

RULE REVIEW

Education Department

Notice of Review of Existing Rules Pursuant to State Administrative Procedure Act Section 207 (Calendar Years 2010, 2005 and 2000)

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

Pursuant to SAPA section 207, the State Education Department submits the following list of its rules that were adopted during calendar years 2010, 2005 and 2000 and invites public comment on the continuation or modification of such rules. All section and part references are to Title 8 of the New York Code of Rules and Regulations. Comments should be sent to the respective agency representative listed below for each particular rule, and must be received within 45 days of the date of publication of this Notice.

A. CALENDAR YEAR 2010 OFFICE OF P-12 EDUCATION

Section 3.16 Charter School Delegation

Description of Rule: The purpose of the rule is to delegate to the Commissioner of Education the authority of the Board of Regents pursuant to Education Law section 2852(7) to approve revisions to the charters of charter schools, with certain specified exceptions.

Need for Rule: The rule is necessary to delegate to the Commissioner of Education the authority of the Board of Regents to approve revisions, with certain specified exceptions, to the charter of public charter schools. Having the Board of Regents approve all revisions, including revisions that do not fundamentally affect the school's missions, organizational structure or educational program, and other such changes, is not deemed to be the most appropriate and efficacious means to address these matters, considering the scope of duties of the Board, the limited number of times that the Board meets during the year, and the time demands placed on individual Board members. It has been determined that delegation to the Commissioner of the Board's authority to approve charter revisions, with certain specified exceptions, will provide for the most efficient and expeditious means to approve and issue charter revisions.

Authority to approve revisions concerning the following is retained by the Board of Regents and not delegated to the Commissioner: (1) educational philosophy, mission or vision; (2) governance or leadership structure; (3) the curriculum model or school design changes that are inconsistent with that approved in the current charter; (4) hiring or termination of a management company; (5) school name; (6) location, if such revision results in relocation to another school district; (7) maximum enrollment, as set forth in the current charter; and/or (8) grades served, as set forth in the current charter. The rule authorizes the Commissioner to approve revisions concerning items (1) through (3) above, provided that the revisions are determined by the Commissioner not to be significant.

Legal Basis for Rule: Education Law sections 101(not subdivided), 206(not subdivided), 207(not subdivided), 305(1), (2) and (20) and 2852(7).

Sections 100.1, 100.2, 100.4 & 100.5 LOTE and State Assessments

Description of Rule: The rule amends sections 100.1, 100.2, 100.4 and 100.5 of the Commissioner's Regulations to eliminate certain State examinations beginning in the 2010-2011 school year as a cost-saving measure associated with the administration of State assessments.

Need for Rule: In response to current fiscal constraints, this rule implements cost-saving measures associated in administering State examinations and assessments by eliminating certain State examinations beginning in the 2010-2011 school year, specifically second language proficiency (SLP) examinations, Regents comprehensive examinations in German, Hebrew and Latin, and State assessments in social studies for grades five and eight. Despite the elimination of these assessments, this rule will ensure that students continue to meet State learning standards and earn diploma credit.

Given the elimination of SLP examinations, students will be required to pass a locally developed examination, in addition to completing two units of study, which will be aligned with Checkpoint A learning standards for languages other than English and approved for high school credit by the superintendent or chief administrative officer of a charter or public school, as applicable. Further, despite the elimination of State assessments in social studies, schools will remain required to provide academic intervention services to students when such students have been determined through a district-developed or district-adopted procedure to be at risk of not achieving State learning standards in social studies. Lastly, despite the elimination of Regents comprehensive examinations in Hebrew, German and Latin, students may pass a locally developed test aligned with Checkpoint B learning standards for languages other than English to earn Regents diploma credit.

Legal Basis for Rule: Education Law §§ 101,207, 208, 209, 305, 308, 309, and 3204.

Section 100.2(ee) Academic Intervention Services

Description of Rule: The rule establishes modified requirements for the provision of academic intervention services (AIS) during the 2010-2011 school year to provide flexibility to school districts and hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the grades 3-8 assessments in English language arts and mathematics.

Need for Rule: The rule establishes modified requirements for the provision of AIS during the 2010-2011 school year based on several factors, including: (1) the change in cut scores for the grades 3-8 assessments in English language arts and mathematics which determine student proficiency; (2) the fact that such changes will not be announced to the field until late July or early August; and (3) the fiscal impact that school districts may experience because of the increase in the number of students required to receive AIS. The purpose of the rule is to provide flexibility to school districts in providing AIS during the 2010-2011 school year in order to hold districts harmless from the expected fiscal impact of an increase in the number of students required to receive AIS as a result of a change in cut scores for the

grades 3-8 assessments in English language arts and mathematics. School districts will continue to have the option to offer services to those children who they feel are in need of the additional support.

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

Section 100.2(ee)(7) AIS/RTI

Description of Rule: The rule adds a new paragraph (7) to section 100.2(ee) of the Commissioner's Regulations. The rule affords flexibility to school districts in providing academic intervention services (AIS) by allowing districts to offer a Response to Intervention program in lieu of providing AIS to eligible students, provided specified conditions are met.

Need for Rule: The rule affords flexibility to school districts in providing AIS by allowing districts to offer a Response to Intervention (RTI) program in lieu of providing AIS to eligible students, provided specified conditions are met. Specifically, the rule would allow for a school district to: (1) continue with a current AIS model, or (2) move to or expand on an RTI model, or (3) use a blended approach of AIS and RTI (ex: RTI in lower grades, AIS in upper grades).

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

Section 100.2(p) SURR & PLA Schools

Description of Rule: The rule would amend section 100.2(p) of the Commissioner's Regulations, effective July 14, 2010, to conform provisions regarding the identification of schools for registration review (SURR) with United States Department of Education (USED) requirements to identify schools as Persistently Lowest-Achieving in order for states to access State Fiscal Stabilization Funds (Phase II), School Improvement Grants and other Federal funding opportunities, and to require SURRs to implement intervention strategies based upon School Improvement Grant guidelines issued by USED in January 2010.

Need for Rule: Section 100.2(p) is amended to comply with USDE requirements to identify schools as PLA in order for states to access State Fiscal Stabilization Funds (Phase II), School Improvement Grants and other Federal funding opportunities and to require schools identified as SURRs to implement intervention strategies based upon School Improvement Grant guidelines issued by USDE in January 2010.

The purpose of the rule is to strengthen the SURR process by merging it with the process to identify PLA schools in order to increase the percentage of schools that successfully implement an intervention strategy that results in the school being removed from PLA status or that results in the school being replaced by a new school in Good Standing.

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

Section 100.2(p)(1) Accountability Declassified SWD

Description of Rule: The rule amends section 100.2(p)(1) of the Commissioner's Regulations to conform the Commissioner's Regulations with New York State's approved amended No Child Left Behind (NCLB) accountability plan that includes in the students with disabilities subgroup, students previously identified as students with disabilities during the preceding one or two school years. The amended plan was approved by the United State Department of Education (USDE) on June 9, 2010.

Need for Rule: Section 100.2(p)(1)(i) has been amended to establish 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 State and local educational agencies (LEAs) are required to comply with the NCLB as a condition to their receipt of 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 rule conforms the Commissioner's Regulations to New York State's amended accountability plan, as approved by the USDE. Adoption of the rule provides a more accurate account of the academic progress that schools and districts are making with students with disabilities commencing with the 2009-2010 school year, and will make the accountability rules for former students with disabilities consistent with rules currently applied to former limited English proficient students.

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

Section 105.3 Special Act School Districts

Description of Rule: The rule amends section 105.3 of the Commissioner's Regulations to provide the Commissioner with more flexibility to appoint prospective public members to Special Act school district board of educations, based upon their availability to serve. The current regulation generally provides for uniform, consecutive 4-year terms for all public members that commence on the first day of a school year (July 1st) and end on the last day of the fourth school year thereafter (June 30th). However, because of the unavailability of persons willing to serve at the prescribed times, it was not possible for the Commissioner to appoint public members in accordance with the current regulation.

Need for Rule: Commissioner's Regulations § 105.3(b) generally provides for uniform, consecutive 4-year terms for all public members that commence on the first day of a school year (July 1st) and end on the last day of the fourth school year thereafter (June 30th). However, because of the unavailability of persons willing to serve at the prescribed times, it was not possible for the Commissioner to appoint public members in accordance with the current language in the regulation. The rule provides more flexibility for the appointment of public members based upon their availability to serve.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1), (2) and (20), 308(not subdivided), 309(not subdivided) and Chapters 628 and 629 of the Laws of 2004

Section 100.5(d)(8) Make-up Credit

Description of Rule: To establish requirements for award of make-up credit to high school students.

Need for Rule: In April 2009, the EMSC Committee of the Board of Regents reviewed a "Draft Proposed Policy on Making Up Course Credit and Receiving Course Credit for Independent Study." After review and discussion, the Regents directed staff to seek public input on the draft policy on making up course credit. A field survey was posted on the Department's Web site in June and concluded in September. A summary and analysis of the survey responses was compiled and submitted for review and consideration in October.

At the October 13, 2009 Board of Regents meeting, members reviewed and approved policy relating to making up course credit. Staff was directed to draft regulatory changes to the Commissioner's Regulations to implement the make up course credit policy.

The rule establishes standards for make-up credit programs for school districts, registered nonpublic schools, and charter schools that choose to offer such programs. The rule is intended to insure appropriate levels of rigor and quality for make-up (credit recovery) programs implemented by local schools.

The make-up program must be aligned with the New York State learning standards for that subject, satisfactorily address the student's course completion deficiencies and individual needs, and ensure that the student receives equivalent, intensive instruction in the subject matter area provided under the direction and/or supervision of a teacher. For programs offered by school districts and boards of cooperative educational services, the direction and supervision must be provided by a teacher certified in the subject matter area.

In the case of a school district or registered nonpublic school, a student's participation in the make-up credit program must be approved by a school-based panel consisting of, at a minimum, the principal, a teacher in the subject area for which the student must make up credit, and a guidance director or other administrator.

To receive credit, the student must successfully complete the make-up credit program and demonstrate mastery of the learning outcomes for the subject, including passing the Regents examination in the subject or other assessment required for graduation, if applicable.

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

Section 100.5(d)(9) Independent Study

Description of Rule: To establish requirements for independent study offered by school districts, registered nonpublic schools and charter schools.

Need for Rule: In April 2009, the EMSC Committee of the Board of Regents reviewed a "Draft Proposed Policy on Making Up Course Credit and Receiving Course Credit for Independent Study."

In March 2010, the Regents approved a conceptual policy on receiving course credit for independent study. At the April 2010 Board of Regents meeting, the EMSC Committee reviewed and discussed policy relating to independent study credit. Staff was directed to draft regulatory changes to the Commissioner's Regulations to implement the independent study credit policy.

The rule establishes standards for a school district, a charter school or a registered nonpublic school to award up to three units of elective credit towards a Regents diploma for independent study. The independent study must be academically rigorous and aligned to the New York State commencement level learning standards for the subject in which credit is sought; overseen by a teacher knowledgeable and experienced in the subject area of the independent study; based on a syllabus on file for each independent study; and of comparable scope and quality to classroom work that would have been done at the school district, charter school or registered nonpublic school awarding the credit.

In the case of a school district or registered nonpublic school, a student's participation in independent study shall be approved by a school-based panel consisting of, at a minimum, the principal, a teacher in the subject area for which independent study is sought, and a guidance director or other administrator.

The rule is intended to insure appropriate levels of rigor and quality for providing students with the opportunity to earn independent study credit and for awarding independent study credit for successful program completion. To receive credit, the student must successfully complete the independent study and demonstrate mastery of the learning outcomes for that subject.

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

Section 135.4 Duration of Competition

Description of Rule: The rule provides a waiver for a student with a disability, defined under § 4401 of the Education Law, to participate in a non-contact sport for a fifth additional season in high school if such student has not graduated from high school as a result of his or her disability delaying his or her education. Such student would have to meet other criteria in order to qualify for such a waiver.

Need for Rule: The rule provides a waiver for a student with a disability to participate in senior high school athletic competition for an additional season despite the age and four-year limitations prescribed in section 135.4 of the Commissioner's regulations. The rule advances initiatives of inclusion by allowing students with disabilities who would otherwise not be able to participate in interscholastic athletic competition due to their age or years in school to participate in a sport for an additional season if they have not graduated as a result of their disability delaying their education. This rule offers these students continued socialization with teammates and continued opportunity to develop the skills and abilities associated with his or her participation in such sport.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 308(not subdivided), 803 (not subdivided) and 3204(2) and (3).

Section 155.22 Qualified School Construction Bonds

Description of Rule: The rule establishes procedures for allocation of the State limitation amount for the issuance of Qualified School Construction Bonds (QSCB) issued under 26 USC section 54F to those school district bond issuers not receiving a direct federal allocation pursuant to 26 USC section 54(F)(d)(2).

In addition, the rule revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate Charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E. Participation in both the QSCB and QZAB programs is voluntary.

Need for Rule: Internal Revenue Code section 54F (26 USC section 54F), as added by section 1521(a) of Title 1 of Part III of Subtitle F of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub.L. 111-5, provides for the issuance of Qualified School Construction Bonds for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue, by a State or local government within the jurisdiction of which such school is located. The statute establishes a national qualified school construction bond limitation for each of the 2009 and 2010 calendar years. Within such national bond limitation amount, the Secretary of the U.S. Treasury will allocate state limitation amounts to each state for the state's allocation to bond issuers within the state.

New York State is home to three city school districts, New York City, Buffalo and Rochester, that are large enough to qualify as part of the 100 largest nationwide school districts, and as such, these districts will receive direct federal Qualified School Construction Bond Allocations from the U.S. Treasury Secretary. Additionally, New York State received \$192 Million in the 2009 and \$178 Million in the 2010 calendar years to allocate to other districts in the State that did not receive a direct federal allocation.

The 2009 allocation was retained by the State to fund State expenditures for local district capital projects. The purpose of the rule to amend section 155.22 of the Commissioner's Regulations is to prescribe the procedures for New York State to allocate its \$174,782,000 2010 state limitation amount to those school district bond issuers not receiving a direct federal allocation.

In addition, the rule revises the provisions relating to Qualified Zone Academy Bonds (QZAB) to provide for a separate charter school allocation from the QZAB State limitation amount. The QZAB provisions are also updated to include QZAB issued under 26 USC 54E, as added by Pub.L. 110-343, 122 Stat. 3765, 3869. Prior to the addition of section 54E, QZAB were issued pursuant to 26 USC section 1397E.

Legal Basis for Rule: Education Law sections 101, 207, 305(1) and (2) and 26 USC sections 54E and 54F.

Part 200 Special Education Mandate Relief

Description of Rule: Mandate relief to schools in certain areas of special education that exceed federal requirements, and to make technical changes. The purpose of the rule is to amend sections 200.2, 200.4, 200.5, 200.6, 200.9, 200.10, 200.11, 200.13, 200.20, 201.2 and 201.11 of the Regulations of the Commissioner of Education to provide relief from certain special education service requirements, specifically by: repealing the minimum service delivery requirements for speech and language; authorizing school districts to add up to two additional students to integrated co-teaching classes; and repealing the requirement that each student with autism receive instructional services to meet his/her individual language needs at a minimum of 30 minutes daily in groups not to exceed two, or 60 minutes daily in groups not to exceed six.

The rule would also conform State regulations to federal requirements relating to meeting notice and parent participation in CSE meetings and to State statutory language relating to district plans of service for special education, and correct certain citations.

Need for Rule: The rule provides mandate relief to schools in certain areas of special education that exceed federal requirements; conforms

the Commissioner's Regulations to the federal regulations (34 CFR Part 300) that implement the Individuals with Disabilities Education Act (IDEA) and State law; and makes certain technical amendments, including correction of cross citations.

The rule provides mandate relief and appropriate flexibility for committees on special education (CSE) to make special education recommendations based on students' individual needs by repealing minimum level of service requirements for speech and language related services and for instruction to address the individual language needs of students with autism, and by authorizing the addition of up to two additional students in an integrated co-teaching class when it is necessary to do so to address the unique needs of students in that class. To conform to federal and state requirements, the rule will also ensure that the State regulations use language consistent with federal regulations for CSE meeting notices and State statute for district plans of service for special education; and will make other technical amendments.

Legal Basis for Rule: Education Law sections 207(not subdivided), 305(1), (2) and (20), 3214(3), 4402(not subdivided) and 4403(3), 4410(13) and Chapter 410 of the Laws of 1978

Agency Representative:

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

Cosimo Tangorra, Jr.

Ken Wagner

Deputy Commissioners P-12

New York State Education Department

State Education Building, Room 2M West

89 Washington Avenue

Albany, New York 12234

(518) 474-3862

nysedp12@nysed.gov

OFFICE OF HIGHER EDUCATION

Sections 52.1, 52.21 & 80-5.13 Clinically Rich Teacher Pilot Program for High Needs Schools

Description of Rule: The purpose of the rule is to establish program registration standards for the clinically rich graduate level pilot program and to authorize institutions, other than institutions of higher education, and that are selected by the Board of Regents to offer teacher preparation programs under this pilot program.

Need for Rule: At its November 2009 and December 2009 meetings, the Board of Regents approved the conceptual framework for graduate level clinically rich teacher preparation pilot programs. At its April 2010 meeting, the Board approved an amendment to the Commissioner's regulations to establish a graduate level clinically rich teacher preparation pilot program, effective May 1, 2010.

The rule establishes two tracks for the graduate level clinically rich program: 1) the Model A track is the residency program for candidates working with a teacher of record in a high need school; and 2) the Model B track is the residency program for candidates employed as teachers of record in a high need school who will be eligible to receive a Transitional B certificate upon completion of required introductory preparation, tests, and workshops. To ensure program quality, the rule requires that the pilot program meet the general registration standards established by the Board of Regents for graduate curricula in terms of instructional time, faculty qualifications, and the rigor of curriculum.

Legal Basis for Rule: Education Law §§ 207, 208, 210, 214, 216, 224, 305(1), (2) and (7), 3004(1) and 3006(1).

Parts 52 & 80 Special Education Certification Restructuring

Description of Rule: The rule amends sections 52.21, 80-1.1, 80-3.3, 80-3.7 and 80-5.22 of the Regulations of the Commissioner of Education relating to program registration requirements for teacher education programs and certification requirements an expedited pathway to teach science and mathematics in grades 5 through 9 and 7 through 12. The purpose of the rule is to establish program registration requirements and certification requirements for an expedited

pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science and mathematics in grades 5-9 and 7-12.

Need for Rule: The purpose of the rule is to ensure an adequate supply of effective adolescence level students with disabilities teachers and to better prepare all teachers to instruct students with disabilities and skillfully collaborate with their colleagues. In 1999, the Board of Regents endorsed a new structure of certificate titles in general and special education. In 2000, teacher preparation programs began offering programs aligned with the new titles. Prior to February 2004, there had been only one special education certificate for teaching students with disabilities Pre-K through Grade 12, in all instructional settings. The 1999 changes to the special education certificate structure focused on student developmental levels and academic content knowledge, to ensure that special educators had sufficient content knowledge in at least one academic subject. This special education redesign resulted in a four-tiered certification structure. Since the changes to the State certification requirements went into effect, the Department has analyzed data related to the supply and demand of special education teachers and found that there is a shortage of these teachers with the appropriate certification to teach students with disabilities in grades 7-12. Approximately 50 percent of students with disabilities are in the birth to grade six, yet, for those students selecting special education as a teaching profession, 80 percent are being prepared at the early childhood or childhood level and only 20 percent at the middle or secondary level. This issue is further exacerbated since the 20 percent are divided between the middle childhood level (5-9) and the secondary level (7-12) and further subdivided by academic disciplines.

Establishment of a students with disabilities generalist certificate at the adolescence level and the phasing out of the students with disabilities 5-9 generalist and content specialist and 7-12 content specialist will entice more candidates into the adolescence level as generalists who can act in supportive roles such as consultant teacher and provide resource room services. These teachers can further develop content expertise through a subject area extension and teach the subject to a special class with required weekly collaboration and monthly co-teaching with a certified general education content specialist.

As more and more students with disabilities are included in regular classes, all teachers must be better prepared to teach students with disabilities. The rule also requires all teacher preparation programs to include a minimum of three semester hours in educating students with disabilities and defining the elements of those semester hours coupled with a focusing a specific number of hours of required field experience that must focus on the needs of students with disabilities to ensure that all teachers are prepared to instruct such students to their highest level of achievement.

Legal Basis for Rule: Education Law §§ 207(not subdivided), 305(1) and (2), 3001, 3004(1) and (6) and 3006.

Section 52.1(a)(6), 52.21(c)(7) & 80-3.10(a)(1)(ii)(a)(3) Clinically Rich Pilot Program for School Building Leaders

Description of Rule: The rule amends Sections 52.1, 52.21 and 80-3.10 of the Regulations of the Commissioner of Education, effective May 25, 2010, relating to the establishment of a clinically rich principal preparation program. The purpose of the rule is to establish program registration standards for the clinically rich principal preparation pilot program and to authorize institutions, other than institutions of higher education, and that are selected by the Board of Regents to offer principal preparation programs under this pilot program.

Need for Rule: The purpose of creating the clinically rich pilot program is to address the retention issue in high need schools and improve student growth and achievement in high need schools. Research studies show that school leaders are critical to helping improve student performance and preparation programs that are grounded in intensive clinical experiences prepare effective school leaders. To maximize student growth and achievement in high need schools, the Department will select program providers for the clinically rich principal preparation pilot program through a Request for Proposal (RFP) process.

In order to ensure that any program selected to offer a clinically rich principal preparation program is of high quality, the Board of Regents will establish a Blue Ribbon Commission to evaluate all applications. This Blue Ribbon Commission will be comprised of highly renowned teacher educators. The Blue Ribbon Commission will make recommendations to the Board of Regents for those programs that should be authorized to establish clinically rich principal preparation programs, from collegiate and non-collegiate providers or in partnerships. The goal is to create a process that will ensure a rigorous programmatic review and to select only the highest quality providers to assist in the preparation of principals for our high need schools. In addition, non-collegiate programs will be required to seek accreditation from an education preparation program accrediting body approved by the Board of Regents.

The rule authorizes institutions, other than institutions of higher education, to offer the graduate level clinically rich pilot program. Such institutions shall include, but not be limited to, cultural institutions, libraries, research centers, and other organizations with an educational mission that are selected by the Commissioner for participation through the RFP process.

To prepare effective principals for high need schools, the graduate level clinically rich pilot program shall include at least one continuous school year of mentored clinical experience, centered on practicing research-based educational leadership skills. Pedagogical study linking theory and practice will be embedded in the clinical experience.

Legal Basis for Rule: Statutory Authority: Education Law §§ 207, 210, 305(1) and (2), 3001(2) and 3007(2).

Section 52.21 Clinically Rich Teacher Preparation Program

Description of Rule: The rule amends section 52.21 of the Regulations of the Commissioner of Education, effective November 19, 2010, relating to the clinically rich graduate level teacher preparation program. The purpose of the rule is to amend the clinical experience component of the pilot programs to allow program providers to offer less than a year of mentored clinical experience to provide program providers with the flexibility they need to be as innovative as possible.

Need for Rule: At its November 2009 and December 2009 meetings, the Board of Regents approved the conceptual framework for graduate level clinically rich teacher preparation pilot programs. At its April 2010 meeting, the Board approved an amendment to the Commissioner's regulations to establish a graduate level clinically rich teacher preparation pilot program, effective May 1, 2010.

The regulatory amendments adopted in April 2010 also required that the pilot programs include at least one continuous school year of mentored clinical experience, grounded in the teaching standards currently being developed, and centered on practicing research-based teaching skills that make a difference in the classroom.

A competitive bidding process will be implemented to select program providers for the graduate level clinically rich teacher preparation pilot program. In order to provide program providers with the flexibility they need to be as innovative as possible, the Department believes that the one school year requirement for clinical experience is too restrictive. Therefore, the rule changes the required clinical experience component of the pilot program to require up to one continuous school year of mentored experience.

Legal Basis for Rule: Education Law §§ 207, 208, 210, 214, 216, 224, 305(1), (2) and (7), 3004(1) and 3006(1).

Section 80-4.3 Flexibility in Teacher Certification to Avoid or Mitigate a Reduction in Force

Description of Rule: The rule amends Section 80-4.3 of the Regulations of the Commissioner of Education, effective April 27, 2010, relating to teacher certification flexibility to avoid or mitigate reductions in force. The purpose of the rule is to provide teacher certification flexibility during a demonstrated fiscal crisis to allow school districts and BOCES to reassign effective classroom teachers to another grade level to avoid reductions in force.

Need for Rule: In 2010, the Board of Regents adopted an amendment to section 80-4.3 of the Commissioner's regulations to provide school districts and BOCES with flexibility in certification when there was a demonstrated immediate fiscal crisis and the certification flex-

ibility would avoid a reduction in force. In 2010, the Regents created certification flexibility in the following areas:

Grades 7-12 Academic Area Certification Extended to Grades 5 and 6

The 2010 amendment allows a district or BOCES to reassign a teacher who is employed by a school district and BOCES and certified in the classroom teaching service in a subject area in grades 7-12 to teach that same subject area in grades 5 or 6 through a limited extension to the teacher's existing certificate. The limited extension will be valid for two years and shall be valid with that employing entity only. A full extension may be issued to the candidate if the candidate meets the requirements within those two years.

Childhood Education Extended to Grades 7 and 8

The 2010 amendment also authorizes a certified and qualified elementary school teacher (grades 1-6) to be reassigned to a position teaching an academic subject in grades 7 and 8. The teacher would need to have appropriate education and experience for such teaching assignment as demonstrated by earning Highly Qualified status under NCLB in order to be granted a limited extension to their existing certificate title. Also, the teacher must agree to: 1) successfully complete the Content Specialty Test in that subject area, and 2) complete 6 semester hours of course work in Middle Childhood Education, within the next two years to qualify for the full certificate extension when their limited extension expires.

The Limited extensions certificates for teacher certification flexibility would not be renewable and would expire at the end of the two-year period. It is intended that these Limited Extensions would provide a two-year bridge to authorize teaching for an already experienced teacher who is seeking to complete any remaining requirements to qualify for the full certificate extension in the new teaching assignment.

Currently, school districts and BOCES may only use this certification flexibility if they can demonstrate an immediate fiscal crisis and that such certification flexibility would avoid a reduction in force. The current regulation also sunsets in June 2013. The rule would create additional flexibility in the assignment of teachers to these grade levels. The rule eliminates the requirement that districts or BOCES demonstrate an immediate fiscal crisis or a reduction in force. The employing entity would only need to demonstrate that the certification flexibility would provide for a more efficient operation of the school district or BOCES. The rule also eliminates the sunset provision.

The rule addresses certification issues only. Hiring decisions or appointments to tenure areas continue to be governed by existing law and rules. For example, if, due to a previous reduction in force, a preferred eligibility list exists that covers the tenure area where the district seeks to fill a position, the school district must use the preferred eligibility list first before making any new appointments to that tenure area. Also, any reassignments to a new tenure area require the consent of the teacher and result in the teacher serving a probationary period in the new tenure area.

Legal Basis for Rule: Statutory Authority: Education Law §§ 207(not subdivided), 3001 and 3004(1).

Section 100.2(o) Annual Evaluations for Teachers

Description of Rule: The rule amends Section 100.2(o) of the Regulations of the Commissioner of Education, effective May 1, 2010, relating to the annual professional performance reviews for teachers in the classroom teaching service. The purpose of the rule is to require school districts and BOCES to provide timely and constructive feedback to teachers as part of their annual evaluations, implement uniform designated rating categories for the evaluation of teachers, and mandate that a ninth evaluation criteria, i.e., student growth be utilized in the evaluation of teachers.

Need for Rule: As part of the current Annual Professional Performance Review ("APPR") set forth in section 100.2 of the Commissioner's regulations, school districts and BOCES are required to perform annual evaluations of their teachers and the evaluation must be based on at least eight evaluation criteria prescribed in regulation. As part of its reform agenda for strengthening teaching, the Board of Regents have made a policy determination to make four major changes

to the current requirements for the annual professional performance reviews of teachers.

First, the rule requires school districts and BOCES to include student growth as a mandatory criteria to be used in the evaluation of teachers. The rule defines student growth as a positive change in student achievement between at least two points in time as determined by the school district or BOCES, taking into consideration the unique abilities or disabilities of each student, including English language learners.

Secondly, the rule requires school districts and BOCES to implement the following uniform qualitative rating categories/criteria in the evaluation of its teachers: Highly Effective, Effective, Developing and Ineffective. The rule also defines each of these quality rating categories/criteria.

The rule also requires that school districts and BOCES to provide timely and constructive feedback to the teacher. The rule requires school districts and BOCES to include in their professional performance review plan a description of how it will provide timely and constructive feedback to its teachers on all criteria evaluated, including data on student growth for each of their students, the class and the school as a whole and feedback and training on how the teacher can use such data to improve instruction as part of the teacher's APPR.

Where the Commissioner finds that a collective bargaining agreement was executed by a school district or BOCES pursuant to Article 14 of the Civil Service Law prior to the effective date of this regulation and whose terms are inconsistent with the new provisions of this regulation the Commissioner will grant a variance from that portion of the regulation for the duration of the existing collective bargaining agreement.

Lastly, the rule eliminates the reporting requirements which previously required school districts and BOCES to annually report information related to the school district's efforts to address the performance of teachers whose performance is rated as unsatisfactory.

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

Section 145-2.2 TAP

Description of Rule: The rule amends section 145-2.2 of the Regulations of the Commissioner of Education relating to the new standards for academic progress for the tuition assistance program for the 2010-2011 academic year. The purpose of the rule is to implement Chapter 53 of the Laws of 2010 and provide clarity as to what constitutes a program of remedial study to determine whether the 2006 or 2010 standards of academic progress apply for the 2010-2011 academic year.

Need for Rule: The enacted 2010-11 New York State budget included new provisions for TAP which are set forth in Chapter 53 of the Laws of 2010. In particular, Chapter 53 establishes new standards of academic progress (SAP) for non-remedial students first receiving State aid in 2007-08 and thereafter. These standards take effect for students enrolled in the 2010-11 academic year. These standards, however, do not apply to "students enrolled in a program of remedial study approved by the Commissioner."

The intent of the new law is to ensure that students receiving TAP funds and not needing remedial instruction or needing only a small amount of such remedial instruction demonstrate sufficient academic progress to complete their academic program in a timely manner. The intent is not to deny TAP to students who need remedial instruction.

However, a problem arises for some students who entered college on or after 2007-08 and were meeting the standards of academic progress established in 2006-07. Now they are faced with new standards which may preclude them from being eligible for TAP for the 2010 fall term. For example, for students in a baccalaureate program based on semesters, under the 2006 SAP requirements, students must have completed at least 21 credits by the end of the fourth term in order to be eligible for TAP in the fifth term. However, under the new 2010 SAP students now must have completed 30 credits by the end of the fourth term to be eligible for TAP in the fifth term. Some students are therefore put into a situation where they were not aware of the new requirements and could not possibly have time to take additional credit hours to meet the new standards in the 2010 SAP. A similar situation is also true for students pursuing an associate degree.

To remedy this situation, in the rule, these returning students that "fall in the gap" between the 2006 and 2010 SAP, will be deemed to be remedial students for the 2010-11 academic year only and therefore can continue to be eligible for TAP under the 2006 SAP. The rationale is that these "gap" students are not progressing along their academic programs at a rate of success that the State finds acceptable for participation in the TAP program. They therefore are being given an academic year to achieve the level of academic performance necessary for participation in TAP.

For purposes of the new standards of academic progress established in Chapter 53 of the Laws of 2010, a student shall be deemed to be in a program approved by the Commissioner for remedial study if he/she: (1) is enrolled in the Higher Education Opportunity Program (HEOP), the Education Opportunity Program (EOP), The Search for Education, Elevation and Knowledge (SEEK) program or the College Discovery (CD) program; (2) takes six credit hours of remedial instruction the first semester and at least nine credit hours of remedial instruction in the first year; or (3) takes three credit hours of remedial instruction in the first semester and six credit hours of remedial instruction in the second semester. Remedial courses taken in the summer session preceding the first academic year may count towards the required nine or more credits of remedial instruction for the purpose of program approval by the Commissioner for remedial study. In addition, for students first becoming eligible for TAP in the 2010-2011 academic year due to a change in their financial circumstances, remedial courses taken in a previous academic year may also be counted. For the 2010-11 academic year only, a student who first received an award prior to the 2010-2011 academic year and does not meet the eligibility requirements to be certified for TAP under the 2010-2011 SAP shall be deemed to be in an approved program of remedial study for the 2010-11 academic year solely for the purpose of defining which standards of academic progress apply for the 2010-11 academic year. This includes students who become ineligible for TAP in the Spring 2010 term because they have insufficient time to adjust their schedule in the Fall term to carry the required number of credits under the new standards of academic progress due to courses becoming unavailable, full or because the add/drop period has ended. The Department will issue guidance on this issue to the colleges.

Legal Basis for Rule: Education Law §§ 207(not subdivided), 602(1), 661(2) and 665(6) and Chapter 53 of the Laws of 2010.

Part 162 VTA Tuition Awards

Description of Rule: The rule amends Subparts 79-9, 79-10, 79-11 and 79-12 of the Regulations of the Commissioner of Education, effective July 14, 2010, relating to licensure requirements for mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts. The purpose of the rules is to change the current requirements relating to experience and limited permits in each of these professions to conform to current practice. The rule also adds a new section to the existing regulations in each of these professions to allow the Department to endorse a license issued in another jurisdiction if the applicant meets certain education, experience and examination requirements.

Need for Rule: The purpose of the rule is to conform Part 162 of the Regulations of the Commissioner of Education to Chapter 57 of the Laws of 2008 to allow Persian Gulf, Afghanistan and other Eligible Combat veterans to receive veterans tuition awards (VTA) for veterans enrolled in approved undergraduate or graduate programs at degree granting institutions or enrolled in approved vocational training programs and who apply for a tuition assistance program award. The rule also conforms the current regulations to current practice by authorizing the Commissioner to approve for VTA funding vocational training programs whose curricula is approved or developed by another state agency acceptable to the Department.

Legal Basis for Rule: Education Law §§ 207, 6506, 8402, 8403, 8404, 8405, and 8409 of the Education Law.

Agency Representative:

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

John D'Agati

Deputy Commissioner for the Office of Higher Education
 New York State Education Department
 Office of Higher Education
 Room 977, Education Building Annex
 89 Washington Avenue
 Albany, New York 12234
 (518) 486-3633
 Shannon.Roberson@nysed.gov
 OFFICE OF THE PROFESSIONS

Sections 59.14 & 29.18 Mental Health Corporate Practice Waiver

Description of Rule: The rule adds a new section 29.18 to the Rules of the Regents and a new section 59.14 to the Regulations of the Commissioner relating to waivers from corporate practice restrictions for certain entities to provide services under Articles 154 or 163 of the Education Law or psychotherapy services as defined in section 8401(2) of the Education Law and services authorized and provided under Articles 131, 139 or 153 of the Education Law. The purpose of the rule is to allow the Department to issue waivers to qualified not-for-profit or educational corporations, so that these entities may employ licensed professionals or authorized individuals to provide services that are restricted under Title VIII of the Education Law.

Need for Rule: Chapters 130 and 132 of the Laws of 2010 amend the Education Law to address critical issues relating to the authority of certain entities to employ licensed master social workers (LMSW), licensed clinical social workers (LCSW), licensed mental health counselors (LMHC), licensed marriage and family therapists (LMFT), licensed creative arts therapists (LCAT), licensed psychoanalysts (LP), and licensed psychologists and to provide services within the scopes of practice of those professions. Prior to the restrictions on practice of those professions established by laws enacted in 2002, any individual or entity could provide psychotherapy and other services that are now restricted. While the new licensing laws provided exemptions for individuals in certain programs, these exemptions did not extend to thousands of not-for-profit and educational corporations throughout New York that provide essential services. This affected not only access to services for vulnerable persons, but also the ability of new graduates to meet the experience requirements for licensure in authorized settings, thereby restricting access to the licensed professions.

On June 18, 2010, Governor Paterson signed into law Chapters 130 and 132 of the Laws of 2010 to authorize the Department to issue waivers authorizing qualified entities to provide certain professional services; to accept supervised experience for licensure completed in settings that are eligible for waivers; to extend the exemption from licensure requirements for individuals in certain programs; and to mandate the Department to recommend, by July 1, 2012, with input from exempt agencies and key stakeholders, any amendments in laws or regulations needed to fully implement licensure by July 1, 2013.

The new section 6503-a of the Education Law authorizes the Department to issue a waiver to certain not-for-profit or educational corporations that were in existence on the effective date of the law, June 18, 2010. An entity must submit a waiver application within 120 days of the applications being posted on the Department's website and may continue to provide services until the application is approved or denied. The law allows entities to continue providing services until July 1, 2012, but if an application is denied by the Department, the entity must cease providing professional services in New York.

The law is very clear that the waiver is not intended to supplant the authority of other State agencies, such as the Department of Health or Office of Mental Health, that have oversight of health and mental health services. In reviewing applications for a waiver, the law requires the Education Department to collaborate with other State agencies to ensure public protection by minimizing the risk of an unqualified entity receiving a waiver to provide professional services. There are also provisions in the law in regard to eligible entities, professional services that may be offered by entities, oversight by the Board of Regents, and attestations by each officer or director of the entity that he or she is of good moral character. An entity that receives a waiver under the law must apply for a renewal every three years and

must request a waiver certificate for each site in New York at which professional services are provided.

Section 6503-a identifies a number of entities that do not require a waiver from the corporate practice prohibitions, including any entity with an operating certificate issued under the Public Health Law, Mental Hygiene Law or in accordance with comparable procedures by a State, federal or local government agency; an institution of higher education that provides a program leading to licensure in medicine, nursing, psychology, social work or the mental health professions; an institution of higher education that provides counseling to students, staff and family members of students and staff; and a university faculty practice corporation. The law allows the Regents to identify in regulation other entities that do not require a waiver, provided that such entity is otherwise authorized by law to provide such services.

The rule implements the provisions of law by setting forth the requirements to be met by a qualified entity in order to receive a waiver. These include, but are not limited to, the submission of the certificate of incorporation or other documentation that authorizes the entity to provide services described in the law and a description of the services that will be offered to the public. The entity must attest to adequate financial resources and that it will comply with section 18 of the Public Health Law in regard to access to patient information and records. Although the granting of a waiver resolves the issue of the authority of the entity to provide professional services, only licensed or authorized persons may provide services, and the entity is responsible for verifying the licensure of providers and the appropriate supervision of interns or permit holders who are only authorized to practice under supervision.

The addition of section 29.18 of the Rules of the Board of Regents implements the Board of Regents disciplinary authority over entities receiving waivers under Education Law section 6503-a. The rule clarifies that the entity is subject to the same professional misconduct provisions of the Regents Rules as a licensed professional or professional entity, and that the entity has the same due process rights as a licensed professional or professional entity.

Legal Basis for Rule: Education Law §§ 207(not subdivided), 6501(not subdivided), 6503-a, 6504(not subdivided), 6506(6), 6507(2)(a), 6508(1), 6509 (not subdivided), 6510 (not subdivided) and 6511 (not subdivided) of the Education Law.

Section 61.15& 61.18 Continuing Education for Dentists

Description of Rule: The amends Sections 61.15 and 61.18 of the Regulations of the Commissioner of Education, effective January 27, 2010, relating to continuing education and limited permits for dentists. The purpose of the rule is to implement the provisions of Chapter 436 of the Laws of 2009.

Need for Rule: Existing regulations governing the ethics and jurisprudence component of mandatory continuing education for licensed dentists requires that this course be taken during the first registration period in which completion of formal education is required, which occurs after a dentist is licensed. The rule implements section 6604-a, as amended by Chapter 436 of the Laws of 2009, by permitting a postgraduate dental student enrolled in an approved residency program to take the dental jurisprudence and ethics course during their residency program, prior to licensure.

Existing regulations that describe the residency requirement for dental licensure make no provision for the registration of residents, or the payment of a residency fee. The rule implements section 6605(5) of the Education Law, as amended by Chapter 436 of the Laws of 2009, by requiring dental residents in an approved residency program to register with the Department and pay a registration fee equal to the amount now charged for a limited permit.

Legal Basis for Rule: Education Law §§ 207(not subdivided), 6504(not subdivided) 6507(2)(a), 6604-a(6) and 6605(5) of the Education Law.

Section 69.2(b)(2) Architectural Licensing Examination

Description of Rule: The rule amends section 69.2 of the Regulations of the Commissioner of Education relating to the examination requirements for licensure as an architect. The purpose of the rule is to align the New York State requirements for licensure with current

national standards set by the National Council of Architectural Registration Boards (NCARB) regarding the retention of credit for Architect Registration Examination (ARE) divisions passed prior to January 1, 2006 and extensions to the existing five year rolling clock.

Need for Rule: The purpose of the rule is to align the New York State requirements for licensure with current national standards set by the National Council of Architectural Registration Boards (NCARB) regarding the retention of credit for Architect Registration Examination (ARE) divisions passed prior to January 1, 2006.

In 2005, the Board of Regents enacted a five year rolling clock for Architecture Registration Examination (ARE) divisions passed on or after January 1, 2006. This rolling clock gave such applicants for licensure five years to pass all divisions of what was, at the time, a nine division exam. Under prior regulations, an applicant may retain credit for ARE divisions passed prior to January 1, 2006 without time limitation. The rule provides that applicants who have passed a division of the ARE prior to January 1, 2006 will lose credit for those divisions if they have not successfully completed the ARE on or before June 30, 2014. This change would be consistent with a recent policy change by NCARB, which, at its Annual Meeting in 2009, voted to extend the five-year rolling clock provision to ARE divisions passed prior to January 1, 2006.

Since 1983, the ARE has transitioned four times. In June 1987, the ARE had a total of nine divisions, consisting of seven multiple choice and two graphic divisions, and was given in a paper and pencil format. By July 2008, the ARE had a total of 7 divisions, with the graphic divisions fully incorporated into the multiple choice divisions, and the exam is now taken and scored by computer. In between, there were transitions in 1988 and 1997 that both combined and split divisions, changing the configuration of the exam.

One of the critical components of licensure is an exam that ensures a minimum threshold of competency within the profession. Given the numerous division transitions within the ARE, enactment of a five-year rolling clock on divisions passed prior to January 1, 2006 will ensure that a candidate has passed the exam as a whole, and not numerous parts of different exams over many years.

The rule also contains extension provisions to the existing five year rolling clock requirement. The State Education Department may allow extensions to this rolling clock for the birth or adoption of an applicant's child, an applicant's serious medical condition, active service in the Armed Forces, or for extreme hardships or other circumstances beyond the applicant's control. If the Department finds that the conditions for an extension are met, the Department may grant an applicant an appropriate extension.

Legal Basis for Rule: Education Law §§ 207, 6504, 6507, and 7304.

Section 70.10 CPA Mandatory Quality Review

Description of Rule: The rule adds a new section 70.10 to the Regulations of the Commissioner of Education relating to the mandatory quality review program in public accountancy. The purpose of the rule is to establish the requirements for the mandatory quality review program for public accountancy to implement section 7410 of the Education Law, as added by Chapter 651 of the Laws of 2008.

Need for Rule: Section 7410 of the Education Law requires all firms, as a condition of renewal of their registrations, to undergo a quality review of the firms' attest services as a condition to renewal of their registration, in a manner specified in the Regulations of the Commissioner. Sole proprietorships and firms with two or fewer accounting professionals are exempt from quality review; however, such firms may voluntarily participate in the quality review program.

The quality review process must include a verification that individuals in the firm who are responsible for supervising attest services or who sign or authorize someone to sign the accountant's report on the financial statements meet competency requirements set out in professional standards for such services and in the Regulations of the Commissioner of Education.

In addition, the new law requires the Commissioner's regulation to include reasonable provisions for compliance by an applicant for firm registration showing that the firm has undergone a quality review in the last three years or a peer review in another state that is the satisfac-

tory equivalent; require that organizations that administer quality review programs be subject to evaluations by the Department or its designee to periodically assess the effectiveness of the quality review program; and require that quality reviews be conducted by reviewers acceptable to the Department in accordance with Commissioner's regulations. In addition, the Commissioner of Education is authorized to require firms undergoing quality review and organizations administering quality review programs to timely submit quality review reports to the State Board for Public Accountancy. Reports submitted must be maintained as confidential in accordance with state law, unless the report is admitted into evidence in a hearing held by the Department.

Any firm, including a sole proprietorship or a firm with two or fewer accounting professionals, that performs attest services for any New York state or municipal entity performing a governmental or proprietary function for New York State or performs attest services specifically required pursuant to New York State law must undergo an external peer review in accordance with Government Auditing Standards issued by the Comptroller General of the United States.

Legal Basis for Rule: Education Law §§ 207(not subdivided), 6501(not subdivided), 6504(not subdivided), 6506(6) and 7410 of the Education Law.

Subpart 74 Social Work Regulations

Description of Rule: The rule amends sections 74.3, 74.4, 74.5, 74.6 and 74.7 and adds a new section 74.9 to the Regulations of the Commissioner of Education relating to limited permits for licensed master social workers (LMSW) and licensed clinical social workers (LCSW) and experience, supervision, and endorsement requirements for licensure as a LCSW in New York. The purpose of the rule is to expedite the processing of applications for licensure as a LCSW in New York State and to provide clarity regarding acceptable supervised experience for licensure as a LCSW to ensure public protection and to establish requirements for the endorsement of certain out-of-state licensed clinical social workers.

Need for Rule: Section 7704(2) of the Education Law requires an applicant seeking licensure as a LCSW to complete three years of full-time supervised post-graduate clinical social work experience in diagnosis, psychotherapy and assessment-based treatment planning, or its part-time equivalent obtained over a period of not more than six years. The law does not require the applicant to complete any other social work experience, although the practice of licensed clinical social work includes other activities, including case management, advocacy, and testing. Such activities are not acceptable toward completion of the experience requirement under the current law. The rule requires an applicant to complete 2,000 client contact hours in diagnosis, psychotherapy, and assessment-based treatment planning over a period of not less than 36 months and not more than 72 months under a qualified supervisor. While this is a 30 percent reduction from the current requirement of 2,880 client contact hours over the same period of time, it is still among the highest requirements for clinical hours in the U.S., and the Department believes 2,000 client contact hours provides sufficient experience to ensure client protection once the applicant is licensed.

The rule amends section 74.3 of the Commissioner's regulations to clarify the experience requirements for licensure as a LCSW in New York. The rule requires an applicant for licensure to complete the required experience as a LMSW or permit holder in New York, except in certain limited circumstances. For experience completed in another jurisdiction, the experience must be obtained after the applicant completes his or her master's degree. The rule requires the applicant to complete the experience in an acceptable setting under a qualified supervisor, as defined in section 74.6 of the Commissioner's regulations. The rule requires the supervisor to maintain records of the applicant's client contact hours and supervision and to submit verification of the client contact hours and supervision on forms prescribed by the Commissioner.

The rule also amends section 74.4 of the Commissioner's regulations to clarify that limited permit applicants must be of good moral character and that the permit may only be issued for work in an authorized setting under a qualified supervisor. In addition, the rule strengthens the requirement that the supervisor is responsible for the

services provided by the permit holder and limits a licensee to supervising no more than five permit holders at any one time. Since the permit holder is only authorized to practice under supervision, this restriction is appropriate for public protection and consistent with the requirements in other professions. A LMSW or LCSW permit holder who is practicing clinical social work under supervision must be under general supervision as defined in the rule.

Currently, section 74.5 of the Commissioner's regulations establishes the fee and experience requirements for a LCSW to qualify for the insurance privilege established in section 3221(1)(4)(D) or 4303(n) of the Insurance Law. The rule increases the application fee from \$85 to \$100 and continue the requirement that the applicant complete 2,400 client contact hours of psychotherapy. However, prior regulations allow experience completed before licensure to be submitted and the rule clarifies the intent of the law that experience must be after licensure as an LCSW over a period of not less than three years. Under the rule, the applicant would have to have no less than 400 client contact hours in any one year in order to qualify for the privilege. In order to clarify the process of meeting the requirements in Insurance Law, the rule also defines an acceptable setting for the practice of licensed clinical social work and requires a LCSW to submit for approval by the State Board for Social Work a plan for appropriate supervision. The rule also defines acceptable supervision for the privilege as two or more hours per month of individual or group consultation or enrollment in a program in psychotherapy offered by an institution of higher education or by a psychotherapy institute chartered by the Board of Regents. This rule eliminates peer supervision, which is not authorized by the Insurance Law, and clarifies the pathway to the insurance privilege.

The rule amends section 74.6 of the Commissioner's regulations to establish the supervision requirements for a licensed master social worker providing clinical social work services. A LMSW who has submitted an application for licensure as a LCSW must maintain registration as a LMSW in New York and may only practice under supervision until licensed as a LCSW. The amendments clarify what constitutes an acceptable setting for the practice of clinical social work and require the supervisor to provide at least 100 hours of individual or group supervision to the LMSW, distributed appropriately over a period of at least 36 months. The LMSW would also be able to submit a plan for supervised experience toward licensure as a LCSW, for review and approval by the State Board for Social Work. By obtaining such approval prior to starting a position, an applicant would be able to avoid working for three years in a position which cannot be accepted toward meeting the experience requirements for licensure as a LCSW because the setting or supervisor was not authorized by law and/or regulation. The State Board's review and approval of the voluntary plan would both protect the public and provide assurances to the LMSW that the setting and supervisor are authorized to engage in the practice of clinical social work in New York. Since a LMSW may provide diagnosis, psychotherapy and assessment-based treatment planning under supervision without seeking licensure as an LCSW, the amendment requires such a LMSW to receive at least two hours per month of in-person individual or group clinical supervision.

Section 7706(2) of the Education Law provides an exemption from licensure for an individual with a bachelor's degree in social work, if the person is under the general supervision of a LMSW or LCSW and engages in non-supervisory and non-clinical activities only. The rule amends section 74.7 of the Commissioner's regulations to provide standards for an individual with a BSW or MSW degree to provide licensed master social work services, under supervision. In order to clarify the boundaries of practice, the rule clearly states that the individual may not provide administrative supervision or engage in the practice of licensed clinical social work or use the title "LMSW" or "LCSW."

The rule adds a new section 74.9 to allow the Department to endorse for practice in New York the license of an LCSW licensed in another jurisdiction. The applicant would have to have at least 10 years of licensed practice during the 15 years immediately preceding the application for licensure in New York. In addition, the applicant must demonstrate: licensure as a LCSW on the basis of an a master's degree in social work from an acceptable school, post-degree supervised clinical

experience, and the passage of a clinical examination in social work acceptable to the department. The applicant must also be of good character, complete coursework in the identification and reporting of suspected child abuse, and submit the application for licensure and fee established in law and regulation.

Legal Basis for Rule: Education Law §§ 207(not subdivided), 212(3), 6501(not subdivided), 6504(not subdivided), 6506(6), 6507(2)(a), 6508(1), 7704(2)(c), 7705(1), and 7706(1) through (5) of the Education Law.

Subparts 79-9, 79-10, 79-11, 79-12 Mental Health Regulations

Description of Rule: The rule implements requirements of Article 163 of the Education Law and establishes endorsement provisions relating to licensure as mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts in New York State.

Need for Rule: In 2002, Article 163 was added to the Education Law to authorize the licensure and practice of mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts. The Board of Regents adopted regulations in 2005 to implement the provisions of Article 163 of the Education Law.

The rule changes current regulations in each of these professions in three major areas. First, the rule amends the experience requirements for licensure in each of these professions by requiring applicants to obtain experience under the general supervision of a qualified supervisor. The rule defines general supervision, requires a certain amount of clock hours of the supervised experience to consist of direct contact with clients, and requires that any supervised experience be performed by an applicant under a limited permit issued by the department. This ensures that the applicant is receiving appropriate supervision from a qualified supervisor in a setting that is authorized to provide services that are restricted under Title VIII of the Education.

The rule also eliminates the requirement that the individual supervising an applicant's experience have three years of licensed experience in the practice of the profession and defines what is considered an appropriate setting to receive licensure-qualifying experience in each of these professions. Due to the recent creation of these four mental health professions, the State Board has notified the Department of shortages in qualified supervisors because of the three-year experience requirement for supervisors. Eliminating the three-year requirement will decrease the shortages in qualified supervisors and be consistent with other professions.

Secondly, the rule clarifies that the Department will issue a limited permit to an applicant to practice under supervision while meeting the experience and/or examination requirements for licensure in these professions and that the limited permit shall identify a qualified supervisor. The rule requires that the permit identify a qualified supervisor acceptable to the department, and prohibits a supervisor from supervising more than five permit holders at a time, which reflects the significant role of the supervisor in overseeing the practice of permit holders.

Finally, a new section is added to the existing regulations in each of these professions to allow the Department to endorse a license issued in another jurisdiction if the applicant meets certain education, experience and examination requirements and the applicant has at least 5 years of experience in that profession, satisfactory to the State Board of Mental Health Practitioners, within the 10 years immediately preceding their application for licensure by endorsement.

Legal Basis for Rule: Education Law Sections 207 (not subdivided), 6501 (not subdivided), 6504 (not subdivided), 6506(6), 6507(2)(a), 6508(1), 8402(3)(c), 8403(3)(c), 8404(3)(c), 8405(3)(c) and 8409(1) of the Education Law.

Agency Representative:

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

Douglas E. Lentivech

Deputy Commissioner for the Professions

New York State Education Department

Office of the Professions

89 Washington Avenue
 West Wing, Second Floor - Education Building
 Albany, NY 12234
 (518) 486-1765
 opdepcom@nysed.gov
 OFFICE OF CULTURAL EDUCATION

Section 90.5 Reference & Research Library Resources Systems

Description of Rule: The rule amends section 90.5 of the Regulations of the Commissioner of Education to update certain terminology and to clarify procedural requirements in the Commissioner's Regulations relating to reference and research library resources systems. Specifically, the rule expands the definition of plan of service and more accurately reflects the information to be included in a plan of service in order to be consistent with the description in other library system regulations. The rule also clarifies the requirements for a full-time director and eliminates references to obsolete practices and terms.

Need for Rule: The rule is needed to update certain terminology and to clarify procedural requirements in the Commissioner's Regulations relating to reference and research library resources systems. Specifically, the rule expands the definition of plan of service and more accurately reflects the information to be included in a plan of service in order to be consistent with the description in other library system regulations; the requirements for a full-time director are clarified; and references to obsolete practices and terms are omitted; in order to conform to Education Law section 272, as amended by Chapter 57 of the Laws of 2005, Part O, and to accurately reflect the current implementation of the statute.

Legal Basis for Rule: Education Law §§ 207, 215, 254, 255, 272(2), and 273.

Agency Representative:

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

Jeffrey W. Cannell
 Deputy Commissioner for Cultural Education
 State Education Department
 Cultural Education Center
 Room 10A33
 Albany, NY 12230
 (518) 474-5976
 Carol.Northrup@NYSED.GOV

OFFICE OF OPERATIONS AND MANAGEMENT SERVICES
 Section 3.2 Establish Audit Committee

Description of Rule: The rule amends section 3.2 of the Rules of the Board of Regents to establish a Regents standing committee on Audits/Budget and Finance that will assist the Board of Regents in carrying out its financial oversight responsibilities by ensuring accountability through centralizing review and discussion of fiscal and audit issues related to the State Education Department.

Need for Rule: The rule is necessary to establish the Committee on Audits/ Budget and Finance as a standing committee of the Board of Regents to assist the Board of Regents in carrying out its financial oversight responsibilities by ensuring accountability through centralizing review and discussion of fiscal and audit issues related to the State Education Department. The Committee will: review State and federal budget actions; review financial reports and all audits of the Department; recommend budget priorities for the upcoming State fiscal year and actions needed to achieve budget reductions and close structural deficits; review select audits of other institutions in the University of the State of New York which may require Department action and submit recommendations and reports to the Full Board, as appropriate; and provide oversight of the Department's Office of Audit Services.

Legal Basis for Rule: Education Law section 207(not subdivided).

Section 3.2 AEWD Committee Name Change

Description of Rule: The rule amends section 3.2 of the Rules of the

Board of Regents and is needed to change the name of a Regents standing committee from Committee on Adult Education and Workforce Development to "Committee on Adult Career and Continuing Education Services (ACCES)," in order to conform to a change of name of the Department's Office of Adult Education and Workforce Development to "Office for Adult Career and Continuing Education Services (ACCES)."

Need for Rule: The Office of Adult Education and Workforce Development was established under a recent reorganization of the State Education Department that abolished the Office of Vocational Educational Services for Individuals with Disabilities (VESID), and transferred responsibility for adult education, workforce development, vocational rehabilitation and proprietary school supervision to the new Adult Education and Workforce Development committee, and transferred responsibility for special education to a new Office of P-12 Education.

The Office of Adult Education and Workforce Development intends to change its name to Office for Adult Career and Continuing Education Services (ACCES). The rule is needed to make a conforming change in the name of the Regents standing committee from Committee on Adult Education and Workforce Development to "Committee on Adult Career and Continuing Education Services (ACCES)."

Legal Basis for Rule: Education Law section 207(not subdivided).

Section 3.2 Regents Standing Committees

Description of Rule: The rule is necessary to conform the Regents Rules to recent changes in the internal organization of the State Education Department, relating to the standing committees of the Board of Regents.

Need for Rule: The rule is necessary to conform the Regents Rules to a recent reorganization of the committee structure of the Board of Regents so that the Board may more effectively meet its statutory responsibilities. The rule conforms the Rules of the Board of Regents to the recent reconfiguration of the standing committees of the Board of Regents, as follows:

(1) The Committee on Elementary, Middle, Secondary and Continuing Education will be renamed the "Committee on P-12 Education."

(2) A new Committee on Adult Education and Workforce Development will be created.

(3) The Committee on Vocational and Education Services for Individuals with Disabilities is abolished, and its functions regarding vocational rehabilitation will be transferred to the Committee on Adult Education and Workforce Development, and its functions regarding special education programs and services for students with disabilities will be transferred to the Committee on P-12 Education.

(4) The adult education and workforce development functions of the Committee on P-12 Education will be transferred to the Committee on Adult Education and Workforce Development.

(5) The functions of the Committee on Adult Education and Workforce Development regarding proprietary school supervision are specified.

(6) The former Committee on Policy Integration and Innovation is abolished.

(7) Clarification is provided regarding the ex officio membership of the chancellor, vice chancellor, and chancellor emeritus on each subcommittee, task force and work group.

(8) Several minor technical changes are made to the Rules to add a reference to Regents work groups and to provide for reasonable notice of meetings to committee members.

The Board of Regents has determined that the reorganization of the committee structure is necessary to assist the Board of Regents to effectively meet its responsibilities to govern the University of the State of New York, determine the educational policies of the State and oversee the State Education Department. The committee reorganization is also consistent with a current restructuring of the Department's internal organization. The rule conforms the Regents Rules to recent changes to the names and functions of certain Regents standing committees so that they may efficiently and effectively carry out the Board's work. The minor technical changes with conform the Rules to the current nomenclature and practice used by the Board.

Legal Basis for Rule: Education Law section 207(not subdivided).

Section 3.8 Senior Deputy Commissioner

Description of Rule: The rule is necessary to conform the Regents Rules to changes in the internal organization of the State Education Department, relating to the designation of the Senior Deputy Commissioner for P-12 Education as the Deputy Commissioner of Education as specified in Education Law section 101, who shall exercise the duties of the Commissioner of Education in his absence or disability, or when a vacancy exists in the office of Commissioner.

Need for Rule: The rule is necessary to conform the Rules of the Board of Regents to changes made in the internal organization of the State Education Department, relating to the designation of the Senior Deputy Commissioner for P-12 Education as the deputy commissioner of education as specified in Education Law section 101, who shall exercise the duties of the Commissioner of Education in his absence or disability, or when a vacancy exists in the office of Commissioner.

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

Parts 275 & 276 Charter School Co-location Appeals

Description of Rule: The rule amends Parts 275 and 276 of the Regulations of the Commissioner of Education. The rule is necessary to implement Chapter 101 of the Laws of 2010 by establishing procedures for expedited appeals relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law § 310 and 2853(3)(a-5). Education Law § 2853(3)(a-5) requires that petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The rule modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for such expedited appeals consistent with statutory requirements.

Need for Rule: The rule is necessary to implement Chapter 101 of the Laws of 2010 by establishing procedures for expedited appeals relating to New York City charter school location/co-location and building usage plans brought pursuant to Education Law §§ 310 and 2853(3)(a-5). Education Law § 2853(3)(a-5) requires that petitions in such appeals must be dismissed, adjudicated or disposed of by the Commissioner within ten days of the receipt of the New York City School District's response. The rule modifies existing notice, service and filing requirements in Parts 275 and 276 of the Commissioner's Regulations, relating to appeals to the Commissioner pursuant to Education Law § 310, to provide for such expedited appeals consistent with statutory requirements. The rule establishes procedures that accommodate the extremely short time frames imposed by the statute, while assuring that due process is provided through procedures which are workable and fair to both parties.

Legal Basis for Rule: Education Law §§ 101, 207, 305(1) and (2), 310, 311 and 2853(3)(a-5) and § 15 of Chapter 101 of the Laws of 2010.

Agency Representative:

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

Richard J. Trautwein

Counsel and Deputy Commissioner for Legal Affairs

State Education Building Room 148

89 Washington Ave., Albany, NY 12234

(518) 474-6400

legal@nysed.gov

B. CALENDAR YEAR 2005

OFFICE OF P-12 EDUCATION

100.1(t) State Learning Standards for Mathematics

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

Need for Rule: The rule is necessary to modify the definition of the State learning standards for mathematics, consistent with policy

enacted by the Board of Regents. The rule added the following provision: "Students will, through the integrated study of number sense and operations, algebra, geometry, measurement, and statistics and probability, understand the concepts of and become proficient with the skills of mathematics, communicate and reason mathematically and become problem solvers by using appropriate tools and strategies."

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

125.1 Voluntary Registration of Nonpublic nursery schools and kindergartens

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

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

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

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

100.3, 100.4 & 80-5.12 Middle-level education

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

Need for Rule: The rule is necessary to implement Regents policy, and ensures that school districts have the flexibility they need to ensure that all students in State public schools are provided instruction in the State learning standards areas and have the skills, knowledge, and understanding necessary for success. The rule provides school districts additional flexibility in meeting State intermediate learning standards and increasing student proficiency in English language arts and mathematics consistent with the federal No Child Left Behind Act.

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

100.2(p) school and school district accountability

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

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

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

100.5 State assessments, graduation and diploma requirements

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

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

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

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

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

Part 105 Special act school districts

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

Need for Rule: The rule is necessary to implement Chapters 628 and 629 of the Laws of 2004 by adding a new Part 105 that establishes

requirements for the appointment by the Commissioner of two public members to the board of education of each special act school district. Section 105.1 provides for definitions of terms used in the new Part. Section 105.2 establishes eligibility requirements for appointment as a public member. Section 105.3 establishes appointment procedures, term lengths, procedures to fill vacancies, and provides that public members, upon appointment, shall have all the rights, privileges, powers, duties and responsibilities of members of the board of education of a union free school district.

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

175.5 Superintendent's conference days

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

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

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

136.1, 136.2 & 136.3 School health services

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

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

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

136.3 School health services

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

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

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

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

Description of Rule: The rule was amended to require a school district to: coordinate the transmittal of records for a student with a disability who is a homeless youth; provide comparable special education services to a homeless youth with a disability who enrolls in a

school district; ensure the local educational agency liaison assists in the enrollment and educational placement through coordination with the Committee on Special Education (CSE) for a student with a disability who is a homeless youth; and coordinate the implementation of the homeless provisions with IDEA.

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

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

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

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

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

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

Part 101 Exemptions from attendance

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

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

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

Section 200.1 Definitions

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

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

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

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

Description of Rule: The rule added child find requirements for students with disabilities who are homeless or wards of the State; added data requirements consistent with federal law; added new responsibilities relating to child find, evaluation, data collection and data reporting for students with disabilities placed in private elementary and secondary schools by their parents; required instructional materials to be in a format that meets the National Instructional Materials Accessibility Standard (NIMAS) as published in the federal Register; ensured that amendments to individualized education programs (IEPs) are disseminated consistent with Chapter 408 of the Laws of 2002 and recommendations made to IEPs without convening a meeting or by amending the IEP are provided to the board of education; repealed requirements for a comprehensive system of personnel development and required schools to include personnel development

activities for staff working with students with disabilities in the professional development plan pursuant to section 100.2 of the Commissioner's Regulations; required boards of education and boards of cooperative educational services (BOCES) to establish written policies that identify the measurable steps it will take to recruit, hire, train and retain highly qualified personnel; required school districts to develop policies and procedures that describe the guidelines for the provision of appropriate accommodations necessary to measure the academic and functional performance of the student in the administration of district-wide assessments; and required a school district to identify how, to the extent feasible, it will use universal design principles in developing and administering any district-wide assessments.

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

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

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

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

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

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

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

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

Need for Rule: The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446. (The rule was amended in 2007 to correct a cross citation and to conform State regulations relating to eligibility determinations including determinations of learning disabilities, IEP contents and provision of services and transfer of records for students who transfer school districts consistent with IDEA and the October 2006 amendments to 34 CFR Part 300, which implement IDEA. The rule was further amended in 2008 to conform State regulations relating to reevaluations and changes to an IEP after the annual review consistent with Chapter 378 of the NYS Laws of 2007 and IDEA statutes and regulations.)

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

Section 200.5 Due process procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 200.16 Educational programs for preschool students with disabilities

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

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

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

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

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

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

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

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

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

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

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

Section 201.4 Manifestation determinations

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

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

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

Section 201.5 Students presumed to have a disability for discipline purposes

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

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

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

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

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

Need for Rule: The rule is necessary to conform the Commissioner's Regulations to IDEA, as amended by Pub L. 108-446. (The rule was amended in 2007 to correct a cross citation and to conform State regulations relating to the consideration of unique circumstances for students with disabilities relating to discipline decisions consistent with IDEA and the October 2006 amendments to 34 CFR Part 300, which implement IDEA.)

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

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

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

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

Legal Basis for Rule: Education Law sections 207(not subdivided),

3208(1-5), 3209(7), 3602-c(2), 4002(1-3), 4308(3), 4355(3), 4402(1-7), 4403(3), 4404(1-5), 4404-a (1-7) and 4410(13).

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

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

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

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

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

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

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

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

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

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

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

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

Agency Representative:

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

Cosimo Tangorra, Jr.

Ken Wagner

Deputy Commissioners P-12

New York State Education Department

State Education Building, Room 2M West

89 Washington Avenue

Albany, New York 12234

(518) 474-3862

nysedp12@nysed.gov

OFFICE OF HIGHER EDUCATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Need for Rule: The rule's purpose is to increase the number of bi-

lingual certified school psychologists and teachers of students with speech and language disabilities to meet the needs of limited English speaking students with disabilities, so as to alleviate serious shortages of bilingual certified school psychologists and teachers of students with speech and language disabilities.

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

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

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

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

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

Agency Representative:

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

John D'Agati

Deputy Commissioner for the Office of Higher Education

New York State Education Department

Office of Higher Education

Room 977, Education Building Annex

89 Washington Avenue

Albany, New York 12234

(518) 486-3633

Shannon.Roberson@nysed.gov

OFFICE OF THE PROFESSIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Agency representative:

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

Douglas E. Lentivech
Deputy Commissioner for the Professions
New York State Education Department
Office of the Professions
89 Washington Avenue
West Wing, Second Floor - Education Building
Albany, NY 12234
(518) 486-1765
opdepcom@nysed.gov

OFFICE OF MANAGEMENT SERVICES

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

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

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

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

3.8 & 3.9 Chief of Staff and Counsel

Description of Rule: The rule provides for the position of Chief of Staff, to be appointed by the Board of Regents, and designates the Chief of Staff as the deputy commissioner of education as specified in

Education Law section 101, who, in the absence or disability of the Commissioner or when a vacancy exists in the office of Commissioner, shall exercise and perform the functions, powers and duties of the Commissioner.

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

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

3.8, 3.9 & 3.15 Chief Operating Officer

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

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

Legal Basis for Rule: Education Law section 101(not subdivided) and 305(1) and (6).

Agency Representative:

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

Richard J. Trautwein
Counsel and Deputy Commissioner for Legal Affairs
State Education Building Room 148
89 Washington Ave., Albany, NY 12234
(518) 474-6400
legal@nysed.gov

C. CALENDAR YEAR 2000

OFFICE OF P-12 EDUCATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Need for Rule: the rule is necessary to implement Regents policy and establishes school accountability criteria, designating schools as farthest from, below, or meeting school accountability performance criteria, consistent with policy adopted by the Board of Regents to ensure that all students in public schools have the skills, knowledge and understanding they need to succeed in the next century. The rule was amended in July 2003 to align the State's System of Accountability for Student Success with the federal No Child Left Behind accountability requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Agency Representative:

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

Cosimo Tangorra, Jr.

Ken Wagner

Deputy Commissioners P-12

New York State Education Department

State Education Building, Room 2M West

89 Washington Avenue

Albany, New York 12234

(518) 474-3862

nysedp12@nysed.gov

OFFICE OF HIGHER EDUCATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Need for Rule: the rule is necessary to implement section 12 of Chapter 181 of the Laws of 2000, the Safe Schools Against Violence in Education Act (SAVE).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Agency Representative:

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

John D'Agati

Deputy Commissioner for the Office of Higher Education

New York State Education Department

Office of Higher Education

Room 977, Education Building Annex

89 Washington Avenue

Albany, New York 12234

(518) 486-3633

Shannon.Roberson@nysed.gov

OFFICE OF THE PROFESSIONS

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

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

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

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

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

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

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

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

Section 64.7 of the Commissioner's Regulations and section 29.14

of the Regents Rules - administration of immunization and anaphylaxis treatment agents b registered professional nurses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Agency representative:

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

Douglas E. Lentivech
 Deputy Commissioner for the Professions
 New York State Education Department
 Office of the Professions
 89 Washington Avenue
 West Wing, Second Floor - Education Building
 Albany, NY 12234
 (518) 486-1765
 opdepcom@nysed.gov
 OFFICE OF MANAGEMENT SERVICES

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

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

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

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

Agency Representative:

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

Richard J. Trautwein
 Counsel and Deputy Commissioner for Legal Affairs
 State Education Building Room 148
 89 Washington Ave., Albany, NY 12234
 (518) 474-6400
 legal@nysed.gov

Department of Environmental Conservation

SAPA Section 207 -- 5-Year Rule Review

The following rules were adopted by the New York State Department of Environmental Conservation (Department or DEC) DURING 2009, and pursuant to SAPA Section 207 have been reviewed. Comments on the rules that are being amended this year should be directed to the contact person listed in the main body of the Regulatory Agenda. Comments on any rules that are not being changed at this time will be accepted for 45 days from the date of publication in the State Register and should be directed to the regulatory coordinator for the appropriate program, as listed below the rules.

DIVISION OF AIR RESOURCES

6 NYCRR Part 200, General Provisions. Statutory Authority: Environmental Conservation Law Sections 1-0101, 1-0303, 3-0301, 3-0303, 11-0303, 11-0305, 11-0535, 13-0105, 15-0109, 15-1903, 16-0111, 17-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 19-0306, 19-0311, 19-0319, 19-0323, 24-0103, 25-0102, 34-0108, 49-0309, 70-0109, 71-2103, 71-2105, 72-0303; Energy Law Sections 3-101, 3-103; Public Authorities Law Sections 1850, 1851, 1854, 1855; Federal Clean Air Act Sections 160-169, 171-193 [42 U.S.C. 7470-7479; 7501-7515]. Part 200 will be revised, and is on the Department's 2014 regulatory agenda.

6 NYCRR Part 202, Emissions Verification. Defines acceptable procedures for performing emissions testing and sampling. Annual emission statements provide an accurate accounting of all emissions from major stationary sources, and assist the state in tracking progress towards attainment and maintaining the national ambient air quality standards for the criteria pollutants. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 71-2103, 71-2105 and 72-0303. Part 202 was amended in 2010. No further amendments will be made at this time.

6 NYCRR Part 204, NOx Budget Trading Program. Defined the

ozone season cap-and-trade program for New York to reduce NOx emissions from large, stationary, fossil fuel-fired boilers and electricity generating units. Statutory Authority: Environmental Conservation Law Sections 1-0101, 19-0103, 19-0105, 19-0301, 19-0303, and 19-0311. Part 204 was repealed in 2010.

6 NYCRR Part 212, General Process Emission Sources. Statutory Authority: Environmental Conservation Law Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105. The 2010 revision of Part 212 was for the purpose of adding Section 212.12, Hot Mix Asphalt Production Plants. The purpose of this section is to control emissions of oxides of nitrogen from hot mix asphalt plants. These regulations has ongoing requirements and therefore will not be amended at this time.

6 NYCRR Part 215, Open Fires. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 9-0105, 9-1103, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 70-0107, 71-2103, 71-2105. This regulation will not be amended at this time.

6 NYCRR Part 217, Motor Vehicle Emissions. Environmental Conservation Law (ECL) Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-0320, 71-2103, and 71-2105. This regulation was revised in 2010 to amend existing Subparts 217-1 and 217-4, and to include a new Subpart 217-6. The revisions ended the New York Transient Emissions Short Test (NYTEST) and updated the New York Vehicle Inspection Program (NYVIP). No further amendments will be made at this time.

6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines. Environmental Conservation Law Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103, 71-2105, and section 177 of the federal Clean Air Act (42 USC 7507). This regulation was revised in 2010 to incorporate revisions California made to its zero emission vehicle program. Additional changes are being considered for 2015.

6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines. Environmental Conservation Law Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103, 71-2105, and section 177 of the federal Clean Air Act (42 USC 7507). This regulation was revised in 2010 to incorporate revisions California made to its low emission vehicle (LEV) program to amend its greenhouse gas (GHG) emission standards. Additional changes are being considered for 2015.

6 NYCRR Part 227-2 Reasonably Available Control Technology (RACT) For Major Facilities of Oxides Of Nitrogen (NOx) Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311. Part 227-2 was amended in 2010. Additional amendments will not be made at this time.

6 NYCRR Part 228, Surface Coating Processes. Statutory Authority: Environmental Conservation Law Sections 3-0301, 19-0301, 19-0303. Part 228 was amended in 2013. Additional amendments will not be made at this time.

6 NYCRR Part 231, New Source Review for New and Modified Facilities. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305; Federal Clean Air Act Sections 160-169, 171-193 [42 U.S.C. 7470-7479; 7501-7515]. Part 231 was amended in 2011. No further amendments will be made at this time.

6 NYCRR Part 237, Acid Deposition Reduction NOx Budget Trading Program. Defined the non-ozone season cap-and-trade program for New York to reduce NOx emissions from large, stationary, fossil fuel-fired electricity generating units. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, and 19-0303. Part 237 was repealed in 2014.

6 NYCRR Part 238, Acid Deposition Reduction SO2 Budget Trading Program. Defined the annual cap-and-trade program for New York to reduce SO2 emissions from large, stationary, fossil fuel-fired electricity generating units. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, and 19-0303. Part 238 was repealed in 2014.

6 NYCRR Part 239, Portable Fuel Container Spillage Control.

Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0303, 19-0305, 17-2103 and 71-2105.

Part 239 was amended in 2009 to include a more broad set of standards which were consistent with the Federal Rule 40 CFR part 59. Part 239 is part of a suite of actions undertaken by the State to control VOC emissions. VOCs are precursors, with nitrogen oxides in the formation of ozone. This regulation will not be amended this year as the current regulations limit the VOCs of this category to a level where the emissions are controlled to a reasonable level.

6 NYCRR Part 241, Asphalt Pavement and Asphalt Based Surface Coating, 6 NYCRR Part 211, General Prohibitions, 6 NYCRR Part 205, Architectural and Industrial Maintenance (AIM) Coatings, and 6 NYCRR Part 200, General Provisions. Adopted asphalt pavement VOC limitations and asphalt based surface coating VOC content and labeling requirements, and updated VOC lists. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105. These regulations will not be amended at this time.

6 NYCRR Part 243, 6 NYCRR Part 244 and 6 NYCRR Part 245, Clean Air Interstate Rule (CAIR). The New York State components of the regional cap and trade programs that primarily apply to large electricity generating units to mitigate transport of NOx and SO2 to reduce ozone and fine particulate formation in the Eastern United States. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, and 19-0303. These regulations will not be amended at this time.

6 NYCRR Part 247, Outdoor Wood Boilers. Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 71-2103, and 71-2105. Part 247 was adopted in 2010 to establish PM emission limits as well as siting and stack height requirements for new outdoor wood boilers (OWBs). This regulation will not be amended at this time.

6 NYCRR Part 249, Best Available Retrofit Technology (BART). Statutory Authority:

Environmental Conservation Law Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105. This regulation codifies a federal program, pursuant to EPA's regional haze rule, for controlling emissions (oxides of nitrogen, sulfur dioxide, and particulate matter) that cause visibility impairment in federal parks. This regulation will not be amended at this time.

Contact: Jen Masa, New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233-3258. Telephone: 518-402-8401. E-mail: airregs@gw.dec.state.ny.us. Please include the Part number when emailing.

DIVISION OF ENVIRONMENTAL PERMITS

6 NYCRR Part 617.20 Appendixes A-C, Statutory Authority Environmental Conservation Law, Article 8. This rule amends the environmental assessment forms. The purpose of the rule is to update the environmental assessment forms. This rule was finalized on January 25, 2013. No further amendments will be made at this time.

Contact: Kent Sanders, New York State Department of Environmental Conservation, Division of Environmental Permits, 625 Broadway, Albany, NY 12233. Telephone: 518-402-9178. E-mail: kent.sanders@dec.ny.gov. Please include the Part number when emailing.

DIVISION OF FISH, WILDLIFE, AND MARINE RESOURCES

6 NYCRR Section 180.3: Definition of firearms. Statutory Authority: ECL 11-0303. Provided a clear definition of an "airgun" for the purpose of implementing hunting laws allowing their use on small game and certain upland game birds. No amendments planned for 2015 as definitions are still relevant and in effect. Contact: Vicky Wagenbaugh, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, NY 12233-4754, Telephone: 518-402-8879. E-mail: vicky.wagenbaugh@dec.ny.gov

6 NYCRR Section 2.25: Pheasant Hunting. Statutory authority:

ECL 11-0303, 11-0901, 11-0903, and 11-0905. Adjusted pheasant hunting seasons and bag limits to increase hunting opportunity. The regulations were amended in 2011 to allow for a youth pheasant hunt on Long Island. No amendments are planned for 2015 as regulations are still relevant and in effect. Contact: Vicky Wagenbaugh, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, NY 12233-4754, Telephone: 518-402-8879. E-mail: vicky.wagenbaugh@dec.ny.gov

6 NYCRR Sections 6.2 and 6.3: Trapping Regulations. Statutory authority: ECL 11-0303, 11-1101, and 11-1103. Amended trapping season dates and reform several general trapping regulations. Several amendments are planned for 2015, otherwise regulations are still relevant and in effect. Contact: Vicky Wagenbaugh, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, NY 12233-4754, Telephone: 518-402-8879. E-mail: vicky.wagenbaugh@dec.ny.gov

6 NYCRR Part 189: Chronic wasting disease. Statutory authority: ECL 3-0301 and 11-0325. Updated chronic wasting disease regulations to protect New York whitetail deer population, including: decommissioning the CWD containment area; rescinding the provisions related to "sale of feed" in 6 NYCRR 189.3 (h); amending 6 NYCRR 189.8 (Taxidermy) to require that taxidermy logs be kept on hand for a two year period; Adding moose as a species that would be regulated if a new containment area is identified. Regulations were amended in 2011 and 2012 to restrict the importation of deer carcasses when Maryland and Pennsylvania were found to be CWD positive states, respectively. Amendments are expected to be proposed in 2015 in order to strengthen the existing regulation pertaining to importation, transportation, possession and disposal of live or dead Cervids (or parts of those animals) as necessary to prevent the introduction or spread of Chronic-wasting Disease in New York. Contact: Vicky Wagenbaugh, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, NY 12233-4754, Telephone: 518-402-8879. E-mail: vicky.wagenbaugh@dec.ny.gov

6 NYCRR Part 187: Black Bear Feeding and Training of Dogs on Black Bears. Statutory authority: ECL 11-0521, 11-0903, and 11-0928. Amended black bear regulations to clarify and expand restrictions on the feeding of black bears in order to reduce conflicts between bears and people, which prompted changing regulations concerning the use of bait in training dogs to hunt black bears. No amendments are planned for 2015 as all regulations are still relevant and in effect. Contact: Vicky Wagenbaugh, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, NY 12233-4754, Telephone: 518-402-8879. E-mail: vicky.wagenbaugh@dec.ny.gov

6 NYCRR Sections 1.30 and 6.3: Deer Management Assistance Permits (DMAP), and Trapping Regulations (pelt seals for beaver), respectively. Statutory authority: ECL 11-0903 and 11-1103. Reduce costs associated with Deer Management Assistant Permits and measuring beaver harvest. These regulatory changes were made to reduce Conservation Fund expenditures by lowering the cost of implementing Deer Management Assistance Permits (DMAP) by changing the reporting requirements, and ending the requirement for trappers to use pelt seals for beaver. No amendments are planned for 2015 as all regulations are still relevant and in effect. Contact: Vicky Wagenbaugh, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, NY 12233-4754, Telephone: 518-402-8879. E-mail: vicky.wagenbaugh@dec.ny.gov

6 NYCRR Part 182: Endangered and Threatened Species of Fish and Wildlife. Statutory authority: ECL - 11-0535. Clarify process and procedures for handling endangered and threatened species in New York. A process to amend and update the Endangered and Threatened Species list has been initiated, but it is not expected that amendments will be made for 2015. Contact: Vicky Wagenbaugh, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, NY 12233-4754, Telephone: 518-402-8879. E-mail: vicky.wagenbaugh@dec.ny.gov

6 NYCRR Sections 2.30 and 180.10: Migratory game bird hunting

and game harvest reporting. Statutory authority: 11-0303, 11-0307, 11-0903, 11-0905, 11-0909, 11-0911, and 11-0917. Regulations conformed migratory game bird hunting regulations to changes in the ECL and clarified and simplified game harvest reporting requirements in order to improve overall compliance with harvest reporting. These regulations were amended in 2013 to allow for an extended Snow Goose season in accordance with federal and flyway management plans for this species. No amendments are planned for 2015 as all regulations are still relevant and in effect. Contact: Vicky Wagenbaugh, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, NY 12233-4754, Telephone: 518-402-8879. E-mail: vicky.wagenbaugh@dec.ny.gov

6 NYCRR Part 59 State Boat-Launching Sites, Fishing Access Sites and Fishing rights Areas; Part 190 Use of State Lands; Part 19 Use of Bait, Fish for Bait, and Bait Fish; Part 35 Licenses: Statutory Authority ECL 3-0301, 9-0105, 9-1709, 11-0303, 11-0305, 11-0317, 11-1301, 11-1303, 11-0325, 11-1316, 11-2101. Amendments to Parts 59 and 190 allowed people to fish at boat launch and waterway access sites so long as fishing did not interfere with the launch or retrieval of boats, use of boarding docks by boaters, or navigation to and from the launch ramp. No amendments are planned for 2015. Contact: Edward Woltmann, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, NY 12233-4753, Telephone: 518-402-8893, E-mail: ed.woltmann@dec.ny.gov Amendments to Parts 19 and 35 facilitate use of bait fish by anglers by extending the period of time that purchased bait fish may be used as well as adjusting the list of identified waters where bait fish may be used. Use of bait fish by anglers was reviewed through the implementation of a survey conducted in 2013. No amendments are planned for 2015. Contact: Shaun Keeler, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 625 Broadway, Albany, NY 12233-4753, Telephone: 518-402-8928, E-mail: shaun.keeler@dec.ny.gov

6 NYCRR Part 10 Sportfishing Regulations. Statutory Authority: ECL 11 0303, 11 0305, 11 0317, 11 1301, 11 1303, 11 1316, and 11-1319. These regulations are amended biannually for the purposes of adjusting the regulations pertaining to the management of freshwater sportfish including appropriate adjustments to freshwater fishing seasons and allowable creel limits & size limits, as well as for gear requirements, the use of baitfish and other requirements related to freshwater angling. The review process also results in eliminating special regulations that are no longer warranted. This rule was amended through the establishment of subsequent sportfishing rules for the 2010 licensing year (effective October 1, 2010), as well as for the 2012 licensing year. Contact: Shaun Keeler, NYS Department of Environmental Conservation, Division of Fish, Wildlife and Marine Resources, 625 Broadway, Albany, NY 12233-4753, Telephone 518-402-8928. E-mail: shaun.keeler@dec.ny.gov

6 NYCRR Part 10 Sportfishing; Part 11 More Than One Species; Part 35 Licenses; Part 36 Gear and Operation of Gear; and Part 40 Marine Fish. Statutory Authority: ECL sections 11-0303, 11-0305, 11-0315, 11-0317, 11-0319, 11-1301, 11-1303, 11-1305, 13-0105, 13-0339 and 13-0371. The rule closed all commercial and recreational fisheries for American shad in the Hudson River and marine district, and reduced the recreational creel limit for the Delaware stock to protect the Hudson River and Delaware River stocks of American shad. The rule remains in effect to continue to provide protection to the American shad stocks. Contact: Kathy Hattala, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 21 South Putt Corners Road, New Paltz, NY 12561. Telephone: 845-2563071. E-mail: kathy.hattala@dec.ny.gov

6 NYCRR Part 40 Marine Fish. Statutory authority: ECL sections 11-0303, 13-0105, and 13-0340-f. This rule proposed to reduce the recreational fishing season for black sea bass from year round to June 1 through June 30 and September 1 through September 30. This action was necessary for New York to comply with the Atlantic State Marine Fisheries Commission's (ASMFC) recommendations for black sea bass. However, ASMFC modified its black sea bass management measures; this rule was withdrawn and never adopted. This rule has since been modified in 2010, 2011, 2012, 2013 and 2014 to meet the

requirements of the black sea bass fishery management plan as ASMFC seeks to provide for the long-term health of this species and to comply with federal regulations. Contact: Stephen Heins, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 205 North Belle Mead Road, Suite 1, East Setauket, NY 17733. Telephone: 631-444-0435. E-mail: steve.heins@dec.ny.gov

6 NYCRR Part 40 Marine Fish. Statutory authority: ECL sections 11-0303, 13-0105, and 13-0340-c. This rule reduced the winter flounder commercial fishing possession to no more than 50 pounds and the winter flounder recreational fishing possession to no more than 2 fish. This action was necessary to protect this species from further depletion by reducing fishing mortality. The rule will be amended in 2015 to extend the recreational fishing season from April 1 through May 30, to March 1 through December 31. Contact: Stephen Heins, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 205 North Belle Mead Road, Suite 1, East Setauket, NY 17733. Telephone: 631-444-0435. E-mail: steve.heins@dec.ny.gov

6 NYCRR Part 40 Marine Fish and Part 44 Lobster and Crabs. Statutory authority: ECL sections 11-0303, 11-1303, 13-0105, 13-0329, 13-0338, 13-0339-a, and 13-0340-a. This rule making allowed recreational anglers to fish for and land Atlantic cod in New York in accordance with federal rules for the Georges Bank cod fishery and reduced the recreational minimum size limit for haddock from 19 inches to 18 inches. This rule also added a section 40.7 Coastal Sharks to Part 40 that identified which shark species are allowed to be taken in the commercial and recreational fisheries and which species are prohibited, and specified management measures to control shark fishing. This rule will be amended in 2014/2015 to make New York's shark regulations consistent with federal shark regulations. This rule also reduced the recreational possession of weakfish to one fish per angler per day, reduced the commercial daily trip limit to 100 pounds, reduced the commercial bycatch limit to 100 pounds during closed seasons, and specified a 100 undersized fish per trip allowance for the finfish trawl fishery. This rule also increased the size of lobster trap escape vents to correspond to the increased minimum size limit which became effective January 1, 2010. The provisions of this rule are necessary to make New York State regulations for Atlantic cod and haddock consistent with federal rules; to protect the coastal shark populations, maintain a sustainable shark fishery, and for New York to remain in compliance with the Atlantic State Marine Fisheries Commission (ASMFC) fishery management plan (FMP) for coastal sharks; to reduce fishing pressure on the depleted weakfish stock; and to ensure that lobster trap escape vent dimensions are compliant with the ASMFC lobster FMP. Contact: Stephen Heins, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 205 North Belle Mead Road, Suite 1, East Setauket, NY 17733. Telephone: 631-444-0435. E-mail: steve.heins@dec.ny.gov

6 NYCRR Part 40 Marine Fish. Statutory authority: ECL sections 13-0105, 13-0340-b, 13-0340-e and 13-0340-f. This rule increased the recreational season for summer flounder and removed the 17-day mid-season closure established in 2009. This rule reduced the bonus season and the bonus season possession limit for scup for recreational anglers fishing from party and charter boats licensed by DEC. The bonus season is a brief time period when the possession limit for scup is increased to some level, higher than the daily trip limit, but only for anglers aboard party and charter boats licensed by DEC. This rule also reduced the fishing season for black sea bass from all year long to May 22 through October 11 and from November 1 through December 31. All these provisions of this rule were necessary to prevent New York State recreational anglers from exceeding the assigned scup and black sea bass quotas for 2010 and for New York State to remain in compliance with the Atlantic States Marine Fisheries fishery management plan for summer flounder, scup and black sea bass. This rule has since been modified in 2011, 2012, 2013 and 2014 to meet the requirements of the summer flounder, black sea bass, and scup fishery management plan as ASMFC seeks to provide for the long-term health of these species and to comply with federal regulations. Contact: Stephen Heins, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 205 North Belle Mead

Road, Suite 1, East Setauket, NY 17733. Telephone: 631-444-0435. E-mail: steve.heins@dec.ny.gov

6 NYCRR Part 41 - Sanitary Condition of Shellfish Lands. Statutory Authority: ECL 13-0307 and 13-0319. This rule making closed portions of shellfish growing areas in Hempstead Bay, Nicoll Bay, Three Mile Harbor, Hog Creek and West Creek for the harvest of shellfish based on recent analyses of bacteriological water quality data from these areas. Shellfish harvested from growing areas that fail to meet bacteriological water quality standards may cause illness in those individuals who consume them. Bacteriological water quality testing is an ongoing task; shellfish lands will be classified as necessary based on the results of the water quality studies. Part 41 will be amended as needed. Contact: William Hastback, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 205 North Belle Mead Road, Suite 1, East Setauket, NY 17733. Telephone: 631-444-0492. E-mail: william.hastback@dec.ny.gov

6 NYCRR Part 41 - Sanitary Condition of Shellfish Lands. Statutory Authority: ECL 13-0307 and 13-0319. This rule making classified portions of shellfish growing areas in Hashamomuck Pond, Matituck Creek, Flanders Bay, Shinnecock Canal, Patchogue Bay, and Oyster Bay Harbor as seasonally certified (open for limited times of year) for the harvest of shellfish based on recent analyses of bacteriological water quality data from these areas. The reclassification of these areas will result in a financial benefit for commercial fisherman and increased opportunities for recreational shellfish harvesters. Bacteriological water quality testing is an ongoing task; shellfish lands will be classified as necessary based on the results of the water quality studies. Part 41 will be amended as needed. Contact: William Hastback, NYS Department of Environmental Conservation, Division of Fish, Wildlife & Marine Resources, 205 North Belle Mead Road, Suite 1, East Setauket, NY 17733. Telephone: 631-444-0492. E-mail: william.hastback@dec.ny.gov

DIVISION OF LANDS AND FORESTS

6 NYCRR Part 190, Use of State Lands. Environmental Conservation Law sections, 1-0101(3)(b), 3-0301(1)(b), 3-0301(2)(m), 9-0105(1), 9-0105(3), 45-0111(6) and 45-0117(2)(n). This regulation is needed since it protects the public safety and the natural resources on the Zoar Valley Multiple Use Area, including the Zoar Valley Unique Area. No amendments to this regulation are planned for the coming year, since implementation has been satisfactory. There is no need for the Department to modify this regulation.

6 NYCRR Part 190, Use of State Lands. Environmental Conservation Law sections, 1-0101(3)(b), 3-0301(1)(b), 9-0105(1), 3-0301(2)(m) and 9-0105(3). This regulation is needed since it protects public safety and the natural resources on the Salmon River Falls Unique Area. No amendments to this regulation are planned for the coming year since implementation has been satisfactory. There is no need for the Department to modify this regulation.

6 NYCRR Part 190, Use of State Lands, Hemlock- Canadice State Forest. Environmental Conservation Law sections, 1-0101(1), 1-0101(3)(b), 3-0301(1)(b), 3-0301(2)(m), 3-0301(2)(v), 9-0105(1) and 9-0105(3). This emergency rulemaking was adopted for the preservation of public health, safety and general welfare, because of the need to protect water quality and allow responsible public use of Hemlock-Canadice Lakes and the lands surrounding the lakes immediately upon State acquisition. Once the permanent regulation became effective, the emergency rulemaking was allowed to expire.

6 NYCRR Part 190, Use of State Lands, Hemlock- Canadice State Forest. Environmental Conservation Law sections, 1-0101(1), 1-0101(3)(b), 3-0301(1), 3-0301(1)(b), 3-0301(2)(m), 3-0301(2)(v), 9-0105(1) and 9-0105(3). This regulation is needed to control public use and safety and to protect watershed values and natural resources. No amendments to this regulation are planned for the coming year since implementation has been satisfactory. There is no need for the Department to modify this regulation.

Contact: Linda Kashdan-Schrom, NYS Department of Environmental Conservation, Division of Lands and Forests, 625 Broadway, Albany, NY 12233-4250 Telephone: (518) 402-9405, E-mail: linda.kashdan@dec.ny.gov Please include the Part number when emailing.

Department of Financial Services

INTRODUCTION

Pursuant to section 207 of the State Administrative Procedure Act, Review of Existing Rules, the Department of Financial Services must review, after five years and at five-year intervals thereafter, rulemakings adopted on or after January 1, 1998. The purpose of the review is to analyze the need for and legal basis of the adopted rulemakings. Please note that all references to “the Department” and the “Superintendent” prior to October 3, 2011 mean, respectively, the former Insurance Department or Banking Department and the former Superintendent of Insurance or Superintendent of Banking, as appropriate to the context, and that the references to the law cited are as of the date of the amendment to the regulations.

PART 1. INSURANCE REGULATIONS

Notice is hereby given of the following rules relating to insurance that the Department of Financial Services (“Department”) will review this year to determine whether they should be continued or modified. These rules were adopted in 2010, 2005 and 2000. These rules as published in the New York State Register contain a regulatory flexibility analysis, a rural area flexibility analysis and/or a job impact statement. If no such analysis was filed, a statement setting forth why one or all of those analyses was unnecessary was published in the Register. Public comment on the continuation or modification of the above rules is invited. Comments must be received within 45 days of the date of publication of this notice. Comments should be submitted to:

Camielle Barclay
Senior Attorney
New York State Department of Financial Services
One State Street
New York, NY 10004

Telephone Number: (212) 480-5299

Email: camielle.barclay@dfs.ny.gov

The following rulemakings were adopted in 2010:

- INS-33-09-00007-A (State Register of January 6, 2010), Repeal of Part 163 and Adoption of a new Part 163 (Insurance Regulation 153) (Flexible Rating for Nonbusiness Automobile Insurance Policies) of Title 11 NYCRR.

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

The adopted rule re-established flexible rating for nonbusiness automobile insurance policies as required by Insurance Law Section 2350, which was enacted by section 13 of Chapter 136 of the Laws of 2008. Section 2350 permits insurers to put into effect nonbusiness automobile insurance rates without the Superintendent’s prior approval, provided that the overall average rate level does not result in an increase above five percent from the insurer’s prior rate level in effect during the preceding 12 months. Section 2350 also limits the overall average rate level decreases without prior approval up to five percent from the insurer’s current rate level regardless of when it went into effect. The former Insurance Regulation 153, implementing the former flex rating system, had been repealed when the former section 2350 had expired and a new Insurance Regulation 153 was adopted to establish rules and provide guidance to insurers to implement the requirements of the newly enacted Section 2350.

- INS-48-09-00002-A (State Register of February 10, 2010), Adoption of a new Part 30 (Insurance Regulation 194) (Producer Compensation Transparency) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301 and Article 21.

Insurance Regulation 194 requires insurance producers to make certain disclosures to insurance customers about their role in the insurance transaction and the compensation arrangements made with insurers. Some insurers pay producers not only by commission, but also by the total volume of policies generated by a producer or the profitability of those insurance contracts. Individual consumers and commercial interests typically rely on insurance producers to assist

them with obtaining information about available insurance policies and to evaluate those policies to determine which are best suited to the customer's needs. A potential conflict of interest may arise when an insurance policy that would earn the producer the greatest compensation for its sale is not the most appropriate insurance for the customer in terms of coverage, service or price. Thus, Insurance Regulation 194 requires an insurance producer to disclose: its role in the transaction; that the producer will receive compensation from the insurer based upon the sale of the policy; that the compensation paid by insurers may vary; and that the purchaser may obtain from the producer, upon request, information about the compensation the producer expects to receive from the sale of the policy. The regulation also requires that upon the customer's request, the producer disclose the amount of compensation for the policy selected and any alternative quotes presented. The required disclosures should minimize the potential conflicts that arise from producer compensation because insurance customers can request information about the compensation for the insurance policy and alternative policies quoted.

An amendment to Insurance Regulation has been proposed and is in effect on an emergency basis (DFS-29-14-00014-E, State Register of October 15, 2014) currently to reflect recent the recent licensing of title insurance agents and to address specific circumstances that apply to such agents.

- INS-51-09-00001-A (State Register of February 24, 2010) Repeal of Part 135 (Insurance Regulation 67) (Reporting of Reserve Liabilities by Public Retirement Systems) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 307(a); Retirement and Social Security Law Sections 15, 315; Education Law Section 523; Administrative Code of the City of New York Sections 13-183, 13-266, 13-378, 13-562; and the Rules and Regulations of the Retirement Board of the Board of Education of the City of New York Section 25.

Insurance Regulation 67 required reporting of certain financial transactions and reserve liabilities by public retirement systems maintained by the City of New York and the State of New York. The regulation referred to items in an annual statement form that was made obsolete by the replacement of a new form in 2007, which included the reporting requirements and filing instructions that were formerly set forth in Insurance Regulation 67. Thus, Insurance Regulation 67 was repealed to eliminate requirements relating to a previous annual statement form that is no longer in use, and eliminated regulatory provisions that are no longer applicable to any person.

- INS-20-09-00011-A (State Register of April 21, 2010) Amendment to Part 151 (Insurance Regulation 119) (Workplace Safety and Loss Prevention Incentive Program) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301 and 308 and Chapter 6 of the Laws of 2007.

Insurance Regulation 119 was adopted to comply with N.Y. Workers Compensation Law § 134(6)(c), which requires the Superintendent to promulgate regulations to establish workers compensation premium credits for employers insured by the State Insurance Fund or another workers compensation insurer that implement a safety incentive program, drug and alcohol prevention program, or a return to work program; and to require re-certification on an annual basis.

- INS-08-10-00002-A (State Register of May 5, 2010) Consolidated Amendments of Part 52 (Insurance Regulation 62), Part 215 (Insurance Regulation 34), Part 360 (Insurance Regulation 145), Part 361 (Insurance Regulation 146), and Addition of Part 58 (Insurance Regulation 193) (Minimum Standards for the Form, Content and Sale of Medicare Supplement Insurance) to Title 11 NYCRR.

Statutory Authority: Federal Social Security Act (42 U.S.C. Section 1395ss); Insurance Law Sections 201, 301, 3201, 3216, 3217, 3218, 3221, 3231, 3232, 4235, and Article 43.

In 1992, Congress enacted the federal Omnibus Budget Reconciliation Act of 1990 which establishes uniform requirements to govern Medicare supplement insurance. In 1992, the Department amended regulatory provisions pertaining to the rules for the regulation of Medicare supplement insurance to ensure compliance with federal standards. In 2008, Congress amended federal law to revise the standards governing Medicare supplement insurance plans. These regula-

tions were amended to conform to federal requirements, as set forth in the revised National Association of Insurance Commissioners ("NAIC") Medicare Supplement Insurance Minimum Standards Model Act.

- INS-25-10-00017-A (State Register of September 22, 2010) Amendment to Part 68 (Insurance Regulation 83) (Charges for Professional Health Services) of Title 11 NYCRR.

Statutory authority: Insurance Law Sections 201, 301, 2601, 5221, and Article 51.

This rule established, for the purposes of no-fault reimbursement, a fee schedule for dental services because at the time the Workers' Compensation Board had not established a fee schedule for such services. In 2009, the Workers' Compensation Board adopted a dental fee schedule effective March 1, 2009. This amendment repealed Part A of Appendix 17-C to Part 68 that pertains to the fee schedule previously established by the then-Insurance Department for dental services. The charges for dental services are covered by the fee schedule established by the Workers' Compensation Board.

The Department is currently considering amending Insurance Regulation 83 to adopt specific rules for fees charged for health services rendered outside New York State.

- INS-37-10-00016-A (State Register of December 8, 2010) Amendment to Part 125 (Insurance Regulations 17, 20, and 20-A) (Credit for Reinsurance from Unauthorized Insurers) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 110, 201, 301, 307(a), 308, 332, 1301(a)(9), 1301(c), and 1308.

This rule applies to insurers authorized to do business in New York State and addresses whether a ceding insurer may take credit on its balance sheet, as an asset or deduction from reserves, for reinsurance recoverable from an unauthorized assuming insurer. The amendment established certain requirements for ceding insurers and reinsurers, and placed the onus on ceding insurers to prudently manage their risk.

Effective March 20, 2013, the Department adopted another amendment to Part 125 (DFS-48-12-00004-A, State Register of March 20, 2013) to establish rules governing when an authorized ceding insurer may take credit on its balance sheet for a reinsurance recoverable.

The following rulemakings were adopted in 2005:

- INS-44-04-00003-A (State Register of January 26, 2005) Amendment to Part 39 (Insurance Regulation 144) (Partnership for Long-Term Care Program) of Title 11 NYCRR.

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

By Chapter 454 of the Laws of 1989, as amended by Chapter 659 of the Laws of 1997, the Legislature enacted the Partnership for Long-Term Care Program ("the Program") to provide that citizens of New York State who purchase a long-term care insurance policy/certificate under the Program, and who exhaust benefits under such policy/certificate, will become eligible for long-term care protection through the New York State Medicaid program. Insurance Regulation 144 establishes the standards and requirements relating to the Program. This amendment to Part 39 of 11 NYCRR was necessary to expand the plan design options under the New York State Partnership for Long-Term Care Program. Prior to the amendment, there was only one plan design offered.

Effective June 1, 2012, the Department adopted another amendment to Part 39 (DFS-09-12-00008-A, State Register of May 16, 2012) to amend minimum standards for inflation protection, to add a new plan and add disclosure requirements relating to reciprocity.

Effective January 1, 2014, the Department adopted another amendment to Part 39 (DFS-36-13-00001-A, State Register of November 13, 2013) to amend the minimum daily benefit amounts for 2014 through 2023 for the New York State Partnership for Long-Term Care Program.

- INS-45-04-00002-A (State Register of February 2, 2005) Adoption of Part 217 (Insurance Regulation 178) (Prompt Payment of Health Insurance Claims) of Title 11 NYCRR.

Statutory Authority: Insurance Law sections 201, 301, 1109, 2403, 3224 and 3224-a.

Chapters 637 and 666 of the Laws of 1997, which amended the Insurance Law relating to the settlement of claims for health care and payment for health care services, took effect January 22, 1998. The legislation was intended to set timeframes within which insurers and health maintenance organizations must pay undisputed claims for health care services submitted by subscribers and health care providers. One area of continuing concern had been determining when a claim was deemed to be “clean,” and therefore ready for payment. This regulation created claims payment guidelines for determining when a health care insurance claim is considered complete and ready for payment. By its terms, the regulation is applicable only to claims submitted on paper.

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

Effective July 15, 2009, the Department adopted an amendment to Part 217 (with a coordinated amendment to Part 52) (INS-52-08-00006-A, State Register of April 1, 2009) to facilitate the timely processing and payment of health insurance claims in those circumstances where the patient is covered by more than one policy issued by different insurers.

- INS-27-05-00005-A (State Register of September 7, 2005) Amendment to Part 52 (Insurance Regulation 62) (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) of Title 11 NYCRR.

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

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

- INS-35-05-00002-A (State Register of December 7, 2005) Amendment to Part 41 (Insurance Regulation 143) (Accelerated Payment of Death Benefits under a Life Insurance Policy) of Title 11 NYCRR.

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

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

The following rulemakings were adopted in 2000:

- INS-48-99-00004-A Addition of Part 261 (Insurance Regulation 161) (Prepaid Legal Services Plans), INS-48-99-00005-A Addition of Part 262 (Insurance Regulation 162) (Legal Services Insurance), INS-48-99-00006-A Amendment to Part 26 (Insurance Regulation 25) (Independent Adjusters), INS-48-99-00007-A Amendment to Part 161 (Insurance Regulation 129) (Flexible Rating System; Rating Plans; Tort Reform Re-filing Requirements), INS-48-99-00008-A Amendment to Part 260 (Insurance Regulation 132) (Experimental Monoline Prepaid Legal Services Plans), INS-48-99-00009-A Amendment to Part 73 (Insurance Regulation 121) (Claims-Made Policies; Scope of

Application; Minimum Standards), INS-48-99-00010-A Amendment to Part 71 (Insurance Regulation 107) (Legal Defense Costs in Liability Policies) (State Register of March 22, 2000) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 1113(a)(29), and 1116, and Article 23; and Chapter 65 of the Laws of 1998.

Prior to enactment of Chapter 65 of the Laws of 1998, Insurance Law Section 1116 of the authorized insurers to offer experimental plans of prepaid legal services insurance, and, except in connection with such plans, the Insurance Law did not authorize insurers to provide legal services insurance. Chapter 65 added a new paragraph 29 to Insurance Law Section 1111(a), effective April 1, 1999 setting forth a new kind of insurance entitled “legal services insurance.” Legal services insurance means insurance providing legal services or reimbursement of the cost of legal services. Chapter 65 also amended Insurance Law Section 1116 (retitled “Prepaid legal services plans and legal services insurance”).

These new regulations and amendments to existing regulations implemented the legislative purpose to make affordable legal services insurance and prepaid legal services plans available in New York, subject to appropriate safeguards and limitations.

Effective January 10, 2007, the Department adopted an amendment to Part 162 (INS-43-06-00004-A State Register of January 10, 2007). Prior to this amendment, legal services insurance that was written as part of a policy of liability insurance was subject to the filing and approval requirements of Insurance Law Article 23 and did not qualify as a special risk coverage pursuant to 11 NYCRR 16 (Insurance Regulation 86). Thus, a liability policy that might otherwise be exempt from Article 23 filing requirements, except for the fact that it includes legal services insurance coverage, was required to be submitted to the Department for approval before it could be used. This rule permitted legal services insurance to qualify as a special risk only if the coverage of the policy of liability insurance of which it is a part also qualifies as special risk coverage pursuant to Insurance Law Article 63 and Insurance Regulation 86, and the policy is written on that basis.

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

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

New York Insurance Law section 4240 authorizes insurers to provide life insurance and annuity benefits that vary according to the investment experience of an insurer’s separate account. This amendment to Insurance Regulation 47 allows life insurers to utilize additional methods in calculating variable annuity payments where the Superintendent has determined the methods to be fair, equitable, reasonable and not less favorable to participants or annuitants than the methods previously employed. The amendment is consistent with the legislative objective of permitting insurers to provide variable annuity income payments to consumers that equitably reflect the investment performance of the separate account.

Effective June 26, 2002, the Department adopted an amendment to Part 50 (INS-16-02-00002-A, State Register of June 26, 2002) to eliminate obsolete provisions.

- INS-13-00-00006-A (State Register of July 12, 2000) Amendment of Part 70 (Insurance Regulation 101) (Medical Malpractice Insurance Rate Modifications, Provisional Rates, Required Policy Provisions And Availability Of Additional Coverages) of Title 11 NYCRR.

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

This amendment established physicians and surgeons medical malpractice insurance rates and appropriate surcharges for the policy year July 1, 1999 through June 30, 2000 and established rules to collect and allocate surcharges to recover deficits based on past experience.

Effective June 20, 2001, the Department adopted an amendment to Part 70 (Insurance Regulation 101) (INS-15-01-00007-A, State Register

ter of June 20, 2001), which established the framework for the rates and forms of policies of physicians medical malpractice insurance. This amendment established the rates and surcharges for primary policies of physicians and surgeons' medical malpractice insurance effective July 1, 2000.

Since 2001, the Superintendent has continued to establish physicians and surgeons medical malpractice insurance rates and appropriate surcharges pursuant to Section 40 of Chapter 266 of the laws of 1986 and amendments thereof. The Superintendent's authority has been extended periodically by the Legislature.

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

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

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

- INS-20-00-00006-A (State Register of September 27, 2000) Amendment of Subpart 62-4 (Insurance Regulation 96) (Anti-Arson Application) of Title 11 NYCRR.

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

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

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

- INS-40-00-00001-A (State Register of January 3, 2001) Amendment of Part 360 (Insurance Regulation 145) (Open Enrollment and Community Rating of Individual and Small Group Health Insurance) of Title 11.

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

Chapter 501 of the Laws of 1992 was enacted to increase access to affordable health insurance coverage through mandatory community rating and open enrollment. Insurance Regulation 145 was first promulgated in 1993 to ensure that the objectives of the legislation were realized. This amendment prohibits premium discounts and per case charges - mechanisms that tended to result in coverage for smaller groups becoming more expensive and less accessible relative to larger groups. The amendment also prohibits insurers from establishing commission payment schedules that would make agents and brokers reluctant to spend time and resources selling and procuring coverage to smaller groups.

- INS-32-00-00002-A (State Register of October 18, 2000) Adoption of Part 310 (Insurance Regulation 167) (Product and System Group Policies) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 3446, and Article 23; and Chapter 187 of the Laws of 1999.

Chapter 187 of the Laws of 1999 added a new Section 3446 to the Insurance Law, which permits a group policy to be issued to a manufacturer, distributor, or installer of a product or system, or to a trustee on behalf of more than one manufacturer, distributor or installer. The policy insures persons who have purchased or own the product or system where the manufacturer, distributor or installer has represented that the product or system is designed to prevent loss or damage from a specific cause. The regulation implements Insurance Law Section 3446 by establishing requirements for issuance of certifi-

icates to group members, payment of premium, and cancellation and renewal.

- INS-39-00-00003-A (State Register of December 13, 2000) Amendment of Part 361 (Insurance Regulation 146) (Pooling Mechanism for Individual and Small Group Health Insurance) of Title 11.

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

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

This amendment implemented the legislative objective of Chapter 504, while also retained and enhanced consumer protections, by assuring that coverage is made available to all segments of the population at reasonable rates.

Effective May 22, 2002, the Department adopted another amendment to Part 361 (INS-06-01-00005-A, State Register of May 22, 2002) to implement and assure the ongoing operation of open enrollment and community rating, including mechanisms designed to ensure the stability of the individual and small group health insurance markets. Chapter 504 of the Laws of 1995 provided for modification of pooling processes designed to share the risk of insurers and HMOs providing individual and small group health insurance coverage.

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

Effective June 25, 2008, the Department adopted another amendment to Part 361 (INS-41-07-00005-A, State Register of June 25, 2008) to phase out the existing market stabilization pool. Payments, collections and data reports were not required in 2005, and the new pooling methodology established by the amendment was established in 2006 and became fully operational in 2008.

PART 2. BANKING REGULATIONS

Notice is hereby given of the following rules relating to banking that the Department of Financial Services will review this year to determine whether they should be continued or modified. These rules were adopted in 2010, 2005 and 2000. Public comment on the continuation or modification of the above rules is invited. Comments must be received within 45 days of the date of publication of this notice. Comments should be submitted to:

Christine Tomczak
New York State Department of Financial Services
One State Street
New York, NY 10004
Telephone: (212) 709-1642
Email: christine.tomczak@dfs.ny.gov

The following rulemakings were adopted in 2010:

There were no new Banking regulation amendments or adoptions in 2010.

The following rulemakings were adopted in 2005:

Adoption of New Part 6.7 of the General Regulations of the Super-

intendent (Additional Authority of Banks, Trust Companies, Savings Banks and Savings and Loan Associations Pursuant to Banking Law §§ 14-g and 14-h; Additional Authority of Banks and Trust Companies to Underwrite and Deal in Certain Securities, including Municipal Bonds).

a. Description of rule: This rule gives New York state-chartered banks and trust companies the power to underwrite and deal in certain securities including municipal bonds.

b. Legal Basis for the rule: Banking Law §§ 13.4, 14, 14-g and 14-h.

c. Need for rule: This rule is necessary to give New York state-chartered banks and trust companies parity with national banks in underwriting and dealing in municipal revenue bonds and other government securities.

Amendment to Part 70.2 of the General Regulations of the Superintendent (Interlocking Directors and Officers of Banking Organizations and Bank Holding Companies: Exceptions)

a. Description of rule: This rule allows for an executive officer of a bank, trust company, bank holding company, foreign banking corporation, national bank, savings bank, savings and loan association or federal savings and loan association to be the executive officer of any other such institution.

b. Legal Basis for the rule: Banking Law §§ 130(3)(b), 143(3)(b), 209(3), 247(5)(b), 399(5)(b) and 399-a(2).

c. Need for rule: This rule is needed to eliminate the requirement that interlock permissions granted by the Banking Board must be expressed in a special regulation.

Amendments to Part 95.2 of the General Regulations of the Superintendent (Borrowings by Credit Unions)

a. Description of rule: This rule outlines borrowings by credit unions.

b. Legal Basis for the rule: Banking Law §§ 14, 453(7) and 454(9).

c. Need for rule: This rule was repealed.

Amendments to Part 96.2 of the General Regulations of the Superintendent (Lending Limits for Credit Unions: Fully Secured Loans)

a. Description of rule: This rule describes how a credit union may make a loan to a member secured by that member's shares.

b. Legal Basis for the rule: Banking Law §§ 14, 453(5) and 454(6).

c. Need for rule: This rule is needed to conform the regulation to changes in the Banking Law intended to provide New York state-chartered credit unions with powers comparable to, and competitive with, those of federally-chartered credit unions.

Amendments to Part 96.6 of the General Regulations of the Superintendent (Lending Limits for Credit Unions: Maximum Amount of Loan)

a. Description of rule: This rule provides the maximum amount that a credit union may loan to a member without permission of the superintendent and that a loan to a member may not exceed 25 percent of the net worth of the credit union.

b. Legal Basis for the rule: Banking Law §§ 14, 453(5) and 454(6).

c. Need for rule: This rule is needed to conform the regulation to changes in the Banking Law intended to provide New York state-chartered credit unions with powers comparable to, and competitive with, those of federally chartered credit unions.

Amendments to Part 97.5 of the General Regulations of the Superintendent (Investment in Credit Union Organizations: Aggregate Limitation)

a. Description of rule: This rule sets forth the aggregate limit of a credit union's investments in the stock, capital notes and debentures of credit union organizations.

b. Legal basis for the rule: Banking Law §§ 14, 453(14-a), 454(19) and 460-a.

c. Need for rule: This rule is needed to conform the regulation to changes in the Banking Law intended to provide New York state-chartered credit unions with powers comparable to, and competitive with, those of federally chartered credit unions.

Amendments to Part 113 of the General Regulations of the Superintendent (Investment by Credit Unions in the Shares of Central Credit Unions Located in this State)

a. Description of rule: This rule sets forth the limitations of investment by credit unions in the shares of central credit unions located in this state.

b. Legal basis for the rule: Banking Law §§ 14, 453(14-a), 454(19) and 460-a.

c. Need for rule: This rule was repealed.

Amendments to Part 207 of the General Regulations of the Superintendent (Permission to Serve as an Executive Officer, Director or Trustee of Banks, Trust Companies, Savings Banks, Savings and Loan Associations, Foreign Banking Corporations, National Banks, Federal Savings and Loan Associations and Banking Holding Companies)

a. Description of rule: This rule allows executive officer and director interlocks at banking organizations.

b. Legal Basis for the rule: Banking Law §§ 130(3)(b), 143(3)(b), 209(3), 247(5)(b) and 399-a(2).

c. Need for rule: This rule is needed to grant permission to Scott Shay to serve as both an executive officer of Signature Bank and a director of Bank Hapoalim, B.M., a foreign banking corporation maintaining a branch in New York.

Amendment to Part 301.5 of the Superintendent's Regulations (Security at Automated Teller Machines: Type and Frequency of Video Tapes or Digital Recording Media for ATM surveillance systems)

a. Description of rule: The rule sets forth the requirements for the quality and maintenance of surveillance equipment at Automatic Teller Machines.

b. Legal basis for the rule: Banking Law §§ 12 and 75-n.

c. Need for rule: Part 301.5 provides detailed standards regarding the retention of surveillance image records.

Adoption of New Part 326 of the General Regulations of the Banking Board (Maintenance of Reserves by Credit Unions)

a. Description of rule: This rule outlines the maintenance of reserves by credit unions.

b. Legal Basis for the rule: Banking Law §§ 12 and 458-a.

c. Need for rule: This rule is needed to conform the regulation to changes in the Banking Law intended to provide New York state-chartered credit unions with powers comparable to, and competitive with, those of federally chartered credit unions.

Adoption of New Part 327 of the General Regulations of the Banking Board (Investments by Credit Unions in the Shares of Corporate Credit Unions Located in this State)

a. Description of rule: This rule outlines the requirements for investments by credit unions in the shares of corporate credit unions located in New York.

b. Legal Basis for the rule: Banking Law §§ 12, 454 and 454(14).

c. Need for rule: This rule is needed to conform the regulation to changes in the Banking Law intended to provide New York state-chartered credit unions with powers comparable to, and competitive with, those of federally chartered credit unions.

Amendments to Supervisory Policy G 4 (Public Accommodation Offices, Adjoining Facilities, and Adjacent Facilities)

a. Description of rule: This rule outlines the procedure for the establishment of public accommodation offices, adjoining facilities and adjacent facilities.

b. Legal Basis for the rule: Banking Law § 195

c. Need for rule: This rule is needed to provide for an expedited branch application process for well-rated institutions; provide simplified application forms; eliminate outdated or unnecessary informational requirements; and establish more consistent applications requirements for different types of banking institutions.

Amendments to Supervisory Policy G 6 (Branching Policy for Banking Organizations)

a. Description of rule: This rule outlines the Department's policy regarding authorization of branches of state-chartered banking organizations.

b. Legal Basis for the rule: Banking Law § 195

c. Need for rule: This rule is needed to provide for an expedited

branch application process for well-rated institutions; provide simplified application forms; eliminate outdated or unnecessary informational requirements; and establish more consistent applications requirements for different types of banking institutions.

Amendments to Supervisory Procedure G 104 (Application for a Public Accommodation Office)

a. Description of rule: This rule describes the requirements for a public accommodation office application.

b. Legal Basis for the rule: Banking Law §§ k 12 and 29

c. Need for rule: This rule is needed to provide for an expedited branch application process for well-rated institutions; provide simplified application forms; eliminate outdated or unnecessary informational requirements; and establish more consistent applications requirements for different types of banking institutions.

Amendments to Supervisory Procedure G 105 (Application for a Change of Location or a Change of Designation of Principal Office)

a. Description of rule: This rule describes the process for the filing of a change of location or a change of designation of principal office.

b. Legal Basis for the rule: Banking Law §§ 12 and 28.

c. Need for rule: This rule is needed to provide for an expedited branch application process for well-rated institutions; provide simplified application forms; eliminate outdated or unnecessary informational requirements; and establish more consistent applications requirements for different types of banking institutions.

Amendments to Supervisory Procedure G 108 (Evidence of Compliance with Executive Law § 296-a)

a. Description of rule: This rule describes the procedure that a person, corporation, partnership or other entity must follow when filing certain applications to evidence that it is in compliance with Executive Law § 296-a.

b. Legal Basis for the rule: Executive Law § 296-a and Banking Law § 9-d.

c. Need for rule: This rule is needed to provide for an expedited branch application process for well-rated institutions; provide simplified application forms; eliminate outdated or unnecessary informational requirements; and establish more consistent applications requirements for different types of banking institutions.

Amendments to Supervisory Policy CB 103 (Application for Commercial Bank Branch Offices)

a. Description of rule: This rule describes the application process for institutions wishing to open branch offices.

b. Legal Basis for the rule: Banking Law §§ 11 and 29.

c. Need for rule: This rule is needed to provide for an expedited branch application process for well-rated institutions; provide simplified application forms; eliminate outdated or unnecessary informational requirements; and establish more consistent applications requirements for different types of banking institutions.

Amendments to Supervisory Policy SB 101 (Application for Savings Bank Branch Offices)

a. Description of rule: This rule describes the application process for savings banks wishing to open branch offices.

b. Legal Basis for the rule: Banking Law §§ 12 and 29.

Need for rule: This rule is needed to provide for an expedited branch application process for well-rated institutions; provide simplified application forms; eliminate outdated or unnecessary informational requirements; and establish more consistent applications requirements for different types of banking institutions.

The following rulemakings were adopted in 2000:

Adoption of New Part 41 of the General Regulations of the Superintendent (Restrictions and Limitations on High Cost Home Loans)

a. Description of rule: The rule sets forth the guidelines for the making of high cost mortgage loans by regulated lenders.

b. Legal basis for the rule: Banking Law §§ 6-I, 6-l, 13 and 14.

c. Need for rule: Part 41 establishes various consumer protections with regard to the making of high cost mortgage loans.

Amendment to Part 301.5 of the Superintendent's Regulations (Se-

curity at Automated Teller Machines: Type and Frequency of Video Tapes or Digital Recording Media for ATM surveillance systems)

a. Description of rule: The rule sets forth the requirements for the quality and maintenance of surveillance equipment at Automatic Teller Machines.

b. Legal basis for the rule: Banking Law §§ 12 and 75-n.

Need for rule: Part 301.5 provides detailed standards regarding video tape quality and usage.

Higher Education Services Corporation

Pursuant to Section 207 of the State Administrative Procedure Act ("SAPA"), notice is hereby provided of the following rules which the New York State Higher Education Services Corporation ("HESC") intends to review in 2015. Public comment on the continuation or modification of these regulations must be received within 45 days of the date of publication of this notice.

The following regulations are subject to review in the 2015 calendar year:

8 NYCRR § 2201.1 – General eligibility criteria

Description of Rule: This rule establishes the general eligibility requirements for all general and academic performance awards. Such requirements pertain to the application, residence, citizenship, matriculation, approved programs, full-time and part-time study, good academic standing, special programs, and the defaulted student loan and award refund exclusion.

Legal Basis for Rule: Education Law §§ 653, 655, and 661.

Need for Rule: This rule provides clarification of the statutory requirements necessary to administer the award programs in a consistent and efficient manner.

HESC Review: HESC identified certain outdated provisions. Therefore, HESC intends to amend this regulation accordingly.

8 NYCRR § 2201.5 – Senator Patricia K. McGee nursing faculty scholarship

Description of Rule: The Senator Patricia K. McGee nursing faculty scholarship provides awards to registered professional nurses enrolling in graduate programs that will qualify them as nursing faculty or adjunct clinical faculty. Recipients are required to provide at least 12 academic credit hours or its equivalent as nursing faculty or as adjunct clinical faculty for four consecutive years at an institution within the State after completing their graduate degree program. The award is converted to a student loan if the recipient fails to fulfill this service obligation. This rule provides the necessary clarification of program criteria.

Legal Basis for Rule: Education Law §§ 653, 655 and 679-c.

Need for Rule: The statute requires the corporation to establish the criteria for the provision of awards on a competitive basis, the rate of interest charged for repayment of the student loan, and other requirements necessary for the administration of the program. This rule establishes criteria for the provision of awards on a competitive basis, establishes standards for disqualification, and establishes penalties for a recipient's failure to fulfill his or her teaching requirement. Therefore, the continuation of this rule is necessary to provide authority for the effective and efficient administration of this program.

HESC Review: HESC identified certain outdated provisions. Therefore, HESC intends to amend this regulation accordingly.

8 NYCRR § 2201.6 – New York state nursing faculty loan forgiveness incentive program

Description of Rule: The New York state nursing faculty loan forgiveness incentive program provides annual awards, for up to five years, to registered professional nurses holding graduate degrees and who teach in the field of nursing within the State. This rule provides necessary clarification of program criteria.

Legal Basis for Rule: Education Law §§ 653, 655 and 679-d.

Need for Rule: The statute requires the corporation to establish the criteria for the provision of awards on a competitive basis and other requirements necessary for the administration of the program. This rule defines statutory terms, establishes criteria for the provision of

awards on a competitive basis, and establishes standards for disqualification. Therefore, the continuation of this rule is necessary to provide authority for the effective and efficient administration of this program.

HESC Review: HESC identified certain outdated provisions. Therefore, HESC intends to amend this regulation accordingly.

8 NYCRR § 2201.12 – Continental Airlines Flight 3407 Memorial Scholarship

Description of Rule: The Continental Airlines Flight 3407 Memorial Scholarship provides financial aid to children, spouses, and financial dependents of individuals killed as a direct result of the crash of Continental Airlines Flight 3407 in Clarence, New York on February 12, 2009. This rule provides necessary clarification of program criteria.

Legal Basis for Rule: Education Law §§ 653, 655, and 668-g.

Need for Rule: This rule defines terms used in the statute and establishes the documentation necessary to evidence an applicant's eligibility. In addition, the statute requires that award amounts be determined in accordance with the World Trade Center ("WTC") Memorial Scholarships program. This rule aligns program requirements with those contained in the WTC Memorial Scholarships program. Therefore, the continuation of this rule is necessary to provide authority for the effective and consistent administration of this program.

HESC Review: HESC intends to continue this rule without modification.

8 NYCRR § 2213.6 – Application content

Description of Rule: The New York Higher Education Loan Program (NYHELPS) was enacted on April 7, 2009 to offer New York State students and families the option of a low rate private education loan to fill the gap between college costs and currently available State and federal student aid. This rule sets forth the application disclosure requirements.

Legal Basis for Rule: Education Law §§ 653, 655, 691(10), and 692(1)(a).

Need for Rule: Although there is no new funding for this program, since the statute remains in effect, this rule is necessary to implement the statutory requirement that the corporation establish the requirements for program application.

HESC Review: HESC intends to continue this rule without modification.

8 NYCRR § 2213.9 – Minimum/Maximum program loan limits

Description of Rule: The New York Higher Education Loan Program (NYHELPS) was enacted on April 7, 2009 to offer New York State students and families the option of a low rate private education loan to fill the gap between college costs and currently available State and federal student aid. This rule establishes the minimum and maximum loan amounts available to eligible borrowers on an annual and cumulative/aggregate basis.

Legal Basis for Rule: Education Law §§ 653, 655, 691(10), and 692(3).

Need for Rule: Although there is no new funding for this program, since the statute remains in effect, this rule is necessary to implement the statutory requirement that the corporation establish annual and cumulative loan limits.

HESC Review: HESC intends to continue this rule without modification.

8 NYCRR § 2213.10 – Default fees

Description of Rule: The New York Higher Education Loan Program (NYHELPS) was enacted on April 7, 2009 to offer New York State students and families the option of a low rate private education loan to fill the gap between college costs and currently available State and federal student aid. This rule establishes the terms, conditions, and processes associated with the borrower and college default fee.

Legal Basis for Rule: Education Law §§ 653, 655 and 691(10), 692(5), and 692(9)(b).

Need for Rule: Although there is no new funding for this program, since the statute remains in effect, this rule is necessary to implement the statutory requirement that the corporation establish a default fee.

HESC Review: HESC intends to continue this rule without modification.

8 NYCRR § 2213.15 – Processing program loan refunds

Description of Rule: The New York Higher Education Loan Program (NYHELPS) was enacted on April 7, 2009 to offer New York State students and families the option of a low rate private education loan to fill the gap between college costs and currently available State and federal student aid. This rule provides establishes the requirements associated with processing program loan refunds.

Legal Basis for Rule: Education Law §§ 653, 655, 691(6), (8) and (10) and 692(9)(a).

Need for Rule: Although there is no new funding for this program, since the statute remains in effect, this rule is necessary to implement the statutory requirement that the corporation establish criteria for colleges and the distribution of program funds.

HESC Review: HESC intends to continue this rule without modification.

8 NYCRR § 2213.17 – Disclosure requirements for participating lenders

Description of Rule: The New York Higher Education Loan Program (NYHELPS) was enacted on April 7, 2009 to offer New York State students and families the option of a low rate private education loan to fill the gap between college costs and currently available State and federal student aid. This rule establishes the disclosure requirements lenders must follow as part of the origination process.

Legal Basis for Rule: Education Law §§ 653, 655, 691(10) and 692(1)(a) and (8).

Need for Rule: Although there is no new funding for this program, since the statute remains in effect, this rule is necessary to implement the statutory requirement that the corporation establish the requirements for program application and origination.

HESC Review: HESC intends to continue this rule without modification.

Agency Contact Information

Public comment on the continuation or modification of the above rules is invited. Comments must be received within 45 days of the date of publication of this notice. *Comments or requests for information should be submitted to:* Cheryl B. Fisher, Supervising Attorney, Higher Education Services Corporation, 99 Washington Ave., Rm. 1315, Albany, NY 12255, (518) 474-5592, e-mail: regcomments@hesc.ny.gov

Department of Motor Vehicles

Five Year Review of Rules Adopted by the Department of Motor Vehicles in Calendar Years 2000, 2005 and 2010 Required to be Reviewed in Calendar Year 2015

As required by Chapter 262 of the Laws of 1996, the following is a list of rules that were adopted by the Department of Motor Vehicles in calendar years 2000, 2005 and 2010 which must be reviewed in calendar year 2015. Public comment on the continuation or modification of these rules is invited and will be accepted for 45 days from the date of publication in the State Register. Comments may be directed to: The Department of Motor Vehicles, Counsel's Office, 6 ESP, Room 522A, Albany, NY 12228.

2010

MTV-51-09-00005 Part 9 Loss of Consciousness

Analysis of the need for the rule: The Commissioner's Regulations provide that if the Department of Motor Vehicles (DMV) learns that a motorist has suffered a loss of consciousness, the motorist must present proof of his or her fitness to safely operate a motor vehicle. Since section 6902(3) of the Education Law provides that a nurse practitioner is authorized to perform diagnostic procedures, this rulemaking was promulgated to permit nurse practitioners to conduct the examination of the motorist to evaluate his or her ability to safely operate a motor vehicle. Previously, only a physician was permitted to conduct the examination. Since this section of Education Law is still in effect, the need for the regulation remains.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 502(1) and 510(3)(b), and section 6902(3) of the Education Law.

MTV-43-10-00007 Part 79 Elimination of the NYTEST Program in the New York Metropolitan Area

Analysis of the need for the rule: This amendment eliminated the NYTEST emissions program in the New York Metropolitan Area. On January 1, 2011, the DMV transitioned from the NYTEST emissions program to the NYVIP program in order to comply with the federal Clean Air Act of 1990. The \$35,000 dynamometer was replaced with the \$2,500 NYVIP equipment. Since the NYTEST system remains unnecessary and obsolete, this rulemaking should remain in effect.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 301(a)(c), (d)(1), 302(a), (e) and 303(d)(1).

2005

MTV-08-05-00012 Part 79 Motor vehicle inspections

Analysis of the need for the rule: New York State was required to adopt an OBD II (on board diagnostic) emissions test in order to comply with the Federal Clean Air Act of 1990 and its accompanying regulations at 40 CFR 51.351. OBD refers to a system, with passenger cars and light trucks in 1996 and newer vehicles, which monitors system degradation as it relates to powertrain components and emission control devices. Since the OBD II system remains central to the State's compliance with the federal law, this rule remains necessary.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 301(d)(1), (f) and 302(a) and (e).

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

Analysis of the need for the rule: This regulation provides that a person found, pursuant to a DMV administrative hearing, to have violated the Zero Tolerance Law, may not enroll in the Drinking Driver Program if such person had a prior alcohol-related conviction in the preceding 5 years. In addition, such person would be subject to the same conditional license eligibility requirements as a person convicted of an alcohol-related conviction.

When the Zero Tolerance Law was enacted in 1996, DMV did not make conforming amendments to Part 134 in terms of DDP and conditional license eligibility. This rulemaking, which made such conforming amendments, remains necessary.

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

2000

MTV-26-99-00007 Part 106 Registration of pick-up trucks

Analysis of the need for the rule: This amendment provided that a pick-up truck, which is used exclusively for non-commercial purposes with an unladen weight of 5000 pounds or less, and with no business advertising could receive a passenger registration. Previously, such a vehicle was required to be registered in the commercial class. However, with the increase in the sale of light trucks, which are substantially the same in size as some SUVs, and used for non-commercial purposes, it made sense to allow such vehicles to be registered in the passenger class. Such vehicles could then be operated on the State's parkways and other roadways, which prohibit the operation of "commercial" vehicles. In 2004, Part 106.6 was amended to raise the threshold to 5,500 pounds for the registration of non-commercial pick-up trucks in the passenger class, thus superseding this regulation.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 401(7) and (15)

MTV-42-99-00009- Part 134 Revocation of conditional license.

Analysis of the need for the rule: This regulation provided that if a person under the age of 21 was convicted of an alcohol-related offense and had his/her conditional license revoked, the time served in revoked/conditional status would be credited towards the one year minimum mandatory revocation period if such person completed the DDP. Previously, if such person's conditional license was revoked, no time served in conditional status would be credited toward the one year revocation period. Therefore, a person who served 11 months in conditional status prior to the revocation of the conditional, had to serve another one year revocation period prior to license reinstatement. The justification for this rule remains necessary.

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

MTV-12-00-00012 Part 138 Motor vehicle accident prevention course

Analysis of the need for the rule: This regulation repealed Part 138 and established a new Part 138 governing the Motor Vehicle Accident Prevention Course, also known as the Point Insurance Reduction Course. The provisions set forth in Part 138 are still needed to regulate the providers of such courses.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) and Article 12-B.

MTV-15-00-0004 Part 139 Chemical Test Refusals

Analysis of the need for the rule: The amendments to Part 139 establish procedures for administrative hearings for the operators of snowmobiles who refuse to submit to a chemical test. These are consistent for such hearings for motor vehicle operators who refuse to submit to a chemical test. The regulations remain necessary for the adjudication of refusals.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) and section 25.24(6)(e) of the Parks, Recreation and Historic Preservation Law.

MTV-20-00-00010

Analysis of the need for the rule: This regulation established the Insurance Information and Enforcement System (IIES). IIES replaced the inefficient paper based system whereby insurance companies notified DMV of new insureds and the cancellation of policies. Under IIES, information is transmitted electronically in a timely and efficient manner. This has reduced the number of improper insurance lapse suspensions and incidence of fraud. The need for this regulation remains.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 313(2)(c), 313(4) and 370.

MTV-37-00-00021 Part 50 Protective helmets for in-line skaters and bicyclists

Analysis of the need for the rule: This amendment provided for the adoption of federal standards for helmets worn by in-line skaters and bicyclists. The regulation incorporated by reference 16 CFR 1203.1 and 1203.4 through 1203.17. The necessity remains for these scientific based and nationally recognized standards.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 1238(2-a).

MTV-43-00-0004 Change of location of inspection station

Analysis of the need for the rule: This amendment required an inspection station which is changing location to notify to submit an application for approval of such new location to DMV at least 30 days prior to moving. This gives DMV adequate time to inspect the new site and insure that it meets all space and dimension requirements set forth in Part 79. The necessity for this rule remains.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 303(a)(1), 301(d)(1), 302(e), and 303(a)(2).

Power Authority of the State of New York

Please be advised that, following a review of actions taken by the Power Authority of the State of New York (the "Authority") under State Administration Procedure Act ("SAPA") in the year 2010, it has been determined that no rules were enacted during 2009 that are subject to the "five-year review" requirements of § 207. Therefore, the Authority will not be submitting a list of rules subject to the five-year review for publication in the New York State Register.

Public Service Commission

Pursuant to § 207 of the State Administrative Procedure Act: Review of Existing Rules, notice is hereby provided that the Public Service Commission wishes to continue the following rules adopted in 2000, 2005 and 2010 without modification or as revised. Comments are welcome on proposed continuation of the rules. Five copies

of comments should be sent to: Kathleen H. Burgess, Secretary, 3 Empire State Plaza, Albany, New York 12223-1350, on or before March 6, 2015. Information about the rules may be obtained from: John C. Graham, Assistant Counsel, 3 Empire State Plaza, Albany, New York 12223-1350; (518) 474-7687.

1.16 NYCRR Parts 890 through 899 (Case No. 01-V-0381).

a. Description of rules:

The rules updated the regulatory framework of cable television which developed in the early 1970's to reflect changes to federal law in 1984 and 1996, conformed cable regulation with the New York State Public Service Commission's regulatory practices for other utilities, and moved cable television rules from the Executive Regulations in 9 NYCRR Parts 590 to 599 to the Department of Public Service Regulations at 16 NYCRR Parts 890 through 899.

b. Statutory Authority:

Public Service Law Sections 215, 216, 221, 222, and 224-a.

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis for the rules:

The rules conformed cable television technical standards to industry standards, streamlined reporting requirements for cable companies, promoted competition, required activation of Emergency Alert Systems, and maintained consumer protections and service standards.

2.16 NYCRR Parts 602, 603, and Section 644.2 (Case No. 97-C-0139).

a. Description of rules:

The rules are related to Consumer Service Standards and Telephone Service Quality, and reflected the impact of a growing competitive environment for local exchange telephone service.

b. Statutory Authority:

Public Service Law, Sections 4(1), 94(2).

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need and legal basis for the rules:

The adopted regulations protected against deterioration in telephone service quality, streamlined the rules which bolstered development of competition in the local exchange market by reduction of regulatory burdens, provided comparable levels of service quality to all consumers, and implemented stricter installation standards, required service providers to promptly install new lines and limited providers from missing installation appointments.

Office of Temporary and Disability Assistance

Pursuant to the State Administrative Procedure Act (SAPA) § 207, the Office of Temporary and Disability Assistance (OTDA) must review at regular intervals those regulations that were adopted on or after January 1, 1997. The purpose of the review is to determine whether the regulations should be retained as written or modified. On January 8, 2014, OTDA published in the New York State Register a list of regulations from Title 18 of the New York Codes, Rules and Regulations (NYCRR) that OTDA adopted in 2009, 2004, and 1999. Those regulations are set forth below:

Rules adopted in 2009

A. TDA-17-08-00032 State-Confirmed Human Trafficking Victims*

Added Part 765 of Subchapter K to Title 18 NYCRR to govern the process and protocols for confirming an individual as a human trafficking victim in New York State.

Analysis of the need for the rule: The amendments provide more detailed instruction on protocols and procedures relating to the confirmation of human trafficking victims and the OTDA responsibilities. The need for the amendments is derived from the ne-

cessity to clearly define the participant agencies, the victim, and the terms describing the process of referral; to clearly describe the nature of OTDA's consultative role in the confirmation process; and to clearly describe the process for required notifications to the prescribed parties.

Legal basis: Social Services Law (SSL) Art. 10-D.

B. TDA-04-09-00011 Educational Activities*

Amended § 385.6(a) and (b), 385.7(a) and (b), and 385.9(c) of Title 18 NYCRR to provide additional opportunities to participate in education and other skill development activities.

Analysis of the need for the rule: The amendments were developed to increase the skills of individuals receiving public assistance through the provision of additional opportunities to participate in education and other skill development activities.

Legal basis: 42 United States Code (U.S.C.) §§ 601(a) and 607; SSL Art. 5, Title 9-B.

C. TDA-07-09-00014 Utility Service*

Amended § 352.5(e) of Title 18 NYCRR to suspend the enforcement of utility repayment agreements during periods of cold weather.

Analysis of the need for the rule: The amendment was developed to better enable SSDs to help protect the health and safety of households if they suffer utility shutoffs during a cold weather period as a result of high energy costs.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 131(1), and 131-s.

D. TDA-09-09-00007 Recovery of Overpayments*

Amended § 352.31(d)(1) of Title 18 NYCRR to delete the regulatory requirement to recoup/recover overpayments from all members of an assistance unit regardless of their ages at the time of overpayment.

Analysis of the need for the rule: This amendment was developed to benefit children by relieving them of the burden of an overpayment incurred on someone else's assistance unit when they were children in that assistance unit.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 106-b.

Rules adopted in 2004

E. TDA-03-04-00003 Supplemental Security Income (SSI) Benefits*

Repealed § 352.2(b) and added new § 352.2(b); amended §§ 352.3(k)(3), (i), 352.30(a) and (f), and 352.31(a)(2); and added § 352.3(l) to Title 18 NYCRR, to require SSDs to consider the presence in the household of an adult or child receiving SSI who would, except for the receipt of SSI, be required to be included in the public assistance household when determining the household's standard of need.

Analysis of the need for the rule: The amendments were developed to eliminate different budgeting methods required to be used for various family circumstances, and, with the exception of budgeting for households requesting and eligible to receive an emergency shelter allowance under § 352.3(k), to establish one budgeting method for determining the needs standard for a household that is applying for benefits.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 158, 349, and 355(3).

F. TDA-28-03-00008 Eligibility of Refugees, Asylees, and Aliens for Public Assistance*

Amended §§ 349.3(a)(1)(iv), (vii), (2), (b), and 352.33; and added § 349.3(c) to Title 18 NYCRR to implement changes to the public assistance eligibility requirements for refugees, asylees, and aliens as set forth in Chapter 214 of the Laws of 1998.

Analysis of the need for the rule: The amendments were developed to implement provisions in Chapter 214 of the Laws of 1998, and to incorporate federal clarification of certain definitions related to citizenship and alien status.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 122, 131(1), and 355(3).

G. TDA-13-04-00002 Cash Management Subsystem*

Amended § 600.6 of Title 18 NYCRR requiring SSDs to use the cash management subsystem of the welfare management system.

Analysis of the need for the rule: The amendment was developed to

standardize local cash processing systems by requiring SSDs to use the cash management subsystem of the welfare management system for receipt of cash and for refunds and recoveries of past expenditures and the collection and tracking of overpayments; to reduce the number of systems used by SSDs to establish and collect recoveries and overpayments on a timely basis; to identify claims on collection cases; and to encourage more orderly claims processing.

Legal basis: SSL §§ 20(3)(d), 21, 21(2), 34(3)(f), and 82.

H. TDA-17-04-00016 Exemption of Earned Income*

Amended § 352.20(a) and (b) of Title 18 NYCRR concerning the exemption of the earned income of full-time and part-time students when determining eligibility for public assistance.

Analysis of the need for the rule: The amendment was developed to implement Chapter 246 of the Laws of 2002, which amended the regulations to provide that all income earned by a dependent child receiving public assistance or for whom an application for such assistance has been made, who is a full-time or part-time student attending a school, college, or university or a course of vocational or technical training designed to fit him or her for gainful employment, is exempt when determining eligibility for public assistance.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 131-a(8), 158, 349, and 355(3).

Rules adopted in 1999

I. TDA-30-98-00005 Child Support Cooperation Requirements*

Amended §§ 347.5, 360-3.2, 369.1, 369.2, 369.7, 370.2, and 370.7 of Title 18 NYCRR to require the local child support enforcement unit, instead of local public assistance or medical assistance unit, to determine whether an applicant/recipient has cooperated in establishing paternity and in establishing, modifying, and enforcing a support order for the child (for medical assistance, a medical support order only).

Analysis of the need for the rule: These amendments implemented Public Law 104-193, regarding cooperation in establishing paternity and establishing, modifying, or enforcing a support order for the child by applicants for and recipients of public assistance and medical assistance, and Chapter 398 of the Laws of 1997, requiring applicants for and recipients of medical assistance to cooperate in establishing paternity or establishing, modifying, or enforcing a medical support order for the child.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 111-a, and 364; Chapter 474 of the Laws of 1996.

J. TDA-39-98-00067 Child Support Cooperation and Reduction of Benefits

Amended § 352.30 (d) of Title 18 NYCRR to implement provisions of Public Law 104-193 and Chapter 214 of the Laws of 1998.

Analysis of the need for the rule: This amendment conformed the regulations to changes in federal and State law, so that instead of an individual being ineligible for public assistance when the individual failed to cooperate in establishing paternity or in establishing, modifying, or enforcing a support order for the child (absent good cause for such failure or other exception from so cooperating), the public assistance otherwise available to the individual's household will be reduced by 25 percent.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 131 (16).

K. TDA-46-98-00015 Emergency Assistance to Families (EAF)

Amended §§ 372.1, 372.2, 372.4, and 372.6 of Title 18 NYCRR, in part, to implement provisions of § 38 of Part B of Chapter 436 of the Laws of 1997.

Analysis of the need for the rule: The amendments were developed to implement Chapter 436 of the laws of 1997, which amended § 350-j of the SSL concerning the types of care that EAF can pay for, eliminating the maximum time period for EAF eligibility, and setting forth other EAF eligibility requirements.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 350-j; § 38 of Part B of Chapter 436 of the Laws of 1997.

L. TDA-47-98-00002 Tier II Family Shelters

Amended Part 900 of Title 18 NYCRR to conform the regulations

governing the operation of shelters for homeless families to § 352.35 of Title 18 NYCRR.

Analysis of the need for the rule: The amendments were developed to update Part 900 of Title 18 of the NYCRR to conform to the regulations governing the provision of temporary housing assistance to persons that are homeless as set forth in 18 NYCRR § 352.35.

Legal basis: SSL §§ 20(3)(d) and 34(3)(f); Chapter 562 of the Laws of 1953.

M. TDA-52-98-00007 Lottery Intercept

Added Part 396 to Title 18 NYCRR concerning the interception of lottery awards to repay public assistance received.

Analysis of the need for the rule: The amendment was developed to implement provisions of § 131-r of the SSL which authorized OTDA to recoup any public assistance paid over the prior 10 years from recipients of such assistance who won lottery prizes of \$600 or more. The amount of assistance to be recovered could not exceed 50% of the lottery prize.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), and 131-r.

N. TDA-07-99-00002 Child Assistance Program (CAP) Participants

Amended § 366.4(c)(2)(ii) and added § 366.7(o) to clarify the eligibility requirements for a family in receipt of Family Assistance (FA) to participate in the CAP and to add the repair of heating equipment, cooking stoves, and refrigerators to the list of special allowances to which CAP recipients could be entitled.

Analysis of the need for the rule: The amendments were developed to conform the State regulation to current practices by SSDs relative to the eligibility prerequisites that must be met by a family receiving FA to enroll in the CAP, and to remedy an administrative oversight in the original Part 366 of Title 18 NYCRR which did not include the repair of heating equipment, cooking stoves, and refrigerators on the list of special allowances.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 131-z, and 355(3).

O. TDA-10-99-00001 Supervisory Review*

Amended § 351.7 of Title 18 NYCRR to provide SSDs the option of conducting supervisory reviews on all actions on public assistance cases or of conducting supervisory reviews on selected cases.

Analysis of the need for the rule: The amendment was developed to give SSDs the option to forego supervisory review of applications for public assistance. There are cases in which strict guidelines can be applied to such applications and no discretion is involved, thereby reducing the need for a supervisor's review. If SSDs wished to review only a certain proportion of the cases, they could submit a plan to OTDA for approval setting forth requirements for supervisory review.

Legal basis: SSL §§ 20(3)(d) and 34(3)(f).

P. TDA-14-99-00014 Reporting Requirements*

Amended Part 651 of Title 18 NYCRR to implement § 149 of Part B of Chapter 436 of the Laws of 1997, which required that OTDA and the Department of Labor (DOL) collect data related to the operation of public assistance programs, including, but not limited to, information that must be submitted to the federal Department of Health and Human Services pursuant to Public Law 104-193.

Analysis of the need for the rule: The rule sets forth the SSDs' requirements for monthly reporting to OTDA and DOL.

Legal basis: SSL §§ 20(3)(d) and 34(3)(f); § 149 of Part B of Chapter 436 of the Laws of 1997.

Q. TDA-40-99-00001 Allowances to Children Suffering from Spina Bifida*

Amended §§ 352.22(c), (f), (w), (x), and (y), and added § 352.22(bb) to Title 18 NYCRR to implement the provisions of Public Law 104-204, which provided that allowances paid on behalf of the natural children of Vietnam veterans who suffered from spina bifida could not be considered when determining eligibility for any federally-financed program.

Analysis of the need for the rule: These amendments implemented provisions of Chapter 18 of Part II of Title 38 of the U.S.C., as added by Public Law 104-204, and made technical corrections to several provisions of 18 NYCRR § 352.22 consistent with Public Law 104-193 and Chapter 436 of the Laws of 1997.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 131(1), 131-n, and 355(3).

As of March 4, 2014, OTDA had not received substantive comments regarding its Rule Review published in the New York State Register on January 8, 2014.

OTDA is considering amendments that may impact the regulatory changes that were adopted in 2009, 2004, and 1999. OTDA is considering the following regulatory amendments: amend regulations to update Part 385 of Title 18 NYCRR to implement changes to participation rate regulations to conform to amendments to the SSL which require SSDs to expand the countable work activities available to Safety Net Assistance (SNA) participants without children to include community service programs, the provision of child care services to an individual participating in community service and time-limited vocational education training, job search and job readiness assistance; amend regulations to update Part 352 of Title 18 NYCRR to reflect that public assistance recipients are allowed to exempt up to \$1,400 in a separate bank account for the sole purpose of paying tuition at two-year or four-year accredited post-secondary educational institutions; amend regulations to update Part 352 of Title 18 NYCRR to address support payments, noncountable income and resources, and estimates of need and application of income, and to update schedules for the standard of monthly need for determining eligibility for all categories of public assistance consistent with SSL § 131-a; update Part 349 of Title 18 NYCRR regarding persons who are permanently residing in the United States under the color of law (PRUCOL); amend regulations to update Part 347 of Title 18 NYCRR pertaining to the modification of child support orders and the calculation of basic child support obligations and repeal the child support standards chart, and promulgate regulations for establishing and enforcing medical support obligations; and amend regulations to update Part 346 of 18 NYCRR to address process changes to lottery intercept provisions. At this time, OTDA has determined that no additional modifications need to be made to its regulations adopted in 2009, 2004, and 1999, as amended.

OTDA has determined that in the ensuing calendar year, it should review its regulations from Title 18 NYCRR adopted in 2010, 2005, and 2000. These regulations from 2010, 2005, and 2000, listed below, are subject to the provisions of SAPA § 207. The regulations must be reviewed to determine whether they should be retained as written or modified. OTDA invites written comments on the continuation or modification of these regulations in order to assist in the required review. We will consider only those comments that are received by March 3, 2015.

Rules adopted in 2010

1. TDA-14-09-00009 SNA Application Supplement*

Repealed § 350.4(a)(7) and amended § 350.4(b) and (c)(1) of Title 18 NYCRR to eliminate the requirement that public assistance recipients complete an SNA application supplement to transition from federally-funded assistance to SNA when they reach the State 60-month time limit for federally-funded assistance.

Analysis of the need for the rule: The amendment eliminates an unnecessary administrative burden to both SSDs and recipients alike, since safeguards that are more efficient and effective are in place to ensure SNA eligibility. The eliminated requirement duplicated these already existing safeguards.

Legal basis: SSL §§ 20(3)(d), 34(3)(f), 131(1), and 158(1)(a).

2. TDA-28-09-00006 Temporary Housing Assistance for Certain Sex Offenders*

Implemented Chapter 568 of the Laws of 2008 concerning factors that SSDs must consider when making determinations about the locations of temporary housing for level two and level three sex offenders, when advanced notice has been received.

Analysis of the need for the rule: When assessing housing placements for certain sex offenders, consideration of the individual's immediate housing needs and such factors as concentrations of registered sex offenders and the proximity of available housing to entities with vulnerable populations are intended to protect the public. Additionally, consideration of other factors, such as the accessibility to family members, friends, or other supportive services, including available sex offender treatment programs, is intended to prevent recidivism by

providing sex offenders with suitable housing and support. Through its implementation of Chapter 568 of the Laws of 2008, the amendment was designed to balance the safety interests of the public, the statutory obligations of SSDs in meeting the immediate needs of individuals, and the unique housing needs of sex offenders.

Statutory basis: SSL §§ 20(3)(d), (8), 34(3)(f), and 131(1); Chapter 568 of the Laws of 2008.

3. TDA-19-10-00010 Utility Repayment Agreements*

Amended § 352.5(e) of Title 18 NYCRR by extending the repayment term of utility repayment agreements from one year to two years to meet the requirements of Chapter 318 of the Laws of 2009.

Analysis of the need for the rule: In addition to rendering the regulations compliant with statutory requirements, the regulatory amendments benefit low-income households which must sign repayment agreements by reducing their monthly repayment amounts, thereby making them more affordable. The amendments also help low-income families remain current on their utility repayment agreements and better enable them to meet their other monthly financial obligations. In addition, by improving the ability of low-income households to comply with the terms of their repayment agreements, the regulatory amendments reduce the need for SSDs to utilize costly temporary housing options.

Statutory basis: SSL §§ 20(3)(d), 34(3)(f), 131(1), and 131-s(1); Chapter 318 of the Laws of 2009.

Rules adopted in 2005

4. TDA-06-04-00006 Operational Plans for Room and Board Facilities*

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

Analysis of the need for the rule: These amendments were developed to improve the quality and availability of temporary housing by making Part 900 standards and reimbursement available to scattered site housing and small facilities when they were operated by one organization and total occupancy exceeded 19 families.

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

5. TDA-17-04-00001 Temporary Absences*

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

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

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

6. TDA-46-04-00006 Income Standards for Eligibility for Emergency Assistance for Needy Families with Children*

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

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

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

7. TDA-02-05-00001 Families in Transition Act*

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

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

that a lapse in assistance did not occur upon the death of the adult relative caretaker of a child in receipt of public assistance. A lapse in financial support can be highly injurious to a child undergoing the difficult transition to a new family or, eventually, to foster care. The amendments ensured that orphaned public assistance recipients would receive the correct amount of assistance and that these children will not be left without financial support.

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

8. TDA-21-05-00002 Section 8 Housing Vouchers*

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

Analysis of the need for the rule: This rule was developed to provide a measure of uniformity and to insure that participants in the Section 8 Voucher Program would not receive a lower subsidy than other families based solely upon the participant families' receipt of public assistance.

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

9. TDA-40-05-00021 Child Support Standards Chart*

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

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

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

Rules adopted in 2000

10. TDA-39-99-00002 Fair Hearings for Employment Related Cases*

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

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

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

It is noted that responsibility for the administration of employment programs has since been transferred from the DOL to OTDA. Title 18 NYCRR reflects this subsequent transfer.

11. TDA-39-99-00003 Home Energy Assistance Program (HEAP)

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

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

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

12. TDA-03-00-00005 Public Assistance*

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

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

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

13. TDA-09-00-00005 Front End Detection System

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

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

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

14. TDA-09-00-00006 State Charges

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

Analysis of the need for the rule: This rule was developed to render OTDA's regulations consistent with the requirements of the SSL, as amended by Chapter 81 of the Laws of 1995; that Chapter was implemented in State Fiscal Year 1995/96 and repealed the "State charge" category in most situations.

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

15. TDA-22-00-00001 Automobile Exemption*

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

Analysis of the need for the rule: This rule was developed to reflect the provisions of Chapter 389 of the Laws of 1999, which amended SSL § 131-n to provide that if an automobile is needed to enable a public assistance recipient to seek or retain employment or to travel to or from work activities, its exempted value can be up to twice the value of an automobile that can be exempted from consideration in determining eligibility for food stamp benefits, now known as "SNAP" benefits, or a higher amount as determined by the SSD.

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

16. TDA-22-00-00002 HEAP*

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

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

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

17. TDA-28-00-00001 Emergency Shelter Allowances

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

Analysis of the need for the rule: The purpose of the repeal of 18 NYCRR § 397.11 was to eliminate provisions that were also contained in 18 NYCRR § 352.3(k).

Legal basis for the rule: SSL §§ 20(3)(d) and 34(3)(f); Chapter 53 of the Laws of 1988 and subsequently enacted budgets.

* The asterisks identify rules for which a regulatory flexibility analysis, rural area flexibility analysis, or job impact statement was prepared.

The rule review may be accessed on OTDA's website at <http://otda.ny.gov/legal/>.

Any comments should be submitted to: Richard P. Rhodes, Jr., Office of Temporary and Disability Assistance, 40 N. Pearl St., 16th Fl., Albany, NY 12243, (518) 486-7503, e-mail: Richard.rhodesjr@OTDA.ny.gov