

# RULE REVIEW

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## Department of Corrections and Community Supervision

Pursuant to Section 207 of the State Administrative Procedure Act (SAPA), the following is a list of rules which were adopted by the Department of Corrections and Community Supervision in calendar years 1998, 2003, and 2008, and which must be reviewed in calendar year 2013. Public comment on the continuation or modification of these regulations was invited. Two comments were received. Based upon the belief that said rules further the Department's mission to provide a safe, stable and humane correctional system in New York State, the Department has determined and hereby gives notice pursuant to SAPA, Section 207(4) that the rules shall be continued without modification.

COR-22-08-00001 Amendment of Part 220 of Title 7 NYCRR.

Statutory Authority: Correction Law, sections 112 and 146.

Assessment of Public Comment: Two identical comments were received concerning the Family Reunion Program at a specific correctional facility. While the comments indicated they have had access and participated in this program, there were comments alleging delays in processing FRP requests, closing of the FRP units for repairs, inefficient use of the FRP units, and disagreement with the facility policy that vacancies that result from cancellations are given to first time applicants. The current regulation requires the first time applicant to go through an extensive review process. Once an inmate has successfully participated in the program, subsequent application may be processed and approved at the facility level. This is occurring at the facility, however, all facilities are given discretion as how to implement their programs based upon the level of inmate participation in the program and the resources available. If there are operational issues concerning how the FRP is being implemented at a particular facility, it should be addressed through the Inmate Grievance Program (IGP) by the inmate participants. Any grievance will be reviewed and investigated at the facility level, can be appealed to the facility Superintendent, and may be appealed to the Central Office Review Committee (CORC) which is represented by Central Office representatives for all of the Deputy Commissioners and has the authority to correct any deficiencies or revise departmental policies. The IGP has reviewed and responded to some of these issues at the CORC level for this facility. The issue of the facility's policy of providing cancellation dates to first time applicants was addressed by CORC where it upheld the discretion of the facility administration to promulgate local policies. These comments alleged operational difficulties due to staff performance which should be addressed through an administrative process such as the IGP. There is no intention to amend the current rule as it is written.

Analysis of the need for this rule: The rule is needed as the Family Reunion Program (FRP) is designed to provide selected inmates and their families the opportunity to meet for an extended period of time in privacy with minimum staff supervision. This rule improves the review process for inmates applying for the FRP, better identify programming requirements, and define eligibility.

COR-10-08-00001 Repeal of section 270.2(B)(6)(iii), addition of sections 270.2(B)(iv)-(v) and amendment of section 712.2(i) of 7 NYCRR.

Statutory Authority: Correction Law, sections 112 and 138.

Assessment of Public Comment: None received.

Analysis of the need for this rule: The rule reiterates the security concerns associated with an inmate's possession of gang related written material as well as written material that could facilitate organizational activity within a correctional facility by other unauthorized organizations.

COR-05-08-00001 Repeal and replacement of Part 1000 to 7 NYCRR.

Statutory Authority: Correction Law, section 112.

Assessment of Public Comment: None received.

Analysis of the need for this rule: This regulation provides the Department with the means to expeditiously revise or amend the Central Monitoring Case (CMC) procedure, promulgate CMC review, identification and appeal procedures as necessary and in the best interest of the public safety.

COR-48-07-00002 Amendment of sections 1020.1, 1020.4(a)(1), (2), (c), (d)(2), (3), (4), (e)(1)(iv), (2)(iii), 1020.5(a)(1) and 1020.6 of 7 NYCRR.

Statutory Authority: Correction Law, section 112.

Assessment of Public Comment: None received.

Analysis of the need for this rule: To detect and deter the use of illicit drugs and alcohol substances within the correctional environment, the Department has relied on random urinalysis testing of the general population and of selected groups of inmates. This rule improves clarity, readability and refines procedures in response to field experience and new testing equipment.

Regulations adopted in 2003

COR-40-03-00003 Addition of section 305.2(f) to 7 NYCRR.

Statutory Authority: Correction Law, section 112.

Assessment of Public Comment: None received.

Analysis of the need for this rule: Deprivation orders, as authorized in section 305.2(a), allow correctional staff to turn off the water supply to the cell when inmates flood them. This rule creates a procedure for the distribution of water to inmates in special housing who are subject to this deprivation order.

COR-12-03-00001 Amendment of section 280.2(d) of 7 NYCRR.

Statutory Authority: Correction Law, sections 112, 803 and 805.

Assessment of Public Comment: None received.

Analysis of the need for this rule: This rule is to afford credit for merit time for those program achievements which have been earned by an inmate while serving their current sentence and not from a prior incarceration.

COR-17-03-00003 Repeal and replacement of section 720.4(a) to 7 NYCRR.

Statutory Authority: Correction Law, section 112.

Assessment of Public Comment: None received.

Analysis of the need for this rule: This rule emphasizes the need to accurately identify the addressee before processing the mail in order to prevent the errant delivery of mail and resulting conflicts among inmates who may have the same or nearly the same name and to more easily forward the mail to another address when appropriate.

COR-05-03-00014 Amendments of section 1900.4(c), (h) and (n) of 7 NYCRR.

Statutory Authority: Correction Law, section 851.

Assessment of Public Comment: None received.

Analysis of the need for this rule: This rule makes the temporary release program to be in compliance with Correction Law § 851, Subdivision 2-a, under Chapter 251 of the Laws of 2002. It authorizes the Commissioner of DOCCS to permit inmates serving sentences for homicide or assault offenses, who are eligible for parole or will be eligible for release on parole or conditional release within two years, to participate in a temporary release program if the inmate can demonstrate that: (i) the victim of such homicide or assault was a member of the inmate's immediate family; (ii) he or she was subjected to substantial physical, sexual or psychological abuse by the victim of the homicide or assault; and, (iii) such abuse was a substantial factor in causing the inmate to commit the homicide or assault. The Commissioner is required to request the opinion of both the sentencing court and district attorney who prosecuted the underlying offense and to consider opinions before making a determination.

Regulations adopted in 1998

COR-35-98-00001 Amendments of sections 100.69, 100.100, 100.110 and 100.117 of 7 NYCRR.

Statutory Authority: Correction Law, section 70.

Assessment of Public Comment: None received.

Analysis of the need for this rule: This rule is necessary to update information where the department has elected to change security classifications and functions to more efficiently use available facility spaces at Butler, Mohawk, and Sullivan Correctional Facilities.

COR-36-98-00003 Addition of section 100.128 to 7 NYCRR.

Statutory Authority: Correction Law, section 70.

Assessment of Public Comment: None received.

Analysis of the need for this rule: This rule is necessary as section 70 of the Correction Law requires the Commissioner of Corrections and Community Supervision to publish a designation of each correctional facility, identifying it by name and location, gender and age range of inmates, and a classification, identifying its security level and function. This rule identifies Gowanda Correctional Facility although the VAST program was removed by an amended rule in 2008 since the program no longer existed.

COR-25-98-00002 Repeal and replacement of sections 305.3 and 305.4 of 7 NYCRR.

Statutory Authority: Correction Law: section 112.

Assessment of Public Comment: None received.

Analysis of the need for this rule: This rule and subsequent amendments provides clarification of procedures for the application of restraints on inmates assigned to special housing units (SHU). This regulation replaced the term "shackles" with a more precisely defined "mechanical restraints." Restraint options are identified in order to help SHU staff manage inmate movements with enhanced safety and security.

COR-19-98-00001 Amendment of Appendix 1-J under Part 1701 of 7 NYCRR.

Statutory Authority: Correction Law, section 112.

Assessment of Public Comment: None received.

Analysis of the need for this rule: This rule revised a form used by departmental staff in evaluating inmate suitability and compatibility for double-cell housing. The amendment corrected the age limitation from 64 years of age or older to 69 years of age or older.

COR-09-98-00004 Repeal and replace section 720.3(i) of 7 NYCRR.

Statutory Authority: Correction Law, section 112.

Assessment of Public Comment: None received.

Analysis of the need for this rule: This rule gives the Department better control over outgoing inmate correspondence because it requires an inmate to put his or her return address on outgoing correspondence in a uniform format which conspicuously identifies the sender's return address as a correctional facility. This helps deter inmates from attempting to mail correspondence to persons with whom they are forbidden to correspond. It also makes it more likely that recipients of inmate correspondence will recognize it as such prior to opening it or accepting it into their households.

COR-15-98-00001 Amendment of section 50.1 of 7 NYCRR.

Statutory Authority: Correction Law, section 112, and Criminal Procedure Law, section 2.10(25).

Assessment of Public Comment: None received.

Analysis of the need for this rule: The Commissioner has discretion to designate certain department officials as peace officers in order that they may carry out their official duties. This rule added three peace officer designations and changes a civil service title from "supervisor" to "coordinator." This rule was amended in 2012 where one of the officials was removed from this designation.

COR-09-98-00005 Repeal and replace section 701.3(h) and amendment of section 701.7 of 7 NYCRR.

Statutory Authority: Correction Law, section 139.

Assessment of Public Comment: None received.

Analysis of the need for this rule: This rule ensures fair access to the inmate grievance program by disabled inmates or any others who may have difficulty communicating, and contributes to the implementation of the consent judgment in the case of *Clarkson v. Goord*, 91 CIV 1792, on behalf of deaf and hard of hearing inmates. This rule was repealed and replaced in 2006. While much of the substance of this rule was kept in the new rule, this rule will be removed from the five year review process since it has been superseded.

COR-51-97-00023 Amendment of section 270.2 of 7 NYCRR.

Statutory Authority: Correction Law, sections 112 and 138.

Assessment of Public Comment: None received.

Analysis of the need for this rule: These amended rules were necessary to the inmate rulebook to enhance its practical application for management and discipline which makes it easier for facility staff to sanction inappropriate behavior. The revision to item (B)(8)(ii) prohibits inmates from communicating messages of a personal nature to employees or volunteers in order to reduce instances of abuse or compromises to staff functions and authority.

## Education Department

Review of Existing Rules Pursuant to State Administrative Procedure Act Section 207 -Notice of Continuation Without Modification

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 which 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 rules that were adopted during calendar years 2008, 2003 and 1998 that the Department has reviewed and determined should be continued without modification. All section and part references are to Title 8 of the New York Code of Rules and Regulations.

A. CALENDAR YEAR 2008

OFFICE OF P-12 EDUCATION

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

Justification for continuation without modification: 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).

Assessment of public comment: No comments were received.

100.2(x) Unaccompanied youth

Justification for continuation without modification: 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).

Assessment of public comment: No comments were received.

100.15 Reasonable and necessary expenses of distinguished educators

Justification for continuation without modification: 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.

Assessment of public comment: No comments were received.

156.3(h) Idling school buses

Justification for continuation without modification: 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.

Assessment of public comment: No comments were received.

Parts 175, 100, 110 & 144 State aid

Justification for continuation without modification: 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.

Assessment of public comment: No comments were received.

136.3 Dental certificates

Justification for continuation without modification: 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).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: The rule is necessary to conform 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).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: The rule is necessary to implement 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.

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: The rule is necessary to ensure consistency in procedural safeguards by providing that the IEPs and notices be developed consistent with the Commissioner's guidelines.

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

Assessment of public comment: No comments were received.

OFFICE OF HIGHER EDUCATION

80-5.5 Waivers of teacher certification requirements

Justification for Continuation without Modification: This rule needs to be continued in order to allow NYS public schools to find a qualified individual to fill a temporary short-term appointment especially in situations where an interim superintendent of schools is needed. Section 211 of the Retirement and Social Security Law permits retired persons between the ages of 55 and 64 to earn compensation when returning to employment in school districts other than the City of New York, BOCES and county vocational education and extension boards and continue to receive their pensions, subject to the Commissioner's approval. Section 80-5.5 of the Regulations of the Commissioner of Education establishes the standards under which a district or board may seek the Commissioner's approval of a waiver for the employment of retired persons beyond the \$30,000 earnings limitation prescribed by § 212 of Retirement and Social Security Law.

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).

Assessment of public comment: No comments received.

145-2.2 Tuition Assistance Program

Justification for continuation without modification: The rule establishes certain educational, or eligibility, requirements for certain State student aid awards granted under the tuition assistance program (TAP), including TAP awards for accelerated study. The rule provides for program pursuit and academic progress requirements for maintaining eligibility for such awards, including good academic standing, and more specifically, satisfactory academic progress. The rule applies to all public and nonpublic colleges and universities, education opportunity centers, and other postsecondary institutions that are eligible to participate in the tuition assistance program (TAP) in New York State. The rule affects students who first received a TAP award in the 2007-2008 academic year, and thereafter, who are enrolled full-time in a two-year, four-year, or five-year undergraduate program whose terms are organized in semesters or trimesters, or the equivalent. These students are held to the satisfactory academic progress standards which prescribe the minimum number of credits completed and minimum cumulative grade point earned before a student is certified for a payment on the students' TAP award. This rule establishes the minimum number of credits, which may include a limited number of remedial-course credits, a student must complete to qualify for a TAP award for accelerated study.

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

Assessment of public comment: No comments received.

350(c) Honorary degrees

Justification for continuation without modification: 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." The rule establishes the list of honorary associate degrees that com-

munity colleges and other New York degree-granting institutions may award. By identifying the associate degree titles available for use, the rule benefits community colleges, which formerly had no avenue to recognize individuals with honorary degrees. In addition, it expands the honorary degree options available to institutions that award baccalaureate or higher degrees, under § 3.48 of the Rules 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.

Assessment of public comment: No comments were received.

#### 80-3.7 Certification for individual evaluation

Justification for continuation without modification: The changes in the rule were relating to the requirement for the Autism training for all teachers that applied under individual evaluation for certain titles. It is important to continue these requirements to ensure that teachers of students with autism and autism spectrum disorders have the competencies to effectively work with these students, their families and other school personnel.

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

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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. It is important to continue these requirements to ensure that teachers of students with autism and autism spectrum disorders have the competencies to effectively work with these students, their families and other school personnel.

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).

Assessment of public comment: No comments were received.

#### 150.4 High needs nursing

Justification for continuation without modification: The Rule requires the eligible institution to apply by September 15 of the academic year for which they are seeking the State aid, and to provide by November 15 of each year, certification by the chief executive officer as to the number of full-time students enrolled in such nursing programs in the fall semester. In addition, for jointly registered nursing degree programs, the Rule clarifies that the institution granting the degree shall receive the State aid award. It ensures that no portion of State aid paid to a higher education institution under this section be used for religious instruction, religious worship, or for the advancement or inhibition of religion (consistent with the Blaine Amendment of the NYS Constitution).

The Rule also defines an eligible institution as a higher education institution that meets the following requirements: (1) the institution must be a non-profit or independent college or university incorporated by the Regents or the Legislature that is geographically located in New York State; (2) the institution must maintain an earned nursing degree program registered by the department, culminating in an associate degree or higher, excluding any online nursing degree program offered via the internet; (3) the institution must meet such standards of educational quality applicable to comparable public institutions of higher education, as may be from time to time established by the Regents; and (4) the institution must meet the requirements for State aid under the constitutions of the United States and the State of New York.

Finally, the Rule authorizes the Commissioner of Education to award State aid for online or internet nursing degree programs at certain independent institutions of higher education within the State, in order to conform with Section 6401-a of the Education Law, as amended by Chapter 57 of the Laws of 2008 and also establishes annual reporting requirements relating to the expenditure of State aid.

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

Assessment of public comment: No comments were received.

#### OFFICE OF THE PROFESSIONS

##### 52.36 and 52.37 Speech/language pathology

Justification for continuation without modification: 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).

Assessment of public comment: No comments were received.

##### 69.1, 69.2 and 69.3 Architectural endorsement

Justification for continuation without modification: 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. 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).

Assessment of public comment: No comments were received.

##### 52. 38, 52.39, 52.40, 79-13.1, 79-14.1 and 79-15.1 Clinical Lab Technology

Justification for continuation without modification: The rule is needed to continue the implementation of the requirements of Chapter 204 of the Laws of 2008. This Chapter amended Article 165 of the Education Law in several respects, relating to the licensure and practice of the Clinical laboratory technologists, cytotechnologists, clinical laboratory technicians, and histological technicians. This Chapter made the following major changes requiring regulations:

(1) establishes the profession of a certified histological technician, which is a profession that is both practice and title protected.

(2) expands the grandparenting provisions for the existing professions of clinical laboratory technologist, cytotechnologist, and certified clinical laboratory technician and creates grandparenting provisions for the new profession of certified histological technician.

(3) establishes restricted licenses for clinical laboratory technologists in the following five areas: histocompatibility, cytogenetics, stem cell process, flow cytometry/cellular immunology, and molecular diagnosis.

(4) establishes limited licenses in the professions of clinical laboratory technology and certified histological 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).

Assessment of public comment: No comments were received.

##### 61.15 and 61.19 Dental continuing education

Justification for continuation without modification: The rule is needed to continue the implementation of the requirements of Chapter 189 of the Laws of 2007 which amended sections 6604-a and 6611 of the education law to increase the number of mandatory continuing education hours for dentists from 45 hours to 60 hours during each triennial registration period; to require a course in jurisprudence/ethics for dentists and to require that dentists maintain current certification in cardiopulmonary resuscitation.

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.

Assessment of public comment: No comments were received.

##### 62.5 Veterinarian technology

Justification for continuation without modification: The rule is needed to continue the professional education requirement for admission to the licensing examination for veterinary technicians in order to

allow students that will be completing registered or accredited programs of education for veterinary technology to be admitted to the licensing examination within their final six months of such professional study immediately preceding their date of graduation. This rule aligns examination admission requirements in this field with practice in other states, thus removing the competitive disadvantage that New York State students would otherwise face.

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

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: The rule is needed to continue the implementation of the provisions of Chapter 204 of the Laws of 2008, relating to:

(1) professional study, examination, limited permit, grandparenting and limited license requirements for certified histological technicians;

(2) expanded grandparenting provisions for licensure as a clinical laboratory technologist, cytotechnologist and certified clinical laboratory technician;

(3) standards for the issuance of restricted and limited licenses to clinical laboratory technologists; and

(4) standards for registered college preparation programs for certified histological technicians.

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).

Assessment of public comment: No comments were received.

24-7 Professional license restoration

Justification for continuation without modification: The rule is needed in order to continue to provide a more orderly and effective review of the evidentiary information which is submitted by an applicant in support of his/her restoration application. The Rules of the Board of Regents specify that an applicant may submit a response to the Committee on the Professions (COP)'s report, provided that the response does not contain any new evidentiary material. This allows an applicant to submit a written statement agreeing or disagreeing with the recommendation of the COP or addressing perceived factual errors in the COP report, provided that the statement is based on evidence which had already been considered prior to the submission of the COP's recommendation to the Board of Regents. Prohibiting the introduction of new evidence when the case is going to the Board of Regents will lead to a more orderly process in which evidence is subject to review at a meeting at which the applicant may be questioned about the information.

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

Assessment of public comment: No comments were received.

63.9 Pharmacy flu shots

Justification for continuation without modification: The rule is needed to continue the implementation of the provisions of Chapter 563 of the Laws of 2008 which authorize licensed pharmacists with a certificate of administration issued by the Department, to administer immunizations for the prevention of influenza and pneumococcal disease to patients 18 years or older and medications for the emergency treatment of anaphylaxis. This Chapter permits certified pharmacists to administer such immunizations or medications pursuant to a patient-specific order or non-patient order from a licensed physician or certified nurse practitioner in the county in which the immunization is administered. If the county where the immunization is administered has a population of less than 75,000 residents, a licensed physician or certified nurse practitioner in an adjoining county may issue the order.

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.

Assessment of public comment: No comments were received.

#### OFFICE OF CULTURAL EDUCATION

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

Justification for continuation without modification: 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. The 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).

Assessment of Public Comment: No comments were received.

90.7 Public librarian professional certificates

Justification for continuation without modification: This rule ensures that public librarian professional certificate holders on or after January 1, 2010 will participate in continuous professional development. 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).

Assessment of public comment: No comments were received.

90.18 School library systems

Justification for continuation without modification: This rule updates and clarifies certain terminology relating to the functions of and State aid for school library systems. 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.

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

Assessment of public comment: No comments were received.

OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)

100.8 Local high school equivalency diploma

Justification for continuation without modification: This rule provides for the continuance of the National External Diploma Program (NEDP) which is an experience based, self-directed, portfolio assessment program that allows adults to demonstrate and document their knowledge and skills that lead to a high school diploma. This program provides an alternative pathway for adults to obtain a high school equivalency diploma. The regulation was recently extended to June 30, 2015, after which it is anticipated that the program should continue as a New York State high school equivalency diploma under a revised section 100.7.

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).

Assessment of public comment: No comments were received.

OFFICE OF OPERATIONS AND MANAGEMENT SERVICES

3.2 & 4-1.5 Regents committees

Justification for continuation without modification: 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).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: the rule revises the procedures relating to appeals to the Commissioner of Education pursuant to Education Law section 310. The 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).

Assessment of public comment: No comments were received.

#### OFFICE OF STATE REVIEW

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

Justification for continuation without modification: This rule, portions of which have been further modified since promulgation, continues to be necessary to ensure that parties supply the Office of State Review with true copies of the record before the impartial hearing officer; to clarify the procedures, timelines, form requirements, and method for properly filing papers and pleadings with the Office of State Review; and to clarify the requirements for filing impartial hearing records consistent with the notice provisions set forth in section 279.2.

Legal basis for rule: Education Law sections 101(not subdivided), 207(not subdivided), 311(not subdivided), 4403(1) and (3), 4404(2) and 4410(13).

Assessment of public comment: No comments were received.

#### B. CALENDAR YEAR 2003

OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

Section 100.2(x) – Homeless Children and Youth.

Justification for continuation without modification: The rule codifies the process for the enrollment and registration of homeless children in New York State public schools, and defines the terms and criteria used to designate and qualify homeless children and prescribes the steps to be taken during the enrollment procedures. 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 State Education Department anticipates amending the regulations during the 2008 calendar year to incorporate a new definition for unaccompanied youth.

Statutory authority: Education Law §§ 101, 207, 215, 305(1) and (2), 3202(1) and (8), 3205(1), 3209(7) and 3713(1) and (2).

Assessment of public comment: No comments were received.

Part 154 – Students With Limited English Proficiency

Justification for continuation without modification: 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. 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 rule was amended, effective October 4, 2007, to conform to Chapter 57 of the Laws of 2007. Prior to enactment of Chapter 57 of the Laws of 2007, school districts had the option of whether to claim State funds for the education of LEP pupils. With the enactment of Chapter 57 of the Laws of 2007, LEP aid is no longer available to school districts beginning in school year 2007-08. The proposed amendment will established:

(1) uniform requirements for all districts for the development of the district's comprehensive plan. Each plan must include the district's philosophy for the education of LEP pupils; the procedures for screening, identifying and annually assessing LEP pupils; a description of the type of program(s) implemented; the criteria used to place LEP pupils in an English as a second language (ESL) or bilingual program; the types of curricular and extracurricular activities available; information on how the program will be managed; and a signed statement of assurances;

(2) specific criteria for the submission of required reports;

(3) standards for the distribution of school-related information to parents of LEP pupils; and

(4) standards for the referral of LEP pupils suspected of having a disability.

Statutory authority: 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).

Assessment of public comment: No comments were received.

#### Section 135.4 – Certified Athletic Trainers

Justification for continuation without modification: 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. 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.

Statutory authority: Education Law §§ 101, 207, 305(1) and (2), 803(5), 917(1) and (2), 3204(2), 8351 and 8352.

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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. 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.

Statutory authority: 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.

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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. 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.

Statutory authority: Education Law §§ 101, 207, 215, 305(1), (2) and (33), 2802(7) and 3713(1) and (2).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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. 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. The State Education Department will, however, seek modification of the rule in the event that the U.S. Department of Education approves either an interim growth model or a differentiated accountability pilot proposal for New York State.

Statutory authority: Education Law §§ 101, 207, 215, 305(1), (2) and (20), 309 and 3713(1) and (2).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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. 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.

Statutory authority: 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).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: The rule establishes criteria and procedures to ensure State and charter school compliance with the provisions of the NCLB relating to public reporting requirements. 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).

Statutory authority: Education Law §§ 207, 2857(2) and 3713(1) and (2).

Assessment of public comment: No comments were received.

Section 156.3 – Requirements for school bus monitors and attendants

Justification for continuation without modification: 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. 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.

Statutory authority: Education Law §§ 207 and 3624 and Vehicle and Traffic Law § 1229-d(3) and Chapter 159 of the Laws of 2003.

Assessment of public comment: No comments were received.

Section 100.5 – State Assessments and Graduation and Diploma Requirements

Justification for continuation without modification: 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. 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.

Statutory authority: Education Law §§ 101, 207, 209, 305(1) and (2), 308, 309 and 3204(3).

Assessment of public comment: No comments were received.

#### Section 107.2 – Driver Education

Justification for continuation without modification: 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. 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.

Statutory authority: Education Law §§ 207, 305(1) and (2) and 806-a(2) and § 13 of Chapter 644 of the Laws of 2002.

Assessment of public comment: No comments were received.

Sections 200.1, 200.4, 200.16 and 201.10 – State Alignment with Federal Regulations and Technical Amendments relating to Special Education

Justification for continuation without modification: The rule continues to be 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 IEP for preschool students and to certain cross citations. The definition of mediator in section 200.1(dd) was subsequently revised in 2005 consistent with federal regulations. Section 200.16(d)(3) relating to the contents of an IEP for preschool students was subsequently relettered as section 200.16(e)(3) and certain technical amendments were made in 2005.

Statutory authority: Education Law sections 101 (not subdivided), 207 (not subdivided), 3214(3), 4403(3), 4404 (not subdivided) and 4410(5).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: The rule will be revised in 2013 to conform to Chapter 57 of the Laws of 2013, which, effective March 29, 2013, repealed the requirement for five-year Board of Cooperative Educational Services (BOCES) special education space requirement plans and added that school districts and BOCES must ensure the stability and continuity of program placements for students with disabilities, including procedures that ensure that special education programs and services located in appropriate facilities will not be relocated without adequate consideration of the needs of participating students with disabilities.

Statutory authority: 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).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: The rule continues to be 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.

Statutory authority: 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).

Assessment of public comment: No comments were received.

#### OFFICE OF HIGHER EDUCATION

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

Justification for continuation without modification: 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. 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.

Statutory authority: Education Law §§ 207, 305(1),(2), and (7), 3004(1), and 3006(1).

Assessment of public comment: No comments were received.

#### Sections 3.47 and 3.50 – Authorization of degrees

Justification for continuation without modification: 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. 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.

Statutory authority: Education Law §§ 207, 210, 218(1), and 224(4).

Assessment of public comment: No comments were received.

#### Section 52.21(b)(2) – Requirements for teacher education programs

Justification for continuation without modification: The rule established the requirements for teacher preparation programs leading to certification to teach in the public schools of New York State. Teacher preparation continues to be an important priority of the Board of Regents. Standards for preparation of teachers are still necessary to meet the needs of the public schools and therefore this rule should be continued without modification.

Statutory authority: Education Law §§ 207, 210, 215, 305(1), and 3004(1).

Assessment of public comment: No comments were received.

Section 52.21 – Requirements for educational leadership programs

Justification for continuation without modification: The rule established the requirements for school leadership programs leading to certification for employment as a school building leader, school district leader and/or school district business leader in the public schools of New York State. School leadership preparation continues to be an important priority of the Board of Regents. Standards for preparation of school leaders are still necessary to meet the needs of the public schools and, therefore, this rule should be continued without modification.

Statutory authority: Education Law §§ 207, 210, 215, 305(1), (2) and (7), 3004(1) and 3006(1).

Assessment of public comment: No comments were received.

Section 80-5.10 – Modified temporary licenses for classroom teaching

Justification for continuation without modification: 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. 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.

Statutory authority: Education Law §§ 207, 305(1), (2) and (7), 3004(1) and 3006(1)(b) and (c) and (2)(a)(iii), 3009(1) and 3010.

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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 experience 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. 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. Therefore, the provision is needed and the rule should be continued without modification.

Statutory authority: Education Law §§ 207, 215, 305(1), (2) and (7), 3004(1) and 3604(8).

Assessment of public comment: No comments were received.

OFFICE OF THE PROFESSIONS

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

Justification for continuation without modification: 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 non-resident 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 unne-

necessary 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.

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

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: The rule is needed to implement the provisions of 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.

Statutory authority: 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).

Assessment of public comment: No comments were received.

Sections 61.2 and 61.18 – Residency option pathway for dental licensure

Justification for continuation without modification: 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.

Statutory authority: Education Law §§ 207, 6506(1), 6507(2)(a), 6601(not subdivided) and 6604(3) and (4).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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.

Statutory authority: 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.

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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.

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

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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.

Statutory authority: Education Law §§ 207, 6506(1), 6507(2)(a), 6606(1) and (2) and 6608.

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: The rule is necessary because it specifies defines necessary areas of continuing education to foster safe pharmacy practice and these areas of practice remain relevant at the present time.

Statutory authority: Education Law §§ 207, 6502(1), 6504, 6507(2)(a) and 6827(2).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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.

Statutory authority: Education Law §§ 207, 6506(1), 6507(2)(a), 6605-b(1),(2) and (3) and 6606.

Assessment of public comment: No comments were received.

Sections 52.15 and 78.4 – Licensure in Massage Therapy

Justification for continuation without modification: 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.

Statutory authority: Education Law §§ 207, 210, 6506(1) and (6), 6507(2)(a) and (4)(a), 7802 and 7804(2).

Assessment of public comment: No comments were received.

Section 68.11 – Mandatory Continuing Education Requirements for Professional Engineers

Justification for continuation without modification: 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.

Statutory authority: 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.

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: The rule establishes standards for the examination required for licensure as a certified public accountant, continuing 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.

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.

Statutory authority: 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).

Assessment of public comment: No comments were received.

Section 68.12 – Mandatory Continuing Education Requirements for Licensed Land Surveyors

Justification for continuation without modification: 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.

Statutory authority: 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.

Assessment of public comment: No comments were received.

#### OFFICE OF CULTURAL EDUCATION

Part 179 – Apportionment of Funds to Educational Broadcast Councils

Justification for continuation without modification: 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. SED received no public comment with respect to modification or continuation of the rule and sees no need to modify the rule.

Statutory authority: Education Law §§ 207(not subdivided) and 236(3), (4) and (5).

Assessment of public comment: No comments were received.

Sections 185.5 and 185.11 – Local Government Records Management

Justification for continuation without modification: 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. 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. SED received no public comment with respect to modification or continuation of the rule and sees no need to modify the rule.

Statutory authority: Education Law § 207(not subdivided) and Arts and Cultural Affairs Law § 57.25(2).

Assessment of public comment: No comments were received.

OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)

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

Justification for continuation without modification: The amendments, adopted in 2003, were necessary to conform State regulations relating to the vocational rehabilitation program with changes in federal law made in the 1998 reauthorization of the Rehabilitation Act (Public Law 105-22). The rule continues to be necessary to ensure that the vocational rehabilitation program is conducted according to federal requirements set forth in the 1998 amendments to the Rehabilitation Act. The rule should continue without modification as federal requirements for the vocational rehabilitation program have not been amended and the standards continue to apply to due process. This rule enacted certain amendments establishing standards for implementation of mediation as part of due process.

Statutory authority: Education Law sections 101(not subdivided), 207(not subdivided) and 1004(1).

Assessment of public comment: No comments were received.

#### OFFICE OF MANAGEMENT SERVICES

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

Justification for continuation without modification: 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. The rule is needed to conform the Rules of the Board of Regents to changes made in the internal organization of the Department.

Statutory authority: Education Law § 101.

Assessment of public comment: No comments were received.

#### OFFICE OF STATE REVIEW

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

Justification for continuation without modification: The rule clarifies procedures for practice on State level review of Impartial Hearing Officer determinations for students with disabilities. The rule is needed to expedite and otherwise facilitate the processing of petitions for review to State Review Officers.

Statutory authority: Education Law §§ 101, 207, 311, 4403(1) and (3), 4404(2) and 4410(13).

Assessment of public comment: No comments were received.

#### C. CALENDAR YEAR 1998

OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

Section 100.12 Instructional Computer Technology Plans

Justification for continuation without modification: 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. 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.

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

Assessment of public comment: No comments were received.

Part 151 and 156.7 Universal Pre-Kindergarten Programs

Justification for continuation without modification: 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. The regulation is necessary to comply with section 58 of Part A of section 1 Chapter 436 of the Laws of 1997.

Statutory authority: 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.

Assessment of public comment: No comments were received.

155.16 Energy Performance Contracts

Justification for continuation without modification: 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. 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.

Statutory authority: 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.

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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). 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.

Statutory authority: Education Law sections 207, 208, 209 and 3205(1), (2) and (3).

Assessment of public comment: No comments were received.

Section 200.1(gg) – Definition of related services

Justification for continuation without modification: The rule continues to be necessary to ensure that the list of related services in regulation is consistent with the related services specified in section 4401 of the Education Law. The rule adds “orientation and mobility services” to the definition of related services. The rule was subsequently relettered section 200.1(qq) in 2000.

Statutory authority: Education Law sections 207, 4403(3) and 4410(13).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: The rule continues to be necessary to clarify the definition of “supplementary aids and services,” consistent with the definition in 34 CFR section 300.28 of federal regulations, which must be documented on a student’s individualized education program (IEP). The rule was subsequently relettered section 200.1(bbb) in 2000.

Statutory authority: Education Law sections 207, 4403(3) and 4410(13).

Assessment of public comment: No comments were received.

Section 200.1(ss) – Definition of transition services

Justification for continuation without modification: The rule continues to be necessary to comply with Education Law section 4401(9) that includes related services in the definition of transition services. The rule adds “related services” to the list of coordinated set of activities for transition services. The rule, subsequently relettered section 200.1(fff) in 2000, was amended in 2005, 2007 and 2008 consistent with federal regulations.

Statutory authority: Education Law sections 207, 4403(3) and 4410(13).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: The rule continues to be necessary to comply with federal regulations regarding the required components of a student’s IEP. The 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 education 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. The rule relating to the required components of a student’s IEP was subsequently amended in 2000, 2001, 2005, 2007 and 2009 consistent with federal regulations.

Statutory authority: Education Law sections 207, 4403(3) and 4410(13).

Assessment of public comment: No comments were received.

Section 200.5(a) – Procedural safeguards notice

Justification for continuation without modification: The rule, subsequently relettered section 200.5(f) in 2000, was amended in 2007 to repeal regulations specifying the information that must be in the procedural safeguards notice and to add language requiring the notice be on a form prescribed by the Commissioner that meets the requirements of 34 CFR section 300.504(c).

Statutory authority: Education Law sections 207, 4403(3) and 4410(13).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: The rule continues to be necessary to correct 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. The rule was subsequently amended in 2001 to change the cross citation from section 200.4(c)(4) to section 200.4(d)(4) of the Regulations of the Commissioner.

Statutory authority: Education Law sections 207, 4403(3) and 4410(13).

Assessment of public comment: No comments were received.

Section 200.16(d) – Preschool programs

Justification for continuation without modification: The rule continues to be necessary to correct 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. The rule, subsequently relettered section 200.16(e) in 2003, was amended in 2000 to correct the cross citation to section 200.4(d)(2), (3) and (4) and in 2005 to repeal the cross citation to section 200.4(2)(v), (viii), and (ix).

Statutory authority: Education Law sections 207, 4403(3) and 4410(13).

Assessment of public comment: No comments were received.

Section 200.2(e) – Impartial hearing officers

Justification for continuation without modification: The rule, subsequently amended effective September 1, 2001 and January 10, 2002, continues to be necessary to ensure compliance with federal regulations which requires that impartial hearing officers be selected in a rotational manner. The 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.

Statutory authority: Education Law sections 207 and 4404(1).

Assessment of public comment: No comments were received.

OFFICE OF CULTURAL EDUCATION

3.27 and 3.30 Museums and Historical Societies chartering and registration

Justification for continuation without modification: the rule specifies certain minimal expectations of institutions regarding management of collections and adoption of a collection management policy which conforms to generally accepted professional and ethical standards; ensures that collecting follows the specific purposes of the institution as enumerated in its charter; gives donors a clear understanding of what will happen to their gifts to the collection; and specifies that funds derived from the sale (deaccession) of collections be restricted to acquisition, preservation, protection or care of collections. The rule conforms to standards enumerated by the American Association of Museums and other museum and historical organizations. The rule has protected collections and the public by ensuring that artifacts held in trust are gathered, maintained, preserved and made available according to accepted professional and ethical standards. As of May 2008, 92 percent of chartered institutions holding collections have complied with the rule and adopted a Collection Management Policy. Since 1998, no one has expressed opposition or objection to the requirement that every collecting institution adopt a Collection Management Policy.

Statutory authority: Education Law sections 207 and 216.

Assessment of public comment: No comments were received.

#### 90.2(a)(9) Library Registration

Justification for continuation without modification: To provide minimum standards for equipment that better accommodates rapidly changing developments in new technology. 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. The changes made in 1998 are still valid. No revisions are required at this time.

Statutory authority: Education Law sections 207, 215, 254 and 273(1)(f)(5).

Assessment of public comment: No comments were received.

#### 90.3 Public Library System Plan of Service

Justification for continuation without modification: 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. 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. Changes made in 1998 are still valid. No revisions are required at this time.

Statutory authority: Education Law sections 207, 254, 255(1), (2) and (3), 272(1)(g) and (h) and 273(1).

Assessment of public comment: No comments were received.

#### 179.2 Operating Aid to Public Broadcasting Councils

Justification for continuation without modification: 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. 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.

Statutory authority: Education Law sections 207, 263(3) and 263(4).

Assessment of public comment: No comments were received.

#### OFFICE OF THE PROFESSIONS

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

Justification for continuation without modification: 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. 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.

Statutory authority: Education Law sections 207, 210, 218(1); 224(4); and 6734(b).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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. 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.

Statutory authority: 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).

Assessment of public comment: No comments were received.

#### Section 66.5 - Phase Two Therapeutic Pharmaceutical Agents

Justification for continuation without modification: 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. 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.

Statutory authority: 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).

Assessment of public comment: No comments were received.

#### Section 67.6 - Ophthalmic Dispensing Continuing Education Requirements

Justification for continuation without modification: 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. 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.

Statutory authority: Education Law sections 207, 212(3), 6502(1), 6504, 6507(2)(a), 6508(1) and 7128(1) - (6).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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.

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.

Statutory authority: Education Law sections 207, 210, 6501, 6504, 6506(1), 6507(2)(a) and (4)(a), 6508(1) and 7404(1)(2) and (1)(3).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: This rule establishes fee requirements for the filing of petitions for restoration of professional licenses that have been revoked or surrendered. 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.

Statutory authority: Education Law sections 207, 6504, 6506(1) and (10), 6508(4) and 6511.

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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. 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.

Statutory authority: Education Law sections 207, 210, 6501, 6506(6), 6507(2)(a) and (4)(a), 6508(1), 6805(1)(2) and 6806(1).

Assessment of public comment: No comments were received.

#### OFFICE OF HIGHER EDUCATION

##### 27-1.1 Higher Education Opportunity Program

Justification for continuation without modification: the rule revised the criteria for determining student economic eligibility for the Higher Education Opportunity Program. 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.

Statutory authority: Education Law sections 207 and 6451(1).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: the rule

eliminated, as of 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. The CQ was eliminated because in the early 1990s, provisional teaching certificates became renewable, thereby fulfilling the purpose the CQ once served. The CQ is still unnecessary and the rule should be continued without modification.

Statutory authority: Education Law sections 207, 305(1) and 3004(1).

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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. Candidates were thereafter required to satisfy the requirements by satisfactory performance on the New York State Teacher Certification Examination (NYSTCE) tests. The rule was adopted to make uniform the testing requirement for all candidates, because the NYSTCEs are customized for New York State and align with State student learning standards. The uniform testing standard should be maintained and therefore the rule should be continued without modification.

Statutory authority: Education Law sections 207, 305(1), 3004(1).

Assessment of public comment: No comments were received.

##### 145-9 Scholarships for Academic Excellence Program

Justification for continuation without modification: 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. 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.

Statutory authority: 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.

Assessment of public comment: No comments were received.

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

Justification for continuation without modification: 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. 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. The Standards Board continues to serve in the capacity required by the Regents and therefore this rule should be continued without modification.

Statutory authority: Education Law sections 207, 305(1) and 3004(1).

Assessment of public comment: No comments were received.