

RULE REVIEW

Department of Agriculture and Markets

Pursuant to Section 207 of the State Administrative Procedure Act, notice is hereby provided of the following rules which the Department of Agriculture and Markets intends to review in 2012. Public comment on the continuation or modification of these regulations will be accepted until April 16, 2012. All Section and Part references are to Title 1 of the New York Code of Rules and Regulations.

Regulations adopted in 2002

- Section 139.2 Control of the Asian Long Horned Beetle.
Statutory authority: Agriculture and Markets Law sections 18, 164 and 167.
The continuation of this regulation is necessary to preserve the Asian Long Horned Beetle quarantine in certain areas of Brooklyn, Queens and Manhattan, New York. The quarantine area has been repeatedly adjusted in an effort to control the spread of the beetle, most recently in 2011.
- Part 351 Animal Health Requirements for Admission to Fairs.
Statutory Authority: Agriculture and Markets Law sections 18, 31-b, 72, 74, and 287.
The continuation of this regulation is necessary to maintain health certification requirements for animals exhibited at fairs. Livestock exhibitions at fairs have the potential to facilitate the spread of communicable or infectious diseases among the domestic animal population of the state. The public is also exposed directly to these animals during the exhibitions, increasing the risk of transmission of certain diseases from animals to humans. The regulation was amended in 2007 and 2009 to make technical changes.

Regulations adopted in 2007

- Part 68 Captive Cervid Health Requirements.
Statutory Authority: Agriculture and Markets sections 18(6), 72, and 74.
The continuation of this regulation is necessary to prevent further introduction of chronic wasting disease (CWD) into New York State and to permit detection and control if the disease were to arise in the State's captive cervid population. The rule establishes health requirements for captive cervids, including those susceptible to CWD; certified and monitored CWD herd programs; and slaughter procedures.
- Part 363 State Aid to Soil and Water Conservation Districts.
Statutory Authority: Soil and Water Conservation Districts Law sections 4 and 11-a.
The continuation of this regulation is necessary to provide a mechanism for the distribution of state financial aid to county soil and water conservation districts in conformance with Soil and Water Conservation Districts Law section 11-a.

Comments should be addressed to: Diane B. Smith, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-6468, e-mail: diane.smith@agriculture.ny.gov, or Ruth A. Moore, Counsel, 10B Airline Dr., Albany, NY 12235, (518) 457-6468

State Commission of Correction

As required by Chapter 262 of the Laws of 1996, the following is a list of rules which were adopted by the State Commission of Correction in calendar years 1997, 2002 and 2007 which must be reviewed in calendar year 2012. Public comment on the continuation or modification of these rules is invited. Comments should be received by April 1, 2012. Comments may be directed to: Brian Callahan, Office of Counsel, 80 Wolf Road, 4th Floor, Albany, New York 12205-2670.

CMC-20-97-00023 Amendment of subdivision (f) of section 7002.4 of Title 9 NYCRR.

Analysis of the need for the rule: The rule is needed to provide that money seized from prisoners upon admission to a local correctional facility be placed in the prisoner's facility account.

Legal basis for the rule: Correction Law section 45(6).

CMC-06-97-00098 Amendment of sections 7003.2(a)(2); 7003.2(c)(2); 7003.3(b); 7003.3(d through l); 7003.3(i); 7003.3(J)(5)(i)(iii).

Analysis of the need for the rule: This rule is needed to eliminate unnecessary recordkeeping; to provide greater discretion regarding supervision of trustee prisoners; and to facilitate greater interaction between correctional staff and prisoners.

Legal basis for the rule: Correction Law section 45(6).

CMC-20-97-00024 Amendment of subdivision (a) of section 7005.4, section 7005.5 and subdivision (a) of section 7005.9 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to provide greater flexibility to facility administrators regarding hair styles and to streamline provisions.

Legal basis for the rule: Correction Law section 45(6).

CMC-10-97-00024 Amendment of subdivision (a) of section 7006.5 and subdivision (b) of section 7006.11 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to modify unnecessary and burdensome procedures.

Legal basis for the rule: Correction Law section 45(6).

CMC-20-97-00025 Amendment of subdivision (b) of section 7010.2 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to allow local correctional facilities to utilize the results of a physical examination conducted upon a prisoner within six months of his or her admission to the facility.

Legal basis for the rule: Correction Law section 45(6).

CMC-16-97-00005 Amendment of Part 7010.

Analysis of the need for the rule: This rule is needed to allow local correctional facilities to return unused medications.

Legal basis for the rule: Correction Law section 45(6).

CMC-53-96-00017 Amendment of subdivisions (b) and (f) and repeal of subdivision (g) of section 7013.8 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to extend the time period in which the classification of a prisoner must be completed and to eliminate unnecessary and burdensome paperwork.

Legal basis for the rule: Correction Law section 45(6).

CMC-20-97-00022 Repeal of sections 7015.2, 7015.3, 7015.4 and 7015.5; addition of a new 7015.2; renumbering of section 7015.6 as 7015.3; and amendment of the renumbered 7015.3.

Analysis of the need for the rule: This rule is needed to streamline the provisions and eliminate overly detailed requirements.

Legal basis for the rule: Correction Law section 45(6).

CMC-06-97-00097 Amendment of Part 7028 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to permit the restriction of an inmate's exercise period when it is determined that it would be a threat to the safety, security, or good order of the facility, or the safety, security or health of the prisoner or other prisoners.

Legal basis for the rule: Correction Law section 45(6).

CMC-29-97-0003 Amendment of Part 7032 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to curtail the submission of frivolous grievances.

Legal basis for the rule: Correction Law section 45(6).

CMC-10-97-00024 Amendment of Part 7605 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to simplify the requirements regarding development and review of policies and procedures.

Legal basis for the rule: Correction Law section 45(6).

CMC-27-97-00017 Amendment of Part 7621 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to authorize establishment of double occupancy housing units in the Department of Correctional Services' facilities.

Legal basis for the rule: Correction Law section 45(6).

CMC-39-96-00005 Amendment of sections 7634.5(c) and 7634.6(c) and repeal of section 7634.8 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to eliminate an impractical requirement to review training; to eliminate an overly detailed reporting requirement; and to delete unneeded language regarding variances.

Legal basis for the rule: Correction Law section 45(6).

CMC-43-96-00005 Amendment of Part 7651 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to eliminate overly detailed and/or obsolete provisions.

Legal basis for the rule: Correction Law section 45(6).

CMC-05-97-00020 Amendment of subdivision (h) of section 7651.10.

Analysis of the need for the rule: This rule is needed to conform the provisions with Correction Law section 137.

Legal basis for the rule: Correction Law section 45(6).

CMC-52-96-00003 Amendment of section 7677.5 and repeal of subdivisions (b) and (c) of section 7677.3 and subdivisions (b), (c) and (d) of section 7677.11 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to simplify requirements regarding development of policies and procedures and recordkeeping.

Legal basis for the rule: Correction Law section 45(6).

CMC-41-06-00007 Amendment of section 7006.9 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to expand and augment the list of allowable sanctions of county jail inmates found guilty of violating disciplinary rules following a disciplinary hearing.

Legal basis for the rule: Correction Law section 45(6) and 45(15).

CMC-27-07-00015 Addition of section 7010.3(c) of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to allow inmates to possess prescribed emergent medications such as nitroglycerine and asthma and other respiratory inhalants.

Legal basis for the rule: Correction Law section 45(6) and 45(15).

CMC-42-06-00006 Amendment of sections 7022.3 and 7022.4 of Title 9 NYCRR.

Analysis of the need for the rule: This rule is needed to amend the manner in which county correctional facilities must report significant events and incidents.

Legal basis for the rule: Correction Law sections 45(6) and 45(15), 46(1) and 47(2).

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 2007, 2002 and 1997 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 2007

OFFICE OF P-12 EDUCATION

Section 100.5 of the Commissioner's Regulations, regarding Regents diploma with honors

Description of rule: To revise and clarify diploma requirements, provide flexibility to schools, and alternatives for students who seek a Regents Diploma with honors or a Regents Diploma with Advanced Designation with honors.

Need for rule: Under prior regulations, a school district could award a student a Regents diploma with honors or a Regents diploma with advanced designation with honors if a student achieves an average of 90 percent in all required Regents examinations. The rule provides an opportunity for students to substitute up to two approved alternative assessments in lieu of required Regents examinations to be awarded the "Honors" designation on their diploma. The student's score on the alternative assessments will not be considered in the calculation to determine whether the student has achieved an average of 90 percent.

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).

Section 120.4 of the Commissioner's Regulations, regarding Supplemental Educational Services (SES)

Description of rule: Prescribes requirements regarding the use of rewards and incentives by Supplemental Educational Services (SES) providers; revises reporting dates for SES providers and local educational agencies (LEAs); and corrects inaccurate references in the SES regulations.

Need for rule: The rule is necessary to implement policy adopted by the Board of Regents regarding the provision of Supplemental Educational Services (SES). The rule:

a. Regulates the use of rewards and incentives by SES provider to prohibit SES providers from using incentives, gratuities, payments, or compensation to solicit enrollment, encourage parents to switch providers once students are enrolled, or attempt to influence parents, students, LEAs, LEA staff and/or school staff.

b. Amends reporting dates for SES providers and local educational agencies (LEAs) to so that accurate information and data are collected on a timeline that is most suitable for the providers and the LEAs; and

c. Corrects inaccurate references in current SES regulations.

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

Section 100.13 and amendment of section 170.12 of the Commissioner's Regulations, regarding Contracts for Excellence

Description of rule: The rule establishes requirements for Contracts for Excellence, including allowable programs and activities, criteria for public reporting by school districts of their total foundation aid expenditures, and other requirements for purposes of preparation of the Contracts by certain specified school districts.

Need for rule: The rule is needed to implement the statutory requirements. The rule establishes systems and processes that provide for transparency, simplicity and accountability in the use of additional aid to districts with the greatest concentrations of students in need who are at the same time, experiencing the greatest obstacles to improving their students' achievement. Moreover, it ensures that districts and schools use new funding on one or more of the following six programs and activities: class size reduction, increased time on task, middle and high school restructuring, full day prekindergarten and kindergarten, teacher and principal quality initiatives and experimental programs.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2), 211-d(1-9), and Chapter 57 of the Laws of 2007.

Sections 21.3 and 100.12 of the Commissioner's Regulations, regarding loan of instructional computer hardware

Description of rule: To implement Education Law sections 753 and 754, as added by Chapter 57 of the Laws of 2007, to provide for the loan of instructional computer hardware from public school districts to nonpublic school students.

Need for rule: The rule is needed to implement statutory requirements. Education Law section 754, as added by Chapter 57 of the Laws of 2007, requires school authorities to loan instructional computer hardware to an individual or a group of individuals legally attending nonpublic schools located in the district, subject to such rules and regulations as prescribed by the Board of Regents. These

requirements are detailed in an amendment to section 21.3 of the Rules of the Board of Regents, which detail loan procedures for computer hardware and software.

Education Law section 753, as added by Chapter 57 of the Laws of 2007, provides for an apportionment for approved school district expenses for computer hardware or technology equipment, or for repair of such equipment or staff development for instructional purposes. Such aid shall be provided pursuant to a plan developed by the district that demonstrates, to the satisfaction of the Commissioner, that the instructional computer hardware needs of the district's public and nonpublic school students have been adequately met. Section 100.12, as amended, specifies that each school district's technology plan including an assurance that the school district has provided for the loan of instructional computer hardware to students legally attending nonpublic schools pursuant to Education Law section 754.

The rule establishes systems and processes that provide needed computer hardware to benefit students attending nonpublic schools in the state, which is a necessary component in raising academic achievement through additional computer training, education and instructional delivery.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305 (1) and (2), 753(1) and 754(1) and sections 7-a and 7-b of Chapter 57 of the Laws of 2007.

Section 151-1 of the Commissioner's Regulations regarding, the Universal Pre-Kindergarten program

Description of rule: Conforms the Commissioner's Regulations to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007, by establishing uniform quality standards for prekindergarten programs, criteria relating to program design, procedures for applying for universal prekindergarten grants, procedures by which districts select eligible agency collaborators through a competitive process, and facility requirements.

Need for rule: The rule is necessary to conform Subpart 151-1 to Education Law section 3602-e, as amended by Chapter 57 of the Laws of 2007.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided) and 3602-e(1), (2), and (5)-(16), and section 19 of Chapter 57 of the Laws of 2007.

Sections 100.2, 120.6, 200.1 through 200.9, 200.13, 200.14, 200.16, 200.22, 201.2 through 201.11 of the Commissioner's Regulations, regarding special education programs and services

Description of rule: Conforms the Commissioner's Regulations to the reauthorization of the Individuals with Disabilities Education Act (IDEA) (20 USC 1400 et seq.), as amended by Public Law 108-446, and the final amendments to 34 CFR Part 300; ensures consistency in procedural safeguards; promotes timely evaluations and services; and facilitates services in the least restrictive environment for students with disabilities.

Need for rule: The rule is necessary to conform the Commissioner's Regulations to the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et. seq.), as amended by Public Law 108-446, and recent amendments to 34 CFR Part 300 which became effective on October 13, 2006. The rule is also necessary to ensure consistency in procedural safeguards; promote timely evaluations and services; and facilitate services in the least restrictive environment for students with disabilities.

Legal basis for rule: Education Law sections 207 (not subdivided), 3208(1-5), 3209(7), 3214(3), 3602-c(2), 3713(1) and (2), 4002(1-3), 4308(3), 4355(3), 4401(1-11), 4402 (1-7), 4403(3), 4404(1-5), 4404-a(1)-(7) and 4410(13).

Section 154.2, repeal and addition of section 154.3 and repeal of section 154.4 of the Commissioner's Regulations, regarding pupils with limited English proficiency

Description of rule: Prescribes requirements for the development of comprehensive plans for students with limited English proficiency by school districts pursuant to Education Law section 3204, as amended by Chapter 57 of the Laws of 2007, and otherwise conforms Part 154 of the Commissioner's Regulations to the statute.

Need for rule: The rule is necessary to conform the Commissioner's Regulations to section 10 of Chapter 57 of the Laws of 2007. Pursuant to Chapter 57 of the Laws of 2007, school districts no longer claim State limited English proficiency aid. Beginning in 2007-08, all districts receive total foundation aid. Each school district that receives total foundation aid must develop a comprehensive plan consistent with Education Law section 3204(2-a)(1) and Part 154 of the Commissioner's Regulations.

Legal basis for rule: Education Law sections 207, 215, 2117(1), 3204(2), (2-a), (3) and (6) and section 10 of Chapter 57 of the Laws of 2007.

Section 175.5 of the Commissioner's Regulations, regarding superintendents' conference days

Description of rule: To extend for two years the provision in Commissioner's Regulations section 175.5(f) that allows a school district to use up to two of its superintendents' conference days for teacher rating of State assessments.

Need for rule: The rule extends for two years the provision in section 175.5(f) that permits a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001. The rating of students' performance on the State assessments is an effective way for teachers to learn the new learning standards and therefore constitutes permissible staff development activities relating to implementation of the new high learning standards and assessments, as authorized by Education Law section 3604(8). The rule continues to provide school districts with additional flexibility and discretion to use this staff development function to fulfill their State test scoring requirements while minimizing impact on student instructional time.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided) and 3604(8).

Section 3.16 of the Rules of the Board of Regents, regarding charter schools

Description of rule: Delegates to the Commissioner of Education the Board of Regents' authority to conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1-a).

Need for rule: Having the Board of Regents personally conduct and hold public hearings to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter is not deemed to be the most appropriate and efficacious means to address this matter, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that delegation of such responsibility to the Commissioner will provide for the most efficient and expeditious means to conduct such hearings.

Legal basis for rule: Education Law sections 101 (not subdivided), 206 (not subdivided), 207 (not subdivided), 305(1), (2) and (20) and 2857(1) and (1-a) and section 7 of Part D-2 of Chapter 57 of the Laws of 2007.

Section 119.4 of the Commissioner's Regulations, regarding charter school public hearings

Description of rule: Establishes procedures for the conduct of public hearings by school districts to solicit comments from the community in connection with the issuance, revision, or renewal of a charter school's charter pursuant to Education Law section 2857(1).

Need for rule: It has been determined that the procedures set forth in the rule will provide for the most efficient, thorough and expeditious means to conduct such hearings.

Legal basis for rule: Education Law sections 101 (not subdivided), 206 (not subdivided), 207 (not subdivided), 305(1), (2) and (20) and 2857(1) and section 7 of Part D-2 of Chapter 57 of the Laws of 2007.

Section 170.13 of the Commissioner's Regulations, regarding fiscal maintenance of effort

Description of rule: Defines "city funds" for purposes of determin-

ing maintenance of effort in cities having a population of one hundred twenty-five thousand or more inhabitants and less than one million inhabitants pursuant to Education Law section 2576(5-b), including state and private funding sources over which the city has no discretion and which are to be excluded from the calculation of city funds subject to the maintenance of effort requirement.

Need for rule: The rule is needed to implement the statutory requirements. The rule establishes a definition of "city funds" for purposes of determining the fiscal maintenance of effort requirement in Education Law section 2576(5-b), thus ensuring that the requirement pertains only to funds over which the cities have control. State Education Department research on the maintenance of local effort in support of schools has documented that school districts tend to reduce local effort when they receive State Aid increases. Without a statutory requirement or formula structure that requires maintenance of local effort there is no way to ensure that State Aid increases provided for the purpose of increasing student achievement will result in additional programs and services for students, rather than tax relief or the funding of other city services.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided) and 305(1) and (2) and 2576(5-b) and section 9 of Part B of Chapter 57 of the Laws of 2007.

Section 100.3 of the Commissioner's Regulations, regarding program requirements for students in prekindergarten and kindergarten

Description of rule: Aligns program requirements for prekindergarten and kindergarten programs operated by school districts and voluntarily registered nonpublic schools with those established for State-funded universal kindergarten programs.

Need for rule: The rule is necessary to achieve consistency between the provisions of this Part and those in other Parts of the Regulations of the Commissioner of Education. Specifically, the rule revises section 100.3(a) to align the program requirements for prekindergarten and kindergarten programs operated by school districts and voluntarily registered nonpublic schools with those established in Subpart 151-1 for state-funded universal prekindergarten programs. These rule requires school districts to adopt and implement curricula that ensure strong instructional content aligned with the State learning standards and integrated with the instructional program in grades one through twelve; redefine the required components of early literacy and emergent reading instruction; identify the types of learning experiences that must be provided; and require procedures to ensure the active engagement of parents in the education of their children.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 215 (not subdivided), 305(1) and (2), 308 (not subdivided), and 309 (not subdivided).

Section 117 of the Commissioner's Regulations, regarding diagnostic screening for students who are new entrants or who have low test scores in reading or mathematics

Description of rule: Provides for the diagnostic screening of students who are new entrants to school or who have low test scores on the statewide reading or mathematics assessment and to provide consistency between definitions in Part 117 and other provisions of the Commissioner's Regulations, specifically, by conforming the definition of "handicapping condition" to the definitions of a "preschool student with a disability" and a "student with a disability".

Need for rule: The rule is necessary to achieve consistency between the definitions in Part 117 and those in other provisions of the Regulations of the Commissioner of Education. Specifically, the definition of a pupil with a possible "handicapping condition" [section 117.2(a)] is amended to conform to the definitions of a "preschool student with a disability" and a "student with a disability" as defined in sections 200.1(mm) and 200.1(zz) respectively. The definition of pupils who must receive diagnostic screening based on their performance on statewide tests [section 117.2(e)] is amended to reflect the definition of a student with low test scores established in Education Law section 3208(5).

Further, the rule clarifies the existing screening requirements. Section 117.2(d) is amended to clarify that prekindergarten students are included in the definition of "new entrants". A new section 117.2(g) is added to define "health care provider". This definition in consis-

tent with that found in Part 136 of the Commissioner's Regulations pertaining to school health services and provides districts and parents with greater flexibility regarding the type of health care professional who can provide the required health and immunization certifications. Section 117.3(b) is amended to incorporate the health screening requirements set forth in section 136.3.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 3208(5) and 4403(3).

Sections 100.14 and 100.15 of the Commissioner's Regulations, regarding Excelsior Scholars Program and Grants for Summer Institutes for Mathematics and Science Teachers

Description of rule: Establishes criteria for the award of grants for the Excelsior Scholars Program pursuant to Education Law section 3641-a and grants for Summer Institutes for Mathematics and Science Teachers pursuant to Education Law section 3641-b.

Need for rule: The rule is necessary to implement Education Law sections 3641-a(1), (2) and (3) and 3641-b, as added by section 39 of Part B of Chapter 57 of the Laws of 2007. The rule establishes criteria for the award of grants for the Excelsior Scholars summer programs for high performing students in mathematics and science who have completed seventh grade, and grants for summer institutes for teachers of mathematics and science in grades five through eight in middle schools, junior high schools, intermediate schools or junior/senior high schools.

Legal basis for rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1) and (2) and sections 3641-a(1), (2) and (3) and 3641-b(not subdivided), as added by section 39 of Part B of Chapter 57 of the Laws of 2007.

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:

Ken Slentz

Deputy Commissioner of Education P-12

New York State Education Department

Office of P-12 Education

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OFFICE OF HIGHER EDUCATION

Section Subpart 4-1 of the Commissioner's Regulations, regarding Voluntary Institutional Accreditation for Title IV purposes

Description of rule: The rule establishes requirements and clarifies existing standards and procedures that must be met by institutions of higher education voluntarily seeking institutional accreditation or renewal of such accreditation by the Board of Regents and the Commissioner of Education.

Need for rule: In June 2001, the Board of Regents adopted Part 4 of the Rules of the Board of Regents, Voluntary Institutional Accreditation for Title IV Purposes (now Subpart 4-1) as part of a process of complying with the requirements in regulations of the U.S. Department of Education (34 CFR Part 602) for continued recognition of the Board of Regents as an institutional accrediting agency. One of the Federal regulations requires each Nationally Recognized Accrediting Agency to have "a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits and relevant to the educational or training needs of students" (34 CFR 602.21[a]).

In compliance with the Federal requirement, the Department began a multi-year review of the institutional accreditation standards and procedures. This review included examination of the standards of other accrediting agencies; surveys of accredited institutions and of New York higher education institutions accredited by other agencies; annual colloquia on selected standards involving faculty and administrators from accredited institutions and from other New York degree-granting institutions, members of the Regents Advisory Council on

Institutional Accreditation, and Department accreditation staff; review of the findings of peer review teams in site visits for institutional accreditation and extended discussions by the Regents Advisory Council. As a result of this multi-year process, the rule was adopted to provide clarity and address any deficiencies in the previous regulation.

The rule permits the Commissioner to extend the 10-year term of accreditation for up to 12 months on one or more occasions for good cause. The Department believes a brief extension of the accreditation term for good cause is necessary to provide regulatory flexibility, due to the challenges institutions face in preparing for accreditation or renewal of accreditation, and the demands on the Department in scheduling so many site visits.

The rule expands on what should be included in an institutional mission statement to ensure it is of sufficient scope and depth to be able to evaluate an institution's activities in support of their mission.

The rule requires an institution to submit a plan, acceptable to the commissioner, to improve graduation rates or job placement rates if its most recent rates fall more than five percentage points below the statewide mean. This rule is needed to hold institutions more accountable for their graduation and job placement rates.

The lack of transferability of courses from institutions accredited by the Board of Regents to regionally accredited institutions has also been identified as a problem. This rule prohibits institutions from denying transfer credits based solely on the sending institutions' choice of an accrediting agency approved by the U.S. Department of Education and requires the learning objectives of each course to be at a level and rigor that warrant acceptance in transfer by other higher education institutions. The rule defines and clarifies the minimum credentials expected of faculty teaching in undergraduate programs.

The rule establishes as a standard for accreditation that an institution shall not be in violation of a State or Federal statute, where such violation demonstrates incompetence and/or fraud in the management of the institution. This assures that accredited institutions are not operating fraudulently or incompetently, in terms of New York State or Federal statutes, and thereby strengthens the Regents standards for the operation of accredited institutions.

The rule requires that any institution admitting students with academic deficiencies provide adequate support services so that students admitted by accredited institutions with "open admission" policies receive the academic services they need in order to successfully complete their programs. It further requires that all students receive instruction in information literacy to assure that all students can utilize the institution's library effectively in their courses and other academic requirements.

The rule clarifies requirements that institutions must meet in reference to catalogs. It requires institutions to archive annually all print and online catalogs, and requires archived copies to be retained permanently. This is needed to address the use of multi-year and online catalogs and how the information contained in such catalogs is to be maintained by institutions.

The rule requires an institution and/or the Deputy Commissioner, if they plan on appealing the findings of the Advisory Board pursuant to section 4-1.5 of the Rules of the Board of Regents, to file a notice of intention to appeal within 10 days of receipt of the Advisory Council's recommendation. Similarly, the rule requires an institution intending to file an appeal of a Regents adverse determination under section 4-1.5 of the Rules of the Board of Regents to file a notice of intention to appeal within five days of such determination. The Department believes this is necessary for regulatory flexibility and to provide the Commissioner with adequate time and notice to process the appeal.

Legal basis for rule: Education Law sections 207 (not subdivided); 210 (not subdivided); 214 (not subdivided), 215 (not subdivided), and 305(1) and (2).

Section 70.3 of the Commissioner's Regulations, regarding examination requirements for licensure in public accountancy

Description of rule: The rule revises standards and procedures relating to the examination for licensure in public accountancy.

Need for rule: The purpose of the rule is to revise standards and procedures relating to the examination for licensure in public accountancy. Specifically, the rule makes the following changes:

The rule changes the grading of the licensure examination from pass/fail to a numeric score. Pass/fail scoring was previously implemented in 2003 because the Department expected the computer-based examination would provide candidates with detailed diagnostic information with the pass/fail result, making numeric scores unnecessary. However, the diagnostic information provided to candidates was not as detailed as expected, and therefore the rule imposes a requirement for numeric scores as a means to help candidates who have failed sections of the examination to understand areas in which they need to improve.

The rule is also lengthens the period of time of validity for passed sections of the licensure examination and the period of time in which all four sections must be passed. This is needed because the examination provider did not provide examination results to candidates as frequently as expected, in some cases resulting in candidates having difficulty passing all four sections of the examination in the time limits prescribed in the regulation. The changes allow a candidate to maintain credit for passed sections of the examination for longer periods of time, providing additional time to re-take a failed section of the examination and meet the time requirements for passing all four sections.

Legal basis for rule: Education Law sections 207(not subdivided); 6504 (not subdivided); 6507(2)(a) and (3)(a); 6508(2)and 7404(1)(4).

Section 66.5(f) and addition of section 66.6 of the Commissioner's Regulations, regarding continuing education requirements for optometrists certified in the use of therapeutic pharmaceutical agents

Description of rule: The rule establishes and clarifies existing continuing education requirements that must be met by licensed optometrists certified to use therapeutic pharmaceutical agents. The rule also provides the Commissioner with the flexibility to adjust the continuing education requirements in exceptional situations leading to non-compliance.

Need for rule: The rule clarifies existing mandatory continuing education requirements and provide more flexibility to the Department for exceptional circumstances that lead to non-compliance.

The rule is also needed to address the Department's current lack of ability to adjust the continuing education requirements for exceptional circumstances that lead to non-compliance. It provides the Department with the flexibility to permit an applicant to complete all or part of the continuing education requirement through an acceptable alternative course of study if the applicant documents good cause that prevents compliance with the regular continuing education requirements. However, the applicant will not be able to renew his/her certification until the continuing education requirement is met. The rule further requires licensed optometrists to certify to the Department that they have complied with the continuing education requirements; or that the applicant has an approved adjustment to such continuing education requirements from the Department.

Under prior regulations, there were no requirements for the approval of program sponsors or courses. The rule provides that the Department shall deem approved courses approved by the Council on Optometric Practitioner Education or an organization determined by the Department with assistance from the State Board for Optometry to have adequate standards or a course offered by a postsecondary institution authorized to offer a program in optometry leading to licensure. Any course not deemed approved must be reviewed by the Department. For Department review, the sponsor will be required to submit an application for advance approval of the course 14 days prior to the date of commencement of such course. Any course approved by the Department will only be approved for the specified dates that the course is offered.

In order to ensure compliance, the rule also provides the Department with the authority to conduct site visits of, or request information from a sponsor of an approved course and provides the Department with the discretion to deny a course or terminate a course's approved status if they are not meeting the requirements set forth in this section.

Legal basis for rule: Education Law sections 207 (not subdivided); 6507(2)(a); 7101 (not subdivided) and 7101-a(7).

Sections 80-1, 80-3, 80-4 and 80-5 of the Commissioner's Regula-

tions, regarding requirements for teachers' certification and teaching practice

Description of rule: The rule clarifies existing standards and procedures that must be met by classroom teachers, school leaders and pupil personnel professionals when seeking certification; and to provide flexibility to accept candidates who substantially meet certain certification requirements and/or who have a valid certificate from another state or an authorization to practice from another country evidencing knowledge, skills and abilities comparable to those required for certification in New York State.

Need for rule: The rule clarifies existing standards and procedures that must be met by teachers (classroom teachers, school leaders and pupil personnel professionals) when seeking certification by the Board of Regents and the Commissioner of Education. The rule also provides the Commissioner with the flexibility to accept candidates who substantially meet certain certification requirements and/or who have a valid certificate from another state or an authorization to practice from another country evidencing knowledge, skills and abilities comparable to those required for certification in New York State. Specifically, the rule makes the following major changes:

The rule permits the Commissioner to extend the time validity of an expired provisional, initial or transitional certificate for an additional year, beyond the two-year extension currently provided for, if a candidate is faced with extreme hardship or other circumstances beyond the control of the individual. This change is needed to provide the Commissioner with the flexibility to extend the time validity of certain certificates in extreme circumstances.

For purposes of qualifying for a teaching certificate, the rule provides the Commissioner with the flexibility to accept a candidate's baccalaureate degree from a higher education institution that the Commissioner deems substantially equivalent to a baccalaureate degree from a regionally accredited institution of higher education. This change is needed to provide the Commissioner with the flexibility to accept a candidate who has received teacher preparation from a higher education institution that the Commissioner deems substantially equivalent to that of a regionally accredited institution.

The rule permits the Commissioner to accept academic preparation that the Commissioner deems to be substantially equivalent to that specified in regulation for a teaching certificate. This change is needed to allow the Commissioner to accept coursework from a candidate that, while not technically meeting a specified requirement, satisfies the required competencies.

The rule provides the Commissioner with the flexibility to accept paid full-time experience in lieu of the college-supervised practicum in the classroom teaching titles that require a practicum: literacy, library media specialist, and speech and language disabilities. This change is needed to provide an option, for example, for those out-of-state candidates who graduated from programs that did not include a practicum but who may have several years of professional experience or applicants who have completed programs years ago and practiced in non-public schools successfully for many years.

For purposes of certification as a school building leader, a school district leader or school district business leader, the rule permits the Commissioner to accept a candidate who has successfully completed an educational leadership program accredited by a United States Department of Education recognized accrediting body at a regionally accredited institution outside New York State. This is needed to provide the Commissioner with a mechanism to accept successful candidates who have completed programs that have been rigorously reviewed by national accrediting bodies and found to be of high quality in the field of school leadership.

The rule sets forth the specific teaching certificate titles to which an extension as coordinator of work-based learning programs for career awareness may be appropriately attached and those teaching certificate titles for which an extension as a coordinator of work-based learning programs for career development may be attached. The prior regulatory language lacked the specificity needed to advise candidates appropriately.

The rule also clarifies that the holder of an extension as a coordinator of work-based learning programs for career development may also

coordinate programs for career awareness. This clarification is needed to advise candidate's appropriately because the requirements for a coordinator of work-based learning programs include and are more rigorous than the requirements for career awareness.

The rule also authorizes the Commissioner to accept an out-of-state certificate or an authorization to practice from another country that evidences comparable knowledge, skills, and abilities with those required for initial certification in New York State. This is needed to provide the Commissioner with the flexibility to accept certificates or authorizations to practice presented by applicants from foreign countries or non-reciprocal states.

Legal basis for rule: Education Law Sections 207 (not subdivided), 208 (not subdivided), 305(1), (2) and (7), 308 (not subdivided), 3001(2), 3004(1), 3006(1)(b), 3007(not subdivided), and 3009.

Sections 80-1.11, 87.1, 87.2, 87.4, 87.5, 87.6, 87.8 and the addition of section 87.10 of the Commissioner's Regulations, regarding the fingerprinting and criminal history record check of prospective employees of nonpublic and private elementary or secondary schools

Description of rule: Establishes requirements and procedures for the fingerprinting and criminal history record check of prospective school employees for nonpublic and private elementary or secondary schools in order to implement the requirements of Chapter 630 of the Laws of 2006.

Need for rule: The rule is needed to implement the requirements set forth in sections 305, 3001-d and 3035 of the Education Law, as amended by Chapter 630 of the Laws of 2006. Specifically, rule makes the following major changes:

In order to conform the regulations to the requirements set forth in Sections 305, 3001-d and 3035 of the Education Law, as amended by Chapter 630 of the Laws of 2006, the rule revises the definitions in Part 87 for clearance for employment, conditional appointment, conditional clearance for employment and covered school to permit nonpublic and private schools to seek such clearances and appointments from the Department beginning July 1, 2007. The rule also authorizes nonpublic or private elementary or secondary schools to be a designated fingerprinting entity if they choose to fingerprint prospective school employees.

The rule further clarifies that the fingerprinting and criminal history record check requirements under Part 87 apply to all prospective school employees appointed to compensated positions in a nonpublic or private elementary school that elects to fingerprint and seek clearance from the Department for prospective employees on or after July 1, 2007 and not to prospective employees appointed to such schools prior to July 1, 2007.

The rule authorizes the Department to consider the criminal history record and any related information obtained by the Department pursuant to such review, when the criminal history record check reveals that the prospective school employee was convicted of a crime or has a pending criminal charge.

The rule also makes technical changes to the due process requirements of Part 87 to reflect the change in title of the executive director of the Office of Teaching Initiatives to the Assistant Commissioner of the Office of Teaching Initiatives. The rule also clarifies that the Department will accept a credit card for the fee charged for a criminal history information request under Part 87 to conform with current practice.

In order to implement the requirements of Chapter 630 of the Laws of 2006, the rule requires that beginning July 1, 2007, any nonpublic or private elementary or secondary school that elects to fingerprint and seek clearance from the Department for prospective employees must notify the Assistant Commissioner of the Office of Teaching Initiatives, or his designee, on forms provided by the Department of its intent to seek clearance from the Department through the Department's TEACH online services system.

The rule further clarifies that any nonpublic or private elementary or secondary school that elects to submit requests for criminal history record review to the Department for prospective employees shall do so with respect to each such prospective employee and shall develop a policy for the safety of the children who have contact with an employee holding conditional appointment or emergency appointment.

Legal basis for rule: Education Law sections 207 (not subdivided), 3012-b and Section 9 of Part 12 of Chapter 57 of the Laws of 2007.

Sections 80-1.11, 87.1, 87.2, 87.4, 87.5, 87.6, 87.8 and the addition of section 87.10 of the Commissioner's Regulations, regarding the fingerprinting and criminal history record check of prospective employees of nonpublic and private elementary or secondary schools

Description of rule: Establishes requirements and procedures for the fingerprinting and criminal history record check of prospective school employees for nonpublic and private elementary or secondary schools in order to implement the requirements of Chapter 630 of the Laws of 2006.

Need for rule: The purpose of the rule is to clarify the existing procedures for institutions of higher education seeking accreditation of their teacher education programs, or renewal of such accreditation, by the Board of Regents. Specifically, the rule clarifies that the Deputy Commissioner may accept and/or consider additional information from the institution, other than the record before the standards board or subcommittee, when making a recommendation during a comprehensive review for accreditation, a compliance review or when reviewing programs on probationary status. The rule also clarifies that the Deputy Commissioner may request additional written information from the standards board or subcommittee, provided that the Deputy Commissioner transmits such additional written information to the institution by first class mail within fifteen days of receipt of such information.

This rule provides the Deputy Commissioner with the flexibility to accept and/or request additional information from the institution and/or standards board before making a recommendation. It also provides the institution with the opportunity to notify the Deputy Commissioner if it has corrected any identified deficiencies.

Legal basis for rule: Education Law sections 207(not subdivided), 305 (30), 3001-d and 3035.

Sections 52.26 and 61.9, repeal section 61.13 and add a new section 61.13 of the Commissioner's Regulations, regarding scope of practice for certified dental assistants and dental hygienists and the curriculum requirements for registration as a program leading to licensure in certified dental assisting

Description of rule: the rule implements the requirements of section 6608 of the Education Law, as added by Chapter 300 of the Laws of 2006, by expanding the scope of practice for certified dental assistants and dental hygienists and amending the curriculum requirements for registration as a program leading to licensure in certified dental assisting.

Need for rule: The rule is necessary to implement Chapter 300 of the Laws of 2006 amended Sections 6608 and 6608-b of the Education Law to expand the scope of practice for certified dental assistants and dental hygienists and amending the curriculum requirements for registration as a program leading to licensure in certified dental assisting.

In order to conform with the new requirements set forth in 6608-b of the Education Law, as amended by chapter 300 of the Laws of 2006, the rule also amends the current curriculum requirements for programs leading to licensure in certified dental assisting. Specifically, the rule provides that an equivalent approved one year course of study by a non-degree granting institution for certified dental assistants shall not be provided by a professional association or organization, and specifies that an alternate course of dental assisting shall be provided by a degree-granting institution or a board of cooperative educational services. The rule also revises the definition of clinical content area for registration as a program leading to licensure in certified dental assisting to include course work in other clinical procedures, including placing and removing temporary restorations; placing, condensing, and carving amalgam restorations; and placing, condensing and finishing non-metallic restorations due to the expansion of the certified dental assistant's scope of practice.

Section 6608 of the Education Law provides that all dental supportive services performed by certified dental assistants may also be performed by currently registered dental hygienists. With the expansion of the scope of practice of dental assistants, the rule revises the scope of practice for dental hygienists to include any dental supportive

services that a licensed dentist authorizes a certified dental assistant to perform, and establishes a definition of unprofessional conduct relating to such practice.

Legal basis for rule: Sections 207(not subdivided); 6506(1); 6507(2)(a), 6606(2), 6608(not subdivided) and 6608-b(4) of the Education Law.

Section 145-2.15 of the Commissioner's Regulations, regarding administration of ability-to-benefit tests for eligibility for awards

Description of rule: The rule identifies certain ability to-benefit tests and the passing scores for such tests that the Board of Regents approves for purposes of eligibility for awards under Section 661 of the Education Law. The rule also establishes criteria that the department will utilize to determine if an approved ability-to-benefit test is independently administered; in order to implement the requirements of Chapter 57 of the Laws of 2007.

Need for rule: Education Law section 661 prescribes eligibility requirements and procedures governing awards under the State student financial aid programs established in Education Law Articles 13 and 14. Education Law section 661(4)(d) and (e) establishes new requirements for students who do not hold diplomas from high schools located within the U.S., or its recognized equivalent, seeking State financial aid for the first time in the 2007-2008 academic year.

Currently, under the federal Higher Education Act, students seeking to qualify for Pell grants or other federal Title IV aid who do not have a high school diploma or its recognized equivalent must demonstrate the ability to benefit from the education or training provided by achieving a score set by the Secretary of the U.S. Department of Education ("Secretary") on a test approved by the Secretary.

Prior to the 2007-2008 academic year, a student applying for State student financial aid who did not have a diploma from a U.S. high school, or its recognized equivalent, was required to achieve a passing score set by the Secretary, on an ability-to-benefit test approved by the Secretary. Education Law section 661(4)(e) modifies this requirement. Students seeking State aid for the first time in the 2007-2008 academic year, without a high school diploma or the recognized equivalent of such, must achieve a passing score on an ability-to-benefit test approved by the Regents and the test must be independently administered as defined by the Commissioner.

The rule requires the Regents to publish a list of the federally approved ability-to-benefit tests the Regents identify as satisfactory in determining eligibility for State aid for students without a high school diploma from the U.S., or its recognized equivalent. For the 2007-2008 academic year fall semester, all seven federally approved ability-to-benefit tests may be used. For subsequent academic terms, the Department intends to identify and publish a list of federally approved ability-to-benefit tests that the Board of Regents identifies as satisfactory in determining eligibility to receive a State aid award. Once identified, such tests shall be without term unless the Department determines a test is no longer satisfactory in determining eligibility for awards or the Secretary discontinues federal recognition of such test.

Each eligible institution must submit for Regents approval, the passing score it proposes to utilize on any approved ability-to-benefit test, which passing score may not be lower than the federally approved score for such test. For the 2007-2008 academic year fall semester, eligible institutions may utilize any passing score that is not lower than the federally approved score. For subsequent academic terms, in determining whether to approve an institution's proposed passing score, the regulation requires the Regents to consider certain specified factors. Once approved, an institution's passing score(s) will remain approved unless the institution proposes to change such score(s) or the Regents determine that such passing score is no longer satisfactory in determining eligibility for awards under Education Law section 661.

The rule also establishes factors the Department will consider to determine if an ability-to-benefit is independently administered and evaluated. For the 2007-2008 academic year fall semester, the test will be deemed independently administered if its administration meets the criteria set forth in federal regulations. For subsequent academic terms, the regulation provides that an ability-to-benefit test is independently administered if the test is administered by an assessment center not located at, or affiliated with, the institution for which the student is

seeking enrollment and the test administrator is an employee of such center. If the ability-to-benefit test is administered at an eligible degree-granting institution, the institution's chief executive officer shall provide the Department an annual certification that it independently administers such tests according to the factors in the regulation. If the ability-to-benefit test is administered by an eligible institution that does not grant degrees, the ability-to-benefit test must be administered pursuant to the federal regulations' criteria. If the Department finds an institution has violated the certification procedure or the federal ability-to-benefit procedures, it may require the institution to use an assessment center external to the institution.

Legal basis for rule: Education Law sections 207 (not subdivided), 215 (not subdivided) and 661(4) and Sections 1 and 2 of Part E-1 of Chapter 57 of the Laws of 2007.

Section 150.2 and addition of section 150.4 of the Commissioner's Regulations, regarding State aid awards for high needs nursing programs at certain independent colleges and universities

Description of rule: The rule establishes eligibility criteria and the requirements and procedures for certain eligible independent colleges and universities to follow when applying for, or awarding, State aid awards for high needs nursing programs in order to implement the requirements of Chapter 57 of the Laws of 2007.

Need for rule: Section 6401-a of the Education Law, as added by Chapter 57 of the Laws of 2007, authorizes the Commissioner of Education to award state aid for high needs nursing programs at certain independent institutions of higher education within the State. In order to conform with the requirements set forth in section 6401-a of the Education Law, the rule establishes eligibility criteria and the requirements and procedures for certain eligible institutions and the Commissioner of Education to follow when applying for, and awarding, state aid under this section.

Legal basis for rule: Education Law sections 207 (not subdivided) and 6401-a(4) and Part E-4 of Chapter 57 of the Laws of 2007.

Section 27-1.1 of the Rules of the Board of Regents, regarding Student Eligibility for the Higher Education Opportunity Program

Description of rule: The rule updates the current economic eligibility criteria for the Higher Education Opportunity Program at independent colleges and universities.

Need for rule: The rule is needed in order to update the current criteria for determining student economic eligibility for the Higher Education Opportunity Program by: (1) taking into account inflationary conditions and changes in annual income; (2) accounting for New York State and local taxes and regional maintenance costs; (3) assuring consistency across the State-supported postsecondary opportunity programs; (4) maintaining the continuing linkage of these eligibility criteria with federally approved methods of needs analysis; and (5) recognizing the costs associated with a household that is solely supported by one member who is employed by two or more employers.

Legal basis for rule: Education Law sections 207 (not subdivided); 6451(1).

Sections 74.2, 74.3, 74.4 and 74.6 of the Commissioner's Regulations, regarding requirements relating to licensure as a licensed clinical social worker, limited permits to practice licensed clinical social work and the supervision of clinical social work services provided by a licensed master social worker

Description of rule: The rule revises the requirements for admission to an examination for licensure as a licensed clinical social worker. It also clarifies the supervision requirements for a licensed master social worker practicing licensed clinical social work and the supervised experience requirements for licensure as a licensed clinical social worker and for limited permits to practice licensed clinical social work.

Need for rule: The rule is needed to conform to the content of the licensing examination, which is based on the expectation that the applicant will have completed at least two years of post-degree supervised experience. The rule also clarifies the current regulations to require supervision of at least one hour per week of individual or group supervision, with at least two hours of individual supervision each month. The rule is needed to eliminate confusion in the supervised experience requirements in the existing regulations.

Legal basis for rule: Education Law sections 207 (not subdivided), 6501, 6504, 6507(2)(a), 7704(2)(c), (2)(d) and 7705.

Section 50.1, amendment of paragraph (4) of subdivision (c) of section 52.2 and addition of subdivision (g) of section 145-2.1 of the Commissioner's Regulations, regarding disaster planning

Description of rule: The rule permits an institution to provide a statement of academic standards establishing equivalency of instruction and study in the temporary closure of an institution as a result of a disaster.

Need for rule: The rule is needed in order to provide regulatory relief in the event of a temporary closure of an institution as a result of a disaster.

Legal basis for rule: Education Law sections 101 (not subdivided), 202(1), 207 (not subdivided), 210 (not subdivided), 215 (not subdivided), and 305 (1), (2) and (20).

Section 52.21(b)(2)(iv)(c)(3)(i) and (ii) of the Commissioner's Regulations, regarding accreditation of teacher education programs

Description of rule: The rule extends for six months, until June 30, 2008, the required time period for completion of the accreditation process by teacher education programs registered on or before September 1, 2001 that are awaiting an accreditation decision following a site visit conducted on or before December 31, 2006; and accordingly, to extend the period of eligibility in which certain teacher education programs, initially denied accreditation, may request from the department a deferral of the date by which they must be accredited.

Need for rule: The purpose of the rule is to enable certain teacher education programs to complete the accreditation process, by extending for six months the date by which teacher education programs registered prior to September 1, 2001 that are awaiting an accreditation decision following an accreditation review which included a site visit conducted on or before December 31, 2006, must achieve accreditation. In addition, the rule extends by six months the period of eligibility in which certain teacher education programs denied accreditation may request a deferral of the date for accreditation. The rule is needed to provide the Department with regulatory flexibility to accommodate sound teacher education programs that demonstrate the ability to earn accreditation within the short term. The rule 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).

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:

John D'Agati

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

Addition of Part 31 of the Rules of the Board of Regents, regarding civil enforcement proceedings for the unauthorized practice of the professions and the unauthorized use of a professional title

Description of rule: The rule implements Education Law section 6516, as added by Chapter 615 of the Laws of 2003, by specifying the requirements and procedures for the submission of complaints, investigations, hearing requests, stay requests, the contents of cease and desist orders; the standards for the imposition of civil penalties and restitution and the procedures for hearings and appeals.

Need for rule: The rule is needed to implement the requirements of Section 6516 of the Education Law by specifying the requirements for

the submission of complaints, investigations, hearing requests and stay requests; the contents of a cease and desist order; the standards for the imposition of civil penalties and restitution and the procedures for hearings and appeals.

Legal basis for rule: Sections 207 (not subdivided); 6506(1); 6512(1); 6513(1); and 6516 (1), (2), (3), (4), (5), (6), and (7) of the Education Law.

Section 64.7 of the Commissioner's Regulations, regarding the execution by registered professional nurses of non-patient specific orders to administer human immunodeficiency virus tests

Description of rule: Establishes requirements for registered professional nurses to meet when executing non-patient specific orders prescribed or ordered by a licensed physician or certified nurse practitioner for the administration of human immunodeficiency virus tests.

Need for rule: Chapter 429 of the Laws of 2005, effective August 2, 2005, added a new paragraph (d) to section 6909 of the Education Law, permitting registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner for the administration of HIV tests. The existing list of procedures that registered nurses can currently perform pursuant to a non-patient specific order include: (1) administration of certain immunizations, (2) anaphylactic treatment medications and (3) tuberculin skin tests.

Section 6909(5) of the Education Law directs the Commissioner of Education to promulgate regulations concerning the execution of such non-patient specific orders by registered professional nurses. The rule establishes uniform requirements for registered professional nurses to meet when executing non-patient specific orders to administer HIV tests. Specifically, the rule defines what information should be included in the non-patient specific order and the requirements that must be set forth in the protocol, for a registered professional nurse to follow when administering an HIV test through a non-patient specific order. The rule also requires registered professional nurses to either maintain or ensure the maintenance of a copy of the non-patient specific order and protocol for a specified period of time.

The rule is needed to advise registered professional nurses of the requirements that they must meet to execute a non-patient specific order for the administration of HIV tests; to provide uniformity and consistency in the information that must be contained in the order and the protocols to be followed when administering such tests and the requirements for the maintenance of such records.

Legal basis for rule: Education Law sections 207 (not subdivided); 6507(2)(a); 6527(6); 6902(1) and 6909(4)(d) and (5).

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 by a physical therapist without a referral, and establishing a definition of unprofessional conduct relating to such practice.

Need for rule: Chapter 298 of the Laws of 2006 added a new section 6731(d) to the Education Law to permit licensed physical therapists who have practiced physical therapy on a full-time basis equivalent to not less than three years to provide treatment to patients without a referral from a physician, dentist, podiatrist or nurse practitioner. 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 is needed to advise licensed physical therapists of the requirements that they 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 establishes an additional definition of unprofessional practice in the practice of physical therapy: failing to meet the require-

ments of subdivision (d) of section 6731 of the Education Law and/or section 77.9 of the Commissioner's Regulations. This will provide a way for the State Education Department to enforce the requirements that licensed physical therapists must meet to provide treatment without a referral.

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:

Douglas E. Lentivech
Deputy Commissioner for the Office of the Professions
Office of the Professions
New York State Education Department
West Wing, Second Floor, EB
Albany, NY 12234
(518) 474-3817 ext. 470
opdepcom@mail.nysed.gov

OFFICE OF CULTURAL EDUCATION

Section 90.12 of the Commissioner's Regulations, regarding state aid for public 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 recent changes made to Education Law section 273-a.

Need for rule: The rule is necessary to conform the Commissioner's Regulations to changes made to Education Law section 273-a by Chapter 57 of the Laws of 2007, so that the payment schedule of State aid for library construction is changed to a 50/40/10 percent basis from a 90/10 percent basis and further, so that funds for public library construction and renovation projects, appropriated pursuant to Chapter 53 of the Laws of 2007, are timely awarded, pursuant to statutory requirements, to eligible public libraries and public library systems. Chapter 53 of the Laws of 2007 appropriates \$14 Million for public library construction and renovation projects.

Legal basis for rule: Education Law sections 207 (not subdivided), 215 (not subdivided) and 273-a(5), section 1 of Chapter 53 of the Laws of 2007, and section 4 of Part B Chapter 57 of the Laws of 2007.

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

Description of rule: The rule prescribes eligibility requirements and criteria for applications for state aid for library construction and renovation projects, and to conform the Commissioner's Regulations to recent changes made to Education Law section 273-a by Chapter 57 of the Laws of 2007.

Need for rule: The rule is necessary to conform the Commissioner's Regulations to recent changes made to Education Law section 273-a by Chapter 57 of the Laws of 2007, so that the payment schedule of State aid for library construction is changed to a 50/40/10 percent basis from a 90/10 percent basis and further, so that funds for public library construction and renovation projects, appropriated pursuant to Chapter 53 of the Laws of 2007, are timely awarded, pursuant to statutory requirements, to eligible public libraries and public library systems. Chapter 53 of the Laws of 2007 appropriates \$14 Million for public library construction and renovation projects.

Legal basis for rule: Education Law sections 207 (not subdivided), 215 (not subdivided) and 273(5), section 1 of Chapter 53 of the Laws of 2007, and section 4 of Part B of Chapter 57 of the Laws of 2007.

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
State Education Department
Cultural Education Center
Room 10A33

Albany, NY 12230
(518) 474-5976

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:

Richard J. Trautwein
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

b. Calendar Year 2002

OFFICE OF P-12 EDUCATION

Section 3.32 of the Regents Rules and section 100.2(p) of the Commissioner's Regulations, regarding Public School registration

Description of rule: The rule establishes a formal process for the registration of new public schools to ensure the fulfillment of Regents standards relating to the accountability of public schools. The Board of Regents will grant approve if it is satisfactorily demonstrated that a school will be operated in an educationally sound manner; is in compliance with applicable statutes, rules and regulations relating to public schools; and will operate in accordance with applicable building codes and pursuant to a certificate of occupancy.

Need for rule: Clarification of policy for the registration of public schools.

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided), 305(1) and (2) and (19) and 309 (not subdivided).

Part 120 of the Commissioner's Regulations, relating to the No Child Left Behind Act of 2001 (Pub. L. 107-110)

Description of rule: The rule ensures compliance of the State and local educational agencies with the federal No Child Left Behind Act of 2001 (Pub.L. 107-110) and the conforming State legislation enacted by Chapter 425 of the Laws of 2002 as a condition of receipt of federal funding under Title I of the Elementary and Secondary Education Act of 1965, as amended. Sections 120.1 and 120.2 of the Regulations of the Commissioner provide a description of the purposes of Part 120 and applicable general definitions. Section 120.3 provides for the implementation of the public school choice provisions that require a federal Title I local educational agency that has a school in school improvement status, corrective action status or restructuring status to provide all students enrolled in such school with the option to transfer to another public school served by the local educational agency at the same grade level that is not in school improvement, corrective action or restructuring status. Section 120.4 establishes criteria and procedures for the approval of providers of supplemental education services. Section 120.5 establishes requirements to ensure that local educational agencies implement provisions to allow any student who attends a persistently dangerous public elementary or secondary school or who is a victim of a violent criminal offense, to attend a safe public school within the local educational agency.

Need for rule: Compliance with the federal No Child Left Behind Act of 2001 and Chapter 425 of the Laws of 2002.

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1), (2) and (33), 2802(7), 3214(3)(d) and (f) and Chapter 425 of the Laws of 2002.

Section 136.4 of the Commissioner's Regulations, relating to Automated External Defibrillators

Description of rule: Require school districts, BOCES, county vocational education and extension boards and charter schools to provide and maintain on-site in each instructional school facility automated external defibrillator (AED) equipment in quantities and types deemed to be adequate to ensure ready and appropriate access for use during emergencies, and to ensure the presence of at least one staff person who is trained in the operation and use of an AED whenever the facility is used for school-sponsored or school-approved curricular or extracurricular events or wherever activities for school-sponsored athletic contests or competitive athletic events are held.

Need for rule: Compliance with Chapters 60 and 61 of the Laws of 2002.

Legal basis for rule: Education Law sections 207(not subdivided) and 917(1) and (2) and Chapters 60 and 61 of the Laws of 2002.

Sections 151-1.2 of the Commissioner's Regulations, relating to Universal Prekindergarten Programs

Description of rule: Defines, for summer only universal prekindergarten programs, an "eligible child" as a child who resides within the school district and is five years of age on or after December 1st of the year in which he or she is enrolled, or who will otherwise be first eligible to enter public school kindergarten commencing with the current school year.

Need for rule: Compliance with Chapter 383 of the Laws of 2001.

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided) and 3602-c (10)(a)(4) and (12) and section 1-a of Part F of Chapter 383 of the Laws of 2001.

Section 155.25 of the Commissioner's Regulations, relating to Electrically Operated Partitions

Description of rule: Establish minimum standards for the construction, maintenance and operation of electrically operated partitions or room dividers located in classrooms or other facilities used by students in public and nonpublic schools, including charter schools, and BOCES within the State. It also requires appropriate and conspicuous notice regarding the safe and proper operation and supervision of the electrical device operating such partition, training of staff in the safe operation of the partition, and maintenance of all equipment.

Need for rule: Compliance with Chapter 217 of the Laws of 2002 and Chapter 231 of the Laws of 2002.

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 409-f(1) and (2) and 3602(6-c) and Chapter 217 of the Laws of 2001.

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:

Ken Slentz
Deputy Commissioner of Education P-12
New York State Education Department
Office of P-12 Education
89 Washington Avenue
West Wing, Second Floor Mezzanine - EB
Albany, New York 12234
(518) 474-5520
nysedp12@mail.nysed.gov

ACCES

Sections 246.3 and 246.6, relating to the Vocational Rehabilitation Program

Description of rule: The rule simplifies and eliminates obsolete language and inserts up to date language in State regulations pertaining to the Department's operation of the vocational rehabilitation program, specifically, the provision of services through community rehabilitation programs.

Need for rule: The rule is necessary to conform the Commissioner's Regulations to changes in federal law made in the 1998 reauthorization of the Rehabilitation Act (Pub.L. 105-22) and thereby ensure that

the State vocational rehabilitation program is conducted according to federal standards.

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

Section 200.2 of the Commissioner's Regulations, relating to Instructional Material in Alternative Formats

Description of rule: The rule requires every school district and BOCES to develop a plan to ensure that all instructional materials to be used in the schools of the district (or in the programs of the BOCES) are available in a usable alternative format for every student with a disability in accordance with his or her individual needs and course selections at the same time that such materials are available to non-disabled students.

Need for rule: The rule is necessary to implement Chapter 377 of the Laws of 2001, which requires every school district and BOCES to develop a plan to ensure that all instructional materials to be used in the schools of the district (or in the programs of the BOCES) are available in a usable alternative format for every student with a disability in accordance with his or her educational needs and course selections at the same time that such materials are available to non-disabled students. The rule was revised in 2005 to add the Individuals with Disabilities Education Act (IDEA) requirement that instructional materials meet the National Instructional Materials Accessibility Standard defined in section 1474(e)930(B) of the reauthorized IDEA (Public Law 108-446).

Legal basis for rule: Education Law sections 207, 1604(29-a), 1709(4-a), 1950(4-a), 2503(7-a), 2554(7-a), 3602(10)(b), 4403(3) and Chapter 377 of the Laws of 2001.

Sections 200.2, 200.4 and 200.16 of the Commissioner's Regulations, relating to Individualized Education Programs (IEPs)

Description of rule: The rule provides copies of individualized education programs (IEP's) to teachers, related service providers and other providers.

Need for rule: The rule is necessary to implement Education Law section 4402(7), as added by Chapter 408 of the Laws of 2002, which requires that school districts establish a policy that: ensures that teachers and other service providers are provided with students' individualized education programs (IEPs) prior to the implementation of such IEPs; ensures the confidentiality of such IEPs; and requires that teachers, assistants, support staff persons and other service providers be informed of their responsibilities in relation to the implementation of students' IEPs prior to the implementation of such IEPs. The rule was subsequently revised in 2003 and 2005 to clarify responsibilities and language and to ensure that amendments to the Individualized Education Plan (IEP) were also required to be provided to certain school personnel to implement the flexibility to provide the amendments to the IEP under the reauthorized IDEA.

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided), 4402(7), 4403(3), 4410(13) and Chapter 408 of the Laws of 2002.

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 Smith
Deputy Commissioner
New York State Education Department
Deputy Commissioner of Adult Career & Continuing Education Services
One Commerce Plaza, Room 1606
Albany, New York 12234
(518) 474-2714

OFFICE OF HIGHER EDUCATION

Sections 3.47(c)(4) and 3.50(b)(16) of the Regents Rules, relating to authorization of a degree abbreviation

Description of rule: The rule authorizes the use by New York post-secondary degree-granting institutions authorized to confer the Bachelor of Music degree of the abbreviation "B.M." for that degree as an alternative to the existing abbreviation "Mus.B."

Need for rule: The rule is needed to authorize the B.M. as an additional abbreviation for the Bachelor of Music degree in order to be consistent with the abbreviation commonly used by other jurisdictions for this degree.

Legal basis for rule: Sections 207(not subdivided), 210(not subdivided), 218(1), and 224(4) of the Education Law.

Sections 3.14, Part 4 and 13.11 of the Regents Rules and section 52.23 of the Commissioner's Regulations, relating to accreditation of teacher education programs and 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 seeking accreditation of their teacher education programs by the Board of Regents; aligns related provisions in the Rules of the Board of Regents and the Regulations of the Commissioner of Education with the new standards and procedures; and rennumbers the rule and clarifies language related to voluntary institutional accreditation for Title IV purposes by the Commissioner of Education and the Board of Regents.

Need for rule: The rule is needed to improve the quality of teacher education programs to ensure that teachers are well qualified to teach to the State Learning Standards for Students, established by the Board of Regents in Part 100 of the Regulations of the Commissioner of Education. The rule carries out the policy of the Board of Regents as stated in its policy paper, "New York's Commitment: Teaching to Higher Standards," and prescribed in the Regulations of the Commissioner of Education, that each teacher education program must be accredited by the Board of Regents or an acceptable professional education accrediting association. The rule responds to requests from colleges that offer teacher education programs that the Regents offer an alternative means to become accredited.

Section 52.21(b)(2)(iv)(c) of the Commissioner's regulations requires the accreditation of programs that prepare classroom teachers for initial or professional certificates either by an acceptable professional education accrediting association or by the Regents, pursuant to a Regents accreditation process. The rule establishes this process.

The rule also is needed to align existing provisions in the Rules of the Board of Regents and the Regulations of the Commissioner of Education with the new procedures for Regents accreditation of teacher education programs. Specifically, it is needed to include responsibilities related to teacher education program accreditation explicitly among the duties of the State Professional Standards and Practices Board for Teaching; to retitle and renumber Part 4 of the Rules of the Board of Regents; to clarify language in the standards and procedures for institutional accreditation by the Commissioner of Education and the Regents for purposes of Title IV of the Higher Education Act of 1965; and to prescribe requirements relating to representations by colleges and universities as to accreditation by the Board of Regents and the Commissioner of Education.

In addition, the rule is needed to provide a substitute for existing procedures on denial of program reregistration, as prescribed in subdivision (a) of section 52.23 of the Regulations of the Commissioner of Education, when reregistration of a teacher education program is denied based upon a review conducted for the Regents accreditation of the program.

Legal basis for rule: Sections 207(not subdivided), 210(not subdivided), 212-c (not subdivided), 214(not subdivided), 215(not subdivided), and 305(1) and (2) of the Education Law.

Sections 87.3, 87.4, 87.5 and 87.9 of the Commissioner's Regulations, relating to fingerprinting and criminal history check of prospective school employees and applicants for teaching certification

Description of rule: The rule sets forth requirements and procedures for the exchange of criminal history records between the State Education Department and City School District of the City of New York for statutorily prescribed individuals, and clarifies both appeal procedures for prospective school employees denied clearance for employment and the scope of the State Education Department's criminal history record check.

Need for rule: The rule is needed to implement Chapter 380 of the Laws of 2001, which authorizes the exchange of criminal history re-

ords of certain individuals, upon their authorization, between the State Education Department and the City School District of the City of New York.

Legal basis for rule: Sections 207(not subdivided), 305(3)(a), 3004-b(1), 3035(3) and (3-a) of the Education Law and Chapter 380 of the Laws of 2001.

Section 52.21(b)(2)(iv)(b)(1) of the Commissioner's Regulations, relating to requirements for teacher education programs

Description of rule: The rule requires teacher education programs to show that a minimum of 80 percent of its program graduates who have taken one or more of the examinations required for a teaching certificate in any given year, have received passing rates. A teacher education program in which fewer than 80 percent of its program graduates pass one or more state examinations required for a teacher certificate will undergo a registration review of its education programs.

Need for rule: The rule aligns the definition for pass rates on teacher certification examinations, used for purposes of triggering a State Education Department registration review of teacher education programs, with the Federal definition, used for purposes of Title II of the Higher Education Act. This annual measurement provides a routine, systematic evaluation of teacher education programs, and a useful, proactive tool when used in conjunction with other data.

Previous regulations of the Commissioner of Education subjected teacher education programs to a registration review when fewer than 80 percent of students who complete the programs at an institution have passed teacher certification examinations. The rule changed the time period for determining the student pass rate for purposes of determining whether a teacher education program should be subject to registration review. It provides that the Department will consider the performance on each certification examination of those students completing an examination not more than five years before the end of the academic year in which the program is completed or not later than the September 30th following the end of such academic year. This definition is consistent with the definition required by the U.S. Department of Education for determining pass rates for teacher education programs for purposes of Title II of the Higher Education Act.

The rule simplifies the reporting requirements for higher education institutions in New York State. Staff at these institutions will not have to verify additional test takers for the computation a second pass rate used for the purpose of determining whether their teacher education programs would be subject to a registration review. The rule also reduces confusion that may result from computing two pass rates for the same teacher education programs.

Legal basis for rule: Sections 207(not subdivided), 210(not subdivided), 215(not subdivided), 305(1), and 3004(1) of the Education Law.

Section 80-2.6(c) of the Commissioner's Regulations, relating to requirements for certificate of teachers of the speech and hearing handicapped

Description of rule: The rule enables licensed and registered speech-language pathologists in New York State to become certified as teachers of the speech and hearing handicapped through an alternative path. The rule enables such licensed individuals to become provisionally certified immediately based upon their preparation for licensure and permanently certified after having completed specified education, experience, and examination requirements.

Need for rule: The rule is needed to address personnel shortages faced by New York schools. Teachers of the speech and hearing handicapped provide communication and language acquisition services to students who have Individualized Education Plans (IEPs). These teachers do not provide direct instruction in academic subjects but, rather, provide foundational skills that will impact on the students' current and future educational success. As a part of their clinical training, professionally licensed speech-language pathologists have experience working with children and have already attained a master's degree in speech-language pathology prior to licensure. They have also passed the national licensing examination in speech-language pathology. The rule will allow these licensed professionals, who have met a high standard of clinical training, to begin working in schools, and require them to meet specific pedagogy-related requirements before receiving the permanent certificate.

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

Section 27-1.1 of the Regents Rules, relating to student eligibility for the Higher Education Opportunity Program

Description of rule: The rule concerns income criteria for determining student eligibility to participate in the Higher Education Opportunity Program at nonpublic institutions of higher education. The rule also pertains to the economic eligibility criteria for the City University of New York's SEEK and College Discovery Programs, and the State University of New York's Educational Opportunity Program.

Need for rule: The rule is needed in order to update the current criteria for determining student economic eligibility for the Higher Education Opportunity Program by: (1) taking into account inflationary conditions and changes in annual income; (2) accounting for New York State and local taxes and regional maintenance costs; (3) assuring consistency across the State-supported postsecondary opportunity programs; (4) maintaining the continuing linkage of these eligibility criteria with federally approved methods of needs analysis; and (5) recognizing the costs associated with a household that is solely supported by one member who is employed by two or more employers.

Legal basis for rule: Sections 207(not subdivided) and 6451(1) of the Education Law.

80-1.7 and 80-5.15 of the Commissioner's Regulations, relating to requirements for the renewal of a provisional teaching certificate and the issuance of a limited certificate in the classroom teaching service

Description of rule: The rule establishes the requirements for the renewal of an expired provisional teaching certificate for an additional five-year term and for the issuance of a limited certificate in the classroom teaching service which would permit candidates to teach for the period September 1, 2003 through August 31, 2004, while they are completing academic requirements for the provisional certificate.

Need for rule: The rule was needed to address personnel shortages faced by New York public schools, by implementing initiatives, endorsed by the Board of Regents Committee on Higher and Professional Education in May 2002, which were designed to increase the number of qualified candidates for teaching positions in the State's public schools. Section 80-1.7, which established the conditions for renewal of the Provisional teaching certificate, was subsequently repealed, effective April 13, 2006, and replaced with a new section 80-1.7. Section 80-5.15 established a Limited certificate available to candidates who taught under a temporary license during the 2002-2003 school year, enabling them to continue teaching during the 2003-2004 school year while completing coursework requirements to qualify for a Provisional certificate. Limited certificates were valid only for the period September 1, 2003 through August 31, 2004 and are not renewable.

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

Agency Representative:

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

John D'Agati
Deputy Commissioner for Higher Education
New York State Education Department
Office of Higher Education
Room 978, Education Building Annex
89 Washington Avenue
Albany, New York 12234
(518) 486-3633
sroberson@nysed.mail.gov

OFFICE OF THE PROFESSIONS

Section 29.13(a) of the Regents Rules, relating to unprofessional conduct in the practice of massage therapy

Description of rule: The rule defines unprofessional conduct in the practice of massage therapy.

Need for rule: The rule removes an exception in the definition of

unprofessional conduct in the practice of massage therapy relating to patient records, which pertains to licensed practitioners who are providing massage therapy services to clients in a health spa or similar setting, when such services are not provided pursuant to a prescription by a health care practitioner. It makes applicable requirements that must be met by licensed massage therapists in all other settings, defining unprofessional conduct as: (1) failing to make available to a patient or client, upon request, copies of documents in the possession or under the control of the licensee which have been prepared for and paid for by the patient or client; and (2) failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. The rule also requires all patient records to be retained for at least six years, unless otherwise provided by law, and that obstetrical records and records of minor patients be retained for six years, and until one year after the minor patient reaches the age of 21 years.

Legal basis for rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1) and 6509(9).

Agency Representative:

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

Dr. Kathleen Doyle
State Board for Massage Therapy
State Education Building, 2nd Floor
89 Washington Avenue
Albany, NY 12234
(518) 474-3817 x 150

Section 29.7(a)(21)(ii)(a) of the Regents Rules, relating to unprofessional conduct in the practice of pharmacy and assistance to licensed pharmacists by unlicensed individuals

Description of rule: The rule revises the list of activities, performed by an unlicensed individual while assisting a licensed pharmacist in the dispensing of a prescription that would invoke the requirement that a licensed pharmacist supervise no more than two unlicensed persons.

Need for rule: A licensed pharmacist may receive the assistance of unlicensed individuals to perform certain specified activities relating to the dispensing of drugs. Generally, a licensed pharmacist may not supervise more than two unlicensed individuals in the performance of these activities. An exception exists for unlicensed individuals who simply receive written or electronically transmitted prescriptions. The rule adds another exception for unlicensed individuals who perform the ministerial task of handing or delivering completed prescriptions to the patient or person authorized to act on behalf of the patient.

The rule is needed to enable pharmacists to supervise more than two unlicensed individuals doing the routine ministerial task of handing or delivering a prescription to a patient. Liberalizing the supervision requirement will not adversely affect public health or safety, while enabling licensed pharmacists to better utilize staff resources of the pharmacy.

Legal basis for rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1) and 6509(7) and (9), and 6801(not subdivided).

Agency Representative:

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

Lawrence Mokhiber
State Board for Pharmacy
State Education Building, 2nd Floor
89 Washington Avenue
Albany, NY 12234
(518) 474-3817 x 130

Section 29.10 of the Regents Rules, relating to the definition of unprofessional conduct and work paper documentation and retention in the practice of public accountancy

Description of rule: The rule establishes, in the definition of unprofessional conduct in the practice of public accountancy, stan-

dards that licensees must meet in relation to documentation in work papers and the retention of such papers.

Need for rule: The rule is needed to establish uniform standards for the documentation in work papers and retention of such work papers in the profession of public accountancy. The rule is needed to ensure that work papers that support work products produced in the practice of public accountancy are maintained for a reasonable period of time, and that such work papers contain adequate documentation. The rule will serve to protect the public interest by ensuring that adequate documentation is available when a potential problem in a public accounting work product is identified. It will provide information that may be used by the State Education Department's Office of Professional Discipline when it conducts investigations of possible instances of professional misconduct.

Legal basis for rule: Education Law sections 207(not subdivided), 6504(not subdivided), 6506(1) and 6509(9), and 7401(not subdivided).

Agency Representative:

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

Daniel Dustin
State Board for Accountancy
State Education Building, 2nd Floor
89 Washington Avenue
Albany, NY 12234
(518) 474-3817 x 160

Section 64.6 of the Commissioner's Regulations, relating to the practice of nursing and midwifery

Description of rule: The rule identifies, in regulation, the licensed profession of midwifery as one of the licensed health care professions that is authorized to prescribe medical regimens to be executed by registered professional nurses that may direct the care provided by licensed practical nurses.

Need for rule: Subdivisions (1) of section 6902 of the Education Law authorizes licensed physicians and dentists or other licensed health care providers legally authorized under Title VIII of the Education Law and in accordance with Commissioner's regulations to prescribe medical regimens to be executed by registered professional nurses. Subdivision (2) of section 6902(2) of the Education Law authorizes registered professional nurses or licensed physicians, dentists or other licensed health care providers legally authorized under Title VIII of the Education Law and in accordance with Commissioner's regulations to direct care provided by licensed practical nurses.

Legal basis for rule: Education Law sections 207(not subdivided), 6507(1) and (2), 6902(1) and (2), and 6951(1), (2) and (3).

Agency Representative:

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

Lorraine O'Brien
State Board for Nursing
State Education Building, 2nd Floor
89 Washington Avenue
Albany, NY 12234
(518) 474-3817 x 120

Part 77 of the Commissioner's Regulations, relating to the licensing of physical therapists and certification of physical therapy assistants

Description of rule: The rule implements Chapter 404 of the Laws of 2002 by establishing requirements for the renewal of a limited permit for a physical therapist assistant and prescribes the examination that must be passed for certification as a physical therapist assistant, and makes nonsubstantial changes in the requirements for licensure as a physical therapist.

Need for rule: Section 6741-a of the Education Law, as added by Chapter 404 of the Laws of 2002, establishes an examination requirement for certification as a physical therapist assistant. This statutory requirement was added to ensure the competency of individuals who

are certified in this field. The memorandum in support of Chapter 404 of the Laws of 2002, submitted by the sponsor of this legislation, states: "Passage of an appropriate examination provides a demonstration of a candidate's competency to work. Most states including those bordering New York require passage of an examination in order to work as a physical therapist assistant." The rule is needed to identify that specific examination, the National Physical Therapy Examination for Physical Therapist Assistants that must be passed.

Section 6741-a of the Education Law, as added by Chapter 404 of the Laws of 2002, also adds provisions for limited permits for physical therapist assistants to practice under the supervision of a licensed physical therapist pending successful completion of the required examination. Subdivision (c) of section 6741-a provides that such permits may be renewed for no more than 6 months for justifiable cause. The rule is needed to establish the conditions upon which a limited permit may be renewed. These conditions are identical to the conditions that are applicable for the renewal of limited permits for physical therapists.

Finally, the rule is needed to make a number of nonsubstantial changes in the provisions relating to requirements for the licensure of physical therapists. Among other changes, citations to Education Law have been changed to be consistent with changes in the numbering of Education Law provisions, as amended by Chapter 404 of the Laws of 2002; the title of the licensing examination has been corrected; and section headings have been modified to identify provisions concerning physical therapists.

Legal basis for rule: Education Law sections 207(not subdivided), 6506(1), 6507(2)(a), 6734(d), 6735(c), 6740(c-1), and 6741-a(c), and Section 4 of Chapter 404 of the Laws of 2002.

Agency Representative:

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

Claudia Alexander
State Board for Ophthalmic Dispensing
State Education Building, 2nd Floor West
89 Washington Avenue
Albany, NY 12234
(518) 474-3817 x 18

Section 61.15(a) of the Commissioner's Regulations, relating to mandatory continuing education for dentists

Description of rule: The rule implements Chapter 237 of the Laws of 2001 which requires licensed dentists to complete, on a one-time basis, no fewer than two hours of acceptable coursework regarding the recognition, diagnosis, and treatment of the oral health effects of the use of tobacco and tobacco products, as part of the dentist's continuing education requirement.

Need for rule: The rule is needed to make regulatory requirements consistent with this statutory change.

Legal basis for rule: Education Law sections 207(not subdivided), 6502(1), 6504(not subdivided), 6507(2)(a), and 6604-a(2) and (4).

Agency Representative:

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

Dolores Catrell-Carson
State Board for Dentistry
State Education Building, 2nd Floor
89 Washington Avenue
Albany, NY 12234
(518) 474-3817 x 550

OFFICE OF CULTURAL EDUCATION

Sections 185.5, 185.13 and 185.14 of the Commissioner's Regulations, relating to Local Government Records Management

Description of 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.

Need for rule: The rule is needed to issue amendments to Records

Retention and Disposition Schedule CO-2 and Records Retention and Disposition Schedule MI-1, thus providing counties and miscellaneous local governments with means to dispose of valueless records not listed on the existing schedules, to maintain voluminous records no longer than the records are needed, and to make the schedules easier to understand.

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

Agency Representative:

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

Jeffrey W. Cannell

Deputy Commissioner for Cultural Education

State Education Department

Cultural Education Center

Room 10A33

Albany, NY 12230

(518) 474-5976

OFFICE OF OPERATIONS AND MANAGEMENT SERVICES

Sections 3.16 and 3.17 of the Commissioner's Regulations, relating to Charter School complaints

Description of rule: The rule establishes procedures for the conduct of charter school revocation proceedings initiated by the Board of Regents, and delegates to the Commissioner the authority of the Board of Regents to investigate and respond to complaints against charter schools pursuant to Education Law section 2855(4), authority to issue remedial orders to charter schools pursuant to Education Law section 2855(4), and the authority to place a charter school on probationary status and to develop and impose a remedial action plan pursuant to Education Law section 2855(3).

Need for rule: The rule is necessary to prescribe procedures for the conduct of charter school revocation proceedings by the Board of Regents pursuant to Education Law section 2855.

Legal basis for rule: Education Law sections 101(not subdivided), 206(not subdivided), 207(not subdivided), 305(1), (2) and (20) and 2855(1), (2), (3), and (4).

Agency Representative:

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

Richard J. Trautwein

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

c. Calendar Year 1997

OFFICE OF P-12 EDUCATION

Section 108.7(b) - Flag

Description of rule: The rule requires public schools to provide specific instruction regarding respect for the flag of the United States of America, its display and use, to include, as a minimum, instruction regarding the provisions of Sections 170 through 177 of Title 36 of the United States Code.

Need for rule: The rule is needed in order to comply with the requirements of Education Law section 802(1), as amended by Chapter 601 of the Laws of 1996, which requires public schools to provide the specified instruction.

Legal basis for rule: Education Law sections 207 and 802(1) and Chapter 601 of the Laws of 1996.

Section 135.4(c)(7)(ii)(b)(1) - Athletic Eligibility

Description of rule: the rule expands the student eligibility requirements for interschool competition in grades 9, 10, 11 and 12, to provide that a student may participate in interscholastic athletics until the last day of the school year in which the student attains the age of

19. It affixes eligibility to a student's age at the start of the legal school year and, thereby, reduces the number of disqualified students. The rule retains the current safety standard which generally precludes students over the age of 19 from participating in interscholastic athletics.

Need for rule: The rule sets forth policy of the Board of Regents to promote safe and equitable competition particularly in contact sports and eliminates the potential incentive of students staying in school longer in order to compete in athletic programs.

Legal basis for rule: Education Law sections 207, 305(1) and (2), 803(1) and (5) and 3204(3).

176.1 and 176.2 - Mandated Services Reimbursement

Description of rule: The rule authorizes the use of time and effort standards established by the Commissioner to determine the time spent on each required service by nonpublic schools. These standards establish time factors for carrying out mandated activities which are then applied against local salary and benefit costs to calculate reimbursement to nonpublic schools. This approach eliminates the onerous task of maintaining individual time records for each staff person involved in 14 of the 16 mandates.

Need for rule: The rule provides relief to nonpublic schools and responds to the recommendations of the State Comptroller's Audit Report on the Mandated Services Program.

Legal basis for rule: Education Law sections 207 and Chapter 507 of the Laws of 1974, as amended by Chapter 903 of the Laws of 1984.

100.2(bb) - School District Report Cards

Description of rule: The rule establishes criteria for the issuance of school district report cards by all public schools and requires school districts to annually prepare a report card and to make it available by appending it to copies of the proposed budget made publicly available. The report card must include (a) measures of academic performance; (b) measures of fiscal performance; (c) special education placements; and (d) other measures, such as graduation and college-going rates, and attendance, suspension and dropout rates.

Need for rule: The rule is necessary to comply with Chapter 474 of the Laws of 1996, which requires the Commissioner to establish criteria for the issuance and dissemination of school district report cards. It also satisfies federal public reporting requirements under the 1994 reauthorization of ESEA.

Legal basis for rule: Education Law sections 207, 1608, 1716, 2554(24), 2509-e(23), 2509-g(21) and 2601-a(7) and sections 157 through 162 of Chapter 474 of the Laws of 1996.

156.12 - Contracts for Pupil Transportation Services

Description of rule: the rule sets forth the requirements for boards of education that elect to award contracts for pupil transportation services through a request for proposals (RFP) instead of through competitive bidding. It includes the criteria that must be used in evaluating each proposal submitted in response to an RFP, the deadline by which school districts must request proposals, a process for awarding emergency contracts, and the specific documents that school districts must file with the Department.

Need for rule: the rule is necessary to comply with Chapter 698 of the Laws of 1996, which requires the Commissioner to establish a process for the approval of contracts awarded in response to a request for proposals for pupil transportation services.

Legal basis for rule: Education Law sections 207, 305(14) and 3625 and Chapter 698 of the Laws of 1996.

100.2(p) - School Deregistration

Description of rule: The rule establishes a System of Accountability for Student Success for schools in New York State. The Commissioner annually assesses the performance of schools in relation to State criteria and determines whether schools are farthest from, below or meeting Regents criteria. The Commissioner establishes Adequate Yearly Progress targets for schools that are below State standards. Schools that fail to meet these targets are identified as Schools in Need of Improvement and are required to develop School Improvement Plans.

The Commissioner also places schools under Registration Review

that are either farthest from State standards and most in need of improvement, or are poor learning environments. The regulation specifies the process that must be followed once a school is placed under Registration Review. The school district must develop a Corrective Action Plan and the school a Comprehensive Education Plan. The regulation also codifies the process, including due process provisions by which schools may be identified or removed from Registration Review, or have their registration revoked by the Board of Regents. The regulation also includes provisions for review of the performance of high school equivalency diploma/GED programs.

Need for rule: The rule sets forth policy of the Board of Regents in order to carry out its responsibility to register public schools in New York State and to ensure that schools are preparing students appropriately to meet State standards. The regulation is also necessary to ensure that improvement efforts are initiated in schools that are not meeting State standards and that such schools are subject to revocation of registration for persistently unacceptable performance. The regulation also helps to ensure that the State is in compliance with federal requirements relating to school accountability.

Legal basis for rule: Education Law sections 207, 305(1) and (2) and 308.

156.3(c) - Qualifications for School Bus Drivers

Description of rule: The rule provides for immediate testing of all new school bus drivers hired after September 1, 1997, and for a three-year phase-in of the testing requirement for veteran school bus drivers.

Need for rule: The rule clarifies the standards of fitness for school bus drivers consistent with the recommendations of the Commissioner's School Bus Driver Instructor Advisory Committee convened pursuant to section 156.3(c)(2) of the Commissioner's Regulations.

Legal basis for rule: Education Law sections 207 and 3624.

100.2(m) - Public School Performance Report

Description of rule: The rule requires a comprehensive assessment report for nonpublic schools and a public school performance report that include measures of academic performance and attendance, suspension and dropout rates for each school. Public school superintendents must submit annually a performance report for each district to the board of education at a public meeting. The chief administrative officer of each nonpublic school is responsible for improving results wherever warranted and for making the report available to parents.

Need for rule: The rule is necessary to implement Board of Regents policy on raising standards for all students. It also satisfies federal public reporting requirements under the 1994 reauthorization of the federal Elementary and Secondary Education Act (ESEA).

Legal basis for rule: Education Law sections 101, 207, 215 and 305(1) and (2).

100.2(cc) - BOCES Report Cards

Description of rule: The rule requires each board of cooperative educational services (BOCES) to prepare a BOCES report card and to append it to copies of the proposed administrative budget made publicly available. The report card must include measures of the academic performance of the BOCES educational services; measures of program participation, completion and placement in occupational education, special education, alternative education, and adult and continuing education; the aggregated performance of students of component school districts on State assessments; the percent of students in component school districts who earn Regents diplomas; and a comparison of each BOCES performance to statewide averages.

Need for rule: The rule is consistent with the Board of Regents policy to publicly report on school performance and is necessary in order to comply with the provision in Chapter 436 of the Laws of 1997, which requires that each BOCES issue a report card on an annual basis, pursuant to regulations of the Commissioner, commencing with the 1997-98 school year.

Legal basis for rule: Education Law sections 101, 207, 215 and 1950(4)(kk) and section 13 of Part A of section 1 of Chapter 436 of the Laws of 1997.

100.12 - Instructional Computer Technology Plans

Description of rule: the rule requires each school district to develop

and maintain a plan for the use of instructional computer technology equipment in order to be eligible for aid for instructional computer technology expenses and identifies what should be included in the plan.

Need for rule: the rule is necessary to comply with the provision in Chapter 436 of the Laws of 1997 which requires, as a condition for eligibility for State aid, that each school district develop and maintain a plan for the use of instructional computer equipment.

Legal basis for rule: Education Law sections 207 and 3602(26-a) and section 53 of Part A of section 1 of Chapter 436 of the Laws of 1997.

Part 151 and section 156.7 - Universal Prekindergarten Program

Description of rule: The rules establish program components, staff qualifications, program design, application procedures, transition rules, transportation provisions, and a required competitive process in order to implement the universal prekindergarten program.

Need for rule: The rule is necessary for the implementation of universal prekindergarten programs pursuant to the provisions of Chapter 436 of the Laws of 1997.

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

155.17 - Contracts for Mobile Instructional Units

Description of rule: The rule establishes a process that school districts and BOCES must follow in the award and approval of contracts for mobile instructional units. This process provides greater flexibility to school districts and BOCES that elect to use a request for proposals process because they may consider factors other than cost in approving such contracts.

Need for rule: The rule is necessary to comply with Chapter 464 of the Laws of 1997, which requires the Commissioner to establish a process for the approval of contracts awarded in response to a request for proposals for mobile instructional units.

Legal basis for rule: Education Law sections 207 and 305(14), as amended by Chapter 464 of the Laws of 1997.

170.3 - Instructional Support Services

Description of rule: The rule concerns the purchase of instructional support services by school districts not a component of a BOCES, including a city school in a city having a population in excess of 125,000, and defines for school districts what constitutes instructional support services: staff and curriculum development programs, activities, in-service and training for school district staff which enable school districts to implement high learning standards, build their capacity to support student learning, and develop an institutional accountability system through public reporting.

Need for rule: The rule is necessary to implement the provisions of Chapter 436 of the Laws of 1997, by defining the term "instructional support services" for purposes set forth in Education Law section 1950(8-c).

Legal basis for rule: Education Law sections 101, 207 and 1950(8-c) and section 14 of Chapter 436 of the Laws of 1997.

170.8 - Annual School Budgets

Description of rule: The rule requires school districts to prepare annual budgets and budget-related materials in plain language and organized in a manner that promotes public understanding of the material. The annual budgets must contain three components: an administrative component; a program component; and a capital component.

Need for rule: The regulation is necessary to comply with the provisions of Chapter 436 of the Laws of 1997 which requires district to prepare annual budgets containing the above-specified components.

Legal basis for rule: Education Law sections 207, 1608 and 1716 and sections 5 and 7 of Part A of section 1 of Chapter 436 of the Laws of 1997.

Agency Representative:

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

Ken Slentz
Deputy Commissioner of Education P-12
New York State Education Department
Office of P-12 Education
89 Washington Avenue
West Wing, Second Floor Mezzanine - EB
Albany, New York 12234
(518) 474-5520
nysedp12@mail.nysed.gov

ACCES

Sections 200.1 (o) and (q), 200.1(tt)(uu), 200.9(f)(2) and (f)(3)(iii), 200.16 and 200.20(a)(1) and (3) - Special Education Programs and Services to Preschool Students with Disabilities

Description of rule: The rule establishes procedures relating to the evaluation of preschool students with disabilities and the recommendation for appropriate special education programs and services in the least restrictive environment. The rule also establishes approved rates for preschool programs and tuition reimbursement.

Need for rule: Sections 200.1 (o) and (q), which were subsequently relettered as (q) and (v), define the terms "full day session" and "half-day session" for preschool students with disabilities. These regulations are necessary to comply with paragraph (b) of subdivision 5 of section 4410 of the Education Law, which compels the Commissioner to promulgate definitions needed to ensure that the individualized education program (IEP) of a preschool child indicates the extent of services to be provided to the child when a half-day or full-day program is recommended.

Sections 200.1(tt) and (uu), which were subsequently relettered (p) and (u), provide definitions of the terms "full-day preschool program" and "half-day preschool program." These regulations are necessary to comply with paragraph (b) of subdivision 5 of section 4410 of the Education Law, which compels the Commissioner to promulgate definitions needed to ensure that the IEP of a preschool child indicates the extent of services to be provided to the child when a half-day or full-day program is recommended.

Section 200.9(f)(2) establishes that the tuition reimbursement methodology for the calculation of tuition rates for programs approved under Articles 81 and 89 of the Education Law may include nondirect care cost parameters and hold harmless percentage, the rate of growth adjustment factor, the annual inflation factor and other factors to be applied in determining the tuition rate for the school year. This regulation is necessary in order to comply with section 4410(10) of the Education Law, which requires the Commissioner to determine annually the tuition rate for approved services or programs provided to preschool children pursuant to this section and in conformance with a methodology established pursuant to section 4405(4) of the Education Law.

Section 200.9(f)(3)(iii) of the Regulations of the Commissioner of Education establishes reconciliation rates for overpayment/underpayment adjustments for preschool programs prior to and including the 1994-95 school year and for the 1995-96 base year and thereafter and for programs no longer in operation. This regulation is necessary to ensure compliance with section 4410(11)(a)(ii) of the Education Law, which authorizes a municipality to recover overpayments made to a preschool provider.

Section 200.16(c) of the Regulations of the Commissioner establishes that: (1) for children in transition from early intervention programs, with the consent of the parents, the most recent evaluation report be provided to approved providers and the committee on preschool special education (CPSE); (2) an approved provider or the CPSE may review other assessments or evaluations to determine if they fulfill the regulations of the Commissioner; (3) the required summary report of a preschool evaluation omit information concerning the general type, duration and frequency of special services and programs needed and may not make reference to any specific provider of special services or program; and (4) prior to making a recommendation that would place a child in an approved program owned or operated by the same agency that conducted the evaluation, a CPSE may obtain an evaluation of the child from another approved evaluator

prior to making a recommendation. These regulations are necessary to comply with section 4410.4(c) of the Education Law and to ensure that that a CPSE has appropriate evaluation information to make an objective recommendation on services and placement for the preschool child.

Section 200.16(d)(3) of the Regulations of the Commissioner (1) requires the CPSE to recommend approved appropriate services and/or special programs and the frequency, duration and intensity of such services including, but not limited to, the appropriateness of single services or half-day programs based on the needs of the preschool child; (2) establishes the sequence of considerations for the provision of programs and services; (3) establishes that if a child needs a single related service, such service must be provided as a related service only or, where appropriate, as a special education itinerant service; (4) establishes the least restrictive environment considerations and IEP documentation requirements for preschool students including a statement of the reasons why a preschool child requires a structured learning environment of 12 months' duration to prevent substantial regression, why less restrictive placements were not recommended when the recommendation is for the provision of special education services in a setting with no regular contact where age-appropriate peers without disabilities can be found, and if the IEP recommendation for a preschool child differs from that preferred by the parent, why the CPSE recommended a different program or service than that preferred by the parent. These regulations are necessary to comply with sections 4410(4)(c), 4410(5)(b)(i) and 4410(5)(h) of the Education Law to ensure that preschool students with disabilities receive needed services only in the least restrictive environment and are not unnecessarily recommended for more extensive services.

Section 200.16(h)(3)(iii) of the Regulations of the Commissioner allows special classes for preschool students to be provided on a half-day or a full-day basis. This regulation is necessary to comply with section 4410(5)(b)(i).

Section 200.16(h)(3)(v) of the Regulations of the Commissioner states that (1) 12-month education services to preschool children must be consistent with the students' individual needs, as specified in the IEPs; and (2) nothing would prohibit a CPSE from recommending a special program or service, frequency or duration for a July and August for a preschool child that differs in services, programs, frequency or duration from the child's school year program. This regulation is necessary to comply with section 4410(5)(h) of the Education Law and to provide flexibility on the part of CPSEs to recommend only those services a preschool child might need during the months of July and August.

Section 200.20(a)(1) and (2) of the Regulations of the Commissioner of Education states that no new or expanded preschool programs shall be given conditional or final approval subject to the moratorium established in section 4410(9)(iii) of the Education Law.

Legal basis for rule: Education Law sections 207 and 4410, as amended by sections 164, 165, 166 and 169 of Chapter 474 of the Laws of 1996.

Section 200.2(c) - District Plans for Special Education Programs and Services

Description of rule: This rule requires that a district plan be filed consistent with the time intervals required in section 3602(10), and that the district plan include an estimated budget.

Need for rule: The rule is necessary to ensure consistency with Education Law section 3602(10), which requires that district plans be revised and made available for public inspection and review by the Commissioner every two years.

Legal basis for rule: Education Law sections 207, 3602(3) and (10), 4402(1), (2) and (3), and 4410(13).

Section 200.6(b)(6) - Specially Designed Reading Instruction to Students with Disabilities

Description of rule: The rule adds specially designed reading instruction, provided by an individual who holds a certificate valid for a reading teacher, to the continuum of services that may be recommended for a student with a disability and authorizes the provision of such instruction.

Need for rule: The rule is necessary to ensure that specially designed reading instruction is provided by individuals with certification and expertise in the area of reading.

Legal basis for rule: Education Law section 207 and 4403(3).

Section 200.9(f)(4) - Reimbursement of Transportation Expenses for Preschool Students with Disabilities

Description of rule: The rule establishes a standardized methodology to develop regional maximum per trip rates for the reimbursement of transportation expenses incurred by municipalities providing services to preschool students with disabilities.

Need for rule: The rule is necessary to implement section 4410(c)(1) of the Education Law, which requires the Commissioner to establish regional ceilings for each region of the State on the maximum allowable State reimbursement and sets out factors the Commissioner must consider in developing such ceilings, and thus ensure that the transportation rates for preschool children between counties in the same geographic regions of the State are not widely discrepant.

Legal basis for rule: Education Law sections 207, 4401(4), 4402(4), 4405(2) and 4410(8), (10) and (13), and sections 171 and 175 of Chapter 474 of the Laws of 1996.

Sections 276.1(c), 276.10 and Part 279 - State Level Review of Impartial Hearing Officer Determinations Regarding Services for Students with Disabilities

Description of rule: The rule clarifies procedures for pendency determinations, school board initiated appeals, cross-appeals and review of interim issues, relating to impartial hearings concerning services for students with disabilities.

Need for rule: The rule is necessary to ensure that impartial hearing officers (IHOs) are made aware of their responsibilities to determine issues of pendency pursuant to statute; to ensure clear identification of the sections of an IHO's decision being challenged and relief sought; to clarify procedures, including timelines, to be followed when a board of education initiates an appeal from an impartial hearing officer's decision; to clarify procedures for cross-appeals; to conform appeals practice to Federal and State requirements; and to otherwise ensure that disagreements regarding a student's status during the due process proceeding are addressed in a timely manner.

Legal basis for rule: Education Law sections 207, 311, 4403(1) and (3), 4404(2) and 4410(13).

Part 247- Vocational Rehabilitation Program

Description of rule: This rule enacted certain amendments to Part 247 to conform State regulations relating to the vocational rehabilitation program to changes in Federal law made by the reauthorization of the Rehabilitation Act (Public Law 102-569) and the subsequent promulgation of Federal regulations.

Need for rule: These regulations are necessary to ensure that the vocational rehabilitation program is conducted according to Federal requirements set forth in the 1992 amendments to the Rehabilitation Act and the corresponding Federal regulations which took effect March 13, 1997. The regulations were again amended in 1999 and 2001 to conform to subsequent Federal requirements.

Legal basis for rule: Education Law sections 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 Smith

Deputy Commissioner

New York State Education Department

Deputy Commissioner of Adult Career & Continuing Education Services

One Commerce Plaza, Room 1606

Albany, New York 12234

(518) 474-2714

OFFICE OF OPERATIONS AND MANAGEMENT SERVICES

3.8, 3.9 and 3.15 - Chief Operating Officer

Description of rule: The rule replaces the term "Executive Deputy

Commissioner" with the term "Chief Operating Officer" and designates the chief operating officer as the deputy commissioner of education as specified in Education Law section 101.

Need for rule: The rule is necessary to implement a change in the internal organization of the State Education Department which replaces the position of Executive Deputy Commissioner with the position of Chief Operating Officer.

Legal basis for rule: Education Law section 101.

Agency Representative:

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

Richard J. Trautwein

Counsel and Deputy Commissioner for Legal Affairs

New York State Education Department

State Education Building, Room 112

Albany, New York 12234

(518) 474-6400

OFFICE OF CULTURAL EDUCATION

185.5 and 185.12 - Local Government Records

Description of rule: Paragraph (3) of subdivision (a) of Section 185.5 was amended to remove the date of the last revision (1994) and add the date of the current revision (1997) of ED-1, retention schedule for school districts, boards of cooperative educational services, teacher resources and computer training centers and county vocational education and extension boards. In addition, section 185.12 was amended to remove the date of an earlier revision (1993) and add the date of the current revision (1997) of ED-1.

Need for rule: The rule is necessary to update references to Records Retention and Disposition Schedule ED-1, which was substantially revised from its last issue in 1993/94.

Legal basis for rule: Education Law section 207 and Arts and Cultural Affairs Law section 57.25(2).

185.10(a)-Local Government Records

Description of rule: The rule removed a requirement that each local government develop and approve a records management plan beforehand, in order to be eligible to apply to the Commissioner for a records management improvement grant.

Need for rule: The rule was adopted in order to streamline the records management improvement grant application process by removing the burdensome requirement that a records management plan be developed and approved before that local government is eligible to apply for such grant.

Legal basis for rule: Education Law section 207 and Arts and Cultural Affairs Law section 57.35(1) and (2).

185.1, 185.7, 185.8, 188.2 and 188.20 Local and State Government Records Management

Description of rule: The rule was adopted to update language to reflect current technologies; to remove two definitions of "digital images" and "source code" that are no longer necessary (185.1); to add a new and more current definition of "automated information system" (185.1); to add a new definition of "SARA" (185.1); to remove the mandate that duplicate eye-readable copies be retained for certain records maintained as digitized images by local government (185.7); and update the definition of "State Archives and Records Administration" (188.2). In addition, section 185.8 was repealed and section 188.20 was amended to consolidate in one regulation the provisions concerning the retention and preservation of electronic records of local and state government.

Need for rule: The rule was adopted to remove the sometimes burdensome requirement that local government officials must maintain the paper original, or a paper copy, or a microform copy of all electronically imaged records which are scheduled to be retained for ten or more years. The rule reduces paperwork because local governments no longer need to keep or create and file a paper or microform copy of certain electronically imaged records. In addition, the repeal of section 185.8 and amendment of 188.20 consolidated in one regulation the provisions concerning the retention and preservation of electronic records of local and State government.

Legal basis for rule: Education Law section 207 and Arts and Cultural Affairs Law sections 57.05, 57.17, 57.23(2) and (3) and 57.29.

188.21 State Government Records Management

Description of rule: Section 188.21 of the Regulations of the Commissioner of Education was amended to update the schedule of fees to reflect changes in the organization of State government and to establish a process for the Division of the Budget to reduce or waive fees under certain conditions.

Need for rule: the rule is necessary to implement Arts and Cultural Affairs Law section 57.05 (9) and (11)(i) and (j), which authorizes the Commissioner of Education to implement a fee schedule to support records management activities for State government agencies and to promulgate rules and regulations setting forth fees to be paid for records management services.

Legal basis for rule: Education Law section 207 and Arts and Cultural Affairs Law section 57.05 (9) and (11)(i) and (j).

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
State Education Department
Cultural Education Center
Room 10A33
Albany, NY 12230
(518) 474-5976

OFFICE OF THE PROFESSIONS

Section 24.3(c)-Waiver of Citizenship/Immunizations Requirement

Description of rule: This Regents Rule authorizes the Board of Regents to grant time-limited waivers of the statutory citizenship or immunizations status requirements for licensure in medicine. The rule establishes conditions for obtaining the waiver, including applications for medical licensure, satisfaction of remaining statutory licensure provisions, maintenance of lawful immigration status, and practice in an underserved area.

Need for rule: This rule is required to implement statutory amendments to the provisions of Education Law § 6524(b), which authorizes the Board of Regents to grant time-limited waivers of the citizenship or immigration status requirements for licensure in medicine.

Legal basis for rule: Education Law sections 207, 6504, 6506(1) and (10), 6507(4)(b) and 6524(6).

Agency Representative:

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

Douglas E. Lentivech
Deputy Commissioner for the Office of the Professions
Office of the Professions
New York State Education Department
West Wing, Second Floor, EB
Albany, NY 12234
(518) 474-3817 ext. 470
opdepcom@mail.nysed.gov

Section 24.7 (h) - Restoration of License

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

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

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

Agency Representative:

Information may be obtained, and written comments may be

submitted, concerning the modification or continuation of this rule by contacting:

Leonard Lapinski, Coordinator
Committee on the Professions
New York State Education Department
Second Floor, West Wing, 89 Washington Avenue
Albany, NY 12234
(518) 474-3817 x300

Part 65 - Licensure in Podiatry

Description: Part 65 was amended on August 1, 1997 to require all individuals who apply for licensure in podiatry on or after July 1, 2000 to have completed one year of supervised postgraduate hospital training in podiatry, acceptable to the Department.

Need for rule: Pursuant to Education Law § 7004 (3) the Commissioner is authorized to establish experience requirements for licensure in podiatry. In 1992, the Department ceased requiring a practical examination for the licensure of podiatrists. The aforementioned regulation was added to assure that podiatrists have adequate clinical experience, given discontinuance of the practical examinations as an evaluative method of determining minimal competence.

Legal basis for rule: Education Law sections 207, 6501, 6504, 6506(1), 6507(2)(a) and (3)(a), 7004(3) and (4) and 7007(1)(c).

Agency Representative:

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

Claudia Alexander, Executive Secretary
New York State Education Department
State Board for Podiatry
89 Washington Avenue, Second Floor
Albany, NY 12234
(518) 474-3817 x180

Section 61.15 - Dentistry

Description of rule: The subject matter of this rule implements mandatory continuing education requirements for dentists. The regulation includes provisions for exemptions, conditional registrations and other procedures needed to implement the law.

Need for rule: The regulation is needed to implement Education Law section 6604-a for dentists, by establishing standards for what constitutes acceptable formal continuing education, 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 dentists.

Legal basis for rule: Education Law sections 207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1) and 6604-a(1)(a), (b) and (c), (2), (3), (4) and (5).

Agency Representative:

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

Delores Catrell-Carson, Executive Secretary
New York State Education Department
State Board for Dentistry
89 Washington Avenue, Second Floor
Albany, NY 12234
(518) 474-3817 x550

Section 61.16 - Dental Hygiene

Description of rule: The subject matter of this regulation implements mandatory continuing education requirements for dental hygienists. The regulation includes provisions for exemptions, conditional registrations and other procedures needed to implement the law.

Need for rule: The regulation is needed to implement Education Law section 6609-a, by establishing standards for what constitutes acceptable formal continuing education, educational requirements when there is a lapse in practice, requirements for licensees under conditional registration and standards for the approval of sponsors of continuing education to licensed dental hygienists.

Legal basis for rule: Education Law sections 207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1) and 6609-a(1)(a), (b) and (c), (2),(3),(4) and (5).

Agency Representative:

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

Delores Catrell-Carson, Executive Secretary
New York State Education Department
State Board for Dentistry
89 Washington Avenue, Second Floor
Albany, NY 12234
(518) 474-3817 x550

Section 63.7 - Pharmacy

Description of rule: The subject matter of the regulation implements mandatory continuing education requirements for pharmacists. The regulation includes provisions for exemptions, conditional registrations and other procedures needed to implement the law.

Need for rule: The regulation is needed to implement Education Law section 6827, by establishing standards for what constitutes acceptable formal continuing education, 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 pharmacists.

Legal basis for rule: Education Law sections 207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1) and 6827(1)(a), (b) and (c), (2), (3), (4), (5) and (6).

Agency Representative:

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

Lawrence H. Mokhiber, Executive Secretary
New York State Education Department
State Board of Pharmacy
89 Washington Avenue, Second Floor
Albany, NY 12234
(518) 474-3817 x130

Section 29.10 - Public Accountancy

Description of rule: The subject matter of the rule relates to unprofessional conduct in the practice of public accountancy. Section 29.10 was amended to update and clarify the special provisions for this profession by: (1) conforming the standards for unprofessional conduct in the Regents Rules with those prescribed by national and State standard-setting bodies; (2) limiting instances where accepting contingent fees would constitute unprofessional conduct; (3) eliminating references to outdated pronouncements of the American Institute of Certified Public Accountants; and (4) limiting a licensee's responsibility to clients for uncompensated work products and clarifying a licensee's responsibility to provide copies of documents.

Need for rule: The need for the amendment to Part 29.10 was three-fold. It provided that contingent fees would be allowable in specific circumstances. Categories of professional accountancy services were delineated where 3rd party reliance occurred. These changes were predicated on a U.S. Federal Trade Commission (FTC) suit filed against the American Institute of Certified Public Accountants (AICPA) because of its prohibitions of contingent fees. The FTC charged that the AICPA prohibitions were anti-competitive in nature. At the time the changes were approved, 30 of 54 licensing jurisdictions had modified their rules or regulations to conform to the modified AICPA model resulting from the FTC suit. Second, outdated references to industry practice standards were removed from the Rules (e.g., specific references to provisions of generally accepted accounting principals and generally accepted auditing standards). Third, clarifications were made to the Rules regarding client records. Under the revision, licensees were required to provide only single copies of excerpts only of accountants' working papers of work performed on behalf of the client. The amendments also brought section 29.10 into conformity with the general provisions of Part 29.1(b)(7).

Legal basis for rule: Education Law sections 207, 6504, 6506(1) and (9), 6508(1) and 6509(9).

Agency Representative:

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

Daniel J. Dustin, CPA, Executive Secretary,
New York State Education Department
State Board for Public Accountancy
89 Washington Avenue, 2nd Floor East Mezzanine
Albany, NY 12234
(518) 474-3817 x160

Sections 29.13 - Massage Therapy

Description of rule: This rule updates and clarifies the special provisions for unprofessional conduct in the profession of massage therapy by: (1) specifying which type of advertising is appropriate, while limited that which is inappropriate; (2) explaining the employment relationship between a licensed massage therapist and an unlicensed owner of a massage therapy practice; and (3) conforming the regulatory language to the statutory terms of massage therapy and massage therapist.

Need for rule: The rule is necessary to clarify and defined unprofessional conduct in the practice of massage therapy and to conform regulatory language to statutory terms of massage therapy and massage therapist.

Legal basis for rule: Education Law sections 207, 6504, 6506(1) and (9), 6508(1) and 6509(9).

Agency Representative:

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

Kathleen M. Doyle, Executive Secretary
New York State Education Department
State Board for Psychology
89 Washington Avenue, 2nd Floor
Albany, New York 12234
(518) 474-3817 x150

52.15, 78.1, 78.2, 78.3 and 78.4 - Massage Therapy

Description of rule: The rule: (1) increases, from 500 to 1000 hours, the amount of instruction and specifying minimum hours in certain curricular areas for the registration of professional massage therapy programs; (2) ensures that the massage therapy licensing examination measures candidates' knowledge of both western and oriental massage; (3) conforms the regulatory language to that in statute in the terms massage therapy and massage therapist; and (4) ensures that persons licensed as massage therapists on the basis of endorsement of licensure in other jurisdictions meet acceptable education, examination and practice standards.

Need for rule: The rule is needed to ensure the quality of applicants' preparation for entry level licensure in massage therapy by upgrading educational requirements for professional programs to include subject matter and modalities used in contemporary practice and to ensure the competency of individuals licensed through the endorsement of a license issued by another jurisdiction by establishing education, examination and practice standards.

Legal basis for rule: Education Law sections 207, 210, 6501, 6504, 6506(6), 6507(2)(a) and (4)(a), 6508(1), 7801, 7804(2) and 7805(3).

Agency Representative:

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

Kathleen M. Doyle, Executive Secretary
New York State Education Department
State Board for Psychology
89 Washington Avenue, 2nd Floor
Albany, New York 12234
(518) 474-3817 x150

78.4(b) - Massage Therapy

Description of rule: The rule amended subdivision (b) of section 78.4 to replace the term “grant” with the term “recommend”, concerning State Education Department actions taken with respect to licensure by endorsement.

Need for Rule: The rule is necessary to provide clarification that the State Education Department recommends to the Regents the endorsement of a license issued by another jurisdiction and that the Regents make the decision concerning whether to grant licensure by endorsement.

Legal basis for rule: Education Law sections 207, 6501, 6504, 6506(6), 6507(2)(a) and 7804(2).

Agency Representative:

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

Kathleen M. Doyle, Executive Secretary
New York State Education Department
State Board for Psychology
89 Washington Avenue, 2nd Floor
Albany, New York 12234
(518) 474-3817 x150

52.10, 72.1, 72.2 and 72.3 - Psychology

Description of rule: The rule: (1) revises the curricular requirements for the registration of professional programs in psychology to conform the education requirements to nationally accepted standards; (2) consolidates and clarifies the experience requirement; (3) admits to the licensing exam, applicants who have completed the required doctoral education and one year of supervised experience; and (4) corrects the name of the exam provider.

Need for rule: The rule is needed to ensure the quality of applicants' preparation for entry-level licensure in psychology by upgrading educational requirements for professional programs. The rule specifies required core education coursework, while permitting a diversity of specializations in educational programs. Entry-level competency is further ensured by requiring that registered doctoral programs leading to licensure include one year of applied training.

Legal basis for rule: Education Law sections 207, 210, 6501, 6504, 6507(2)(a) and (4)(a), 6508(1), 7603(2), (3) and (4) and 7605(2) and (3).

Agency Representative:

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

Kathleen M. Doyle, Executive Secretary
New York State Education Department
State Board for Psychology
89 Washington Avenue, 2nd Floor
Albany, New York 12234
(518) 474-3817 x150

OFFICE OF HIGHER EDUCATION

85.1 and 85.2 - Mentor-Teacher Internship Program

Description of rule: The rule: (1) makes the requirements for and limitations on interns and mentors who participate in the Mentor-Teacher Internship Program and allowable costs for that program consistent with changes in statutory requirements; (2) removes an unnecessary reference to licenses issued by the City School District of the City of New York; and (3) clarifies that the budget for the program may include up to 10 percent of the salary of each mentor per mentor-intern relationship.

Need for rule: The rule is needed to conform the Commissioner's Regulations with the requirements and limitations for interns and mentors set forth in Education Law section 3033, as amended by section 117-b of Part A of section 1 of Chapter 436 of the Laws of 1997.

Legal basis for rule: Education Law sections 207 and 3033(4) and (5) and section 117-b of Part A of section 1 of Chapter 436 of the Laws of 1997.

145-9 - Merit Scholarships

Description of rule: The rule establishes criteria, definitions and procedures for the Merit Scholarships for Academic Excellence Program, including selection criteria for scholarship nominees, definition of high schools that will receive an allocation of scholarship awards, and reporting requirements for the high schools.

Need for rule: The rule is necessary to implement the requirements of Education Law section 605-a and 670-b, as promulgated by sections 11 and 12 of Chapter 309 of the Laws of 1996. Section 605-a requires the Commissioner to establish selection criteria for scholarship nominees at those high schools which do not offer the Regents examinations enumerated in statute. Section 605-a requires the Commissioner to define the high schools that would receive an allocation of scholarships for their students. The rule also establishes reporting procedures for participating high schools in order to implement the program.

Legal basis for rule: Education Law section 207, 605-a(1)(a) and (b) and 670-b(1) and sections 11 and 12 of Chapter 309 of the Laws of 1996.

Agency Representative:

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

John D'Agati
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

Department of Environmental Conservation

The following rules were adopted by the New York State Department of Environmental Conservation (Department or DEC) during 2007, 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. Revisions are also planned to update the provisions related to the revoked one-hour ozone standard to replace them with references to the 8-hour standard.

6 NYCRR Part 200, General Provisions. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0305 and 19-0311. Part 200 was amended in 2007 to incorporate new federal fine particulate (PM_{2.5}) designations and geographic boundaries (70 FR 943-1019). This change is still valid, however, all areas of the state are monitoring attainment of the PM_{2.5} national ambient air quality standard (NAAQS) using 2008-2010 data. The Department plans to prepare a redesignation request in 2012 that, when approved by EPA, will result in changes to the nonattainment area definition in Part 200. EPA approval in 2012 is not certain.

6 NYCRR Part 205, Architectural and Industrial Maintenance (AIM) Coatings. Statutory Authority: Environmental Conservation

Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, and 19-0305. Part 205 was amended in 2007 to eliminate the small manufacturers' exemption and establish a sell-through end date to eliminate the unlimited sell-through of non-complying coatings manufactured pursuant to a small manufacturer's exemption or before January 1, 2005. This change is still valid but the Department will assess whether these provisions will need to be retained if and when it amends this Part.

6 NYCRR Part 243, CAIR Ozone Season NO_x Trading Program, 6 NYCRR Part 244, CAIR Annual NO_x Trading Program, and 6 NYCRR Part 245, CAIR SO₂ Trading Program. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, and 19-0311. Parts 243, 244 and 245 were adopted in 2007. They implemented the federally mandated Clean Air Interstate Rule (CAIR) to address the interstate transport of the precursors of fine particulate matter and ozone from large fossil fuel fired electricity generating units. Each of these Parts established a separate cap and trade program for affected facilities that implemented a statewide cap of emissions from these sources through a multi-state trading program. In 2010, the Department revised each of these Parts to incorporate changes made to the model federal regulations on which the three NYS CAIR rules were based, and made minor clarifications and corrections to the NYS CAIR rules. The Department will assess whether these Parts can be repealed after the implementation of the federal Cross State Air Pollution Rule (CSAPR) and any future State regulations that may result from CSAPR.

6 NYCRR Part 246, Mercury Reduction Program for Coal Fired Electric Utility Steam Generating Units. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, and 19-0305. Part 246 was promulgated in January of 2007 to control mercury emissions from existing and new coal fired units. The first compliance date was January of 2010 for Phase 1 and the next compliance date is January 2015. The current regulation has been effective in reducing emissions of mercury and Department does not intend to revise it at this time.

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: ljsteven@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 2007, updated the existing Uniform Procedures regulations to revise and correct references to 6 NYCRR Part 231, "New Source Review for New and Modified Facilities". No further action is planned this year.

Regulatory Coordinator for the Division of Environmental Permits is Kent P. Sanders, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-1750. Telephone: 518-402-9178. E-mail: depprmt@gw.dec.state.ny.us

DIVISION OF FISH, WILDLIFE AND MARINE RESOURCES

6 NYCRR Section 1.31 - Hunting Black Bear. Statutory Authority: ECL 11-0303, 11-0903 and 11-0907. This rule making modified the opening day of the regular season for bear hunting in the Catskill region to provide additional opportunities to harvest black bears. The rule remains in effect, and was affirmed when other changes to bear hunting seasons were adopted in August 2011.

6 NYCRR Section 2.2 - Taking of Frogs was repealed and Part 3 - Reptiles was amended. Statutory Authority: ECL 11-0103, 11-0303, 11-0311, 11-0903, 11-0905 and 11-0909. This regulation repealed section 2.2 regarding the taking of frogs and amended section 3.1 and added new sections 3.2 through 3.6 to provide for protection of all native reptiles and amphibians. The rule remains in effect.

6 NYCRR Section 2.25 - Hunting upland game birds. Statutory Authority: ECL 11-0303, 11-0903 and 11-0905. This regulation established a special two-day youth pheasant hunting weekend for licensed junior hunters prior to the regular fall season. The original rule established the youth hunt for pheasants for upstate New York

only. The regulation was amended in October 2011 to establish a two-day youth pheasant hunting weekend on Long Island, pursuant to legislation enacted in August. Other amendments to regular pheasant hunting seasons and bag limits were adopted in 2010 and remain in effect in accordance with the Department's pheasant management plan.

6 NYCRR Section 2.30 - Migratory Game Bird Hunting Regulations. Statutory Authority: ECL 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 2007-2008 hunting 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, has reduced the need for annual amendment of these regulations in 2011 and beyond.

6 NYCRR Section 6.3 - General Trapping Regulations. Statutory Authority: ECL 11-0303, 11-1101 and 11-1103. This regulation established new requirements (e.g., specifications on size and placement) for body gripping traps set on land (larger than five inches) to reduce or eliminate the accidental capture, injury, or killing of dogs in body gripping traps primarily set to catch fisher or raccoons. The rule remains in effect.

6 NYCRR Part 10 - Sportfishing Regulations. Statutory Authority: ECL 11 0303, 11 0305, 11-1301 and 11 1303. On 10/24/07 Emergency regulations were put in place for 90 days as special regulations for West Canada Creek to prevent trout mortality due to drought conditions. This was not followed by a permanent rule making proposal.

6 NYCRR Part 10 - Sportfishing Regulations. Statutory Authority: ECL 11 0303, 11 0305, 11-1301 and 11 1303. On 10/3/07 Emergency regulations were put in place as special regulations for the Salmon River to prevent salmon mortality due to drought conditions. The initial emergency was followed by an Extension of the Emergency. Both were submitted as 90 day emergency rule makings. These were not followed by a permanent rule making proposal.

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 was utilized for a proposed rule making which was filed in April of 2011, including providing for a 45 day public comment period. A final rule making containing modifications was adopted on June 29, 2011.

6 NYCRR Part 40 - Marine Fish. Statutory Authority: Environmental Conservation Law sections 13-0105 and 13-0340-b. This rule making increased the recreational size limit for summer flounder from 18 inches to 19 inches and increased the recreational fishing season from May 6 - September 12 to open all year. These regulations were adopted to be consistent with the Atlantic States Marine Fisheries Commission (ASMFC) Fishery Management Plan (FMP) for summer flounder. 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 2012 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR Part 40 - Marine Fish. Statutory Authority: Environmental Conservation Law sections 13-0105 and 13-0340-b. This rule making implemented a closure of the recreational summer flounder season effective September 17, 2007. This regulation was adopted to be con-

sistent with the Atlantic States Marine Fisheries Commission (ASMFC) Fishery Management Plans for summer flounder 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 2012 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

6 NYCRR Part 41 - Sanitary Condition of Shellfish Lands. Statutory Authority: ECL 13-0307 and 13-0319. This regulation classified shellfish lands in Town of Southold as uncertified (closed) for the harvest of shellfish. Portions of Cutchogue harbor and its tributary creeks were designated as seasonally uncertified for shellfish harvest. Portions of the creeks were closed to shellfish harvest for the entire year. 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 2012 Division of Fish, Wildlife and Marine Resources Regulatory Agenda.

Regulatory Coordinator for the Division of Fish, Wildlife & Marine Resources is Rose Diana, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233. Telephone: (518) 402-8981. E-mail: rtdiana@gw.dec.state.ny.us

DIVISION OF LANDS AND FORESTS

6 NYCRR Part 198 Outdoor Recreation and Trail Maintenance Pin and Patch Program, Environmental Conservation Law sections, 3-0301(2)(m) and 11-0329. This regulation is needed since it implements a voluntary outdoor recreation and trail maintenance Pin and Patch Program. No amendments to this rule are planned for 2012 since implementation has been satisfactory. There is no need for the Department to modify this rule from its present form.

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

Department of Financial Services

PART 1. INSURANCE REGULATIONS

Pursuant to section 207 of the State Administrative Procedure Act ("SAPA"), the Department of Financial Services must review after five years, and at five-year intervals thereafter, rulemakings adopted on or after January 1, 1997. Please note that all references to "the Department", prior to October 3, 2011 mean the former Insurance Department, as appropriate to the context, and that the references to the law cited are as of the date of the amendment to the regulations.

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 2007, 2002, and 1997. Comments must be received within 45 days of the date of publication of this notice.

Comments should be submitted to:

Samuel Wachtel
Supervising Attorney
New York State Department of Financial Services
25 Beaver Street
New York, NY 10004
Telephone Number: (212) 480-5269
Email: samuel.wachtel@dfs.ny.gov

The following rulemakings were adopted in 2007.

- INS-43-06-00004-A (State Register of January 10, 2007)

Amendment to Part 68 (Second Amendment to Regulation 162) (Legal Services Insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 1113(a)(29), 1116 and Articles 23 and 63.

Regulation 162 establishes requirements for Legal Services Insurance authorized pursuant to section 1113(a)(29) of the Insurance Law. Prior to this amendment, legal services insurance that was written as part of a policy of liability insurance was subject to the filing and approval requirements of Article 23 of the Insurance Law and did not qualify as a special risk coverage pursuant to Part 16 of Title 11 of the New York Codes, Rules and Regulations ("NYCRR") (Regulation 86). Thus, a liability policy that might otherwise be exempt from Article 23 filing requirements, except for the fact that it included legal services insurance coverage, was required to be submitted to the Department for approval before it could be used. This rule permits legal services insurance to qualify as a special risk only if the coverage of the policy of liability insurance of which it is a part also qualifies as a special risk coverage pursuant to Part 16 of Title 11 of the NYCRR and Article 63 of the Insurance Law, and the policy is written on such basis.

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-44-06-00000-A (State Register of January 10, 2007) Adoption of Part 75 (Regulation 181) (Standards For Insurance That Qualifies For The Environmental Remediation Insurance Tax Credit) of Title 11 NYCRR.

Section 3447 of the Insurance Law authorizes the Superintendent to promulgate regulations relating to the certification of policies of insurance that qualify for the environmental remediation insurance tax credit provided for under Section 23 of the Tax Law. This Part provides guidance for insurers as to the minimum standards for environmental remediation insurance coverages that will enable an insurer to certify that the coverages qualify for the environmental remediation insurance tax credit provided for under the Tax Law. This Part also provides the requirements for disclosure of the premiums paid for the coverages under Section 3447(b) of the Insurance Law to enable the insured to obtain the appropriate tax credit.

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-43-06-00002-A (State Register of January 10, 2007) Amendment of Part 83 (Fifth Amendment to 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.

Sections 307 and 308 of the Insurance Law provide that authorized insurers, accredited reinsurers, authorized fraternal benefit societies, and Public Health Law Article 44 Health Maintenance Organizations and Integrated Delivery Systems shall file financial statements annually and quarterly with the Superintendent. The Insurance Law further provides that the form of such statements shall be prescribed by the Superintendent. To assist in the completion of the financial statements, the National Association of Insurance Commissioners ("NAIC") adopts and publishes from time to time certain policy, procedure and instruction manuals. One of these manuals, the Accounting Practices and Procedures Manual ("Accounting Manual"), includes a body of accounting guidelines referred to as "Statements of Statutory Accounting Principles."

The Accounting Manual was originally effective January 1, 2001. The latest revision of the Accounting Manual is as of March 2005. With a few exceptions, this rule incorporates the Accounting Manual by reference so as to enhance the consistency of the accounting treatment of assets, liabilities, reserves, income and expenses, and to set

forth the accounting practices and procedures to be followed in completing annual and quarterly financial statements required by law. The amendment of another portion of the regulation was necessitated by the issuance of a revised edition of Estimated Useful Lives Of Depreciable Hospital Assets, another publication which is incorporated by reference in the regulation.

The regulation was amended again in 2007 (INS-06-07-00007-A, State Register of April 25, 2007) to conform the regulation to revisions to the Accounting Manual. Also, in 2011, the Department amended the regulation (INS-02-11-00004-A, State Register of March 16, 2011) to conform the regulation to revisions made to the Accounting Manual in 2007, 2008, 2009, and 2010 and Chapter 311 of the Laws of 2008, effective July 21, 2008, which amended the Insurance Law relating to the treatment of certain assets in the filing of quarterly and annual financial statements by certain regulated insurers.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend the regulation again to conform the regulation to revisions to the Accounting Manual.

- INS-32-06-00004-A (State Register of January 10, 2007) Amendment of Part 98 (First Amendment to Regulation 147) (Valuation of Life Insurance Reserves) of Title 11 NYCRR.

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

Maintaining the solvency of insurers doing business in New York is a principal focus of the Insurance Law. One way the Insurance Law seeks to ensure solvency is by requiring all insurers and fraternal benefit societies authorized to do business in New York to hold reserve funds in an amount proportional to the obligations made to policyholders. At the same time, insurers and policyholders benefit when insurers have adequate capital for company purposes such as expansion and product or other forms of business development.

Some companies have sold life insurance products that result in lower reserves than would be required for products with similar death benefit and premium guarantees. This rule addresses that problem by establishing new reserve methodologies consistent with Section 4217 of the Insurance Law. In 2011, the Department amended the regulation (INS-02-11-00002-A, State Register of March 16, 2011) to remove restrictions on the mortality adjustment factors (known as X factors) in deficiency reserves calculations.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend the regulation again to establish or revise reserve standards for equity-indexed life insurance plus other new product designs.

- INS-42-06-00003-A (State Register of January 17, 2007) Adoption of Part 46 (Regulation 174) (Unemployment Lapse Protection Benefit For Life Insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 1113, 3201, and 4525.

This rule establishes minimum standards for benefit levels, benefit eligibility and exclusion, and premium levels relating to additional benefits authorized under Section 1113(a)(1) of the Insurance Law for unemployment lapse protection benefits for life insurance. The unemployment lapse protection benefit includes waiver of premium benefits and waiver of charge benefits. This rule also prescribes advertising and disclosure requirements for unemployment lapse protection benefits for life 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-46-06-00011-A (State Register of January 24, 2007) Amendment of Part 152 (Third Amendment to Regulation 124) (Physicians and Surgeons Professional Insurance Merit Rating Plans) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, and 2343(d) and (e) and Section 42 of Part A of Chapter 1 of the Laws of 2002, as amended by Section 16 of Part J of Chapter 82 of the Laws of 2002 and Chapter 420 of the Laws of 2005.

Insurance Law Section 2343(d) provides that the Superintendent shall, by regulation, establish a merit rating plan for physicians' professional liability insurance. Section 2343(e) provides that the Superintendent may approve malpractice insurance premium reductions for insured physicians who successfully complete an approved risk management course, subject to standards prescribed by the Superintendent by regulation. This amendment allows, but does not require, an insurer to offer an internet-based risk management course to its insureds as soon as the Department determines that the course is in proper compliance with applicable law.

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-44-06-00004-A (State Register of January 31, 2007) Amendment of Part 362 (Second Amendment to Regulation 171) (The Healthy NY Program and Direct Payment Market Stop Loss Relief Programs) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327.

Due in part to the rising cost of health insurance coverage, many small employers are unable to provide health insurance coverage to their employees. Chapter 1 of the Laws of 1999 enacted the Healthy NY Program as an initiative designed to encourage small employers to offer health insurance to their employees and to encourage uninsured individuals to purchase health insurance coverage.

This rule introduces a second Healthy NY benefit package at a reduced premium rate. The second benefit package provides for a lower-cost alternative and permits individuals and small businesses to choose a benefit package that meets their needs. The rule eliminates the well-child copayment applicable to the Healthy NY Program in order to enhance access to preventive and primary care for children, and permits the Healthy NY Program to be considered qualifying health insurance under the federal Trade Act of 2002 to allow those qualifying for a federal tax credit to benefit from that credit. The rule also revises the eligibility requirements relating to employment in order to lessen complexity and enhance access.

Later in 2007, the Department adopted another amendment to Part 362 (see below).

- INS-34-07-00016-A (State Register of November 7, 2007) Amendment to Part 362 (Third Amendment to Regulation 171) (The Healthy NY Program and Direct Payment Market Stop Loss Relief Programs) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 1109, 3201, 3217, 3221, 4235, 4303, 4304, 4305, and 4326.

Before enactment of this rule, small employers and individual participants in the Healthy New York program seeking comprehensive health insurance coverage could not purchase high deductible health plans and establish health savings accounts in accordance with federal standards. This regulation requires HMOs and participating insurers to offer high deductible health plans using the Healthy New York small employer and individual programs. This new option provides New Yorkers with access to a tax-advantaged method of purchasing health insurance.

The rule also provides for prostate cancer screening and a limited home health care and physical therapy benefit. The addition of the prostate cancer screening benefit will facilitate prompt and early detection of prostate cancer, which in turn should decrease mortality and reduce treatment costs.

In 2011, the Department prepared an amendment to the regulation. This was necessitated by the fact that due to state fiscal constraints, the New York State budget set Healthy NY funding appropriations at approximately \$160 million for the past three consecutive fiscal years. As a result, there is a need to pro-rate state payments to health plans for the last two years. The new rule will provide that new applicants, for coverage effective January 1, 2012 or later, will be limited to Healthy NY's high deductible health plans only. The rule will permit existing Healthy NY enrollees to keep their current coverage option. The Department believes that, by limiting the program options avail-

able to new applicants, Healthy NY's limited financial resources will be better utilized.

- INS-52-06-00006-A and INS-52-06-00007-A (State Register of March 14, 2007) Amendment of Part 65-3.13 (Third Amendment to Regulation 68-C) (Claims for Personal Injury Protection Benefits) and Part 65-4.5 (Fourth Amendment to Regulation 68-D) (Arbitration) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 2601, 5106, and 5221 and Section 2407 of the Vehicle and Traffic Law (for Part 65-3.13). Insurance Law Sections 201, 301, 2601, 5106, and 5221 and Section 2407 of the Vehicle and Traffic Law (for Part 65-4.5).

Regulation 68 contains provisions implementing Article 51 of the Insurance Law, which is commonly referred to as the No-Fault Law. No-Fault insurance is intended to provide for prompt payment of health care and loss of earnings benefits. In accordance with Chapter 452 of the Laws of 2005, these two rules require an insurer to issue a denial of a No-Fault claim with specific language that advises the applicant of the availability of special expedited arbitration to resolve the issue of which insurer must process the claim for first party benefits.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend Part 65 to revise No-Fault endorsements and requirements for insurer claim practices, and to amend rules related to the manner in which the organization designated by the Superintendent both administers the first party motor vehicle insurance arbitration programs and assesses the costs of these programs to the insurance industry.

- INS-17-07-00002-A (State Register of July 11, 2007) Repeal of Part 94 (Regulation 56) and Adoption of New Part 94 (Regulation 56) (Rules Governing Individual and Group Accident and Health Reserves) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 1303, 1304, 1305, 1308, 4117, 4217, 4310, and 4517.

The Insurance Law does not specify mortality, morbidity, and interest standards used to value individual and group accident and health insurance policies, but relies on the Superintendent to specify methodology. This regulation prescribes rules for valuing minimum individual and group accident and health insurance reserves, including standards for valuing certain accident and health benefits in life insurance policies and annuity contracts. The regulation lowers reserves for individual policies, which is expected to result in a lower cost of doing business in New York.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend the regulation to reduce the lapse rate used to calculate reserves on long-term care policies.

- INS-21-07-00001-A (State Register of August 8, 2007) Amendment of Part 74 (First Amendment to Regulation 159) (Homeowners Insurance Disclosure Information and Other Notices) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 3425, 3445 and 5403.

In enacting Chapter 162 of the Laws of 2006, the Legislature intended to improve public awareness of market assistance programs, such as the Coastal Market Assistance Program ("CMAP"), that may be available to homeowners in New York. Chapter 162 requires that when a policyholder receives a notice of cancellation, nonrenewal or conditional renewal for a homeowners insurance policy as specified in Section 3425(e) of the Insurance Law on property located in an area served by a market assistance program established by the Superintendent for the purpose of facilitating placement of homeowners insurance, the policyholder must also receive notice from the insurer of possible eligibility for coverage through the market assistance program or through the New York Property Insurance Underwriting Association ("NYPIUA"). In order to implement Chapter 162, the Legislature required the Superintendent to promulgate regulations governing the notices required by law. This rule sets forth certain minimum notification requirements to assure that policyholders who may

be eligible for a market assistance program or NYPIUA receive proper notice of their options.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend the regulation to provide minimum standards for the uniform use of mandatory hurricane deductibles in homeowner and dwelling fire (personal lines) policies.

- INS-33-06-00003-A (State Register of October 17, 2007) Amendment of Part 350 (First Amendment to Regulation 140) (Continuing Care Retirement Communities) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, and 1119 and Public Health Law Sections 4604(4)(a), 4607 and 4611.

Chapter 689 of the Laws of 1989 was enacted for the stated purpose of facilitating the creation of the necessary components for the development of a broader and more integrated continuum of long term care, financed by a range of private, public, and public/private options. One option was the Continuing Care Retirement Community (CCRC), a residential facility for seniors that provides stated housekeeping, social, and health care services in return for some combination of advance fees, periodic fees, and additional fees. A CCRC is often designed to provide a full continuum of care as the health status of a resident deteriorates with age. A CCRC is expected to maintain at all times at least the required minimum level of liquid funds to cover unexpected expenses or unexpected revenue shortfalls. These funds are not to cover budgeted expenses.

This amendment reduces the minimum liquid amount requirement to a level more in line with the investment community's "days cash on hand" benchmark for an entrance fee community. The "days cash on hand" benchmark is designed to provide sufficient funds to cover unexpected expenditures, provide refunds for unanticipated living unit turnover without an attendant new entrance fee, or meet other unbudgeted expenses.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend the regulation to modify and clarify the actuarial reserve calculation, solvency testing, distribution allowances, fee adequacy, allowable investments, and needed filing requirements, in view of marketplace expansion in both the number and types of CCRCs.

- INS-32-07-00002-A (State Register of October 17, 2007) Adoption of Part 12 (Regulation 50) (Agent Training Allowance Subsidies For Certain Life Insurance And Annuity Business) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, and 4228.

Insurance Law Sections 4228(e)(3)(C) through (E) describe the cumulative maximum training allowance subsidy limits an insurer may pay its agents. Section 4228 recognizes that the dollar amount of these training allowance limits would eventually become insufficient due to inflation. Therefore, Section 4228(e)(3)(G) provides that the Superintendent shall periodically adjust these cumulative maximum training allowance subsidy limits.

January 1, 1998 was the effective date of Insurance Law Section 4228. Because of inflation since that date, the Section 4228(e)(3)(C) through (E) cumulative maximum training allowance subsidy limits on the amount an insurer can pay its agents have become insufficient. This rule making was necessary to permit an increase in these limits that reflects overall inflationary increases since January 1, 1998.

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-52-06-00006-A and INS-52-06-00007-A (State Register of November 7, 2007) Amendment of Part 52 (Thirty-Fifth Amendment to Regulation 62) (Minimum Standards For Form, Content And Sale Of Health Insurance, Including Standards Of Full And Fair Disclosure) and Adoption of Part 56 (Regulation 183) (Processing of Claims) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305 and 4802 and Article 49 (for Part 52). Insurance Law sections 201, 301, 1109, 3201, 3216,

3217, 3221, 4235, 4303, 4304, 4305 and 4802 and Article 49 (for Part 56).

The Insurance Law authorizes the Superintendent to establish standard provisions for accident and health insurance coverage, and to promulgate regulations governing minimum standards for the form, content and sale of such coverage. Regulation 183 and the amendment to Section 52.16(c)(5) of Regulation 62 serve that purpose.

The cosmetic surgery exclusion presently set forth in Regulation 62 predates Article 49 of the Insurance Law, which provides for internal and external appeal of medical necessity denials. This rulemaking clarifies the requirements relating to the cosmetic surgery exclusion in light of the subsequently enacted statutes.

In 2008, the Department amended Regulation 62 (INS-49-07-00006-A, State Register of March 12, 2008) to require insurers, art. 43 corporations and HMO's to send notices to their policyholders, certificate holders, and members describing chapter 748 of the Laws of 2006 (also known as Timothy's Law).

Also in 2008, the Department amended Regulation 62 (INS-36-08-00009-A, State Register of November 19, 2008) to prohibit coverage of certain benefits to sex offenders registered pursuant to article 6-C of the Correction Law.

In 2009, the Department amended Regulation 62 (in a consolidated action that also included the amendment of 11 NYCRR Part 217) (INS-52-08-00006-A, State Register of April 1, 2009) to establish guidelines for the processing of healthcare claims for persons covered by more than one health insurance policy.

Also in 2009, the Department amended Regulation 62 (INS-36-09-00001-A, State Register of December 9, 2009) to adopt standards for the valuation of reserves for variable annuity and other contracts involving certain guaranteed benefits.

In 2010, the Department amended Regulation 62 (in a consolidated action that also included the amendment of four other parts of 11 NYCRR) (INS-08-10-00002-A, State Register of May 5, 2010) to conform the regulations to the requirements of the federal Medicare Supplement laws.

In 2011, the Department amended the regulation (INS-02-11-00013-A, State Register of March 30, 2011) to establish standards for an internal appeal procedure for long term care insurance.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend Regulation 62 in 10 separate instances, none dealing with the cosmetic surgery exclusion. The Department currently intends to continue this provision of 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-43-06-00003-A (State Register of December 5, 2007) Amendment to Part 42 (First Amendment to Regulation 149) (Term Life Insurance and Renewal Provisions) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 3201, 4221, and 4511.

The Insurance Law sets forth nonforfeiture requirements for the anniversaries of life insurance policies. The requirements set forth in the Insurance Law assume that premiums are annually paid at the beginning of each policy year, and that any surrenders or lapses occur at the end of the year. In practice, premium may actually be paid throughout a policy year (i.e. monthly), and surrenders may occur at times other than on a policy anniversary.

This rule addresses the issues regarding fairness to policyholders that arise when these sorts of variations occur. By having these issues addressed in a regulation, insurance companies will have guidance as to what is considered acceptable, which, in turn, should enhance their ability to get policy forms approved more quickly. This rule also clarifies the requirements of Section 4221 of the Insurance Law in a number of areas where the Department has found problems with policy form submissions.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend the regulation to provide requirements for life policies with in-

termediate endowment values and make technical corrections to 42-2.11 which deals with nonforfeiture values for policies where the terms are affected by an index.

- INS-40-07-00002-A (State Register of December 19, 2007) Adoption of Part 27 (Tenth 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.

Article 21 of the Insurance Law establishes minimum standards for the placement of New York risks with eligible excess line insurers. Regulation 41 further governs the placement of excess line insurance. The purpose of the excess line insurance market is to enable consumers who are unable to obtain insurance from licensed insurers instead to obtain coverage from eligible excess line insurers. The Department monitors the financial standards imposed upon such insurers. Some eligible excess line insurers are located outside of the United States. These insurers are referred to as "alien excess line insurers". Regulation 41 requires alien excess line insurers to maintain trust funds in the United States to support their United States excess line business. These trust requirements have not been updated for several years. The NAIC International Insurers Department ("IID"), which reviews alien insurer applications for inclusion on the NAIC Quarterly Listing of Alien Insurers, recently updated its trust funding standards for alien excess line insurers and for associations of insurance underwriters ("Associations"). Underwriters at Lloyd's, London ("Lloyd's") is the only Association in existence at this time.

This rule changed the amount of funds required to be held in trust by alien excess line insurers and Associations, and resolves the existing inequity in the trust fund obligations imposed upon alien excess line insurers, as compared to the obligations imposed upon an Association. The amount of funds to be held in trust by alien excess line insurers increased, and the amount of funds to be held in trust by an Association decreased.

In 2009, the Department amended 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.

In 2011, the Department amended the regulation (INS-40-10-00009-A, State Register of May 4, 2011) to increase the minimum surplus to policyholders required to be maintained by new and current excess line insurers.

Also in 2011, the Department amended Regulation 41 to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"), which significantly changed the paradigm for excess line insurance placements in the United States. An emergency rule has been in effect since July 22, 2011, and the Department is working with affected parties to finalize the rule before adopting it on a permanent basis.

- INS-42-07-00005-A (State Register of December 26, 2007) Amendment to Part 100 (First Amendment to Regulation 179) (Recognition Of The 2001 CSO Mortality Table For Use In Determining Minimum Reserve Liabilities And Nonforfeiture Benefits And Recognition And Application Of Preferred Mortality Table For Use In Determining Minimum Reserve Liabilities) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 1304, 4217, 4218, 4221, 4224, 4240, and 4517, and Articles 24 and 26.

One major focus of the Insurance Law is the solvency of insurers doing business in New York. One way the Insurance Law seeks to ensure solvency is by requiring all insurers licensed to do business in New York to hold reserve funds in proportion to the obligations made to policyholders. The Insurance Law prescribes the mortality tables and interest rates to be used for calculating such reserves for life insurance purposes.

With respect to policies issued on or after January 1, 2007, the regulation permits the 2001 CSO Preferred Class Structure Mortality Table to be used in lieu of the 2001 CSO Mortality Table, under certain specified conditions, for valuing the minimum standards for individual life insurance policies and group life insurance policies sold to individuals by certificate with premium rates guaranteed from

issue for at least two years. The split of the 2001 CSO Mortality Table into super-preferred, preferred, and residual standard classes will allow for reserves to better match the risks associated with different underwriting classifications. Use of the 2001 CSO Preferred Class Structure Mortality Table, however, is not mandatory.

This rule requires insurers to submit certain data because experience information is necessary in order to help the Department monitor the ongoing adequacy of the reserves established pursuant to this rule, particularly as the Department considers the implementation of a more principles-based reserve system that puts greater emphasis on an insurer's own experience data.

In 2011, the Department amended the regulation (INS-02-11-00003-A, State Register of March 16, 2011) to extend the use of the 2001 CSO Preferred Structure Mortality Table to policies issued on or after January 1, 2004.

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-42-07-00004-A (State Register of December 26, 2007) Amendment to Part 98 (Second Amendment to Regulation 147) (Valuation Of Life Insurance Reserves) of Title 11 NYCRR.

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

This regulation is designed to help ensure the solvency of life insurers doing business in New York. The original version of Regulation 147, which incorporated the NAIC Valuation of Life Insurance Policies model regulation (adopted in 1999), was permanently adopted in 2003. In 2004, the Department and other state regulators became aware that some insurers were creating new products in order to avoid the reserve methodologies described in Regulation 147. As a result, the NAIC began developing an Actuarial Guideline in 2004 that addressed the concerns of the Department and other regulators by eliminating any perceived ambiguity in the standards for policies issued July 1, 2005 and later. This revision was adopted by the NAIC in October 2005, and Regulation 147 was amended on an emergency basis to reflect the principles of Section 4217 of the Insurance Law and the NAIC standards for policies issued July 1, 2005 and later. The amendment was permanently adopted effective January 10, 2007.

In September 2006, the NAIC adopted a new version of Actuarial Guideline 38, which included provisions on lapse decrements and a separate asset adequacy analysis requirement for certain universal life with secondary guarantee policies. This amendment, which includes these provisions, is consistent with the NAIC actuarial guidelines. For example, consistent with the NAIC practice, these provisions will only be in effect for policies issued on or after January 1, 2007 and prior to January 1, 2011.

The rule also requires insurers to submit certain data to the Department because experience information is needed to help the Department monitor the ongoing adequacy of the reserves established pursuant to this regulation, particularly as the Department considers the implementation of a more principles-based reserve system that puts more emphasis on an insurer's own experience data.

In 2011, the Department amended the regulation (INS-02-11-00002-A, State Register of March 16, 2011) to remove restrictions on the mortality adjustment factors (known as X factors) in deficiency reserves calculation.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend the regulation to establish or revise reserve standards for equity indexed life insurance plus other new product designs.

The Department also invites public comment on the continuation or modification of the following rulemakings, which were adopted in 2002.

- INS-46-01-00021-A (February 13, 2002) Amendment of Part 34 (Regulation 125) (Requirements for Business Established by an Agent or Broker in New York) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, and 2129; Laws of 1996, Chapter 556 and Laws of 2000, Chapter 505.

The only substantive changes made to this regulation were necessitated by statutory changes. Chapter 556 of the Laws of 1996 modified the requirements as to who may supervise the office of an insurance agent or broker. Chapter 505 of the Laws of 2000 created a new type of license, the life insurance broker license, which is referenced in subdivision (b) of section 34.2 of this amendment.

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-47-01-00007-A (February 27, 2002) Adoption of Part 421 (Regulation 173) (Standards for Safeguarding Customer Information) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, and Article 24; Gramm-Leach-Bliley Act, Sections 501, 505(b) and 507, codified as 15 U.S.C. 6801, 6805(b) and 6807.

This regulation established standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality, and integrity of customer information, pursuant to Sections 501, 505(b) and 507 of the Gramm-Leach-Bliley Act ("GLBA").

Section 501(b) of the GLBA requires state insurance regulatory authorities to establish appropriate standards relative to administrative, technical and physical safeguards for customer records and information. Section 505(a) and (b) provide that state insurance regulatory authorities must implement and enforce the standards prescribed under Section 501(b) by rule with respect to the financial institutions subject to their respective jurisdictions. Section 505(c) provides that the failure of a state insurance regulatory authority to adopt regulations to implement these standards would preclude such authority from overriding insurance customer protection regulations prescribed by a federal banking agency pursuant to Section 45 (a) of the Federal Deposit Insurance Act. Section 507 provides, inter alia, that a state regulation may afford persons greater privacy protections than those provided by the GLBA.

Accordingly, the regulation established standards relative to administrative, technical and physical safeguards for customer records and information to: (1) ensure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of such records or information that would result in substantial harm or inconvenience to any customer. The regulation ensures that licensees will develop and implement information security programs that prevent the unwarranted disclosure of nonpublic personal customer information.

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-52-01-00001-A (April 17, 2002) Amendment of Part 71 (Regulation 107) (Legal Defense Costs in Liability Policies) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 1113(a)(13) and (14), 3436, 5504 and Articles 23, 31, 34 and 55.

The purpose of this Part is to balance insurers' need to be able to anticipate the ultimate exposure on a policy with the policyholders' needs to obtain meaningful coverage for payment of damages in the event of a loss. Since traditional liability insurance provides for defense of a claim to be provided in addition to the policy limits, and as such, the cost of defense is essentially unlimited, the original limit requirements under Regulation 107 were set at levels that were considered adequate to account for both defense and loss payment considerations.

This amendment established lines of insurance that may be written to provide for defense of a claim to be provided within policy limits (defense within limits). Information provided to the Department indicated that for certain of the lines of insurance for which defense within limits was allowed, the minimum limit requirements were greater than the needs of some policyholders, for example small busi-

nesses with a limited number of employees. The premium for the minimum permissible limits was often such that, as a business decision, the employer declined to purchase the coverage. As a consequence, the financial position of the employer, if faced with a claim, may be placed at undue risk and injured parties may have no means of recovery for damages suffered. In addition, some small and regional insurers with relatively limited financial capacity had indicated reluctance to participate in this market at the previously required minimum limits.

This amendment reduced the minimum required limit of liability for employee benefit liability, fiduciary liability and employment practices liability. As a result, small insurance agents and brokers, as well as regional insurers, had an additional product line to offer and small businesses were offered more affordable coverage.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend the regulation to permit the inclusion of a non-duty-to-defend provision in directors and officers liability insurance policies under certain circumstances.

- INS-51-01-00001-A (State Register of April 17, 2002) Repeal of Parts 11 and 12 (Regulations 49 and 50) (Expense Allowance Limits and Training Allowances) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201 and 301.

These two Parts were promulgated pursuant to the old section 4228 of the Insurance Law, which was repealed by Chapter 616 of the Laws of 1997. The newly enacted section 4228, effective January 1, 1998, contained provisions relating to expense allowance limits and training allowances that conflict with the provisions of these regulations. This action repeals regulatory provisions that are no longer applicable by virtue of repeal of the authority for their promulgation.

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-52-01-00002-A (State Register of May 1, 2002) Amendment of Part 86 (Regulation 95) (Fraud Prevention) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 403, 409 and 4322; Laws of 1998, Chapter 2.

Chapter 2 of the Laws of 1998 amended Section 409 of the Insurance Law, relating to fraud prevention plans, to make it applicable to most entities licensed pursuant to Article 44 of the Public Health Law (Health Maintenance Organizations). Section 409 requires the superintendent to implement its provisions by promulgating a regulation, including those provisions requiring insurers to adopt and implement fraud prevention plans utilizing a special investigation unit "(SIU)". The superintendent determined that amendment of the regulation was necessary to ensure that these objectives were met, by requiring Health Maintenance Organizations to adopt and implement fraud prevention plans and to liberalize the requirements for SIU investigators so that insurers would be better able to recruit qualified investigators.

In 2003, the Department adopted an amendment to Sections 86.1 and 86.4 of the regulation (INS-22-03-00011-A, State Register of August 22, 2003) to delete obsolete language and name references and update the language in required warning statements regarding the commission of a fraudulent insurance act.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend the regulation to establish a requirement that any amendment to a fraud prevention plan that the Frauds Bureau had previously approved must be submitted to the Frauds Bureau within thirty days of its implementation. The bureau's name was changed to the Insurance Fraud Prevention Bureau effective October 3, 2011, when the merger of the Insurance and Banking Departments into the Department of Financial Services became effective.

- INS-06-01-00005-A (State Register of May 22, 2002) Amendment of Part 361 (Regulation 146) (Pooling Mechanism for Individual and Small Group Health Insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 1109, 3201,

3216, 3217, 3221, 3231, 3232, 3233, 4235, 4304, 4305, 4317, 4318, 4321, 4322; and Article 45; Laws of 1992, Chapter 501 and Laws of 1995, Chapter 504.

Chapter 501 of the Laws of 1992 established requirements for open enrollment, community rating and portability of individual and small group health coverage, and provided for a pooling mechanism for individual and small group insurance to ensure the stabilization of health insurance markets and premium rates. Chapter 504 of the Laws of 1995 provided for modification of pooling processes designed to share the risk of insurers and HMOs providing individual and small group health insurance coverage.

This amendment exercises the statutory authority and responsibility placed upon the Superintendent to implement and assure the ongoing operation of open enrollment and community rating, including mechanisms designed to ensure the stability of the individual and small group health insurance markets. Chapter 504 permitted the Superintendent, after January 1, 2000, to establish more than one type of mechanism for insurers and HMOs to share risks or prevent undue variation in claims costs. This amendment phased out (as of January 1, 2000) pooling based on demographics for individual and small group coverage, other than Medicare supplement insurance, and replaced them with modified specified medical condition pools. It continued a demographic pooling mechanism for Medicare supplement insurance.

In 2008, the Department adopted an amendment to the regulation (INS-41-07-00005-A, State Register of June 25, 2008) to create a new market stabilization process in the individual and small group market, to share among plans substantive cost variations attributable to high cost medical claims.

In 2010, the Department amended regulation 146 (in a consolidated action that also included the amendment of four other parts of 11 NYCRR) (INS-08-10-00002-A, State Register of May 5, 2010) to conform the regulations to the requirements of the federal Medicare Supplement laws.

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-13-02-00004-A (State Register of June 19, 2002) Amendment of Part 52 (Regulation 62) (Minimum Standards For The Form, Content And Sale Of Health Insurance, Including Standards For Full And Fair Disclosure) of Title 11 NYCRR.

Statutory Authority: Federal Social Security Act (42 U.S.C. Section 1395ss); Insurance Law Sections 201, 301, 3201, 3216-3218, 3221, 3231, 3232, 4235, 4237 and Article 43.

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

In 2004, the Department adopted an amendment to Sections 52.17, 52.18 and 52.22 of the regulation (INS-32-04-00006-A, State Register of October 27, 2004) to provide revised standards for the form, content and sale of policies and contracts as a result of changes to the Insurance Law enacted by Laws of 2002, Chapter 82.

In 2005, the Department adopted an amendment to Section 52.22 of the regulation (INS-27-05-00005-A, State Register of September 7, 2005) to adopt revised minimum standards for the form, content and sale of Medicare supplement insurance as a result of changes to the federal minimum standards for Medicare supplement insurance enacted by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Public Law 108-173).

In 2007, the Department amended Regulation 62 (INS-52-06-00006-A, State Register of November 7, 2007) in conjunction with the adoption of a new Part 56 (INS-52-06-00007-A) to clarify when plans may exclude coverage for cosmetic surgery.

In 2008, the Department amended Regulation 62 (INS-49-07-00006-A, State Register of March 12, 2008) to require insurers, Article 43 corporations and HMOs to send notices to their policyholders, certificate holders, and members describing chapter 748 of the Laws of 2006 (also known as Timothy's Law).

Also in 2008, the Department amended Regulation 62 (INS-36-08-00009-A, State Register of November 19, 2008) to prohibit provision of certain benefits to sex offenders registered pursuant to article 6-C of the Correction Law.

In 2009, the Department amended Regulation 62 (in a consolidated action that also included the amendment of 11 NYCRR Part 217) (INS-52-08-00006-A, State Register of April 1, 2009) to establish guidelines for the processing of healthcare claims for persons covered by more than one health insurance policy.

Also in 2009, the Department amended Regulation 62 (INS-36-09-00001-A, State Register of December 9, 2009) to adopt standards for the valuation of reserves for variable annuity and other contracts involving certain guaranteed benefits.

In 2010, the Department amended Regulation 62 (in a consolidated action that also included the amendment of four other parts of 11 NYCRR) (INS-08-10-00002-A, State Register of May 5, 2010) to conform the regulations to the requirements of the federal Medicare Supplement laws.

In 2011, the Department amended the regulation (INS-02-11-00013-A, State Register of March 30, 2011) to establish standards for an internal appeal procedure for long term care insurance.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend Regulation 62 in 10 separate instances, none dealing with the cosmetic surgery exclusion. The Department currently intends to continue this provision of 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-25-02-00005-A (State Register of September 11, 2002) Amendment of Part 16 (Regulation 86) (Special Risk Insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 307 and 308 and Article 63.

This amendment updated the regulation to include the definitions of various risks and exposures that have previously been added to the Class Two Risk List of the Free Trade Zone by Public Notice. These risks and exposures had been added to the list since the last amendment to this regulation in 1998.

In 2011, the Department developed an amendment to the regulation to conform to Chapter 490 of the Laws of 2011, which amended Article 63 of the Insurance Law by introducing Class 3 risks to be written in New York by insurers licensed to write Special Risk Insurance to "large commercial insureds" provided they make certain informational filings with the Superintendent. The proposed rule sets forth the requirements for writing Class 3 risks and the procedures for insurers to make the required filings as stated in Chapter 490.

- INS-33-02-00002-A (State Register of October 23, 2002) Amendment of Part 68 (Regulation 83) (Charges For Professional Health Services) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, and Article 51.

This amendment repeals those fee schedules that have been superseded by fee schedules established by the Workers' Compensation Board. However, treatments provided at the time that the superseded fee schedules were effective are still subject to those fee schedules. The amendment also repeals provisions referencing outdated hospital fee schedules applicable to No-Fault. However, hospital treatments provided at the time those fee schedules were effective are still controlled by those fee schedules. The Public Health Law establishes the applicable schedules to be used by hospitals when billing for services provided to patients involved in automobile accidents. Finally, the amendment repealed health provider schedules created by the Department, which were outdated and were rarely, if

ever, used and references the current health provider fee schedules established by this Department.

In 2004, the Department adopted an amendment to Sections 52.17, 52.18 and 52.22 of the regulation (INS-12-04-00016-A, State Register of October 6, 2004) to adopt revised standards for charges for professional health care services, including adoption of the fee schedule set forth in the New York State Medicaid Management Information System Provider Manual for durable medical equipment, medical/surgical supplies, orthopedic footwear, and orthotic and prosthetic appliances.

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

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.

In 2002 the Department also made numerous consensus amendments to Parts of 11 NYCRR to update regulations and statutory references contained therein to be consistent with the Insurance Law recodification and to eliminate numerous obsolete provisions.

The Department also invites public comment on the continuation or modification of the following rulemakings, which were adopted in 1997.

- INS-25-96-00001-A (State Register of February 5, 1997) Amendment of Part 67 (Third Amendment to Regulation 79) (Mandatory Inspection of Certain Private Passenger Automobiles) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 3411, and 5303, and Article 53.

Section 3411 of the Insurance Law sets forth a framework for providing physical damage coverage to private passenger automobiles. Inspections of such vehicles have been required since 1977 in order to combat insurance fraud (as where, for instance, coverage is purchased for a non-existent vehicle, or for a damaged vehicle). Section 3411 also provides that the Superintendent, by regulation, may relieve insurers of the requirement to inspect private passenger motor vehicles where circumstances obviate the need.

The rule was adopted to alleviate the cost and burden to insurers, as well as consumers, where circumstances obviate or minimize the need for applicability of the provisions of this Part.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend the regulation to include additional circumstances under which an insurer may voluntarily waive mandatory inspection of a motor vehicle for physical damage coverage, and to clarify that the use of digital photography and electronic access to inspection report data are permitted.

- INS-25-96-00004-A (State Register of February 5, 1997) Amendment of Part 135 (First Amendment to Regulation 67) (Reporting of Certain Financial Transactions) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 301 and 307; Retirement and Social Security Law Sections 15 and 315; Education Law Section 523; Administrative Code of the City of New York, Sections 13-193, 13-266, 13-378, and 13-562; Rules and Regulations of the Retirement Board of the Board of Education of the City of New York, Section 25.

This regulation required reporting of certain financial transactions and reserve liabilities by public retirement systems maintained by the City of New York and the State of New York. This rule repealed obsolete and invalid provisions and made technical revisions to update the statutory references.

In 2010, the Department repealed the regulation (INS-51-09-00001-A, State Register of February 24, 2010) to eliminate requirements relating to a previous annual statement form that was no longer in use, and eliminate regulatory provisions that were no longer applicable to any person.

- INS-49-96-00007-A (State Register of February 26, 1997)

Amendment of Subpart 60-2 (Second Amendment to Regulation 35-D) (Supplementary Uninsured Motorist Insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301 and 3420.

The purpose of this Subpart is to interpret Section 3420(f)(2) of the Insurance Law and establish a standard form for Supplementary Uninsured Motorist coverage, in order to eliminate ambiguity, minimize confusion and maximize its utility.

The 1997 rulemaking was done to clarify certain provisions of the subpart, including a specific provision providing that the per person limit of liability is also applicable to the limit of liability per accident and to reflect an increase in the required minimum limits of liability for motor vehicle liability insurance.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend the regulation to revise all references in sections 60-2.3 and 60-2.4 from "AAA/American Arbitration Association" to "designated organization", amend rules related to the manner in which the organization designated by the Superintendent to administer the SUM arbitration program assesses the cost of the program to the insurance industry, and make various editorial revisions to the prescribed endorsement and other portions of the regulation to clarify the intent and application of the coverage.

- INS-41-96-00001-A (State Register of April 2, 1997) Repeal of Part 63 (Regulation 61) and Adoption of the new Part 63 (Regulation 61) (Financial Guaranty Insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 6903(a), 6907(b) and Article 69.

Effective May 14, 1989, a new Article 69 was added to the Insurance Law defining and authorizing the sale of certain types of financial guaranty insurance. Article 69 superseded Part 63 for all new financial guaranties. However, Sections 6903(a)(2) and 6907(b) provide that certain reserve requirements that were applicable for municipal bond guaranties prior to the effective date of Article 69 would continue to apply to all financial guaranties in force prior to the dates set forth in the respective sections. The specific reserve requirements that have to be met are different depending upon whether or not the insurer is currently organized and licensed as a financial guaranty insurance corporation pursuant to Article 69.

This Part sets forth the reserve requirements for financial guaranty insurance in force prior to May 14, 1989, the effective date of Article 69 of the Insurance Law.

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-03-97-00010-A (State Register of April 9, 1997) Amendment of Subpart 186 (First Amendment to Regulation 27-B) (Insurance Covering Debtors Or Personal Property Purchased On Installment Or Deferred Payment Plan) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301 and Article 23.

This regulation sets forth minimum requirements for disclosure, policy provisions, policy cancellations, form and rate filing, reporting of experience statistics, and adjustment of claims for policies issued in New York covering debtors and/or creditors on personal property purchased on installment or deferred payment plans. This rulemaking was technical in nature, merely amending the regulation to conform to amendments to the Insurance Law.

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-05-97-00018-A (State Register of April 23, 1997) Addition of sections 68.1(x) and 68.2(i) to Part 68 (24th Amendment to Regulation 83) (Charges For Professional Health Services) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, and Article 51.

Article 51 of the Insurance Law contains the provisions authorizing the establishment of a no-fault reparations system for persons injured in motor vehicle accidents, and Section 5108 specifically authorizes the superintendent to adopt or promulgate fee schedules for health care benefits payable under the no-fault system.

The superintendent is required to promulgate rules and regulations implementing and coordinating the fee schedules adopted by the chairman of the Workers' Compensation Board for medical, chiropractic and podiatric services. These schedules also include fees for some dental, psychiatric and physical therapy services. In 1996 the chairman adopted a new fee schedule. This rulemaking adopts that same schedule for use under the no-fault system.

In 2002, the Department amended the regulation (INS-33-02-00002-A, State Register of October 23, 2002) to repeal those fee schedules that had been superseded by fee schedules established by the Workers' Compensation Board.

In 2004, the Department amended the regulation (INS-12-04-00016-A, State Register of October 6, 2004) to adopt revised standards for charges for professional health care services, including adoption of the fee schedule set forth in the New York State Medicaid Management Information System Provider Manual for durable medical equipment, medical/surgical supplies, orthopedic footwear, and orthotic and prosthetic appliances.

In 2008, the Department amended the regulation (INS-02-08-00005-A, State Register of April 16, 2008) to repeal the fee schedules previously established by the 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 to clarify 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 amended the regulation (INS-25-10-00017-A, September 22, 2010) to adopt the new Workers Compensation Board Dental Fee Schedule.

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-05-97-00018-A (State Register of April 23, 1997) Amendment of Part 216 (6th Amendment to Regulation 64) (Unfair Claims Settlement Practices and Claim Cost Control Measures) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, and Article 51.

This regulation implements Insurance Law § 2601, which prohibits an insurer from engaging in unfair claims practices, including knowingly misrepresenting pertinent facts or policy provisions; failing to acknowledge with reasonable promptness pertinent communications as to claims; failing to adopt and implement reasonable standards for the prompt investigation of claims; not attempting in good faith to effectuate prompt, fair, and equitable claim settlements submitted in which liability has become reasonably clear; and compelling policyholders to institute suits to recover amounts due by offering substantially less than the amounts ultimately recovered in suits brought by the policyholders.

This rulemaking updated the requirements placed on insurers regarding the investigation and settlement of claims.

In 1999, the Department amended the regulation (INS-47-98-00007-A, September 15, 1999) to ensure that full information be provided regarding vehicles that are severely damaged and subsequently rebuilt.

In 2003, the Department amended the regulation (INS-47-98-00007-A, April 23, 2003) to add provisions related to the rights of authorized drivers and insurers to inspect damaged rental vehicles.

In 2004, the Department amended the regulation (INS-20-04-00007-A, July 28, 2004) to replace the reference to the National Insurance Crime Bureau ("NICB") with an unspecified "central organization" designated by the superintendent, which will receive and investigate automobile total losses.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend the regulation to codify the Department's current interpretation with regard to releases of liability and update the entire regulation to, among other things, provide notice and time frame requirements for third party claims.

- INS-13-97-00003-A (State Register of July 9, 1997) Amendment of Part 169 (3rd Amendment to Regulation 100) (Noncommercial Motor Vehicle Insurance Merit Rating) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 2334, 2335, and 2345.

Insurance Law Section 2334 authorizes the superintendent to promulgate regulations establishing standards and limitations that are intended to ensure that noncommercial motor vehicle insurance merit rating plans are reasonable, understandable and objective and are not unfairly discriminatory, inequitable, violative of public policy or otherwise contrary to the best interests of the people of New York State. This part establishes standards and limitations under which insurers may use merit rating plans.

In 2011, the Department amended the regulation (INS-45-10-00010-A, January 19, 2011) to raise from \$1,000 to \$2,000 the minimum threshold amount of property damage which, if exceeded in a motor vehicle accident, would allow an insurer to impose a policy premium surcharge. This conforms the regulation to Chapter 277 of the Laws of 2010, which amended Section 2335 of the Insurance Law.

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-04-97-00003-A (State Register of July 30, 1997) Amendment of Part 81-1.0 (1st Amendment to Regulation 53) (Subsidiaries of Insurance Companies) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, and Article 16.

This regulation concerns subsidiaries that are owned, acquired, or organized pursuant to Article 16 of the Insurance Law by insurance companies that are subject to Section 1403(c) of the Insurance Law. Section 1403(c) prescribes the investments that certain domestic insurers may make once they meet their minimum capital and minimum surplus to policyholders requirement. This rule clarifies the fact that the regulation is applicable only to domestic insurance companies.

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-04-97-00004-A (State Register of July 30, 1997) Amendment of Part 80-2 (1st Amendment to Regulation 52-A) (Minimum Standards for Producer-Controlled Insurers and Controlling Producers: Disclosure Requirements for Certain Other Producers) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 308, 309, 310, 1104, 1106(e), and Articles 15, 16, and 21.

Because the close relationship between a producer and insurer could result in a conflict of interest that might compromise the insurer's solvency, Subpart 80-2 was promulgated to provide minimum safeguards, allow timely oversight of control arrangements, and reduce the likelihood of abuses and financial harm. This amendment exempts any controlled non-domestic insurer whose state of domicile has a substantially similar law from compliance with the reporting requirements of this subpart.

In 2004, the Department amended the regulation (INS-44-03-00004-A, February 4, 2004) to repeal Section 80-2.6, a section containing 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 state and federal statutory and regulatory requirements.

- INS-17-97-00003-A (State Register of July 30, 1997) Amend-

ment of Part 73 (4th Amendment to Regulation 121) (Claims Made Policies: Scope of Application; Minimum Standards) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 308, 1113, 3436, 5504, and Articles 23 and 55.

This regulation provides minimum standards and requirements concerning the offset of defense costs against liability insurance policy limits and/or deductibles. This amendment updates the list of coverages and risks that may be written on a defense cost within limits of liability basis; disclosure requirements; minimum limits of liability and minimum standards for approval of policies written on a defense cost within limits basis.

In 2000, the Department amended the regulation (INS-48-99-00009-A, March 22, 2000) to provide that legal services insurance may be provided on a claims-made basis, when written as part of a policy of liability insurance covering the types of risk specified in section 73.2(a) of the 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 state and federal statutory and regulatory requirements.

- INS-18-97-00012-A (State Register of July 30, 1997) Addition of Part 19 (Regulation 154) (Homeowners Insurance; Applications for Withdrawal from Marketplace) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 2351, and 3425.

This regulation establishes standards for the definition of "material reduction of volume of policies" and standards by which an insurer's application for material reduction of policies shall be approved.

The Department's June 2011 Regulatory Agenda (published in the State Register of June 29, 2011) noted the Department's intent to amend the regulation to revise the definition of "material reduction of volume of policies", a term used in Insurance Law Section 3425, to include a reduction in the net number of homeowner policies within a county.

- INS-20-97-00007-A (State Register of July 30, 1997) Amendment of Part 70 (21st Amendment to 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 Chapters 639 and 253, Laws of 1996.

This regulation establishes medical malpractice insurance rates, required policy provisions and other standards relating thereto. This amendment established physicians and surgeons medical malpractice rates for the policy year beginning July 1, 1996, and established rules to collect and allocate surcharges to recover deficits based on past experience.

In 1999, the Department amended the regulation (INS-39-98-00014-A, January 6, 1999) to require that when an insurer enters New York to write physicians and surgeons medical malpractice liability insurance it must utilize the rates established for the Medical Liability Mutual Insurance Company ("MLMIC"), unless the insurer can demonstrate to the satisfaction of the superintendent that another rate is appropriate.

Also in 1999, the Department amended the regulation (INS-05-99-00003-A, April 7, 1999) to establish physicians and surgeons medical malpractice rates for the policy year beginning July 1, 1998, and established rules to collect and allocate surcharges to recover deficits based on past experience.

In 2000, the Department amended the regulation (INS-13-00-00006-A, State Register of July 12, 2000) to establish physicians and surgeons medical malpractice rates for the policy year beginning July 1, 1999; and establish rules to collect and allocate surcharges to recover deficits based on past experience.

In 2001, the Department amended the regulation (INS-15-01-00007-A, State Register of June 20, 2001) to establish physicians and

surgeons medical malpractice rates for the policy year beginning July 1, 2000, and establish rules to collect and allocate surcharges to recover deficits based on past experience. In addition, the rule established the rates to be used by the Medical Malpractice Insurance Plan, which was created by statute to provide coverage for eligible health care practitioners and facilities that were unable to obtain coverage in the voluntary market.

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-21-97-00001-A (State Register of August 20, 1997) Adoption of Part 163 (Regulation 153) (Flexible Rating for Nonbusiness Automobile Insurance Policies) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 2350, and Article 23.

The stated purpose of Article 23 of the Insurance Law includes improving the availability and reliability of insurance and promoting the public welfare by regulating insurance rates to assure that they are not excessive, inadequate, or unfairly discriminatory and are responsive to competitive market conditions. The introduction of flexible rating to private passenger automobile insurance by Chapter 113 of the Laws of 1995 was intended to strengthen the high level of fair competition on a long term basis. Flexible rating is a blend of prior approval and competitive rating. This rule replaces the prior approval system for nonbusiness auto insurance that had been in effect since 1974.

In 2010, the Department amended the regulation (INS-33-09-00007-A, January 6, 2010) to implement Section 13 of Chapter 136 of the Laws of 2008, which added a new Section 2350 to the Insurance Law, which reintroduced flexible rating for nonbusiness automobile insurance rates. Chapter 113 of the Laws of 1995 first introduced “flex rating” to nonbusiness automobile insurance effective July 1, 1995 until it expired on August 2, 2001 and was replaced by prior approval 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 state and federal statutory and regulatory requirements.

PART 2. BANKING REGULATIONS

Pursuant to section 207 of the State Administrative Procedure Act (“SAPA”), the Department of Financial Services must review after five years, and at five-year intervals thereafter, rulemakings adopted on or after January 1, 1997. Please note that all references to “the Department” prior to October 3, 2011 mean the former Banking Department, as appropriate to the context, and that the references to the law cited are as of the date of the amendment to the regulations.

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 2007, 2002, and 1997. Comments must be received within 45 days of the date of publication of this notice.

Comments should be submitted to:

Sam L. Abram
Assistant Counsel
New York State Department of Financial Services
One State Street
New York, NY 10004
Telephone: (212) 709-1658
Email: sam.abram@dfs.ny.gov

The following rulemakings were adopted in 2007.

- Amendments to new Part 6.8 of the General Regulations of the Banking Board, 3 NYCRR (Overdraft Protection Charges)

Description of rule: The amendments make it clear that the notice to account holders that is called for by the guidelines of the federal banking agencies regarding overdraft protection programs must be separately given and be “clear and conspicuous” in cases where bounce protection will be applied to a new or existing account.

Legal basis for the rule: Banking Law Sections 14-g and 14-h.

Need for the rule: The amendment is necessary to ensure that customers whose accounts are covered by newly permissible overdraft protection programs are promptly and clearly notified of that fact and of the associated bounce protection charges.

- Amendments to Part 76 of the General Regulations of the Banking Board, 3 NYCRR (Compliance With Community Reinvestment Act (“CRA”) Requirements)

Description of rule: The amendments conform Part 76 to changes in the federal CRA regulations.

Legal basis for the rule: Banking Law Sections 10, 14(1) and 28-b(1), (3), (4) and (5).

Need for the rule: The amendments are necessary to create compatibility with the federal CRA regulation so that banks chartered under the New York Banking Law do not have to satisfy conflicting sets of CRA regulations, thus substantially reducing their regulatory burden.

- Amendments to Part 322 of the Superintendent’s Regulations, 3 NYCRR (Pledge of Assets and Maintenance of Assets By Licensed Foreign Banking Corporations In New York)

Description of rule: The amendments reduce the asset pledge requirement for foreign banks with “well-rated” foreign branches and agencies and allow foreign banks to pledge a wider variety of assets.

Legal basis for the rule: Banking Law Section 202-b(1).

Need for the rule: The amendments decrease the costs of compliance with the asset pledge requirements for most institutions. The amount of assets required to be pledged is reduced for many well rated institutions, while all other institutions benefit from being able to utilize a broader range of assets in meeting a portion of their asset pledge requirements.

- Amendments to Part 400.5 of the Superintendent’s Regulations, 3 NYCRR (Licensed Cashers of Checks)

Description of rule: The amendments permit licensed check cashers to maintain bank accounts with banking institutions or their branches located inside or outside this state.

Legal basis for the rule: Banking Law Section 371.

Need for the rule: The amendments expand the pool of potential banking institutions that may be willing to provide deposit account services to check cashing institutions while ensuring that the Superintendent’s supervisory oversight of and jurisdiction over the cashier’s banking relationship remains effective, regardless of whether the account is in a banking institution within or outside of New York.

- Amendments to Part 73 of the General Regulations of the Banking Board, 3 NYCRR (Electronic Facilities)

Description of rule: The amendments streamline the application and approval process for banking institutions that wish to establish electronic facilities.

Legal basis for the rule: Banking Law Sections 14(1), 105-a, 240-a and 396-a.

Need for the rule: The amendments eliminate certain items of information previously required, including a Board resolution, information on costs, the names of any initial sharing institutions, and a description of the activities to be conducted.

The Department also invites public comment on the continuation or modification of the following rulemakings, which were adopted in 2002.

- Amendments to Part 41 of the General Regulations of the Banking Board, 3 NYCRR (Restrictions and Limitations on High Cost Home Loans)

Description of rule: Prohibits the financing of single premium credit insurance in connection with high cost home loans and responds to requests from the residential mortgage lending industry for clarification of certain provisions of the regulation.

Legal basis for the rule: Banking Law Sections 6-I, 590-a, 590(3) and Article 12-D.

Need for the rule: The Department has adopted further amendments to this regulation.

- Amendments to parts 80 and 82 of the General Regulations of the Banking Board, 3 NYCRR (Investment in Junior Lien Mortgage Loans by Commercial Banks, Savings Banks, Credit Unions, Mortgage Bankers and Savings and Loan Associations; Alternative Mortgage Instruments)

Description of rule: Amends Parts 80 and 82 to conform to Part 38 of the General Regulations of the Banking Board with respect to the use of electronic media for disclosure and notification requirements for junior lien and alternative mortgage loans and the description of certain permissible loan fees.

Legal basis for the rule: Banking Law Sections 6, 14, 103, 235, 380, 454 and 590-d.

Need for the rule: The amendments are necessary to permit banks, mortgage bankers and mortgage brokers to comply with certain disclosure and notification requirements through the use of electronic media and to clarify their ability to collect certain fees.

- Amendments to Part 322 of the Superintendent's Regulations, 3 NYCRR (Pledge of Assets and Maintenance of Assets by Licensed Foreign Banking Corporations in New York)

Description of rule: Reduces asset pledge requirement for foreign banking corporations operating a state-licensed branch or agency in New York from 5% of total third party liabilities to 1%.

Legal basis for the rule: Banking Law Section 202-b(1).

Need for the rule: Requiring foreign banking corporations with a branch or agency office in New York to maintain some funds here gives the Superintendent the ability to use the funds in a liquidation scenario to pay liquidation expenses and protect creditors. The Department has proposed further amendments to these regulations, which it expects will be adopted in the near future.

The Department invites public comment on the continuation or modification of the following rulemakings, which were adopted in 1997.

- Amendments to Part 79 of the General Regulations of the Banking Board (Reverse Mortgage Loans)

Description of rule: Permits the offering of FNMA reverse mortgage loans

Legal basis for the rule: Banking Law Sections 6-h, 14, Real Property Law Sections 280, 280-a.

Need for the rule: The amendments are necessary in order to permit lenders to make certain reverse mortgage loans.

- Amendments to Part 38 of the General Regulations of the Banking Board (Definition of Terms; Advertising; Application and Commitment Disclosures and Procedures; Improper Conduct Under Article 12-D)

Description of rule: Eliminates inconsistencies between Part 38 and the newly amended Regulation Z of the Board of Governors of the Federal Reserve System.

Legal basis for the rule: Banking Law Sections 6-l, 9-o, 14, 590-a, 590(3), 595-a.

Need for the rule: The amendments are necessary in order to prevent consumers from becoming confused as a result of differing disclosures regarding the treatment of borrower-paid mortgage fees.

- Amendments to Part 90 of the General Regulations of the Banking Board (Variable Rate Open-End Accounts Established by Lending Institutions)

Description of rule: Eliminates the need for prior Banking Board approval for certain changes in rates being charged on open-end consumer credit.

Legal basis for the rule: Banking Law Sections 14(1), 108(5), 202(9), 235(8-h), 352(a), 380-I; Personal Property Law Section 413(3).

Need for the rule: The amendments are necessary in order to permit banking institutions to make certain changes in the spread between the actual rate charged on open-ended credit and the index value without obtaining prior Banking Board approval.

- Amendments to Part 17 of the General Regulations of the Banking Board (Permission to Have Directors and Other Personnel with

Certain Underwriting Relationships) - this rule was modified in 1997 and was subsequently repealed

- Amendments to Part 38 of the General Regulations of the Banking Board (Definition of Terms; Advertising; Application and Commitment Disclosures and Procedures; Improper Conduct Under Article 12-D)

Description of rule: Creates a two tier branch system and authorized shared branch space.

Legal basis for the rule: Banking Law Sections 6-l, 9-o, 14, 590-a, 590(3), 595-a.

Need for the rule: The Department has adopted further amendments to this regulation.

- Amendments to Part 39 of the General Regulations of the Banking Board (Exempt Organizations: Subsidiaries of Exempt Organizations: Exempt Mortgage Products)

Description of rule: Allows "exempt organizations" not to comply with the branch requirements of Part 38.

Legal basis for the rule: Banking Law Section 14, Article 12-D.

Need for the rule: The Department is in the process of adopting further amendments to this regulation.

- Amendments to Part 80 of the General Regulations of the Banking Board (Investment in Junior Lien Mortgage Loans by Commercial Banks, Savings Banks, Credit Unions, Mortgage Bankers and Savings and Loan Associations)

Description of rule: Modifies the appraisal requirement for junior mortgage loans.

Legal basis for the rule: Banking Law Sections 14, 103, 235, 380, 454, 590-a.

Need for the rule: Raises the threshold amount above which appraisal on residential property must be performed by or under the supervision of a certified or licensed appraiser.

- Amendments to Part 82 of the General Regulations of the Banking Board (Alternative Mortgage Instruments)

Description of rule: Modifies the appraisal requirement for first lien mortgage loans.

Legal basis for the rule: Banking Law Sections 6-f, 14(1).

Need for the rule: Raises the threshold amount above which appraisal on residential property must be performed by or under the supervision of a certified or licensed appraiser and allows lenders to chose indices for first lien home equity loans that have not been specifically approved by the Superintendent.

- Amendments to Part 86 of the General Regulations of the Banking Board (Organization and Operation of Stock-Form Savings Banks and Savings and Loan Associations)

Description of rule: Regulates various aspects of conversion by mutual thrift institutions to stock form, the operation of converted institutions and the offering of capital stock and sale of control in connection therewith.

Legal basis for the rule: Banking Law Sections 14, 14-e.

Need for the rule: Facilitates the conversion of mutual thrift institutions to stock form.

- Adoption of new Part 5 of the General Regulations of the Banking Board (Internal and External Audits at Branches and Agencies of Foreign Banking Corporations)

Description of rule: Requires New York branch and agency offices of foreign banking corporations to utilize external and internal auditors under criteria prescribed by the regulation.

Legal basis for the rule: Banking Law Sections 14, 37, 204.

Need for the rule: Maintains and enhances the safety and soundness of foreign bank offices in New York.

- Repeal of former Part 76 of the General Regulations of the Banking Board and Adoption of new Part 76 (Compliance with Community Reinvestment Act Requirements)

Description of rule: Establishes the framework and criteria by which the Department assesses a banking institution's record of helping to meet the credit needs of the community.

Legal basis for the rule: Banking Law Sections 10,14, 28-b, Art XII.

Need for the rule: Encourages banking institutions to help meet the credit needs of their local communities, including low and moderate income neighborhoods, consistent with safe and sound operation.

- Adoption of amendments to Part 410 of the Superintendent's Regulations (Mortgage Bankers: Licensing Requirements; Mortgage Brokers: Registration Requirements; Branch Applications; Notification Provisions: Books and Records: Annual Reports)

Description of rule: Creates a two-tier branch system.

Legal basis for the rule: Banking Law Section 12, Art. 12-D.

Need for the rule: The Department has adopted further amendments to this regulation.

- Adoption of amendments to Supervisory Procedure MB 101 (Application for License as a Mortgage Banker)

Description of rule: Reduces required notifications to the Department.

Legal basis for the rule: Banking Law Sections 12, 590, Art. 12-D.

Need for the rule: Streamlines application requirements.

- Adoption of amendments to Supervisory Procedure MB 102 (Application for Registration as a Mortgage Broker)

Description of rule: Reduces required notifications to the Department.

Legal basis for the rule: Banking Law Sections 12, 590.2(b), Art. 12-D.

Need for the rule: Streamlines application requirements.

- Adoption of amendments to Supervisory Procedure MB 103 (Application for Change in Control of a Mortgage Banker)

Description of rule: Reduces required notifications to the Department.

Legal basis for the rule: Banking Law Sections 12, 594-b.

Need for the rule: Streamlines application requirements.

- Adoption of amendments to Supervisory Procedure MB 104 (Application for Change in Control of a Mortgage Broker)

Description of rule: Reduces required notifications to the Department.

Legal basis for the rule: Banking Law Sections 12, 594-b.

Need for the rule: Streamlines application requirements.

- Adoption of amendments to Supervisory Procedure MB 105 (Application by a Mortgage Broker for Inactive Status)

Description of rule: Reduces reporting requirements for inactive brokers.

Legal basis for the rule: Banking Law Section 12, Art. 12-D, General Regulations of the Banking Board Section 38.1(f).

Need for the rule: Reduces regulatory burden.

- Adoption of amendments to Part 321 of the Superintendent's Regulations (Loans to Executive Officers and Directors of Banks and Bank Holding Companies)

Description of rule: Limits loans by a bank to its executive officers and directors.

Legal basis for the rule: Banking Law Sections 103(8), 130(5)-(6), 142(3)(b), 143(2).

Need for the rule: Conforms rule to applicable federal regulations.

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.

Amendment of Sections 2.1(a) and 2.5 - Communicable Disease-Neonatal Herpes Infection Reporting and Laboratory Specimen Submission

Statutory Authority:

Public Health Law Sections 225(4) and 225(5)(a), (g), (h), and (i)

Description of the regulation:

Neonatal herpes, defined as herpes infection in infants aged 60 days or less, is a serious disease associated with neurological devastation of the infant and neonatal death. Neonatal herpes can result from infection with either herpes simplex virus (HSV) type 1 (HSV-1) or HSV type 2 (HSV-2). The disease can be localized to skin, eye and mouth (SEM disease), involve the central nervous system (CNS), or manifest as disseminated infection involving multiple organs. Most infants with CNS or disseminated disease have neurological sequelae, and the mortality rate in the absence of therapy is very high (80%) for these babies. Consequently, the Department believes it is essential to continue the reporting and laboratory submissions for testing for neonatal herpes.

The regulation should continue without modification.

Amendment of Subpart 6-1 - Swimming Pools

Statutory Authority:

Public Health Law Sections 225(5)(a) and 201(l) and (m)

Description of the regulation:

The amendments to the regulation (1) modified instructional swimming requirements; and (2) corrected an inconsistency between the requirements for supervision level IV use rules and the written statement/brochure requirements. These provisions are necessary for the safe regulation of the area.

The regulation should continue without modification.

Addition of new Subpart 6-3 - Recreational Aquatic Spray Grounds

Statutory Authority:

Public Health Law Sections 225(5)(a) and 201(l) and (m)

Description of the regulation:

Prior to the adoption of Subpart 6-3, Recreational Aquatic Spray Grounds (Spray Grounds) were not regulated by the Department of Health. During the summer of 2005, approximately 3,000 patrons of the Seneca Lake State Park Spray Ground became ill with cryptosporidiosis as a result of exposure to the Spray Ground water. Spray Grounds, which collect and recirculate sprayed water, pose a significant risk of illness to the patrons. To prevent a similar illness outbreak at Spray Grounds, design and operation regulations are necessary.

The regulation should continue without modification.

Amendment of Section 52-1.1(r) and (aa)(2) and addition of new Subpart 52-11 to Part 52 of Title 10 - Minimum Technical Requirements for Nontransplant Anatomic Banks

Statutory Authority:

Public Health Law Article 43-B

Description of the regulation:

Nontransplant anatomic banks are licensed as tissue banks under 10 NYCRR Part 52. The amendments established technical standards for the operation of nontransplant anatomic banks, including whole body acquisition services and whole body users. These requirements have helped ensure that nontransplant anatomic parts recovered, processed, and used in New York State are obtained with documented informed consent, and handled respectfully and safely. The Department's efforts must be maintained through continuation of Part 52.

The regulation should continue, but should be updated in the future as technology and practice standards change.

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

Statutory Authority:

Public Health Law Section 3121(5)

Description of the regulation:

This regulation amended provisions of Subpart 58-2 to reflect accepted nomenclature and advances in technology, update practice standards, eliminate obsolete requirements, clarify language, increase compliance flexibility, and permit blood donation by 16 year-olds, with parental permission. A proposed rule to amend Subpart 58-2 is currently under consideration, to update technical requirements for the collection, testing, and storage of blood and blood components and al-

low advanced life support emergency medical technicians to administer blood components during transport of patients from one hospital to another.

The regulation should continue, but should be updated in the future as technology and practice standards change.

Amendment of Sections 69-1.2 and 69-1.3 of Title 10 - Newborn Screening Panel-Krabbe Disease

Statutory Authority:

Public Health Law, Sections 2500-a and 2500-f

Description of the regulation:

New York State Public Health Law Section 2500-a authorizes the Commissioner of Health to designate additional diseases or conditions for inclusion in the Newborn Screening Program test panel by regulation. The regulatory amendment added one condition-galactosylceramidase deficiency or Krabbe disease, a lipid disorder to New York State's newborn screening test panel. Continued inclusion of this disorder to the list facilitates early identification and treatment.

The regulation should continue and the addition of additional diseases or conditions may be necessary in the future to protect public health, e.g. the addition of Severe Combined Immune Deficiency Disease (SCID).

Addition of new 10 NYCRR Section 80.138 to Title 10 - Opioid Overdose Prevention Programs

Statutory Authority:

Public Health Law Section 3309(1)

Description of the regulation:

This regulation articulates the Commissioner's standards for approval of opioid overdose prevention programs and include, but are not limited to, standards for program directors, appropriate clinical oversight, training, record keeping and reporting.

The need for standards continues, however modification of the regulation is required with respect to language defining "person" in 10 NYCRR 80.138(a)(6), the responsibilities of the program director in 10 NYCRR 80.138(c)(1) and the supplies which must be maintained and provided by opioid overdose prevention programs in 10 NYCRR 80.138(c)(5).

Repeal 87.22 of Part 87 and add a new Sec. 400.24 to Part 400 of Title 10 - Increase DOH Fees for the Operational Period

Statutory Authority:

Public Health Law Sections 2868 and 2881; and

Public Authorities Law Section 2976-A3

Description of the regulation:

Regarding the financing of hospital projects approved by the Commissioner for which reimbursement is provided pursuant to Article 28 of the Public Health Law, the regulation addresses the charge for the operational period of such financing which shall be from the occupancy date to the mortgage discharge at an annual charge of three-tenths of one percent of the mortgage loan, for inspection, regulation, supervision and audit. This is payable monthly to the State Department of Health by the mortgagor. Adjustments of charges for the operational period shall be made by adjusting future operational period payments.

The regulation should continue without modification.

Amendments to Part 96 of Title 10 - Licensure and Practice of Nursing Home Administration

Statutory authority:

Public Health Law Article 28-D and Section 2896-b

Description of the regulation:

These regulations set forth the standards for licensure and practice of nursing home administration in New York State. They are necessary to protect public health and safety of residents.

The regulation should continue without modification.

Amendment of Section 400.18 of Title 10 - SPARCS Reporting Requirements for Ambulatory Surgery

Statutory Authority:

Public Health Law Section 2816

Description of the regulation:

Section 400.18 defined the reporting requirement for ambulatory surgery. It contained language to include the collection of data from free standing ambulatory surgeries. Ambulatory surgery services were defined by a range of Current Procedural Terminology (CPT) codes.

This regulation is being reviewed and revisions are expected.

Amendment of 405.9 and 405.19 of Part 405 and addition of a new Part 722 to Title 10 - Standards for Hospital-based Sexual Assault Forensic Examiners (SAFE) Programs

Statutory Authority:

Public Health Law Section 2805-i

Description of the regulation:

Sexual assault is an important public health issue. The regulations related to the Sexual Assault Forensic Examiners (SAFE) program set forth standards for hospitals and practitioners regarding capacity and expertise needed to ensure that victims of sexual assault are provided with competent, compassionate and prompt care.

Specifically, the regulation addressed requirements for hospitals related to provision of treatment for alleged victims of sexual offense, including collection and maintenance of sexual offense evidence, provision of support services for victims. The regulations authorized the Department of Health to designate hospitals as sites for 24-hour SAFE programs including use of qualified SAFE examiners.

These regulations are being reviewed and revisions to simplify and streamline regulations for this program are expected.

Amendment of Parts 700, 717, 790, 791 and 794 of Title 10 - Hospice Residence Dually Certified Beds

Statutory Authority:

Public Health Law Section 4004(4); Public Health Law Section 4010(4)

Description of the regulation:

Regulations addressed the approval, construction and operation of hospice residences, providing hospice access to individuals who may otherwise be denied such services due to the lack of an appropriate caregiver and/or suitable home environment. The dual certification of hospice residence beds for hospice inpatient level of care, as needed, allows for up to two patients residing in a hospice residence at any given time to receive the higher inpatient level of care, as necessitated by changes in their condition, without the need to transfer the patient out of the hospice residence into an alternate hospice inpatient bed setting.

The regulations should continue without modification.

Title 18 NYCRR - Five Year Review

Repeal subdivision (j) of Section 360-3.2 and add a new subdivision (j) to Section 360-3.2 to Title 18 - Citizenship and Immigration Status - Conditions of Eligibility

Statutory Authority:

Social Services Law Section 363-a(2)

Description of the regulation:

The regulations revised the Department's regulations governing the Medicaid eligibility of aliens to be consistent with the Court of Appeals decision in *Aliessa v. Novello*. Under that decision, social services districts cannot deny Medicaid to otherwise eligible lawfully residing aliens, including qualified aliens and aliens who are permanently residing in the U.S. under color of law.

The regulations should continue without modification.

Title 10 NYCRR - Ten Year Review

Addition of new Subpart 7-5 Agricultural Fairgrounds

Statutory Authority:

Public Health Law Sections 225(5)(a), 201(l) and (m)

Description of the regulation:

Prior to the addition of Subpart 7-5, Agricultural Fairgrounds were not regulated. In August of 1999, an outbreak of gastrointestinal illness was associated with an agricultural fairground's on-site water

supply resulting in two deaths and illness in more than 1,100 fair attendees. Regulations were adopted in 2002, and in 2006 were amended through the consensus regulation process to incorporate the Subpart 7-3 campground regulations into the Agricultural Fairground regulations and to modify the campsite size requirements. These regulations are needed to ensure public health and prevent the spread of disease.

The regulations should continue without modification.

Amendment of Subdivision 86-2.10(k) - Change in Ownership of Nursing Facilities - Medicaid Rates

Statutory Authority:

Public Health Law Sections 2803(2), 2807(3) and 2808

Description of the regulation:

The regulations allowed for the recalculation of nursing facility Medicaid reimbursement rates to be based upon an updated cost report once every ten years when transfers of ownership between a parent and a child occur.

The regulation is no longer relevant and the Department will consider its repeal.

Amendment of Subpart 86-6 - Hospice Residence Reimbursement

Statutory Authority:

Public Health Law Sections 4010(4) and 4012-a(4).

Chapter 532 of the Laws of 1995; Chapter 642 of the Laws of 1999;

Chapter 496 of the Laws of 2000

Description of the regulation:

Established a rate of payment for room and board services provided by hospice residences to Medicaid-eligible patients electing hospice care and residing in the hospice residence. The hospice residence will receive, in addition to the room and board rate, payment of the routine hospice rate for all other services provided.

The regulation should continue without modification.

Amendment of Sections 86-4.10, 405.3, 415.26, 444.23, 700.2, 751.6, 754.1, 754.2, 754.6 and 763.13 - Regulations Affecting Midwives

Statutory Authority:

Public Health Law Sections 2803(2)(a)(i) and (v), 2803-b(1), and 3612(5) and reflect practice provisions in Article 140 of the Education Law, amended by Chapter 327 of the Laws of 1992

Description of the regulation:

This regulation amended several provisions of Title 10 NYCRR to be consistent with Education Law Article 140, which defined and established licensure and practice standards for the practice of midwifery.

This regulation is consistent with the substance and intent of Article 140 of the Education Law and should continue.

Amendment of Parts 700, 717, 790, 791, 793 and 794 of Title 10

Statutory Authority:

Public Health Law Section 4010(4)

Description of the regulation:

These regulations authorized the approval, construction and operation of hospice residences. The hospice residence program provides hospice access to individuals who may otherwise be denied such services due to the lack of an appropriate caregiver and/or safe environment. These patients are often transferred to more costly inpatient settings, such as hospitals or nursing homes.

This regulation should continue without modification.

Title 18 NYCRR - Ten Year Review

Amendment of Sections 360-4.3 and 360-4.6 - Allocation Provisions used in Medicaid Eligibility

Statutory Authority:

Social Services Law Section 366

Description of the regulation:

The regulatory amendment to 360-4.3 defined income to be used in determining Medicaid eligibility. The regulatory amendment to 360-4.6 defined the types and amounts of income and resources to be

disregarded to determine the applicant's/recipient's net available income and resources. The regulatory amendment to 360-4.3 and 360-4.6 clarified that in determining the amount of income to be deemed available to an SSI-related applicant/recipient from his or her legally responsible relative, income of the legally responsible relative is first allocated to meet the needs of certain non-SSI-related relatives residing in the household.

The regulations continue to be appropriate and should be retained without modification.

Amendment of Parts 485, 486, 487, 488 and 490 - Adult Care Facilities

Statutory Authority:

Social Services Law Section 461-m

Description of the regulation:

The regulations required that the operator of an adult care facility (i.e., adult home, enriched housing program, and residence for adults) report all deaths to the Department within twenty-four hours of occurrence; and report to the State Commission on Quality of Care for the Mentally Disabled these deaths if they involved a resident who had at any time received services from a mental hygiene service provider.

This regulation should continue until such time as a statutory amendment is enacted to require the reporting of only deaths occurring under questionable or unusual circumstances within 24 hours.

Amendment of Part 505 - OASAS Consolidation and Detoxification/Chemical Dependency

Statutory Authority:

Mental Hygiene Law Section 19.07

Description of the regulation:

The regulation addressed Medicaid billing methodology for drug and alcohol services. However, on July 1, 2011, OASAS began implementation of the Ambulatory Patient Group (APG) billing methodology for services provided in chemical dependence outpatient clinics and opioid treatment clinics. Accordingly, 505.27 will need to be revised to reflect this new billing methodology.

This regulation will be revised.

Amendment of Section 505.7 - Medicaid Payment for Laboratory Services

Statutory Authority:

Social Services Law Section 365 a(2)

Description of the regulation:

This regulation allowed practitioners ordering/initiating services for Medicaid recipients to designate to personnel/staff the authority to complete laboratory test form(s). The regulations allowed acceptance of electronic laboratory test ordering or signatures from authorized practitioners. Additionally, this amendment allowed Medicaid to accept "standing orders" for laboratory tests, for certain specific medical conditions, that are initiated by authorized practitioners.

This regulation should continue without modification.

Amendment of Section 515.9 and addition of new Part 520 - Monetary Penalties and Tax Intercepts to Determine Medicaid Fraud

Statutory Authority:

Public Health Law Section 206(17); Tax Law Section 171-f

Description of the regulation:

18 NYCRR Part 520 and Section 515.9 effectuated the statutory provisions that provide for an interception of a Medicaid provider's State refund to repay identified Medicaid overpayments.

Part 520 of Title 18 provided for the administrative mechanism allowing the New York Medicaid program, and local Social Services districts in appropriate circumstances, to obtain State tax refunds belonging to current or former medical assistance providers as a recovery of identified Medicaid overpayments. The mechanism provided for access to the State tax refunds only in cases where the determination of liability for the Medicaid overpayments has been finally adjudicated through administrative and/or judicial review or where the time to contest the determination has passed. This regulation provided a simplified tool for the State to offset tax refunds against

monies due the State while providing for significant administrative safeguards for the affected provider. The Section 515.9 amendment merely added the new Part 520 as an available mechanism for Medicaid overpayment recovery under Part 515.

This regulation should continue without modification.

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 2007 which must be reviewed in calendar year 2012. 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-47-07-00006/07-00007 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 they were not otherwise eligible for the DDP pursuant to Vehicle and Traffic Law Section 1196(4). Chapter 732 required courts to sentence motorists to attend and complete the DDP if such motorists entered into specific plea bargained dispositions arising out of driving while intoxicated charges. Parts 134 and 136 were amended 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).

MTV-13-07-00016 Part 8 Waiver of Road and Written Tests

Analysis of the need for the rule: This amendment provided that a person applying for relicensing after revocation would not be required to take the road and written tests if such application was submitted within two years from the date the applicant was last validly licensed. Previously, the tests could only be waived if the application were submitted within one year from the date the applicant was last validly licensed. This amendment aligned Part 8 with Vehicle and Traffic Law 502(6)(b) which provides that a license may be renewed if the application for renewal is filed within two years of the date of the license's expiration. Since the two year rule has resulted in efficiencies in DMV's processing offices, with no diminution of highway safety, the amendments remain necessary.

Legal basis for the rule: Vehicle and Traffic Law Sections 215(a), 502(4)(a)(i), 502(4)(b), 502(4)(f) and 508(1) and (4).

MTV-15-07-00005 Part 58- Rear Object Detection Devices

Chapter 686 of the Laws of 2006 required all garbage trucks operated in Westchester County and purchased on or after January 1, 2008 to be equipped with mirrors or other rear object detection devices. Since this law is still in effect, this regulation, which specifies the approved devices, remains necessary.

Legal basis for the rule: Vehicle and Traffic Law Sections 215(a) and 375(10)(f).

MTV-30-07-00003 Part 135 Restricted Use Licenses

Chapter 571 of the Laws of 2006 required the suspension/revocation of a driver's licenses for right of way violations resulting in serious injury or death. The law prohibited DMV from issuing a restricted use license to a person whose license was suspended or revoked for one of the specified violations. Part 135 was amended conform to this statutory mandate. Since the law is still in effect, this regulation remains necessary.

Legal basis for the rule: Vehicle and Traffic Law Sections 215(a) and 530(9).

MTV- 39-07-00009 Parts 127 and 139 Chemical Test Refusal Hearings

This regulation modified the procedures related to adjournments of

chemical test refusal hearings and the effects of such adjournments on the driver licenses of hearing respondents. Since this regulation discourages frivolous requests for adjournments and, at the same time, enhances highway safety, it should remain in effect.

Legal basis for the rule: Vehicle and Traffic Law Sections 215(a), 1194(2)(c) and 1194(2)(e).

MTV-43-07-00009 Part 124 Evidentiary Rules in Traffic Violation Bureaus

This regulation was adopted in light of a U S Supreme Court decision, Crawford v State of Washington, which requires testimony regarding the introduction of certain documents at trial so that the defendant has the opportunity to cross-examine the witness. The amendment exempted business records admissible under Civil Practice Law and Rules section 4518 from the requirement that such records be introduced at a hearing by the person who created the document. This was necessary to exempt certain documents introduced at DMV's Traffic Violation Bureau hearings such as overweight scale calibration reports. This regulation would obviate the need for the creator of such report to appear at the hearing. Since the Crawford decision is still good law, the regulation remains necessary.

Legal basis for the rule: Vehicle and Traffic Law Sections 215(a), 225(1) and (3) and 227(1).

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 rulemakings finalized during calendar years 1997, 2002, and 2007 which are subject to the SAPA section 207 five-year review of rules.

During calendar year 1997, OPWDD finalized nine rules. Five of these were proposed and adopted as consensus rulemakings and are, therefore, exempted from the review requirements by subdivision (5) of SAPA section 207. The remaining four rulemakings finalized during 1997 were identified and described as follows at the time the respective notices were first published in the State Register:

97-1. MRD-03-97-00003-A (State Register of 9/10/97). Amendments to 14 NYCRR sections 635-10.5 (Home and Community-Based Waiver Services), 671.7 (Home and Community-Based Waiver Community Residential Habilitation Services), 680.12 (Specialty Hospitals), 681.12 (Intermediate Care Facilities for persons with developmental disabilities), and 690.7 (Day Treatment Services for persons with developmental disabilities). These amendments establish trend factors to be applied (beginning January 1, 1997) within the context of the various rate/fee setting methodologies. Although specific trend factors are calculated annually, they are cumulative. These amendments need to be maintained, without modification, to define how OPWDD establishes current rates/fees of reimbursement for the affected facilities or services. The amendments to section 681.12 have been subsequently moved to section 681.14 and all of section 681.12 was repealed.

97-2. MRD-15-97-00023-A (State Register of 7/25/97). Amendments to 14 NYCRR section 671.7. The purpose of these amendments was to establish a revised fee calculation add-on for voluntary agency operators of home and community-based (HCBS) waiver community residential habilitation services. Due to a change in rate methodology, these amendments have since been repealed as they are outdated and no longer necessary.

97-3. MRD-28-97-00034-A (State Register of 9/24/97). Amendments to 14 NYCRR section 681.12 - Rate Setting and Financial Reporting for voluntary agency operated Intermediate Care Facilities for persons with developmental disabilities. The amendments revise the method of calculating reimbursement for ICF/DD facilities by adding a transportation component to the ICF/DD rate when a consumer's active treatment needs and individual program plan require a day service to which transportation is necessary. The amendments to section 681.12 have been subsequently superseded by section 681.14 and all of section 681.12 was repealed. Current section

681.14 contains the transportation component as it is still part of the ICF/DD rates and therefore these amendments must be maintained without modification.

97-4. MRD-41-97-00006-A (State Register of 12/24/97). Amendments to 14 NYCRR section 671.7 - Reimbursement and fiscal reporting for voluntary agency operated providers of home and community-based (HCBS) waiver community residential habilitation services. The purpose of these amendments was to provide a one percent trend factor for these operators of community residences, and to structure the fees of reimbursement for the affected fee periods so that the amendments would result in the equivalent of a one percent increase when annualized. Due to a change in rate methodology, these amendments have since been repealed as they are outdated and no longer necessary.

During calendar year 2002, OPWDD adopted ten rules. These ten rulemakings were identified and described as follows at the time the respective notices were published in the State Register:

02-1. MRD-03-02-0005-A (State Register of 3/20/02). Amendment of section 681.11 of Title 14 NYCRR- Rate setting and financial reporting in voluntary agency operated intermediate care facilities for persons with developmental disabilities (ICF/DD). The amendments institute an additional subsequent (i.e., not base) period in the rate cycle for under 31-bed ICF/DD facilities beginning Jan. 1, 2002 for Region II and III facilities and July 1, 2002 for Region I facilities. The amendment to section 681.11 has been subsequently superseded by section 681.14 and all of section 681.11 was repealed. Current section 681.14 contains this amendment which needs to be maintained, without modification, to preserve the progression of rate years within cycles of the ICF/DD rate setting methodology and define how OPWDD establishes current rates of reimbursement for ICF/DD facilities.

02-2. MRD-04-02-00001-A (State Register of 4/10/02). Amendment of sections 635-10.5, 671.7, 680.12, 681.11 and 690.7 of Title 14 NYCRR- Rate/fee setting in voluntary agency operated individualized residential alternative (IRA) facilities and home and community-based (HCBS) waiver services; HCBS waiver community residential habilitation services; specialty hospitals; intermediate care facilities for persons with developmental disabilities; and day treatment facilities serving persons with developmental disabilities. The amendments revise the methodologies used to calculate rates/fees of the referenced facilities or programs for the periods of Jan. 1, 2002 to Dec. 31, 2002 and July 1, 2002 to June 30, 2003 and establish trend factors to be applied within the context of the referenced reimbursement methodologies, effective January 1, 2002. Although specific trend factors are calculated annually, they are cumulative. The amendments need to be maintained, without modification, to define how OPWDD establishes current rates/fees of reimbursement for the affected facilities or services. The amendments to section 681.12 have been subsequently moved to section 681.14 and all of section 681.12 was repealed.

02-3. MRD-04-02-00020-A (State Register of 12/31/02). Amendments of sections 681.11 and 681.14 of Title 14 NYCRR. Rate setting in voluntary agency operated intermediate care facilities for persons with developmental disabilities. The amendments allow for inclusion of day program services costs in the reimbursement rate of ICF/DD facilities. The amendments to section 681.11 were subsequently superseded by section 681.14 and all of section 681.11 was repealed. Current section 681.14 continues to allow for inclusion of day program services costs in the reimbursement rate of ICF/DD facilities and these amendments must therefore be maintained without modification.

02-4. MRD-08-02-00006-A (State Register of 5/1/02). Amendment of sections 635-10.5 and 681.11 of Title 14 NYCRR- Rate/fee setting in voluntary agency operated individualized residential alternative (IRA) facilities and home and community-based (HCBS) waiver services and intermediate care facilities for persons with developmental disabilities. The amendments implement payments to reflect adjustments to the trend factors to be applied within the context of the referenced reimbursement methodologies. Although specific trend factors are calculated annually, they are cumulative. The amendments need to be maintained, without modification, to define how OPWDD establishes current rates/fees of reimbursement for the affected facili-

ties or services. The amendments to section 681.12 have been subsequently moved to section 681.14 and all of section 681.12 was repealed.

02-5. MRD-09-02-00006-A (State Register of 11/27/02). Amendments to 14 NYCRR Parts 603 and 604 to revise public access to records pursuant to the Freedom of Information Law. The amendments make necessary technical corrections and revise standards to ensure consistency of OPWDD's regulations with State regulations implementing the Freedom of Information Law. The revisions continue to be necessary to ensure consistency of OPWDD's regulations with 21 NYCRR Part 1401, the regulations of the NYS Committee on Open Government responsible for oversight of implementation of the Freedom of Information Law, and will therefore be maintained without modification.

02-6. MRD-15-02-00012-A (State Register of 6/26/02). Amendments of sections 81.10, 635-4.4, 635-10.5, 635-99.1, 686.13 and 686.99 of Title 14 NYCRR to revise rate and fee setting for various developmental disabilities services provided under the auspices of OPWDD. The amendments revise the provisions governing the reimbursement of home and community-based (HCBS) waiver residential habilitation services provided in individualized residential alternatives (IRAs) and make various other technical corrections, clarifications, or conforming amendments. OPWDD has since modified these amendments and the current regulatory provisions are still necessary. OPWDD will continue to make additional modifications as needed.

02-7. MRD-29-02-00008-A (State Register of 9/25/02). Amendment of section 635-10.5 of Title 14 NYCRR to revise the price setting methodology governing the reimbursement of home and community-based (HCBS) waiver residential habilitation services provided in individualized residential alternatives (IRAs). These amendments allow for the reimbursement of IRA residential habilitation services in the event that all residents of an IRA are relocated to an alternative site approved by OPWDD due to an emergency or for the health and safety of individuals receiving services. These regulatory provisions remain necessary and OPWDD intends to maintain the regulation without modification.

02-8. MRD-42-02-00005-A (State Register of 12/31/02). Amendment of section 635-10.5 of Title 14 NYCRR to revise the provisions determining the prices for home and community-based (HCBS) waiver services provided in individualized residential alternatives (IRAs). These amendments institute an efficiency adjustment to be applied to the administration costs portion of the IRA price. The efficiency adjustment is carried forward into subsequent years and these price setting and reimbursement provisions remain necessary to describe how IRA prices were adjusted. OPWDD intends to maintain the regulation without modification.

02-9. MRD-43-02-00007-A (State Register of 12/24/02). Amendment of sections 681.11 and 690.7 of Title 14 NYCRR to revise rate and fee setting for voluntary agency operated day treatment programs and intermediate care facilities for persons with developmental disabilities (ICF/DD). The amendments revise the provisions governing the management of real property and capital indebtedness. Specifically, the amendments enable the use of a combination of a provider agency's lock box accounts for the purpose of retiring mortgage indebtedness on a single facility. These provisions continue to be relevant and necessary so that OPWDD intends to maintain them without modification. The amendments to section 681.12 have been subsequently moved to section 681.14 and all of section 681.12 was repealed.

02-10. MRD-44-02-00003-A (State Register of 12/31/02). Addition of section 681.14 to Title 14 NYCRR. Rate setting in voluntary agency operated intermediate care facilities for persons with developmental disabilities. The amendments establish calendar 1999 or 1999/2000 as a new base year, and calendar 2003 or 2003/2004 as a new base period for under 31 bed facilities, and revise cost category screens and regional values in the ICF/DD reimbursement methodology. The amendments constitute the basis of the current ICF/DD reimbursement methodology for under 31 bed facilities and need to be maintained, without modification, to define how OPWDD establishes current rates of reimbursement for ICF/DD facilities.

With the exception of the rulemaking discussed in item 02-5, all of the mandated five-year reviews for 1997 and 2002 concern amendments which revise OPWDD's rate/fee setting methodologies. The legal basis for the adoption of these rules is in sections 13.07, 13.09 and 43.02 of the Mental Hygiene Law. In particular, section 43.02 of the Mental Hygiene Law sets forth OPWDD's responsibility for setting Medicaid rates for services in facilities licensed by OPWDD. As concerns item 02-5, the statutory authority for promulgating and maintaining regulations to implement the Freedom of Information Law can be found in Article 6 of the Public Officers Law and in the regulations of the Committee on Open Government found at 21 NYCRR Part 1401.

During calendar year 2007, OPWDD adopted nine rules. These nine rulemakings were identified and described as follows at the time the respective notices were published in the State Register:

07-01. MRD-46-06-00015-A (State Register of 7/25/07). Repeal of Subpart 635-7; addition of new Subpart 635-7; and amendment of sections 635-99.1, 686.15 and 686.16 of Title 14 NYCRR pursuant to sections 13.07, 13.09(b) and 16.00 of the Mental Hygiene Law. The amendments revise and update environmental requirements for OPWDD certified residential and non-residential facilities, including family care homes. Specifically, the amendments require the application of the 2002 edition of the NYS Uniform Fire Prevention and Building Code and the application of the 2000 edition of the Life Safety Code. The amendments also update other physical plant requirements. These requirements are still in effect and are necessary to protect the health and safety of individuals receiving services. OPWDD will be considering future modifications to these requirements as necessary.

07-02. MRD-46-06-00017-A (State Register of 1/24/07). Addition of Subpart 635-11 and amendment of section 635-99.1 of Title 14 NYCRR pursuant to sections 13.07(a), (c), 13.09(b), and 13.15(a) of the Mental Hygiene Law. The amendments identify and authorize those parties who may enroll or act for a person who does not have the ability to enroll or act for him/herself in a Medicare prescription drug plan. These amendments are still in effect and are necessary to ensure that individuals are enrolled in a plan that is suitable for them and that their rights are protected in these plans.

07-03. MRD-52-06-00010-A (State Register of 3/7/07). Addition of sections 633.22 and 633.98 and amendment of sections 633.5, 633.99, 635-10.5, 679.6, 680.12, 681.14, 687.4, and 687.8 and 690.7 of Title 14 NYCRR pursuant to sections 13.07, 13.09(b), and 16.33 of the Mental Hygiene Law and section 845-b of the Executive Law. The amendments are concerning criminal history record checks. The regulation requires that agencies, sponsoring agencies and providers of services request criminal history record checks for specified employees, volunteers, family care providers and parties who are to reside in a family care home. This requirement is still in effect and is necessary for the protection of individuals receiving services.

07-04. MRD-08-07-00002-A (State Register of 5/2/07). Amendment of sections 81.10, 635-10.5, 671.7, 680.12, 681.14 of Title 14 NYCRR pursuant to sections 13.07, 13.09(b), and 43.02 of the Mental Hygiene Law. The amendments revise the methodologies used to calculate rates/fees for integrated residential community (IRC) programs, individualized residential alternative (IRA) facilities, home and community based (HCBS) waiver services, HCBS waiver community residential habilitation services, specialty hospitals, and intermediate care facilities for persons with developmental disabilities. More specifically the amendments are concerned with establishing trend factors to be applied within the context of the referenced methodologies. 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.

07-05. MRD-12-07-00003-A (State Register of 5/30/11) Amendment of sections 671.7, 679.6 and 690.7 of Title 14 NYCRR pursuant to sections 13.07, 13.09(b), and 43.02 of the Mental Hygiene Law. The amendments are concerning fee setting in home and community-based (HCBS) waiver community residential habilitation services, clinic treatment facilities, and day treatment facilities for persons with

developmental disabilities. The amendments establish a cost of living adjustment (COLA) and trend factors applicable to these facilities and services. Although specific trend factors are calculated annually, they are cumulative. COLAs are also important elements of the reimbursement methodologies. The amendments (with the exception of those made to 679.6) need to be maintained without modification to define how OPWDD establishes current rates/fees of reimbursement for the affected facilities or services. The amendments in 679.6 have since been deleted due to the development of a new reimbursement methodology for clinic treatment facilities.

07-06. MRD-29-07-00022-A (State Register of 11/21/07) Repeal of sections 633.14 and 633.15; addition of new 633.15 and amendment of sections 633.99, 635-9.1 and 635-99.1 of Title 14 NYCRR pursuant to sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law. The amendments pertain to the management of personal allowance funds. They consolidate, reorganize and update the current requirements into a regulation to make it easier to use; place more of an emphasis on individual choice; and add new features such as electronic recordkeeping, money management assessments, personal expenditure planning and person-owned bank accounts. The requirements are still in effect and are necessary to promote choice and encourage individuals receiving services to participate in managing their own funds. OPWDD is planning to make minor modifications to these requirements in the future.

07-07. MRD-36-07-00005-A (State Register of 12/26/07). Amendment of sections 635-10.4 and 635-10.5 of Title 14 NYCRR pursuant to sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law. These amendments update definitions of residential habilitation to parallel the wording in the Federal Home and Community-Based (HCBS) Waiver agreement; and include the billing requirement of a face-to-face contact for at home residential habilitation and for family care residential habilitation. The amendments continue to be relevant and are still in effect. Therefore, OPWDD intends to maintain the amendments without modification.

07-08. MRD-41-07-00019-A (State Register of 12/26/07). Amendment of sections 635-10.5, 671.7, 679.6, 680.12, 681.14, 686.13 and 690.7 of Title 14 NYCRR pursuant to sections 13.07, 13.09(b) and 43.02 of the Mental Hygiene Law. The amendments revise the reimbursement methodology for various facilities and services provided under the auspices of OPWDD to include a Health Care Enhancement (HCE III) funding initiative. The amendments implement a new phase of a funding initiative that will enable 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 those in 679.6) without modification. The amendments in 679.6 have since been deleted due to the development of a new reimbursement methodology for clinic treatment facilities.

07-09. MRD-42-07-00007-A (State Register of 12/26/07). Amendment of section 633.10 of Title 14 NYCRR pursuant to sections 13.07 and 13.09(b) of the Mental Hygiene Law; the Surrogate's Court Procedure Act, section 1750-b; and L. 2007, Chapter. 105. The amendments revise certain regulatory provisions implementing the Health Care Decisions Act consistent with Chapter 105 of the Laws of 2007. The amendments include a prioritized list of family members who may be qualified to make a decision to withhold or withdrawal life sustaining treatment in certain circumstances. These regulations are still in effect and are necessary to enhance and safeguard the constitutional rights of individuals with developmental disabilities to refuse life-sustaining treatment. OPWDD intends to maintain these amendments without modification.

The public is invited to review and comment on OPWDD's proposed disposition regarding these 1997, 2002 and 2007 rulemakings beginning January 4, 2012.

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 proposes to continue the following rules adopted in 1997, 2002, and 2007 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 § 753 (Case No. 95-M-1007).

a. Description of rules:

This enactment added Subchapter F of Chapter VII of 16 NYCRR, entitled "Protection of Underground Facilities," implemented revisions to Public Service Law (PSL) § 119-b and General Business Law (GBL) Article 36, and replaced the Department of Labor's "Code Rule 53" (12 NYCRR § 53). The rules establish precepts for the protection of underground facilities (UGF) to assure public safety and to prevent damage to public and private property by expanding excavator and operator knowledge of the One Call notification system (One Call). The rules require an excavator to contact One Call before work commences and to provide One Call with the work zone location. One Call coordinates excavation by notifying the owner of any UGF at the work location (the Operator) and informs the Operator to clearly mark the UGF within the regulatory prescribed time frame and before excavation or demolition begins.

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 for and legal basis of rules:

The legal basis for a new Part 753 are PSL § 119-b and GBL Article 36. The new regulations were enacted to protect underground pipelines, conduits, ducts, cables, wires, manholes, and vaults installed by Operators of UGFs to furnish electricity, gases, steam, liquid petroleum products, telephone or telegraph communications, cable television, sewage removal, traffic control systems, or water from damage by excavation or demolition. This regulation protects consumers' steady supply of public utility services and protects UGFs from damage.

2. 16 NYCRR § 262 (Case No. 97-G-0230).

a. Description of rules:

Amendments were made to 16 NYCRR Part 262 in order to bring the New York State pipeline safety regulations into conformance with the federal Department of Transportation (DOT) statutes, the most significant pertaining to alcohol testing and the addition of an Alcohol Misuse Program.

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

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 intent of the amendments was to bring the State's pipeline safety regulations into conformance with the counterpart federal Department of Transportation regulations which had been amended several times. The amendments were designed to prevent accidents and injuries that result from the misuse of alcohol by employees of operators of certain pipeline facilities. The regulation requires operators to develop an alcohol misuse plan that outlines methods and procedures for federal compliance, and to promulgate educational materials to disseminate the operators' policy on misuse of alcohol.

3. 16 NYCRR §§ 90.3, 91.1, 225.3, 402.3, 510.3, 600.3, 633.9(g) (Case 97-M-0623).

a. Description of rules:

The Commission adopted interest rates applicable to customer deposits held by utilities, replacing the actual Customer Deposit Rate stated in the regulations with a formula.

b. Statutory authority: PSL §§ 36(3), 117.

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis of rules:

Prior to enactment of this regulatory amendment the actual Customer Deposit Rate was specifically stated in the regulations and adjustment of the rate to account for current monetary trends was onerous. To assure a consistent interpretation, staff recommended that an advisory letter be issued each time the rate is revised, to publicize the new rate.

4. 16 NYCRR Parts 600, 631, 633 (Case No. 96-C-1114).

a. Description of rules:

Part 600 and 631 amendments pertaining to non-residential customers streamlined the existing rules governing provision of service to non-residential customers by eliminating unnecessary details and furnishing companies that provide service greater flexibility. The new rules eliminate detailed record keeping requirements for companies with respect to the kind of records to be kept regarding customer deposits, deposit refund requirements, type of receipts and information about deposits that must be given to customers.

b. Statutory authority: PSL §§ 4(1), 92(1), 94(2), 96(1).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis of rules:

Part 633 was removed from Subchapter C, Rates and Charges, and placed in Subchapter A, Service, and then renumbered to create a new Part 609 that better reflects current policy and applies only to basic, local, residential telephone service, including radio telephone utilities. The definitions list was consolidated, and minor changes to Deferred Payment Agreements and Proof of Identity as a condition for services were enacted.

5. 16 NYCRR § 3.9(e) (Case No. 01-M-0886).

a. Description of the rules:

A new provision for mediator confidentiality was implemented by the Commission to supplement the existing protection provided by PSL § 15 and 16 NYCRR § 3.9(d). Alternative Dispute Resolution (ADR) processes are increasing in use by the Commission in the development of public policy, and determining and monitoring operating practices among competitors and incumbent providers of regulated services. Department Staff facilitate and mediate numerous cases in which parties offer confidential communications. Mediated proceedings are any process in which an ADR technique is used to resolve an issue in controversy. Any oral or written communication prepared for the purpose of a mediated proceeding is not required to be disclosed, and with the enactment of Section 3.9(e) a more stringent policy of confidentiality has been implemented.

b. Statutory authority: PSL §§ 4(1), 15, 20(1).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis of rules:

In order to supplement 16 NYCRR § 3.9(d) (confidentiality of settlement negotiations) and PSL § 15 (which obligates department employees to protect confidential information obtained in the administration of Department business) Rule 3.9(e) was drafted to extend the protections in Section 3.9(d) to other ADR processes used by the Department.

Department of State

Five Year Review of Rules Adopted by the Department of State in Calendar Year 2007 Required to be Reviewed in Calendar Year 2012; Further Review of Rules Adopted by the Department of State in Calendar Year 2002 Required to be Re-Reviewed in Calendar Year 2012; and Further Review of Rules Adopted by the Department of State in Calendar Year 1997 Required to be Re-Reviewed in Calendar Year 2012

As required by section 207 of the State Administrative Procedure

Act (SAPA), the following is a list of rules that were adopted by the Department of State in calendar year 2007 and must be reviewed in calendar year 2012. The list does not include rules that were: adopted as consensus rules, repealed, or subsequently amended. Public comment on the continuation or modification of these rules is invited and will be accepted until February 18, 2012. Comments may be submitted to the contact person at the end of this Notice.

RULES ADOPTED IN 2007

(1) DOS-19-07-00012 Shared Municipal Services Incentive Awards Grant Program

Amended Part 814 of Title 19 NYCRR

Analysis of the need for the rule: The rule was needed to establish eligibility requirements and criteria for the Shared Municipal Services Incentive Awards Grant Program.

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

(2) DOS-37-07-00001 Cremation Certification Course

Added Part 204 to Title 19 NYCRR

Analysis of the need for the rule: The rule was needed to establish training and cremation certification course requirements for the maintenance and operation of crematories.

Legal basis for the rule: Not-for-Profit Corporation Law, section 1517-j

(3) DOS-39-07-00010 New York State Uniform Fire Prevention and Building Code

Amended sections 1201.2(d) and 1204.1; Added 1204.3(f)(4) and 1204.3(h)(3); Renumbered 1204.3(i) to (l); and Added 1204.3(i),(j) and (k)

Analysis of the need for the rule: The rule was needed to clarify that the State would be responsible for administration and enforcement of the Uniform Fire Prevention and Building Code with respect to facilities included in the Statewide Wireless Network.

Legal basis for the rule: Executive Law, section 381

RULES ADOPTED IN 2002

As further required by section 207 of SAPA, certain rules adopted in calendar year 2002 must be listed for re-review in calendar year 2012. Such list does not include rules that were: adopted as consensus rules, repealed, or subsequently amended; all of the rules adopted by the Department of State in calendar year 2002 were either: adopted as consensus rules, or subsequently amended. Thus, no rules adopted by the Department in 2002 are listed for re-review in 2012.

RULES ADOPTED IN 1997

As further required by section 207 of the State Administrative Procedure Act (SAPA), the following is a list of rules that were adopted by the Department of State in calendar year 1997 and must be re-reviewed in calendar year 2012. The list does not include rules that were: adopted as consensus rules, repealed, or subsequently amended. Public comment on the continuation or modification of these rules is invited and will be accepted until February 18, 2012. Comments may be submitted to the contact person at the end of this Notice.

(1) DOS-01-97-00012 Community Services Block Grant Advisory Council

Added Part 701 to Title 19 NYCRR

Analysis of the need for the rule: The rule was needed because Chapter 884 of the Laws of 1982 directed the Governor to require each executive agency administering a Community Services Block Grant Program to establish a Community Services Block Grant Advisory Council. Article 6-D of the Executive Law places the responsibility for administering the Community Services Block Grant Advisory Council in the Department of State. This rule recognized the existing Community Services Block Grant Advisory Council, and provided membership in the Council to be a number certain of 20.

Legal basis for the rule: Executive Law, sections 91 and 159-g; and Chapter 884 of the Laws of 1982

(2) DOS-30-97-00056 Maintaining Abandoned Cemeteries

Added a new Part to Title 19 NYCRR

Analysis of the need for the rule: The rule was needed to satisfy the requirement in General Municipal Law, section 165 that the Division

of Cemeteries of the Department of State promulgate regulations describing how the Department would provide technical assistance to a municipal corporation wishing to establish voluntary maintenance and cleanup programs at abandoned cemeteries for which the municipality has primary responsibility to provide care.

Legal basis for the rule: General Municipal Law, section 165

Comments on any item appearing in the above Notice of Rule Review of the Department of State may be submitted to: David Treacy, Esq., Office of General Counsel, New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 1120, Albany, New York 12231-0001.

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 2012, the Department must review rules that were adopted during 1997, 2002 and 2007 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 2012, 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 21, 2012.

1. 20 NYCRR Part 151 (Group Nonresident Income Tax Returns). Filed January 9, 1997; published January 29, 1997; effective January 29, 1997. Need: This rule expanded the privilege of filing group non-resident income tax returns to more partnerships; clarified the Department's policy allowing certain limited liability partnerships and limited liability companies to file group returns; and allowed non-resident athletes the election to be included on a group individual non-resident income tax return. These provisions were again amended in 1998 to further expand the privilege of filing group returns to other groups. This rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on November 6, 2002. The rule was again reviewed as part of the Department's 2007 Rule Review published in the State Register on January 3, 2007. As a result of that review of the 1997 rule, a Rule Review notice that it would be continued without modification was published in the State Register on May 14, 2008. Legal Basis: Tax Law, sections 171, subd. First; 697(a); 651; 658(a); 658(c).

(TAF-45-96-00002-A)

2. 20 NYCRR Part 6 (CT-4 Filing Rules) filed March 5, 1997, published/effective March 26, 1997. Need: This rule eliminated certain restrictions on who may file Form CT-4, General Business Corporation Franchise Tax Return (short form), thereby increasing the number of taxpayers eligible to file the short form. This rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on July 24, 2002. The rule was again reviewed as part of the Department's 2007 Rule Review published in the State Register on January 3, 2007. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on April 4, 2007. Legal Basis: Tax Law, sections 171, subd. First; 211.1; and 1096(a).

(TAF-02-97-00001-A)

3. 20 NYCRR Section 528.7 (Farming and commercial horse boarding operations). Filed May 14, 1997; published June 4, 1997; effective September 1, 1997. Need: This rule originally provided that personal protective equipment purchased by farmers for use directly and predominantly in farm production and construction materials that

become integral component parts of the foundations of farm silos were exempt from sales and compensating use taxes. The rule also made clarifying amendments to section 528.7. The rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review, substantial changes to section 528.7 of the regulations were adopted based on statutory changes in 1999 and 2000, which significantly broadened the subject exemptions from tax. (See TAF 10 04 00025 A; filed April 29, 2004; published May 19, 2004; effective May 19, 2004.) However, two of the amendments that were made in 1997 were continued without modification, specifically the cross reference added to section 528.7(c) and the clarifying amendment made to section 528.7(c)(1)(iii). Therefore, only these two amendments from the 1997 rule were subject to review in 2007, and every five years thereafter. They were previously reviewed as part of the Department's 2007 Rule Review published in the State Register on January 3, 2007. As a result of that review, a Rule Review notice indicating that these two amendments would be continued without modification was published in the State Register on August 1, 2007. Legal Basis: Tax Law sections 171, subd. First; 1115(a)(6); 1142(1); and 1250 (not subdivided).

(TAF-12-97-00014-A)

4. 20 NYCRR Section 533.3 (Filing of Sales and Use Tax Returns) Filed June 25, 1997; published July 16, 1997, effective July 16, 1997. Need: This rule allowed vendors with ranges of annual sales and use tax liabilities of \$250 to \$3,000 to file annual, rather than quarterly, sales and use tax returns. The rule also made technical corrections to sections 533.3 and 561.13 of the Sales and Use Taxes Regulations. The rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on August 21, 2002. The rule was again reviewed as part of the Department's 2007 Rule Review published in the State Register on January 3, 2007. As a result of that review of the 1997 rule, amendments to sections 533.3(d) and (g) of the regulations were adopted to delete obsolete information and to better reflect the current policies of the Department concerning the administration of its annual-filing program. (See TAF-40-07-00004-A; filed December 11, 2007; published December 26, 2007; effective December 26, 2007.) However, other amendments that were made in 1997 were continued without modification, specifically those concerning the filing benefits and the filing period codified in the regulations. (See TAF 40-07-00004-P, Statement of Reasoned Justification for Modification of the Rule; published October 3, 2007.) Therefore, the 1997 amendments related to the filing benefits and the filing period remain valid and are again subject to five-year review in 2012 and forward. Legal Basis: Tax Law, sections 171, subd. First; 1136(a), (b), and (c); 1142(1); 1250 (not subdivided); and 1251(c).

(TAF-18-97-00008-A)

5. 20 NYCRR Part 2390 (Power of Attorney) and Section 4000.2(b) (Bureau of Conciliation and Mediation Services, Procedural Rules) Filed August 6, 1997; published August 27, 1997; effective August 27, 1997. Need: Part 2390 provides practical requirements as to when a power of attorney is required by the Division of Taxation, and as to the form and content of a power of attorney. Section 4000.2(b) was amended to reflect that an agent who is enrolled to practice before the Internal Revenue Service may act as a representative in a conciliation conference proceeding. This rule was previously reviewed as part of the Department's 2002 and 2007 Rule Reviews. The 2002 Rule Review was published in the State Register on January 2, 2002. As a result of the 2002 review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on June 19, 2002. The 2007 Rule Review was published in the State Register on January 3, 2007. As a result of the 2007 review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on September 5, 2007. Legal Basis: Tax Law sections 171, subd. First; and 170.3-a(d).

(TAF-22-97-00001-A)

6. 20 NYCRR Part 2391 (Service of Process). Filed October 16,

1997; published November 5, 1997, effective November 5, 1997. Need: This rule added new provisions to provide information to any person commencing an action or proceeding involving the Commissioner or Department (except the Division of Tax Appeals or the Tax Appeals Tribunal) by setting forth the procedure for service of process on the Commissioner or Department. The rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on June 19, 2002. The rule was reviewed again as part of the Department's 2007 Rule Review published in the State Register on January 3, 2007. Following the 2007 review, a Rule Review notice indicating that the rule would again be continued without modification was published in the State Register on April 18, 2007. Legal Basis: Tax Law, section 171, subd. First; Civil Practice Law and Rules, section 307.

(TAF-34-97-00003-A).

7. 20 NYCRR Article 1 (Elimination of Unnecessary Provisions of Art. 1 of the Personal Income Tax Regulations (entitled "General")). Filed October 16, 1997, published November 5, 1997, effective November 5, 1997. Need: This rule repealed certain provisions that were unnecessary because the provisions repeated statutory material which did not require additional interpretation by regulation. Approximately 30 pages of unnecessary regulations were eliminated while retaining and recodifying necessary provisions. This rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on October 16, 2002. The rule was reviewed again as part of the Department's 2007 Rule Review published in the State Register on January 3, 2007. Following the 2007 review, a Rule Review notice indicating that the rule would again be continued without modification was published in the State Register on May 2, 2007. Legal Basis: Tax Law, sections 171, subd. First; 697(a); 601(e); and 606(b) and (e).

(TAF-34-97-00004-A)

8. 20 NYCRR Parts 5, 20, 32, 106 (Repeal of Parallel Credit Provisions). Filed November 21, 1997; published December 10, 1997, effective December 10, 1997. Need: This rule eliminated certain unnecessary corporation tax, bank tax, insurance tax and personal income tax regulations relating to credits, which was considered redundant. Additionally, there were amendments which updated the rule to reflect legislative changes in the Empire Zone Investment Tax Credit, the Empire Zone Capital Credit, and the Special Mortgage Recording Tax Credit. This rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on February 26, 2003. The rule was included in the Department's 2007 Rule Review published in the State Register on January 3, 2007. Legal Basis: Tax Law, sections 171, subd. First; 191; 210(20)(a), (b), (c) and (d); 210(12-B)(d); 606(j); 683(c)(9); 697(a); 1096(a); 1456(d); and 1511(h).

(TAF-38-97-00004-A)

9. 20 NYCRR Parts 6, 8 and 21 (Repeal of the 30 day Rule) Filed December 23, 1997; published/effective January 7, 1998. Need: This rule eliminated the requirement that business and banking corporations request permission to file combined reports, or to change the composition of a combined group, within 30 days of the close of the taxable year. This rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on July 24, 2002. The rule was again reviewed as part of the Department's 2007 Rule Review published in the State Register on January 3, 2007. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on April 18, 2007. Legal Basis: Tax Law, sections 171, subd. First; 211.4; and 1096(a).

(TAF-44-97-00001-A)

10. 20 NYCRR Subparts 5-9, 20-4, 32-2 and section 106.8 (Empire Zone Wage Tax Credit). Filed January 25, 2002; published February 13, 2002; effective February 13, 2002. Need: This rule eliminated obsolete and redundant material and areas of Franchise Tax on Banking Corporations, Franchise Taxes on Insurance Corporations and New York State Personal Income Tax regulations, relating to Empire Zone (EZ) Wage Tax Credit, that parallel provisions in the Business Corporation Franchise Tax regulations. In addition, the rule contained amendments to reflect existing Department policy with respect to the EZ Wage Tax Credit. The rule was included in the Department's 2007 Rule Review published in the State Register on January 3, 2007. Legal Basis: Tax Law, sections 171, subd. First; 697(a); and 1096(a).

(TAF-49-01-00002-A)

11. 20 NYCRR Sections 527.4(b), (c), and 527.5(b)(3) (Clothing Alterations) Filed June 17, 2002; published July 3, 2002; effective September 1, 2002. Need: This rule provided that reasonable charges for alterations to all items of clothing are treated as tailoring, a service that is specifically excluded from New York State and local sales and compensating use taxes. Prior to these amendments, the exclusion from tax depended upon who altered the clothing (e.g., an independent tailor or the clothing retailer) and whether the clothing itself was new, used, taxable, or exempt from tax. The rule also made technical corrections to the subject sections of the regulations. The rule was previously reviewed as part of the Department's 2007 Rule Review published in the State Register on January 3, 2007. As a result of that review of the 2002 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on April 25, 2007. Legal Basis: Tax Law sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided).

(TAF-13-02-00008-A)

12. 20 NYCRR Sections 89.1 and 89.3 (Tobacco Products Tax) Filed June 17, 2002; published July 3, 2002; effective July 2, 2002, except for the addition of section 89.3 which was effective June 17, 2002 (emergency adoption). Filed August 26, 2002; published September 11, 2002; effective September 11, 2002 (permanent adoption). Need: This rule reflected the statutory increase in the rate of tobacco products excise tax that was effective July 2, 2002, and effectuated the floor tax on tobacco products in inventory as of the close of business on July 1, 2002. This rule was previously reviewed as part of the Department's 2007 Rule Review published in the State Register on January 3, 2007. As a result of that review of the 2002 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on October 24, 2007. (It is noted that a portion of this rule was subsequently amended, deleting an outdated rate of tax for tobacco products [TAF-49-10-00002-A].) Legal Basis: Tax Law sections 171, subd. First; 471-b; 471-c; 472; 473-a; and 475 (not subdivided); and L. 2002 ch. 85.

(TAF-27-02-00006-A)

13. 20 NYCRR Parts 74, 80, and 82 (Increased Rate of New York City Excise Tax on Cigarettes) Filed June 28, 2002; published July 17, 2002; effective July 2, 2002, except for the amendment to section 74.2 which was effective June 28, 2002 (emergency adopt). Filed September 17, 2002; published October 2, 2002; effective September 17, 2002 (emergency re-adopt). Filed October 29, 2002; published November 13, 2002; effective November 13, 2002 (permanent adopt). Need: This rule reflected the statutory increase in the rate of New York City excise tax on cigarettes that was effective on June 30, 2002, ensured that the commissions paid by New York State to licensed cigarette agents were preserved notwithstanding the New York City tax rate increase and more realistically reflected the basic cost of cigarettes in the cigarette marketing standards illustrations. (It is noted that portions of this rule have been amended to delete obsolete references to the 75 cent cigarette tax stamp and packages of 10 cigarettes to conform to section 1399-gg of the Public Health Law [TAF-48-07-00006-A]. In addition, portions of this rule have been subsequently amended based on Chapter 57, Part RR-1 of the Laws of 2008 [TAF-24-08-00006-A] and Chapter 134 of the Laws of 2010, Part D [TAF-35-10-00003-A], both affecting the New York State rate of tax.) This rule was previously reviewed as part of the Department's 2007 Rule

Review published in the State Register on January 3, 2007. As a result of that review of the 2002 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on September 12, 2007. Legal Basis: Tax Law sections 171, subd. First; and 475 (not subdivided); and L. 2002, ch. 93 and New York City Local Law 10, enacted June 30, 2002.

(TAF-37-02-00005-A)

14. 20 NYCRR Subparts 5-4 and 20-7 and section 106.3 (Security Training Tax Credit) Filed February 14, 2007; published/effective March 7, 2007. Need: This rule provides a credit proration rule where a qualified security officer is not employed for a full year. Legal Basis: Tax Law, sections 26(a); 171, subd. First; 697(a); and 1096(a).

(TAF-52-06-00008-A)

15. 20 NYCRR Sections 3-3.2, 4-4.3, and 6-2.7, renumbering of section 4-4.7 to section 4-4.8 and addition of new section 4-4.7 (Repurchase Agreements and Securities Lending Agreements held by Registered Securities Brokers and Dealers) Filed December 11, 2007; published/effective December 26, 2007 and applicable to reports required to be filed, without regard to extensions of time to file, on or after January 15, 2008. Need: This rule provided that repurchase agreements and securities lending agreements held by registered securities brokers or dealers may not be considered investment capital so that the income and expenses from these agreements must be included in the computation of business income for such taxpayers. Legal Basis: Tax Law, sections 171, subd. First; and 1096(a).

(TAF-43-07-00015-A)

16. 20 NYCRR Part 90 (Tobacco Products Wholesale Dealers' Informational Returns) Filed December 11, 2007; published December 26, 2007; effective December 26, 2007. Need: This rule required licensed wholesale dealers that are not also distributors of tobacco products to file new monthly informational returns with the Department detailing their purchases, sales, and prices of such products. Legal Basis: Tax Law sections 171, subdivision First; 474, subdivision (4); and 475, (not subdivided).

(TAF-43-07-00003-A)

17. 9 NYCRR Parts 186 and 191 (Procedures for Conducting Market Value Surveys) Filed March 4, 1997, published/effective March 19, 1997. Need: This rule provided for increased reliance upon sales and local valuation data in the computation of State equalization rates by the State Board of Real Property Services (whose rule-making functions were transferred to the Department by L.2010, c.56, Pt. W). This rule was previously reviewed as part of the 2002 Rule Review of the State Board of Real Property Services. As a result of that review, a notice indicating that the rule would be continued without modification was published in the State Register on January 23, 2002. Legal Basis: Real Property Tax Law, sections 202(1)(1), 1200.

(RPS-48-96-00024-A)

18. 9 NYCRR Part 188 (Minimum qualifications of Appointed Assessors and County Directors). Filed May 20, 1997, published/effective June 4, 1997. Need: This rule modified the procedures by which Appointed Assessors and County Directors of Real Property Tax Services obtain approval of their qualifications from the State Board of Real Property Services (whose rule-making functions were transferred to the Department by L.2010, c.56, Pt. W). This rule was previously reviewed as part of the 2002 Rule Review of the State Board of Real Property Services. As a result of that review, a notice indicating that the rule would be continued without modification was published in the State Register on January 23, 2002. Legal Basis: Real Property Tax Law, sections 202(1)(1), 312, 1530.

(RPS-10-97-00020-A)

19. 9 NYCRR Parts 197 and 200 (Assessing Special Franchises and Establishing Railroad Ceilings). Filed May 20, 1997, published/effective June 4, 1997. Need: This rule revised the procedures relating to the determination of annual charges for special franchise assessments and railroad ceilings established by the State Board of Real Property Services (whose rule-making functions were transferred to the Department by L.2010, c.56, Pt. W). This rule was previously reviewed as part of the 2002 Rule Review of the State Board of Real Property Services. As a result of that review, a notice indicating that

the rule would be continued without modification was published in the State Register on January 23, 2002. Legal Basis: Real Property Tax Law, sections 202(1)(1), 489-q, 489-nn and 606; State Finance Law section 97-jj.

(RPS-12-97-00004-A)

20. 9 NYCRR Part 188 (Training for Assessors). Filed July 22, 1997, published/effective August 6, 1997. Need: This rule revised the basic course of training for Assessors, as prescribed by the State Board of Real Property Services (whose rule-making functions were transferred to the Department by L.2010, c.56, Pt. W), and expanded reimbursement provisions. This rule was previously reviewed as part of the 2002 Rule Review of the State Board of Real Property Services. As a result of that review, a notice indicating that the rule would be continued without modification was published in the State Register on January 23, 2002. Legal Basis: Real Property Tax Law, sections 202(1)(1), 318.

(RPS-11-97-00030-A)

21. 9 NYCRR Part 186 (State equalization program). Filed November 3, 1997, published/effective November 19, 1997. Need: This rule related to the use of local valuation data in the computation of State equalization rates by the State Board of Real Property Services (whose rule-making functions were transferred to the Department by L.2010, c.56, Pt. W), and generally clarified the framework for the establishment of equalization rates and the review of complaints. This rule was previously reviewed as part of the 2002 Rule Review of the State Board of Real Property Services. As a result of that review, a notice indicating that the rule would be continued without modification was published in the State Register on January 23, 2002. Legal Basis: Real Property Tax Law, sections 202(1)(1), 1200.

(RPS-39-97-00003-A)

22. 9 NYCRR Part 186 (State equalization program). Filed April 23, 2002, published/effective May 8, 2002. Need: This rule enhanced the procedures relating to complaints against tentative State equalization rates filed by municipalities. This rule was previously reviewed as part of the 2007 Rule Review of the State Board of Real Property Services (whose rule-making functions were transferred to the Department by L.2010, c.56, Pt. W). As a result of that review, a notice indicating that the rule would be continued without modification was published in the State Register on July 11, 2007. Legal Basis: Real Property Tax Law, sections 202(1)(1), 1202, 1204, 1206, 1208 and 1210.

(RPS-08-02-00009-A)

23. 9 NYCRR Part 201 (Payment of Maintenance Aid). Filed April 23, 2002, published/effective May 8, 2002. Need: This rule made amendments to conform to various statutory changes concerning the payment of maintenance aid by the State to assessing units. This rule was previously reviewed as part of the 2007 Rule Review of the State Board of Real Property Services (whose rule-making functions were transferred to the Department by L.2010, c.56, Pt. W). As a result of that review, a Rule Review notice indicating that the rule would be continued without modification was published in the State Register on July 11, 2007. Legal Basis: Real Property Tax Law, sections 202(1)(1) and 1573.

(RPS-08-02-00008-A)

24. 9 NYCRR Part 189 (Tax maps). Filed November 26, 2002, published/effective December 11, 2002. Need: This rule relaxed submission and approval requirements for converting traditional tax maps into a digital data format. This rule was previously reviewed as part of the 2007 Rule Review of the State Board of Real Property Services (whose rule-making functions were transferred to the Department by L.2010, c.56, Pt. W). As a result of that review, a notice indicating that the rule would be continued without modification was published in the State Register on July 11, 2007. Legal Basis: Real Property Tax Law, sections 202(1)(1) and 503(1)(b).

(RPS-26-02-00013-A)

25. 9 NYCRR Part 200 (Annual reports of railroad companies). Filed March 26, 2007, published/effective April 11, 2007. Need: This rule revised the schedule for filing annual reports with the State Board of Real Property Services (whose rule-making functions were trans-

ferred to the Department by L.2010, c.56, Pt. W). Legal Basis: Real Property Tax Law, sections 202(1)(1), 489-q, 489-nn.

(RPS-40-06-00007-A)

26. 9 NYCRR Part 197 (Annual reports of special franchise owners). Filed March 26, 2007, published/effective April 11, 2007. Need: This rule revised the schedule for filing annual reports with the State Board of Real Property Services (whose rule-making functions were transferred to the Department by L.2010, c.56, Pt. W). Legal Basis: Real Property Tax Law, sections 202(1)(1) and 604.

(RPS-40-06-00008-A)

27. 9 NYCRR Part 190 (License Fees). Filed August 6, 2007, published/effective August 22, 2007. Need: This rule lowered the annual license fee charged to school districts which subscribe to the Real Property System developed by the State Board of Real Property Services (whose rule-making functions were transferred to the Department by L.2010, c.56, Pt. W). Legal Basis: State Finance Law, section 97-kk and Real Property Tax Law, section 202(1)(1).

(RPS-21-07-00002-A)

28. 9 NYCRR Part 188 (Training for assessors and county directors). Filed August 6, 2007, published/effective August 22, 2007. Need: This rule revised the basic course of training prescribed for assessors and directors of county real property tax service agencies by the State Board of Real Property Services (whose rule-making functions were transferred to the Department by L.2010, c.56, Pt. W). Legal Basis: Real Property Tax Law, sections 202(1)(1), 310(5), 318 and 1532.

(RPS-21-07-00003-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.ny.gov

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 5, 2011, 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 2006 and 2001. Those regulations are set forth below:

Rules Adopted in 2006

A. 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).

B. 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 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.

C. 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

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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).

As of March 1, 2011, OTDA had not received substantive comments regarding its Rule Review published in the New York State Register on January 5, 2011.

OTDA is not considering amendments that may impact the regulatory changes that were adopted in 2006 and 2001. At this time, OTDA has determined that no additional modifications need to be made to its regulations adopted in 2006 and 2001, as amended.

OTDA has determined that in the ensuing calendar year, it should review its regulations from Title 18 NYCRR adopted in 2007, 2002 and 1997. These regulations from 2007, 2002 and 1997, 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, 2012.

Rules Adopted in 2007

1. TDA-41-06-00030 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. TDA-42-06-00015 Home Energy Assistance Program

Amended 18 NYCRR § 358-2.2(a)(14) to update the adequate notice requirements for Home Energy Assistance Program (HEAP) determinations.

Analysis of the need for the rule: The amendments were developed to update the adequate notice requirements to reflect the current policy and practice of providing budget information in HEAP notices that are based upon budget computations.

Legal basis for the rule: SSL sections 20(3)(d), 34(3)(f), 97 and 131(1).

3. TDA-37-06-00011 Congregate Care Level 3 Enhanced Residential Care

Amended 18 NYCRR § 352.8(b)(4), (i), (ii), (5), (c)(1) (ii) and (d); and added 18 NYCRR § 352.8(b)(4)(iii) to authorize the provision of an allowance for temporary assistance recipients residing in congregate care level 3 facilities.

Analysis of the need for the rule: This rule was developed to authorize the provision of an allowance for temporary assistance recipients residing in congregate care level 3 facilities in order to implement the reclassification adult homes and enriched housing programs certified by the Department of Health from congregate care level 2 to level 3.

Legal basis for the rule: SSL sections 20(3)(d), 34(3)(f), 131(1), 131-o and 209.

Rules Adopted in 2002

4. TDA-37-01-00006 Applications for Safety Net Assistance

Amended 18 NYCRR § 350.4(a) and (b) to describe the circumstances when a person who is no longer eligible for family assistance because of the durational limits must apply for safety net assistance in order to be eligible for such assistance.

Analysis of the need for the rule: This rule was developed to describe the circumstances when a person who is no longer eligible for family assistance because of the durational limits must apply for safety net assistance in order to be eligible for such assistance. Note: section 350.4 has been subsequently amended.

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

5. TDA-02-02-00005 Removals

Amended 18 NYCRR § 352.7 (o) to revive regulations concerning the circumstances under which a social services district may remove a public assistance recipient to another state or country.

Analysis of the need for the rule: This rule was developed to revive regulations concerning the circumstances under which a social services district may remove a public assistance recipient to another state or country. Note: section 352.7(o) has been subsequently amended.

Legal basis for the rule: SSL sections 20(3)(d), 34(3)(f) and 121.

6. TDA-01-02-00005 Home Energy Assistance Program (HEAP)

Amended 18 NYCRR §§ 358-3.5(b)(4), 393.2(b), 393.3(a)-(b), 393.4(c)-(d) and 393.5(a), (c) and (e) to conform the regulations concerning the home energy assistance program (HEAP) with current policies and procedures of OTDA.

Analysis of the need for the rule: This rule was developed to conform the regulations concerning the home energy assistance program (HEAP) with OTDA's policies and procedures.

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

7. TDA-29-02-00010 Refugee Cash Assistance and Medical Assistance Programs

Amended 18 NYCRR Part 373 to implement federal regulations concerning operation of the refugee cash assistance program and the refugee medical assistance program.

Analysis of the need for the rule: This rule was developed to implement federal regulations concerning operation of the refugee cash assistance program and the refugee medical assistance program.

Legal basis for the rule: SSL sections 20(3)(d), 34(3)(f), 358(3) and 358(4).

8. TDA-01-02-00006 Domestic Violence Waivers

Amended 18 NYCRR § 351.2 to implement federal requirements concerning the establishment of domestic violence service plans and review of domestic violence waivers.

Analysis of the need for the rule: This rule was developed to implement federal requirements concerning the establishment of domestic violence service plans and review of domestic violence waivers.

Legal basis for the rule: SSL sections 20(3)(d), 34(3)(f), 131-u and 349-a.

9. TDA-50-01-00004 Desk Reviews of Child Support Payments

Added 18 NYCRR § 347.25 to publish regulations on the conduct of desk reviews. The desk reviews involve an examination of public assistance and child support enforcement case records that will result in a written determination to the requestor of how the collections were distributed.

Analysis of the need for the rule: This rule was developed to formalize the procedures for the conduct of desk reviews upon the request of current and former recipients of public assistance who wish to obtain an accounting of the distribution of child support collected for months during which they received assistance payments and who believe that such distribution was incorrect.

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

Rules Adopted in 1997

10. SCS-07-96-00005 Shelters for Adults

Amended 18 NYCRR Part 491 to ease the burden on social services districts and other operators of shelters for adults in relation to the operation of such shelters.

Analysis of the need for the rule: The regulatory amendments, among other things, expanded the options for granting waivers of non-statutory requirements of 18 NYCRR Parts 485, 486 and 491 relating to shelters for adults; eliminated the maximum capacity for shelters for adults; increased the time period during which a shelter for adults could be operated above the certified capacity; and repealed environmental standards that were duplicative of local codes or other State requirements.

Legal basis for the rule: SSL §§ 20(3)(d), 34(3)(f), 460 and 461.

11. SCS-13-96-00003 Personal Interviews for Applicants

Amended 18 NYCRR § 350.3(c) to require that an interview with an applicant for public assistance be scheduled within seven rather than five working days after an application is submitted.

Analysis of the need for the rule: The regulatory amendment assisted social services districts in the effective and efficient administration of public assistance programs by providing additional time for districts to schedule interviews with public assistance applicants.

Legal basis for the rule: SSL §§ 17, 20(3)(d), 34(3)(f), 158(a) and 355(3).

12. SCS-25-96-00016 Temporary Housing Assistance for Homeless Families

Amended 18 NYCRR Parts 900 and 1000 to consolidate and modify existing requirements for family shelters and shelters for pregnant women.

Analysis of the rule: The regulatory amendment provided administrative flexibility to, and reduced the administrative burden on, social services districts and homeless shelter providers by consolidating and modifying existing requirements for family shelters and shelters for pregnant women. Note: Sections of Part 900 have been subsequently amended.

Legal basis for the rule: SSL §§ 20(3)(d), 34(3)(f) and 153, Chapter 562 of the Laws of 1953, and Chapter 53 of the Laws of 1992.

13. SCS-31-96-00001 Copies of Documents for Fair Hearings

Amended 18 NYCRR §§ 358-3.7 and 358-4.2 to set forth standards for making documents available to appellants in fair hearings.

Analysis of the rule: The regulatory amendments relieved social services districts from costly mandates by conforming Office regulations to federal requirements regarding the provision of copies of documents from the case file by social services districts to appellants at fair hearings. Note: Section 358-4.2 has been subsequently amended.

Legal basis for the rule: SSL §§ 20(3)(d), 34(3)(f) and 22(8).

14. SCS-41-96-00017 Food Stamp Program

Amended 18 NYCRR §§ 359.9, 387.1, 387.2, 387.9, 387.10, 387.11, 387.12, 387.14 and 387.19 to implement the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193) relating to the food stamp program.

Analysis of the rule: The regulatory amendments were developed to implement the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) relating to the food stamp program. Note: Sections 387.1, 387.9, 387.10, 387.12 and 387.14 were subsequently amended.

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

15. SCS-11-97-00019 1996 Self-Support Reserve and Child Support Standards Chart

Amended 18 NYCRR § 347.10 to reflect the 1996 self-support reserve and child support standard chart.

Analysis of the rule: The regulatory amendment advised the social services districts and the family courts of the correct amount of the 1996 self-support reserve when calculating the basic child support obligation for parties in child support proceedings. This was consistent with federal requirements that States implement child support standards that were used in the calculation of child support obligations and that the standards took into account the non-custodial parent's income. Note: Section 347.10 has been subsequently amended.

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

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

