

RULE REVIEW

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 1998, 2003 and 2008 which must be reviewed in calendar year 2013. Public comment on the continuation or modification of these rules is invited. Comments should be received by April 1, 2013. Comments may be directed to: Brian Callahan, Office of Counsel, A.E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210-8001.

CMC-52-97-00006 Amendment of sections 7040.5 and 7621.6(c) of Title 9 NYCRR

Analysis of the need for the rule: The rule is needed to provide greater flexibility regarding the number of toilets, sinks, and showers that must be provided in multiple occupancy housing areas and conform minimum square footage requirements.

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

CMC-37-98-00001 Amendment of sections 7004.6 and 7025.4 of Title 9 NYCRR

Analysis of the need for the rule: The rule is needed to provide local correctional facility administrators with greater flexibility regarding the disposition of contraband found in incoming correspondence and packages.

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

CMC-07-98-00005 Amendment of section 7006.8(a) and (h) of Title 9 NYCRR

Analysis of the need for the rule: The rule is needed to extend the time frames for conducting disciplinary hearings and to clarify that an inmate must receive a hearing within 15 days of receipt of a misbehavior report and must receive at least 24 hours prior written notice of the hearing.

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

CMC-19-98-00015 Amendment of sections 7006.9(a) and 7008.3(a) of Title 9 NYCRR.

Analysis of the need for the rule: The rule is needed to authorize restriction of a portion of an inmate's weekly visitation time as a sanction for misbehavior.

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

CMC-07-98-00006 Amendment of section 7008.4 of Title 9 NYCRR.

Analysis of the need for the rule: The rule is needed to specify that initial visits are non-contact visits.

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

CMC-24-98-00024 Amendment of section 7013.8(a) and (b); repeal of Section 7013.9; and addition of new section 7013.9 to Title 9 NYCRR.

Analysis of the need for the rule: The rule is needed to reduce the instances in which an inmate's classification status must be reviewed and provide greater flexibility regarding the housing of inmates pending completion of classification.

Legal basis for the rule: Correction Law sections 45(6) and 500-(b)(6).

CMC-13-98-00003 Repeal of Part 7014 of Title 9 NYCRR.

Analysis of the need for the rule: The rule is needed to repeal unnecessary provisions.

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

CMC-13-98-00002 Repeal of Part 7017 and addition of new Part 7017 to Title 9 NYCRR.

Analysis of the need for the rule: The rule is needed to streamline the requirements of Part 7017 and eliminate unnecessary provisions.

Legal basis for the rule: Correction Law section 45(6) and (9).

CMC-11-98-00005 Amendment of section 7032.5(d) of Title 9 NYCRR.

Analysis of the need for the rule: The rule is needed to streamline the internal operations of the Citizens' Policy and Complaint Review Council in order to improve the timeliness of its determinations.

Legal basis for the rule: Correction Law sections 42(b)(1) and 45(6).

CMC-28-98-00004 Amendment of section 7040.5 of Title 9 NYCRR.

Analysis of the need for the rule: The rule is needed to make technical conforming changes.

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

CMC-04-98-00005 Amendment of sections 7003.3, 7003.4, 7003.6, 7009.1, 7009.5, 7010.2, 7010.5, 7013.2, 7013.9, 7028.3, 7040.4, 7064.4, 7064.8, 7070.2, 7070.6, 7200.2, 7200.3, 7200.6, 7400.4, 7400.6, 7400.11, 7602.4, 7602.5 and 7651.3 of Title 9 NYCRR.

Analysis of the need for the rule: The rule is needed to make technical corrections to various provisions of the Commission's regulations.

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

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 2008, 2003 and 1998 and invites public comment on the continuation or modification of such rules. All section and part references are to Title 8 of the New York Code of Rules and Regulations. Comments should be sent to the respective agency representative listed below for each particular rule, and must be received within 45 days of the date of publication of this Notice.

A. CALENDAR YEAR 2008

OFFICE OF P-12 EDUCATION

100.8 Local high school equivalency diploma

Description of rule: The rule allows boards of education specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner. The rule was extended for one year in 2011 and again in 2012 and is currently set to expire June 30, 2013.

Need for rule: The rule is consistent with statutory authority and necessary to implement Regents policy. The rule provides for continuance of the External Diploma Program, which is a complete assessment program that allows adults to demonstrate and document the lasting outcomes and transferable skills for which a high school diploma is awarded.

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

175.41 Average Interest Rates Applied to Capital Debt Incurred by the City of New York for School Purposes

Description of rule: The rule provides an appropriate methodology for computation of the true cost of debt issued by New York City for the purpose of financing school construction.

Need for rule: The rule is needed to align the Commissioner's regulations with statute and so that New York City can plan its capital expenditures and issue debt to fund them.

Legal basis for rule: Education Law sections 207(not subdivided) and 3602(6)(e)(1).

100.2(x) Unaccompanied youth

Description of rule: The rule clarifies the definition of "unaccompanied youth" in the Commissioner's Regulations and Subtitle B of Title VII of the federal McKinney-Vento Homeless Education Assistance Act (42 U.S.C. sections 11431 et seq.), as amended. The rule also clarifies that disputes regarding transportation or a child's status as a homeless child or unaccompanied youth are includable as disputes that are subject to prompt resolution procedures in accordance with 42 U.S.C. section 11432(g)(3)(E).

Need for rule: The rule is needed to ensure State and school districts comply with the requirements of the McKinney-Vento Act.

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2), 3202(1) and (8), 3209(1)(a) and (7) and 3713(1) and (2).

100.15 Reasonable and necessary expenses of distinguished educators

Description of rule: The rule establishes criteria for the determination of reasonable and necessary expenses of members of school quality review teams and joint intervention teams, and distinguished educators, who are appointed by the Commissioner to assist low performing districts in improving their academic performance.

Need for rule: The rule is necessary to implement Chapter 57 of the Laws of 2007, which requires the development of an enhanced accountability system for New York State's schools and districts and includes the development of a system of support and intervention in low performing schools. The rule is consistent with statutory authority and Regents policy.

Legal basis for rule: Education Law sections 207 (not subdivided) and 211-b(2)(a) and (b) and 211-c(7) and Chapter 57 of the Laws of 2007.

156.3(h) Idling school buses

Description of rule: The rule prescribes requirements for minimizing the idling of school buses and other vehicles owned or leased by school districts.

Need for rule: The rule is necessary to implement Education Law section 3637, as added by Chapter 670 of the Laws of 2007, which requires the Commissioner to promulgate regulations requiring school districts to minimize, to the extent practicable, the idling of the engine of any school bus and other vehicles owned or leased by the school district while such bus is parked or standing on school grounds, or in front of any school.

Legal basis for rule: Education Law sections 207(not subdivided), 3624(not subdivided) and 3627(1), (2) and (3) and Chapter 670 of the Laws of 2007.

Parts 175, 100, 110 & 144 State aid

Description of rule: The rule implements the Foundation Aid provisions enacted by Chapter 57 of the Laws of 2007, brings the Commissioner's Regulations into compliance with other statutory changes to the law, and eliminates obsolete provisions.

Need for rule: The rule is needed to repeal obsolete State Aid provisions and conform the Commissioner's regulations with the statutory changes to Education Law section 3602 made by Chapter 57 of the Laws of 2007, which changed the school funding system by replacing approximately 30 State Aid categories with a single Foundation Aid.

Legal basis for rule: Education Law sections 101(not subdivided), 207 (not subdivided), 305(1), (2) and (20) and 3602, and Chapter 57 of the Laws of 2007.

136.3 Dental certificates

Description of rule: The rule prescribes requirements for school districts to request a dental health certificate from each student in the public schools at designated intervals.

Need for rule: The rule is consistent with statutory authority and is necessary to implement Education Law 903, as amended by Chapter 281 of the Laws of 2007.

Legal basis for rule: Education Law section 207(not subdivided), 305(1) and (2), and 903(2)(a) and (b), (3)(b) and (4).

177.1, 200.1, 200.3 through 200.7, 200.16 and 201.11 Special education programs and services for students with disabilities

Description of rule: The rule ensures that chairpersons of committees on special education are appropriately qualified, and establishes procedures when a district receives a request for referral of a student for an initial evaluation for special education services.

Need for rule: The rule conforms the Commissioner's Regulations to Chapter 378 of the Laws of 2007, the Individuals with Disabilities Education Act (IDEA) (20 USC 1400 et seq.), as amended by Public Law 108-446, and the amendments to 34 CFR Part 300.

Legal basis for rule: Education Law sections 207 (not subdivided), 3208(1-5), 3214(3), 3602-c, 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).

177.2 Disputes of Reimbursement Claims for Special Education Services Provided to Nonresident Parentally-Placed Nonpublic School Students with Disabilities

Description of rule: The rule prescribes a dispute resolution mechanism regarding claims for reimbursement of costs for special education provided to a nonresident student with a disability, who is parentally placed in a nonpublic school located in a school district other than the school district in which the student legally resides.

Need for rule: The rule implements Education Law section 3602-c(7), as amended by Chapter 378 of the Laws of 2007.

Legal basis for rule: Education Law sections 207(not subdivided) and 3602-c(7) and section 4 of Chapter 378 of the Laws of 2007.

200.4 & 200.5 State forms for Individualized Education Programs, Meeting Notice and Prior Written Notice (Notice of Recommendation)

Description of rule: The proposed amendment was first adopted as an emergency action at the October 2008 Regents meeting to extend from January 1, 2009 to September 1, 2009, the initial effective date for required use of State forms for IEPs, meeting notice and prior written notice (notice of recommendation). In response to public comment, the rule was subsequently revised and permanently adopted in March 2009 to further extend the initial effective date to commence with the 2011-12 school year, in order to provide additional time for cost-effective conversion to the State's required forms and for the State to make professional development available through no-cost means such as informational materials, web-conferencing and professional development through its technical assistance networks.

Need for rule: The rule is consistent with statutory authority and ensures consistency in procedural safeguards.

Legal basis for rule: Education Law sections 207 (not subdivided), 4402(1-7), 4403(3), and 4410(13).

100.14 Excelsior Scholars

Description of rule: The rule clarifies procedures for the nomination of eligible students in mathematics and science who have completed seventh grade to participate in the Excelsior Scholars program pursuant to Education Law section 3641-a.

Need for rule: The rule is necessary to implement Education Law section 3641-a, as added by Chapter 57 of the Laws of 2007.

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2) and 3641-a(1), (2) and (3).

Agency Representative:

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

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

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OFFICE OF HIGHER EDUCATION

80-5.5 Waivers of teacher certification requirements

Description of rule: The rule strengthens the current regulatory standards relating to the approval process for the employment of retired persons in public school districts other than the City of New York, boards of cooperative educational services and county vocational educational and extension board prescribed under Section 211 of the Retirement and Social Security Law.

Need for rule: The rule is needed to ensure that such standards conform with legislative intent and to provide transparency and effectiveness in the approval process.

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 3003(1), 3004(1) and Retirement and Social Security Law sections 210(not subdivided) and 211(2) and (8).

145-2.2 Tuition Assistance Program

Description of rule: The rule updates the academic achievement requirements (minimum credits and minimum cumulative grade point average) a student must meet before being certified for a payment on his or her tuition assistance program (TAP) award including such an award for accelerated study.

Need for rule: The rule is needed to conform the Commissioner's Regulations to changes made to subdivisions (2) and (6) of section 665 of the Education Law by Parts E-1 and E-2 of section 1 of Chapter 57 of the Laws of 2007.

Legal basis for rule: Education Law sections 207 (not subdivided), 602(1) and (2), 661(2), and 665(2) and (6).

3.50(c) Honorary degrees

Description of rule: The rule establishes the list of honorary associate degrees that community colleges and other New York degree-granting institutions may award.

Need for rule: The rule implements the provisions of Chapter 324 of the Laws of 2006 that amended Education Law § 6306 by adding a new subdivision 5-b to authorize honorary degrees "[s]ubject to the approval of the Board of Regents."

Legal basis for rule: Sections 207 (not subdivided), 210 (not subdivided), 214 (not subdivided), 215 (not subdivided), 305 (not subdivided) and 6306(5-b) of the Education Law.

Part 30 & 100.2 Teacher tenure determinations

Description of rule: The rule establishes minimum standards and procedures for teacher tenure determinations for teachers in all school districts and boards of cooperative educational services ("BOCES") in New York State

Need for rule: The rule is needed to implement the requirements of

Section 3012-b of the Education Law, as amended by Chapter 57 of the Laws of 2008.

Legal basis for rule: Education Law sections 207 and 3012-b and Chapter 57 of the Laws of 2008.

80-3.7 Certification for individual evaluation

Description of rule: The rule extends the expiration date for applicants seeking certification through the individual evaluation pathway in all classroom titles except childhood education from February 1, 2009 to February 1, 2012, thus extending the time that the individual evaluation pathway remains available for these applicants.

Need for rule: The rule is needed to facilitate the Department's continuing ability to certify a sufficient number of properly qualified candidates to fill vacant teaching positions in the State's public schools and allows the Board of Regents and the Department to monitor and assess teacher supply and demand data for three additional years, from 2009 to 2012.

Legal basis for rule: Education Law sections 207, 305(1), 3001(2), 3004(1) and 3006(1)(b).

52.21, 80-1.12 and Subpart 57-3 Autism training

Description of rule: The rule requires teachers seeking certification in special education titles to have course work or training in the needs of students with autism and establishes standards for Education Department approval of providers of course work or training in autism.

Need for rule: The rule implements the requirements of Education Law section 3004 (4) and (5), as added by Chapter 143 of the Laws of 2006.

Legal basis for rule: Education Law sections 207(not subdivided), 215(not subdivided), 208 (not subdivided), 212(3), 305(1) and (2), 3004(1),(4) and (5) and 3007 (not subdivided).

52.36 and 52.37 Speech/language pathology

Description of rule: The rule updates the education, experience, examination and endorsement provisions for licensure of speech-language pathologists and audiologists.

Need for rule: The rule conforms New York State requirements for licensure as a speech pathologist or audiologist to federal Medicaid requirements, expands opportunities for qualified speech-language pathologists and audiologists in other jurisdictions to become licensed in New York State, and addresses shortages in the number of speech-language pathologists that exist in New York State school districts.

Legal basis for rule: Education Law sections 207(not subdivided), 212(3), 6504(not subdivided), 6506(5) and (6), 6507(1),(2)(a) and (4)(a), 8206(2), (3) and (4).

69.1, 69.2 and 69.3 Architectural endorsement

Description of rule: The rule aligns the New York State requirements for admission into the Architect Registration Examination with national standards and modifies the endorsement provisions for applicants licensed in another jurisdiction prior to 1983 to conform to current practice.

Need for rule: The rule is consistent with statutory authority and aligns with national standards.

Legal basis for rule: Education Law sections 207(not subdivided); 6504(not subdivided); 6506(1) and (6)(c); 6507(2)(a); and 7304(1)(3), (2) and (3).

Agency Representative:

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

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

52.38, 52.39, 52.40, 79-13.1, 79-14.1 and 79-15.1 Clinical Lab Technology

Description of rule: The rule establishes educational requirements for licensure as a clinical laboratory technologist or cytotechnologist and for certification as a clinical laboratory technician, and standards for registered college preparation programs for these professions.

Need for rule: The rule is necessary to implement Education Law sections 8605(2)(b), which authorizes the State Education Department to establish implementing standards for education that must be successfully completed by an applicant to qualify for a license as a cytotechnologist, and section 8606(2), which authorizes the State Education Department to establish implementing standards for education that must be successfully completed to qualify for certification as a clinical laboratory technician.

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

61.15 and 61.19 Dental continuing education

Description of rule: The rule increases the amount of continuing education required of licensed dentists during each triennial registration period and requiring certification in cardiopulmonary resuscitation and completion of coursework in New York State jurisprudence and ethics.

Need for rule: The rule is consistent with statutory authority and conforms the Commissioner's regulations to section 4 of Chapter 183 of the Laws of 2007.

Legal basis for rule: Education Law sections 207(not subdivided); 6506(1); 6507(2)(a), 6604-a(2), 6604-a(6), 6611(10), and section 4 of Chapter 183 of the Laws of 2007.

62.5 Veterinarian technology

Description of rule: The rule allows students completing registered or accredited programs of education for veterinary technology admission to the licensing examination for veterinary technicians within the final six months of professional study.

Need for rule: The rule is needed to align examination admission requirements in this field with practice in other states and thereby remove the competitive disadvantage that New York students confront.

Legal basis for rule: Education Law sections 207(not subdivided); 6504 (not subdivided); 6506(1); 6507(2)(a) and (3)(a); and 6711(5).

52.41 and Subparts 79-13, 79-14 & 79-15 Clinical laboratory technology

Description of rule: The rule establishes standards for licensure as a clinical laboratory technologist or a cytotechnologist and certification as a clinical laboratory technician or a histological technician

Need for rule: The rule is consistent with statutory authority and implements the provisions of Chapter 204 of the Laws of 2008, which amended Article 165 of the Education Law.

Legal basis for rule: Education Law sections 207(not subdivided); 210 (not subdivided); 212(3); 6501 (not subdivided); 6504(not subdivided); 6507(2)(a), (3)(a), and (4)(a); 6508(1), 8606-a(2) and (3); 8610(3).

150.4 High needs nursing

Description of rule: The rule permits online nursing programs to be eligible for state aid

Need for rule: The rule is consistent with statutory authority and conforms to Chapter 57 of the Laws of 2008, which authorizes the Commissioner of Education to award state aid to certain eligible independent colleges and universities for high needs nursing programs, including those institutions that offer online nursing programs via the internet.

Legal basis for rule: Education Law sections 207, 215 and 6401-a and Chapter 57 of the Laws of 2008.

24-7 Professional license restoration

Description of rule: The rule specifies that an applicant's response to the report and recommendation made by the Committee on the Professions (COP) shall not contain any new evidentiary material.

Need for rule: The rule is consistent with statutory authority and is needed to provide a more orderly and effective review of evidentiary information submitted in support of a restoration application.

Legal basis for rule: Education Law Sections 207, 6506(1) and 6511. 63.9 Pharmacy flu shots

Description of rule: The rule establishes criteria for the certification of licensed pharmacists and requirements for the administration of immunization agents.

Need for rule: The rule is consistent with Education Law section 6801(2), as added by Chapter 563 of the Laws of 2008, which authorizes certified pharmacists to administer immunizing agents and authorizes the Commissioner of Education to promulgate regulations regarding training and reporting requirements.

Legal basis for rule: Education Law §§ 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6527(7), 6801(1),(2) and (3), 6802(22), 6828(1) and (2), and 6909(7) of the Education Law, and Chapter 563 of the Laws of 2008.

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

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Albany, NY 12234

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OFFICE OF CULTURAL EDUCATION

Section 3.27 of the Rules of the Board of Regents, regarding museum collections management policies

Description of rule: The rule clarifies restrictions on deaccessioning of items in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities.

Need for rule: rule is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 216(not subdivided) and 217(not subdivided).

90.7 Public librarian professional certificates

Description of rule: The rule ensures that public librarian professional certificate holders certified on or after January 1, 2010 will participate in continuous professional development.

Need for rule: The rule is consistent with Regents policy to promote excellence in New York's library workforce at all stages and levels

Legal basis for rule: Education Law sections 207(not subdivided), 208(not subdivided), 254(not subdivided), 272(1)(k)(3) and 279(not subdivided)

90.18 School library systems

Description of rule: The rule amends terminology primarily relating to the functions of school library systems to accurately reflect the current operations of such library systems and to omit references to obsolete practices and terms; amends certain terms relating to State aid for school library systems to accurately reflect the legislative intent of section 284 of the Education Law; amends certain terminology relating to school library systems to conform such provisions of the Commissioner's Regulations to other corresponding sections of such regulations; amends the definition of a "coordinator of a school library system" to clarify that such a coordinator must possess a valid certificate as either a school administrator and supervisor (S.A.S.) or a school building leader (S.B.L.); and provides for the uniform application of the title of "Communications Coordinator" to persons serving such role in both BOCES and the Big Five city school districts, and

clarifies the role of such persons, which is to effectuate two-way communication between districts and school library systems.

Need for rule: The rule updates and clarifies certain terminology relating to the functions of and State aid for school library systems.

Legal basis for rule: Education law sections 282, 283 and 284.

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
3.2 & 4-1.5 Regents committees

Description of rule: The rule reorganizes the structure of the standing committees of the Board of Regents. Specifically, the Committee on Higher Education and Professional Practice will be separated into two committees, the Committee on Higher Education and the Committee on Professional Practice, and the Committee on Elementary, Middle, Secondary and Continuing Education and Vocational and Educational Services for Individuals with Disabilities will be separated into two committees, the Committee on Elementary, Middle, Secondary and Continuing Education (EMSC) and the Committee on Vocational and Educational Services for Individuals with Disabilities (VESID).

Need for rule: The rule is needed to conform the Rules of the Board of Regents to a reconfiguration of the standing committees of the Board of Regents. The rule was subsequently amended in 2009 to: (1) rename the EMSC Committee as the P-12 Education Committee and (2) abolish the VESID Committee and transfer its functions regarding special education for students with disabilities to the P-12 Committee and its functions concerning vocational rehabilitation to a newly established Adult Career and Continuing Education (ACCES) Committee

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

Parts 275, 276 and section 10.2(y) Ed Law § 310 appeal procedures

Description of rule: the rule revises the procedures relating to appeals to the Commissioner of Education pursuant to Education Law section 310.

Need for rule: The proposed rule is needed to clarify, update and prescribe appeal procedures and requirements, consistent with established practice.

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2), 310(not subdivided) and 311(not subdivided).

Agency Representative:

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

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Counsel and Deputy Commissioner for Legal Affairs
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OFFICE OF STATE REVIEW
Part 279 State Office Review

Description of rule: The rule revises the procedures for state-level review of impartial hearing officer determinations regarding services for students with disabilities

Need for rule: The rule is needed to clarify the procedures concerning appeals of impartial hearing officer decisions to a State Review Officer, correct citations and references and expedite and otherwise facilitate the processing of petitions for review to State Review Officers

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided), 311(not subdivided), 4403(1) and 93), 4404(2) and 4410(13)

Agency Representative:

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

Justyn Bates
Assistant Counsel and State Review Officer
Office of State Review
80 Wolf Road, 2nd Floor
Albany New York 12203
(518) 485-9373
B. CALENDAR YEAR 2003
OFFICE OF P-12 EDUCATION

Section 100.2(x) - Homeless Children and Youth.

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

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

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

Part 154 - Students With Limited English Proficiency.

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

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

Proficiency Aid and, for a large number of districts, as a condition to their receipt of other State Categorical funds and Title III, Part A LEP and Immigrant funds under The No Child Left Behind Act of 2001. The rule also provides that the learning standards for English language arts and English as a second language serve as the basis for the ELA and ESL curricula, thus strengthening and improving the bilingual education and freestanding ESL for LEP students. The amendment is geared to secure opportunities for LEP students to achieve the same educational goals and standards as the general school population. The rule is also necessary to update certain references and to delete certain outdated references and provisions.

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

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

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

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

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

Section 135.4 - Certified Athletic Trainers.

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

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

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

Section 156.3 - Requirements for school bus drivers, monitors and attendants

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

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

The State Education Department anticipates amendments in 2008 to expand upon the training requirements for school bus drivers, monitors and attendants to complete training, at least once a year, on the special needs of children with a disability, as required by Chapter 181 of the Laws of 2007.

Legal Basis for Rule: Education Law §§ 207(not subdivided) and

3624 (not subdivided), and Vehicle and Traffic Law §§ 509-g (1) and 1229-d (3) and Chapters 472, 529 and 600 of the Laws of 2002.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Need for Rule: The rule is needed to ensure State and local educational agencies (LEAs) compliance with the NCLB in order that they may be eligible to receive federal funds under Title I of the

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

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

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

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

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

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

Section 156.3 - Requirements for school bus monitors and attendants.

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

Need for Rule: The rule is needed to conform the Commissioner's Regulations to the provisions of Vehicle and Traffic Law (VTL) section 1229-d(3), as amended by Chapter 159 of the Laws of 2003. Consistent with the statute, section 156.3(c)(4) has been revised to provide that CPR instruction shall be given where such skills are required as part of the individualized education plan prepared for the student, and to further provide that any person employed as a school bus attendant serving pupils with a disabling condition on January 1, 2004 shall comply with VTL section 1229-d(3) by July 1, 2004 and that any person hired after January 1, 2004 shall complete training, instruction and testing prior to assuming their duties as a school bus attendant serving pupils with a disabling condition.

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

Section 100.5 - State Assessments and Graduation and Diploma Requirements.

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

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

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

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

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

Section 107.2 - Driver Education.

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

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

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

Sections 247.1, 247.2, 247.3 and 247.4 - Vocational Rehabilitation Program

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

Need for Rule: In recent years, The State Education Department's Office of Vocational and Educational Services for Individuals with Disabilities (VESID) has implemented mediation as part of its due process system. The time to arrange and conduct a mediation session impinges upon the deadline for arranging for an impartial hearing. The previous Commissioner's regulation reflected the 4 day time limit contained in the original, draft Federal regulation. When that regulation was finalized, the Secretary of Education discussed the need to allow time for mediation and also cited the overwhelming, nationwide support for extending that 45 day period. This rule allows VESID to use mediation, when appropriate, while preserving a due process

system that is timely, quick and equitable. The rule also restates the criteria for determining eligibility in terms of the standards in the Commissioner's regulations, and eliminates an obsolete reference to the possible review of a hearing officer decision by the deputy commissioner, that is no longer available under Federal law. In addition, the title of section 247.3 is revised to reflect the addition of mediation as a dispute resolution tool.

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

Sections 200.1, 200.4, 200.16 and 201.10 - Vocational Rehabilitation Program

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

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

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

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

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

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

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

Section 200.5(b) - Parental consent for special education services

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

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

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

Agency Representative:

Information may be obtained, and written comments may be

submitted, concerning the continuation or modification of any of the above rules by contacting:

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OFFICE OF HIGHER EDUCATION

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

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

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

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

Sections 3.47 and 3.50 - Authorization of degrees.

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

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

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

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

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

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

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

Section 52.21 - Requirements for educational leadership programs.

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

Need for Rule: Section 52.21(c) was amended effective July 13, 2006, to clarify and strengthen requirements relating to the three educational leadership certifications. For registered School Building Leader (SBL) programs only, the 2006 amendment specified that programs must inform applicants, in writing, prior to admission, that the Department requires candidates to have completed three years of classroom teaching service and/or pupil personnel service experience, in public or non-public schools N-12, to qualify for initial SBL certification.

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

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

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

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

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

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

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

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

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

Description of Rule: The amendment to Section 100.2(dd) requires that school district and BOCES professional development plans include a mentoring program to both support new classroom teachers holding Initial certificates, and to allow them to meet the mentored ex-

perience requirement for the Professional certificate. The regulation establishes required elements of the mentoring programs as well as documentation requirements for districts and BOCES. It is in effect for district professional development plans covering the period February 2, 2004 and thereafter.

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

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

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

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

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

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

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

Agency Representative:

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

John D'Agati

Deputy Commissioner for Higher Education

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OFFICE OF THE PROFESSIONS

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

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

Need for Rule: The rule is needed to establish standards for the registration of nonresident establishments that are pharmacies, and wholesalers and manufacturers of prescription drugs and devices, in accordance with section 6808-b of the Education Law, including the

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

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

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

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

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

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

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

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

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

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

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

Description of rule: The rule establishes requirements for limited permits to practice psychology, remove outdated registration requirements for educational programs leading to licensure in this profession, delete a provision concerning professional study for admission to the licensure examination, and repeal the regulatory definition of the practice of psychology which is now established in statute.

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

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

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

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

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

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

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

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

Need for Rule: Education Law section 6608 authorizes the Commissioner of Education to establish in regulation additional dental supportive services that a certified dental assistant may perform in the practice of certified dental assisting. The rule is needed to establish such appropriate additional dental supportive services that may be performed by certified dental assistants. The rule will benefit dental practice in the State by enabling the licensed dentist to use his or her staff more efficiently. The dentist will be able to delegate appropriate dental supportive services to trained staff, under the dentist's direct personal supervision. The State Board for Dentistry recommended that these additional supportive services be added to the scope of practice for certified dental assisting. In accordance with section 6608 of Education Law, all dental supportive services within the scope of practice of certified dental assisting may be performed by registered dental hygienists while under a dentist's supervision as defined in Regulations of the Commissioner of Education. Therefore, the rule is also needed to include the additional services in the scope of practice of dental hygiene and to establish the appropriate level of supervision for those services. The rule was subsequently modified in 2007.

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

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

Description of Rule: The rule requires licensed pharmacists to

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

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

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

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

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

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

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

Sections 52.15 and 78.4 - Licensure in Massage Therapy.

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

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

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

Section 68.11 - Mandatory Continuing Education Requirements for Professional Engineers.

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

Need for Rule: The rule is needed to clarify and implement the requirements of section 7211 of the Education Law, as added by Chapter 146 of the Laws of 2002. As required by statute, the rule is also needed to establish continuing education requirements when there is a lapse in practice, requirements for licensees under conditional registration, and standards for the approval of sponsors of continuing education to licensed professional engineers. In addition, the rule is needed to establish a fee for the review by the State Education Department of sponsors of courses of learning or self-study programs in order to defray the cost of such review.

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

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

Description of Rule: The rule establishes standards for the examination required for licensure as a certified public accountant, continu-

ing education requirements that licensed certified public accountants and public accountants must meet to be registered to practice in New York State, and requirements for sponsors of the continuing education.

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

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

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

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

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

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

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

Agency Representative:

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OFFICE OF CULTURAL EDUCATION

Part 179 - Apportionment of Funds to Educational Broadcast Councils.

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

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

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

Sections 185.5 and 185.11 - Local Government Records Management.

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

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

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

Agency Representative:

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

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OFFICE OF MANAGEMENT SERVICES

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

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

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

Legal Basis for Rule: Education Law § 101.

Agency Representative:

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

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OFFICE OF STATE REVIEW

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

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

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

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

Agency Representative:

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C. CALENDAR YEAR 1998

OFFICE OF P-12 EDUCATION

Section 100.12 Instructional Computer Technology Plans

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

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

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

Part 151 and 156.7 Universal Pre-Kindergarten Programs

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

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

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

155.16 Energy Performance Contracts

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

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

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

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

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

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

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

100.13 Operating Standards Aid

Description of Rule: The regulation requires school districts to develop and maintain an Operating Standards Aid plan to assist students to achieve the high learning standards and may use operating standards aid in conjunction with other resources to help students

improve. Each plan shall be approved by the board of education by July 31st and a district may incorporate the required elements of such a plan in a comprehensive district educational plan.

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

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

144.11 Early Grade Class Size

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

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

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

Section 200.1 (gg) - Definition of related services

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

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

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

Section 200.1(oo) - Definition of supplementary aids and services

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

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

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

Section 200.1(ss) - Definition of transition services

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

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

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

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

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

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

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

Section 200.5(a) - Procedural safeguards notice

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

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

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

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

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

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

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

Section 200.16(d) - Preschool programs

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

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

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

Section 200.2(e) - Impartial hearing officers

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

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

Legal Basis for Rule: Education Law sections 207 and 4404(1).

Agency Representative:

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OFFICE OF CULTURAL EDUCATION

3.27 and 3.30 Museums and Historical Societies chartering and registration

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

Need for Rule: The rule protects collections, the public and

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

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

90.2(a)(9) Library Registration

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

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

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

90.3 Public Library System Plan of Service

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

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

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

179.2 Operating Aid to Public Broadcasting Councils

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

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

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

Agency Representative:

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

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OFFICE OF THE PROFESSIONS

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

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

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

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

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

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

Need for Rule: the rule is needed to strengthen the alternative training and experience requirements for applicants who have not completed a registered program in ophthalmic dispensing by ensuring adherence to a common curriculum which has been determined by a national body of opticians to be equivalent to the didactic course work provided in registered programs in ophthalmic dispensing. The requirement of on-site supervision by a licensee is needed to ensure the on-site presence of a licensed practitioner when services are provided by an applicant-trainee. Moreover, the provision requiring a ratio of one applicant-trainee to one supervising licensee will ensure that appropriate and adequate supervision and training is provided to the applicant. Finally, limiting renewal of the training permit to a maximum of three years will help to ensure that supervisors provide appropriate learning experiences for an applicant-trainee within a reasonable time period.

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

Section 66.5 - Phase Two Therapeutic Pharmaceutical Agents

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

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

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

Section 67.6 - Ophthalmic Dispensing Continuing Education Requirements

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

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

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

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

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

Need for Rule: The regulation is necessary to strengthen the education requirements for licensure to accommodate licensees' need for core competencies required to practice public accountancy in today's complex business world. Such education will ensure the applicant's balanced educational preparation in content areas of professional accountancy, general business, and liberal arts and sciences. It will also prepare applicants with such necessary skills as logical thinking, effective writing, ethics, judgment, and quantitative skills. The requirement of one-year experience will suffice an applicant with such preparation for entry into the public accountancy profession.

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

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

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

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

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

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

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

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

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

Agency Representative:

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OFFICE OF HIGHER EDUCATION

27-1.1 Higher Education Opportunity Program

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

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

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

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

Description of Rule: the rule eliminated, beginning September 1, 1998, the issuance of the certificate of qualification (CQ) to candidates eligible or provisional teacher certification. The CQ originally provided an additional five years for persons who completed teacher preparation programs to secure employment, at which time he or she surrendered the CQ for a provisional certificate.

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

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

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

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

Need for Rule: the rule is needed to make uniform the testing requirements for all candidates for teacher certification. With the implementation of the NYSTCE program in 1993, a series of regulatory amendments was begun to require the new NYSTCE exams for all candidates for certification. The amendment completes the process for all teacher certification areas. The NYSTCE program is customized for New York State and the tests align closely with student learning standards that the Board of Regents adopted for kindergarten through twelfth grade students in the State's public schools. The data compiled on candidates taking the NYSTCE tests are made available, with candidates' consent, to institutions that prepare teachers. Institutions use this information to review their teacher education programs

and to advise students. The data is also used by the Regents and the State Education Department to formulate teacher education and certification policy. In addition, a uniform testing standard is easier to administer by the Department and would prevent confusion on the part of candidates, and eliminate a significant amount of paperwork and speed the processing of certifications for teachers.

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

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

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

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

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

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

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

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

Agency Representative:

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

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 2008, 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 242, CO2 Budget Trading Program. Statutory Authority: Environmental Conservation Law Sections: 1-0101, 1-0303, 3-0301, 11-0303, 11-0305, 11-0535, 13-0105, 15-0109, 15-

1903, 16-0111, 17-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 24-0103, 25-0102, 34-0108, 49-0309, 71-2103 and 71-2105. Part 242 is also consistent with the Department's obligations under Energy Law Sections: 3-101 and 3-103. The general powers of the New York State Energy Research and Development Authority (NYSERDA) that are relevant to the Program's ability to sell allowances in a transparent auction are set forth in the Public Authorities Law Section 1850, 1851, 1854 and 1855. Part 242 was adopted in 2008. It implemented CO2 emissions limitations on fossil fuel-fired electric generating sources 25 MW and larger through a flexible cap-and-trade program. Revisions are planned to address program items identified by the Department as part of a comprehensive program review and stakeholder process. Part 242 is on the Department's 2013 regulatory agenda.

Regulatory Coordinator for the Division of Air Resources is Laura Stevens, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3258. Telephone: 518-402-8401. E-mail: airregs@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 rulemaking 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 rulemaking 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 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 rulemaking which was filed in April of 2011, including providing for a 45 day public comment period. A final rulemaking 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 rulemaking 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 rulemaking implemented a closure of the recreational summer flounder season effective September 17, 2007. This regulation was adopted to be consistent 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 Coordinators for the Division of Fish, Wildlife & Marine Resources are Colleen O'Brien and Maria Williams, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233. Telephone: (518) 408-0919 and (518) 402-8984. E-mail: cjbrien@gw.dec.state.ny.us and mcwillia@gw.dec.state.ny.us

DIVISION OF LANDS AND FORESTS

6 NYCRR Part 190 Use of State Lands. Environmental Conservation Law sections, sections 1-0101(3)(b), 1-0101(3)(d), 3-0301(1)(b), 3-0301(1)(d), 3-0301(1)(i), 3-0301(2)(m), 3-0301(2)(v), 9-0105(1), 9-0105(3), 9-0303, and 9-1105(1) and Article 49 of Environmental Conservation Law, and section 816(3) of Executive Law. This regulation protects public safety, manages public use and protects natural resources on State lands. Minor revisions to clarify the existing regulations need to be made in the coming year.

6 NYCRR Part 192, Firewood Restrictions to Protect Forests from Invasive Species Environmental Conservation Law sections, 1-0101(3)(b), 1-0101(3)(d), 3-0301(1)(b), 3-0301(1)(d), 3-0301(2)(m), 9-0105(1), 9-0105(3) and 9-1303. The 2008 emergency rulemakings were replaced by a final regulation adopted in March 2009 which protects New York State's forests from invasive insects

and diseases carried on firewood and introduced into non-infested forests. Amendment to this regulation was made in another rulemaking adopted in July 2012. This amendment was needed to facilitate the interpretation, compliance and enforcement of the 2009 regulation. These were not substantive revisions.

6 NYCRR Part 190, Addition of Specialized Regulations to Control Use on Stewart State Forest Environmental Conservation Law sections, Environmental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), 3-0301(2)(m) and 9-0105(1). This regulation is needed since it provides the necessary controls on the Stewart State Forest as public recreational use increases. No amendments to this regulation are planned for 2013 since implementation has been satisfactory. There is no need for the Department to modify this rule from its present form.

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

DIVISION OF WATER

6 NYCRR Parts 700-704, Water quality standards, standard-setting procedures, and related regulations to add, revise and delete water quality standards. Amendment of Parts 700-704 of Title 6 NYCRR, Environmental Conservation Law, sections 3-0301(2)(m), 15-0313 and 17-0301. The changes were necessary to add, revise, and delete water quality standards, and add and/or revise standard-setting procedures and related regulations, based upon the most current scientific information. These regulations will be amended as part of the rulemaking to amend Parts 700 - 706 of NYCRR. Please refer to the main section of the agenda for further information.

6 NYCRR Parts 608, 621 and 673, Operation and maintenance of dams. To adopt requirements for owner dam safety programs, permitting and enforcement. Amendment of Parts 608, 621 and 673 of Title 6 NYCRR, Environmental Conservation Law, art. 3, title 3 and art. 15, title 5. Requires all dam owners to operate and maintain dams in a safe condition and adopts requirements for owner dam safety programs. These regulations will not be amended this year.

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

Department of Financial Services

PART 1. INSURANCE REGULATIONS

Pursuant to section 207 of the State Administrative Procedure Act ("SAPA"), the Department of Financial Services (the "Department") must review after five years and at five-year intervals thereafter, rulemakings adopted on or after January 1, 1998. Please note that all references to "the Department" and the "Superintendent" prior to October 3, 2011, mean the former Insurance Department and former Superintendent of Insurance, respectively, 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 analyze the need for and legal basis of rulemakings that were adopted in 2008, 2003 and 1998, and the Department invites public comment on the continuation or modification of those rulemakings. Comments must be received within 45 days of the date of publication of this notice.

Comments should be submitted to:

Camielle Barclay

Senior Attorney

New York State Department of Financial Services

25 Beaver Street

New York, NY 10004

Telephone Number: (212) 480-5299

Email: camielle.barclay@dfs.ny.gov

The Department invites public comments on the continuation or modification of the following rulemakings that were adopted in 2008.

- INS-49-07-00006-A (State Register of March 12, 2008) Amendment of Part 52 (Regulation 62) (Minimum Standards for the Form, Content and Sale of Health Insurance, including Standards of Full and Fair Disclosure) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 1109, 3103, 3201, 3217, 3221, 4303, 4305, and 4308

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.

Chapter 748 of the Laws of 2006 (commonly referred to as “Timothy’s Law”) became effective on January 1, 2007, less than two weeks after it was signed into law. That law required insurance companies, Article 43 corporations and Health Maintenance Organizations (“HMOs”) to provide coverage for inpatient and outpatient mental health services in certain policies and contracts that are issued, renewed, modified, altered or amended on or after that date.

Regulation 62 was amended in light of the enactment of Timothy’s law to require insurers, Article 43 corporations and HMOs to notify their policyholders, certificateholders, and members of the impact of Chapter 748 on their coverage, and to provide a toll-free customer service telephone number from which policyholders, certificateholders and members may obtain information regarding their mental health coverage.

On November 19, 2008, the Department adopted an amendment to Regulation 62 (INS-36-08-00009-A State Register of November 19, 2008) pursuant to Chapter 645 of the Laws of 2005, which directed the Superintendent to promulgate rules to implement the denial of coverage for drugs, procedures and supplies for the treatment of erectile dysfunction by publicly funded health insurance programs when provided to, or prescribed for use by a person who is required to register as a sex offender pursuant to article 6-C of the Correction Law. This amendment to Regulation 62 also provides that Healthy New York and the standardized individual enrollee direct payment contracts shall not provide coverage for erectile dysfunction drugs, procedures or supplies provided to registered sex offenders.

- INS-02-08-00005-A (State Register of April 16, 2008) Amendment to Part 68 (Regulation 83) (Charges for Professional Health Services) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 5108, 5221 and article 51.

Chapter 892 of the Laws of 1977 recognized the necessity of establishing schedules of maximum permissible charges for professional health services payable as no-fault insurance benefits, in order to contain the costs of no-fault insurance. To do so, the Superintendent was required to adopt those fee schedules promulgated by the Chairman of the Workers’ Compensation Board (“WCB”). Effective July 11, 2007, the WCB issued two new fee schedules, one for prescription drugs and the other for durable medical equipment, medical/surgical supplies, orthopedic footwear, and orthotic and prosthetic appliances.

This amendment to Regulation 83 was necessary to repeal the fee schedules that the Department previously established for prescription drugs, durable medical equipment, medical/surgical supplies, orthopedic footwear, and orthotic and prosthetic appliances, and to adopt those schedules established by the WCB. In addition, the amendment clarified that a pharmacy is deemed to be a provider of health services for purposes of eligibility for direct payments pursuant to Regulation 68-C.

- INS-41-07-00005-A (State Register of June 25, 2008) Amendment to Part 361 (Regulation 146) (Market Stabilization Mechanisms for Individual and Small Group Health Insurance and Medicare Supplement Insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 1109 and 3233; L. 1992, ch. 501; and L. 1995, ch. 504

Regulation 146 was originally promulgated pursuant to the requirements of Chapter 501 of the Laws of 1992 and the statutory authority set forth in Insurance Law section 3233, which require the Superintendent to promulgate regulations designed to encourage insurers to

remain in or enter the small group or individual health insurance markets, as well as to promote an insurance marketplace where premiums do not unduly fluctuate and where insurers and HMOs are reasonably protected against unexpected, significant shifts in the number of persons insured who are ill or who have a history of poor health. In addition, Insurance Law section 3233 specifically directs the Superintendent to create a pooling process involving insurer contributions to, or receipts from, a fund designed to share the risk of or equalize high cost claims and claims of high cost persons.

Regulation 146 was amended as a result of comments and suggestions that the Department received regarding the specified medical condition pool established in a prior amendment to Regulation 146. That market stabilization pool was phased out, and a new pooling methodology was established, which has been fully operational since 2009.

- INS-16-08-00007-A (State Register of June 25, 2008) Amendment to Part 42 (Regulation 119) (Workers’ Compensation Insurance Rates) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201 and 301; and Workers’ Compensation Law section 27.

Chapter 6 of the Laws of 2007 established comprehensive reforms to New York’s Workers’ Compensation Law by: (1) increasing maximum and minimum benefits for injured workers and indexing the maximum to New York’s average weekly wage; (2) dramatically reducing costs in the workers’ compensation system, thus making hundreds of millions of dollars available annually to be translated into premium reductions; (3) establishing enhanced measures to combat workers’ compensation fraud; (4) replacing the Special Disability Fund (“SDF”) with enhanced protections for injured veterans; (5) preventing insurers from transferring costs to New York employers by closing the SDF to new claims; and (6) creating a financing mechanism to allow for settlement of the Fund’s existing liabilities. The legislation also amended section 27(4) of the Workers’ Compensation Law to authorize the Superintendent to determine, by regulation, the “industry standard rate” for calculating simple interest to be used in calculating the present value of future benefits when the employer or insurer is required to deposit such amount into the Aggregate Trust Fund (ATF). The WCB computes the present value thereof and requires payment of such amount into the ATF.

Regulation 119 was amended to establish the interest rate applicable when workers’ compensation insurers are required to deposit the present value of unpaid benefits for permanent partial disability and death benefit cases into the ATF. Without the Superintendent’s determination of the industry standard rate, the WCB would have been unable to compute the present value of amounts to be deposited into the ATF.

In April 2010, Regulation 119 was amended (INS-46-10-00006-A, State Register of January 29, 2011) pursuant to Workers Compensation Law section 32, which permits the chair of the WCB to procure one or more private entities to assume the liability for, and the management, administration or settlement of, all or a portion of the claims in the SDF. No insurer, self-insured employer, or the State Insurance Fund (“SIF”) may assume liability for, or the management, administration or settlement of, any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent. The law also mandates the Superintendent to set a reserve standard specific to transactions authorized by the law.

This amendment to Regulation 119 was necessary to establish the required reserve standards, including establishing the amount of reserves an insurer, self-insured employer, or SIF may hold for claims for which an entity has waived its right to reimbursement for the SDF and for which it has assumed the liability, management, administration or settlement.

Regulation 119 was also amended in 2012 (DFS-52-11-00004-A, State Register of March 7, 2012) to standardize the basis upon which workers’ compensation assessments were calculated.

- INS-30-08-00004-A (State Register of November 19, 2008) Amendment of Part 136 (Regulation 85) (Standards for the Management of the State Employees’ Retirement System and the Common Retirement Fund) of Title 11 NYCRR.

Statutory authority: Insurance Law sections 201, 301, 314, 7401(a) and 7402(n)

Insurance Law section 314 authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of the public retirement and pension systems, and after a public hearing, certain standards with respect to the public retirement and pension systems of the State of New York.

Regulation 85 was amended to establish new standards governing actuarial assumptions, administrative efficiency, investment policies and financial soundness for the management of the New York State and Local Employees' Retirement System, and the New York State and Local Police and Fire Retirement System (collectively "the retirement system"), as well as the New York State Common Retirement Fund ("the fund"), which was established pursuant to Retirement and Social Security Law section 422 and holds the assets of the Retirement System.

The standards in the regulation are intended to ensure that the conduct of the business of the retirement system and the fund, and of the New York State Comptroller (as administrative head of the retirement system and as sole trustee of the fund), are consistent with fiduciary standards, which includes maintenance of a strong governance framework with a rigorous system of internal controls, a high level of operational transparency, and the highest ethical, professional and conflict of interest standards.

Since June 18, 2009, the Department has adopted on an emergency basis a third amendment to Regulation 85 (DFS-47-12-00002-E, last published in the State Register of November 21, 2012) in order to establish new standards of behavior with regard to the investment of the assets of the Fund, conflicts of interest, and procurement. In addition, the amendment creates new audit and actuarial committees, and greatly strengthens the investment advisory committee, as well as set high ethical standards, strengthens internal controls and governance, enhances the operational transparency of the Fund, and strengthens supervision by the Department.

- INS-35-08-00009-A (State Register of December 3, 2008) Amendment of Part 410 (Regulation 166) (External Appeals of Adverse Determinations of Health Care Plans) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 1109, article 49, and L. 1998 ch. 586

Chapter 586 of the laws of 1998 amended the Insurance Law and the Public Health Law to authorize external appeals of adverse determinations relating to health care services, and section 45 of Chapter 586 provided that the Superintendent may promulgate regulations to implement the external appeal program. In turn, Article 49 of the Insurance Law and Article 49 of the Public Health Law ("the external appeal law") were amended to provide an insured with the right to obtain an independent medical review by an external appeal agent when the insured's health plan denies a health care service as not medically necessary, experimental or investigational. This amendment does not affect an insured's right to bring a legal action against a health plan that issues an adverse determination, which has been reviewed by an external appeal agent if the insured continues to disagree with the factual basis or clinical rationale for that health plan's adverse determination.

This amendment to Regulation 166 does not affect any remedy an insured may have with respect to the Department of Financial Services or the Department of Health regarding the Departments' oversight of the external appeal program. Nor does the amendment preclude an insured from seeking damages for an opinion rendered in bad faith or involving gross negligence. The amendment to Regulation 166 only provides that upon requesting an external appeal, the insured acknowledges that the external appeal agent's determination is binding on the health plan, as well as the insured, and agrees not to commence any legal proceeding against that external appeal agent or clinical peer reviewer with respect to any determination that was made, other than an action for damages pursuant to Article 49 of the Insurance Law or Article 49 of the Public Health Law.

- INS-39-08-00009-A (State Register of December 3, 2008) Addition of Part 223 (Regulation 186) (Insurance Sales Practices on Military Installations or Involving Military Personnel) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 308, 309,

2103, 2104, 2107, 2109, 2110, 2123, 3201 and 4226 and arts. 24 and 45

The United States Congress ("Congress") determined that sales abuses were occurring on military installations or involving military personnel. As a result, Congress passed, and President Bush signed on September 29, 2006, the Military Personnel Financial Services Protection Act (the "Federal Act"), Pub. L. No. 109-290 (2006). In order to effectuate the Federal Act, the Department promulgated Regulation 186 to declare certain sales practices occurring on military installations or involving military personnel as false, misleading, deceptive or unfair.

Also, the Military Sales Practices Model Regulation (the "Model Regulation") was developed by the NAIC to meet the congressional mandates. The Model Regulation makes actionable certain acts and practices that until now have not been declared to be false, misleading, deceptive or unfair under state trade practices statutes. Many of the practices identified incorporated Department of Defense (the "DoD") solicitation rules. For example, the Model Regulation, by tracking DoD regulations, makes it a deceptive trade practice to solicit in barracks, day rooms and other restricted areas.

The Model Regulation also addresses congressional concerns regarding suitability and product standards. In that regard, the Model Regulation makes it a deceptive or unfair trade practice to recommend the purchase of any life insurance product that includes a "side fund" to junior enlisted service members in pay grades E-4 and below, unless the insurer has reasonable grounds for believing that the life insurance portion of the product, standing alone, is suitable.

In recognition of Congress' concerns and in furtherance of its goals, the Department adopted the Model Regulation, which became 11 NYCRR 223 (Regulation 186), with minimal modifications to the Model Regulation necessary to comport with existing New York law. For example, the Department revised the Model Regulation's exclusion provision to remove the reference to prearranged funeral contracts, because under Insurance Law section 3208(d), insurers are prohibited from marketing prepaid funeral agreements in New York. The Department also revised the Model Regulation to remove the prohibition against the use of war exclusions in life insurance policies, because Insurance Law sections 3203(c) and 4510(b)(1) specifically authorize such exclusions.

The Department also invites public comment on the continuation or modification of the following rulemakings, which were adopted in 2003.

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

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

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

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

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

In response to reports of widespread fraud and abuse involving no-fault claims, the Department has further amended the no-fault regulations, but unrelated to the specific sub-parts discussed above.

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

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

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

This amendment to Regulation 120 required that certain contract provisions be included in a written contract between an insurer and a managing general agent ("MGA"). The amendment implemented minimum provisions of the National Association of Insurance Commissioners' ("NAIC") model law for MGAs, which had been adopted by several other states. Those provisions help to ensure that an insurer maintains proper supervision over an MGA, and thus safeguards the interests of both insureds and the general public in protecting against abuses to insureds that may occur when another entity manages the affairs of the insurer.

- INS-01-03-00011-A (State Register of March 26, 2003) Amendment of Part 83 (Regulation 172) (Financial Statement Filings and Accounting Practices and Procedures) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law sections 4403, 4403-a, 4403-(c)(12) and 4408-a; and L. 2002, ch. 599

Regulation 172 was promulgated to enhance the consistency of the accounting treatment of assets, liabilities, reserves, income and expenses by entities subject to the Part, by clearly setting forth the accounting practices and procedures to be followed in completing annual and quarterly financial statements required by law. Pursuant to the Insurance Law, the Superintendent is authorized to implement the NAIC's Accounting Practices and Procedures Manual ("Accounting Manual"), subject to any provisions in New York law or regulations promulgated thereunder that conflict with particular points in those rules. The Accounting Manual includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs").

On March 16, 2011 the Department adopted an amendment to Regulation 172 (INS-02-11-00004-A, State Register of March 16, 2011) to conform to NAIC guidelines and statutory amendments, as well as to clarify existing provisions.

In 2012, the Department adopted another amendment to Regulation 172 (DFS-06-12-00010-A, State Register of May 2, 2012) to update citations in the regulation to the Accounting Manual as of March 2011.

Regulation 172 was originally promulgated in late 2000, and is amended accordingly when the NAIC adopts a revised version of its Accounting Manual, both to incorporate by reference the new Accounting Manual and to update the conflicts and exceptions to the Accounting Manual.

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

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

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

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

The first amendment to Regulation 20 cited above implemented minimum provisions of the NAIC's model law relating to "credit for reinsurance". By modifying the requirements with respect to controlling when ceding insurers may take credit for certain reinsurance

contracts, these provisions help to maintain the ceding insurer's financial stability, and thereby safeguard the interests of both insureds and the general public.

The second amendment to Regulation 20 cited above provided alien reinsurers with the means to secure their United States obligations through the establishment of a multi-beneficiary trust. Previously, the regulation required that funds held in such a trust be in the form of cash or readily marketable securities. Since the requirement was originally established, the Department recognized the use of letters of credit as qualifying securities in a number of similar trust vehicles. In addition, the NAIC amended its model regulation relating to credit for reinsurance to specifically permit certain alien assuming reinsurers to include, subject to specified conditions, letters of credit in trust funds held for the protection of United States insurers and beneficiaries under reinsurance policies issued by such alien insurers. Modifying the requirements regarding alien reinsurers funding requirements to permit the use of letters of credit allowed alien reinsurers using multi-beneficiary trusts to reduce their cost of capital in a manner similar to other methods used by unauthorized reinsurers that use single-beneficiary trusts.

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

Regulation 20 requires a strongly capitalized non-New York authorized or accredited reinsurer to tie up capital by posting collateral while not imposing a similar burden on a New York authorized or accredited reinsurer. This rule levels the playing field for all reinsurers, mitigates the risk that may exist under the present regulatory structure, and continues the Department's efforts to keep New York competitive while bringing the United States into the 21st century of financial services regulation.

On January 1, 2011, the Department adopted another amendment to Part 125 (Regulations 17, 20 and 20-A) (INS-37-10-00016-A State Register of November 23, 2010), which repealed redundant and dated insolvency clause requirements. This amendment also established rules governing when an authorized ceding insurer may take credit on its balance sheet, as an asset or deduction from reserves, for reinsurance recoverable from any unauthorized assuming insurer, established certain requirements for ceding insurers and reinsurers, and placed the onus on ceding insurers to prudently manage their risk.

In November 2012, the Department filed with the Department of State a proposed amendment to Part 125 (DFS-48-12-00004-P, published in State Register of November 28, 2012) to establish rules governing when an authorized ceding insurer may take credit on its balance sheet for a reinsurance recoverable.

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

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

By Chapter 454 of the Laws of 1989, as amended by Chapter 659 of the Laws of 1997, the Legislature enacted the Partnership for Long-Term Care Program ("the Program") to provide that citizens of New York State who purchase a long-term care insurance policy/certificate under the Program, and who exhaust benefits under such policy/certificate, will become eligible for long-term care protection through the New York State Medicaid program without spending down all or some of their assets.

Regulation 144 establishes the standards and requirements relating to the Program, as well as set the daily minimum benefit amounts that the Program prescribes. All policies sold pursuant to the Program include a provision guaranteeing lifetime inflation protection of at

least five percent compounded on an annual calendar or policy year basis at issue ages 79 and younger. The previously existing regulation set forth the minimum daily benefit standards for the 10-year period beginning January 1, 1993 and ending December 31, 2002. Those minimum benefit standards were computed with a minimum annual increase of five percent.

This amendment to Regulation 144 sets forth the daily minimum benefit amounts, computed using the five percent inflation protection, for the consecutive 10-year period beginning January 1, 2003 through December 31, 2012. The increase in daily minimum benefit amounts favors insureds under the Program who require long-term care services by providing a higher daily reimbursement rate to offset their nursing home or home care costs. The increased daily minimum amounts should encourage individuals to purchase the Program coverage to offset potential long-term care costs.

In 2005, the Department adopted an amendment to Regulation 144 (INS-44-04-00003-A, State Register of January 26, 2005) to make various changes to and expand the Program, as well as extend minimum daily benefit amounts through December 31, 2013.

On June 1, 2012, the Department adopted another amendment to Regulation 144 (DFS-09-12-00008-A, State Register of May 16, 2012) to amend minimum standards for inflation protection, add a new plan, and add disclosure requirements relating to reciprocity.

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

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

Insurance Law section 1304 gives the Superintendent the authority to require any additional reserves as necessary on account of policies, certificates and contracts of insurers authorized to transact life insurance, annuities, and accident and health insurance. Insurance Law section 1308 describes when reinsurance is permitted and the effect that reinsurance will have on reserves.

One of the Department's primary areas of focus is ensuring the solvency of insurers doing business in New York. In order to do so, the Insurance Law requires authorized insurers to hold reserve funds necessary in relation to their obligations to policyholders. The Insurance Law also specifies mortality and interest standards but does not specify an explicit method to be used to value life insurance policies that do not have level premiums and/or level benefits. The absence of a specific standard to value those products could result in inadequate reserves for some insurers that could jeopardize the security of policyholders' funds.

Regulation 147 was promulgated to fill the gaps in the Insurance Law. Specifically, the regulation required that reserves for term insurance and secondary guarantees on universal life, universal life-type products, and variable life products meet the same standards as reserves for level premium insurance. Regulation 147 also permitted the use of new select mortality factors and allowed the appointed actuary for a life insurer to apply certain percentages, called X factors, to modify the mortality bases for deficiency reserves, which gave domestic insurance companies and authorized foreign insurance companies the ability to compete in those markets with companies not so authorized.

Regulation 147 subsequently has been amended several times to address particular concerns and issues involving life insurance reserve requirements. Furthermore, in December 2012, the Department is likely to file an emergency adoption to the regulation, which will prescribe rules and guidelines for valuing individual life insurance policies and certain group life insurance certificates.

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

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

Insurance Law section 3420(g), as amended by Chapter 584 of the Laws of 2002, requires insurers to provide notification on an annual

basis to insureds about the availability of supplemental spousal liability insurance coverage, an explanation of such coverage, and the premium for such coverage. The law also requires the Superintendent to promulgate a regulation to provide guidelines to insurers to comply with those requirements.

To comport with the Insurance Law, the Department amended Regulation 35-A to provide the minimum requirements for notification of the availability of supplemental spousal liability insurance coverage and sample notification language that insurers may use.

The Department also invites public comment on the continuation or modification of the following rulemakings, which were adopted in 1998.

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

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

Regulation 57 was amended in 1998 to establish standards for actuarially appropriate reductions in homeowners, commercial, and public entity insurance premiums attributable to real property fitted or retrofitted with hurricane-resistant laminated glass windows or doors and to residential real property fitted or retrofitted with hurricane/storm shutters or equipped with deadbolt locks.

In 2001, the Department adopted another amendment to Regulation 57 (INS-43-00-00006-A, State Register of January 27, 2001) to provide for actuarially appropriate rate reductions of commercial motor vehicle insurance premiums for vehicles equipped with factory installed auxiliary running lamps.

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

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

Regulation 60, originally promulgated on August 4, 1971, implemented provisions of the Insurance Law by regulating the acts and practices of insurers, agents and other licensees of the Department with respect to the internal and external replacement of life insurance policies and annuity contracts. The new regulation establishes stronger requirements for agents and insurers in the replacement of existing life insurance policies and annuity contracts. It also provides for greater disclosure to applicants with respect to the impact of the purchase of new insurance by using values from existing insurance.

In 2002, Regulation 60 was amended (INS-50-02-00014-A, State Register of December 11, 2002) to implement the provisions of Chapter 505 of the Laws of 2000 and Chapter 13 of the Laws of 2002, which created a new type of broker's license that would permit brokers to sell life insurance and annuities.

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

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

Regulation 62 was first promulgated in 1972, and established minimum standards for the form, content and sale of accident and health insurance. This amendment to the regulation adopted minimum standards for the form, content and sale of specified disease coverage, such as cancer insurance, in New York State.

Since 1998, various provisions of Regulation 62 - unrelated to the provision discussed here - subsequently have been amended numerous times in response to the rapidly changing nature of the accident and health insurance market. A discussion of two such amendments is above.

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

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

Pursuant to authority granted the Superintendent in article 63 of the

Insurance Law, Regulation 86, originally promulgated in 1978, specifies categories of risk that may be written in a “free trade zone” exempt from policy form and rate filing requirements. This amendment established methods, procedures and reports for licensing, facilitating, monitoring and verifying compliance with the requirements of article 63 related to the writing of such risks, and added 34 more classifications of eligible risks that may be written in the free trade zone.

In 2002, the Department adopted an amendment to Regulation 86 (INS-25-02-00005-A, State Register of September 11, 2002) adding additional categories of risk.

In April 2012, the Department amended Regulation 86 (DFS-52-11-00018-A, State Register of April 11, 2012) to revise the regulation to comply with Chapter 490 of the Laws of 2011. This amendment to Regulation 86 established a new Class 3 with respect to large commercial insureds. Chapter 490 also required the insurer to submit a certificate of insurance to the Superintendent with respect to each Class 3 policy. The amendment fleshed out that mandate and also required the insurer to submit, along with the certificate of insurance, a “certification form” that includes additional information such as the identity of the insured and the risk manager that the “large commercial insured” used.

Regulation 86 was amended again in November 2012 (DFS-25-12-00003-A, State Register of November 7, 2012) to revise the parameters established for writing risks in the free trade zone.

- INS-05-97-00018-A (State Register of May 27, 1998) Amendment of Part 86 (Regulation 95) (Report of Suspected Insurance Frauds to Insurance Frauds Bureau; Required Warning Statements) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 403(d) and (e), 409 and 4322

Insurance Law section 409 requires that insurers writing motor vehicle insurance, workers’ compensation insurance or health insurance must implement a plan for the detection, investigation, and prevention of fraudulent insurance activities.

Regulation 95, which was first promulgated in 1981, establishes specific requirements with which insurers must comply, and this amendment refines the required procedures for development of fraud detection plans and requires that the plans be filed with the Superintendent. The amendment also requires an insurer to establish a Special Investigations Unit separate from its underwriting and claims functions to be responsible for fraud investigations.

In 2002, the Department adopted an amendment to Regulation 95 (INS-52-01-00002-A, State Register of May 1, 2002) revising the category of insurers to which the regulation is applicable and the qualifications for individuals employed as investigators in a Special Investigations Unit.

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

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

The Insurance Law requires the Superintendent, by regulation, to establish a merit rating plan for physicians’ professional liability insurance, and states that the plan may include malpractice insurance premium reductions for insured physicians who successfully complete an approved risk management course, subject to standards prescribed by the Superintendent by regulation.

This amendment to Regulation 124, which was originally promulgated in 1985, expands the number of merit rating plans that insurers may use, and also redefines the criteria for approved risk management programs.

In 2002, the Department adopted an amendment to Regulation 124 (INS-27-02-00001-A, State Register of July 3, 2002), again expanding the types of risk management courses that insurers may offer. This amendment recognizes the feasibility of offering such courses over the internet (as opposed to a classroom setting), as well as legislative initiatives (L. 2002, ch. 1, part A, section 42 as amd. by L. 2002, ch. 82, part J, section 16) that required all physicians, surgeons and

dentists participating in the excess medical malpractice program that the Legislature established to also participate in a proactive risk management program.

In 2007, the Department adopted another amendment to Regulation 124 (INS-46-06-00011-A, State Register of January 24, 2007) to establish guidelines and requirements for medical malpractice merit rating plans and risk management plans, including internet-based risk management courses and other innovative risk-management vehicles.

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

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

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

Regulation 145 was amended in 1998 to comport with the new federal and state laws, thereby providing guidance to insurers as to the minimum standards necessary to facilitate implementation and ensure compliance with the new laws.

Regulation 145 was again amended in 1998 (INS-21-98-00029-A, State Register of November 18, 1998) to clarify the fact that “specified disease coverage” was exempt from the market stabilization mechanisms applicable to individual and small group health insurance.

In 2001, Regulation 145 was amended (INS-40-00-00001-A, State Register of January 3, 2001) to establish requirements regarding commissions and marketing practices in the sale of small group health insurance.

- INS-21-98-00033-A (State Register of July 29, 1998) Amendment of Section 361.2 (Regulation 146) (Market Stabilization Mechanisms for Individual and Small Group Health Insurance) of Title 11 NYCRR.

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

Pursuant to HIPAA, Chapter 661 of the Laws of 1997 amended the Insurance Law and the Public Health Law to bring state law into compliance with federal law, enhance existing state enacted reforms and protections, and preserve state regulation of health insurance policies issued in New York State.

Regulation 146 was amended to redefine small group health insurance policy. Regulation 146 was also amended in 2000 (INS-39-00-00003-A, State Register of December 13, 2000) to phase out insurer and HMO required contributions to a distributions from demographic-based pools, modify required contributions to and distributions from specified medical condition pools, and expand the list of specified medical conditions.

In 2002, the Department adopted another amendment to Regulation 146 (INS-06-01-00005-A, State Register of May 22, 2002) to modify the mechanisms for determining required contributions to and distributions from market stabilization pools.

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

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

Chapter 389 of the Laws of 1997 added a new Section 11 of the Tax Law, which provides for the establishment of certified capital companies, and conferred on the Department the authority to certify and regulate those companies.

Regulation 156 was amended to establish the following: (1) an application procedure for entities wishing to become certified capital companies; (2) a procedure for requesting tax credits and the method for allocating those tax credits; and (3) the requirements that a certified capital company must meet in order to maintain its certification.

PART 2. BANKING REGULATIONS

Pursuant to section 207 of the State Administrative Procedure Act (“SAPA”), the Department of Financial Services (the “Department”) must review after five years and at five-year intervals thereafter, rulemakings adopted on or after January 1, 1998. Please note that all references to “the Department” and the “Superintendent” prior to October 3, 2011, mean the former Banking Department and former Superintendent of Banking, respectively, 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 analyze the need for and legal basis of rulemakings that were adopted in 2008, 2003 and 1998, and the Department invites public comment on the continuation or modification of those rulemakings. Comments must be received within 45 days of the date of publication of this notice.

Comments should be submitted to:

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The following rulemakings were adopted in 2008:

- Adoption of New Part 115 of the General Regulations of the Banking Board, 3 NYCRR (Anti-Money Laundering Programs for Applications for Charters, Acquisitions and Mergers and Changes of Control)

Description of rule: The rule requires banking organizations and certain licensees to demonstrate compliance with applicable anti-money laundering and foreign assets control programs.

Legal basis for the rule: Banking Law Sections 10, 14(1), 24, 26, 29, 39, 44, 142, 143-a, 143-b, 201, 324, 413, 450, 461, 519, 601, 601-a, 601-b

Need for the rule: The rule formalizes the existing practice of the Department to require applicants for charters, licenses, acquisitions, changes of control to guard against money laundering through their institutions.

- Adoption of New Part 116 of the General Regulations of the Banking Board, 3 NYCRR (Maintenance of Anti-Money Laundering Compliance Programs by Banking Organizations and Foreign Banking Corporations Licensed to Maintain a Branch or Agency)

Description of rule: The rule requires foreign banking organizations and foreign banking corporations licensed to maintain a branch or agency to establish and maintain an anti-money laundering compliance program.

Legal basis for the rule: Banking Law Sections 10, 14(1), 37(3), 39, 44

Need for the rule: The rule formalizes the existing practice of the Department to require applicants for charters, licenses, acquisitions, and changes of control to guard against money laundering through their institutions.

- Amendments to New Part 306 of the Superintendent’s Regulations, 3 NYCRR (Corporate Governance Vacancies on the Board of Directors)

Description of rule: The rule outlines the maximum number of vacancies in the office of the director that may be left unfilled until the next annual election by the stockholder.

Legal basis for the rule: Banking Law Sections 12, 7005

Need for the rule: The rule is necessary in order to establish the circumstances under which vacancies on the board of directors of a bank,

trust company, stock-form savings bank, and stock-form savings and loan association may be left unfilled until the next annual election by the stockholders.

- Amendments to New Part 307 of the Superintendent’s Regulations, 3 NYCRR (Corporate Governance Actions permitted to be taken by Unanimous Written Consent of Board of Directors)

Description of rule: The rule outlines the actions that may be taken by unanimous written consent of a board of directors.

Legal basis for the rule: Banking Law Sections 12, 7008(3)

Need for the rule: This rule provides a more flexible environment for certain institutions to conduct their business.

- Adoption of New Part 416 of the Superintendent’s Regulations, 3 NYCRR (Anti-Money Laundering Programs for Applications for Licenses, Branches and Acquisitions by Licensed Check Cashers and Licensed Money Transmitters)

Description of rule: The rule requires licensed check cashers and licensed money transmitters to demonstrate compliance with applicable anti-money laundering and foreign assets control programs.

Legal basis for the rule: Banking Law Sections 10, 39, 44, 367, 369, 370, 371, 370-a, 641, 646, 649, 652(a)

Need for the rule: The rule formalizes the existing practice of the Department to require applicants for charters, licenses, and acquisitions to guard against money laundering through their institutions.

- Adoption of New Part 417 of the Superintendent’s Regulations, 3 NYCRR (Maintenance of Anti-Money Laundering Compliance Programs by Licensed Check Cashers and Licensed Money Transmitters)

Description of rule: The rule requires licensed check cashers and licensed money transmitters to establish and maintain an anti-money laundering compliance program.

Legal basis for the rule: Banking Law Sections: 10, 37(3), 39, 44, 371, 646, and 649

Need for the rule: The rule formalizes the existing practice of the Department to require applicants for charters, licenses, and acquisitions to guard against money laundering through their institutions.

- Adoption of New Part 420 of the Superintendent’s Regulations, 3 NYCRR (Mortgage Loan Originators: Licensing; Education Requirements)

Description of rule: The rule sets forth the application, exemption and approval procedures for initial and annual licensing as a mortgage loan originator.

Legal basis for the rule: Banking Law Sections 39, 44

Need for the rule: The rule assists the Department in its efforts to oversee the mortgage industry and protect consumers.

- Adoption of New Supervisory Procedure MB 107 (Application for Initial License as a Mortgage Loan Originator; Request for Renewal of License)

Description of rule: The rule sets forth the details of the application procedure for mortgage loan originators.

Legal basis for the rule: Banking Law Section 599-c

Need for the rule: The rule explains the application procedure for initial licenses and annual renewals.

The Department also invites public comment on the continuation or modification of the following rulemakings, which were adopted in 2003:

- Amendments to Part 41.1 of the General Regulations of the Banking Board, 3 NYCRR (Restrictions and Limitations on High Cost Home Loans)

Description of rule: This rule defines terms used in high cost home loans

Legal Basis for the rule: Banking Law Sections 6-I, 13, and 14

Need for rule: This rule is needed to clarify terms involved in high cost home loans.

- Amendments to Part 41.2 of the General Regulations of the Banking Board, 3 NYCRR (Restrictions and Limitations on High Cost Home Loans)

Description of rule: This rule describes the limitations placed on high cost home loans.

Legal Basis for the rule: Banking Law Sections 6-I, 13, and 14

Need for rule: This rule is needed to clarify the limitations on high cost home loans.

- Amendments to Part 41.3 of the General Regulations of the Banking Board, 3 NYCRR (Restrictions and Limitations on High Cost Home Loans)

Description of rule: This rule describes prohibited acts and practices in the making of high cost home loans.

Legal Basis for the rule: Banking Law Sections 6-I, 13, and 14

Need for rule: This rule is needed to clarify what are considered prohibited acts or practices in the making of high cost home loans.

- Amendments to Part 41.4 of the General Regulations of the Banking Board, 3 NYCRR (Restrictions and Limitations on High Cost Home Loans)

Description of rule: This rule describes the additional requirements in order to make high cost home loans.

Legal Basis for the rule: Banking Law Sections 6-I, 13, and 14

Need for rule: This rule is needed to clarify the additional requirements for making high cost home loans.

- Amendments to Part 41.5 of the General Regulations of the Banking Board, 3 NYCRR (Restrictions and Limitations on High Cost Home Loans)

Description of rule: This rule describes what are unfair and deceptive acts or practices in making high cost home loans.

Legal Basis for the rule: Banking Law Sections 6-I, 13, and 14

Need for rule: This rule is needed to clarify what are unfair and deceptive acts or practices in making high cost home loans.

- Amendments to Part 41.7 of the General Regulations of the Banking Board, 3 NYCRR (Restrictions and Limitations on High Cost Home Loans)

Description of rule: This rule requires a legend that states that the mortgage is a high cost home loan subject to Banking Law Section 6-I.

Legal Basis for the rule: Banking Law Sections 6-I, 13, and 14

Need for rule: This rule is needed to explain what is to be included on the mortgage document with regard to the mortgage being a high cost home loan.

- Amendments to Part 41.8 of the General Regulations of the Banking Board, 3 NYCRR (Restrictions and Limitations on High Cost Home Loans)

Description of rule: This rule explains that certain products offered as mortgage loans by an instrumentality of the United States or of any state shall be exempt from Part 41 such as loan products offered by SONYMA.

Legal Basis for the rule: Banking Law Sections 6-I, 13, and 14

Need for rule: This rule clarifies what products are exempt from Part 41.

- Amendments to Part 41.9 of the General Regulations of the Banking Board, 3 NYCRR (Restrictions and Limitations on High Cost Home Loans)

Description of rule: This rule explains what a lender of a high cost home loan must establish if, when acting in good faith, it fails to comply with the provisions of Part 41, so as not to be deemed to have violated Part 41 and section 6-I of the Banking Law.

Legal Basis for the rule: Banking Law Sections 6-I, 13, and 14

Need for rule: This rule is needed to outline how a lender of a high cost home loan that makes an error needs to remedy that error.

- Amendments to Part 41.11 of the General Regulations of the Banking Board, 3 NYCRR (Restrictions and Limitations on High Cost Home Loans)

Description of rule: This rule states that no lender or affiliate shall finance single premium insurance or debt cancellation and suspension agreement payments.

Legal Basis for the rule: Banking Law Sections 6-I, 13, and 14

Need for rule: This rule is needed to clarify that no lender or affiliate shall finance single premium insurance or debt cancellation and suspension agreement payments.

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

Description of rule: The rule outlines the maximum number of vacancies in the office of the director that may be left unfilled until the next annual election by the stockholders.

Legal basis for the rule: Banking Law Sections 12, 7005

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

- Adoption of New Part 307 of the Superintendent's Regulations, 3 NYCRR (Corporate Governance Actions permitted to be taken by Unanimous Written Consent of Board of Directors)

Description of rule: The rule outlines the actions that may be taken by unanimous written consent of a board of directors.

Legal basis for the rule: Banking Law Sections 12, 7008(3)

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

- Adoption of New Part 402 of the Superintendent's Regulations, 3 NYCRR (Budget Planners)

Description of rule: This rule sets forth the licensing requirements and the regulatory scheme for budget planning activities by licensed entities.

Legal basis for the rule: Banking Law Sections 12, 587

Need for the rule: The rule sets forth the regulatory requirements and standards of operation for entities to conduct the business of budget planning.

- Adoption of New Part 404 of the Superintendent's Regulations, 3 NYCRR (Budget Planners/Delegation of Certain Activities)

Description of rule: This rule sets forth the regulatory requirements for licensed budget planners regarding the use of services of third party entities in making payments of debtor funds to creditors.

Legal basis for the rule: Banking Law Sections 12, 587

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

The Department also invites public comment on the continuation or modification of the following rulemakings, which were adopted in 1998:

- Amendments to Part 6.1 of the General Regulations of the Banking Board, 3 NYCRR (Additional Authority of Banks, Trust Companies, Savings Banks and Savings and Loan Associations pursuant to Banking Law, Sections 14-g and 14-h)

Description of rule: The rule sets forth the purpose of Banking Law Section 14-g as being the assurance of parity between state-chartered and national banks, and the preservation and enhancement of the state charter.

Legal basis for the rule: Banking Law Section 14-g (this section has been repealed, but Banking Law Section 12-a provides that regulations promulgated under that Section remain in effect)

Need for rule: Part 6 was needed to allow state-chartered banks to remain competitive with their federal counterparts and to maintain the appeal of the state charter by providing parity between state banking law and regulations and those of the federal regulatory agencies.

- Amendments to Part 6.2 of the General Regulations of the Banking Board, 3 NYCRR (Additional Authority of Banks, Trust Companies, Savings Banks and Savings and Loan Associations pursuant to Banking Law, Sections 14-g and 14-h)

Description of rule: The rule pertains to the application procedure for any bank, trust company or other person to make a request to the Banking Board to promulgate a rule or regulation pursuant to section 14-g

Legal basis for the rule: Banking Law Section 14-g (this section has been repealed, but Banking Law Section 12-a provides that regulations promulgated under that section remain in effect)

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

- Amendments to Part 6.3 of the General Regulations of the Banking Board, 3 NYCRR (Additional Authority of Banks, Trust Companies, Savings Banks and Savings and Loan Associations pursuant to Banking Law, Sections 14-g and 14-h)

Description of rule: The rule pertains to the additional insurance powers of banks and trust companies.

Legal basis for the rule: Banking Law Section 14-g (this section has been repealed, but Banking Law Section 12-a provides that regulations promulgated under that section remain in effect)

Need for rule: The rule implements Part 6 by permitting state-chartered banks and trust companies to sell insurance directly from a place of 5,000 or fewer inhabitants, even though the principal office is not located in such a place.

- Adoption of New Part 6.4 of the General Regulations of the Banking Board, 3 NYCRR (Additional Authority of Banks, Trust Companies, Savings Banks and Savings and Loan Associations pursuant to Banking Law, Sections 14-g and 14-h)

Description of rule: The rule pertains to the additional insurance powers of savings banks and savings and loan associations.

Legal basis for the rule: Banking Law Section 14-h (this section has been repealed, but Banking Law Section 12-a provides that regulations promulgated under that section remain in effect)

Need for rule: The rule implements Part 6 by permitting state-chartered savings banks and savings and loan associations to engage in the insurance business to the same extent and under the same conditions as State-chartered banks and trust companies and national banks and thus, remain competitive.

- Adoption of New Part 8.3 of the General Regulations of the Banking Board, 3 NYCRR (Banking Development Districts) Description of rule: The rule pertains to criteria for approval for the establishment of banking development districts.

Legal basis for the rule: Banking Law Section 96-d

Need for rule: The rule sets forth criteria for the designation of a banking development district.

- Adoption of New Part 8.4 of the General Regulations of the Banking Board, 3 NYCRR (Banking Development Districts)

Description of rule: The rule pertains to applications to the superintendent for designation of proposed banking development districts.

Legal basis for the rule: Banking Law Section 96-d

Need for rule: This rule sets forth the required information needed on an application for designation of a proposed banking development district.

- Adoption of New Part 8.5 of the General Regulations of the Banking Board, 3 NYCRR (Banking Development Districts)

Description of rule: The rule pertains to optional information that may be included in an application to the superintendent for designation of a proposed banking development district.

Legal basis for the rule: Banking Law Section 96-d

Need for rule: The rule sets forth the optional information which may be included on an application for designation of a proposed banking development district.

- Amendments to Part 38.4 of the General Regulations of the Banking Board, 3 NYCRR (Definition of Terms; Advertising; Application and Commitment Disclosures and Procedures; Improper Conduct under Article 12-D)

Description of rule: This rule pertains to commitment disclosures and procedures for mortgage loans.

Legal Basis for the rule: Banking Law Section 590.5-a

Need for rule: This rule sets forth the disclosure requirements and procedures for mortgage loans to be used by mortgage bankers and exempt organizations.

- Amendments to Part 38.5 of the General Regulations of the Banking Board, 3 NYCRR (Definition of Terms; Advertising; Application and Commitment Disclosures and Procedures; Improper Conduct under Article 12-D)

Description of rule: This rule pertains to the required disclosure and procedures for the issuance of a prevailing rate commitment by a licensee or exempt organization.

Legal Basis for the rule: Banking Law Section 590.5-a

Need for rule: The rule sets forth the required disclosure and procedures for the issuance of a prevailing rate commitment by a licensee or exempt organization.

- Amendments to Part 38.6 of the General Regulations of the Banking Board, 3 NYCRR (Definition of Terms; Advertising; Application and Commitment Disclosures and Procedures; Improper Conduct under Article 12-D)

Description of rule: This rule pertains to lock-in agreements (guarantee rate) used by a mortgage banker or exempt organization.

Legal Basis for the rule: Banking Law Section 590.5-a

Need for rule: This rule sets forth the required disclosures and notices along with the procedures that a mortgage banker or exempt organization must use when offering a lock-in agreement to its customers.

- Amendments to Part 38.7 of the General Regulations of the Banking Board, 3 NYCRR (Definition of Terms; Advertising; Application and Commitment Disclosures and Procedures; Improper Conduct under Article 12-D)

Description of rule: This rule pertains to the prohibited conduct of a mortgage broker, mortgage banker, or exempt organization.

Legal Basis for the rule: Banking Law Section 590.5-a.

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

- Amendments to Part 38.8 of the General Regulations of the Banking Board, 3 NYCRR (Definition of Terms; Advertising; Application and Commitment Disclosures and Procedures; Improper Conduct under Article 12-D)

Description of rule: This rule pertains to administrative actions and penalties for mortgage brokers, mortgage bankers or exempt organizations for violations of Banking Law article 12-D.

Legal Basis for the rule: Banking Law Section 590.5-a

Need for rule: This rule sets forth the grounds for disciplinary actions and penalties that may be imposed on a mortgage broker, mortgage banker or exempt organization for violations of Banking Law article 12-D.

- Amendments to Part 38.9 of the General Regulations of the Banking Board, 3 NYCRR (Definition of Terms; Advertising; Application and Commitment Disclosures and Procedures; Improper Conduct under Article 12-D)

Description of rule: This rule explains the limitation on excess insurance.

Legal Basis for the rule: Banking Law Section 590.5-a

Need for rule: This rule sets forth the limitation on excess insurance that a mortgage banker or exempt organization may require of a borrower and the required disclosures that must be made to the borrower if hazard insurance is required.

- Amendments to Part 38.10 of the General Regulations of the Banking Board, 3 NYCRR (Definition of Terms; Advertising; Application and Commitment Disclosures and Procedures; Improper Conduct under Article 12-D)

Description of rule: This rule pertains to required notifications in writing by every mortgage banker, mortgage broker and exempt organization.

Legal Basis for the rule: Banking Law Section 590.5-a.

Need for rule: This rule makes it a requirement that every mortgage banker, mortgage broker and exempt organization, notify the Department in writing of any administrative, civil or criminal proceeding initiated by any domestic governmental department or agency, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Agency, with 20 days of its commencement, provided such proceeding pertains to residential mortgage lending.

- Amendments to Part 38.12 of the General Regulations of the Banking Board, 3 NYCRR (Definition of Terms; Advertising; Application and Commitment Disclosures and Procedures; Improper Conduct under Article 12-D)

Description of rule: This rule pertains to dual agency transaction disclosures.

Legal Basis for the rule: Banking Law Section 590.5-a

Need for rule: This rule sets forth the required disclosure where there is a dual role performed by a mortgage broker, mortgage banker or an exempt entity in those instances when the mortgage broker is also the real estate broker in the same residential real estate transaction.

- Amendments to Part 80.9 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)

Description of rule: This rule pertains to the prohibited clauses in a contract, note or instrument evidencing or securing a junior mortgage loan.

Legal Basis for the rule: Banking Law Sections 14.1, 103.4-a, 235.6-a, 380.4-a, 454.11 and 590-a

Need for rule: This rule sets forth the specifics of what is prohibited in contracts, notes or instruments evidencing or securing a junior mortgage loan.

- Amendments to Part 80.10 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)

Description of rule: This rule pertains to revolving credit accounts secured by a junior mortgage.

Legal Basis for the rule: Banking Law Sections 14.1, 103.4-a, 235.6-a, 380.4-a, 454.11 and 590-a.

Need for rule: This rule sets forth the disclosure requirements for revolving credit accounts secured by a junior mortgage.

- Amendments to Part 82.7 of the General Regulations of the Banking Board, 3 NYCRR (Alternative Mortgage Instruments)

Description of rule: This rule pertains to prepayment penalties on mortgage loans.

Legal Basis for the rule: Banking Law Sections 14.1, 103.4-a, 235.6-a, 380.4-a, 454.11 and 590-a

Need for rule: This rule sets forth the conditions for the imposition of prepayment penalties on mortgage loans.

- Amendments to Part 86.4 of the General Regulations of the Banking Board, 3 NYCRR (Organization and Operation of Stock-Form Savings Banks and Savings And Loan Associations)

Description of rule: This rule pertains to the general provisions relating to the conversion (other than a conversion effected pursuant to any contrary provisions of Part 86.12) of a thrift institution from mutual to stock-form organization.

Legal Basis for the rule: Banking Law Section 14-e.

Need for rule: This rule is needed to facilitate the conversion of mutual institutions to stock-form and to ensure that State-chartered mutual thrift institutions are not forced to convert to Federal charter to exist in stock-form.

- Amendments to Part 86.5 of the General Regulations of the Banking Board, 3 NYCRR (Organization and Operation of Stock-Form Savings Banks and Savings And Loan Associations)

Description of rule: This rule pertains to the public offering of capital stock in connection with the conversion of mutual thrift institutions to stock-form.

Legal Basis for the rule: Banking Law Section 14-e.

Need for rule: This rule sets forth the procedure for a public offering of capital stock in connection with the conversion of mutual thrift institutions to stock-form.

- Amendments to Part 86.14 of the General Regulations of the Banking Board, 3 NYCRR (Organization and Operation of Stock-Form Savings Banks and Savings And Loan Associations)

Description of rule: This rule pertains to the required contents of a proxy statement when a mutual thrift converts to stock-form.

Legal basis for the rule: Banking Law Section 14-e.

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

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 Part 11 of Title 10 NYCRR - Qualifications of Local Health Personnel

Statutory Authority:

Public Health Law Sections 225(4) and (5) and 206(1)(9)(a)

Description of the regulation:

Part 11 of the State Sanitary Code provides job descriptions and minimum qualifications for public health personnel working in county and city health departments. Changes made to the Part 11 in 2008 include:

- Revised job descriptions and/or minimum qualifications for the following titles:

- Commissioner of Health
- Public Health Director
- Local Health Officer
- Public Health Nurse 1
- Public Health Nurse 2
- Supervising Public Health Nurse
- Environmental Health Director
- Public Health Engineer
- Public Health Sanitarian
- Supervising Public Health Sanitarian
- Public Health Technician
- Public Health Nutritionist
- Supervising Public Health Nutritionist
- Public Health Educator
- Supervising Public Health Educator
- Public Health Social Worker
- Public Health Epidemiologist
- Supervising Public Health Epidemiologist

- New requirements for those newly hired in Public Health Nurse 2, Supervising Public Health Nurse and Local Public Health Educator titles to complete 15 hours of continuing education within their first year of employment.

- An extension from one year to two years after appointment, in which Public Health Sanitarians must complete a continuing education training program.

- For conditional appointments made to positions of Commissioner of Health and Public Health Director for up to four years contingent on a public health education or experience plan developed in conjunction with and approved by the New York State Commissioner of Health.

The regulation should continue without modification.

Amendment of Section 66-1.2 of Part 66 of Title 10 NYCRR - Immunization Registry

Statutory Authority:

Public Health Law Section 2168

Description of the regulation:

These regulations need to be updated to be consistent with changes enacted to the PHL. The regulations will codify Advisory Committee on Immunization Practice recommendations and incorporate by reference the recommended vaccination schedule, as well as the catch-up schedule. Language will also be added to clarify medical exemptions, acceptable serology, what it means to be "in process", annual school immunization survey requirements, and change physician diagnosis standards for measles and mumps to reflect the rarity of these diseases. The regulations will also seek to establish time limits for completion of needed immunizations.

Amendment of Sections 86-1.55, 86-1.62 and 86-1.63 of Title 10 NYCRR - DRGs, SIWs, Trimpoints and the Mean LOS

Statutory Authority:

Public Health Law Sections 2803(2), 2807(3), 2807-c(3) and (4)

Description of the regulation:

These represented the annual update of SIWs, DRGs and Length of Stays required under the statute. These regulations were repealed effective 12/1/2009 with the implementation of the new reform regulations.

Addition of new section 86-2.38 of Title 10 NYCRR - Rate Enhancement/Pay for Performance

Statutory Authority:

Public Health Law Section 2808(22)

Description of the regulation:

The nursing home incentive payments regulation provides for additional payments to nursing homes (in the form of a rate enhancement) that exceed defined quality standards. One set of awards was for (1) the best overall performers during the evaluation period (calendar year 2007) and (2) best improvement in performance in pressure ulcer care (comparison of performance from July 1, 2006-June 30, 2007 to performance from July 2007, June 2008). A nursing home could receive an award in both categories. Nursing homes that received a deficiency for substandard quality of care or were in the bottom quarter percentile of all eligible nursing homes during the periods under review were not eligible for these incentives. The regulation should continue without modification.

Addition of new Subpart 86-8 to Title 10 NYCRR - APGs Outpatient Reimbursement

Statutory Authority:

Public Health Law Section 2807(2)(a)

Description of the regulation:

Established regulations for the new APG reimbursement system effective 12/1/2008 forward. The regulation should continue without modification.

Addition of new Subpart 86-9 to Title 10 NYCRR - Limited Home Care Services Agencies

Statutory Authority:

Public Health Law Sections 2803, 2807, 2808

Description of the regulation:

The regulation enables licensed adult home and enriched housing program operators under contract to local departments of social services (LDSS) to be reimbursed by the New York State Medical Assistance (MA) program for providing specified home care services to eligible persons under Title XIX of the Social Security Act. The services that may be provided for which the operator may be reimbursed by MA are personal care services, the administration of medications, and the application of sterile dressings by a registered nurse. The regulation should continue without modification.

Amendments to Sections 98-2.2, 98-2.6 and 98-2.10 of Subpart 98-2 of Title 10 NYCRR -

External Appeals of Adverse Determinations

Statutory Authority:

Public Health Law Sections 4910 – 4916

Description of the regulation:

Subpart 98-2 codifies requirements and responsibilities for health plans and certified external appeal agents to afford enrollees and providers independent external review of health plan determinations that a requested service was not medically necessary. Section 98-2.2 provides definitions for certain words and terms used in this Subpart. Section 98-2.6 describes certified external appeal agents' prohibited material affiliations and conflicts of interest. Section 98-2.10 describes the responsibilities of certified external appeal agents to process external appeal requests.

The Subpart continues to be required to affect the external appeal process in conjunction with Department of Health responsibilities under Public Health Law and the Department of Financial Services re-

sponsibilities under Insurance Law Article 49. The entire Subpart requires revision in various paragraphs to reflect changes to Article 49 of the Public Health Law made by Chapter 237 of the Laws of 2009, Chapter 451 of the Laws of 2007, Chapter 219 of the Laws of 2011 and the Patient Protection and Affordable Care Act (PPACA). Section 98-2.10 currently contains provisions and timeframes that have been changed by Chapter 219 of the Laws of 2011. These revisions are to be promulgated in conjunction with revisions to Department of Financial Services regulations at 11 NYCRR 410.

Amendment of Section 415.13, addition of subdivision 415.2(u) and addition of subdivision 415.26(k) to Title 10 - Feeding Assistants in Nursing Homes

Statutory Authority:

Public Health Law Sections 2800 and 2803

Description of the regulation:

This regulation amends § 415.13 (c) (1) to exclude feeding assistants from the definition of nurse aide. The addition of subdivision (d) to § 415.13 (which is referenced in subdivision [u] of Section 415.2) defines the term "feeding assistant" and sets forth the circumstances under which a feeding assistant may be used, consistent with federal requirements. Subdivision (k) of § 415.26 describes the feeding assistant training course that feeding assistants are required to complete pursuant to paragraph (2) of subdivision (d) of § 415.13 and 42 CFR § 483.35 (h) (i). The training course requires a minimum of 15 hours (as opposed to the federally-required minimum of eight hours) of training for feeding assistants and includes all federally-required topics. This regulation should continue without modification.

Amendment of Sections 763.12, 766.10 and 766.12 of Title 10 NYCRR - Licensed Home Care Services Agency Reporting

Statutory Authority:

Public Health Law Sections 3612(3) and (6)

Description of the regulation:

This regulation implements the provisions of Public Health Law (PHL) § § 3612 (3) and (6). Under § 763.12 and § 766.12, certified home health care agencies (CHHAs) and licensed home care services agencies (LHCSAs) are required to submit annual reports that must include reports on the type, frequency and reimbursement for services provided, including reimbursement from federal and state agencies. Subdivision (c) of § 763.12 requires CHHAs to provide all information necessary to any LHCSA that subcontracts with the CHHA to allow the LHCSA to file its annual report. Subdivision (h) of § 766.10 establishes a cap on administrative and general costs for LHCSAs equal to the cap on administrative and general costs applied to CHHAs, in accordance with subdivision seven of PHL § 3614. The regulation should continue without modification.

Addition of a new Part 910, amendment of existing sections 85.21 & 85.22, repeal of existing sections 85.23 & 85.25, & amendment of Part 80 of Title 10 NYCRR, amendment of existing section 505.3 & repeal of existing sections 528.1 & 528.2 of Title 18 NYCRR - Enactment of a Serialized New York State Prescription Form

Statutory Authority:

Public Health Law Sections 206 and 3308(2)

Description of the regulation:

Public Health Law Section 21 defined the use of the Official New York State Prescription Form as it applies to all medications issued by New York State licensed practitioners authorized to issue such prescriptions and institutional dispensers. The corresponding new Part 910 established definitions, minimum standards for registration to utilize the forms, a system for ordering and tracking the serialized forms, safeguards and storage of the forms by registered practitioners and institutional dispensers, and dispensing upon prescription forms. Because this regulation provides parameters for combating fraud and diversion of controlled substances through the Official New York Prescription Program, continuance of this regulation is warranted. The Official Prescription Program is still in effect and operating efficiently under the support of these regulations and should be retained. The regulation should continue without modification.

Addition of new Part 1001 within Title 10 NYCRR - Assisted Living Residences

Statutory Authority:

Public Health Law Section 4662(1)

Description of the regulation:

This regulation implements Public Health Law Article 46-B, which creates new licensure and certification categories for assisted living residences (ALRs), entities that provide or arrange for housing, on-site monitoring and personal care services and/or home care services in a home-like setting. An operator of an ALR must be certified as an adult home or enriched housing program. In addition to its obligations to residents under that certificate, the ALR operator must have an individualized service plan for each resident and provide prospective residents, residents and their representatives with significant residency agreements and disclosure information. ALR operators will also have additional or different requirements with regard to case management and staff qualifications and training. The regulation should be modified to conform with the provisions of a stipulation and order resolving Empire State Association of Assisted Living v Daines venued in the Supreme Court, Albany County.

Title 18 NYCRR - Five Year Review

Amendment of paragraph 505.3(b)(1) of Title 18 NYCRR - Non-Prescription Emergency Contraceptive Drugs

Statutory Authority:

Public Health Law Sections 201(1)(v) and 206(1)(f); Social Services Law, Section 365-a(2)

Description of the regulation:

This rule allows for Federal Drug Administration (FDA) approved non-prescription emergency contraceptive drugs to be dispensed by a pharmacy without a fiscal order for women 18 years of age and older. This was enacted to allow women, 18 years of age and older, to have access to this time sensitive medication. It is critical for women to take emergency contraceptive drugs within 72 hours, although ideally within 12 hours, of unprotected intercourse.

The regulation should continue with modification to address the March 23, 2009 federal court order that requires the FDA to make non-prescription emergency contraceptive drugs available without a prescription to women 17 years of age and older.

Addition of paragraph 505.8(g)(6) to Title 18 NYCRR - Payment for Nursing Services Provided to Medically Fragile Children (RAU # 07-11) Effective: 4/16/08

Statutory Authority:

Social Service Law Section 367-r(1-a)

Description of the regulation:

This regulation provides that Medicaid reimbursement for private duty nursing services furnished to medically fragile children will be made at an enhanced rate. The regulation should continue without modification.

Title 10 NYCRR - Ten Year Review

Amendment to Section 2.1 (Effects of Smallpox Vaccination)

Statutory Authority:

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

Description of the regulation:

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

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

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

Statutory Authority:

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

Description of the Regulation:

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

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

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

Statutory Authority:

Public Health Law, Sections 201 and 225

Description of the regulation:

This amendment revised the Maximum Contaminant Level (MCL) for Propylene Glycol in water, which is delivered to any user of a public water system, to 1.0 mg/L. This amendment should continue without modification.

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

Statutory Authority:

Public Health Law, Sections 201 and 225

Description of the regulation:

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

Amendments to Subpart 58-8 (HIV Testing)

Statutory Authority:

Public Health Law section 576 (4) authorizes the Department of Health to adopt, and amend rules and regulations to implement the provisions of Public Health Law Article 5, Title V, and ensure high quality clinical laboratory services, including testing related to HIV. Public Health Law section 2786 authorizes the Department to promulgate regulations concerning the implementation of article 27-F of the Public Health Law, which, among other things, protects the confidentiality of information concerning whether an individual has been the subject of an HIV related test.

Description of the regulation:

Subpart 58-8 promotes the public health, safety and welfare by establishing minimum standards for clinical laboratory testing and reporting of test results to detect human immunodeficiency virus (HIV) and to monitor infected individuals. Revisions of this regulation are required to create consistency with the HIV testing law implemented September 1, 2010 and supporting regulations of Part 63. The revisions will address updated technologies and revise testing algorithms for the management of HIV. This proposed rule was included in the October 2012 Regulatory Agenda. The regulation should continue.

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

Statutory Authority:

Public Health Law Section 2164

Description of the regulation:

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

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

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

Statutory Authority:

Public Health Law Section 2164

Description of the regulation:

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

Varicella, or chickenpox, is a highly contagious and potentially serious vaccine preventable disease that was once a common illness in young children. Use of the vaccine to prevent varicella has significantly reduced the incidence of this disease in recent years. Children attending school in NY must be protected against this disease, as it is easily transmitted in a school setting. In addition, if an individual reaches adolescence or adulthood without having been vaccinated, the occurrence of natural disease could have even more serious consequences. These regulations need to be updated to be consistent with changes enacted to the PHL. The regulations should also codify Advisory Committee on Immunization Practice recommendations and incorporate by reference the recommended vaccination schedule, as well as the catch-up schedule.

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

Statutory Authority:

Public Health Law Section 2500-a

Description of the regulation:

The regulation designates diseases or conditions for the state's newborn screening panel, in accordance to the Department's mandate to prevent infant and child mortality, morbidity, and diseases and disorders of childhood, in keeping with the Legislature's public health aims of early identification and timely medical intervention for all the State's youngest citizens. The regulation is updated as needed; the most recent amendment, effective December 11, 2012, modified the newborn screening panel by adding severe combined immunodeficiency (SCID), and by deleting hyperammonemia/ornithinemia/citrullinemia (HHH). The regulation should be continued.

Amendments to Part 1000

Statutory Authority:

Public Health Law Section 2995-a

Description of the regulation:

The rule sets forth the requirements for collecting and presenting information on New York's licensed and registered physicians for purposes of the New York State Physician Profile. Modifications are needed to this rule to define physician membership other than "board certification" and update definition of "board certification", clarify the circumstances under which a physician may be granted an extension to submit additional medical malpractice appeal information because of physical incapacitation, etc, and add the requirement that physicians must notify the department at least annually if there are no changes in profile information.

Title 10 NYCRR - Fifteen Year Review

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

Statutory Authority:

Public Health Law Sections 201 and 225

Description of the regulation:

This regulation incorporated the federal EPA Phase V drinking water standards for certain organic and inorganic chemicals into the state sanitary code. To ensure compliance with federally mandated regulations, amendments to Subpart 5-1 were made to incorporate specific Maximum Contaminant Levels for six inorganic and eight organic contaminants in water, which is delivered to any user of a public water system. This regulation should continue without modification.

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

Statutory Authority:

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

Description of the regulation:

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

Amendment to Section 35.8 (Form and Content of Certificates)

Statutory Authority:

Public Health Law Sections 4100(1)(c), 4132(1) and 4141(1).

Description of the regulation:

This regulation establishes a basis for the electronic preparation and filing of birth and death certificates. It supports the efforts of the Department of Health to electronically file vital records certificates. No changes in this regulation are required at this time.

Amendment to Subpart 58-2 (Blood Banks)

Statutory Authority:

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

Description of the regulation:

Subpart 58-2 is necessary to promote the public health, safety and welfare by establishing minimum standards for the proper collection, processing, fractionation, storage, distribution and supply of human blood or blood products for use in transfusion. The regulation is updated as needed; the most recent amendment, effective November 7, 2007, updated practice standards, lowered donor age, and recognizes advances in technology. A proposed amendment of Subpart 58-2 is currently under consideration. This amendment would update technical requirements for the collection, testing, and storage of blood and blood components, allow increased flexibility in compliance, and allow advanced life support emergency medical technicians to administer blood components during transport of patients from one hospital to another.

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

Statutory Authority:

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

Description of the regulation:

The three requirements of this regulation are intended to provide consumers with information that will help them to select a vent-free heater with appropriate heat output and use the heater in an appropriate manner. The first requirement describes a shipping carton and point-of-sale label with language intended to minimize the potential for adverse health effects from the use of these heaters. The second requirement describes an emissions rating label that informs consumers about the performance of each product relative to industry emission standards. The third requirement describes point-of-sale sizing guidelines that provide information on selecting a properly sized unit (in terms of heat output) and gives the general format of the information. The amendments should continue without modification.

and are necessary to minimize the potential for adverse health effects from the use of vent-free gas space heating appliances.

Amendment of Section 77.7 (Registered Residents - Funeral Directing)

Statutory Authority:

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

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

Description of the regulation:

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

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

Statutory Authority:

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

The definition of practitioner who is permitted to dispense, administer or conduct research with respect to a controlled substance in the course of a licensed professional practice or research license, including a physician assistant, is provided for in Section 3302(29) of the Public Health Law.

Description of the regulation:

The above regulation governs the prescribing, dispensing, and administration of controlled substances in a variety of circumstances by practitioners, including physician assistants. In 1998, the definitions of “authorized practitioner” and “practitioner” in 10 NYCRR Section 80.1(a) were amended to add physician assistants to the categories of licensed practitioners who can lawfully prescribe controlled substances in New York State. This regulation permits physician assistants to perform an activity for which they are well trained while providing the necessary regulatory safeguards for controlled substances required of all practitioners. In 2006, section 80.46 was further amended to bring into conformity with an amendment to Public Health Law, Section 3703 (1). In this law a physician’s assistant’s written medical order for the administration of a controlled substance in a hospital setting is required to be countersigned by his or her supervising physician only if deemed necessary by the supervising physician or the hospital. In 2007, Public Health Law, Section 3703 (3) was amended to authorize physician assistants to prescribe controlled substances, including Schedule II, when acting in good faith and in the physician assistant’s lawful scope of practice. These regulations continue to appropriately govern the prescribing, dispensing and administration of controlled substances by physician assistants and reflect all the changes in this period of time. Therefore, continuance of this regulation is warranted. This regulation should be retained.

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

Statutory Authority:

Public Health Law Section 2807-m

Description of the regulation:

Clarifies the definitions and data collection time frames for making distributions from the Regional Professional Education Pool to teaching general hospitals. This regulation was repealed as part of the inpatient reimbursement reform regulatory package.

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

Statutory Authority:

Public Health Law Section 2807-m(5)

Description of the regulation:

Describes the graduate medical education reform goals and methodology for receiving supplemental distributions from the Regional Professional Education Pool. This regulation was repealed as part of the inpatient reimbursement reform regulatory package.

Amendment to Part 128 (New York City Watershed)

Statutory Authority:

Public Health Law Section 1100

Description of the regulation:

These rules and regulations govern those activities in the watershed that threaten the quality of the water supply of numerous upstate communities and the City of New York to protect public health by averting future contamination to and degradation of the New York City water supply and by remediating existing sources of pollution or degradation of the New York City water supply.

Proposed amendments to these regulations are currently under review. The amendments propose to incorporate changes made by the Department of Environmental Conservation (DEC) to the State Pollution Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity. Other proposed changes include clarifying authority with respect to new sewage holding tanks and alterations to existing holding tanks. Additionally, the proposed amendments include technical corrections to referenced materials, changes in certain text and technical terminology to improve clarity, and revisions to the definition of “phosphorus restricted basin.” The proposed regulatory changes add a provision authorizing the granting of a variance for new or expanded surface wastewater treatment plant discharges within a 60-day travel time to a terminal water intake.

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

Statutory Authority:

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

Description of the regulation:

These amendments are intended to establish criteria and safeguards for hospital usage of modern data communications technology and to update provisions for the acceptance of verbal orders. The amendments permit hospitals to use the most current electronic and computer technology for the transmission and storage of information. It includes safeguards for author identification/authentication and security and confidentiality of records. It also clarifies standards for the use of telephone orders. These are important advances in giving hospitals the flexibility to operate an effective and efficient medical records unit and continuance of these regulations is warranted. This regulation was updated to allow verbal orders to be authenticated by not only the ordering practitioner, but also by other practitioners responsible for the care of the patient within 48 hours rather than “as soon as possible” consistent with federal requirements that had a sunset date of January 26, 2012. The Centers for Medicare and Medicaid Services (CMS) permanently adopted their provisions. This regulation will be modified to remove the sunset date.

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

Statutory Authority:

The authority for the promulgation of this regulation is contained in Sections 2803(2) and 2819 of the Public Health Law. PHL Section 2803 authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations, subject to the approval of the

Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law, and to establish minimum standards governing the operation of health care facilities. PHL Section 2819 sets forth the provision for hospital acquired infection reporting.

Description of the Regulation:

These amendments are intended to streamline reporting requirements for infection outbreaks and reorganize and update infection control standards focusing on outcome rather than processes. Unnecessary bureaucratic requirements have been eliminated so the regulations can focus on promotion of safe and effective infection control practices and appropriate reporting of untoward events.

These provisions are currently being modified to define requirements for hospitals to report select hospital acquired infections using methods, definitions and protocols defined by the Department, ensure patient privacy in collection and release of data and create standards for publication and release of the data reported.

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

Statutory Authority:

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

Description of the regulation:

The regulation updated the need methodology for ambulatory surgery services and changes the definitions of hospital-based ambulatory surgery services and of extension clinics. These amendments promoted efficiency, accessibility and quality in the operation of Ambulatory Surgery Centers. The regulation continues to serve its original purposes, and continuance is warranted.

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

Statutory Authority:

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

Description of the regulation:

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

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

Amendment of Paragraph 405.24(i) (Sterility Assurance)

Statutory Authority:

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

Description of the regulation:

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

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

Statutory Authority:

Public Health Law Section 2803(2)(a)

Description of the regulation:

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

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

Statutory Authority:

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

Description of the regulation:

The rule helped streamline and focus the CON process on project proposals that have a significant impact on how and where Article 28 providers deliver care. This rule was amended in 2010 to further raise the project cost thresholds for administrative and full review. Continuance of these regulations as amended in 2010 is warranted.

Amendment of Section 710.1 (Conversion of Article 28 Beds)

Statutory Authority:

Public Health Law Section 2803

Description of the regulation:

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

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

Statutory Authority:

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

Description of the regulation:

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

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

Statutory Authority:

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

Description of the regulation:

The regulation updates referenced technical standards and allows providers greater flexibility in the design and construction of health care services. The regulations ensure that the initial construction of new medical facilities as well as their subsequent repair, maintenance, refurbishing and modernization conform to the latest architectural and engineering standards for the structure, dimensions and physical appointments of medical facility buildings. These several Parts were amended in 2010 to reflect updates of their referenced technical standards and changes in prevailing industry practices in health care facility design and construction. Continuance of these regulations as amended in 2010 is warranted.

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

Statutory Authority:

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

Description of the regulation:

The regulations contained in Subdivision 800.20 establish the criteria for approval by the Department of EMS Course Sponsors

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

Proposed amendments to these regulations are under consideration to address the current environment and technology as well as reflect the current EMS education curricula. The surveillance portions of these provisions need to be strengthened to appropriately address the issues of quality, student rights and safety.

Title 18 NYCRR - Fifteen Year Review

Amendment of Section 505.2 (Gender Reassignment)

Statutory Authority:

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

Description of the regulation:

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

Amendment of Section 505.10 (Medicaid Transportation)

Statutory Authority:

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

Description of the regulation:

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

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

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

This regulation needs to be updated incorporating Chapter 109 of the Laws of 2010 which amended Section 365-h of the Social Services Law (SSL). This law allows the department to assume the administration of the Medicaid transportation program from the local county. Additionally, the update will include emergency medical services guidelines and new quality standards expected of Medicaid transportation providers.

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

Statutory Authority:

Social Services Law Section 368-d

Description of the regulation:

Section 505.18 is in the process of being changed. Certified School Counselors are no longer considered Medicaid qualified providers. The only Medicaid qualified providers for psychological counseling for disabled children with an Individualized Education Program (IEP) are psychiatrists, psychologists, and licensed clinical social workers (LCSWs). Licensed master social workers (LMSWs) may also provide psychological counseling services when services are provided under the supervision of one of either a psychiatrist, psychologist, or a LCSW.

This regulation is in the process of being repealed and rewritten.

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 1998, 2003, and 2008 which are subject to the SAPA section 207 five-year review of rules.

During calendar year 1998, OPWDD adopted eleven rules. Five of these were proposed and adopted as minor rulemakings identified by the Department of State as MRD-43-97-00020; MRD-43-97-0021; MRD-43-97-00022; MRD-02-98-00027; and MRD-36-98-00007. As minor rulemakings, these are exempted from the review requirements by subdivision (5) of SAPA section 207. The remaining six rulemakings finalized during 1998 were identified and described as follows at the time the respective notices were first published in the State Register:

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

98-2. MRD-03-98-00001. Amendments to 14 NYCRR sections 635-10.5 (HCBS Waiver Services), 671.7 (HCBS Waiver Community Residential Habilitation Services), 680.12 (Specialty Hospitals), 681.12 (Intermediate Care Facilities for persons with developmental disabilities), and 690.7 (Day Treatment Services for persons with developmental disabilities). These amendments established trend factors to be applied (beginning January 1, 1998) within the context of the various rate/fee setting methodologies. Although specific trend factors are calculated annually, they are cumulative. The amendments (with the exception of those made to sections 671.7 and 681.12) 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 section 671.7 were deleted in 2010 when rate/fee methodologies for Individualized Residential Alternatives (IRAs) and Community Residences (CRs) were consolidated. Also, the entirety of section 681.12 has since been repealed.

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

98-4. MRD-13-98-00004. Amendments to 14 NYCRR sections 635-10.5, 671.7, and 686.13 - Fee setting and financial reporting in OPWDD certified or operated home and community-based (HCBS) waiver services, HCBS waiver community residential habilitation services, and individualized residential alternative (IRA) facilities. These amendments clarified that there can be no billing for therapeutic leave days for HCBS waiver residential habilitation services provided in individualized residential alternative facilities. This clarification was necessary because the Federal Health Care Financing Agency (HCFA) clarified its policy on the reimbursement of such vacancies and held that a State cannot pay for therapeutic leave days for persons who reside in IRAs and receive residential habilitation services. Since this remains the policy of the Federal Centers for Medicare and Medicaid

Services (CMS, formerly HCFA), the amendments must be maintained without modification.

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

98-6. MRD-43-98-00006. The addition of new section 681.11 - Rate setting and financial reporting in voluntary agency operated intermediate care facilities for persons with developmental disabilities (ICF/DDs). This section eventually replaced previous section 681.12 for all ICF/DD facilities during the course of the 1998 calendar year. The new section established 1994 as a new base year for under 31-bed ICF/DD facilities and revised the cost category screens and other reimbursement provisions to reflect cost data and changes in spending patterns. OPWDD has since proposed and adopted a new section 681.14 which repeats this cyclical process of establishing a new base year and revised rate setting methodology for under 31-bed ICF/DD facilities. Section 681.11 (added during 1998) needed to remain in effect without modification until June 30, 2003, which is the end of the rate year for ICF/DD facilities in Region I. Effective July 1, 2003, new section 681.14 replaced section 681.11 for all ICF/DD facilities so that the amendment adopted in 1998 became obsolete. It has since been repealed (see item 03-3).

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

03-1. MRD-03-03-0001. Amendment of sections 635-10.5, 671.7, 679.6, 680.12, 681.11, and 690.7 - Rate/fee setting in voluntary agency operated individualized residential alternative (IRA) facilities and home and community-based (HCBS) waiver services; HCBS waiver community residential habilitation services; clinic treatment facilities; specialty hospitals; intermediate care facilities for persons with developmental disabilities; and day treatment facilities serving persons with developmental disabilities. The amendments revised the methodologies used to calculate rates/fees of the referenced facilities or programs for the periods of Jan. 1, 2003 to Dec. 31, 2003 and July 1, 2003 to June 30, 2004 and establish trend factors to be applied within the context of the referenced reimbursement methodologies, effective January 1, 2003. Although specific trend factors are calculated annually, they are cumulative. The amendments (with exception to those made to sections 671.7, 679.6, and 681.11) 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 671.7 were deleted in 2010 when rate/fee methodologies for IRAs and Community Residences (CRs) were consolidated. The amendments in 679.6 were deleted due to the development of a new reimbursement methodology for clinic treatment facilities. The amendments to section 681.11 were subsequently moved to section 681.14 and all of section 681.11 was repealed.

03-2. MRD-13-03-00002. Amendments to section 633.10 - Regulations to implement the Health Care Decisions Act for Persons with Developmental Disabilities. The statutory authority for this rule making is in Mental Hygiene Law, sections 13.07 and 13.09 and in section 1750-b of the Surrogates Court Procedure Act (SCPA) which required the commissioner of OPWDD to promulgate implementing regulations in order for a specific statutory provision to be effective. The amendments implemented changes to section 1750-b of the SCPA by establishing a specific safeguarding process to ensure that, in accordance with the changes to the SCPA, appropriate health care decisions can be made for persons with developmental disabilities who are terminally ill or who have other extremely serious medical conditions. More specifically, the regulations established a process for OPWDD to determine whether physicians and psychologists are qualified to make decisions or provide consultation to the attending physician and include additional delineation of the responsibility of OPWDD and

agencies operating OPWDD-certified residences when they receive notification of health care decisions that involve the withdrawal or withholding of life-sustaining treatment. The process implemented by the regulations remains pertinent and the regulations continue to be necessary. Therefore, the regulations need to be maintained without modification.

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

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

03-5. MRD-43-03-00046. Amendments to 14 NYCRR section 681.14. The amendments clarified certain provisions of the rate setting methodology for intermediate care facilities for persons with developmental disabilities. This methodology includes a desk audit feature to determine whether a provider's reported costs are atypical or non-recurring (e.g., expended only in the base year). The amendments include language to enable OPWDD to apply appropriate trend factors to the rates in effect on Dec. 30, 2002 and June 30, 2003 pending completion of the desk audit. The methodology also allows for the inclusion of certain day program services costs as add-ons in the ICF/DD rate of reimbursement. The amendments clarify that the appropriate trend factor to be applied to these ICF/DD day program elements shall be the trend factor used by OPWDD for day programs. Finally, establishment of the ICF/DD day services add-on is limited to the budgeted costs or the actual costs of providing these services. The amendments add language to specify that the add-on derived from actual costs shall be net of any surplus calculated per certified cost reports for that day services program. These changes (with the exception of the amendments pertaining to the desk audit) continue to be relevant and OPWDD intends to maintain them without modification. The amendments pertaining to the desk audit were deleted in 2011.

During calendar year 2008, OPWDD adopted and finalized four rules. One of these rules identified by the Department of State as MRD-39-08-00003 was proposed and adopted as a consensus rule-making, and therefore is exempt from the review requirements by subdivision (5) of SAPA section 207. The remaining three rule makings were identified and described as follows at the time the respective notices were published in the State Register:

08-1. MRD-08-08-00008. Amendment of sections 81.10, 635-10.5, 671.7, 680.12 and 681.14 - Rate/fee setting in voluntary agency operated integrated residential community programs (81.10); individualized residential alternative (IRA) facilities and home and community-based (HCBS) waiver services (635-10.5); HCBS waiver community residential habilitation services (671.7); specialty hospitals (680.12); and intermediate care facilities for persons with developmental disabilities (681.14). The amendments revise the methodologies used to calculate rates/fees of the referenced facilities or programs and establish trend factors to be applied within the context of the referenced reimbursement methodologies, effective Feb. 1, 2008. Although specific trend factors are calculated annually, they are cumulative. The amendments (with the exception of those made to section 671.7) need to be maintained, without modification, to define how OPWDD establishes current rates/fees of reimbursement for the affected facilities or services. The amendments in 671.7 were deleted in 2010 when rate/fee methodologies for IRAs and Community Residences (CRs) were consolidated.

08-2. MRD-20-08-00033. Amendment of sections 671.7, 679.6 and 690.7 - Fee setting in home and community-based (HCBS) waiver community residential habilitation services, clinical treatment facilities, and day treatment facilities for persons with developmental disabilities. The amendments establish cost of living (COLA) adjustments and trend factors applicable to these facilities and services, effective Aug. 1, 2008. 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 sections 671.7 and 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 section 671.7 were deleted in 2010 when rate/fee methodologies for IRAs and Community Residences (CRs) were consolidated. The amendments in 679.6 were deleted due to the development of a new reimbursement methodology for clinic treatment facilities.

08-3. MRD-43-08-00010. Amendment of section 635-10.5(c)(4) and (e)(5). The amendments established a methodology for reimbursement of property and capital equipment costs in day habilitation and prevocational services. The amendments converted the process for reimbursing capital costs for providers of group day habilitation and prevocational services to be consistent with the process for reimbursing operational costs. As a result, the new process simplified billing procedures and allowed for payment of the entire group day habilitation or prevocational services to be made through eMedNY. Since this process is still in effect, the amendments need to be maintained without modification.

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

The public is invited to review and comment on OPWDD's proposed disposition regarding these 1998, 2003 and 2008 rulemakings beginning January 2, 2013.

This notice was prepared and submitted by: 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, December 18, 2012

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

Public Service Commission

Pursuant to 207 of the State Administrative Procedure Act: Review of Existing Rules, notice is hereby provided that the Public Service Commission wishes to continue the following rules adopted in 1998, 2003, and 2008 without modification or as revised. Comments are welcome on proposed continuation of the rules. Any person wishing to comment should file electronically with the Acting Secretary at secretary@dps.ny.gov. Those unable to file electronically may mail or deliver their comments to the Hon. Jeffrey C. Cohen, Acting Secretary, Public Service Commission, Three Empire State Plaza, Albany, NY 12223-1350. Comments should be submitted no later than March 1, 2013. Information about the rules may be obtained from: John C. Graham, Assistant Counsel, by e-mail at john.graham@dps.ny.gov, or by phone at (518) 474-7687.

1. 16 NYCRR § 11 (Case No. 96-M-0706).

a. Description of rules:

In an effort to reduce regulatory burdens on utilities while maintaining customer protections, this rulemaking was initiated to modify the rules and procedures governing the provision of energy service to residential utility customers. The enactment streamlined and clarified the language in the rules and allowed utilities to require proof of identity of all applicants for service.

- b. Statutory Authority: PSL §§ 4(1), 30 through 51, 66(1) and 80(1).
- c. No hearings or public meetings are scheduled.
- d. The rules are in effect and will continue.
- e. Need and legal basis for the rules:

The rules are an outgrowth of the Public Service Commission's general supervision of gas, electric and steam corporations that protect consumers and allowed utilities to attempt to stop a common form of theft of services.

2. 16 NYCRR § 262 (Case No. 97-G-0230).

a. Description of rules:

This rule expands the drug testing requirements of 16 NYCRR § 262 to include alcohol testing as it applies to gas utility safety measures and requires testing of employees that exhibit indicia of imbibing alcohol.

b. Statutory Authority: Title 49, Code of Federal Regulations, Part 199.

- c. No hearings or public meetings are scheduled.
- d. The rules are in effect and will continue.
- e. Need and legal basis for the rules:

The New York State Department of Public Service is certified under section 60105(a) of the Accountable Pipeline Safety and Partnership Act of 1996 to act as a representative for the Administrator of the Research and Special Programs Administration (RSPA) in enforcing pipeline safety regulations within New York State. A requirement of that certification is that State regulations be at least as stringent as Federal regulations.

3. 16 NYCRR §§ 21.2, 21.3, 603, 642, 644 (Case No. 97-C-0956).

a. Description of Rules:

The preceding rules were deemed unnecessary for the regulation of certain telephone companies and therefore permanently waived by amendment to the code: 16 NYCRR sections 21.2 (details of a petition), 21.3 (evidence to be presented at a hearing) and Part 642 (retention of records) for facilities based carriers that do not provide local service and for non-incumbent facilities based local exchange companies; and 16 NYCRR Part 603 (service standards), section 644.3 (capital program filing) for facilities based carriers that do not provide local service. These rules were routinely waived on a case by case basis, and are unnecessary for the regulation of these companies.

- b. Statutory Authority: PSL §§ 4(1), and 94(2).
- c. No hearings or public meetings are scheduled.
- d. The rules are in effect and will continue.
- e. Need and legal basis for the rules:

The amendment will allow companies to be certified more quickly, without requiring rule waivers, enabling them to enter and compete more effectively in the telecommunications market.

4. 16 NYCRR §§ 10 and 255 (Case No. 97-G-1161).

a. Description of rules:

Several amendments to the Federal pipeline safety regulations contained in 49 CFR 192, required revisions to Chapter I, Rules of Procedure, Subchapter A, General, Part 10, Referenced Material, section 10.3; and revised Chapter III, Gas Utilities, Subchapter C, Safety, Part 255, Transmission and Distribution of Gas. The revisions brought the Department's regulations into compliance with the federal rules.

- b. Statutory authority: PSL §§ 66(2).
- c. No hearings or public meetings are scheduled.
- d. The rules are in effect and will continue.
- e. Need and legal basis for the rules:

PSL § 66(2) grants the Department of Public Service the power to investigate and ascertain the quality of gas supplied, the methods employed in distributing and supplying gas and the power to order such reasonable improvements as will best promote the public interest, preserve public health, and protect those using such gas supplies. The revisions are a logical extension of the Department's authority. The listing of standards and codes incorporated by reference in Part 10 was revised in order to reference current editions and provided contact information for the codes' publishers were updated. Part 255

was streamlined by revising or eliminating unnecessary and costly requirements.

5. 16 NYCRR §§ 10 AND 255 (Case No. 02-G-0134).

a. Description of rules:

16 NYCRR Chapter I, Rules of Procedure, Subchapter A, General, Part 10, Referenced Material; and Chapter III, Gas Utilities, Subchapter C, Safety, Part 255, Transmission and Distribution of Gas, amended Part 10 and Part 255 of the code to conform to Federal Regulations contained in Title 49, Code of Federal Regulations, Part 192.

b. Statutory authority: PSL § 66.

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis for the rules:

The listing of standards and codes incorporated by reference in Part 10 were revised in order to reference current editions of the standards and codes while contact information for the codes' publishers was updated. Part 255, Transmission and Distribution of Gas was updated to conform to the Federal Regulations promulgated.

Department of State

FIVE YEAR REVIEW OF RULES ADOPTED BY THE DEPARTMENT OF STATE IN CALENDAR YEAR 2008 REQUIRED TO BE REVIEWED IN CALENDAR YEAR 2013; FURTHER REVIEW OF RULES ADOPTED BY THE DEPARTMENT OF STATE IN CALENDAR YEAR 2003 REQUIRED TO BE RE-REVIEWED IN CALENDAR YEAR 2013; AND FURTHER REVIEW OF RULES ADOPTED BY THE DEPARTMENT OF STATE IN CALENDAR YEAR 1998 REQUIRED TO BE RE-REVIEWED IN CALENDAR YEAR 2013

As required by section 207 of the State Administrative Procedure Act (SAPA), the following list of rules, adopted by the Department of State in calendar year 2008, must be reviewed in calendar year 2013. This list does not include rules that: were originally adopted as consensus rules, subsequently have been amended, have been repealed. The original Notices of Proposed Rulemaking for all of the listed rules required the preparation of a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement. Public comment on the continuation or modification of these rules is invited and will be accepted until February 20, 2013. Comments may be submitted to the contact person at the end of this Notice.

RULES ADOPTED IN 2008

(1) DOS-47-07-00018 Manufactured Homes

Added Part 1210 to Title 19 NYCRR

Analysis of the need for the rule: The rule was needed to implement Article 21-B of the Executive Law regarding warranty seal, certifications, and dispute resolutions concerning construction, installation, and servicing of manufactured homes.

Legal basis for the rule: Executive Law, section 604

(2) DOS-49-07-00003 Continuing Education for Hearing Aid Dispensers

Amended Section 192.7 of Title 19 NYCRR

Analysis of the need for the rule: The rule was needed to require registered dispensers of hearing aids to complete continuing education requirements on infection control and professional conduct.

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

(3) DOS-30-08-0012 Local Government Efficiency Grant Program

Added Part 815 to Title 19 NYCRR

Analysis of the need for the rule: The rule was needed to establish criteria and eligibility requirements for local government efficiency awards program.

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

(4) DOS-32-08-00006 Fire Alarm and Security Systems

Amended Sections 196.1, 196.2, 196.8, & 196.10 of Title 19 NYCRR

Analysis of the need for the rule: The rule was needed to add a qualifying educational module for licensure to install, service or maintain security or fire alarm systems.

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

RULES ADOPTED IN 2003

As also required by section 207 of SAPA, the following rule, adopted by the Department of State in calendar year 2003, must be re-reviewed in calendar year 2013. This list does not include rules that: were originally adopted as consensus rules, subsequently have been amended, have been repealed. The original Notice of Proposed Rulemaking for the listed rule required the preparation of a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement. Public comment on the continuation or modification of the rule is invited and will be accepted until February 20, 2013. Comments may be submitted to the contact person at the end of this Notice.

(1) DOS-53-02-00019 Continuing Education for Real Estate Brokers and Salespeople

Amended Part 177 of Title 19 NYCRR

Analysis of the need for the rule: The rule was needed to update the continuing education rules and to provide for computer-based and distance learning.

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

RULES ADOPTED IN 1998

As further required by section 207 of SAPA, the following list of rules, adopted by the Department of State in calendar year 1998, must be reviewed in calendar year 2013. This list does not include rules that: were originally adopted as consensus rules, subsequently have been amended, have been repealed. The original Notices of Proposed Rulemaking for all of the listed rules required the preparation of a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement. Public comment on the continuation or modification of these rules is invited and will be accepted until February 20, 2013. Comments may be submitted to the contact person at the end of this Notice.

(1) DOS-41-98-00001 Trademarks and Service Marks

Added Part 140 to Title 19 NYCRR

Analysis of the need for the rule: The rule was needed to provide information and instruction to those who file trademarks and service marks with this Department.

Legal basis for the rule: Executive Law, section 91; General Business Law, sections 360-i & 360-q

(2) DOS-11-98-00003 Filing Rule Technical Amendments

Amended Parts 145, 150, 154 and 155 of Title 19 NYCRR

Analysis of the need for the rule: The rule was needed to: eliminate references to certain technologies, conform provisions to statutory changes, and reflect filing practices in this Department's Division of Corporations.

Legal basis for the rule: Executive Law, section 91

(3) DOS-11-98-00002 Corporation Names

Added Part 156 to Title 19 NYCRR

Analysis of the need for the rule: The rule was needed to modernize the naming rule for business organizations.

Legal basis for the rule: Executive Law, section 91

(4) DOS-14-98-00004 Continuing Education for Real Estate Appraisers

Added Part 1107 to Title 19 NYCRR

Analysis of the need for the rule: The rule was needed to implement statutory continuing education requirements.

Legal basis for the rule: Executive Law, section 160-t

(5) DOS-46-97-00004 State Academy of Fire Sciences

Amended Part 452 of Title 19 NYCRR

Analysis of the need for the rule: The rule was needed to more closely align fees charged to the State's actual costs.

Legal basis for the rule: Executive Law, section 156

(6) DOS-26-97-00019 Filing of Local Laws

Added new Part 130 to Title 19 NYCRR

Analysis of the need for the rule: The rule was needed to simplify and clarify filing procedures.

Legal basis for the rule: Executive Law, section 91

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, (518) 474-6740; David.Treacy@dos.state.ny.gov. This Regulatory Agenda is scheduled for publication in the January 2, 2013 Issue of the New York State Register and is posted on the Department's website at: www.dos.ny.gov.

Department of Taxation and Finance

Pursuant to section 207 of the State Administrative Procedure Act (SAPA) the Department of Taxation and Finance intends to review the following rules during 2013, and invites written comments on the continuation or modification of these rules in order to assist the Department in the required review. We will consider comments that are received by February 19, 2013. Any questions concerning the items listed in this rule review or comments regarding the continuation of the rules being reviewed should be referred to: John W. Bartlett, Taxpayer Guidance Division, Department of Taxation and Finance, W.A. Harriman Campus, Building 9, Room 160, Albany, New York 12227. Telephone: (518) 457-2254, Email address: tax.regulations@tax.ny.gov.

RULES ADOPTED IN 2008

1. TAF-10-08-00004-A Supplemental Schedule for Distributors of Tobacco Products to Account for Roll-Your Own Cigarette Tobacco in New York State

This rule added section 89.4 to Title 20 NYCRR of the Tobacco Products Tax Regulations to codify in regulation the reporting requirements for distributors of tobacco products that import, cause to be imported, or manufacture roll-your-own cigarette tobacco to file a schedule to account for any roll-your-own (RYO) cigarette tobacco imported or caused to be imported into New York State, or manufactured in New York State.

Analysis of the need for the rule: New York State's Public Health Law Article 13-G constitutes the State's "Qualifying Statute" under the Master Settlement Agreement (MSA). It provides that each tobacco product manufacturer selling cigarettes or RYO cigarette tobacco in New York must either: (a) join the MSA and make the annual payments required by that agreement; or (b) make annual escrow deposits based upon the amount of its products sold each year in New York. Chapter 272 of the Laws of 2006 amended the Public Health Law in relation to enforcement of the MSA to require non-participating manufacturers to include RYO cigarette tobacco in determining their annual escrow payments. This rule required tobacco distributors to complete a schedule reporting information on roll-your-own cigarette tobacco manufactured in the State or imported into the State to assist in the enforcement of the Public Health Law.

The notice of proposed rule making included a regulatory flexibility analysis and a rural area flexibility analysis.

Legal basis for the rule: Tax Law sections 171, subs. First and Fourteenth and 475 (not subdivided); Public Health Law, section 1399-oo, subdivision (10).

2. TAF-24-08-00006-A Increased Rate of Excise Tax on Cigarettes

This rule amended sections 70.1, 80.2 and Parts 74 and 82; renumbered section 79.3 to section 79.4; and added new section 79.3 to Title 20 NYCRR of the Cigarette Tax Regulations to reflect the statutory increase in the rate of New York State cigarette excise tax that was effective on June 3, 2008.

Analysis of the need for the rule: Chapter 57 of the Laws of 2008, Part RR-1, amended Article 20 of the Tax Law to increase the tax on cigarettes effective June 3, 2008. Part RR-1 also required all agents, wholesale dealers and retail dealers to pay the tax increase on cigarettes possessed and tax stamps in inventory as of the close of

business June 2, 2008. The rule made necessary regulatory changes to implement the statutory provisions and to set the commissions allowable to cigarette agents for affixing cigarette stamps relating to the new rate of tax. The rule also updated the calculation of the basic cost of cigarettes and made other technical updates.

The notice of proposed rule making included a regulatory flexibility analysis and a rural area flexibility analysis.

Legal basis for the rule: Tax Law sections 171, subd. First; 475 (not subdivided); 1142(1), 1250 (not subdivided); and L. 2008, ch 57, part RR-1, section 4.

3. TAF-37-08-00005-A Sales Tax Re-Registration of Show and Entertainment Vendors and Other Persons

This rule amended Parts 533, 539, and 540 of Title 20 NYCRR of the Sales and Use Taxes Regulations to streamline the sales tax re-registration process for show and entertainment vendors and other persons.

Analysis of the need for the rule: Part LL-1 of Chapter 57 of the Laws of 2008 directed the Department to institute a sales tax re-registration program under which registered persons were required to file new certificates of registration (renewal) and obtain new certificates of authority to collect sales tax. The rule was part of the Department's plan to streamline the sales tax re-registration process by eliminating the special certificate of authority and its specified annual term that was applicable only to show and entertainment vendors. Prior to the rule, this "Certificate of Authority for Show and Entertainment Vendors" was automatically reissued by the Department at the end of each calendar year provided the vendor had no sales tax delinquencies. The rule allows the Department to conform the process by which show and entertainment vendors' certificates of authority are renewed to the process applicable to other registered persons. Additionally, the rule contains clarifying, technical, and conforming amendments in conjunction with this change and with Part LL-1 of Chapter 57 of the Laws of 2008.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Tax Law, sections 171, subd. First; 1134(a)(2) and (5); 1142(1) and (8); 1250 (not subdivided); and part LL-1 of Chapter 57 of the Laws of 2008.

4. TAF-42-08-00016-A Definition of Resident for Personal Income Tax

This rule amended section 105.20(e)(1) of Title 20 NYCRR of the Personal Income Tax Regulations to remove provisions of the regulations providing for a "temporary stay" exception from the definition of permanent place of abode for purposes of determining whether an individual is a resident for personal income tax purposes.

Analysis of the need for the rule: The elimination of the temporary stay exception from the definition of permanent place of abode provided taxpayers and the Department with more clear rules for assessing residency status for New York State personal income tax purposes. Prior to the rule, a place of abode would not be considered permanent if it was maintained only during a temporary stay, or "fixed and limited period," for the accomplishment of a "particular purpose." The temporary stay concept does not appear in the statute, and was difficult to apply for both taxpayers and the Department.

The notice of proposed rule making included a regulatory flexibility analysis and a rural area flexibility analysis.

Legal basis for the rule: Tax Law, sections 171, subd. First; 697(a) and 605(b)(1).

5. TAF-44-08-00016-A Taxable Sales by Certain Exempt Organizations

This rule amended sections 526.10, 529.7, 529.8, and 529.9 of Title 20 NYCRR of the Sales and Use Taxes Regulations to provide rules regarding sales tax on sales, including auction sales, by certain exempt organizations.

Analysis of the need for the rule: Part KK-1 of Chapter 57 of the Laws of 2008 amended Section 1116(b)(1) of the Tax Law to expand the existing "shop or store" provision so that certain additional sales

of tangible personal property and services are subject to sales tax when sold by certain organizations that are otherwise exempt from sales tax. The rule reflected the additional sales made taxable by Part KK-1, which include remote sales (e.g., sales over the Internet) of tangible personal property and certain services if made with a degree of regularity, frequency, and continuity. Because this legislation applies to remote auction sales, the rule also provided guidance regarding when both remote and traditional auction sales are considered to be made with a degree of regularity, frequency, and continuity.

The notice of proposed rule making included a regulatory flexibility analysis and a rural area flexibility analysis.

Legal basis for the rule: Tax Law, sections 171, subd. First; 1116(b)(1); 1142(1) and (8); 1250 (not subdivided); and L.2008, ch.57, part KK-1.

6. RPS-16-08-00006-A Annual Charges to Railroad Companies

Analysis of the need for the rule: The rule restored the process of establishing annual charges that was unintentionally deleted in a prior rule making.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, sections 202(1)(l), 489-q, and 489-nn; and State Finance Law, section 97-jj.

RULES ADOPTED IN 2003

1. RPS-49-02-00014-A Reimbursement of Local Officials

Analysis of the need for the rule: The rule provided a process for the equitable distribution of the available funds.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, sections 202(1)(l), 318, and 1530; and L. 2002, ch. 53.

RULES ADOPTED IN 1998

1. TAF-49-97-00004-A Stock Transfer Tax - Formerly Subchapter G of Chapter III

This rule amended Subchapter G of Chapter I of Title 20 NYCRR to simplify and update the Stock Transfer Tax Regulations.

Analysis of the need for the rule: This rule removed outdated information, and consolidated and summarized the language. The rule also provided for an alternative means for brokers to submit daily reports to a clearing corporation and provided for the manner in which they could certify such records. In addition, the rule addressed the rebate of the stock transfer tax provided for in section 280-a of the Tax Law.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Tax Law section 171, subd. First.

2. TAF-01-98-00007-A Action for Failure to Release a Lien

This rule added Part 2400 to the Title 20 NYCRR Procedural Regulations to provide taxpayers with guidance relating to actions for failure to release a lien.

Analysis of the need for the rule: This rule implemented provisions of Chapter 577 of the Laws of 1997 and provides taxpayers with guidance on administrative review of a "notice of failure to release a lien". The rule also provides for the type of bond or other security which is acceptable to effectuate a release of lien.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal Basis for the rule: Tax Law, sections 171, subd. First; and 3032(a) and (d), and section 56(j) of Chapter 577 of the Laws of 1997.

3. TAF-07-98-00003-A Application of Sales Tax Exemption to Marshmallows

This rule amended section 528.2(a) of Title 20 NYCRR of the Sales and Use Taxes Regulations to delete regulatory inconsistency in the imposition of sales tax on receipts from the sales of marshmallows and marshmallow bits.

Analysis of the need for the rule: Prior to the rule, large marshmallows were considered to be candy and confectionary and were, consequently, subject to sales tax. At the same time, marshmallow bits were considered to be food used in cooking and baking and were, therefore, exempt from tax. The rule allowed marshmallows to be treated consistently as exempt from sales tax.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Tax Law, sections 171, subd. First; 1142(1); and 1250 (not subdivided).

4. TAF-17-98-00004-A Credit Line Mortgage

This rule amended Part 647 of Title 20 NYCRR to reflect the statutory change that extended favorable tax treatment afforded certain residential credit line mortgages to all credit line mortgages securing a maximum principal indebtedness of less than \$3 million.

Analysis of the need for the rule: Prior to statutory changes made by Chapters 489 and 490 of the Laws of 1996, when a credit line mortgage of real property principally improved or to be improved by a one-to six-family owner-occupied residence or dwelling ("residential credit line mortgage") was recorded, the mortgage recording tax was computed and paid based on the maximum principal amount secured by the mortgage. No further tax was payable on the recording or the filing of instruments evidencing advances or readvances by the lender to the borrower under a residential credit line mortgage. The rule reflected the department's interpretation of the statutory amendments and provided for the aggregation of certain related mortgages so the \$3 million limitation could not be easily circumvented.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Tax Law, sections 171, subd. First; 253-b(3); and 263(1)(a).

5. TAF-19-98-00002-A Taxpayers Affected by Declared Disasters

This rule added Part 2401 to Title 20 NYCRR of the Procedural Regulations to provide relief for taxpayers affected by declared disasters by extending tax deadlines. It also provides a determination of taxpayers affected by declared disasters.

Analysis of the need for rule: The rule implements the provisions of Chapter 8 of the Laws of 1998 that authorize the Commissioner of Taxation and Finance to postpone certain tax deadlines for a period up to 90 days, without imposition of penalty and interest, for taxpayers determined to be affected by a disaster declared by the President or the Governor.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Tax Law, section 171, subsd. First and Twenty-eighth.

6. TAF-32-98-00004-A Social and Athletic Clubs

This rule amended Example 29 of section 527.11(b)(7) of Title 20 NYCRR of the Sales and Use Taxes Regulations to eliminate the reference to fishing and hunting clubs as examples of athletic clubs whose dues and initiation fees are subject to sales tax, and to qualify the reference to boating clubs subject to such tax.

Analysis of the need for the rule: This rule was necessary to conform the regulations to current interpretation of statutory provisions concerning the taxation of dues and initiation fees paid to athletic clubs. In general, these dues and initiation fees are subject to sales tax under Section 1105(f)(2) of the Tax Law. This rule reflected a prior change in Department policy that dues and initiation fees paid to fishing and hunting clubs are no longer subject to sales tax. The rule also qualified the nature of boating clubs that are considered to be athletic clubs, i.e., those boating clubs devoted to sports and athletic activities. This was necessary to clarify that not all boating clubs fall within the purview of Section 1105(f)(2) of the Tax Law as taxable athletic clubs.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Tax Law, sections 171, subd. First; 1142(1); and 1250 (not subdivided).

7. RPS-29-98-00008-A General Administration

Analysis of the need for the rule: This rule simplified provisions of Part 185 relating to general administrative provisions of rules.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, section 202(1)(l); Public Officers Law, sections 87(1)(b), 94(2), and (1)(i); Environmental Conservation Law, sections 8-0113(3); and State Administrative Procedure Act, section 204.

8. RPS-29-98-00009-A Equalization Products

Analysis of the need for the rule: This rule simplified provisions of Part 186 relating to equalization products established by the office.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, arts. 8, 12, 18, and 19; sections 202(1)(l), 1314, and 1315.

9. RPS-29-98-00010-A Minimum Qualifications Standards, Training and Certification of Local Assessment Administration Personnel

Analysis of the need for the rule: This rule simplified provisions of Part 188 relating to qualifications, training and certification of assessors and other local assessment and administration personnel.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, sections 202(1)(l), 310, 312, 318, 320, 322, 1530, and 1532.

10. RPS-29-98-00011-A Preparation and Maintenance of Tax Maps for Real Property Tax Administration

Analysis of the need for the rule: This rule simplified provisions of Part 189 relating to tax maps for use in real property tax administration.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, sections 202(1)(l) and 503(1)(b).

11. RPS-29-98-00012-A Requirements for Form and Preparation of Local Assessment Rolls

Analysis of the need for the rule: This rule simplified provisions of Part 190 relating to assessment rolls.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, sections 202(1)(l) and 504(1).

12. RPS-29-98-00013-A Real Property Transfers

Analysis of the need for the rule: This rule simplified provisions of Part 191 relating to real property transfer reports.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, sections 202, 574, 738, and 1570; and Real Property Law, section 333.

13. RPS-29-98-00014-A Assessors' Reports to the State Board of Real Property Services

Analysis of the need for the rule: This rule simplified provisions of Part 193 relating to filing and content of assessors' reports.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, sections 202 and 575.

14. RPS-32-98-00007-A Advisory Appraisals

Analysis of the need for the rule: This rule simplified provisions of Part 195 relating to advisory appraisals.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, sections 202(1)(l), 1536, 1544, 1546, and 1548.

15. RPS-32-98-00008-A Revisions of Provisions Concerning Assessment of Oil and Gas Economic Unit

Analysis of the need for the rule: This rule simplified provisions relating to assessment of oil and gas economic unit.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, sections 202 and 592.

16. RPS-32-98-00009-A Establishment of Assessments and Full Values of Special Franchises

Analysis of the need for the rule: This rule simplified provisions relating to establishment of special franchise assessments and full values.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, section 202(1)(l), and art. 6.

17. RPS-32-98-00010-A Taxation of State Lands

Analysis of the need for the rule: This rule simplified provisions of Part 199 relating to taxation of State lands.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, section 202(1)(l).

18. RPS-32-98-00011-A Establishment of Railroad Ceilings

Analysis of the need for the rule: This rule simplified provisions relating to railroad ceilings.

The notice of proposed rule making did not include a regulatory flexibility analysis, a rural area flexibility analysis, or a job impact statement.

Legal basis for the rule: Real Property Tax Law, sections 202(1)(l), (m), 489-q, and 489-nn.