wages and other compensation paid on or after January 1, 2006. The amendments reflected the return to tax tables used in 2002 for New York State and the City of New York based on the lapse of revisions of the tax tables and tax table benefit recapture provided in Chapters 62 and 63 of the Laws of 2003, and the postponement of the expiration of City of New York provisions by Chapter 636 of the Laws of 2005. The new tables and other methods for the City of Yonkers also reflected amendments to City of Yonkers local laws increasing the amount of its income tax surcharge and its rate of earnings tax on nonresidents. The rule also reflected the decreases in the New York State and City of New York supplemental withholding rates applied to supplemental payments and the increase in such rate for the City of Yonkers. Legal Basis: Tax Law sections 171, subd. First, 671(a)(1), 697(a), 1309, 1312(a), 1329(a), 1332(a); and Model Local Law, section 7, found in section 1340(c); Codes and Ordinances of the City of Yonkers, sections 15-105; 15-108(a); 15-121; and 15-130; Administrative Code of the City of New York, sections 11-1771(a); 11-1909; and 11-1943. (TAF-40-05-00024-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 the State Administrative Procedure Act (SAPA) § 207, 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 7, 2009, OTDA published in the New York State Register a list of regulations from Title 18 of the New York Codes, Rules and Regulations (NYCRR) that OTDA adopted in 2004 and 1999. Those regulations are set forth below:

### 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, in part, to implement provisions of section 38 of Part B of Chapter 436 of the Laws of 1997. 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, called Emergency Assistance to Needy Families with Children (EAF), 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 concerning the kinds of care that EAF can pay for, eliminating the maximum time period for EAF eligibility, and setting forth other EAF eligibility requirements.

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 the 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.

As of March 1, 2009, OTDA had not received substantive comments regarding its Rule Review published in the New York State Register on January 7, 2009.

OTDA is proposing an amendment that would revise the regulatory amendments made to 18 NYCRR § 352.2 (b), 352.3 (l), 352.30 (a) and (f), and 352.31 (a) (2) in 2004. OTDA is in the process of updating regulations regarding the treatment of public assistance budgets when the family unit includes a member who is a recipient of Supplemental Security Income. A Notice of Proposed Rule Making was published in the New York State Register on April 15, 2009.

OTDA is considering a number of amendments that may impact the regulatory changes that were adopted in 2004 and 1999. OTDA is considering the following regulatory amendments: update provisions regarding persons who are permanently residing in the United States under the color of law; promulgate regulations for establishing and enforcing medical support obligations; remove quarterly reporting as a district optional requirement for public assistance programs, which could necessitate amendments to 18 NYCRR Part 366 concerning the child assistance program; and provide consistency between the Family Assistance program and the Safety Net Assistance program concerning the treatment of bona fide loans, income and resources. At this point, OTDA has determined that no additional modifications need to be made to its regulations adopted in 2004 and 1999.

OTDA has determined that in the ensuing calendar year, it should review its regulations from Title 18 NYCRR adopted in 2005 and 2000. These regulations from 2005 and 2000, listed below, are subject to the provisions of SAPA § 207. 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, 2010.

#### Rules Adopted in 2005

1) TDA-06-04-00006 Operational Plans for Room and Board Facilities

Amended 18 NYCRR § 352.8 (b) (1) and 900.1 (a), added 18 NYCRR § 352.8 (b) (2), and renumbered paragraphs of 18 NYCRR § 352.8 (b) to require an operational plan to be submitted under certain circumstances for facilities that provide room and/or board.

Analysis of the need for the rule: These amendments were devel-



oped to improve the quality and availability of temporary housing by making Part 900 standards and reimbursement available to scattered site housing and small facilities when they were operated by one organization and total occupancy exceeded 19 families.

Legal basis for the rule: SSL § § 20 (3) (d), 34 (3) (f) and 131 (1); L. 1953, ch. 562

#### 2) TDA-17-04-00001 Temporary Absences

Amended 18 NYCRR § 349.4 (a) and repealed 18 NYCRR § 352.3 (c) to allow all public assistance recipients who are temporarily absent from their homes to be treated the same.

Analysis of the need for the rule: These amendments were developed to make it easier for social services districts to determine which public assistance recipients, who were temporarily absent from the district of residence, continue to be eligible for assistance.

Legal basis for the rule: SSL § § 20 (3) (d), 34 (3) (f), 131-a (1), 158, 349 and 355 (3).

#### 3) TDA-46-04-00006 Income Standards for Eligibility for Emergency Assistance for Needy Families with Children

Amended 18 NYCRR § 372.2 (a) to establish an objective income standard that would be used by social services districts when determining eligibility for emergency assistance for needy families with children.

Analysis of the need for the rule: This rule was developed to make State regulations consistent with the terms of the State Plan submitted to the Department of Health and Human Services for the Temporary Assistance for Needy Families Program.

Legal basis for the rule: SSL § § 20 (3) (d), 34 (3) (f), 131 (1), 350-j and 355 (3).

#### 4) TDA-02-05-00001 Families in Transition Act

Added 18 NYCRR § 351.20 (c) to implement Chapter 477 of the Laws of 2000 to permit the continuation of public assistance eligibility for a child whose adult relative caretaker has died until arrangements are completed for the addition of the child to another public assistance household, reclassification of the case, foster care or other appropriate financial support for the child.

Analysis of the need for the rule: This rule was developed to ensure that a lapse in assistance did not occur when the adult relative caretaker of a child in receipt of public assistance died. A lapse in financial support can be highly injurious to a child undergoing the difficult transition to a new family or, eventually, to foster care. The amendments ensured that orphaned public assistance recipients would receive the correct amount of assistance and that these children will not be left without financial support.

Legal basis for the rule: SSL § § 20 (3) (d), 34 (3) (f), 131 (1), 131-a (13) and 355 (3); L. 2000, ch. 477

#### 5) TDA-21-05-00002 Section 8 Housing Vouchers

Amended 18 NYCRR § § 350.3 (d) (2) (i), 352.5 (b), (f) (2) and (5) (i) and added 18 NYCRR § 352.3 (d) (2) (ii) to establish a reasonable shelter schedule for persons and families receiving temporary assistance and rent subsidies under the Section 8 Voucher Program.

Analysis of the need for the rule: This rule was developed to provide a measure of uniformity and insure that participants in the Section 8 voucher program would not receive a lower subsidy than other families based only on the fact that they also received public assistance.

Legal basis for the rule: SSL § § 20 (3) (d), 34 (3) (f), 131 (1) and 355 (3)

#### 6) TDA-40-05-00021 Child Support Standards Chart

Amended 18 NYCRR § 347.10 (a) (9), (b) and (c) to update the child support calculations formula as reflected in the child support standards chart.

Analysis of the need for the rule: The amendments were developed to update the self-support reserve, the poverty level and the child support standards chart in order to correctly reflect child support obligation amounts.

Legal basis for the rule: SSL § § 20 (3) (d), 34 (3) (f), 111-a and 111-i (2)

Rules adopted in 2000

#### 7) TDA-39-99-00002 Fair Hearings for Employment Related Cases

Amended 18 NYCRR § § 358-2.9, 358-2.15, 358-3.1, 358-3.3, 358-3.5, 358-3.6, 358-4.1, 358-4.2, 358-5.9, 358-6.1, and 358-6.3 to conform State regulations concerning fair hearings for employment related cases to regulations of the New York State Department of Labor.

Analysis of the need for the rule: At the time, this rule was developed to reflect the transfer of the administration of employment programs from the New York State Department of Social Services to the New York State Department of Labor.

Legal basis for the rule: SSL § § 20 (3) (d), 22, 34 (3) (f) and 337

It is noted that responsibility for the administration of employment programs has since been transferred from the New York State Department of Labor to OTDA, and Title 18 NYCRR reflects this subsequent transfer.

#### 8) TDA-39-99-00003 Home Energy Assistance Program

Amended 18 NYCRR § § 393.4 (c), 393.4 (d) (1) (ix) and 393.5 (a) and (c) to require applicants for emergency Home Energy Assistance Program (HEAP) benefits to use available liquid resources to meet an energy emergency and to remove a detailed list of criteria for the HEAP payment matrix.

Analysis of the need for the rule: The amendments were developed to reflect the existing HEAP program requirements and to help reduce the State's HEAP administrative costs, thereby increasing the amount of the HEAP grant that could be used to provide energy assistance to needy individuals.

Legal basis for the rule: SSL § § 20 (3) (d), 34 (3) (f) and 97.

#### 9) TDA-03-00-00005 Public Assistance

Amended 18 NYCRR § 352.31 (a) and (d) to give guidance to social services districts with respect to counting the number of months a person had been in receipt of public assistance in circumstances where a person received public assistance during a time period that he or she was ineligible for the assistance and the monies were subsequently recovered.

Analysis of the need for the rule: The amendments were developed to clarify State policy and ensure that the time limits for determining public assistance eligibility were applied correctly and consistently.

Legal basis for the rule: SSL § § 20 (3) (d) and 34 (3) (f)

#### 10) TDA-09-00-00005 Front End Detection System

Amended 18 NYCRR § 348.7 (c) (1) (i) (a) to clarify when an applicant for public assistance must be referred to a front end detection system unit.

Analysis of the need for the rule: This rule was developed to provide for a more thorough review of the applicant's financial situation. This amendment sought to address the question of why a person was applying for public assistance when the person's financial obligations were current and there appeared to be no changes in the person's circumstances.

Legal basis for the rule: SSL § § 20 (3) (d), 34 (3) (f) and 134 (b)

#### 11) TDA-09-00-00006 State Charges

Repealed 18 NYCRR Part 310 and amended 18 NYCRR § § 313.1, 313.2, 603.1 and 620.3 to eliminate the concept of State charges except in certain circumstances.

Analysis of the need for the rule: This rule was developed to make the regulations consistent with the requirements of the SSL, as amended by Chapter 81 of the Laws of 1995. That Chapter was implemented in State Fiscal Year (SFY) 1995/96 and repealed the category of "State charge" in most situations.

Legal basis for the rule: SSL § § 20 (3) (d) and 34 (3) (f); L. 1995, ch. 81, § § 155-159 and 195-199

#### 12) TDA-22-00-00001 Automobile Exemption

Amended 18 NYCRR § 352.23 (b) (2) to implement Chapter 389 of the Laws of 1999 concerning the value of an automobile that can be exempted and disregarded when determining eligibility for public assistance.

Analysis of the need for the rule: This rule was developed to reflect the provisions of Chapter 389 of the Laws of 1999 which amended

SSL § 131-n to provide that if an automobile is needed to enable a public assistance recipient to seek or retain employment or to travel to or from work activities, its exempted value can be up to twice the value of an automobile that can be exempted from consideration in determining eligibility for food stamp benefits or a higher amount as determined by the social services district.

Legal basis for the rule: SSL § § 20 (3) (d), 34 (3) (f) and 131-n (1); L. 1999, ch. 389

13) TDA-22-00-00002 Home Energy Assistance Program (HEAP)

Added 18 NYCRR § 393.4 (c) (4) and amended 18 NYCRR § 393.4 (d) (1) (i) to conform State regulations to federal requirements concerning which households were eligible for HEAP benefits.

Analysis of the need for the rule: These amendments were developed to conform State regulations to federal requirements governing which households were eligible for regular HEAP benefits. The federal requirements provided that, in order to be eligible for HEAP, an applicant must be a United States citizen, a national or a qualified alien.

Legal basis for the rule: SSL § § 20 (3) (d), 34 (3) (f) and 97

14) TDA-28-00-00001 Emergency Shelter Allowances

Repealed 18 NYCRR § 397.11 to eliminate an unnecessary section of Title 18 NYCRR concerning emergency shelter allowances.

Analysis of the need for the rule: The purpose of the repeal of 18 NYCRR § 397.11 was to eliminate provisions that were also contained in 18 NYCRR § 352.3 (k).

Legal basis for the rule: SSL § § 20 (3) (d) and 34 (3) (f); L. 1988, ch. 53 and subsequent budget bills

*Any comments should be submitted to:* Jeanine Stander Behuniak, Office of Temporary and Disability Assistance, 40 North Pearl Street, 16th Floor, Albany, New York 12243, (518) 474-9779, e-mail: Jeanine.Behuniak@OTDA.state.ny.us

