

RULE REVIEW

Adirondack Park Agency

As required by section 207 of the State Administrative Procedure Act (SAPA), the following is a list of rules which were adopted by the Adirondack Park Agency in calendar year 2000 which must be reviewed in calendar year 2011. Public comment on the continuation or modification of these rules is invited and will be accepted until February 21, 2011. Comments may be directed to: Paul Van Cott, Associate Attorney, Legal Division, Adirondack Park Agency, P.O. Box 99, NYS Route 86, Ray Brook, New York 12977.

RULES ADOPTED IN 2000 AND EFFECTIVE ON JANUARY 3, 2001

Legal basis for these rules: Adirondack Park Agency Act, Executive Law, article 27; Wild, Scenic and Recreational Rivers System Act (ECL section 15-2709); Freshwater Wetlands Act (ECL section 24-0801)

(1) Amended 9 NYCRR section 572.1 to authorize agreements with other state agencies to enhance the exchange of information and to establish coordinated pre-application, application and review procedures.

Analysis of the need for the rule: This rule was intended to contribute to the more efficient use of resources by the applicant and involved state agencies, and to help provide for more unified, efficient and timely joint review and processing of applications.

(2) Amended 9 NYCRR section 572.3 to provide a more defined process for providing conceptual review of large-scale projects.

Analysis of the need for the rule: To allow the Agency to provide preliminary review, comment and guidance on large-scale projects before significant expenditures of time and money are made by the project applicant.

(3) Amended 9 NYCRR section 572.4 to require submission of a survey or deed plot and a site plan map for subdivisions.

Analysis of the need for the rule: This rule was intended to contribute to more timely and accurate permit review; reduced need for additional information requests; improved enforcement; improved public records and understanding of an approved project.

(4) Amended 9 NYCRR section 572.20 to eliminate the requirement that projects must be in existence within two years of recording of the permit unless the permit is renewed, allowing for use of the longer period of four years now used in Agency permits.

Analysis of the need for a rule: This rule enables the project sponsor a longer period of time in which to undertake a project without having to expend time and resources to obtain a permit renewal and to pay the additional recordation costs involved.

(5) Added 9 NYCRR subsection 571.1(d) to codify practice for determining when a project is "in existence".

Analysis of the need for the rule: Intended to eliminate confusion by providing specific criteria for determining when a project is considered by the Agency to be "in existence".

(6) Amends 9 NYCRR section 572.22 to reduce the vote requirement from eight to six for determination of whether reconsideration

should be granted, while retaining the eight-vote threshold for action on the request for reconsideration.

Analysis of the need for the rule: Intended to lower the threshold for a project sponsor or variance applicant to obtain reconsideration of a prior Agency action.

(7) Added 9 NYCRR section 572.23 to establish a generic process to authorize a general permit for jurisdictional activities which otherwise require an individual Agency permit.

Analysis of the need for the rule: Reduce unnecessary expense and delay to the public from the need to obtain an individual Agency permit.

(8) Amended 9 NYCRR subsection 573.4(c) to count otherwise adjoining parts of a single parcel which are separated by roads and right-of-ways owned in fee as individual lots.

Analysis of the need for the rule: This rule codified existing Agency practice.

(9) Amended 9 NYCRR subsection 573.4(g) to clarify Agency requirements and jurisdiction over gifts of land.

Analysis of the need for the rule: This rule codified existing Agency practice.

(10) Amended 9 NYCRR subsection 573.4(h) concerning the criteria and standards applicable to a determination of "preexisting subdivision" under the APA Act.

Analysis of the need for the rule: This rule consolidated the statutory standards for determination of "preexisting subdivision" under the APA Act.

(11) Added 9 NYCRR section 588.9 to authorize the Agency to enter into and carry out written agreements with the federal government and/or with other state agencies.

Analysis of the need for the rule: This rule allows for written inter-agency agreements to facilitate cooperation and joint action to be taken under any statute administered by the Agency.

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 2011. Public comment on the continuation or modification of these regulations will be accepted until March 31, 2011. All section and Part references are to Title 1 of the New York Code of Rules and Regulations.

2001

Section Control of the Asian Long Horned Beetle.

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

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

2006

Section Golden Nematode Quarantine.

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

The continuation of this regulation is necessary to prevent further spread of the golden nematode by extending that quarantine to certain lands currently owned or operated by Martens Farms in the Town of Mentz in Cayuga County and to a field in the Town of Fremont in Steuben County.

Part 154 Ammonium Nitrate and Regulated Ammonium Nitrate Materials.

Statutory Authority: Agriculture and Markets Law Sections 18(6) and 146-f.

The continuation of this regulation is necessary to implement L. 2005 ch. 620, which requires the registration of persons and entities in New York State that sell, offer for sale or otherwise make available ammonium nitrate or regulated ammonium nitrate materials. Ammonium nitrate is a common chemical compound used in fertilizer, but which is also an explosive chemical used to make bombs such as those used in the 1993 World Trade Center and 1995 Oklahoma City bombings.

Part 245 Sanitation and Processing Procedures for Slaughterhouses.

Statutory Authority: Agriculture and Markets Law Sections 16(1), 18(6) and 96-a.

The continuation of this regulation is necessary to improve the sanitary conditions and processing procedures of slaughterhouses in order to help ensure the wholesomeness of meat and poultry produced therein.

Comments should be addressed to: Diane B. Smith, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-6468, or e-mail: 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 President of the Commission during calendar years 2001 and 2006.

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

Rules Adopted in Calendar Year 2001

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

Statutory Authority: Civil Service Law section 64(4)

Description of the Rule: The rule repealed sections 4.11 and 4.12 of the Rules for the Classified Service and added a new section 4.11 to such Rules.

The rule describes the rights and limitations of "contingent permanent" appointments to positions in the competitive, non-competitive and labor classes, which are defined as permanent appointments to positions which have been temporarily left vacant due to a leave of absence of the permanent incumbent of the position.

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

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

Statutory Authority: Civil Service Law section 6

Description of the Rules: The rules amended sections 28-1.3(b), 28-2.1(c) and 28-3.7(a) and (c) of the Attendance Rules for managerial/confidential employees in New York State Departments and Institutions.

Sections 28-1.3(b) and 28-2.1(c) were amended upon the request of the Governor's Office of Employee Relations (GOER) to provide that qualified managerial/confidential employees may utilize up to 200

days of accrued sick leave credits to pay for health insurance premiums during retirement.

The amendments to sections 28-3.7(a) and (c) provide that the rules governing donations of leave credits for managerial/confidential employees shall be consistent with such leave donation policies granted represented employees through collective bargaining agreements.

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

Rules Adopted in Calendar Year 2006

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

Statutory Authority: Civil Service law section 63

Description of the Rule: The rule revised section 4.5 of the Rules for the Classified Service to provide for probationary terms for positions of University Police Officer 1 and University Police Officer 1 (Spanish Language) of not less than 52 nor more than 78 weeks.

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

Amendment to Chapter V of the Title 4 of NYCRR (Regulations of the Department of Civil Service [President's regulations])

Statutory Authority: Public Officers Law sections 87, 89

Description of the Rule: Public Officers Law Article 6 (Freedom of Information Law; "FOIL") requires subject agencies to adopt regulations regarding public access to records. The regulation amended Part 80 of the President's Regulations, "Public Access to Records," to conform the language of such Part with provisions of FOIL by replacing references to "applications" for records with "requests" for records. In accordance with FOIL, the regulation specifies how requests shall be acknowledged and addresses when the Department is unable to grant or deny a request for records within the initial twenty-day period from when the request is received.

Proposed Action: The rule is required by the Public Officers Law and shall be continued without modification.

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

Appendix 1 (Exempt Class)

Appendix 2 (Non-competitive Class)

Statutory Authority:

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

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

Description of the Rules:

Civil Service Commission rules relating to the jurisdictional classification of positions were specifically exempted from compliance with Executive Order No. 20 review requirements by the Governor's Office of Regulatory Reform (GORR), upon a finding by GORR that such review lacked substantial benefit. Based upon this determination by GORR, and pursuant to subdivision (5) of SAPA section 207, a full recitation of amendments to Appendices 1 and 2 to Title 4 of NYCRR adopted by the Civil Service Commission during calendar years and 2001 and 2006 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 Bldg., Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

Education Department

Section 207 of the State Administrative Procedure Act (SAPA) requires that each State agency review, after five years and thereafter at five-year intervals, each of its rules that is adopted on or after January 1, 1997 to determine whether such rules should be modified or continued without modification.

Pursuant to SAPA section 207, the State Education Department submits the following list of its rules that were adopted during calendar years 2006 and 2001 and invites public comment on the continuation or modification of such rules. All section and part references are to Title 8 of the New York Code of Rules and Regulations. Comments should be sent to the respective agency representative listed below for each particular rule, and must be received within 45 days of the date of publication of this Notice.

a. Calendar Year 2006

OFFICE OF P-12 EDUCATION

Sections 170.12, 170.2 and 170.3 of the Commissioner's regulations, regarding school district financial accountability

Description of rule: the rule establishes criteria for claims auditor, financial training for school district officers, internal audit function, request for proposals (RFP) process for contracting for annual audit, audit committees and annual audits.

Need for rule: the rule is needed to implement Chapter 263 of the Laws of 2005. The rule establishes systems and processes that provide for transparency and accountability in the conduct of district business, strengthens oversight, and increases accountability.

Legal basis for rule: Education Law sections 207(not subdivided), 215(not subdivided), 305(1) and (2), 1604(35), 1709(20-a), 1711(2)(e), 1950(4)(k), 2102-a(1) through (4), 2116-a(3), 2116-b(1) through (7), 2116-c(1) through (9), 2117(1), 2503(5), 2508(5), 2509(4), 2523(2), 2524(1), 2525(1) and (2), 2526(1), (1-a) and (2), 2527(not subdivided), 2554(2-a), 2562(2), 2566(6), 2573(4), 2576(1)(a), 2580(2) and 3713(1) and (2), and Chapter 263 of the Laws of 2005.

Section 175.5 of the Commissioner's Regulations, regarding length of school day

Description of rule: the rule amends section 175.5(b) of the Commissioner's Regulations to provide that the minimum daily sessions lengths set forth in section 175.5(a), for purposes of determining State aid, shall not apply to school days during which Regents examinations have been scheduled.

Need for rule: Pursuant to section 175.5(a) of the Commissioner's Regulations, in order for a school day to be counted for State aid purposes, students in Grades 7 through 12 must attend school for a minimum of five and one-half hours. Subdivision (b) of section 175.5 allows an exception to this rule where a school day of less than five and one-half hours is conducted because of certain circumstances specified in the subdivision. The proposed amendment to section 175.5(b) would add the scheduling of Regents examinations to the list of permissible circumstances allowing an exception. As a result, schools would be able to count for State aid purposes a school day that includes a half-day Regents Examination session. In addition, the Department would be able to provide school districts and boards of cooperative educational services (BOCES) with a more flexible Regents examination schedule that minimizes the number of instances in which general education students and students with disabilities might be expected to take two examinations required for a diploma on the same day.

Legal basis for rule: Education Law sections 207(not subdivided) and 3602(1)(d).

Section 100.2(c) of the Commissioner's Regulations, regarding instruction in life safety

Description of rule: the rule establishes State learning requirements for injury prevention and life safety education.

Need for rule: the rule is necessary to conform the Commissioner's Regulations to Chapter 242 of the Laws of 2005, by requiring the addition of a course of instruction in injury prevention and life safety education to existing curricula.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), 308 (not subdivided), 309 (not subdivided), 808(1) and 3204(3).

Section 100.5 of the Commissioner's Regulations, regarding mathematics graduation and diploma requirements

Description of rule: the rule revises mathematics graduation and di-

ploma requirements consistent with policy adopted by the New York State Board of Regents.

Need for rule: The rule is necessary to implement revisions to the commencement level mathematics graduation and diploma requirements to align with the revised high school performance indicators for the following three mathematics courses: Integrated Algebra, Geometry, and Algebra 2 and Trigonometry.

The rule limits to two the number of units of credit earned for any of these three commencement level mathematics courses. It clarifies that, to earn a Regents diploma with advanced designation, students entering grade 9 prior to September 2009 must pass two of the three commencement level Regents examinations through one of the following combinations: Mathematics A and Mathematics B, or Mathematics A and Algebra 2 and Trigonometry, and that students who enter grade 9 in September 2009 and thereafter must pass three commencement level Regents examinations in mathematics titled Mathematics A or Integrated Algebra, Geometry, and Algebra 2 and Trigonometry. The rule also provides for students who first enter grade 9 in September 2009 and thereafter, who complete all coursework and testing requirements for the Regents diploma with advanced designation in mathematics and/or science, and who pass, with a score of 85 or better, three commencement level Regents examinations in mathematics and/or three commencement level Regents examinations in science, will earn a Regents diploma with advanced designation, with an annotation on the diploma that denotes mastery in mathematics and/or science, as applicable.

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided) and 3204(3).

Sections 19.5, 200.1, 200.4, 200.7 and 200.22 of the Commissioner's Regulations, regarding aversive behavioral intervention

Description of rule: the rule establishes standards for behavioral interventions, including a prohibition on the use of aversive interventions; to provide for a child-specific exception to the prohibition on the use of aversive interventions; and to establish standards for programs using aversive interventions.

Need for rule: the rule is necessary to establish standards for behavioral interventions, including a prohibition on use of aversive behavioral interventions (ABIs); to provide for a child specific exception; and to establish standards for programs using ABIs. The rule ensures that ABIs are used only when necessary; in accordance with research-based practices; under conditions of minimal intensity and duration to accomplish their purpose; and in accordance with the highest standards of oversight and monitoring.

Legal basis for rule: Education Law sections 207(not subdivided), 210(not subdivided), 305(1), (2) and (20), 4401(2), 4402(1), 4403(3) and 4410(13).

Section 100.2(gg) of the Commissioner's Regulations, regarding uniform violent and disruptive incident reporting

Description of rule: the rule provides a ranking, standard for reporting, and more concise definition of reportable offenses as required by the uniform violent and disruptive incident reporting system for the reporting of incidents by school districts, BOCES, charter schools and county vocational education and extension boards, as required by Education Law section 2802, and to establish the use of a school violence index as a comparative measure of the level of school violence in a school.

Need for rule: The rule is necessary to provide a ranking, standard for reporting, and more concise definition of reportable offenses as required by the uniform violent and disruptive incident reporting system for the reporting of incidents by school districts, BOCES, charter schools and county vocational education and extension boards, as required by Education Law section 2802, and thereby assure to the extent practicable that the reports are uniform and comparable throughout the State with respect to the type of incidents reported and the actions taken in response to such incidents.

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 2801(1) and 2802(2),(3),(4) and (6) and Chapter 402 of the Laws of 2005.

Section 100.2(p) of the Commissioner's Regulations, regarding school accountability

Description of rule: the rule conforms the Commissioner's Regulations with New York's approved NCLB accountability plan by: (1) modifying the School Performance Index to incorporate the results from New York's grade 3-8 assessment program in English language arts and mathematics; (2) revising the Annual Measurable Objectives in English language arts and mathematics to reflect the use of grade 3-8 test results; (3) combining the elementary and secondary science criteria into a single combined elementary-middle level science criterion; (4) revising the definition of the graduation cohort beginning with the 2003 graduation cohort to make schools accountable for students after they received five months of instruction in a school or district; (5) incorporating in the limited English proficient (LEP) subgroup students who had previously been considered LEP students during the prior one or two years in order to calculate Adequate Yearly Progress; (6) restricting the use of backmapping to schools serving exclusively students below grade three; (7) revising the timelines for schools and local educational agencies whose 2006-2007 accountability status is dependent on 2005-2006 grade 3-8 assessment results to take certain actions required of schools and local educational agencies identified as requiring academic progress or as in need of improvement; (8) indicating that the NYSESLAT will no longer be administered, in lieu of the required State assessment in English language arts, for accountability purposes beyond the 2005-2006 school year; and (9) restricting the use of the NYSESLAT, for participation rate purposes, to limited English proficient students who have attended school in the United States (not including Puerto Rico) for one year.

Need for 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.

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

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 80-1.7 of the Commissioner's Regulations, regarding renewal of provisional certificate

Description of rule: the rule restores the opportunity for candidates to renew expired provisional certificates in the pupil personnel service and in the title school administrator and supervisor (authorizing service as a school building level administrator) and establish requirements for the renewal of these certificates.

Need for rule: the rule provides individuals holding such expired provisional certificates a one-time opportunity to renew these certificates for a five-year term to enable them to meet the experience requirement for the permanent certificate. The opportunity to renew provisional certificates was removed effective February 2, 2004. The Department believes that this opportunity should be restored because otherwise these individuals have no way to qualify for employment in the public schools for the purpose of meeting the experience requirement for the permanent certificate.

The rule also addresses regional shortages of school principals and pupil personnel professionals by expanding the pool of qualified candidates for such positions.

Legal basis for rule: Education Law sections 207(not subdivided); 305(1) and (7); 3001(2); 3004(1); 3006(1)(b); and 3009(1).

Section 80-5.6 of the Commissioner's Regulations, regarding teaching assistants

Description of rule: the rule establishes requirements for the certification of teaching assistants for service in the State's public schools: extending the time validity of the Level I and II teaching assistant certificates, specifying additional requirements for the renewal of the Level I teaching assistant certificate, requiring additional collegiate study for the Level II teaching assistant certificate, and clarifying coursework requirements.

Need for rule: the rule extends the validity of the entry-level certificate for teaching assistants, the Level I teaching assistant certificate, from one to three years. The rule is needed to allow holders of the Level I teaching assistant additional time to meet the experience and education requirements for the level II teaching assistant certificate.

The rule also establishes a new requirement for the renewal of the level I certificate: the candidate must submit to the State Education Department adequate evidence substantiating that the candidate has a commitment for employment in a teaching assistant position under the level I teaching assistant certificate. These changes allow candidates who were unable to find employment during the first term of the level I certificate, or have decided to delay entry into this field, the opportunity to obtain employment and meet the experience requirement for the level II certificate. It also ensures that candidates for the renewed level I certificate will be on track for meeting the experience requirement for the level II certificate.

The rule is needed to strengthen the education requirement for the level II teaching assistant certificate. After February 1, 2007, the candidate must have completed a total of nine semester hours of collegiate study for this certificate, instead of the current requirement of six semester hours. Candidates will have sufficient time to complete the additional coursework because of the change in the duration of the level I certificate.

The rule also increases the validity period of the level II teaching assistant certificate from two to three years in order to give candidates additional time to earn the remaining semester hours of collegiate study required for the level III teaching assistant certificate.

Finally, the rule is needed to clarify that the education requirement for each certificate level may be met by completing collegiate coursework creditable to an associate degree, as well as the baccalaureate degree. This is needed because teaching assistants often attend two-year colleges, which do not offer baccalaureate study.

Legal basis for rule: Education Law sections 207(not subdivided); 305(1), (2), and (7); 3001(2); 3004(1); 3006(1)(b); and 3009(1) and (2).

Section 7.1 of the Regents Rules and sections 52.21, 80-2, 80-3 & 80-5 of the Commissioner's Regulations, regarding certification in educational leadership

Description of rule: the rule establishes requirements for the certification of school administrators for service in New York State public schools.

Need for rule: The purpose of the rule is to strengthen requirements that candidates must meet in order to be certified as school building leaders, school district leaders, and school district business leaders for service in New York State public schools. The rule requires candidates for certification to complete approved programs, and eliminates the transcript evaluation route to certification in the educational leadership service. This will improve the educational preparation of school administrators by requiring them to complete coordinated, well developed programs, rather than a series of individual courses chosen by the candidate.

The rule requires candidates for the initial certificate as a school building leader to pass the New York State Assessment for school building leaders. For professional certificates in school district leadership and school district business leadership, the New York State assessments are incorporated as part of education program completion requirements. These requirements will be implemented when the examinations become available. The certification examinations will

help to ensure the competency of new educational leaders employed in the State's public schools.

The rule requires college programs that lead to the initial certificate for school building leaders and to the professional certificate for school district leaders to advise applicants in writing that they must meet an experience requirement to be certified. This will help ensure that applicants are fully aware of certification requirements prior to enrollment.

The rule establishes experience requirements for school building leaders. For the initial certificate as a school building leader, the candidate must have three years of experience in classroom teaching and/or pupil personnel service. Administrative and supervisory service will no longer be credited, as it is for the old series provisional certificate. For the professional certificate, the candidate must have at least three years experience in an educational leadership position, including at least one-year at the building level, instead of the old series permanent certificate requirement of two years of experience in any school administrative/supervisory position, and the candidate must be mentored in prescribed cases. These changes will strengthen the preparation of building leaders by providing them with pertinent experience working directly with students.

The rule establishes professional development requirements for school leaders. Professional certificate holders who are regularly employed by a school district or BOCES must complete 175 clock hours of professional development every five years. That number is reduced by half for individuals not regularly employed by a school district or BOCES. This is needed to help ensure that administrators have current knowledge.

The rule limits the scope of practice for school district leaders certified under the new series. Holders of a professional certificate as a school district leader may not serve as a school building leader or as a school district business leader unless they are certified in these areas as well. The limitation on the scope of practice is appropriate because the knowledge and skills needed for service as a school building leader or school district business leader differ from that needed for service as a school district leader.

The rule establishes alternative requirements for school districts leaders who are exceptionally qualified candidates and employed under the transitional D certificate. This change is needed to provide a new pathway for exceptionally qualified candidates who have demonstrated exemplary leadership but who do not have requisite experience in a school setting.

The rule establishes requirements for two-year nonrenewable conditional initial certificates for school building leaders. This provides a means for individuals who are certified as building level administrators in other states to become certified in New York State while meeting the examination requirement.

The rule establishes requirements for the endorsement of a certificate of another state for service as a school district leader or a school district business leader, in order to provide an expedited means to certification for experienced school district leaders and school district business leaders who are certified in other states.

Legal basis for rule: Education Law sections 207(not subdivided); 210(not subdivided); 305(1), (2), and (7); 3001(2); 3003(1), (3), and (5); 3004(1); 3006(1)(b); 3007(2); 3009(1); and 3604(8).

Section 52.21 of the Commissioner's Regulations, regarding accreditation of teacher preparation programs

Description of rule: the rule defines limited conditions under which registered teacher education programs leading to certification in the classroom teaching service may receive from the State Education Department a deferral of the date by which they must be accredited.

Need for rule: the rule is needed to provide the Department with regulatory flexibility to accommodate sound teacher preparation programs that demonstrate the ability to earn accreditation within the short term. The amendment is intended to provide needed flexibility to permit programs to address deficiencies, thereby limiting disruptions to students while helping to ensure improvements in program quality.

Legal basis for rule: Education Law sections 207(not subdivided);

210(not subdivided); 215(not subdivided); 305(1) and (2); 3001(2); and 3004(1).

Sections 3.46 & 3.58 of the Regents Rules, regarding proprietary colleges

Description of rule: the rule establishes requirements that a for-profit institution must meet for Regents authorization to confer degrees and that a prospective owner of a proprietary college must meet to obtain Regents consent to the transfer of the degree-conferring authority of the institution, and to establish requirements for the revocation and surrender of degree-conferring authority at proprietary colleges.

Need for rule: the rule strengthens the Regents and State Education Department's oversight of proprietary colleges, thereby helping to ensure high standards of academic quality at these institutions.

The rule is needed in order to establish a procedure by which the State Education Department and the Regents will monitor and assess the on-going capacity of the new degree-granting proprietary college, before it is granted permanent authority to confer degrees.

The rule requires the prospective owner of a proprietary college to be reviewed by the Department and Regents prior to the change ownership or control of the institution. The review would determine whether the prospective owner meets prescribed standards for Regents consent to the transfer of degree-conferring authority. The rule provides expedited time frames for this review. In addition, the rule provides for Regents consent to a temporary transfer of degree-conferring authority after the change of ownership or control already has taken place in limited cases, upon a showing of good cause.

The rule is also needed to establish circumstances and procedures under which the Board of Regents may revoke or limit the degree-conferring authority of a proprietary college and procedures for the surrender of such degree-conferring authority. Finally, it is needed to establish institutional responsibilities upon the cessation of degree-granting authority.

Legal basis for rule: Education Law sections 207(not subdivided); 210(not subdivided); 215(not subdivided); 216(not subdivided); 218(1) and (2); 224(1)(a) and (b); and section 137 of Chapter 82 of the Laws of 1995.

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

Sections 61.2 & 61.18 of the Commissioner's Regulations, regarding dental licensure

Description of rule: the rule establishes requirements relating to examination and residency programs for dental licensure.

Need for rule: the rule is needed to implement the requirements of Education Law section 6604(3) and (4) by requiring applicants for dental licensure to complete an accredited dental residency program and eliminating the option of their completing a clinical examination in dentistry instead of a residency program, effective January 1, 2007, to establish a definition of an acceptable national accrediting body for dental residency programs, and to add two specialties to the list of specialty residency programs that may be used to fulfill the residency program requirement for dental licensure.

Legal basis for rule: Sections 207(not subdivided); 6506(1); 6507(2)(a); 6601(not subdivided); 6604(3) and (4) of the Education Law; and Section (3) of Chapter 76 of the Laws of 2004.

Section 71.3 of the Commissioner's Regulations, regarding certified shorthand reporting

Description of rule: the rule makes a change in an examination requirement for licensure in certified shorthand reporting to partially eliminate the option that permits a candidate to transcribe shorthand notes in longhand during the examination, preserving the option only in the event the candidate's transcription equipment fails or malfunctions during the examination.

Need for rule: the rule is needed to align examination requirements with standard practice in this field, which requires certified shorthand reporters to produce transcripts of their shorthand notes through the use of typewriters or other transcription equipment.

Legal basis for rule: Education Law sections 207(not subdivided); 6504 (not subdivided); 6506(1); 6507(2)(a) and (3)(a);and 7504(4).

Section 29.10 of the Regents Rules, regarding unprofessional conduct in accountancy

Description of rule: the rule revises the definition of unprofessional conduct in accountancy by updating the names of entities that promulgate generally accepted auditing standards and generally accepted accounting principles, establishing reporting requirements, and setting forth definitions of unprofessional conduct based upon actions of the United States Securities and Exchange Commission (SEC) or the Public Company Accounting Oversight Board (PCAOB).

Need for rule: The rule is needed to align the regulation of the public accountancy profession in New York State with Federal laws and regulations and contemporary professional practice.

Legal basis for rule: Education Law sections 207(not subdivided); 6502(1) and (3-a); 6504(not subdivided); 6506(1); 6509(9); 6510(8); and 7401 (not subdivided).

Sections 52.36, 52.37, 52.38, 79-13, 79-14 and 79.15 of the Commissioner's Regulations, regarding clinical laboratory technology practitioners

Description of rule: the rule adds new sections 52.36, 52.37, and 52.38, and new Subparts 79-13, 79-14, and 79-15, relating to licensure as a clinical laboratory technologist and as a cytotechnologist and certification as a clinical laboratory technician.

Need for rule: the rule is needed to implement the provisions of Article 165 of the Education Law by establishing requirements for licensure as a clinical laboratory technologist or cytotechnologist and for certification as a clinical laboratory technician, requirements for limited permits in these fields, and standards for registered college preparation programs for these professions.

Legal basis for rule: Education Law sections 207 (not subdivided); 210 (not subdivided); 212(3); 6501 (not subdivided); 6504(not subdivided); 6507(2)(a), (3)(a), and (4)(a); 6508(1); 8605(1)(b) and (c) and (2)(b) and (c); 8606(2) and (3); 8607(1) and (2); and 8608.

Section 64.4 of the Commissioner's Regulations, regarding nurse practitioner

Description of rule: the rule phases out alternative criteria for certification in an additional specialty area of practice and requires candidates to complete the standard requirements for certification, which include completion of a registered master's degree or advanced certificate program in the area of specialty, or its equivalent; or certification as a nurse practitioner in the specialty area by a national certifying body acceptable to the Department.

Need for rule: the rule closed what was intended to be a limited window of opportunity for nurse practitioners to qualify for certification in additional specialty areas through completion of 60 hours of continuing education in the specialty area and 1,000 hours of clinical practice in the specialty. These requirements were designed primarily to provide a route to certification in another specialty area of practice for certified nurse practitioners who were employed in the specialty area of practice before the effective date of this licensed profession. The objective was to provide experienced nurse practitioners a route to certification in another specialty area without requiring them to return to college to complete a master's degree or advanced certificate program in the specialty area. The Department believes that this option is no longer needed and that this change will strengthen the educational preparation of certified nurse practitioners.

The rule also makes several minor technical changes in the regulation, correcting the terminology for the titles "physician assistant" and "midwife" and a lettering error.

Legal basis for rule: Education Law sections 207(not subdivided); 6504(not subdivided); 6507(2)(a)and (3)(a); 6902(3)(a); and 6910(1)(c) and (5).

Section 79-1.5 of the Commissioner's Regulations, regarding landscape architecture

Description of rule: the rule establishes continuing education requirements that licensed landscape architects must complete to be registered to practice this profession in New York State and requirements for the approval of sponsors of such continuing education.

Need for rule: the rule is needed to clarify and implement the requirements of Education Law section 7328, as added by Chapter 683 of the Laws of 2005. As required by statute, the proposed regulation is also needed to establish continuing education requirements when there is a lapse in practice, requirements for licensees under conditional registration, and standards for the approval of sponsors of continuing education to licensed landscape architects. In addition, the regulation is needed to establish a fee for the review by the State Education Department of sponsors of courses of learning or educational activities in order to defray the cost of such review.

Legal basis for rule: Education Law sections 207(not subdivided); 212(3); 6504(not subdivided); 6507(2)(a); and 7328(1), (2), (3), (4), (5), and (6).

Sections 52.13, 70.1 and 70.4 of the Commissioner's Regulations, regarding public accountancy education and endorsement

Description of rule: the rule revises requirements for college programs leading to licensure in public accountancy, makes changes in the education requirements that applicants for licensure as a certified public accountant must meet, and revises requirements for licensure in this field through the endorsement of an out-of-state license.

Need for rule: the rule deletes a 60 semester-hour liberal arts and sciences requirement for such registered programs, and instead permits the registered programs to provided liberal arts and sciences coursework in accordance with the requirements of Regents Rules for the type of degree conferred. The Department believes that this change provides accountants with sufficient liberal and sciences preparation, and removes a barrier to licensure for certified public accountants who are licensed in other states and have completed out-of-state programs, most of which do not include a similar liberal arts and sciences coursework requirement.

The rule also removes a requirement in the registered licensure-qualifying programs for a course in quantitative measurements or methods. This specific requirement does not exist in the education requirements for licensure in most other states. As a result, this requirement has been a barrier to licensure in New York State. The State Board for Public Accountancy has approved this change.

The rule makes a clarifying change in the requirements specifying content requirements for registered 150-semester hour programs leading to licensure. The language clarifies that the subjects listed under each content area must be completed in curricular content, meaning that the subjects may be provided in individual courses or within the curricular content of several courses. This change is needed to ensure that colleges have the flexibility to structure their registered programs as they see fit, provided that the prescribed subject matter is covered.

The rule also permits an applicant to meet the education requirement for licensure by completing an accountancy program that is accredited by an acceptable accrediting agency. The regulation defines an acceptable accrediting agency as an agency that has accreditation standards that are substantially equivalent to the requirements in Commissioner's Regulations for registered programs leading to licensure, among other requirements. This change eases access to licensure in New York State for applicants who have completed out-of-state accredited programs, streamlines the licensure process, and expedites the processing of licensure applications. It saves staff time because the Department no longer has to compare the course content of out-of-state programs to registered New York State programs, if the programs

are accredited by an acceptable accrediting agency that the Department has already determined to have substantially equivalent standards to New York's.

The rule also changes requirements for the endorsement of an out-of-state license in this field. The rule changes the experience requirement for applicants who do not meet the regular education and/or experience requirement for licensure. It reduces from five years to four years in the preceding 10 years the number of years of professional experience that such an applicant for licensure through the endorsement of an out-of-state license must have. This is needed to ease access to licensure in New York State for experienced certified public accountants who are licensed in other jurisdictions. The change is consistent with the standard included in the Uniform Accountancy Act of the American Institute for Certified Public Accountants and the National Association of State Boards of Accountancy and with the experience requirement prescribed by many other jurisdictions for the endorsement of an out-of-state license.

Legal basis for rule: Education Law sections 207(not subdivided); 210(not subdivided), 6506(1) and (6); 6507(2)(a), (3)(a), and (4)(a); and 7404 (1)(2) and (2).

Sections 29.17 and 77.9 of the Commissioner's Regulations, regarding physical therapy

Description of rule: the rule implements the requirements of section 6731(d) of the Education Law by defining the experience requirement that a licensed physical therapist must meet to provide treatment without a referral, clarifying the content of the notice of advice provided to a patient prior to treatment without a referral, and establishing a definition of unprofessional conduct relating to such practice.

The rule establishes requirements that licensed physical therapists must meet in order to provide treatment without a referral and to provide uniformity and consistency in the information that must be contained in the written notice provided to a patient. The rule also establishes an additional definition of unprofessional practice in the practice of physical therapy: failing to meet the requirements of subdivision (d) of section 6731 of the Education Law and/or section 77.9 of the Commissioner's Regulations.

Need for rule: the rule is needed to implement the requirements of Education Law section 6731(d) by defining the experience requirement that a licensed physical therapist must meet to provide treatment without a referral, clarifying the content of the notice of advice provided to a patient prior to treatment without a referral, and establishing a definition of unprofessional conduct relating to such practice.

Legal basis for rule: Education Law sections 207(not subdivided); 6504(not subdivided), 6506(1), 6507(2)(a), 6509(9), and 6731(d).

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

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State Education Building

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Albany, NY 12234

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OFFICE OF CULTURAL EDUCATION

Sections 185.5, 185.13 and 185.14 of the Commissioner's Regulations, regarding records retention

Description of rule: the rule substantially revises schedules CO-2 and MI-1 since they were last issued in 2002. The major revisions in both schedules are new Community College sections appearing in each, authorizing the disposition of records held by New York's community colleges. In addition to updating the community college sec-

tions of the two schedules, other sections in Schedules CO-2 and MI-1 have also been updated based on changes to record keeping systems since the 2002 editions.

Need for rule: the rule makes necessary changes and additions in order to update Records Retention and Disposition Schedule CO-2 and Records Retention and Disposition Schedule MI-1.

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

Section 90.12 of the Commissioner's Regulations, regarding State aid for library construction

Description of rule: the rule prescribes eligibility requirements and criteria for applications for state aid for library construction, and conforms the Commissioner's Regulations to changes to Education Law section 273-a.

Need for rule: the rule is needed to ensure that the Commissioner's Regulations are in compliance with changes to Education Law section 273-a. Chapter 572 of the Laws of 2003 amended section 273-a to change the funding year from one year to three years and the payment year from 'January 1 through December 31' to 'July 1 through June 30.' Section 4 of Part O of Chapter 57 of the Laws of 2005 amended section 273-a to change the payment schedule from a 50/40/10 percent basis to a 90/10 percent basis. The rule also permits libraries greater flexibility in applying for grant funds. Projects that are not completed but are more than 60 percent complete are now eligible for funding. Projects that will not be ready to start for up to 180 days are now eligible for funding, as opposed to 90 days previously.

Legal basis for rule: Education Law sections 207(not subdivided), 215(not subdivided) and 273-a(5) and section 1 of Chapter 53 of the Laws of 2006.

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:

Jeffrey W. Cannell

Deputy Commissioner for Cultural Education

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Cultural Education Center

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OFFICE OF OPERATIONS AND MANAGEMENT SERVICES

Section 3.2 of the Regents Rules, regarding Quality Committee name and responsibilities

Description of rule: the rule revised the provision on Regents standing committees to replace the Committee on Quality with a new Committee on Policy Integration and Innovation.

Need for rule: the rule was needed to conform the Regents Rules with changes to the committee structure of the Board of Regents.

Legal basis for rule: Education Law section 207(not subdivided).

Agency Representative:

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

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b. Calendar Year 2001

OFFICE OF P-12 EDUCATION

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

Description of Rule: Section 7.1 of the Regents Rules and section

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Board of Regents adopted an amendment to section 100.5 to provide an additional safety net for all students with disabilities entering grade 9 in the 2005-06 school year, by allowing students with disabilities to meet local diploma requirements by achieving a passing score of 55-64 on the five required Regents examinations to meet local diploma requirements.

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

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

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

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

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

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

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

Need for Rule: the rule is needed to implement Regents policy to ensure effective school attendance programs by requiring that schools collect data through accurate attendance recordkeeping, and analyze attendance data to identify individual and group patterns so as to provide programs and services that will assist each student to successfully meet higher academic standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 201.11(c) was amended to require an impartial hearing of-

ficer to mail a copy of the written, or at the option of the parents, electronic findings of fact and decisions to the parents, to the board of education, and to the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) of the State Education Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 West Wing, Second Floor Mezzanine - EB
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 nysedp12@mail.nysed.gov

OFFICE OF HIGHER EDUCATION

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

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

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

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

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

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

Need for Rule: the rule is needed to specify the accreditation actions that result from a review of an institution of higher education for Title IV purposes by the Commissioner and Board of Regents, to define the term "accreditation with conditions", to ensure that reviews are completed within a reasonable time period, and to comply with federal requirements for appeals of review determinations. Subparts 4.2 and 4.5 were renumbered to 4-1.2 and 4-5.2 pursuant to a separate rulemaking filed April 2002 and made effective May 16, 2002.

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

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

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

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

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

and while completing the registered teacher preparation program, candidates will teach with mentoring and supervision for a period up to three years.

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

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

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

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

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

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

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

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

Agency Representative:

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

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

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

Description of Rule: the rule establishes standards for licensure qualifying programs in social work, education and examination requirements for licensure, requirements for applicants for limited

permits to practice as a certified social worker (CSW), and requirements that must be met by certified social workers to qualify for reimbursement under certain group health insurance policies for psychotherapy services.

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

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

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

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

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

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

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

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

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

Need for Rule: the rule is needed to conform to realistic testing requirements for the dictation portion of the licensure test, as recommended by the State Board for Certified Shorthand Reporting. The rule is also needed to update the examination to reflect current wide-

spread use of computer assisted dictation equipment in the practice of certified shorthand reporter.

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

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

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

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

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

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

Agency representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of 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 ADULT CAREER AND CONTINUING EDUCATION SERVICES

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

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

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

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

Agency representative:

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

Kevin G. Smith

Deputy Commissioner

Office of Adult Career and Continuing Education Services

Room 1606, One Commerce Plaza

Albany, NY 12234

(518) 474-2714

OFFICE OF STATE REVIEW

Sections 279.3 and 279.8 of the Commissioner's Regulations, regarding conforming and technical amendments to implement IDEA

Description of Rule: the rule relates to procedures for appeals to the State Review Office.

Section 279.3, as amended: (1) repealed language allowing a State

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

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

Need for Rule: the rule is needed to conform the Commissioner's Regulations to the federal regulations implementing the Individuals with Disabilities Education Act.

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

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting:

Justyn Bates

Assistant Counsel and State Review Officer

Office of State Review

80 Wolf Road, 2nd Floor

Albany New York 12203

(518) 485-9373

OFFICE OF MANAGEMENT SERVICES

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

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

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

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

Agency Representative:

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

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 2006, and pursuant to SAPA Section 207 have been reviewed. Comments on the rules that are being amended this year should be directed to the contact person listed in the main body of the Regulatory Agenda. Comments on any rules that are not being changed at this time will be

accepted for 45 days from the date of publication in the State Register 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 200.1 was amended in 2006 to add a definition of "exempt VOCs". Tertiary Butyl Acetate (TBAC) was designated as an exempt VOC. This change was made to align New York's definition of VOC with EPA's rules. This change is still valid in order for companies doing business in New York to be regulated consistently with those doing business elsewhere in the US.

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 Article 70. The amendments to 6 NYCRR Part 621, which were adopted in 2006, made the various changes to the then existing Uniform Procedures regulations including: The amendments change the order of the regulation to more closely follow the application review process, added needed definitions, clarified and updated for various programs that fell under the auspices of Uniform Procedures, clarified procedures for transferring a permit, clarified how to apply for variances, add several minor categories that were expected to save applicants time and money without impacting the environment, and clarified and applicant responsibilities in various stages of the application review process. A more detailed description of the rule, as adopted, may be had in the September 6, 2006 edition of the New York State Register, which appears at the following web address: <http://www.dos.state.ny.us/info/register/2006/sep6/pdfs/rules.pdf>

No further action is planned this year.

Regulatory Coordinator for the Division of Environmental Permits is Robert Ewing, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-1750. Telephone: 518-402-9167. E-mail: depprmt@gw.dec.state.ny.us

DIVISION OF ENVIRONMENTAL REMEDIATION

6 NYCRR Part 375, Environmental Remediation Programs. Statutory Authority: Article 1, Title 1; Article 3, Title 3; Article 27, Titles 13 and 14; Article 52, Title 3; Article 56, Title 5; Article 71, Title 36 of the Environmental Conservation Law (ECL); Chapter 1, laws of 2003; Chapter 577, laws of 2004; and Article 6, section 97-b of the State Finance Law. This rule revised, reorganized and restructured the existing 6 NYCRR Part 375, which governed the State Superfund (SSF) and Environmental Restoration Programs (ERP), and it included a provision of regulations for the Brownfield Cleanup Program (BCP). This was necessitated to cover the requirements provided by, and to provide for the implementation of, the 2003 and 2004 Superfund/Brownfield Acts. These laws were enacted subsequent to the previous Part 375 rulemaking. The regulations exist to provide for the orderly and efficient administration of the SSF, BCP and ERP, including the oversight and implementation of remedial programs; provision of grants; granting of liability protections; and the certificates of completion. The regulations also facilitate disbursement of monies to municipalities and the providing of tax credits to private parties; all of which enhance public health and the environment by ridding the environment of undesirable contaminants and promoting the use of previously contaminated properties. No further action is planned this year.

6 NYCRR Parts 360, 372, 374, and Appendix 26, Used Oil Management. Statutory Authority: Article 3, Title 3; Article 23, Title 23; Article 27, Titles 7 and 9 of the Environmental Conservation Law. This rule updated the used oil regulations to implement amendments to Article 23, Title 23, and to implement provisions derived from the Federal used oil regulations, 40 CFR 279, that either had not been

adopted previously, or that had been added since DEC's previous used oil rulemaking. No further action is planned.

6 NYCRR Parts 370, 371, 372, 373 and Appendix 30, Hazardous Waste Manifest Program. Statutory Authority: Article 3, Title 3; Article 27, Title 9; and Article 71, Titles 27 and 35 of the Environmental Conservation Law. This rule incorporated Federal changes published in the March 4, 2005 and June 16, 2005 Federal Registers regarding the Hazardous Waste Manifest Program, along with State initiated changes to this program. 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 will include certain changes related to the hazardous waste manifest program and is included in this Regulatory Agenda notice.

Regulatory Coordinator for the Division of Environmental Remediation is Angela Chieco, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7012. Telephone: 518-402-9764. E-mail: derweb@gw.dec.state.ny.us

DIVISION OF FISH, WILDLIFE AND MARINE RESOURCES

6 NYCRR Part 10, Sportfishing Regulations. Statutory Authority: ECL 11-0303, 11-0305, 11-0317, 11-0319, 11-1301, 11-1303, and 11-1316. These regulations are conducted biannually for the purposes of adjusting the regulations pertaining to the management of freshwater sportfish including appropriate adjustments to seasons, creel limits, and size limits. This rule was amended through the establishment of subsequent sportfishing rules; for the 2008 licensing year (effective October 1, 2008), and for the 2010 licensing year (effective October 1, 2010).

6 NYCRR Parts 10, 19, 35 and 188, Sportfishing Regulations; Use of Bait, Fish for Bait, and Bait Fish; Commercial Inland Fisheries; and Fish Health Inspection Requirements. Statutory Authority: ECL 3-0301, 11-0303, 11-0305, and 11-0325. These regulations, "Bait fish regulations and fish health inspection reports -To prevent the spread of viral hemorrhagic septicemia in New York State" were reviewed in the summer of 2010. The public input received will now be utilized in determining whether the rule needs to be modified. If an amendment is warranted, it will likely be proposed in the last quarter of 2010 or the first quarter of 2011.

6 NYCRR Part 1.20, Deer Management Permits, Part 1.27 - Alternative Deer Harvest Strategies, and 1.31 Hunting Black Bear. Statutory Authority: 11-0303, 11-0903, 11-0907, 11-0913. This regulation opened three Wildlife Management Units (WMUs) in portions of Otsego, Schoharie and Albany counties for hunting of black bears, and it provided additional flexibility for issuing Deer Management Permits for antlerless deer harvest when deer populations are below management objectives. These changes remain in effect, and no amendments are needed for these portions of the regulation. The regulation also added WMUs 3H and 3K, primarily in Sullivan County, to the pilot antler restriction program. The Department will be reviewing results of the pilot antler restriction program, including assessment of hunter satisfaction and interest in program continuation or change, and may consider amendments to this regulation in the future.

6 NYCRR Part 189, Chronic Wasting Disease. Statutory Authority: 11-0325, 11-1905, 27-0703. This regulation added moose to the list of species to which importation restrictions apply, and placed restrictions on the importation of wild deer carcasses and parts from West Virginia. This rulemaking was, and continues to be, necessary to protect New York's white-tailed deer herd from Chronic Wasting Disease (CWD) by preventing the importation of CWD infectious materials into New York from recently identified sources. Changes to other aspects of this rule were adopted on July 28, 2010. These included decommissioning of the current CWD containment area, rescinding provisions related to "sale of feed" and amending the requirement that taxidermy logs can now be kept on hand for a two year period, instead of requiring that these records be sent to the department.

6 NYCRR Part 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 2006-2007 season. The rule making has been amended annually since then to maintain conformance with Federal regulations and to reflect current hunter preferences for open season dates. The regulation was amended further in 2010 to specify that season dates and bag limits for migratory game birds in New York would be as published annually by the U.S. Fish and Wildlife Service in the Federal Register. This change, authorized by amendment of ECL 11-0307 in May 2010, should reduce the need for annual amendment of these regulations in 2011 and beyond.

6 NYCRR Part 6.4, Experimental Research Trapping Seasons for Bobcat and Fisher. Statutory Authority: Environmental Conservation Law 11-0303, 11-1103. This regulation established experimental research trapping seasons (ERTS) for a 3-year period (2006-07, 2007-08 and 2008-09). The ERTS was a carefully controlled harvest opportunity designed to yield data on the status of bobcat and fisher in three Wildlife Management Units (WMUs 4F, 4N, 4O). These data will help the department to develop statewide population management systems geared to establishing these species in all suitable areas of New York. The ERTS have expired in 2009 and this section of regulations can be repealed in its entirety at the earliest opportunity.

6 NYCRR Part 42, Sanitary Control Over Shellfish. Statutory Authority: Environmental Conservation Law, sections 13-0309 and 13-0319. This regulation consolidated the classes of shellfish dealer permits and allowed DEC to remain in compliance with changes to the ECL, incorporated changes to the National Shellfish Sanitation Program into the state shellfish sanitary regulations and made Part 42 clearer and easier to understand. Part 42 will be amended as needed. Please refer to the 2011 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR Part 40, Marine Fish. Statutory Authority: Environmental Conservation Law, sections 11-0303, 11-1303, 13-0105, 13-0335, 13-0338, 13-0339-a, 13-0340, 13-0340-b, 13-0340-c, 13-0340-e, 13-0340-f, 13-0342 and 13-0347. This rule making adopted the following changes to Part 40: a revision of the commercial trip limit definition; a requirement that Marine District Party and Charter Boat License holders submit trip reports reporting catch and effort; a decrease in the recreational minimum size limits for haddock and Atlantic cod; an increase in the minimum size limit, a decrease in possession limit, and a shortened fishing season for the recreational winter flounder; an increase in the recreational black sea bass fishing season; new recreational and commercial minimum size and possession limits and fishing season for oyster toadfish; an increase in the minimum mesh size requirement for winter flounder and scup trawls; and a change in the commercial striped bass limit for trawl gear. 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 2011 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR Part 44, Lobster and Crabs. Statutory Authority: Environmental Conservation Law, sections 13-0329 and 13-0331. The rule increases the circular vent size on lobster pots; clarifies lobster trap tag regulations and complies with criteria established in the Atlantic States Marine Fisheries Commission (ASMFC) Fishery Management Plan for American Lobster; establishes criteria for authorizing a lobster permit holder to tend another permit holder's gear in the event of a "temporary emergency"; establishes criteria to close areas to commercial horseshoe crab harvest; establishes regulations for marking crab pots; restricts the placement of lobster and crab traps/pots in relation to designated navigation channels; establishes regulations on

the construction of escape panels in crab and lobster pots; and establishes minimum size limits for blue crabs. ASMFC provides cooperative management of the marine fisheries found within state waters along the Atlantic Coast. ASMFC seeks to promote healthy, self-sustaining populations for all Atlantic coast fishery resources 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 44 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 2011 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR Part 49, Shellfish Management. Statutory Authority: Environmental Conservation Law, sections 13-0323 and 13-0327. This regulation established a new Part 49 and adopted new regulations for the conservation and management of scallops and oysters. The rule clarified the harvest limits for bay scallops, set the open season for bay scallops, and set a size limit for oysters. These regulations allow the protection of the bay scallop and oyster resources, yet allow State harvesters to utilize a valuable State natural resource. The management of bay scallops and oysters is conducted as required by State law and regulations and Part 49 will be amended as needed. Please refer to the 2011 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR Part 40, Marine Fish. Statutory Authority: Environmental Conservation Law sections 11-0303, 13-0105, 13-0340-b, 13-0340-e and 13-0340-g. This rule making established new recreational limits for summer flounder, scup (porgy), and monkfish and new commercial size limits for monkfish. These regulations were adopted to be consistent with the Atlantic States Marine Fisheries Commission (ASMFC) Fishery Management Plans for the fish listed above and NOAA/National Marine Fisheries Service (NMFS) regulations. ASMFC provides cooperative management of the marine fisheries found within state waters along the Atlantic Coast. ASMFC 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 NMFS 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 2011 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR Part 41, Sanitary Condition of Shellfish Lands. Statutory Authority: ECL 13-0307, 13-0319. This regulation classified shellfish lands in Towns of Smithtown (Stony Brook Harbor), Brookhaven (Stony Brook Harbor, Bellport Bay, Moriches Bay, and Long Island Sound), Riverhead (Long Island Sound), and Southold (Brushes Creek, Great Peconic Bay) uncertified for the harvest of shellfish. This rule also extended the seasonal opening for Port Jefferson Harbor for one month. 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 2011 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

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. Revisions to Part 616 to make typographical corrections to amendments promulgated in the previous year. 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 LANDS AND FORESTS

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 2011 since implementation has been satisfactory. There is no need for the Department to modify this rule from its present form.

6 NYCRR section 196.4(b) and Section 196.4(d), Mechanically Propelled Vessels on Lows Lake, Environmental Conservation Law Sections, 1-0101(3)(b), (3)(d), 3-0301(1)(d), (1)(i), (2)(m) and 9-0105(1) This regulation was subsequently amended in 2006 and 2010, and is needed so that the management of Lows Lake will be consistent with Adirondack Park State Land Master Plan guidelines. No further amendments to this rule are planned for 2011 since implementation has been satisfactory. There is no need for the Department to modify this rule from its present form.

6 NYCRR Part 192 Use of Disease-Resistant or Immune Cultivars of the Genus Ribes, Environmental Conservation Law Sections, 1-0103(3)(b), 3-0301(1)(b), 3-0301(2)(m) and 9-1301(5) This regulation is needed so that planting of disease-resistant or immune cultivars of the genus Ribes can occur. No amendments to this rule are planned for 2011 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, (518) 402-9405, e-mail: lrkashda@gw.dec.state.ny.us

DIVISION OF MATERIALS MANAGEMENT

6 NYCRR 374-4, Management of Mercury and Dental Amalgam Wastes at Dental Facilities Statutory Authority: Pursuant to ECL 27-0926, regulations were adopted and became effective May 12, 2006. This rule prohibits the use of non-encapsulated elemental mercury in dental offices and requires dentists to recycle any elemental mercury or dental amalgam waste they generate and to install and maintain dental amalgam separators to remove any dental amalgam waste from their wastewater discharges. This rule significantly decreases the amount of mercury and mercury wastes resulting from dental facilities. No further action is planned or needed. Contact: Peter M. Pettit, P.E., NYS Department of Environmental Conservation, Division of Materials Management, 625 Broadway, Albany, New York 12233-7253. Telephone: 518-402-8705. E-mail: pmpettit@gw.dec.state.ny.us

Regulatory Coordinator for the Division of Materials Management is Tom Lynch, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7250, (518) 402-8678, e-mail: tjlynch@gw.dec.state.ny.us

DIVISION OF WATER

6 NYCRR Part 649 Clean Water State Revolving Fund. Law of 1989, Chapter 565 Amendments were made to conform DEC and EFC regulations to current administrative practices. The Project Priority System (PPS) was also updated to place a primary emphasis on water quality improvement and a secondary emphasis on water quality protection. The PPS was also expanded to include non-municipal projects. This rule will be modified to accommodate the provisions of the Water Pollution Control Linked Deposit Program Act.

Regulatory Coordinator for the Division of Water is Rob Simson, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3500, (518) 402-8271, e-mail: rjsimson@gw.dec.state.ny.us

Department of Health

Title 10 NYCRR - Five Year Review

Pursuant to the State Administrative Procedure Act Sections 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.

Amendments to Sections 5-1.52, 5-1.72(f)(12)(i), 5-1.91 of Subpart 5-1 and Appendix 5-C of Part 5 of Title 10 - Standards for Arsenic in Drinking Water

Statutory Authority:

Public Health Law (PHL) § 225

Description of the regulation:

This regulation established a lower Maximum Contaminant Level (MCL) and revised monitoring frequencies for arsenic in drinking water, conforming to the federal Arsenic Rule requirements. The lower MCL has reduced the risk of exposure to this contaminant and has had a positive impact on public health for those served by public water systems in New York State (federally mandated). This regulation should continue without modification.

Amendment of Subpart 7-5 of Title 10 - Camping at Agricultural Fairgrounds

Statutory Authority:

PHL §§ 225(5)(a) and 201(l) and (m)

Description of the regulation:

The regulation established the campsite size and camping unit separation distance requirements at Agricultural Fairgrounds. The changes address the difference between camping at agricultural fairgrounds, which typically provide accommodations for workers and owners of livestock, and recreational camping by the vacationing public. The regulation should continue without modification.

Amendment of Paragraph (7) of Subdivision 58-1.12(b) and Addition of a New Subparagraph (iv) of Title 10 - Cytotechnologists Work Standards

Statutory Authority:

PHL § 576-a

Description of the regulation:

Section 576-a of the Public Health Law establishes a work standard for cytotechnologists who examine cytology slides (e.g., Pap smears) at clinical laboratories. Section 576-a also authorizes the Department to promulgate regulations to specify maximum number of cytology slides that may be examined in a workday by cytotechnologists who use cytology slide examination or preparation technologies approved by the federal Food and Drug Administration (FDA). Subdivision 58-1.12(b) was amended in 2005 to allow the Department to set workload standards for new automated FDA approved devices as they become commercially available, to ensure that new Pap testing technologies that hold promise for more accurate, efficient and effective cervical cancer diagnosis can be used by clinical laboratories without compromising accuracy and reliability. This regulation should continue without modification.

Amendment of Section 63.4(a)(4)(i) and Repeal of Section 63.11; Renumber 63.12 to 63.11 of Title 10 - HIV Laboratory Test Reporting

Statutory Authority:

PHL Article 21, Title III, §§ 2130-2139

Description of the regulation:

This regulation describes the protocols and procedures required for HIV reporting, including confidentiality of such reports by PHL 27-F and Article 21, Title III. Relevant sections of Part 63 will be amended in the future to be consistent with Chapter 308 of the Laws of 2010, the HIV Testing Law.

Repeal of Current Part 70 and Addition of New Part 70 of Title 10 - Regulated Medical Waste

Statutory Authority:

PHL §§ 1389-bb-ff

Description of the Regulation:

This regulation sets forth the requirements hospitals, residential health care facilities, diagnostic and treatment centers and clinical laboratories must follow regarding regulated medical waste. It contains 5

Subparts: 70-1 Applications and Definitions; 70-2 Management of Regulated Medical Waste (RMW); 70-3 Requirements for Autoclaves to Treat Regulated Medical Waste; 70-4 Approval of Alternative Regulated Medical Waste Treatment Systems; and 70-5 Approval Process for Alternative Technologies. These provisions should be retained.

Amendment of Sections 80.11(b)(6) and (f), 80.47, 80.49 and 80.50 of Part 80 of Title 10 - Administering Controlled Substances in Emergency Kits for Class 3A Facilities

Statutory Authority:

PHL §§ 3300-a and 3308(2)

Description of the regulation:

This regulation allows the legitimate use of controlled substances in health care. It allows for patients who reside in a residential health care facility to receive controlled substances in a timely manner when immediate administration is necessary; and it exempts a pharmacy from the licensing requirements of Article 33 for the sale of controlled substances to a practitioner for the immediate needs of the practitioner receiving such substances. This regulation should continue without modification.

Amendment of Sections 86-1.62 and 86-1.63 of Title 10 - NYS-DRGs, SIW, Group Average Arithmetic Inlier Lengths of Stay

Statutory Authority:

PHL § 2807-c(3)

Description of the regulation:

This regulation modifies the service intensity weights for DRGs. This provision has been repealed under Sections 86-1.62 and 86-1.63; however, the provision has been incorporated into inpatient reform under Section 86-1.18, which is currently being filed as an emergency adoption.

Amendment of Section 86-1.89 of Title 10 - Supplemental Distribution of the Regional Professional Education Pools

Statutory Authority:

PHL § 2807-m(5)

Description of the regulation:

This regulation establishes reform goals and specifies the distribution methodology. DOH plans to repeal this regulation.

Amendment of Section 94.2(e)(6) of Title 10 - Physician Assistants and Specialist Assistants - Inpatient Medical Orders

Statutory Authority:

PHL §§ 3308, 3701 and 3703

Description of the regulation:

This regulation removed the requirement that inpatient medical orders written by a registered physician assistant (RPA), including those for controlled substances, for inpatients under the care of a physician responsible for such RPA, be countersigned by the supervising physician within 24 hours, but not prior to the execution of any such order. New language was added to specify that countersignature of such orders may be required if deemed necessary and appropriate by the supervising physician or the hospital, but in no event shall countersignature be required prior to execution.

Compliance with the mandatory requirement that a supervising physician countersign RPAs inpatient orders within 24 hours was difficult for the supervising physician. Furthermore, inpatient medical orders written by RPAs are executed prior to the supervising physician's countersignature. It is believed that meaningful supervision comes from the relationship from the supervising physician and the RPA, the credentialing process, the documentation of ongoing competency, and other internal review mechanisms. The Legislature determined that a decision to require countersignature should be determined by the supervising physician or the hospital. The regulation was out of compliance with Chapter 351 of the Laws of 2005 and was amended. This regulation should be retained.

Addition of Section 400.22 of Title 10 - Establishment of Statewide Perinatal Data System

Statutory Authority:

PHL §§ 206(1)(e), 2500, 2803(2), 2803(4), 2803-j(3), 2805-j, 2805-m, and Article 41; Social Services Law (SSL) § 366-g

Description of the regulation:

The regulation enabled the Department to establish a Statewide Perinatal Data System (SPDS) to consolidate collection, analysis and reporting of birth-related data into a single internet-based, statewide system. The SPDS also facilitated expedited Medicaid enrollment of newborns, ensure they have access to needed health services. SPDS improved the Commissioner's ability to fulfill statutory duties to identify and address public health matters related to perinatal care. No changes are recommended.

Amendment of Section 405.7 of Part 405 and Section 751.9 of Part 751 of Title 10 - Language Assistance Services/Patients' Rights

Statutory Authority:

PHL §§ 2803 and 2805-r

Description of the regulation:

To address the increased need for language services in the hospital setting, the Department strengthened its regulation regarding communication services. This regulation required hospital to develop a Language Assistance Program to ensure meaningful access to the hospital's services and reasonable accommodation for all patients who require language assistance. This regulation also made technical amendments to the hospital and diagnostic and treatment center patients' rights provisions to include two rights that are in statute and in the Department's Your Rights as a Hospital Patient provisions (now online), but were never added to the regulation. This regulation should be retained.

Amendment of Section 415.18(g) and (i) of Title 10 - Pharmacy Services in Nursing Homes

Statutory Authority:

PHL, Article 33

Description of the regulation:

Amendment of Section 415.18(g) and (i) of Title 10 should be continued without modification of the existing language. The provisions contained in 415.18(g) outline the nursing home provider's responsibilities for assuring the availability, administration and safe storage of emergency medications, including controlled substances to be used in emergency situations. The provisions contained in 415.18(i) outline the nursing home provider's responsibility to ensure that legally authorized practitioners/prescribers of medications promptly countersign verbal orders for medications administered to residents within 48 hours, otherwise the order is terminated. This regulation should continue without modification to ensure resident health and safety.

Title 10 NYCRR - Ten Year Review

Amendment of Subpart 5-1 - Public Water Systems - Annual Water Supply Statements

Statutory Authority:

PHL § 225

Description of the regulation:

This regulation provides a framework that water suppliers will use to give consumers information on their drinking water, including the water source, contaminants detected in finished water, health effects of contaminants when violations occur, likely sources of detected contaminants, and availability of source water assessments. By understanding their water supplies, customers, especially those with special health needs, can make informed decisions regarding their use of drinking water. This regulation should continue without modification.

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

Statutory Authority:

PHL § 225

Description of the regulation:

This regulation established that all community water systems (CWS) and nontransient noncommunity (NTNC) water systems serving 15 or more service connections or 25 or more persons have the ap-

propriate certified operator(s). Owners of all CWS and NTNC water systems must place the direct supervision of their water system, including each treatment plant and/or the distribution system, under the responsible charge of water treatment operator(s), holding a valid certification equal to or greater than that required for the classification of the treatment plant and/or distribution system. All operating personnel making process control/system integrity decisions about water quality or quantity that effect public health must be appropriately certified and under the direction of an operator in responsible charge. A designated certified operator must be available during plant operation. The regulation should continue with minor modifications to reflect updated training and certification objectives, as well as reflect improved consistency of existing regulatory language between subparts 5-4 and 5-1, and to provide greater flexibility to the regulated community.

Addition of Subpart 7-3 - Campgrounds

Statutory Authority:

PHL §§ 225(4) and 225(5)

Description of the regulation:

Prior to the addition of Subpart 7-3, campgrounds were regulated as a subset of temporary residences under Subpart 7-1. Many sections of Subpart 7-1 are not applicable or relevant to campgrounds. Subpart 7-3 contains only those sections applicable to campgrounds and clarifies and consolidates all regulations regarding the construction, operation and maintenance of campgrounds. The regulation should continue without modification.

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

Statutory Authority:

PHL §§ 225(5)(p) and (q)

Description of the regulation:

Part 16 of the State Sanitary Code was amended to revise the schedule for fees charged to radiation equipment facilities registered by the department and instituted new fees for radioactive material users who are issued licenses by the department. The fees are based on the type of facility registered or licensed by the Department. Larger facilities require more staff to regulate and are charged a higher fee while smaller facilities are charged a lesser fee. The fees help to support the regulatory program of the Bureau of Environmental Radiation Protection and are comparable with fees charged in other states and are less than the fees charged by the US Nuclear Regulatory Commission (NRC) for its radioactive material licensees. The fees are necessary in order to conduct a regulatory program which covers both radiation equipment and radioactive material and which meets the legislative mandate and maintains compatibility with NRC's program. The regulation should continue without modification.

Amendment of Part 34 - Health Care Practitioner Referrals

Statutory Authority:

PHL §§ 238-a, and 586-587

Description of the regulation:

Part 34 regulations are necessary to prohibit health service purveyors and practitioners from engaging in compensation or business arrangements that improperly induce referrals while allowing arrangements with a beneficial effect.

The Department plans to amend Subparts 34-1 and 34-2 to bring existing New York State rules into compliance with federal Stark law provisions defining additional exceptions to prohibited business or compensation arrangements.

Amendment of Subpart 69-8 - Newborn Hearing Screening Program

Statutory Authority:

PHL § 2500-g and Chapter 585 of the Laws of 1999

Description of the regulation:

Subpart 69-8 is needed to set forth the requirements upon all regulated parties, including hospitals and birthing centers responsible for administering newborn hearing screening programs. Subpart 69-8 defines relevant terms; sets forth general requirements for administration of the newborn hearing screening program and sets forth require-

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

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

The Department has identified a need to review and propose revisions to these regulations in the near future.

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

Statutory Authority:

PHL § 3381(c)

Description of the regulation:

These regulations implement Public Health Law Section 3381 regarding the sale of hypodermic needles and syringes without a prescription under the Expanded Syringe Access Demonstration Project (ESAP). They support the effort to combat the spread of infectious diseases, including HIV and hepatitis C, via the sharing of needles and syringes and to facilitate access for those having a medical condition requiring regular self-injection. These regulations should be retained and amended to remove the word "Demonstration" from the title of the program and formally adopt "Expanded Syringe Access Program" as the name of the program. The Department plans to amend the regulation to reflect changes to Article 33 of the Public Health Law resulting from Chapter 178 of the Laws of 2010.

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

Statutory Authority:

PHL § 3333

Description of the regulation:

Article 33 of the Public Health Law (Controlled Substances) was amended in 1999 converting the Official New York State triplicate prescription to a single part form. Pharmacy prescription data submission requirements were amended to provide for electronic transmission of data. The law also provided that a pharmacy could partially fill Official New York State prescriptions in certain specified circumstances. Regulations were developed to implement this law. The regulation should remain in force. The Department plans to amend the regulation to reflect changes to Article 33 of the Public Health Law resulting from Chapter 178 of the Laws of 2010.

Amendment of Section 86-1.89 - Professional Education Supplemental Pool

Statutory Authority:

PHL § 2807-m(5)

Description of the regulation:

Supplemental distributions of the regional professional education pools. The rule was discontinued.

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

Statutory Authority:

Title II of Article 49 of the Public Health and Insurance Laws, which was enacted by the legislature as Chapter 586 of the Laws of 1998.

Description of the regulation:

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

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

Effective December 3, 2008, the regulations were revised, consistent with PHL Section 4914(c) and Insurance Law Section 4914(c) to provide that an external appeal agent and the agent's clinical peer reviewers are not subject to court proceedings to review an external appeal determination absent bad faith or involved gross negligence. In addition, the definition of "designee" was removed to conform to a 2002 caselaw.

The rule should continue with modifications necessitated by changes to Article 49 of the Public Health Law made by Chapter 237 of the Laws of 2009 and Chapter 451 of the Laws of 2007, as well as passage of the federal Patient Protection and Affordable Care Act (PPACA).

Title 18 NYCRR - Five Year Review

Amendment of 360-2.3(c)(3) of Title 18 - Self Attestation of Resources for Medicaid Applicants and Recipients

Statutory Authority:

SSL § 366-a(2)

Description of regulation:

This regulation allows self-attestation of resources for certain Medicaid applicants/recipients. This regulation needs to continue without modification.

Repeal existing subdivision (a) of Section 360-7.5 and Add New Subdivision (a) to Section 360-7.5 to Title 18 - Reimbursement of Paid Medical Expenses

Statutory Authority:

The regulations reflect several federal and State court decisions: the federal district court orders in *Greenstein v. Dowling* (1994) and *Car-*

roll v. DeBuono (1998) and the New York State Court of Appeals decision in Seittelman v. Sabol (1998).

Description of regulation:

The regulations at 18 NYCRR 360-7.5(a) govern the circumstances in which direct reimbursement of paid medical bills may be made to eligible Medicaid or Family Health Plus recipients or their representatives. This regulation needs to continue without modification.

Amendment of Sections 486.4 and 493.2 of Title 18 - Adult Care Facility Operating Certificates

Statutory Authority:

SSL § 460(d)(4)

Description of the regulation:

The regulations were modified to reflect SSL 460d(4) that extended the time frame to 60 days, that the Department may suspend an Operating Certificate without providing a hearing to the operator. This regulation should continue without modification.

Amendment of Section 505.14 of Title 18 - Personal Care Services

Statutory Authority:

SSL §§ 363-a(1) and 365-a(2)(e)

Description of the regulation:

The regulations were amended in December 2006 to repeal obsolete provisions of the Department's Personal Care Services regulations at 18 NYCRR 505.14. The repealed provisions represent non-implementable content and obsolete content resulting from expired statutory authority and court decisions. Removal of content from the regulations that is not in effect makes the regulations accurate and consistent with current policy and procedures for the program's operations. This regulation should continue.

Title 18 NYCRR - Ten Year Review

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

Statutory Authority:

SSL §§ 363-1(1), 363-a(2) and 365-1(2)(e)

Description of the regulation:

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

Consistent with State policy, the Mayer case stands for the general principle that social services districts cannot arbitrarily or capriciously reduce or discontinue Medicaid recipients' personal care services. To the contrary, the districts must have a legitimate reason, grounded in law or regulation, to reduce or discontinue services. Further, the fair hearing notice must state the particular reason for the proposed reduction or discontinuance sufficient to apprise the recipient of the basis for the district's action. The Mayer court also ordered that districts may not use so-called task-based assessment plans when authorizing personal care services for any recipient whom the district has determined needs 24 hour care. Under the 1997 settlement in this case, the Department agreed to adopt regulations by November 1, 2001, that substantially complied with the court's various orders in this case. Although the regulations were new when added in 2001, their content should be familiar to all social services districts. The regulations essentially reiterate previous instructions that the Department issued to districts on the Mayer court order. This regulation should continue without modification.

Insurance Department

Pursuant to section 207 of the State Administrative Procedure Act ("SAPA"), the Insurance Department must review after five years, and at five-year intervals thereafter, rulemakings adopted on or after January 1, 1997. The purpose of the review is to determine whether the rulemakings should be continued as adopted, or else modified. The Department invites public comment on the continuation or modification of the following rulemakings, which were adopted in 2006.

· INS-49-05-00004-A (State Register of February 15, 2006) Amendment to Part 261 (Second Amendment to Regulation 161) (Prepaid Legal Services Plans) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 1113(a)(29), 1116 and article 23.

Regulation 161 establishes requirements for Prepaid Legal Service Plans authorized pursuant to section 1116 of the Insurance Law, including the recognition of groups to whom policies and certificates may be issued on a group basis. This rulemaking establishes that a group policy may be issued to a college, school or other institution of learning, or to the head or principal thereof (who or which shall be deemed the policyholder), covering the students of such college, school or other institution of learning.

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

· INS-52-05-00016-A (State Register of March 8, 2006) Amendment to Part 27 (Ninth Amendment to Regulation 41) (Excess Lines Placements Governing Standards) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 2105, 2118 and article 21.

Regulation 41 establishes excess line placement governing standards. This rulemaking restates section 2118(b)(6) of the Insurance Law regarding the duty of an excess line broker to deliver a stamped declarations page or cover note evidencing insurance that is stamped by the excess line association. The rulemaking updates the language on the notice that is required to be prominently displayed on written confirmations of placement of coverage with excess line insurers, and the notice that is required on insurance policies issued by excess line insurers in this state. The two notices currently in use are different. Such changes are necessary to facilitate the eventual conversion of the affidavit system of the Excess Line Association of New York to an electronic filing system.

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

In 2009, the Department adopted an amendment to the regulation (INS-24-09-00002-A, State Register of September 2, 2009) to add additional coverages to the "export" list and reduce the requisite declinations for several other coverages. The Department is considering amending the regulation to add more classes to the "export" list.

In 2010, the Department proposed an amendment to the regulation (INS-40-10-00009-P, State Register of October 6, 2010) that would increase the minimum surplus to policyholders required to be maintained by new and current excess line insurers.

· INS-29-06-00004-A (State Register of October 11, 2006) Amendment to Part 219 (Third Amendment to Regulation 34-A) (Rulemakings Governing Advertisements of Life Insurance & Annuity Contracts) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 308, 1313, 2122, 2123, 2402, 4224, 4226 and 4240(d).

Section 2122(a)(2) of the Insurance Law prohibits any person from calling attention to an unauthorized insurer by any advertisement or public announcement in this state. Regulation 34-A establishes requirements regarding advertisements, statements and representations of licensees used in the solicitation of life insurance, annuities and the reporting of financial information. This rulemaking permitted "joint advertisements" in New York, which are advertisements that contain the names of, or references to, insurance policies sold by a New York authorized insurer and an affiliated insurer that is not authorized in New York. This rulemaking construed the terms "advertisement" and "public announcement" as used in the Insurance Law and prescribes, for the protection of New York consumers, rules and guidelines that require the truthful and adequate disclosure of all material and relevant information in joint advertisements.

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.

The Department's June 2010 Regulatory Agenda (published in the State Register of June 30, 2010) noted the Department's intent to adopt a new part to 11 NYCRR to provide rules and guidelines to assure full disclosure of all relevant information within advertisements that describe or solicit the purchase of property/casualty insurance coverage published, issued or distributed through various advertising media.

· INS-31-06-00013-A (State Register of October 25, 2006) Adoption of Part 221 (Regulation 182) (Limitations upon and Requirements for the use of Credit Information for Personal Lines Insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, article 28.

The Legislature, in enacting article 28 of the Insurance Law (Chapter 215 of the Laws of 2004), sought to afford consumers certain protections with respect to the use of credit information for personal lines insurance. To this end, the Legislature directed the Superintendent to promulgate a regulation that establishes limitations on, and requirements for, the permissible use of credit information by insurers doing business in this State to underwrite and rate risks for personal lines insurance business. This rulemaking clarifies prohibited and permitted uses of credit information in the underwriting and rating of personal lines insurance.

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-35-06-00007-A (State Register of November 15, 2006) Amendment to Part 68 (29th Amendment to Regulation 83) (Charges for Professional Health Services) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 2601, 5221, article 52.

Regulation 83 establishes maximum permissible charges for medical, hospital and other professional health services payable as no-fault insurance benefits. This rulemaking updates the addresses of the New York State Department of Health and the New York State Education Department for the purposes of reporting patterns of health provider overcharges, excessive treatment or any other improper actions. The rulemaking also updates the name of the New York State Insurance Department bureau that is collecting the data.

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

In 2010, the Department adopted an amendment to the regulation (INS-25-10-00017-A, State Register of September 22, 2010) that adopts the new Workers Compensation Board Dental Fee Schedule.

Also, in 2010, the Department proposed an amendment to the regulation (INS-29-10-00006-A, State Register of July 21, 2010) that would establish, for the purposes of no-fault reimbursement, fees for licensed acupuncturists. Final action on this amendment should take place by early 2011.

· INS-36-06-00008-A (State Register of November 29, 2006) Amendment to Part 218 (9th Amendment to Regulation 90) (Prohibition against geographical redlining and discriminating in certain property/casualty policies) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 307, 308, 3429, 3429-a, 3430, 3433 and article 34.

Regulation 90 is intended to make certain types of property/casualty coverage readily available in the voluntary market by implementing statutory prohibitions against companies engaging in geographical redlining practices and discrimination.

In enacting Chapter 259 of the Laws of 2005, the Legislature sought

to prohibit insurance companies from canceling, refusing to issue, or refusing to renew a homeowner's insurance policy, including fire insurance or fire and extended coverage insurance, based solely on the insured residing in an area that is serviced by a volunteer fire department, unless such action is based on sound underwriting and actuarial principles. This rulemaking establishes procedures for notifying applicants or insureds of the insurer's specific reasons for canceling or refusing to issue or renew such policies. The rulemaking advises that an applicant or insured may contact the insurance company with any questions, and may file a complaint with the Department.

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-41-06-00006-A (State Register of December 27, 2006) Amendment to Part 217 (1st Amendment to 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.

Regulation 178 establishes minimum data element requirements for the submission of claims for payment of medical or hospital services that are submitted on paper. This rulemaking merely updates the fields required for the submission of health care claims in a paper format. This information is required by Medicare, and was inadvertently omitted from the original promulgation of the regulation.

In 2009, the Department adopted an amendment to the regulation (INS-52-08-00006-A, State Register of April 1, 2009, effective date July 15, 2009) to establish guidelines for the processing of healthcare claims when the claimant is covered by more than one health insurance policy.

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

The Department also invites public comment on the continuation or modification of the following rulemakings, which were adopted in 2001.

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

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

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

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

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

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

Chapter 614 of the Laws of 1997 added a new article 79 to the Insurance Law governing the making of service contracts by service contract providers, and service contract reimbursement insurance, which was added as a new kind of insurance under section 1113(a)(28). Section 7911 specifically authorizes the Superintendent to promulgate

regulations necessary to effectuate article 79. Chapter 198 of the Laws of 1999 amended section 1113(a)(28) of the Insurance Law to add indemnification coverage to the definition of service contract reimbursement insurance.

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

In 2003, the Department adopted an amendment to the regulation (INS-48-02-00007-A, State Register of March 5, 2003) to update two references to the address of the Department's Albany office.

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

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

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

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

In 2008, the Department adopted an amendment to the regulation (INS-35-08-00009-A, State Register of December 3, 2008) to provide that external appeal agents shall not be subject to legal proceedings to review their determinations.

The Department's June 2010 Regulatory Agenda (published in the State Register of June 30, 2010) noted the Department's intent to amend Part 410 to: (1) establish standards for coverage determinations and appeals in conformance with federal requirements and (2) implement the requirements of Chapter 451 of the Laws of 2007 and Chapter 237 of the Laws of 2009 regarding contract terminations, pre-authorization requirements, and external appeals regulation, consistent with legislative intent: provide a description of the external appeal process; set criteria for entities wishing to act as external appeal agents; and establish a process whereby such entities can obtain such certification.

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

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

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

With the adoption of Part 99 (Regulation 151), Part 58 of 11 NYCRR (Regulation 117) was repealed. Part 58 was repealed because

its mortality tables for determining liabilities for annuities and pure endowments had been updated for new business and included in new Part 99.

In 2009, the Department adopted an amendment to Regulation 151 (INS-32-09-00005-A, State Register of December 9, 2009) to provide that external appeal agents shall not be subject to legal proceedings to review their determinations.

The Department's June 2010 Regulatory Agenda (published in the State Register of June 30, 2010) noted the Department's intent to amend Regulation 151 to ensure safeguards are maintained for variable annuity reserves.

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

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

Pursuant to Insurance Law section 5502, as amended by Chapter 147 of the Laws of 2000, the Superintendent dissolved the Medical Malpractice Insurance Association ("Association"). The Association had written medical malpractice insurance for health care providers who were unable to secure such coverage in the voluntary market. This regulation established the New York Medical Malpractice Insurance Plan ("Plan") to provide for the equitable distribution required by the Legislature. Through the Plan, an eligible health care provider, as defined in the regulation, that is unable to obtain insurance in the voluntary market, is assigned to an insurer writing the appropriate coverage in the insured's geographical territory.

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

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

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

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

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

In 2010, the Department adopted a consolidated regulatory action, including the amendment of Regulation 62 (INS-08-10-00002-A, State Register of May 5, 2010), to conform to the requirements of federal law. States must have a Medicare supplement insurance regulatory program that provides a minimum level of coverage as established by federal law, 42 U.S.C. § 1395ss. The applicable federal laws were amended in 2008.

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

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

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

each year. Section 307(b) was amended by Chapter 324 of the Laws of 1992, thereby necessitating amendment to Regulation 118 and the prescription of forms or otherwise the making of regulations.

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

The Department's June 2010 Regulatory Agenda (published in the State Register of June 30, 2010) noted the Department's intent to amend Regulation 118 to improve the Department's surveillance of the financial condition of insurers by requiring an annual audit of financial statements by independent certified public accountants, and the filing of audit reports and other related documents.

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

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

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

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

The regulation was amended twice in 2003 (INS-01-03-00011-A, State Register of March 26, 2003) and (INS-26-03-00003-A, State Register of September 24, 2003), twice in 2004 (INS-03-04-00004-A, State Register of May 19, 2004) and (INS-22-04-00005-A, State Register of September 15, 2004), and twice in 2007 (INS-43-06-00002-A, State Register of January 10, 2007) and (INS-06-07-00007-A, State Register of April 25, 2007) and, to conform the regulation to revisions to the Accounting Manual.

The Department's June 2010 Regulatory Agenda (published in the State Register of June 30, 2010) noted the Department's intent to amend the regulation again to develop standards and guidelines for real estate appraisals and accounting methodologies under which In-

urance Law article 43 corporations and Public Health Law article 44 Health Maintenance Organizations may evaluate real estate in the ordinary course of business and conform the regulation to the latest revisions to the Accounting Manual.

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

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

Insurance Law sections 4216 and 4235 authorize credit life insurance and credit accident and health insurance as permitted coverages in this state. One portion of this amendment removed a restriction on the use of age terminations.

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

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

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

· INS-15-01-00007-A (State Register of June 20, 2001) Amendment of section 70.8 and adoption of a new section 70.22 (Regulation 101) (Medical Malpractice Insurance Rate Modifications, Provisional Rates, Required Policy Provisions and Availability of Additional Coverages) of Title 11 NYCRR.

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

This amendment established physicians and surgeons medical malpractice insurance rates and appropriate surcharges effective July 1, 2000, and established rules to collect and allocate surcharges to recover deficits based on past experience. While the Superintendent continues to establish medical malpractice rates, the Superintendent no longer amends the regulation to do so, and the old rates are no longer current. The Department reviews this regulation each year to ensure that the provisions remain consistent with other related statutory and regulatory requirements.

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

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

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

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

York, to unauthorized affiliates, provided that the unauthorized insurer has satisfied all applicable requirements for placement by excess line brokers. Both sections of law require that any documents issued by an unauthorized insurer from an office in this state contain a prominent notice that the insurer is not licensed in New York, in accordance with regulations promulgated by the Superintendent.

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

In 2003, the Department adopted an amendment to Regulation 41 (INS-48-02-00013-A, State Register of February 19, 2003) to clarify the duties and responsibilities of excess line brokers, unauthorized insurers and the Excess Line Association of New York with regard to excess line business placed in New York State.

In 2006, 2007, and 2009, the Department adopted amendments to Regulation 41, and an additional proposed amendment was introduced in 2010. Those amendments are discussed on pages 2 - 3 of this report.

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

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

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

In 2004, the Department adopted an amendment to Regulation 171 (INS-46-03-00004-A, State Register of February 11, 2004) to encourage small employers that do not currently provide health insurance coverage to their employees to offer such coverage, and to make coverage available to uninsured employees whose employers do not provide group health insurance. To encourage the goals stated above, the amendment clarified eligibility for the Healthy NY Program and simplified the application and administrative process for both enrollees and providers.

In 2007, the Department adopted an amendment to Regulation 171 (INS-44-06-00004-A, State Register of January 31, 2007) to reduce Healthy New York premium rates to enable more uninsured businesses and individuals to afford health insurance and generally improve the Healthy New York Program.

Also in 2007, the Department adopted an amendment to Regulation 171 (INS-34-07-00017-A, State Register of November 7, 2007) to offer high deductible health plans in conjunction with the Healthy New York Program and to add additional benefits to the program.

The Department's June 2010 Regulatory Agenda (published in the State Register of June 30, 2010) noted the Department's intent to amend Regulation 171 to adjust and update the available benefit packages and/or cost sharing to make the products more marketable.

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

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

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

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

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

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

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

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

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

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

In 2002, the Department adopted an amendment to Regulation 35-C (INS-25-02-00004-A, State Register of September 11, 2002) to update certain references in accordance with statutory amendments.

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

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

· INS-31-00-00029-A (State Register of August 22, 2001) Repeal

of Part 65 (Regulation 68) and Adoption of the New Part 65 (Regulation 68) (Regulations Implementing the Comprehensive Motor Vehicle Insurance Reparations Act) of Title 11 NYCRR.

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

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

The new regulation reduced the time periods from 90 days to 30 days for notice of claim by claimants and from 180 days to 45 days for submission of health care claims, respectively. The Department recognized that in rare circumstances, a claimant will not be able to provide notice, or a medical provider may not be able to submit a claim, within the new time periods. In light of such recognition, the Department repealed the former requirement that a provider or claimant show that compliance was impossible in order to file a claim outside of the time requirements, and replaced it with a more flexible “reasonableness” standard that allows additional time for notice or submission of a claim if reasonable justification is provided.

The regulation was also amended to reflect the transfer of the no-fault conciliation function from the Insurance Department to an organization designated by the Superintendent. By this amendment of the conciliation procedures, rather than diminishing its role in the process, the Department strengthened its regulatory function with respect to compliance with the no-fault insurance statutes. The Department continues to monitor conciliation activity, and analyzes trends via reports to be generated regularly by the designated organization on all aspects of the conciliation function, such as provider overcharges, dilatory claims handling by insurers and over-utilization of the arbitration system by claimants’ representatives.

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

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

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

In 2004, the Department adopted amendments to subpart 65-4 (Regulation 65-D) (INS-43-03-00003-A and 43-03-00005-A, State Register of February 4, 2004) to correct an erroneous cross reference and insert a requirement that was inadvertently omitted from the previously revised regulation: the long-standing administrative procedure

that the designated administrator of the no-fault administration system will consult with the Insurance Department before making final determinations on requests to recuse an arbitrator for conflict of interest reasons. The rulemaking also provides that determinations shall be in writing and in a format approved by the Department.

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

In 2007, the Department adopted amendments to subparts 65-3 (Regulation 65-C) and 65-4 (Regulation 65-D) (INS-52-06-00006-A and 52-06-00007-A, State Register of March 14, 2007) to conform the regulations to Chapter 452 of the Laws of 2005. The legislation codifies the rulemakings contained within Insurance Department Regulation 68 that are applicable when multiple insurers may be responsible to the claimant for the processing of the claim for first party benefits. It also enhances the current arbitration procedures to include an expedited eligibility hearing option, when required, to designate the insurer for first party benefits.

The Department’s June 2010 Regulatory Agenda (published in the State Register of June 30, 2010) noted the Department’s intent to amend Regulation 68 to revise no-fault endorsements and requirements for insurer claim practices and to amend rulemakings related to both the manner in which the organization designated by the Superintendent administers the first party motor vehicle insurance arbitration programs and assesses the costs of these programs to the insurance industry.

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

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

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

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

The Department’s June 2010 Regulatory Agenda (published in the State Register of June 30, 2010) noted the Department’s intent to amend Regulation 29 to permit brokers and agents to use the internet and out-of-state banks with respect to producer premium accounts.

· INS-48-0000005-A (State Register of November 21, 2001) Adoption of Part 420 (Regulation 169) (Privacy of Consumer Financial and Health Information) of Title 11 NYCRR.

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

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

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

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

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

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 2005, which the Department of Labor is reviewing:

1. Amendment of Part 56 of Title 12 NYCRR.
 - a. Description of Rule: Protection of Public Health and Safety Relating to the Handling of Asbestos.
 - b. Statutory Authority: Labor Law, Art. 30, Section 906.
 - c. Need for Rule: To incorporate Federal standards and streamline and clarify the regulation.

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, Department of Labor, Counsel’s Office, Rm. 509, Bldg. 12, State Office Campus, Albany, NY 12240, teresa.stoklosa@labor.state.ny.us, (518) 457-4380

Office of Mental Health

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. Rulemakings which resulted in repeal of a Part, emergency and consensus rulemakings, and other rules which have expired are not subject to rule review.

In accordance with this statutory requirement, the New York State Office of Mental Health hereby gives notice of a rule which was adopted by this Office during the calendar year 2006. All rules in 2006, other than the one listed below, were processed as consensus rules; therefore, they are not subject to the five-year review. While the rule described below did result in the repeal of a Part, it also added provisions to another Part and is being submitted for review. The only two regulations that were adopted in 2001 were promulgated via the consensus process; therefore no rules from 2001 are subject to this rule review.

The public is invited to review and comment on the continuation or modification of the rule listed below. Comments should be submitted in writing, no later than March 1, 2011, 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

#OMH-27-05-00003-A Patient Visiting Rights. State Register Pub-

lication Date: July 6, 2005; Continued: December 28, 2005; Adopted: July 5, 2006.

Action: Amendment of Section 527.2(c) of 14 NYCRR; Addition of Section 527.10 to Title 14 NYCRR; Repeal of Part 21 of Title 14 NYCRR.

Purpose: To update regulations governing patients’ rights to visitation and to repeal obsolete regulations.

Analysis of Need: Regulations were enacted in the 1970’s at 14 NYCRR Part 21 to establish standards for communications and visits, which were applicable to both the Office of Mental Health and the Office of Mental Retardation and Developmental Disabilities (now known as the Office for People with Developmental Disabilities). Subsequently, the Department of Mental Hygiene was split into autonomous offices in 1978. Each office established its own statutory framework in the Mental Hygiene Law, and later legislation expanded upon the rights of patients and the communication needs of patients.

The Office of Mental Retardation and Developmental Disabilities updated its regulations in 14 NYCRR Part 633, which superseded Part 21 since applicable provisions regarding patient visiting rights and communication needs were moved into this section. Similarly, the Office of Mental Health promulgated regulations setting forth the rights of patients to communicate with visitors and establishing rules governing communication needs in 14 NYCRR Part 527. However, at that time, the Office of Mental Health did not clarify that the provisions of Part 527 partially superseded Part 21. As a number of provisions in Part 21 were outdated, the rulemaking was needed to eliminate duplication and confusion. The language added to Part 527 by this rulemaking updated the standards governing visiting rights of patients in facilities under the jurisdiction of the Office of Mental Health and served to ensure that those standards are fully contained in 14 NYCRR Part 527.

Legal Base: 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. Section 33.05 of the Mental Hygiene Law requires the Commissioner to establish guidelines to ensure that patients at facilities have full opportunities for conducting correspondence, have reasonable access to telephones, and have frequent and convenient opportunities to meet with visitors.

Department of Motor Vehicles

As required by Chapter 262 of the Laws of 1996, the following is a list of rules that were adopted by the Department of Motor Vehicles in calendar year 2006 which must be reviewed in calendar year 2011. 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-04-06-00002 Part 3 Driver License Requirements

Analysis of the need for the rule: This regulation was necessary to conform Part 3 to two Vehicle and Traffic Law amendments. One amendment provided that a class D licensee may operate a motor vehicle with a GVWR of not more than 26,000 pounds, and the other amendment created a “W” endorsement for tow truck operators. In addition, an “A3” restriction was added to Part 3, to conform to federal law, to permit school bus and municipal drivers to operate certain commercial vehicles (primarily school buses and municipally owned vehicles) even if such drivers do not meet all federal medical requirements. School bus drivers are still required to meet the stringent medical requirements set forth in 15 NYCRR 6. Since the relevant state statutory and federal regulatory provisions remain in effect, the need for this rule continues.

Legal basis for rule: Vehicle and Traffic Law Sections 215(a), 501(2)(b) and (c) and 501-a.

MTV-27-06-0010- Part 136- Restoration of Commercial Driver’s License

Analysis of the need for the rule: This rule was promulgated to create specific criteria for the restoration of a commercial driver’s license (CDL) following a conviction for an alcohol-related offense. When a

CDL holder is convicted of such an offense, DMV issues two revocation orders: the "commercial" part of the license is revoked for at least one year and the "non-commercial" part is revoked for at least six months. This amendment provides that if the "non-commercial" part is restored upon proof of rehabilitation, DMV will automatically restore the "commercial" part after one year is served in revoked status. This regulation provided for efficiencies in the restoration of the "commercial" portion, which benefits both the licensee and DMV. There is no diminution of highway safety, because the licensee has already submitted proof of rehabilitation to DMV. Since the applicable law has not changed, these regulations remain necessary.

Legal basis for the rule: Vehicle and Traffic Law Sections 215(a), 510(6)(a) and 1193(2)(c)(1).

MTV-47-06-00001 Parts 134 and 136 Drinking Driver Program and License Restoration

Analysis of the need for the rule: These amendments resulted from Chapter 732 of the Laws of 2006, which required certain motorists to enroll in the Drinking Driver Program (DDP) even if such motorists were not otherwise eligible for the DDP pursuant to Vehicle and Traffic Law Section 1196(4). Chapter 732 required courts to sentence motorists to DDP if such motorists entered into specific plea bargaining dispositions arising out of driving while intoxicated charges. DMV amended Parts 134 and 136 to provide that a motorist who entered DDP would not have his or her license restored following completion of DDP if such motorist was not otherwise eligible. Previously, completion of DDP had always served as the basis of license restoration and as proof of rehabilitation. Since the statutory provisions have not changed, these amendments remain necessary.

Legal basis for the rule: Vehicle and Traffic Law Sections 215(a), 510(6), 1193(2)(c)(1), 1192(10)(a) and (d), 1194(4), 1196(5) and 1196(7)(a).

Office of Mental Retardation and Developmental Disabilities

Office for People with Developmental Disabilities

The NYS Office for People With Developmental Disabilities (OPWDD) 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 OPWDD rule makings finalized during calendar years 2001 and 2006 which are subject to the SAPA section 207 five-year review of rules.

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

01-1. MRD-03-01-00004 (State Register of 1/17/01). Amendment to Title 14 NYCRR subpart 635-10.5 (home and community based waiver services [HCBS]) and sections 671.7 (HCBS waiver community residential habilitation services), 679.6 (clinic treatment facilities), 680.12 (specialty hospitals), 681.11 (intermediate care facilities for persons with developmental disabilities), and 690.7 (day treatment services for persons with developmental disabilities). All of these amendments, with the exception of amendments to 679.6, establish trend factors to be applied (beginning January 1, 2001) within the context of the various rate/fee setting methodologies. Although specific trend factors are calculated annually, they are cumulative. These amendments, with the exception of 671.7, need to be maintained, without modification, to define how OPWDD establishes current rates/fees of reimbursement for the affected facilities or services. The amendment to 671.7 was revised due to changes in fee setting methodology in 2010. The amendment to 679.6 pertained to requirements related to governing body resolution which was deleted in 2009 as a result of revisions to this section.

01-2. MRD-07-00-00016 (State Register of 2/16/00). Amendment to Title 14 NYCRR subdivisions 635-10.4(d) and 635-10.5(d): Service delivery and reimbursement standards applicable to the HCBS waiver service known as supported employment. The sections, as

amended, continue to reflect delivery and reimbursement of supported employment services provided under the auspices of OPWDD, however, 635-10.5(d) has since been further revised.

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

01-4. MRD-42-01-00003 (State Register of 10/17/01). Amendment to 14 NYCRR section 635.10 and subdivision 635-10.5(d): Revision of reimbursement standards applicable to HCBS waiver services known as supported employment services. The amendments revise the reimbursement methodology for supported employment services to reflect current reimbursement practice. As stated above, this rule making readopts the reimbursement provisions (with some minor revisions) which were previously adopted by the rule summarized in number 01-3 above. The different effective date was made necessary by the need to conduct provider training which was delayed due to the tragic events of September 11, 2001. This rule is not duplicative of number 01-3 above, and the reimbursement provisions remain current and need to be maintained without modification.

During calendar year 2006, OPWDD finalized nine rules. Four of these rule makings were proposed and adopted as consensus rule makings. MRD-47-05-00013 (State Register of 11/23/05) amended regulations to delete obsolete cross-references; MRD-49-05-00018 (State Register of 12/07/05) amended regulations on abuse reporting and updated the proper name for the Commission on Quality of Care and Advocacy for Persons with Disabilities; MRD-17-06-00005 (State Register of 4/26/06) amended regulations to revise an incorporation by reference to reflect the 2004 edition of the Estimated Useful Lives of Depreciable Hospital Assets; MRD-39-06-00025 (State Register of 9/27/06) amended personal allowance regulations to increase the amount of cash allowed to be maintained per person at his/her residence. Consensus rule makings are exempted from the review requirements by subdivision (5) of SAPA section 207. The remaining five rule makings finalized during 2006 were identified and described as follows at the time the respective notices were published in the State Register:

06-1. MRD-03-06-00013 (State Register of 1/18/06). Amendment to Title 14 NYCRR subpart 635-10.5, and sections 671.7, 680.12, 681.14 and 690.7: Rate/fee setting in voluntary agency operated individualized residential alternative (IRA) facilities and 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 and establish trend factors to be applied within the context of the referenced reimbursement methodologies, effective January 1, 2006. Although specific trend factors are calculated annually, they are cumulative. These amendments, with the exception of 671.7, need to be maintained, without modification, to define how OPWDD establishes current rates/fees of reimbursement for the affected facilities or services. The amendment to 671.7 was revised due to changes in fee setting methodology in 2010.

06-2. MRD-07-06-00007 (State Register of 2/15/06) Amendment to Title 14 NYCRR subpart 635-10.5 and section 681.14: Rate/fee setting in voluntary agency operated IRA facilities and HCBS waiver services and intermediate care facilities for persons with developmental disabilities. The amendments revise the methodologies used to calculate rates/fees and establish supplemental trend factors applicable to the referenced facilities and services, effective February 1, 2006, to cover prior period costs not recognized in the previous year. Although specific trend factors are calculated annually, they are cumulative. They need to be maintained, without modification, to define how OPWDD establishes current rates/fees of reimbursement for the affected facilities or services.

06-3. MRD-28-06-00019 (State Register of 7/12/06). Amendment to Title 14 NYCRR sections 671.7, 679.6 and 690.7: Fee setting in HCBS waiver community residential habilitation services, clinic treatment facilities, and day treatment facilities for persons with developmental disabilities. The amendments establish cost of living adjustments (COLA) and trend factors applicable to these facilities and services, effective October 1, 2006. Although specific trend factors are calculated annually, they are cumulative. COLAs are also important elements of the reimbursement methodologies. The amendment to 690.7 needs to be maintained, without modification, to define how OPWDD establishes current rates/fees of reimbursement for the affected facilities or services. The amendment to 671.7 was revised in 2010 due to changes in fee setting methodology. The amendment to 679.6 was deleted as a result of revisions to this section in 2009.

06-4. MRD-42-06-00008 (State Register of 10/18/06). Amendment to Title 14 NYCRR subpart 635-10.5 and sections 671.7 and 679.6: Revision of the reimbursement methodologies for various facilities and services provided under the auspices of OPWDD to include a health care enhancement (HCE II) funding initiative. The regulations implement the second phase of a funding initiative that enables agencies, which operate facilities and provide services under the auspices of OPWDD, to address the health care costs of their employees. OPWDD has been consistently building on this funding initiative so that the regulations remain an indispensable element of the reimbursement methodologies and OPWDD intends to maintain these amendments, with the exception of the amendment to 679.6, without modification. The amendment to 679.6 was deleted as a result of revisions to this section in 2009.

06-5. MRD-42-06-00009 (State Register of 10/18/06). Amendment to Title 14 NYCRR section 635-10.5(b): Revision of the reimbursement methodologies for residential habilitation services provided under the auspices of OPWDD in supervised and supportive IRA facilities. This amendment simplifies price setting and billing procedures for IRAs. The changes to the methodologies remain current and they need to be maintained, without modification, to define how OPWDD establishes current rates/fees of reimbursement for the affected facilities or services.

All of the rule makings identified as items 06-1 through 06-5 above are amendments which revise OPWDD's rate/fee setting methodologies. The legal basis for the adoption of these rules is found 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 OPWDD's responsibility for setting Medicaid rates for services in facilities licensed by OPWDD.

The public is invited to review and comment on OPWDD's proposed disposition regarding these 2001 and 2006 rule makings beginning January 5, 2011.

Any written comments or inquiries for further information may be directed to: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Counsel, Office for People With Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830, e-mail: barbara.brundage@opwdd.ny.gov

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 2001 and 2006 without modification or as revised. Comments are welcome on proposed continuation of the rules. Five copies of comments should be sent to: Jaclyn A. Brillling, Secretary, 3 Empire State Plaza, Albany, New York 12223-1350, within 45 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 §§ 255 (Case No. 99-G-1626).

a. Description of rules:

The rule added several definitions to the Gas Safety rules, including: "abnormal operating condition," "evaluation," "qualified," and "covered tasks." The rule also added a new subsection entitled,

"Operator Qualifications," which prescribes minimum requirements for individuals performing certain tasks on a pipeline facility.

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

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need for and legal basis of rules:

The rule was adopted to conform Part 255 to federal requirements at 49 CFR Part 192, Transportation of Natural Gas, to promote gas pipeline safety. The rule is needed to ensure that New York requirements for gas pipeline safety conform with federal requirements.

2. 16 NYCRR §§ 85-2, 86.8, and 88.4 (Case No. 06-M-1019).

a. Description of rules:

In order to make it possible for the Commission to act on a national interest electric transmission corridor (NIETC) project within a year a new § 85-2.9 was added to specify precisely the information an application for an electric transmission line in a NIETC project must contain to be considered "filed." This section streamlines the review process by identifying application requirements specific to portions of transmission lines that are proposed to be installed overhead, underground or underwater, thus avoiding the need to process a significant number of waiver requests. Section 86.8, Exhibit 7: Local Ordinances was amended so as to clarify the obligations of all applicants as to the filing requirements for all local ordinances, laws, resolutions, standards and other requirements, and section 88.4, Exhibit E-4: Engineering Justification was amended to require submission of a system reliability impact study.

b. Statutory authority: PSL §§ 4(1), 20(1), 122(1)(f).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis of rules:

The rules streamline the review process by clarification of what an application for an electric transmission line must contain to be considered "filed," augments filing requirements regarding substantive local legal provisions, and clarifies the transmission system studies to be provided in all applications.

3. 16 NYCRR Part 753 (Case No. 99-M-1624).

a. Description of rules:

The amendments to Part 753 "Protection of Underground Facilities" update the regulations by clarifying definitions and requiring operators to develop a means of providing information regarding the location of underground facilities to facilitate future design projects, and adding a new section 753-6 describing the enforcement authority and sanctions available to the Public Service Commission.

b. Statutory authority: PSL § 119-b and General Business Law Article 36.

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis of rules:

The rule supports Staff's oversight of underground utilities excavation and authorizes the Public Service Commission to utilize enforcement capabilities in the protection of underground facilities.

4. 16 NYCRR Part 93 (Case No. 99-E-1691).

a. Description of rules:

The amendments to Part 93 encourage competition in electricity meter sales by allowing any energy services company or competitive meter service provider to apply for approval of a type of meter intended for use in New York.

b. Statutory authority: PSL § 67(4).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis of rules:

The amendments to the rule were promulgated to open the market for sales of electric meters to promote competition and expand customer choice.

Department of State

As required by section 207 of the State Administrative Procedure Act (SAPA), the following is a list of rules which were adopted by the Department of State in calendar year 2006 which must be reviewed in calendar year 2011. 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 21, 2011. Comments may be directed to: David Treacy, Office of Counsel, Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 1120, Albany, New York 12231-0001.

RULES ADOPTED IN 2006

(1) DOS-33-06-00004 Qualifying Courses for Home-Inspection Applicants

Added Subpart 197-2 to Title 19 NYCRR to establish standards for home-inspection courses, and procedures for course approval

Analysis of the need for the rule: The rule is needed pursuant to Article 12-B of the Real Property Law to ensure that schools and students will know which courses are required in order for an applicant to qualify for a home inspector license.

Legal basis for the rule: Real Property Law, sections 444-c(6)(A) and 444-1

(2) DOS-33-06-00005 General Liability Insurance for Licensed Home Inspectors

Added Part 197 and Subpart 197-1 to Title 19 NYCRR to establish the type and amount of liability coverage required of licensed home inspectors

Analysis of the need for the rule: The rule is needed pursuant to Article 12-B of the Real Property Law to ensure that prospective applicants for home inspector licenses will know the terms and conditions of the required liability coverage.

Legal basis for the rule: Real Property Law, sections 442-k and 444-1

RULES ADOPTED IN 2001

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 2001 which must be re-reviewed in calendar year 2011. 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 21, 2011. Comments may be directed to: David Treacy, Office of Counsel, Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 1120, Albany, New York 12231-0001.

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

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

Analysis of the need for the rule: Section 69-m(1) of the General Business Law provides that a licensed security or fire alarm installer shall issue identification cards to employees who assist with the installation, servicing, or maintenance of alarm systems. Section 69-m(1) further provides that the identification card shall be in a form prescribed by the Secretary of State. The identification card required prior to the adoption of this rule was 2 inches by 3 1/4 inches with prescribed information printed on both sides of the card. Industry representatives indicated that the prescribed size of the card was not a standard size and that this made the card more expensive to produce than a card of standard size. These representatives also stated that the cost of producing the card would be reduced if information was not required to be printed on both sides. Consequently, at the recommendation of the Department of State's Security and Fire Alarm Advisory Committee, the Department adopted this rule, which prescribed a standard size card of 3 3/8 inches by 2 1/8 inches printed on one side only.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) DOS-27-01-00005 Bail Enforcement Agents and their Employes

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

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

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

(6) DOS-31-01-0000 Coastal Policies for Long Island Sound

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

Analysis of the need for the rule: This rule was adopted to establish policies to which State agencies must adhere when they certify consistency of actions which are intended to be taken in the coastal area of Long Island with the coastal policies found in Article 42 of the Executive Law. Among the matters concerning the Long Island Sound coastal area addressed by the rule are: overall development patterns, historical resources, visual quality and scenic resources, erosion and flood hazards, water quality and supply, ecosystem issues, air quality, solid waste and hazardous wastes, public access and recreation, water-dependent uses, living aquatic resources, agricultural lands, and energy and mineral resources.

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

Department of Taxation and Finance

Pursuant to section 207 of the State Administrative Procedure Act (SAPA) the Department of Taxation and Finance must review all rules, with certain exceptions, adopted on or after January 1, 1997, after five years, and, thereafter, at five year intervals. In 2011, the Department must review rules that were adopted during 2001 and 2006 to determine whether these rules should be retained as written or modified. This rule review includes rules of the State Board of Real Property Services whose rule making functions were transferred to the Department by the Laws of 2010, chapter 56, Part W. Accordingly, the Department intends to review the following rules during 2011, 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, 2011.

1. 20 NYCRR Part 530 (Amount to be Collected, formerly entitled Tax Rates) Filed June 12, 2001; published June 27, 2001; effective December 1, 2001. Need: This regulation was amended to repeal the tax rates and bracket schedules which indicated the amount of sales tax to be collected for various amounts of sales prices and tax rates, and replace them with standard methodology for rounding the amount of sales tax to be collected to the nearest penny. This rule was previously reviewed as part of the Department's 2006 Rule Review published in the State Register on January 4, 2006. As a result of that review of the 2001 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on October 25, 2006. Subsequent to the 2006 statutory five-year review, amendments to update and simplify Part 530 of the Sales and Use Taxes Regulations by eliminating obsolete and unnecessary tax rates that are set by and pursuant to the Tax Law were adopted on February 14, 2007. (See TAF-47-06-00012-A; filed February 14, 2007; published March 7, 2007; effective March 7, 2007.) However, certain provisions of the 2001 rule were not amended in 2007 and, therefore, remain subject to review in 2011. Legal Basis: Tax Law sections 171, subd. First; 1132(b); 1142(1) and (8); and 1250 (not subdivided).

(TAF-17-01-00002-A)

2. 20 NYCRR Part 2402 (Taxpayer Record Retention Formats) Filed May 22, 2001; published June 6, 2001; effective May 22, 2001, and applicable to the retention of taxpayer records on and after June 1, 2001 (emergency adoption). Filed July 24, 2001; published/effective August 8, 2001 (permanent adoption). Need: The Department's Procedural Regulations were amended to add a new Part 2402 to ensure timely compliance with the record retention and electronic record-keeping provisions of the state Electronic Signatures and Records Act (State Technology Law, section 301 et seq.) and the federal Electronic Signatures in Global and National Commerce Act (15 USCS, section 7001 et seq.). Part 2402 provides for the voluntary use of electronic records by taxpayers and prescribes general standards applicable to the retention of electronic records that ensure that taxpayers who exercise this option are complying with their responsibilities under the Tax Law and under other applicable laws that are administered by the Commissioner. This rule was previously reviewed as part of the Department's 2006 Rule Review published in the State Register on January 4, 2006. As a result of that review of the 2001 rule, changes to section 2402.1 of the regulations were adopted to reflect the renumbering of a citation to the Electronic Signatures and Records Act, and to update references to enabling state and federal legislation.

(See TAF-19-06-00022-A; filed July 6, 2006; published/effective July 26, 2006.) The remaining amendments from the 2001 rule remain subject to review in 2011. Legal Basis: Tax Law, section 171, subs. First and Fourteenth.

(TAF-23-01-00043-A)

3. 20 NYCRR Section 528.12 (The flags of the United States of America and the State of New York) Filed August 14, 2001; published August 29, 2001; effective September 1, 2001. Need: This regulation was amended to update the definition of the term "flag" and, accordingly, to exempt from State and local sales and use taxes flags that are made from materials in addition to cloth and those accessories that are used solely for the display of the flag and are sold with the flag for a single charge. This rule was previously reviewed as part of the Department's 2006 Rule Review published in the State Register on January 4, 2006. As a result of that review of the 2001 rule, a Rule Review notice indicating that it would be continued without modification was published in the State register on April 26, 2006. Legal Basis: Tax Law sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided).

(TAF-26-01-00017-A)

4. 9 NYCRR Parts 186 and 191 (Procedures for Market Value Surveys) Filed April 24, 2001, published/effective May 9, 2001. Need: This rule made various revisions to the procedures for determining State equalization rates with the goal of providing for more accurate and timely measurements of relative municipal full value for use in calculating the rates. This rule was previously reviewed as part of the State Board of Real Property Services' 2006 Rule Review published in the State Register on January 4, 2006. As a result of that review of the 2001 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on September 20, 2006. Legal Basis: Real Property Tax Law sections 202(1)(i) and 1202.

(RPS-08-01-00004-A)

5. 9 NYCRR Part 197 (Reports by Special Franchise Owners and Review of Special Franchise Complaints) Filed January 16, 2001, published/effective January 31, 2001. Need: This rule simplified the reporting requirements to which special franchise owners were subject, and provided a more specific and consistent structure for the filing of complaints. This rule was previously reviewed as part of the State Board of Real Property Services' 2006 Rule Review published in the State Register on January 4, 2006. As a result of that review of the 2001 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on September 20, 2006. Legal Basis: Real Property Tax Law sections 202(1)(i), 600, 604 and 612.

(RPS-43-01-00007-A)

6. 20 NYCRR Part 2399 (Mailing Rules and Legal Holidays) Filed February 16, 2006; published/effective March 8, 2006. Need: This rule updated the Department's Procedural Regulations concerning the timeliness of documents and payments that are filed and remitted by electronic means. Legal Basis: Tax Law, section 171, subs. First and Fourteenth.

(TAF 52 05-00018-A)

7. 20 NYCRR Section 1-2.6 and Parts 3 and 4 (Taxation of corporate partners) Filed October 17, 2006; published/effective November 1, 2006 and applicable to taxable years beginning on or after January 1, 2007. Need: This rule provided guidance with regard to the computation of the business corporation franchise tax imposed by Article 9-A of the Tax Law for corporations that are partners in partnerships or that are members of limited liability companies that are treated as partnerships under Article 9-A. Legal Basis: Tax Law, sections 171, subd. First and 1096(a).

(TAF-34-06-00005-A)

8. 20 NYCRR Part 2500 (Reportable Transactions) Filed December 12, 2006; published/effective December 27, 2006. Need: The Department's Procedural Regulations were amended to add a new Part 2500 to provide a definition of a New York reportable transaction and the disclosure requirements for participation in a New York reportable transaction. Under Part 2500, a New York reportable transaction is a

transaction that has the potential to be a tax avoidance transaction under articles 9, 9-A, 22, 32, or 33 of the Tax Law. Legal Basis: Tax Law, sections 25(a)(3); 171; subd. First; 697(a); and 1096(a).

(TAF-43-06-00006-A)

9. 20 NYCRR Parts 132 (New York Adjusted Gross Income of a Nonresident Individual) and 154 (Change of Resident Status During Year) Filed December 12, 2006; published/effective December 27, 2006, and shall apply to taxable years beginning on or after January 1, 2006. Need: This rule complied with the statutory directive of Tax Law sections 631(g) and 638(c), as amended by Chapter 62 of the Laws of 2006, requiring the Department to propose regulations within 180 days of enactment to provide allocation rules for certain nonresidents and part-year residents who were granted stock options, stock appreciation rights or restricted stock. Legal Basis: Tax Law, sections 171, subd. First; 631(g); 638(c); 697(a); and L. 2006, ch. 62, part N, section 3.

(TAF-43-06-00007-A)

10. 9 NYCRR Subpart 188-8 (Training Requirements for New York City Assessors) Filed November 20, 2006, published/effective December 6, 2006. Need: This rule implemented the program of training, certification and minimum qualification standards for New York City Assessors that was established by L.2005, ch.139. Legal Basis: Real Property Tax Law sections 202(1)(l) and 350-364.

(RPS-27-06-00006-A)

11. 9 NYCRR Section 190-3.2 (RPS License Fees) Filed November 20, 2006, published/effective December 6, 2006. Need: This rule revised the annual license fees payable by users of the Real Property System (RPS). Legal Basis: Real Property Tax Law section 202(1)(l) and State Finance Law section 97-kk.

(RPS-38-06-00001-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, Bldg. 9, Rm. 160, Albany, NY 12227, (518) 457-2254, e-mail 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 6, 2010, 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 2005 and 2000. Those regulations are set forth below:

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 developed 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: Social Services Law (SSL) sections 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 sections 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 OTDA's 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 sections 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 sections 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 sections 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 sections 20(3)(d), 34(3)(f), 111-a and 111-i(2)

Rules adopted in 2000

1. 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 sections 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.

2. 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 sections 20(3)(d), 34(3)(f) and 97.

3. 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 sections 20(3)(d) and 34(3)(f)

4. 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 sections 20(3)(d), 34(3)(f) and 134(b)

5. 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 OTDA's 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 sections 20(3)(d) and 34(3)(f); L. 1995, ch. 81, sections 155-159 and 195-199

6. 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 sections 20(3)(d), 34(3)(f) and 131-n(1); L. 1999, ch. 389

7. 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 sections 20(3)(d), 34(3)(f) and 97

8. 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 sections 20(3)(d) and 34(3)(f); L. 1988, ch.53 and subsequent budget bills

As of March 1, 2010, OTDA had not received substantive comments regarding its Rule Review published in the New York State Register on January 6, 2010.

OTDA is considering amendments that may impact the regulatory changes that were adopted in 2005 and 2000. OTDA is considering the following regulatory amendments: update regulation pertaining to the calculation of basic child support obligations and repeal the child support standards chart; and update Home Energy Assistance Program (HEAP) regulations to reflect current practices and the provisions of the federally accepted HEAP State plan. At this point, OTDA has determined that no additional modifications need to be made to its regulations adopted in 2005 and 2000, as amended.

OTDA has determined that in the ensuing calendar year, it should review its regulations from Title 18 NYCRR adopted in 2006 and 2001. These regulations from 2006 and 2001, 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, 2011.

Rules Adopted in 2006

1. TDA-13-05-00001 Verification of School Attendance

Amended 18 NYCRR § 369.4(f) to relieve social services districts of verifying school attendance of children under the age of 18.

Analysis of the need for the rule: These amendments were developed to make the requirements of 18 NYCRR § 369.4(f) consistent with those of 18 NYCRR § 369.2(c) and to reduce the administrative burden on social services districts.

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

2. TDA-36-05-00003 Enforcement of Support Obligations and Issuance of Income Executions

Amended 18 NYCRR § 347.9 to implement State and federal laws concerning the process for issuing income execution orders in child support cases and to change the method for calculating the amount of any additional deductions to be withheld from an employee's income if the employee owes child support arrears or past due child support.

Analysis of the need for the rule: These amendments were developed to implement section 314 of the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 (P.L. 104-193) and the provisions of Chapter 398 of the Laws of 1997 that amended section 5241 of the Civil Practice Law and Rules (sections 20 through 28), concerning the process for issuing income execution orders in child support cases and the penalties to be imposed on employers for failing to comply with such orders. The amendments also revised the calculation of the additional amount deducted from an employee's salary to collect child support arrears or past due child support. These revisions allowed a higher additional amount when current support terminates, clarified the rules for deductions from lump sum payments, and clarified the rules for proving that the additional amount should be reduced or eliminated in certain cases.

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

3. TDA-51-05-00006 Treatment of Lump Sum Income

Amended 18 NYCRR §§ 352.23(b) and 352.29(h)(1) and (2) and added 18 NYCRR § 352.23(b)(4) to implement Chapter 373 of the Laws of 2003, concerning the treatment of lump sum income.

Analysis of the need for the rule: This rule was developed to provide that any lump sum of income received by a public assistance applicant or recipient could be disregarded when determining eligibility for such assistance under certain circumstances.

Legal basis for the rule: SSL sections 20(3)(d), 34(3)(f), 131(1), 131-a(12)(c), 131-n and 355(3).

Rules adopted in 2001

1. TDA-43-00-00001 Cooperation with Social Services Officials

Amended 18 NYCRR § 351.1(b)(2) to require information concerning the non-legally responsible caretaker relatives of children who receive public assistance and information concerning the siblings of children who are receiving public assistance to be provided to social services officials.

Analysis of the need for the rule: This rule was developed to help the State meet federal requirements concerning the furnishing of information on families receiving assistance under the State's public assistance programs funded under Temporary Assistance for Needy Families program.

Legal basis for the rule: SSL sections 20(3)(d), 34(3)(f) and 132

2. TDA-43-00-00002 Safety Net Assistance

Amended 18 NYCRR § 370.4(b)(1)(ii) to exempt from the two year limit on receipt of safety net assistance work subsidies paid to an employer or a third party for the cost of wages or benefits for a recipient when the payment equals the full amount of the recipient's safety net assistance budget deficit.

Analysis of the need for the rule: This rule was developed to make State requirements concerning the time limits for receipt of safety net assistance consistent with federal requirements concerning the time limits for receipt of benefits funded under the Temporary Assistance for Needy Families program.

Legal basis for the rule: SSL sections 20(3)(d), 34(3)(f), 158(a) and art. 5, title 3

3. TDA-46-00-00004 Intentional Program Violations

Amended 18 NYCRR §§ 359.3(a) and 359.9(g) to make State regulations consistent with State law and a federal court decision.

Analysis of the need for the rule: This rule was developed to clarify the circumstances under which a person would be determined to have committed an intentional program violation and to clarify the start date of the disqualification period for an intentional program violation in the food stamp program.

Legal basis for the rule: SSL sections 20(3)(d), 34(3)(f) and 145-c

4. TDA-48-00-00002 Homeless Housing Assistance Program Projects

Amended 18 NYCRR § 800.2(m) to provide additional funds to existing homeless housing and assistance program projects.

Analysis of the need for the rule: This rule was developed to extend the policy that authorized the creation of operating and capital replacement reserves to existing Homeless Housing and Assistance Program projects.

Legal basis for the rule: SSL sections 20(3)(d), 34(3)(f) and art. 2-A, title 1

5. TDA-19-01-00009 Food Stamp Benefit Increase

Amended 18 NYCRR § 387.17(e) to clarify existing federal policy regarding time frames due to change in household circumstances.

Analysis of the need for the rule: This rule was developed to implement existing federal requirements regarding time frames for providing an increase in food stamp benefits due to a change in household circumstances.

Legal basis for the rule: SSL sections 20(3)(d), 34(3)(f) and 95

6. TDA-19-01-00010 Eligibility for Public Assistance

Amended 18 NYCRR § 351.2(e), (f) and (j) to conform eligibility requirements to existing policies and remove outdated terminology.

Analysis of the need for the rule: This rule was developed to make

technical changes to conform to existing policies and to remove references to outdated terminology.

Legal basis for the rule: SSL sections 20(3)(d), 34(3)(f), 158 and 349

7. TDA-21-01-00004 Temporary Assistance for Needy Families Program

Amended 18 NYCRR § 369.4(d)(7) to establish uniform statewide standards.

Analysis of the need for the rule: These amendments were developed to establish uniform statewide standards for determining hardship under the Temporary Assistance for Needy Families program for purposes of exempting certain households from the 60-month time limit for eligibility.

Legal basis for the rule: SSL sections 20(3)(d), 34(3)(f), 350(2) and art. 5, title 10

8. TDA-24-01-00001 Recoupment and Advance Allowances

Amended 18 NYCRR §§ 352.11 and 352.31(d)(2) to permit recoupment of 10 percent for recipients of Safety Net Assistance and Family Assistance.

Analysis of the need for the rule: This rule was developed to permit recoupment of overpayments of public assistance benefits from future benefit payments made to public assistance recipients, achieve consistency in the recoupment policy between the family assistance and safety net assistance programs, ease administrative burdens for local social services districts, and make conforming changes to advance allowances.

Legal basis for the rule: SSL sections 20(3)(d), 34(3)(f), 158(1) and 355(3)

Any comments should be submitted to: Kathryn Mazzeo, Office of Temporary and Disability Assistance, 40 N. Pearl St., 16th Fl., Albany, NY 12243, (518) 473-3271, e-mail: Kathryn.Mazzeo@OTDA.state.ny.us

