

RULE REVIEW

Office of Children and Family Services

Notice of Review of Existing Regulations Pursuant to State Administrative Procedure Act Section 207 (Calendar Years 2011, 2006 and 2001)

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 adopted on or after January 1, 1997 to determine whether such rules should be modified or continued without modification.

Pursuant to section 207 of SAPA, the Office of Children and Family Services (OCFS) submits the following rules that were adopted during calendar years 2011, 2006 and 2001, and invites public comment on the continuation or modification of such rules. All section and part references are to Title 18 of the Official Compilation of the Codes, Rules and Regulations of the State of New York (NYCRR) unless otherwise indicated.

Comments regarding these rules should be sent to the attention of the following agency contact: Senior Attorney, Leslie Robinson, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144. Email: leslie.robinson@ocfs.ny.gov. Comments must be received within 45 days of the date of publication of this Notice. Please reference Rule Review in the subject line of the email.

The following information relates to regulations promulgated in 2011, 2006 and 2001 that are scheduled for review during calendar year 2016:

2011

1. CFS-18-10-0004-A Prohibiting use of tobacco by staff and residents in residential programs caring for foster children

Action taken: The addition of section 441.23

Analysis of need: This rule is necessary to protect the health and safety of staff and residents in residential programs caring for foster children by prohibiting the use of tobacco by staff and residents at such facilities.

Legal basis: Social Services Law, sections 20(3)(d), 34(3)(f) and 462(1)(a)

2. CFS-48-10-00004-A Education stability of foster children, transition planning and relative involvement in foster care cases

Action taken: Amendment of sections 421.4, 428.3, 428.5, 430.11 and 430.12

Analysis of need: This rule is necessary to implement the Federal Foster Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) regarding education stability of foster children, transition planning and relative involvement in foster care cases.

Legal basis: Social Services Law, sections 20(3)(d), 34(3)(f)

3. CFS-01-11-000010-A Kinship Guardianship Assistance and Non-recurring Guardianship Expense Program

Action taken: Amendment of Parts 426, 428, 430 and 443; and addition of Part 436

Analysis of need: This rule is necessary to implement the kinship

guardianship assistance and non-recurring guardianship expense program.

Legal basis: Social Services Law, sections 20(3)(d), 34(3)(f) and L. 2010, ch. 58, part F

4. CFS-18-11-00010-A Child Care Subsidy Fraud Prevention

Action taken: Amendment of Part 414, 415, 416, 417 and Subparts 418-1 and 418-2

Analysis of need: This rule is necessary in order to clarify when child day care providers may be disqualified from receiving payments for child care subsidies due to fraud.

Legal basis: Social Services Law, sections 20(3)(d), 34(3)(f), 390(2)(d), (3)(e)(ii), 410(1) and title 5-C of article 6

2006

1. CFS-44-05-00012-A Exclusion of Certain Veterans' Benefits

Action taken: Amendment of section 404.5

Analysis of need: This rule is necessary to implement Federal requirements to disregard certain veterans' benefits when determining the eligibility for services.

Legal basis: Social Services Law, sections 20(3)(d), 34(3)(f) and 407(4)

2. CFS-44-05-00013-A Pre-adoption residency requirement

Action taken: Amendment of section 421.19

Analysis of need: This rule is necessary in order to implement the shorter three-month residency requirement found under Domestic Relations Law, section 112(6) regarding pre-adoption residency requirements for children under 18 years of age.

Legal basis: Social Services Law, sections 20(3)(d), 34(3)(f) and Domestic Relations Law, section 112(6)

3. CFS-44-05-00014-A Federal Poverty Lines

Action taken: Amendment of section 415.1(k)

Analysis of need: This rule is necessary to correct the name of the Federal agency setting Federal poverty lines, that being the United States Department of Health and Human Services.

Legal basis: Social Services Law, sections 20(3)(d) and 34(3)(f)

4. CFS-01-05-00006-A Health and safety standards for legally-exempt informal child care providers

Action taken: Amendment of section 415.1, 415.4, and 415.9

Analysis of need: This rule is necessary to further enhance the health, safety and welfare of the children that receive subsidized child care from legally-exempt informal child care providers in New York State.

Legal basis: Social Services Law, sections 20(3)(d), 34(3)(f) and 410-x(3)

5. CFS-37-06-00009-A Permanency, safety and well-being of children in foster care

Action taken: Addition of section 426.10, amendment of sections 421.4, 421.6, 421.17, 423.2, 426.4, 428.1 - 428.10, 430.8, 430.9, 430.11, 430.12, 431.9, 432.2, 441.22, 443.2, 476.2, 507.2 and repeal of section 430.1 - 430.7, 430.13 and 441.20

Analysis of need: This rule is necessary to implement the enhanced procedures set forth in L. 2005, ch. 3 intended to produce more timely and effective judicial and administrative reviews, thus improving the permanency outcomes for children in foster care and those placed directly in the custody of a relative or other suitable person.

Legal basis: Social Services Law, sections 20(3)(d), 34(3)(f), 383-c, 384 and 409-e; and Family Court Act, art. 10-A and section 1017

2001

1. CFS-52-00-00003-A Reports of child abuse and maltreatment

Action taken: Amendment of section 432.2(b)(3)(i) and (f)(3)(xxviii)

Analysis of need: This rule is necessary to expand those circumstances under which a legally sealed unfounded report can be unsealed and made available to specified persons and entities.

Legal basis: Social Services Law, sections 20(3)(d), 34(3)(f), 421(1) and 422(5)

2. CFS-02-01-00003-A Standards for providers of subsidized child care services

Action taken: Amendment of sections 415.4(a), (c), (f) and 415.8

Analysis of need: This rule is necessary to protect the health, safety and welfare of children in public assistance and low income families by precluding the sanctioning of public assistance recipients who are unable to meet work requirements due to the unavailability of appropriate child care.

3. CFS-23-01-00001-A Criminal history record check

Action taken: Amendment of sections 421.15(c)(8) and 421.27(d)-(g) and addition of section 421.27(k)

Analysis of need: This rule is necessary to implement the provisions relating to criminal history record reviews of applicants to be approved as adoptive parents, currently approved adoptive parents or other persons over the age of 18 residing in the homes of such applicants or adoptive parents.

Legal basis: Social Services Law, sections 20(3)(d), 34(3)(f) and 378-a(2) as amd. by L. 2000, ch. 145 and L. 1997, ch. 436

4. CFS-23-01-00002-A Federal Adoption and Safe Families Act

Action taken: Amendment of sections 421.24(e)(2), 430.12(c) and 431.9(e) and addition of sections 421.16(o)(5), 421.27(j) and 429.9

Analysis of need: This rule is necessary (1) to clarify the standards relating to criminal history record reviews of clients of out-of-state adoption agencies approved by OCFS; standards relating to medical subsidies for special needs children in conformance with Federal standards and direction; the notice and participation standards for foster parents and caretaker relatives at service plan reviews of foster children; and (2) to amend the standards relating to the filing of petitions to terminate parental rights, as required by Federal statute and administrative directives.

Legal basis: Social Services Law, sections 20(3)(d), 34(3)(f), 372-b(3) and 378-a, L. 1999, ch.7, section 58

State Commission of Correction

Five Year Review of Rules Adopted by the State Commission of Correction in Calendar Years 2001, 2006, and 2011 Required to be Reviewed in Calendar Year 2016

As required by Chapter 262 of the Laws of 1996, the following is a list of rules which were adopted by the State Commission of Correction in calendar years 2001, 2006, and 2011 which must be reviewed in calendar year 2016. Public comment on the continuation or modification of these rules is invited. Comments should be received by April 1, 2016. Comments may be directed to: Deborah Slack-Bean, Senior Attorney, A.E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210-8001.

CMC-03-01-00002 Amendment of subdivision (a) of section 7028.2 and subdivision (c) of section 7028.4 of Title 9 NYCRR.

Analysis of the need for the rule: The rule is needed to clarify the situations when outdoor exercise at local correctional facilities may be canceled.

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

CMC-43-00-0005 Amendment of section 7621.6, renumber 7621.7-11 to be 7621.8-12 and addition of new section 7621.7 of Title 9 NYCRR.

Analysis of the need for the rule: The rule is needed to provide minimum standards for the use of double occupancy housing units originally designated and constructed for double occupancy.

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

CMC-06-11-00001-P Amendment of section 7003.10 of Title 9 NYCRR.

Analysis of the need for the rule: The rule is needed to extend the intervals within which locks and securing devices must be inspected.

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

CMC-06-11-00002-P Amendment of section 7063.6 of Title 9 NYCRR.

Analysis of the need for the rule: The rule is needed to extend the intervals within which certain chemical agents must be inspected.

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

Education Department

Notice of Review of Existing Rules Pursuant to State Administrative Procedure Act Section 207 (Calendar Years 2011, 2006 and 2001)

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 2011, 2006 and 2001 and invites public comment on the continuation or modification of such rules. All section and part references are to Title 8 of the New York Code of Rules and Regulations. Comments should be sent to the respective agency representative listed below for each particular rule, and must be received within 45 days of the date of publication of this Notice.

A. CALENDAR YEAR 2011

OFFICE OF P-12 EDUCATION

Section 100.2(ee)(2) Technical Amendment

Description of Rule: The purpose of the rule is to add language that was inadvertently omitted in a previous rule making.

Need for Rule: The rule is necessary because the rule concerning diploma credit for languages other than English (LOTE) and State assessments in Social Studies, that were adopted at the December 2010 Regents meeting (EDU-40-10-00022-A), inadvertently omitted language in section 100.2(ee)(2) that was added in a prior, separate amendment concerning Academic Intervention Services, that was permanently adopted at the October 2010 Regents meeting (EDU-31-10-00004-A). The rule is necessary to clarify and resolve this inconsistency by including the omitted language.

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)(14) Annual Measurable Objective

Description of Rule: The purpose of the rule is to conform the Commissioner's Regulations with recent amendments to New York State's accountability plan that reset New York's annual measurable objective (AMO) for grades 3-8 English language arts (ELA) and mathematics beginning in the 2010-11 school year, as prescribed in New York's approved accountability workbook.

Need for Rule: On February 14, 2011, Dr. Thelma Meléndez de Santa Ana, the Assistant Secretary of the Office of Elementary and Secondary Education of the United States Department of Education (USDE), informed Commissioner Steiner that USDE had approved New York's request to amend its State accountability plan under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act (NCLB), to reset New

York's AMO for grades 3-8 ELA and mathematics beginning in the 2010-11 school year, as prescribed in New York's approved accountability workbook. As a result, New York was approved to reset the AMO to a Performance Index of 122 for ELA and a Performance Index of 137 for mathematics for 2010-11, and with annual equal increments up to 200 by 2013-14, as prescribed in New York's approved accountability workbook.

In August 2010, the proficiency cut scores were raised on the grades 3-8 ELA and math assessments based on the analyses that associated college readiness with cut scores of between 75 and 85 on the Regents exams. Proficiency means students will be college ready if they are able to meet high school exit examination requirements and pass first year college courses in ELA and math without the need for remediation. The purpose of the rule is to conform the Commissioner's Regulations with New York State's approved amended accountability plan. Adoption of the rule is necessary in order for New York to smoothly transition to the higher achievement standards for grades 3-8 in ELA and mathematics.

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 100.5(b)(7)(v) Regents Advanced Diploma Math Requirements

Description of Rule: The purpose of the rule is to revise the mathematics requirements for earning a Regents diploma with advanced designation.

Need for Rule: The rule is necessary to provide for additional options for students to meet the Mathematics assessment requirements leading to a Regents Diploma with Advanced Designation. Commissioner's Regulation section 100.5(b)(7)(v)(a) provided that beginning with the cohort entering grade 9 in 2009, all students seeking a Regents Diploma with Advanced Designation had to pass a three exam sequence in mathematics, as this was all that would be available to them. The sequence of exams available to students entering grade 9 in 2009 were the following:

- Mathematics A, Geometry, and Algebra 2/Trigonometry.
- Integrated Algebra, Geometry, and Algebra 2/Trigonometry.

Absent from these sequences in the regulatory language are the following two or three exam sequences that would also meet the mathematics requirements for the Advanced Designation Regents Diploma:

- Mathematics A, Mathematics B
- Integrated Algebra and Mathematics B
- Mathematics A, Algebra 2/Trigonometry
- Integrated Algebra, Geometry and Mathematics B

It came to the attention of the Department that there are some students who have completed or wish to complete one of the sequences listed above in order to meet the requirements for an Advanced Regents. While Math A and Math B are no longer available, there are still students in the P-12 system that may have completed one or both of these exams in the past. In order to give students a continued opportunity to meet the Advanced Regents requirements and honor the work they have completed in the past, the above sequences would have to be made available to all students regardless of cohort assignment.

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

Section 100.5(b)(7)(i) Local Diploma Appeals Process

Description of Rule: The purpose of the rule is to clarify an inconsistency in the Commissioner's Regulations relating to the award of Regents and local diplomas.

Need for Rule: The rule is necessary to resolve an inconsistency in the Commissioner's Regulations relating to Regents and local diplomas.

In July 2005, the Board of Regents amended Commissioner's Regulations section 100.5(b)(7) to eliminate the local diploma for general education students, beginning with students who entered grade

9 in 2008. However, at the same time, the Board of Regents also added a new section 100.5(d)(7) to permit general education students, who meet certain criteria and who enter 9th grade in September 2005 or thereafter, to receive a local diploma through an appeals process. This provision contains no sunset date.

Specifically, section 100.5(d)(7) allows a general education student who fails to attain a score of 65 or above on a required Regents examination for graduation to appeal his or her score if the student:

- has scored within three points of 65 on a required Regents exam for graduation and has a course average of at least 65 in the subject area of the examination;
- has received academic intervention services by the school in the subject area of the examination;
- has an attendance rate of at least 95 percent for the school year during which the student last took the examination;
- has attained a course average in the subject area of the examination that meets or exceeds the required passing grade by the school; and
- is recommended for an exemption to the passing score by his or her teacher or department chairperson in the subject area of the examination.

Students who successfully appeal one Regents Exam receive a Regents diploma, and students who successfully appeal two Regents Exams receive a local diploma.

Sections 100.5(b)(7) and 100.5(d)(7) are inconsistent in that 100.5(b)(7) does not allow for local diplomas, beginning with students who enter grade 9 in 2008, but 100.5(d)(7) permits students who first enter grade nine in September 2005 or thereafter to earn a local diploma through an appeals process as specified in the regulation.

The rule would resolve this inconsistency by amending 100.5(b)(7)(i) to clarify that the local diploma option under 100.5(d)(5) continues to be available under the appeals process for general education students. Continuation of the local diploma option is appropriate for the following reasons:

- Under local scoring procedures that were in effect until this school year, students were from two to six times more likely to earn a score of 65 than to earn a score between 62 and 64 on those Regents examinations most typically used to meet graduation requirements. Starting with the exams administered in June 2011, the Department revised its rescoring policies in light of this research. The Department anticipates having larger numbers of students scoring from 62-64 on Regents Exams in the future. Consequently, SED recommends having a formal appeals process to address this situation.

- Maintaining the option of a local diploma for general education students would allow SED to continue to define the local diploma as a "standard diploma" for computing graduation rates for No Child Left Behind (NCLB) accountability purposes since it can be earned by both general education students and students with disabilities.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 210(not subdivided), 215(not subdivided), 305(1) and (2), and 309(not subdivided).

Section 100.5(d)(10) Online & Blended Course Credit

Description of Rule: The purpose of the rule is to establish criteria for awarding credit towards a Regents diploma for online and online/classroom coursework.

Need for Rule: The rule is necessary to establish criteria for awarding credit towards a Regents diploma for online and online/classroom coursework. Digital and Internet-connected technologies have increased access to a rich variety of educational opportunities, in the form of online content and instruction, for schools and students across New York State. These educational opportunities have resulted in a number of questions from school districts and educational organizations, and a need for the New York State Education Department (NYSED) to provide alternative pathways for school districts to provide students with opportunities to earn course credit through online instruction and content. A policy for awarding units of credit to students for their completion of online and blended courses is intended

to provide guidance to public school districts and Boards of Cooperative Educational Services (BOCES) interested in offering new learning opportunities for students through online instruction. NYSED recognizes that concepts such as virtual learning, distance learning, online instruction, online courses, and online learning may have multiple meanings, which may evolve and change with the development of new technologies. This policy serves as an initial foundation for school districts and BOCES to develop, implement, and evaluate online and blended courses as alternative pathways for student completion of general education and diploma requirements.

The rule requires school districts, registered nonpublic schools and charter schools that choose to provide their students with instruction by means of online or blended coursework to ensure that the courses:

- are aligned with the applicable New York State learning standards for the subject area in which instruction is provided;
- provide for documentation of student mastery of the learning outcomes for such subjects, including passing the Regents examination in the subject and/or other assessment in the subject if required for earning a diploma;
- provide for instruction by or under the direction and/or supervision of a certified teacher (if instruction is to be provided by a school district, BOCES, or pursuant to a shared service agreement), or of a teacher of the subject area in which instruction is to be provided (in the case of a registered nonpublic school or charter school);
- include regular and substantive interaction between the student and the teacher providing direction and/or supervision; and
- satisfy the unit of study and unit of credit requirements in section 100.1(a) and (b) of the Commissioner's Regulations.

According to section 100.1(a) of the Commissioner's Regulations, a unit of study "means at least 180 minutes of instruction per week throughout the school year, or the equivalent." To determine whether an online or blended course provides students with instruction that is equivalent to that received through 180 minutes of traditional classroom instruction, the principal must evaluate all course components (including, but not limited to, its curriculum, alignment to relevant New York State Learning Standards, instructional strategies and requirements, formative and summative assessments, professional development for teachers, and general delivery and revision processes). While Commissioner's Regulations for completing a unit of study (8 NYCRR § 100.1 [a]) and earning a unit of credit (8 NYCRR § 100.1 [b]) refer to the amount of instruction to which students are entitled, the regulations do not limit or confine instruction solely to classroom-based instruction. As a result, instruction may be delivered in multiple ways and through multiple media that best meet the needs of the students, so long as such modes and media are under the direction of a certified teacher in that subject area and accountable to the district providing instruction, and so long as all applicable requirements are met. The mastery of learning outcomes, as determined by the principal, is based on an evaluation of an online or blended course as an equivalent mode of instruction.

Pursuant to § 100.5(b)(7)(iv)(d) of the Commissioner's regulations, 1,200 minutes of actual hands-on (not simulated) laboratory experience with satisfactory documented laboratory reports is required in order for students to qualify to take a Regents examination in any of the sciences. However, due to the increasing availability of high-quality virtual laboratory experiences, the Department will engage the field in statewide discussion regarding alternative approaches to this requirement. Alternative approaches in time (e.g., 800 minutes of hands-on and 400 minutes of virtual or blended laboratory experience) and/or content (allowing for high-quality virtual labs) may be considered.

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

Section 100.17 Distinguished Educator

Description of Rule: The purpose of the rule is to prescribe requirements regarding appointment of distinguished educators to assist low-performing schools.

Need for Rule: Education Law § 211-c directs the Regents to estab-

lish a Distinguished Educator Program providing for the appointment of individuals as distinguished educators to assist low performing districts in improving their academic performance. In addition, Education Law § 211-b provides for the inclusion of distinguished educators in joint intervention teams that are appointed by the Commissioner to assist school districts in developing, reviewing and recommending plans for reorganizing or reconfiguring of schools in restructuring status or schools under registration review (SURR) status that have failed to demonstrate progress as specified in their corrective action plan or comprehensive education plan.

The rule is necessary to implement Education Law §§ 211-c and 211-b by establishing criteria regarding the selection, roles, responsibilities, protocols and procedures, and expenses for distinguished educators. The rule enables the Commissioner to appoint distinguished educators to districts and schools that are experiencing extremely serious academic challenges and ensure the appointment of qualified individuals, who have experience in achieving consistent growth in academic performance or educational expertise, including superior performance in the classroom, to serve as distinguished educators to assist low performing schools.

Legal Basis for Rule: Education Law sections 207(not subdivided), 305(1), 211-b(1-5), 211-c(1-8) and section 1 of Part A of Chapter 57 of the Laws of 2007.

Section 119.5 Charter School Lottery

Description of Rule: The purpose of the rule is to establish procedures for the random selection process for Charter School student admissions required under Ed. L. 2854(2).

Need for Rule: The rule is necessary to establish procedures for the conduct of the random selection process for charter school admissions required under Education Law section 2854(2), as amended by Chapter 101 of the Laws of 2010, and to ensure that the process is performed in a transparent and equitable manner, consistent with the requirements of the statute.

Legal Basis for Rule: Education Law section 101(not subdivided), 206(not subdivided), 207(not subdivided), 305(1), (2) and (20) and 2854(2) and Chapter 101 of the Laws of 2010.

Section 155.17 School Safety Plans

Description of Rule: The purpose of the rule is to amend the content requirements of each district-wide school safety plan and building-level school safety plan to reflect current confidentiality requirements and concerns.

Need for Rule: In 2000, Chapter 181 enacted Education Law § 2801-a, requiring the implementation of certain school safety plans. Education Law § 2801-a specially required that every school district, board of cooperative educational services (BOCES) and county vocational education extension board, as well as the Chancellor of the City School District of the City of New York, develop a district-wide school safety plan and building-level school safety plans regarding crisis intervention and emergency response ("school emergency response plan"). Section 2801-a prescribed minimum requirements of a district-wide school safety plan and a school emergency response plan, which included policies and procedures relating to responding to certain threats. These plans were designed to prevent or minimize the effects of emergencies and to facilitate the coordination of schools and school districts with local and county resources in the event of such emergencies.

Education Law § 2801-a also required that each district-wide school safety plan be filed with the Commissioner of Education no later than thirty days after adoption and that each school emergency response plan be filed with the appropriate local law enforcement agency and State Police within thirty days from adoption. Both plans were to be adopted and annually updated following a public hearing, provided, however, that only a summary of the building-level plan would be made available for public comment given the sensitive nature of its contents. Conversely, the district-wide school safety plan would be made available to the public for review. Further and significantly, Education Law § 2801-a expressly required that every school emergency response plan be kept confidential and prohibited from disclosure pursuant to Article VI of the Public Officers Law, the Freedom of Information Law (FOIL).

In July 2001, the Board of Regents amended Section 155.17 of the Commissioner's regulations to implement Education Law § 2801-a by prescribing these new school safety plan requirements in regulation. In accordance with statutory authority, Section 155.17, as amended, required that the district-wide school safety plan include the minimum requirements prescribed by law, but additionally required the inclusion of plans of evacuation and sheltering as well as information on school population, number of staff, transportation needs and the business and home telephone numbers of key officials of each educational agency within such district.

Since the adoption of the amendments, many events surrounding safety and security, including the attacks on September 11, 2001, have occurred which modified strategies associated with emergency response and school safety. The inclusion of any tactical strategy, floor plan or schematics for responding to any such threat should not be made available to the public. Disclosure of such information threatens the safety of students, staff and the public. The intent of the district-wide school safety plan is to provide broad concepts and policies related to preparing for and responding to issues of school safety, while the building-level, school emergency response plan is to provide any details on how to respond. Therefore, this amendment is consistent with law and sound policy in requiring plans of evacuation and sheltering and home telephone numbers, etc. only be included in the school emergency response plan, which is kept confidential.

This rule is necessary to ensure that confidential information including the home telephone numbers of local education officials and the tactical strategies for responding to critical events such as building evacuation and sheltering are not disclosed to the public. The rule will also reinforce the strategies related to the public availability of strategic plans for responding to certain emergencies in schools, as well as the public availability of key information related to certain information about each educational agency located in the school district.

Legal Basis for Rule: Section 207, 305, and 2801-a of the Education Law.

Section 156.3(b) & (h) MR School Transportation

Description of Rule: The purpose of the rule is to provide mandate relief through increased scheduling flexibility and by repealing certain monitoring/reporting requirements.

Need for Rule: The rule is necessary to amend section 156.3(b)(5)(iii) to provide mandate relief to school districts and afford greater flexibility to school bus drivers to complete required semi-annual school bus driver safety training, by allowing the training to be scheduled coincidental with other professional development days scheduled during the year. The rule is in response to comments from school districts and vendor School Bus Driver Instructors (SBDIs) and Master Instructors (MIs) that the training schedule needs to allow for cost effective and timely semi-annual training for school bus drivers. In addition, the amendment to section 156.3(h)(5) will provide mandate relief to school districts by repealing requirements that each school district monitor compliance with school bus idling restrictions at least twice a year, and prepare, retain and submit written reports of such reviews. The rule ensures student safety in that it will still require each school district to periodically monitor compliance with school bus idling restrictions. The rule is in response to comments to provide more flexibility to school districts to monitor and report compliance with the rule's provisions.

Legal Basis for Rule: Education Law sections 207(not subdivided), 305(1), (2) and (20), 3624(not subdivided) and 3637(1), (2) and (3).

Section 155.6 MR School Facilities Report Card

Description of Rule: The purpose of the rule is to repeal the requirement that school districts and BOCES prepare school facility report cards.

Need for Rule: The rule is necessary to reduce costs and provide mandate relief to school districts and boards of cooperative educational services (BOCES), by repealing section 155.6 of the Commissioner's Regulations to eliminate a requirement that school districts and BOCES prepare a school facility report card for each occupied school building. While the intent of the report card was to summarize all facilities activities, projects, investigations, and tests performed throughout the year, the report card data may be obtained from other

required data available in the district and represents a duplicative and unnecessary administrative burden. The national recession and the expiration of the federal stimulus funds has forced many districts to dip into their fund balance and reduce staffing and other resources for students. It is critical that districts receive relief from mandates that have not been demonstrated to justify their cost in order that districts can maintain critical services to students.

Legal Basis for Rule: Education Law sections 207(not subdivided), 305(1), (2) and (20), 409-d(1-3) and 409-e(1-4).

Section 200.1 & 200.4 "Intellectual Disability" Name Change

Description of Rule: The purpose of the rule is to conform Commissioner's regulations to federal and State terminology changes for Special Education Programs and Services for Students with Disabilities.

Need for Rule: The rule is necessary to conform the Regulations of the Commissioner of Education to be consistent with a recent terminology change in federal law, by replacing the term "mental retardation" with "intellectual disability" in the Commissioner's Regulations. On October 5, 2010, "Rosa's Law" (Public Law 111-256) was enacted to replace the term "mental retardation" with "intellectual disability" in federal statutes, including IDEA, the Elementary and Secondary Education Act (ESEA), the Higher Education Act and the Rehabilitation Act of 1973. While states are not required to replace the term "mental retardation" with "intellectual disability," the Department has determined that replacing "mental retardation" with "intellectual disability" will ensure the Commissioner's Regulations are consistent with the terminology used in federal law and will address issues of respect and dignity for individuals with this disability.

The rule also makes technical revisions to replace the term "Commissioner of Mental Retardation and Developmental Disabilities" with "Commissioner of the Office for People With Developmental Disabilities" to conform to a recent State statutory change of name of the Office of Mental Retardation and Developmental Disabilities to the Office for People With Developmental Disabilities (OPWDD).

Legal Basis for Rule: Education Law sections 207, 305(1), (2) and (20), 4402 and 4403(3).

Parts 275 & 276 Charter School Co-location Appeals

Description of Rule: The purpose of the rule is to establish special procedures for appeals relating to New York City charter school location/co-location and building usage plans.

Need for Rule: The amendment 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 amendment 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(1) and (7), 311 and 2853(3)(a-5) and § 15 of Chapter 101 of the Laws of 2010.

Agency Representative:

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OFFICE OF HIGHER EDUCATION

Section 27-1.1 HEOP

Description of Rule: The purpose of the rule is to update criteria for determining student economic eligibility for the Higher Education Opportunity Program.

Need for Rule: The rule is needed in order to update criteria for determining student economic eligibility for the Higher Education Opportunity Program by: (1) taking into account inflationary conditions and changes in annual income; (2) accounting for New York State and local taxes and regional maintenance costs; (3) assuring consistency across the State-supported postsecondary opportunity programs; and (4) maintaining the continuing linkage of these eligibility criteria with federally approved methods of needs analysis.

The amendment updates the existing definition of “economically disadvantaged,” which has become outdated because of inflationary factors. It will prevent a reduction in the pool of eligible students due to inflation and other factors. The amendment will ensure that the appropriate pool of students will be eligible for the program.

The changes in the economic income guidelines apply to students first entering college on or after July 2012. The income level for the household of one was determined based on 185 percent of an income at poverty level as established by U.S. Department of Health and Human Services poverty guidelines. These guidelines are based on poverty measures issued by the U.S. Census Bureau.

The rule is also needed to update the definition of an independent student, to be more consistent with the federal definition of independent student for purposes of the needs analysis for federal student financial aid programs. The rule was developed by a statewide task force of representatives from the City University of New York, the State University of New York, independent colleges and universities and the State Education Department’s Office of Higher Education. This task force met and reached a consensus on the amendment.

Legal Basis for Rule: Education Law Sections 207 and 6451(1).

Subpart 30-1 Instructional Support Services

Description of Rule: The purpose of the rule is to create new tenure areas for teachers performing instruction support services in boards of cooperative educational services.

Need for Rule: The rule is necessary to create new tenure areas for teachers performing instruction support services in boards of cooperative educational services. In 2009, the Board of Regents promulgated regulations to permit teachers employed in instructional support service positions in BOCES to accrue tenure and seniority rights in their existing teacher tenure area or if newly hired, to receive tenure and seniority rights in a tenure area for which they are properly certified. (The regulations did not impact teachers serving in New York City). The BOCES have experienced many operational problems since 2009 with the current regulation. As a result of reductions in force, teachers hired for their skills in an area of instructional support services have been bumped by a teacher assigned to a classroom. Reductions in force have also resulted in bumping in the reverse direction (from instructional support services to the classroom). These bumping actions have placed teachers into assignments for which they are not prepared. To address these problems it is proposed that new instructional support services tenure areas are created for BOCES to reflect the unique nature of instructional support services in a BOCES setting and to address the Network Team positions that BOCES will provide for component districts as part of the Race to the Top (RTTT) implementation.

Historically, BOCES have responded to the needs of component districts for the professional growth of district teachers through instructional support services duties designed to enhance teaching skills, including infusing technology into instruction, providing for differentiated instruction and incorporating the analysis of student performance data, and providing a variety of specialized supports. The staff hired by a BOCES to provide these instructional support services are, in most cases, hired from outside the BOCES for their particular expertise in subject matter and the education of teachers.

School districts, on the other hand, tend to identify individual members of their teaching staff who possess the needed skills to be professional developers, curriculum specialists, or have the knowledge and skills to assist other teachers in using technology as part of their instruction to provide these services. Using existing teachers seems to work effectively in many school districts as the teachers have a desire to retain their existing tenure area and continue to earn seniority while on special assignment.

In the BOCES, the need to provide teacher growth and professional development services to component districts is increasing and the number of teachers doing instructional support services work in a BOCES will continue to increase as the RTTT initiatives are implemented, particularly with the use of the Network teams. The regulation adopted by the Regents in 2009 is designed to fit the school district model of providing ISS and the past two years have demonstrated that this model is causing substantial operational problems and disruption for the BOCES that would jeopardize the ability of the BOCES to provide the supports needed to implement RTTT initiatives and maintain capacity to provide high quality professional development for teachers by individuals who are hired because they are particularly adept at adult education and professional development in specific content areas.

The problems experienced with reductions in force resulting in teachers being placed into roles for which they do not possess the required knowledge or skills are of great concern for the work of the Network Teams and the BOCES professional development programs. The duties of Network Team members under RTTT are one example of Instructional Support Services work. The careful selection of properly qualified educators to assume Network Team and other Instructional Support Services duties is a critical part of the implementation of SED’s RTTT program. These Network Team duties along with other Instructional Support duties are different from classroom teaching duties and BOCES teachers performing Network Team duties should not be in the same tenure areas as individual classroom teachers. Accordingly, after consultation with all interested parties, staff proposed for the Regents consideration, the creation of the following (“new”) tenure areas for BOCES that would be appropriate for the most common types of ISS assignments:

- (1) instructional support services in mathematics;
- (2) instructional support services in English language arts and literacy;
- (3) instructional support services in science;
- (4) instructional support services in special education;
- (5) instructional support services in curriculum and differentiated instruction incorporating the analysis of student performance data;
- (6) instructional support services in the integration of technology into instructional practices;
- (7) instructional support services in technical support for bilingual and English as a second language instruction for English language learners; and
- (8) instructional support services in professional development.

Teachers who are currently performing ISS duties in a BOCES would be able to choose to either: (1) go into a newly created ISS tenure area designated by the BOCES as appropriate for their duties; or (2) stay in their existing tenure area (grandparenting provision). If the teacher chose to go into the new ISS tenure area designated by the BOCES, he or she would be eligible to carry with them the tenure and seniority previously earned for the time they spent performing those ISS duties. New teachers hired by a BOCES to perform ISS duties after the effective date of this regulation would be appointed to an ISS tenure area as designated by the BOCES consistent with their duties determined by the BOCES.

Legal Basis for Rule: Section 207(not subdivided) of the Education Law.

Section 52.21(b)(5) Teacher Prep Pilot Program (MAT Degree)

Description of Rule: The purpose of the rule is to amend the degree conferring requirements of the pilot programs to provide program providers with flexibility to confer degrees.

Need for Rule: At its April 2010 meeting, the Board of Regents

established certain eligibility requirements to participate in the clinically rich teacher preparation pilot program, including certain curriculum requirements, a clinical component, mentoring and training requirements and requirements for the conferral of degrees upon completion of the program.

The regulation adopted in April 2010 provided, among other things, that completion of the pilot programs would lead to a professional Master of Arts in Teaching degree. Some higher education institutions offering graduate teacher education programs do not have the authority to confer a Master of Arts in Teaching degree. In order to provide these institutions with the flexibility to confer other appropriate degrees, the rule authorizes higher education institutions to confer one of the specialized degrees in education prescribed in section 3.50(b)(5) of the Rules of the Board of Regents, a Master of Professional Studies degree or a Master of Arts or Master of Science degree as prescribed in section 3.50(a) of the Rules of the Board of Regents. For institutions, other than institutions of higher education, that meet the requirements in section 52.21(b)(5) of the Commissioner's regulations, the Regents will confer a Master of Arts in Teaching degree upon their candidates.

Legal Basis for Rule: Education Laws Sections 207(not subdivided), 208(not subdivided), 210(not subdivided), 214(not subdivided), 216(not subdivided), 224(1), 305(1), (2) and (7), 3004(1) and 3006(1).

Section 52.21(c)(7) Principal Prep Pilot Program (Clinical Experience)

Description of Rule: The purpose of the rule is to amend the clinical experience requirement to provide program providers with the flexibility they need to be innovative.

Need for Rule: At its May 2010 meeting, the Board of Regents approved an amendment to the Commissioner's regulations to establish a graduate level clinically rich principal preparation pilot program. The regulatory amendments adopted in May 2010 required that the pilot programs include at least one continuous school year of mentored clinical experience. 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 Sections 207, 208, 210, 214, 216, 224, 305(1), (2) and (7), 3004(1) and 3006(1).

Part 80-STEM Expedited Pathway

Description of Rule: The purpose of the rule is to provide an expedited pathway for candidates with an advanced degree in STEM areas and postsecondary teaching experience.

Need for Rule: The rule is necessary to establish a transitional G certificate to create a mechanism for schools to employ applicants with a graduate degree or higher in science, technology, engineering or mathematics, and two years of experience teaching at the college level in the same area as the certificate requested, or in a closely related field as determined by the Commissioner, to address demonstrated shortage areas in these subjects. School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder for two years of employment, which shall include mentoring and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment. For individuals who meet the other requirements but do not have an offer of employment by a school district they would still have the option of completing six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study.

The rule is necessary to facilitate the State's ability to address persistent shortages of certified teachers who are qualified to teach in one of the sciences or mathematics at the 5-9 or 7-12 grade level. The rule is designed to support the Department's continuing efforts to certify a sufficient number of properly qualified candidates to fill the need for science and mathematics teachers in the State's schools.

The transitional G certificate will be valid for two years from its ef-

fective date and will not be renewable. It will be limited to employment with an employing entity.

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

Section 80-1.6 Teacher Certification Extensions (Residency)

Description of Rule: The purpose of the rule is to extend the time validity of provisional or initial teacher certificates for those who have met all requirements except citizenship.

Need for Rule: The rule establishes a means for extending the time validity of Provisional or Initial certificates for those individuals who have met all academic, testing and experience requirements for Permanent or Professional certification, and are unable to receive such certification due to USCIS processing delays. The rule is needed to maintain the employment of experienced teachers and is in the interest of the New York State public schools and students.

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

Section 80-3.7 Individual Evaluation

Description of Rule: The purpose of the rule is to extend the expiration date for applicants seeking certification in the classroom teaching service through the individual evaluation pathway.

Need for Rule: The rule was necessary to extend the expiration date for applicants seeking certification through the individual evaluation pathway in all classroom titles except childhood education from February 1, 2012 to September 1, 2013, thus extending the time that the individual evaluation pathway remains available for these applicants. In 2003, the Board of Regents established requirements for teacher certification though the individual evaluation of candidates who have not completed registered teacher education programs. Under the individual evaluation pathway, candidates are required to submit evidence of course work and field experience to the State Education Department for evaluation and issuance of the certificate. The rule was therefore critical to facilitate the Department's continuing ability to certify a sufficient number of properly qualified candidates to fill vacant teaching positions in the State's public schools.

Extending the Individual Evaluation pathway until September 1, 2013 allowed:

- 1.) the Regents to have time to evaluate the implementation of the reforms to teaching and the impact such changes may have on an Individual Evaluation pathway to certification;
- 2.) SED staff to prepare policy options and research on the effectiveness of the Individual Evaluation pathway in addressing subject shortage areas especially in high needs schools.
- 3.) candidates with applications pending through the Individual Evaluation pathway to have more certainty in making plans for college study in the next several semesters in order to complete requirements for a teaching certificate.

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

Section 80-4.3 Teacher Certification Flexibility

Description of Rule: The purpose of the rule is to provide teacher certification flexibility if it would provide for a more efficient operation of the school district or BOCES.

Need for Rule: The rule is necessary to provide teacher certification flexibility if it would provide for a more efficient operation of the school district or BOCES.

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 flexibility 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 exten-

sion 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.

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 amendment would create additional flexibility in the assignment of teachers to these grade levels. The amendment 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 amendment also eliminated a sunset provision in the prior regulation.

Legal Basis for Rule: Education Law sections 207, 3001, 3004(1).

Section 87.5 Employment Clearances Due Process Procedures

Description of Rule: The purpose of the rule is to amend section 87.5(a)(5) of the Commissioner's Regulations to conform the Regulations of the Commissioner of Education to changes in the internal organization of the State Education Department by replacing references in the regulation to specific staff titles with the terms "designee of the Commissioner" or "Commissioner's designee," and thereby provide flexibility in responding to future changes in the internal organization of the Department, and avoid the necessity of amending the regulation each time such changes occur.

Need for Rule: The amendment is necessary to conform the Regulations of the Commissioner of Education to changes in the internal organization of the State Education Department. Under the prior Commissioner's Regulation [8 NYCRR section 87.5(a)(5)], Department determinations denying clearance for employment to prospective school employees and certification applicants may be appealed to the Assistant Commissioner of the Office of Teaching Initiatives (or, in one instance, to the executive director of such Office). The rule will replace references to the specific staff titles with the terms "designee of the Commissioner" or "Commissioner's designee." The rule thereby provides flexibility in responding to future changes in the internal organization of the Department, and avoids the necessity of amending the regulation each time such changes occur.

Legal Basis for Rule: Education Law sections 207(not subdivided), 305(1), (2) and (30), and 3035(3).

Section 100.2, Subpart 30-2 Teacher and Principal Evaluations

Description of Rule: The purpose of the rule is to establish requirements for conducting annual professional performance reviews of classroom teachers and building principals pursuant to Education Law section 3012-c.

Need for Rule: The rule is necessary to establish requirements for conducting annual professional performance reviews of classroom teachers and building principals. Education Law section 3012-c establishes a comprehensive evaluation system for classroom teachers and building principals. Although a new Education Law section

3012-d has been enacted to establish a revised comprehensive evaluation system for classroom teachers and building principals effective with the 2015-2016 school year, many school districts and BOCES are continuing to conduct annual professional performance reviews pursuant to Education Law section 3012-c while they complete the collective negotiations needed to implement section 3012-d. Therefore, the provisions of Subpart 30-2 continue to be needed. This evaluation system is a critical element of the Regents reform agenda—an agenda aimed at improving teaching and learning in New York and increasing the opportunity for all students to graduate from high school ready for college and careers. A primary objective of the evaluation system is to foster a culture of continuous professional growth. The system's three components are designed to complement one another:

- Statewide student growth measures will identify those educators whose students' progress exceeds that of their peers, as well as those whose students are falling behind compared to similar students.

- Locally selected measures of student achievement will reflect local priorities, needs, and targets.

- Teacher observations, school visits, and other measures will provide educators with detailed, structured feedback on their professional practice.

Together, this information will be used to tailor professional development and support for educators to grow and improve their instructional practices, with the ultimate goal of ensuring an effective teacher in every classroom and an effective leader in every school.

Legal Basis for Rule: Education Law sections 101(not subdivided), 207(not subdivided), 215(not subdivided), 305(1) and (2), and 3012-c(1) - (8), as added by Chapter 103 of the Laws of 2010.

Agency Representative:

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OFFICE OF THE PROFESSIONS

Sections 3.2, & 60.2 Oversight Committee for Clinical Clerkships

Description of Rule: The purpose of the rule is to establish an Advisory Committee on Long-Term Clinical Clerkships to recommend standards for placement of students into long-term clinical clerkships in New York.

Need for Rule: The rule is necessary to establish an Advisory Committee that would provide advice on matters related to the evaluation and approval of dual-campus international medical schools seeking authorization to place students in long-term clinical clerkships in New York State. Between November 2010 and January 2011, the Professional Practice Committee (PPC) engaged in discussions with Department staff and the Chair of the New York State Board for Medicine regarding the oversight of dual-campus international medical schools that seek authorization to place students in long-term clinical clerkships in NYS hospitals. The discussions with the PPC incorporated input from the Study Group on International Medical Schools which included representation from a broad spectrum of the medical education and hospital services communities, including representatives from the affected schools. The Study Group considered the following assertions/information in making its recommendations:

- The number of dual-campus international medical schools operating in NYS has increased dramatically since rules governing their activities in NYS were first promulgated in 1981.

- The schools established extensive affiliation agreements with NYS hospitals to place their students in clinical clerkships.

- Hospitals derive substantial income from fees paid by dual campus medical schools to hospitals that provide opportunities for their students to engage in clinical training.

- Accredited and registered medical schools in New York State (NYS) expressed concern that the continued accommodation of students from the international medical schools impacts their ability to find suitable clinical clerkship placements for their students.

- Admission standards for students attending the dual-campus international medical schools and the implementation of the didactic and clinical parts of the medical programs have not been reviewed in decades, even as medical practice has become more demanding and complex.

- There is a physician shortage in NYS that is expected to grow.

- Approximately 35% of active patient care physicians in New York State are international medical graduates (not necessarily from schools placing students in clinical clerkships in NYS).

- Many of the students attending the dual-campus international medical schools are United States citizens.

- Graduates of the dual-campus international medical schools will eventually return to the United States to compete for placement in postgraduate training programs (residencies).

- Postgraduate training opportunities have not grown to match the increased demand by domestic and international medical graduates.

After consideration of the various preliminary findings and the changes that had taken place in the provision of medical education, the Board of Regents concluded that it was time to review the applicable regulations and policies. Accordingly, the Board of Regents agreed to establish an Advisory Committee that would provide advice on matters related to the evaluation and approval of dual-campus international medical schools seeking authorization to place students in long-term clinical clerkships in New York State.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6506(4), 6507(2) and (4) and 6508(1).

Section 29.7 Customized Packaging of Prescription Drugs

Description of Rule: The purpose of the rule is to authorize pharmacists to repackage drugs in customized patient packaging provided that certain requirements are met.

Need for Rule: The rule is necessary to authorize medications to be repackaged in customized patient medication packages, with the consent of the patient, the patient's caregiver, or the prescriber. The rule would encourage patient compliance with complex medication protocols.

Legal Basis for Rule: Education Law sections 207, 6504, 6506(1), 6508(1), 6509(9) and 6510(1).

Sections 29.10, 70.7, 70.8 CPA Practice Privilege

Description of Rule: The purpose of the rule is to implement Chapter 456 of the Laws of 2011 which establishes a practice privilege provision to permit practice in New York by certain CPAs licensed in other states.

Need for Rule: The rule is needed to implement Chapter 456 of the Laws of 2011. The new law repeals a statutory provision which enabled certain certified public accountants (CPAs) licensed in states other than New York to provide attest and compilation services in this state on a temporary and limited basis. It also repeals a provision which authorized certain out-of-state CPAs to provide non-attest services in New York. In lieu of these provisions, Chapter 456 establishes a practice privilege provision to permit practice in New York by certain CPAs licensed in other states.

Legal Basis for Rule: Education Law sections 207 (not subdivided), 6504 (not subdivided), 6506(1), 6507(2)(a), Chapter 456 of the Laws of 2011.

Sections 29.19 & 79-5 Midwifery

Description of Rule: The purpose of the rule is to remove unnecessary provisions and conform the practice of midwifery to current law.

Need for Rule: The rule is necessary to conform regulations with current statute, and to update educational requirements for licensure as a midwife, in response to increasingly independent practice by licensed midwives.

Legal Basis for Rule: Education Law sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6508(1) and 6509(9).

Section 59.14 Mental Health Corporate Practice Waivers

Description of Rule: The purpose of the rule is the waiver of corporate professional practice restrictions for certain Mental Health professions to conform Commissioner's Regulations to Education Law section 6503-a, as amended by Ch. 187, L. 2011.

Need for Rule: On June 18, 2010, Governor Paterson signed into law Chapters 130 and 132 of the Laws of 2010, which amended 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.

Chapter 130 of the Laws of 2010 added a new Education Law section 6503-a, which authorizes the Department to issue waivers of the corporate professional practice restrictions to certain not-for-profit or educational corporations that were in existence on the effective date of the law and that apply for the waiver by a specified deadline. As noted above, Chapter 187 of the Laws of 2011 amended Education Law section 6503-a to extend the time during which waiver applications can be submitted until February 1, 2012. The corporation could continue to provide services until the application is approved or denied, but if an application was denied by the Department, the entity had to cease providing professional services in New York.

The amendment of section 59.14 of the Commissioner's regulations was necessary to conform the Commissioner's regulations to Education Law section 6503-a, as amended by Chapter 187 of the Laws of 2011. Consistent with the statute, the amendment merely extended to February 1, 2012 the date by which certain not-for-profit corporations and education corporations must apply for a waiver from corporate professional practice restrictions in the Education Law.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6503-a(1)(a) and (c), 6504(not subdivided), 6507(2)(a), and Chapter 187 of the Laws of 2011.

Section 62.8 Veterinarian and Veterinary Technicians Continuing Education

Description of Rule: The purpose of the rule is to implement statutory authority requiring continuing education for licensed veterinarians and veterinary technicians.

Need for Rule: The rule implements sections 6704-a and 6711-b of the Education Law, enacted by Chapter 328 of the Laws of 2010, which established mandatory continuing education requirements for veterinarians and veterinary technicians licensed in this State. The rule is necessary to implement these statutorily mandated continuing education requirements.

In accordance with statutory authority, this rule requires that within each three-year registration period, excluding the initial registration period, a licensed veterinarian must complete 45 hours of formal continuing education, 22 and one-half of which may be self-instruction, and a licensed veterinary technician must complete 24 hours of such education, 12 of which may be self-instruction. The rule would identify acceptable coursework and activities through which a licensee may meet the mandatory continuing education requirements. Acceptable coursework would include self-instructional coursework provided by a sponsor approved by the Department. During each triennial registration period, at least two hours of the required continuing education credits would be required to focus on the use, misuse, documentation, safeguarding and prescribing of controlled substances.

The rule also includes provisions relating to the applicability of the continuing education requirements, including the grounds for granting an exemption to the requirements, such as the veterinarian's full-time engagement as a teacher of veterinary medicine at a veterinary education program registered by the Department, the grounds for an adjustment, such as poor health certified by a physician, and the requirements to obtain a conditional registration for up to one year to enable a licensee who was unable to complete the requirements to complete them within one year from the date of issuance of such registration. This rule also provides the requirements for approval of sponsors of the continuing education by the Department.

Legal Basis for Rule: Education Law sections 207, 6504, 6506, 6507(2)(a), 6704-a, and 6711-b, and Chapter 328 of the Laws of 2010.

Sections 63.7 & 63.10 Collaborative Drug Therapy Management

Description of Rule: The purpose of the rule is to establish requirements to implement the Collaborative Drug Management Therapy Demonstration Program.

Need for Rule: The rule is necessary to implement Chapter 21 of the Laws of 2011, which established the Collaborative Drug Therapy Management (CDTM) Demonstration Program, which continues to operate. At least 46 other states have already authorized collaboration between medication prescribers and pharmacists for the purpose of improving therapeutic outcomes from medication therapies. The purpose of such collaboration is to reduce morbidity and mortality, reduce emergency room visits and hospital admissions, and otherwise reduce health care spending. Included among the many disease states in which such improvements have been documented are asthma, diabetes, and clotting disorders or other indications for anticoagulation.

Legal Basis for Rule: Education Law sections 207(not subdivided), 6801(1-a), 6507, 6801-a(1-6) and 6827(2) of the Education Law and Chapter 21 of the Laws of 2011.

Sections 68.11 and 68.12 Engineering continuing education

Description of Rule: The purpose of the rule is to require mandatory continuing education in ethics for Engineers and Land Surveyors.

Need for Rule: The amendments to sections 68.11(c)(1)(i) and 68.12(c)(1)(i) of the Regulations of the Commissioner are necessary to require mandatory continuing education in ethics. Within each three-year registration period, licensees would be expected to earn at least one continuing education credit by participating in an approved continuing education course or "other educational activity" that focuses substantially on ethics relating to professional practice. The public engages design professionals because they trust that the practitioner will provide competent and independent professional services in an ethical manner. There is currently a renewed focus nationally on the core values of these professions, and this amendment will benefit the public by increasing the design professionals' knowledge of ethical standards for the professions.

The amendments to sections 68.11(c)(3)(ii)(b) and 68.12(c)(2)(ii)(b) of the Regulations of the Commissioner add an additional activity through which a licensee may meet the mandatory continuing education requirements. Individuals are permitted to earn up to nine continuing education hours over a three-year registration period for professional service on a committee or task force that addresses technical and/or regulatory issues relating to the professional practice of engineering, provided that such committee or task force has been established by a governmental entity, professional association, or other entity determined by the department, with assistance from the State Board for Engineering and Land Surveying, to be acceptable. One hour of credit is granted for every two hours of time spent in formal collaborative sessions of such committees, while engaged in activities directly related to professional practice, such as developing and interpreting industry standards and related technical information for code officials. To be acceptable for continuing education credit, such service must be certified in writing by an authorized individual within the organization. Such continuing education credits are categorized as "other educational activities," which include all types of permitted continuing education other than courses of learning and cannot total more than 18 continuing education hours in any registration period. This rule more closely aligns the New York State requirements for mandatory continuing education with current national standards

established by the National Council of Examiners for Engineering and Surveying.

Legal Basis for Rule: Education Law Sections 207 (not subdivided), 6504 (not subdivided), 6507 (2)(a), 7211(4) and 7212(4).

Section 70.9(b)(5) Public Accountancy Continuing Education

Description of Rule: The purpose of the rule is to require the completion of continuing education requirements in ethics for Certified Public Accountants (CPA's) and Public Accountants (PA's) to be calculated on a calendar year basis.

Need for Rule: The current ethics continuing education requirement is aligned with the licensees' month of birth thereby creating thirty-six separate reporting periods over the three year registration period. The rule is needed to align the ethics continuing education requirement with the calendar year reporting requirement contained in § 7409 of the Education Law, as amended by chapter 651 of the Laws of 2008.

Legal Basis for Rule: Education Law Sections 207 (not subdivided), 6501 (not subdivided), 6502 (not subdivided), 6504 (not subdivided), 6507 (not subdivided), 6508 (not subdivided) and 7409 (not subdivided).

Section 78.5 Massage Therapy

Description of Rule: The purpose of the rule is to implement statutory authority requiring continuing education for licensed massage therapists.

Need for Rule: The rule is necessary to implement section 7807 of the Education Law, enacted by Chapter 463 of the Laws of 2010, which prescribes mandatory continuing education requirements for individuals licensed in the practice of massage therapy. The rule was necessary to implement these statutorily mandated continuing education requirements.

In accordance with this statutory authority, this rule requires that within each three-year registration period, excluding the initial registration period, a licensed massage therapist must earn 36 hours of formal continuing education, no more than 12 of which may be earned through self-instruction. The rule would identify acceptable coursework and activities through which a licensee may meet the mandatory continuing education requirements. The rule would also include provisions relating to the applicability of the continuing education requirements, including the grounds for granting an exemption or adjustment to the requirements; the formal continuing education required of a licensee returning to the practice of massage therapy after a lapse in practice in this State; and the requirements to obtain a conditional registration to enable those who, for good cause, were unable to complete the requirements within the triennial registration period, but who may complete such requirements within one year from issuance of such registration. The rule would also provide the requirements for approval of sponsors of the continuing education by the Department.

Legal Basis for Rule: Sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a) and 7807(2) of the Education Law, and section 2 of Chapter 463 of the Laws of 2010.

Agency Representative:

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

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OFFICE OF CULTURAL EDUCATION

Section 3.27 Deaccessioning

Description of Rule: The purpose of the rule is to clarify restrictions on the deaccessioning of items and materials in collections held by museums and historical societies.

Need for Rule: The rule is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies. Specifically, the amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item in its collection only in a manner consistent with its mission statement and collections management policy and where one or more of the following criteria have been met:

- (1) the item is inconsistent with the mission of the institution as set forth in its mission statement;
- (2) the item has failed to retain its identity;
- (3) the item is redundant;
- (4) the item's preservation and conservation needs are beyond the capacity of the institution to provide;
- (5) the item is deaccessioned to accomplish refinement of collections;
- (6) it has been established that the item is inauthentic;
- (7) the institution is repatriating the item or returning the item to its rightful owner;
- (8) the institution is returning the item to the donor, or the donor's heirs or assigns, to fulfill donor restrictions relating to the item which the institution is no longer able to meet;
- (9) the item presents a hazard to people or other collection items; and/or
- (10) the item has been lost or stolen and has not been recovered.

The rule would also require that proceeds from deaccessioning be restricted in a separate fund to be used only for the acquisition of collections or the preservation, conservation or direct care of collections. In addition, the rule requires each institution to include in the annual report filed pursuant to section 3.27(e), a list of all items or item lots deaccessioned in the past year and all items or item lots disposed of in the past year.

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

Agency Representative:

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

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OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)

Section 100.8 Local High School Equivalency Diploma Experimental Program

Description of Rule: The purpose of the rule is to extend until June 30, 2012 the provision for awarding local high school equivalency diplomas based upon experimental programs.

Need for Rule: The rule is necessary to implement Regents policy to extend for one year the provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES to award local high school equivalency diplomas based upon experimental programs approved by the Commissioner. The extension will allow the continuance in New York State of the National External Diploma Program (NEDP), which is a complete assessment program that allows adults over age 21 to demonstrate and document the lasting outcomes and transferable skills for which a high school diploma is awarded. The NEDP is a competency based, applied performance assessment system which capitalizes on an adult's life experiences and

uses a practical application of learning for assessment through such methods as simulations, authentic demonstration, research projects, hands-on interviews and oral interviews. An NEDP candidate must demonstrate a job skill and the competencies that align with the skills needed to function effectively in the workplace. All competencies require a 100 percent mastery. The one year extension ensures that all current NEDP students in the approximately 20 program sites across the State are provided with an opportunity to complete their programs and earn a local high school equivalency diploma.

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

Agency Representative:

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OFFICE OF OPERATIONS AND MANAGEMENT SERVICES

Section 3.8 Executive Deputy Commissioner

Description of Rule: The purpose of the rule is to designate the Executive Deputy Commissioner as Deputy Commissioner of Education pursuant to Education Law section 101.

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 Executive Deputy Commissioner as the deputy commissioner of education 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).

Agency Representative:

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

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B. CALENDAR YEAR 2006

OFFICE OF P-12 EDUCATION

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

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

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

Legal basis for rule: Education Law sections 207(not subdivided), 215(not subdivided), 305(1) and (2), 1604(35), 1709(20-a), 1711(2)(e), 1950(4)(k), 2102-a(1) through (4), 2116-a(3), 2116-b(1) through (7), 2116-c(1) through (9), 2117(1), 2503(5), 2508(5), 2509(4), 2523(2), 2524(1), 2525(1) and (2), 2526(1), (1-a) and (2),

2527(not subdivided), 2554(2-a), 2562(2), 2566(6), 2573(4), 2576(1)(a), 2580(2) and 3713(1) and (2), and Chapter 263 of the Laws of 2005.

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

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

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

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

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

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

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

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

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

Description of rule: the rule revises mathematics graduation and diploma requirements consistent with policy adopted by the New York State Board of Regents.

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

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

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

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

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

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

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

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

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

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

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

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

Description of rule: the rule conforms the Commissioner's Regulations with New York's approved NCLB accountability plan by: (1) modifying the School Performance Index to incorporate the results from New York's grade 3-8 assessment program in English language arts and mathematics; (2) revising the Annual Measurable Objectives in English language arts and mathematics to reflect the use of grade 3-8 test results; (3) combining the elementary and secondary science criteria into a single combined elementary-middle level science criterion; (4) revising the definition of the graduation cohort beginning with the 2003 graduation cohort to make schools accountable for students after they received five months of instruction in a school or district; (5) incorporating in the limited English proficient (LEP) subgroup students who had previously been considered LEP students during the prior one or two years in order to calculate Adequate Yearly Progress; (6) restricting the use of backmapping to schools serving exclusively students below grade three; (7) revising the timelines for schools and local educational agencies whose 2006-2007 accountability status is dependent on 2005-2006 grade 3-8 assessment results to take certain actions required of schools and local educational agencies identified as requiring academic progress or as in need of improvement; (8) indicating that the NYSESLAT will no longer be administered, in lieu of the required State assessment in English language arts, for accountability purposes beyond the 2005-2006 school year; and (9) restricting the use of the NYSESLAT, for participation rate purposes, to limited English proficient students who

have attended school in the United States (not including Puerto Rico) for one year.

Need for rule: the rule establishes criteria and procedures to ensure State and local educational agency compliance with the provisions of the federal Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001 relating to academic standards and school/district accountability. While the Elementary and Secondary Education Act has been recently amended by the Every Student Succeeds Act or ESSA, the general effective date of ESSA is July 1, 2016, so criteria and procedures established in the rule need to be continued in the 2015-16 school year.

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

Agency Representative:

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OFFICE OF HIGHER EDUCATION

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

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

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

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

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

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

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

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

The rule also establishes a new requirement for the renewal of the level I certificate: the candidate must submit to the State Education Department adequate evidence substantiating that the candidate has a commitment for employment in a teaching assistant position under the level I teaching assistant certificate. These changes allow candidates

who were unable to find employment during the first term of the level I certificate, or have decided to delay entry into this field, the opportunity to obtain employment and meet the experience requirement for the level II certificate. It also ensures that candidates for the renewed level I certificate will be on track for meeting the experience requirement for the level II certificate.

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

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

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

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

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

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

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

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

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

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

The rule establishes professional development requirements for

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

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

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

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

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

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

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

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

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

Legal basis for rule: Education Law sections 207(not subdivided); 210(not subdivided); 215(not subdivided); 305(1) and (2); 3001(2); and 3004(1).

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

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

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

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

The rule requires the prospective owner of a proprietary college to be reviewed by the Department and Regents prior to the change ownership or control of the institution. The review would determine whether the prospective owner meets prescribed standards for Regents

consent to the transfer of degree-conferring authority. The rule provides expedited time frames for this review. In addition, the rule provides for Regents consent to a temporary transfer of degree-conferring authority after the change of ownership or control already has taken place in limited cases, upon a showing of good cause.

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

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

Agency Representative:

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

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OFFICE OF THE PROFESSIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

212(3); 6504(not subdivided); 6507(2)(a); and 7328(1), (2), (3), (4), (5), and (6).

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

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

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

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

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

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

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

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

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

Description of rule: the rule implements the requirements of section 6731(d) of the Education Law by defining the experience requirement

that a licensed physical therapist must meet to provide treatment without a referral, clarifying the content of the notice of advice provided to a patient prior to treatment without a referral, and establishing a definition of unprofessional conduct relating to such practice.

The rule establishes requirements that licensed physical therapists must meet in order to provide treatment without a referral and to provide uniformity and consistency in the information that must be contained in the written notice provided to a patient.

The rule also establishes an additional definition of unprofessional practice in the practice of physical therapy: failing to meet the requirements of subdivision (d) of section 6731 of the Education Law and/or section 77.9 of the Commissioner's Regulations.

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

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

Agency representative:

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

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OFFICE OF CULTURAL EDUCATION

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

Description of rule: the rule substantially revises schedules CO-2 and MI-1 since they were last issued in 2002. The major revisions in both schedules are new Community College sections appearing in each, authorizing the disposition of records held by New York's community colleges. In addition to updating the community college sections of the two schedules, other sections in Schedules CO-2 and MI-1 have also been updated based on changes to record keeping systems since the 2002 editions.

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

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

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

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

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

Projects that will not be ready to start for up to 180 days are now eligible for funding, as opposed to 90 days previously.

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

Agency representative:

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

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OFFICE OF OPERATIONS AND MANAGEMENT SERVICES

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

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

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

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

Agency Representative:

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

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C. CALENDAR YEAR 2001

OFFICE OF P-12 EDUCATION

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

Description of Rule: Section 7.1 of the Regents Rules and section 135.4 of the Commissioner's Regulations establish a professional coaching certificate that is valid for three years to a candidate who has completed the first aid requirements as set forth in section 135.4 of the Commissioner's Regulations and three course requirements established for coaching by the State Education Department, and has a minimum of three years coaching experience in a specific sport in a New York State interschool athletic program. The professional coaching certificate may be renewed for an additional three-year period if the candidate meets the requirements of section 135.4 and has received a satisfactory evaluation by the principal or athletic director for each of the preceding three years that the candidate coached in the specific sport.

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

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

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

Description of Rule: Part 57 and section 100.2(dd)(2) of the Com-

missioner's Regulations establish standards for Department approval of providers of coursework or training in school violence prevention and intervention and require school districts and BOCES to include in their professional development plans provisions for training of employees holding a teaching certificate or license in the classroom teaching service, school service, or administrative and supervisory service in school violence prevention and intervention.

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

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

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

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

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

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

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

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

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

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

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

Description of Rule: Section 100.5 and 100.2 of the Commissioner's Regulations create a process of program approval for career

and technical education programs that will allow flexibility in the attainment of graduation requirements; provide for a diploma with a technical endorsement to be awarded to students who successfully complete certain requirements, including an industry-developed technical assessment of skills in a specific technical field; and correct technical errors concerning the units of credit for mathematics to meet graduation requirements.

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

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

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

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

Need for Rule: the rule is necessary to implement Regents policy relating to State learning standards, State assessments and graduation and diploma requirements, to provide additional time to gather data on how students with disabilities are performing on required Regents examinations, including the effect of multiple tests, to increase the participation of students with disabilities in the general education curriculum, and to study the impact of academic intervention services for these students. In December 2003, the Board of Regents again amended section 100.5 to extend for an additional four years the provision permitting students with disabilities who fail one or more of the Regents examinations required for high school graduation, to meet local diploma requirements by passing the respective Regents Competency Tests or their equivalent in these subject areas. In July 2005, the Board of Regents adopted an amendment to section 100.5 to provide an additional safety net for all students with disabilities entering grade 9 in the 2005-06 school year, by allowing students with disabilities to meet local diploma requirements by achieving a passing score of 55-64 on the five required Regents examinations to meet local diploma requirements.

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

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

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

Need for Rule: the rule was necessary to comply with Chapter 60 of the Laws of 2000. Upon enactment of the Foundation aid formula by Chapter 57 of the Laws of 2007, Education Law section 3602(38) was repealed, operating standards aid is no longer available, and the rule can now be repealed.

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

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

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

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

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

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

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

Need for Rule: the rule was necessary to implement Chapter 60 of the Laws of 2000. The rule establishes standards for the receipt of State aid for summer school programs and summer camp programs pursuant to Education Law section 3602(39), as added by section 32 of Chapter 60 of the Laws of 2000. Education Law section 3602(39) was repealed by Part B of Chapter 57 of the Laws of 2007, and the rule is no longer needed and can be repealed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 200.1(x) was amended, regarding the definition of "impar-

tial hearing officer” and the officer’s qualifications. This section was amended again pursuant to a separate rule making in September 2001 to conform to the Individuals with Disabilities Education Improvement Act.

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

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

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

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

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

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

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

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

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

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

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

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

Section 200.4(b)(4) was amended to clarify that a committee on

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

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

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

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

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

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

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

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

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

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

Section 200.5(i)(4) was amended to clarify that except for preschool and expedited hearings, an impartial hearing officer shall render a decision, and mail a copy of the written, or at the option of the parent,

electronic findings of fact and the decision to the parents, the board of education, and to the Office of Vocational and Educational Services for Individuals with Disabilities; and that the record of the findings of fact and the decision shall be provided at no cost to the parents.

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

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

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

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

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

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

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

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

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

Section 201.11(c) was amended to require an impartial hearing officer to mail a copy of the written, or at the option of the parents, electronic findings of fact and decisions to the parents, to the board of education, and to the Office of Vocational and Educational Services for Individuals with Disabilities (VESID) of the State Education Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Agency Representative:

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

Angelica Infante-Green
Deputy Commissioner P-12 Instructional Support
New York State Education Department
Room 875, Education Building Annex
89 Washington Avenue
Albany, New York 12234
(518) 474-5915
nysedp12@nysed.gov
OFFICE OF HIGHER EDUCATION

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

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

Need for Rule: the rule is necessary to establish standards consistent with federal requirements to ensure that institutions that are accredited by the Commissioner of Education and the Board of Regents, for purposes of their participation in Title IV federal student aid programs, are quality institutions. The rule also removed unnecessary

provisions in the Regents Rules relating to the role of the State Education Department as a State Postsecondary Review Entity. This role does not exist because the federal law authorizing the designation of such entities was not reauthorized. Section 13.1 and Subpart 145-9 were subsequently repealed in a separate rule making, effective July 4, 2001.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Agency Representative:

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

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

Description of Rule: the rule establishes standards for licensure qualifying programs in social work, education and examination requirements for licensure, requirements for applicants for limited permits to practice as a certified social worker (CSW), and requirements that must be met by certified social workers to qualify for reimbursement under certain group health insurance policies for psychotherapy services.

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

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

Section 74.2 established the requirements for licensure qualifying professional examinations leading to the professional preparation for

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

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

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

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

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

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

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

Need for Rule: the rule is needed to conform to realistic testing requirements for the dictation portion of the licensure test, as recommended by the State Board for Certified Shorthand Reporting. The rule is also needed to update the examination to reflect current widespread use of computer assisted dictation equipment in the practice of certified shorthand reporter.

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

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

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

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

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

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

Agency representative:

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

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 ADULT CAREER AND CONTINUING EDUCATION SERVICES

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

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

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

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

Agency representative:

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

Lisa Van Ryn
Manager, VR Resource Development
Office of Adult Career and Continuing Education Services
Room 580 EBA
89 Washington Avenue
Albany, New York 12234
(518) 473-1626
Lisa.VanRyn@nysed.gov

OFFICE OF STATE REVIEW

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

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

Section 279.3, as amended: (1) repealed language allowing a State Review Officer to base his or her decision on statements contained in a petition, which are deemed to be true, if an answer to the allegations in a petition is not served and filed according to the provisions of such regulations; and (2) authorized a State Review Officer to make a decision, that is considered final unless an aggrieved party seeks judicial review.

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

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

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

Agency Representative:

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

Justyn P. Bates

Office of State Review

80 Wolf Road, Suite 203

Albany, New York 12203

(518) 485-9373

osrcomment@nysed.gov

OFFICE OF MANAGEMENT SERVICES

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

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

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

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

Agency Representative:

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

Richard J. Trautwein

Counsel and Deputy Commissioner for Legal Affairs

New York State Education Department

State Education Building Room 148

89 Washington Ave., Albany, NY 12234

(518) 474-6400

legal@nysed.gov

Department of Financial Services

INTRODUCTION

Pursuant to Section 207 of the State Administrative Procedure Act, Review of Existing Rules, the Department of Financial Services (“the Department”) must review, after five years and at five-year intervals thereafter, rulemakings adopted on or after January 1, 1998, and effective January 1, 2013, for any rule that requires a regulatory flexibility analysis, rural area flexibility analysis or job impact statement, the Department must initially review that rule in the third calendar year after the year the rule first was adopted. 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 laws 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 will review this year to determine whether they should be continued or modified. These rules were adopted in 2013, 2011, 2006 and 2001. 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

Unless otherwise noted, the Department intends to continue the rules discussed herein without modification, while continually monitoring the regulations to ensure that the provisions remain consistent with related statutory and regulatory requirements.

The following rulemakings were adopted in 2013:

- DFS-34-12-00005-A (State Register of February 20, 2013), Adoption of a new Part 225 (Insurance Regulation 199) (Use of Senior-Specific Certifications and Professional Designations in the Sale of Life Insurance and Annuities) of Title 11 NYCRR.

Statutory Authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 2103, 2104, 2110, 2403, and 4525.

This new rule effectuated standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, a life insurance policy or annuity contract and prohibited the use of a senior-specific certification or professional designation by an insurance producer in such a way as to mislead a purchaser or prospective purchaser into believing that the insurance producer has special certification or training in advising or providing services to seniors in connection with the sale of life insurance and annuities.

- DFS-48-12-00004-A (State Register of March 20, 2013), Amendment to Part 125 (Insurance Regulations 17, 20 and 20-A) (Credit for Reinsurance) of Title 11 NYCRR.

Statutory Authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 307(a), 308, 1301(a)(9), 1301(c), and 1308.

This amendment aligned Part 125 more closely with the Credit for Reinsurance Model Regulation that was adopted by the National Association of Insurance Commissioners (“NAIC”); improved upon the reduction of reinsurance transactional costs and increase in reinsurance capacity; kept New York aligned with global insurance markets and worldwide accounting standards governing reinsurance contracts; and reflected the purpose of the Dodd-Frank Wall Street Reform and Consumer Protection Act [Public Law 111-203; 7/21/10], which preempts certain state laws relating to reinsurance ceded by authorized non-domestic insurers.

- DFS-20-12-00009-A (State Register of February 20, 2013) Amendment of Part 65-3 (Insurance Regulation 68-C) (Claims for Personal Injury Protection Benefits) of Title 11 NYCRR.

Statutory Authority: Financial Services Law Sections 202 and 302, Insurance Law Sections 301, 2601, 5221 and Article 51, and Vehicle and Traffic Law Section 2407.

This amendment reduced the number of automobile personal injury protection claims that would have remained open indefinitely by requiring an applicant for benefits to either submit any requested verification within the applicant’s control or possession, or provide reasonable justification for failing to do so within 120 calendar days from the date of the initial verification request; reduced litigation and arbitration by providing that a technical defect in an insurer’s verification request, notice, or claim denial does not discharge the recipient’s obligation to comply with the request or notice or invalidate an otherwise proper claim denial; and prevented an injured person’s policy limit from being unjustly depleted by providing that no payment is due for services to the extent the charges exceed the applicable fee schedules or where the services for which payment is requested were not rendered.

- DFS-35-12-00003-A (State Register of April 3, 2013) Amendment to Part 57 (Insurance Regulation 113) (Smoker/Nonsmoker

Mortality Tables and Underwriting Classifications) to Title 11 NYCRR.

Statutory Authority: Sections 202 and 302 of the Financial Services Law, and Sections 301, 2403, 3201, 4217, 4221, 4224, 4511 and 4517 of the Insurance Law.

This amendment provided that no insured will be classified as a smoker or tobacco user by an insurer unless the insured actually smokes or uses tobacco or nicotine products and required insurers to provide notice of any procedures to seek reclassification of the insured's risk classification.

- DFS-45-12-00002-A (State Register of April 10, 2013) Amendment to Part 27 (Insurance Regulation 41) (Excess Line Placements Governing Standards) of Title 11 NYCRR.

Statutory Authority: Financial Services Law Sections 202 and 302 and Insurance Law Sections 301, 307, 308, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2130, 3103, 5907, 5909, 5911, and 9102.

This amendment updated the export list of coverages set forth in 11 NYCRR Section 27.3(g) and implemented the provisions and purposes of Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010.

Effective October 8, 2014, the Department adopted another amendment to Part 27 (DFS-29-13-00002-A, State Register of October 8, 2014) to implement Chapter 61 of the Laws of 2011, conforming to the federal Non-admitted and Reinsurance Act of 2010.

- DFS-29-12-00004-AA (State Register of April 10, 2013) Consolidated Amendment of Parts 9 (Insurance Regulation 46), 65-3 (Insurance Regulation 68-C), 216 (Insurance Regulation 64), 218 (Insurance Regulation 90) and 241 (Insurance Regulation 71) of Title 11 NYCRR

Statutory Authority: Financial Services Law, Sections 202 and 302; and Insurance Law, Section 301.

This consolidated rule-making corrected out-of-date references resulting from the consolidation of the New York State Banking and Insurance Departments.

- DFS-52-12-00005-A (State Register of April 23, 2013) Amendment to Part 80-1 (Insurance Regulation 52) (Holding Companies) of Title 11 NYCRR

Statutory authority: Financial Services Law, Sections 202 and 302, and Insurance Law, Sections 301 and 306 and Article 15.

This amendment corrected certain sections of Regulation 52 that were out-of-date, updated the rule to reflect changes in technology, and adopted certain provisions of the NAIC's model Insurance Holding Company System Regulatory Act.

Effective June 11, 2014, the Department adopted another amendment to Part 80-1 (DFS-13-14-00002-A, State Register of June 11, 2014) to conform to amendments made to Insurance Law Section 1505(d) by Chapter 238 of the Laws of 2013.

Effective November 12, 2014, the Department adopted another amendment to Part 80-1 (DFS-19-14-00012-A, State Register of November 12, 2014) to accord with the public policy objectives that the Legislature sought to advance by enacting Article 15, including Section 1506, by reducing the possibility that any person seeking to acquire control of a New York domestic insurer has interests that conflict with the interests of policyholders, shareholders, or the public, and by minimizing the potential for harm to a domestic insurer.

- DFS-12-13-00003-A (State Register of August 14, 2013) Addition of new Part 224 (Insurance Regulation 187) (Suitability in Annuity Transactions) of Title 11 NYCRR.

Statutory Authority: Financial Services Law Sections 202, 301 and 302, and Insurance Law Sections 301, 308, 309, 2110, 2123, 2208, 3209, 4226, 4525 and Article 24.

This new rule effectuated requirements on life insurance companies and fraternal benefit societies to set standards and procedures for recommendations to consumers with respect to annuity contracts so that the insurance needs and financial objectives of consumers at the time of a transaction are appropriately addressed.

- DFS-29-13-00015-A (State Register of September 25, 2013)

Amendment of Part 60-2 (Insurance Regulation 35-D) (Supplementary Uninsured/Underinsured Motorists Insurance) of Title 11 NYCRR.

Statutory Authority: Financial Services Law Sections 202 and 302, Insurance Law Sections 301 and 3420, and Chapter 496, Laws of 2012, and Chapter 11, Laws of 2013.

This amendment implemented Insurance Law Section 3420(f), which requires motor vehicle liability insurers to provide, at the option of the insured, Supplementary Uninsured Motorist ("SUM") coverage to all policyholders in New York State and the provisions and purposes of Chapter 496 of the Laws of 2012 and Chapter 11 of the Laws of 2013 by amending the definition of "insured" in the prescribed SUM endorsement in 11 NYCRR Section 60-2.3(f) to include members and employees of a fire department, fire company, ambulance service or voluntary ambulance service when the policy insures the fire department, fire company, ambulance service or voluntary ambulance service.

- DFS-11-13-00008-A (State Register of November 13, 2015) Addition of new Part 65-5 (Insurance Regulation 68-E) (Unauthorized Providers of Health Services) to Title 11 NYCRR.

Statutory Authority: Financial Services Law Section 202 and Articles 3 and 4; and Insurance Law Sections 301, 5109 and 5221 and Articles 4 and 51.

This new rule promulgated standards and procedures for investigating and suspending or removing the authorization for health service providers to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to Insurance Law § 5109.

- DFS-36-13-00001-A (State Register of November 13, 2013) Amendment to Part 39 (Insurance Regulation 144) (Minimum Standards for the New York State Partnership for Long-Term Care Program) of Title 11 NYCRR.

Statutory Authority: Financial Services Law, Sections 202 and 302; Insurance Law Sections 301, 1117, 3201, 3217, 3221, 3229, 4235, 4237 and Article 43; and Social Services Law Section 367-f.

This amendment revised the minimum daily benefit amounts for 2014 through 2023 for the New York State Partnership for Long-Term Care program.

- DFS-09-13-00003-A (State Register of December 4, 2013) Amendment to Part 83 (Insurance Regulation 172) (Financial Statement Filings and Accounting Practices and Procedures) of Title 11 NYCRR.

Statutory Authority: Financial Services Law Sections 202 and 302; Insurance Law Sections 107(a)(2), 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law Sections 4403, 4403-a, 4403-(c)(12) and 4408-a; and Chapter 599, Laws of 2002, Chapter 311, Laws of 2008.

This amendment updated the reference to the Accounting Practices and Procedures Manual published by the NAIC as of March 2012, replacing the rule's former reference to the Accounting Practices and Procedures Manual as of March 2011.

Effective April 2, 2014, the Department adopted another amendment to Part 83 (DFS-52-13-00002-A, State Register of April 2, 2014) to update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2013.

Effective November 19, 2014, the Department adopted another amendment to Part 83 (DFS-23-14-00002-A, State Register of November 19, 2014) to update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2014.

Effective September 23, 2015, the Department adopted another amendment to Part 83 (DFS-20-15-00005-A, State Register of September 23, 2015) to update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2015.

The following rulemakings were adopted in 2011:

- 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 amendment applied 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 puts 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.

- INS-45-10-00010-A (State Register of January 19, 2011) Amendment of Part 169 (Insurance Regulation 100) (Noncommercial Private Passenger Automobile Insurance Merit Rating Plans) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 2334, 2335, 2345, and 3425.

Regulation 100 was amended to comply with Chapter 277 of the Laws of 2010. Chapter 277 of the Laws of 2010 amended Insurance Law § 2335 to raise from \$1,000 to \$2,000 the minimum threshold amount of property damage which, if exceeded in a motor vehicle accident, would allow an insurer to impose a policy premium charge. The minimum threshold amount of property damage for which insurers may impose a premium surcharge was based on the amount (\$1,000) set forth in the Vehicle & Traffic Law § 605.

- INS-45-10-00005-A (State Register of January 19, 2011) Amendment of Part 151-4 (Insurance Regulation 119) (Workers' Compensation Insurance Rates: Reserves for Special Disability Fund Claims) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 1303 and 4117, and Workers' Compensation Law Section 32.

Workers' Compensation Law ("WCL") § 32 permits the chair of the Workers' Compensation Board to procure one or more private entities to assume the liability for, and the management, administration or settlement of all or a portion of the claims in the Special Disability Fund ("SDF"). No insurer, self-insured employer, or the State Insurance Fund ("SIF") may assume liability for, management, administration or settlement of any claims on which it holds reserves, beyond such reserves as are permitted by regulation of the Superintendent of Financial Services.

The law mandates the Superintendent to set a reserve standard specific to transactions authorized by WCL § 32. This regulation established the required reserve standards, including the amount of reserves that an insurer, self-insured employer, or the SIF may hold for claims for which an entity has waived its right to reimbursement for the SDF and for which it has assumed the liability, management, administration or settlement.

- INS-45-10-00005-A (State Register of January 19, 2011) Amendment of Part 151-5 (Insurance Regulation 119) (Workers' Compensation Insurance – Independent Livery Driver Benefit Fund) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301 and 3451.

Chapter 392 of the Laws of 2008 enacted Executive Law Article 6-G, establishing clear rules for determining when livery drivers in New York City, Westchester County and Nassau County are employees or independent contractors of livery bases, and establishing the Independent Livery Driver Benefit Fund (the "Fund") to provide independent contractor livery drivers workers' compensation with benefits under certain circumstances where no-fault automobile insurance does not provide sufficient coverage. Before passage of this law, the only recourse for independent contractor livery drivers was no-fault automobile insurance, which resulted in delays in payment while no-fault insurers ascertain whether livery drivers were independent contractors and eligible for coverage.

Insurance Law § 3451 permits the Superintendent to promulgate

regulations authorizing an insurer licensed to write workers' compensation and employers' liability to provide coverage as authorized pursuant to Executive Law Article 6-G. This regulation was amended to ensure that the Fund has a choice of procuring coverage either from the State Insurance Fund or an authorized insurer, which may provide savings to the Fund and ultimately the livery bases that pay for the coverage.

- INS-02-11-00003-A (State Register of March 16, 2011) Amendment to Part 100 (Insurance Regulation 179) (Determining Minimum Reserve Liabilities and Non-forfeiture Benefits) of Title 11 NYCRR.

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

This amendment extended the use of the 2001 CSO Preferred Class Structure Mortality Table to policies issued on or after January 1, 2004 with the Superintendent's approval, and if certain conditions were met by the insurer related to policies or portions of policies that were co-insured. Previously, the table could have only been used for policies issued on or after January 1, 2007. The use of the table allowed for the reserves to better match the risks associated with different underwriting classifications. Also, the rule should result in lower reserve requirements for those insurers that elected to use the table for policies issued on or after January 1, 2004, and therefore, decrease the cost of doing business in New York. This standard had already been adopted by the NAIC through its Accounting Practices and Procedures Manual.

Effective December 10, 2014, the Department adopted another amendment to Part 100 in a consolidated rulemaking with 11 NYCRR 98 (Insurance Regulation 147) (DFS-17-14-00002-A, State Register of December 10, 2014) to modernize the current regulatory scheme with respect to term life insurance reserves as discussed in the Superintendent's March 27, 2014 letter to state Commissioners.

Effective April 1, 2015, the Department adopted another amendment to Part 100 in a consolidated rulemaking with 11 NYCRR 98 (Insurance Regulation 147) (DFS-04-15-00005-A, State Register of April 1, 2015) to modernize the current regulatory scheme with respect to universal life insurance with secondary guarantee reserves.

- INS-02-11-00004-A (State Register of March 16, 2011) Amendment to Part 98 (Insurance Regulation 147) (Valuation of Life Insurance Reserves) to Title 11 NYCRR.

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

This amendment removed restrictions on the mortality adjustment factors (known as "X" factors) in the deficiency reserve calculation. The former restrictions on the X factors prevented some insurers from using mortality rates with a slope similar to their expected mortality. The purpose of the X factor in the deficiency reserve calculation is to allow insurers to adjust the valuation mortality assumptions so that the mortality rates better reflect the experience mortality rates: removal of the former restrictions would allow that to occur. The amendment also provided clarification in the calculation of the segment length, and addressed whether recalculation is required when valuation mortality changes. These standards already had been adopted by the NAIC through its Accounting Practices and Procedures Manual.

Effective December 10, 2014, the Department adopted another amendment to Part 98 in a consolidated rulemaking with 11 NYCRR 100 (Insurance Regulation 179) (DFS-17-14-00002-A, State Register of December 10, 2014) to modernize the current regulatory scheme with respect to term life insurance reserves.

Effective April 1, 2015, the Department adopted another amendment to Part 98 in a consolidated rulemaking with 11 NYCRR 100 (Insurance Regulation 179) (DFS-04-15-00005-A, State Register of April 1, 2015) to modernize the current regulatory scheme with respect to universal life insurance with secondary guarantee reserves.

The Department is considering proposing amendments to Part 98 to adopt the existing NAIC standards for waiver of premium reserves, and to adopt the 2017 CSO mortality table for valuing life insurance reserves in consideration of a proposed NAIC adoption of such table.

- INS-02-11-00004-A (State Register of March 16, 2011) Amendment to Part 83 (Insurance Regulation 172) (Financial Statement Filings and Accounting Practices and Procedures) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law Sections 4403, 4403-a, 4403-c and 4408-a; and Chapter 599, Laws of 2002, and Chapter 311, Laws of 2008.

The purpose of this regulation is to enhance the consistency of the accounting treatment of assets, liabilities, reserves, income, and expenses by regulated insurers, by clearly setting forth the accounting practices and procedures to be followed in completing annual and quarterly financial statements that must be filed with the Department. The NAIC adopted a new Accounting Manual Practices and Procedures Manual as of March 2010. This regulation has been amended to update the regulation to conform to NAIC guidelines, statutory amendments and to clarify existing provisions.

Effective May 2, 2012, the Department adopted another amendment to Part 83 (DFS-06-12-00010-A, State Register of May 2, 2012) to update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2011 (instead of 2010).

Effective December 4, 2013, the Department adopted another amendment to Part 83 (DFS-09-13-00003-A, State Register of December 4, 2013) to update the reference to the Accounting Practices and Procedures Manual published by the NAIC as of March 2012, replacing the rule's former reference to the Accounting Practices and Procedures Manual as of March 2011.

Effective April 2, 2014, the Department adopted another amendment to Part 83 (DFS-52-13-00002-A, State Register of April 2, 2014) to update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2013.

Effective November 19, 2014, the Department adopted another amendment to Part 83 (DFS-23-14-00002-A, State Register of November 19, 2014) to update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2014.

Effective September 23, 2015, the Department adopted another amendment to Part 83 (DFS-20-15-00005-A, State Register of September 23, 2015) to update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2015.

The Department is considering a proposal to amend Part 83 to revise lapse rates and economic volatility used in calculating the standard scenario reserve, to update the economic volatility assumption used in the stochastic modeling for variable annuities with guaranteed living benefits, and other revisions.

- INS-02-11-00001-A (State Register of March 16, 2011) Repeal and Addition of new Part 89 (Insurance Regulation 118) (Audited Financial Statements) to Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 307(b), 1109, 4710(a)(2) and 5904(b).

Regulation 118 was originally promulgated in 1984 to implement the provisions of Insurance Law § 307(b). The regulation was repealed and a new regulation promulgated to continue to implement the provisions of Insurance Law § 307(b), which requires all but specified small insurers to file annual statements with the Superintendent for review and oversight. The new regulation added provisions modeled on those required pursuant to the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7201 et seq., which imposes on publicly held companies a comprehensive regime of audits and internal management controls and reports designed to ensure greater transparency and accountability.

The new regulation was closely patterned upon the NAIC model regulation that reflects a consensus of the insurance regulators of all states and territories of the United States as to scope, detail, needs and benefits. The new regulation was promulgated to ensure that regulated companies engage in best practices related to auditor independence, corporate governance, and internal controls over financial reporting.

- INS-02-11-00001-A (State Register of March 30, 2011) Amendment to Part 52 (Insurance Regulation 62) (Minimum Standards for the Form, Content and Sale of Health Insurance, Including Full and Fair Disclosure) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 1109, 1117, 2601, 3217, 3234 and 4512.

Insurance Law Sections 1117 and 3217 grant the Superintendent

the authority to promulgate regulations that establish minimum standards for the form, content and sale of health insurance, including long-term care insurance. This rule adopted current best practices as the minimum standards applying to internal appeals for long-term care insurance across the industry.

Specifically, the amendment established minimum standards for internal appeal procedures for long-term care insurance, nursing home and home care insurance, nursing home insurance only, and home care insurance only.

The Department is considering a proposal to amend Part 52 to establish minimum standards for the form, content, and sale of policies and contracts of accident and indemnity insurance, as well as for student accident and health insurance.

- INS-40-10-00009-A (State Register of May 4, 2011) Amendment to Part 27 (Insurance Regulation 41) (Excess Line Placements Governing Standards) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, 2105, 2118 and Article 21.

Regulation 41 enables consumers who are unable to obtain insurance from authorized insurers to obtain coverage from unauthorized insurers if the unauthorized insurers are "eligible" and an excess line broker places the insurance. Although the Superintendent does not directly regulate excess line insurers and excess line insurers are not subject to the minimum capital surplus requirements applicable to authorized insurers, the Superintendent is responsible for ensuring that adequately and appropriately capitalized insurers provide coverage to consumers. The amendment established certain minimum financial standards and surplus to policyholders vis-à-vis excess line insurers to ensure the claims-paying viability of excess line insurers. Specifically, the regulation increased the minimum surplus to policyholders that new and current excess line insurers are required to maintain.

Effective April 10, 2013, the Department amended the regulation (DFS-45-12-00002-A, State Register of April 10, 2013) to update the export list of coverages set forth in 11 NYCRR 27 and to implement Chapter 61 of the Laws of 2011 ("Chapter 61"), which revised the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010.

Effective October 8, 2014, the Department adopted another amendment to Part 27 (DFS-29-13-00002-A, State Register of October 8, 2014) to implement Chapter 61 of the Laws of 2011.

- INS-04-11-00001-A (State Register of May 11, 2011) Amendment to Part 65-1 (Insurance Regulation 68-A) and Part 65-2 (Insurance Regulation 68-B) (Regulations Implementing the Comprehensive Motor Vehicle Insurance Repairs Act) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 2307, 5103 and 5221.

Chapter 303 of the Laws of 2010 amended Insurance Law Section 5103(b)(2) to prohibit a no-fault insurer from excluding from coverage necessary emergency health services rendered in a general hospital, including ambulance services attendant thereto and related to medical screening, for any person who is injured as a result of operating a motor vehicle while in an intoxicated condition or while the person's ability to operate the vehicle is impaired by the use of a drug within the meaning of the Vehicle and Traffic Law ("VTL") § 1192. Chapter 303 also permits a no-fault insurer to maintain a cause of action against the covered person for the amount of first party benefits paid or payable on behalf of the covered person if such person is found to have violated VTL § 1192.

The Mandatory Personal Injury Protection Endorsement (New York), Additional Personal Injury Protection Endorsement (New York) and the rights and liabilities of self-insurers provisions of Regulations 68-A and 68-B were amended to comply with Chapter 303 of the Laws of 2010.

The following rulemakings were adopted in 2006:

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

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

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

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

Statutory Authority: Insurance Law Sections 201, 301, 2105, 2118 and Article 21.

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

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

In 2009, the Department adopted an amendment to the regulation (INS-24-09-00002-A, State Register of September 2, 2009) to add coverages to the “export” list and reduce the requisite declinations for several other coverages.

In 2011, the Department adopted an amendment to the regulation (INS-40-10-00009-A, State Register of May 4, 2011) that increased the minimum surplus to policyholders that excess line insurers are required to maintain.

In 2013, the Department adopted an amendment to the regulation (DFS-45-12-00002-A, State Register of April 10, 2013) that updated the export list of coverages set forth in 11 NYCRR 27 and implemented Chapter 61 of the Laws of 2011 (“Chapter 61”), which revised the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010.

In 2014, the Department adopted an amendment to the regulation (DFS-29-13-00002-A, State Register of October 8, 2014) that made additional revisions to the rule to further implement Chapter 61.

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

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

Insurance Law Section 2122(a)(2) prohibits any person from calling attention to an unauthorized insurer by any advertisement or public announcement in this state. Regulation 34-A establishes requirements regarding advertisements, statements and representations of licensees used in the solicitation of life insurance, annuities and the reporting of financial information.

The amendment to the regulation permitted “joint advertisements” in New York, which are advertisements that contain the names of, or references to, insurance policies sold by a New York authorized insurer and an affiliated insurer that is not authorized in New York. The amendment construed the terms “advertisement” and “public announcement” as used in the Insurance Law and prescribed, for the protection of New York consumers, rules and guidelines that require the truthful and adequate disclosure of all material and relevant information in joint advertisements.

- INS-31-06-00013-A (State Register of October 25, 2006) Adoption of Part 221 (Insurance Regulation 182) (Limitations upon and

Requirements for the use of Credit Information for Personal Lines Insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301, Article 28.

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

- INS-35-06-00007-A (State Register of November 15, 2006) 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, Article 52.

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

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

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

- INS-36-06-00008-A (State Register of November 29, 2006) Amendment to Part 218 (Insurance Regulation 90) (Prohibition Against Geographical Redlining and Discriminating in Certain Property/Casualty Policies) of Title 11 NYCRR.

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

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

In enacting Chapter 259 of the Laws of 2005, the Legislature sought to prohibit insurance companies from canceling, refusing to issue, or refusing to renew a homeowner’s insurance policy, including fire insurance or fire and extended coverage insurance, based solely on the insured residing in an area that is serviced by a volunteer fire department, unless such action is based on sound underwriting and actuarial principles.

The amendment established procedures for notifying applicants or insureds of the insurer’s specific reasons for canceling or refusing to issue or renew such policies. The amendment advised that an applicant or insured may contact the insurance company with any questions, and may file a complaint with the Department.

In 2013, the rule was revised as part of a consolidated amendment (DFS29-12-00004-AA, State Register of April 10, 2013) to correct out-of-date references resulting from the consolidation of the New York State Banking and Insurance Departments into the Department of Financial Services.

- INS-41-06-00006-A (State Register of December 27, 2006) Amendment to 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.

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

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

The following rulemakings were adopted in 2001:

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

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

Insurance Law Section 2336(h) provides for premium reductions for certain commercial motor vehicles when such vehicles are equipped with factory-installed auxiliary running lamps. The statutory provision requires the Superintendent, after consultation with the Department of Motor Vehicles and the Department of Transportation, to promulgate regulations that establish the qualifications and standards for the approval, utilization and installation of such lamps. Chapter 475 of the Laws of 1998 added subsection (h) to Section 2336 to induce commercial risk insureds to reduce risk levels to their commercial motor vehicles. The amendment implemented the legislative objective of Chapter 475.

In 2002, the Department adopted an amendment (INS-16-02-00002-A, State Register of June 26, 2002) to update the regulation and eliminate obsolete provisions.

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

Statutory Authority: Insurance Law Sections 201, 301, 1101, 7911 and Article 79.

Chapter 614 of the Laws of 1997 added a new Article 79 to the Insurance Law governing the making of service contracts by service contract providers, and service contract reimbursement insurance, which was added as a new kind of insurance under Section 1113(a)(28). Section 7911 specifically authorizes the Superintendent to promulgate regulations necessary to effectuate Article 79. Chapter 198 of the Laws of 1999 amended Insurance Law Section 1113(a)(28) to add indemnification coverage to the definition of service contract reimbursement insurance. Article 79 created a framework for regulating service contract providers. The new law also authorized service contract reimbursement insurance, which is intended to provide one of the three forms of financial security required to ensure that a provider will meet its obligations.

The regulation established rules governing and regulating the service contract business, and accomplished several goals. It established a procedure for the registration of providers, including the specification of minimum information necessary for the Superintendent to determine whether to register the provider. It established minimum provisions and requirements regarding service contract reimbursement insurance and service contracts. It also clarified the relationship of mechanical breakdown insurance to service contracts.

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

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

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

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

review of their health plans' decisions through an objective body of medical experts, at the health plans' expense.

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

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

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

The adoption of 11 NYCRR 99 established an appropriate methodology to calculate and determine adequate reserves to help ensure the solvency of life insurers doing business in New York. The Insurance Law specifies mortality and interest standards but does not specify an explicit method to value annuities, single premium life insurance policies, or guaranteed interest contracts, and relies on the Superintendent to specify the method. Without this regulation, there would be no standard method for valuing such products. This could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds.

With the adoption of Part 99 (Regulation 151), Part 58 of 11 NYCRR (Regulation 117) was repealed. Part 58 was repealed because its mortality tables for determining liabilities for annuities and pure endowments had been updated for new business and included in new Part 99.

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

In 2012, the Department adopted an amendment to Regulation 151 (DFS-05-12-00010-A, State Register of April 11, 2012) to allow the use of substandard annuity mortality tables in valuing impaired lives under individual single premium immediate annuities, enabling insurers to keep costs at a lower level because they will not need to hold standard reserves for impaired lives and thus offer these annuities at a more competitive price to the annuitant.

In 2014, the Department adopted an amendment to Regulation 151 (DFS-20-14-00009-A, State Register of August 27, 2014) to incorporate a new individual annuity mortality table, which had been adopted by the National Association of Insurance Commissioners, that insurers are required to use to calculate reserves on individual annuities and pure endowments issued or purchased on or after January 1, 2015. Use of the new table's mortality rates and projection scales are expected to result in increased reserves because mortality rates will be lower due to the expectation that lifetime annuitants will receive their income for longer periods of time.

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

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

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

- INS-01-01-00009-A (State Register of March 21, 2001) Amendment of 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: Insurance Law Sections 201, 301, 3201, 3216, 3217, 3218, 3221, 3231, 3232, 4235, 4237, Article 43 and Federal Social Security Act (42 U.S.C. Section 1395ss).

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

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

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

In 2011, the Department amended the regulation (INS-02-11-00001-A, State Register of March 30, 2011) to establish minimum standards for internal appeal procedures for long-term care insurance, nursing home and home care insurance, nursing home insurance only, and home care insurance only.

- INS-07-01-00001-A (State Register of May 9, 2001) Amendment of Part 89 (Insurance Regulation 118) (Audited Financial Statements) of Title 11 NYCRR.

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

Insurance Law Section 307(b) provides for the audited financial statement of every licensed insurer, with certain exceptions, and of any subsidiary described therein, together with an opinion of an independent certified public accountant on the financial statement of the insurer and any subsidiary, to be filed on or before May 31 of each year. Section 307(b) was amended by Chapter 324 of the Laws of 1992 and necessitated an amendment to Regulation 118.

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

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

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

The purpose of 11 NYCRR 83 is to enhance the consistency of the accounting treatment of assets, liabilities, reserves, income and expenses by entities subject thereto, by setting forth the accounting practices and procedures to be followed in completing annual and quarterly financial statements required by law. Certain provisions of the Insurance Law provide that authorized insurers and other entities shall file financial statements annually and quarterly with the Superintendent, on forms prescribed by the Superintendent. Except with regard to filings made by Underwriters at Lloyd's, London, the Superintendent prescribed forms and Annual and Quarterly Statement Instructions that are adopted from time to time by the National Association of Insurance Commissioners, as supplemented by additional New York forms and instructions. To assist in the completion of the Financial

Statements, the National Association of Insurance Commissioners ("NAIC") also adopts and publishes from time to time certain policy, procedure and instruction manuals. One of these manuals, The Accounting Practices and Procedures Manual Effective January 1, 2001 as of March 2000 ("Accounting Manual") includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles. The Accounting Manual is incorporated by reference into Part 83.

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

In 2003, the Department adopted an amendment to Part 83 (INS-01-03-00011-A, State Register of March 26, 2003) to update citations in Part 83 to Accounting Practices and Procedures Manual as of March 2002.

Also in 2003, the Department adopted another amendment to Part 83 (INS-26-03-00003-A, State Register of September 24, 2003) to update citations in Part 83 to Accounting Practices and Procedures Manual as of March 2003; make a technical correction; and delete an obsolete provision regarding accident and health benefits in life insurance policies and annuities.

In 2004, the Department adopted an amendment to Part 83 (INS-03-04-00004-A, State Register of May 19, 2004) to delete obsolete references to certain web sites.

Also in 2004, the Department adopted another amendment to Part 83 (INS-22-04-00005-A, State Register of September 15, 2004) to update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2004.

In 2007, the Department adopted an amendment to Part 83 (INS-43-06-00002-A, State Register of January 10, 2007) to update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2005, and to make minor modifications to the rule regarding accounting treatment of certain insurer assets.

Also in 2007, the Department adopted another amendment to Part 83 (INS-06-07-00007-A, State Register of April 25, 2007) to update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2006.

In 2011, the Department adopted an amendment to Part 83 (INS-02-11-00004-A, State Register of March 16, 2011) to update citations to Part 83 to the Accounting Practices and Procedures Manual as of March 2010. The amendment also updated the regulation to conform to NAIC guidelines, statutory amendments and to clarify existing provisions.

In 2012, the Department adopted an amendment to Part 83 (DFS-06-12-00010-A, State Register of May 2, 2012) to update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2011.

In 2013, the Department adopted an amendment to Part 83 (DFS-09-13-00003-A, State Register of December 4, 2013) that updated the reference to the Accounting Practices and Procedures Manual published by the NAIC as of March 2012.

In 2014, the Department adopted an amendment to Part 83 (DFS-52-13-00002-A, State Register of April 2, 2014) to update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2013.

Also in 2014, the Department adopted an amendment to Part 83 (DFS-23-14-00002-A, State Register of November 19, 2014) to update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2014.

In 2015, the Department adopted an amendment to Part 83 (DFS-20-15-00005-A, State Register of September 23, 2015) to update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2015.

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

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

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

The regulation, prior to the amendment, specified the rates for vendor business. The most common examples of vendor business are automobile dealerships. The rates specified in the regulation for some blocks of vendor business were inadequate. Thus a part of the amendment allowed for the rates for blocks of vendor business to be based on their actual experience. Prior to this change, coverage was not available at some vendors.

Insurance Law Sections 4216 and 4235 also require that the premium not be unreasonable in relation to the benefits provided. Another part of the amendment balanced the legislative objective of making the product available with the legislative objective that insureds receive fair value for their premium dollar.

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

- INS-15-01-00007-A (State Register of June 20, 2001) 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, and Chapter 147 of the Laws of 1999 as amended by Part JJ of Chapter 407 of the Laws of 1999.

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

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

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

Insurance Law Section 1101(b) was amended by Chapter 597 of the Laws of 1999 to provide for a new paragraph (5). It permits an unauthorized insurer that is affiliated with an insurer licensed in this state to have an office in this state to provide services to support its insurance business. Insurance Law Section 2117 was also amended by Chapter 597 of the Laws of 1999 to provide for a new subsection (i) that allows an authorized insurer to provide support services, from its office in New York, to unauthorized affiliates, provided that the unauthorized insurer has satisfied all applicable requirements for placement by excess line brokers. Both sections of law require that any documents issued by an unauthorized insurer from an office in this state contain a prominent notice that the insurer is not licensed in New York, in accordance with regulations promulgated by the Superintendent.

The amendment revised the regulation by establishing a mandatory

and uniform notice instead of permitting each insurer to establish its own notice, to ensure that consumers receive the appropriate information. The amendment also required insurers to provide notice to the Superintendent of the existence of the New York office of an unauthorized insurer to allow the Superintendent to properly regulate their activities.

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

In 2006, the Department adopted an amendment to Regulation 41 (INS-52-05-00016-A, State Register of March 8, 2006) regarding the duty of an excess line broker to deliver a stamped declarations page or cover note evidencing insurance that is stamped by the excess line association. The amendment also updated the language on the notice that is required to be prominently displayed on written confirmations of placement of coverage with excess line insurers, and the notice that is required on insurance policies issued by excess line insurers in this state. Prior to the amendment, the two notices that were in use were different.

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

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

In 2011, the Department adopted an amendment to the regulation (INS-40-10-00009-A, State Register of May 4, 2011) that increased the minimum surplus to policyholders that excess line insurers are required to maintain.

In 2013, the Department adopted an amendment to the regulation (DFS-45-12-00002-A, State Register of April 10, 2013) that updated the export list of coverages set forth in 11 NYCRR 27 and implemented Chapter 61 of the Laws of 2011 ("Chapter 61"), which revised the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010.

In 2014, the Department adopted an amendment to the regulation (DFS-29-13-00002-A, State Register of October 8, 2014) that made additional revisions to the rule to further implement Chapter 61.

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

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

The Legislature enacted Chapter 1 of the Laws of 1999 to provide for the Healthy New York Program, an initiative that was designed to encourage small employers that did not provide health insurance coverage to their employees to offer such coverage and to make coverage available to uninsured employees whose employers did not provide group health insurance coverage. By creating a standardized health insurance benefit package to be offered by all health maintenance organizations, which is made more affordable through the availability of state funded stop loss reimbursement, more small employers and uninsured employed individuals were encouraged to purchase health insurance coverage. The regulation was necessary to clarify eligibility for, and establish procedures for enrolling in, the Healthy New York Program.

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

simplified the application and administrative process for both enrollees and providers.

In 2007, the Department adopted an amendment to Regulation 171 (INS-44-06-00004-A, State Register of January 31, 2007) to reduce Healthy New York premium rates to enable more uninsured businesses and individuals to afford health insurance and generally improve the Healthy New York Program. Also in 2007, the Department adopted an amendment to Regulation 171 (INS-34-07-00017-A, State Register of November 7, 2007) to offer high deductible health plans in conjunction with the Healthy New York Program and to add additional benefits to the program.

In 2012, the Department adopted an amendment to Regulation 171 (DFS-23-12-00003-A, State Register of November 28, 2012) to mitigate large premium increases for current enrollees in Healthy NY by limiting new enrollees to the high deductible plan.

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

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

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

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

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

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

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

Statutory Authority: Insurance Law Sections 201, 301 and 5103; Vehicle and Traffic Law, Section 2407.

Vehicle and Traffic Law Section 2407 requires that an all-terrain-vehicle (“ATV”) is to be covered by a policy of liability insurance, which includes no-fault coverage for the pedestrian victims of ATV accidents. The amendment incorporated the applicable no-fault insurance forms into Regulation 68, which was adopted simultaneously.

In 2002, the Department adopted an amendment to Regulation 35-C

(INS-25-02-00004-A, State Register of September 11, 2002) to update certain references in accordance with statutory amendments.

In 2004, the Department adopted an amendment to the regulation (INS-08-04-00006-A, State Register of May 19, 2004) to conform the fraud warning statement in the required no-fault claim forms with the text (as revised in the Fourth Amendment to Regulation 95) as then written in Part 86 of 11 NYCRR; to correct any incorrect references, addresses and typographical errors; and to present the forms in a more easily readable format.

- INS-31-00-00029-A (State Register of August 22, 2001) Repeal of Part 65 (Insurance Regulation 68) and Adoption of New Part 65 (Insurance Regulation 68) (Regulations Implementing the Comprehensive Motor Vehicle Insurance Reparations Act) of Title 11 NYCRR.

Statutory Authority: Insurance Law Sections 201, 301 2601, 5521 and Article 51; Vehicle and Traffic Law Section 2407.

Insurance Regulation 68 contains provisions implementing Insurance Law Article 51, known as the Comprehensive Motor Vehicle Insurance Reparations Act and popularly referred to as the “no-fault” law. No-fault insurance was introduced to rectify many problems that were inherent in the existing tort system that were utilized to settle claims, and to provide for prompt payment of health care and loss of earnings benefits. The no-fault insurance coverage endorsement contained in Regulation 35-C, which was incorporated into Regulation 68 by the 2001 amendment, implemented Vehicle and Traffic Law Section 2407, which affords no-fault coverage to the pedestrian victims of ATV accidents.

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

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

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

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

The amendment to Regulation 68-C updated provisions relating to Personal Injury Protection Benefits (“PIP”) in conformance with

changes to requirements regarding forms to be used by insureds, claimants and providers. The amendment to Regulation 68-D revised the rulemakings and requirements applicable to the arbitration of no-fault claims. It was intended to make the system more efficient for all participants.

In 2004, the Department adopted amendments to subpart 65-4 (Regulation 65-D) (INS-43-03-00003-A and 43-03-00005-A, State Register of February 4, 2004) to correct an erroneous cross reference and insert a requirement that was inadvertently omitted from the previously revised regulation: the long-standing administrative procedure that the designated administrator of the no-fault administration system will consult with the Department before making final determinations on requests to recuse an arbitrator for conflict of interest reasons. The rulemaking also provided that determinations shall be in writing and in a format approved by the Department.

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

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

In 2013, the Department adopted an amendment to Regulation 68 that added subpart 65-5 (Insurance Regulation 68-E) (DFS-11-13-00008-A, State Register of November 13, 2013) that established standards and procedures for investigating and suspending or removing the authorization for health service providers to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to Insurance Law § 5109.

Also in 2013, the Department adopted an amendment to subpart 65-3 (Insurance Regulation 68-C) (DFS-20-12-00009-A, State Register of February 20, 2013) to reduce the number of automobile personal injury protection claims that would have remained open indefinitely by: (i) requiring an applicant for benefits to either submit any requested verification within the applicant's control or possession, or provide reasonable justification for failing to do so within 120 calendar days from the date of the initial verification request; (ii) reducing litigation and arbitration by providing that a technical defect in an insurer's verification request, notice, or claim denial does not discharge the recipient's obligation to comply with the request or notice or invalidate an otherwise proper claim denial; and (iii) preventing an injured person's policy limit from being unjustly depleted by providing that no payment is due for services to the extent the charges exceed the applicable fee schedules or where the services for which payment is requested were not rendered.

In 2015 the Department adopted an amendment to subpart 65-4 (Insurance Regulation 68-D) (DFS-29-14-00003-A, February 4, 2015) that revised the fee structure awarded to attorneys who prevail in no-fault disputes on behalf of applicants.

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

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

Insurance Law Sections 2119 and 2120 require that an agent or broker keep records that reasonably demonstrate moneys collected from insureds and that those records demonstrate that the portion of those funds that are held on behalf of insurers represent net premiums (premiums paid less commissions earned.) Insurance Law Section 2121 acknowledges that a broker, who traditionally represents the

insured, will be an agent of the insurer who delivers a contract, for purposes of premium collection.

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

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

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

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

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

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

PART 2. BANKING REGULATIONS

Pursuant to Section 207 of the State Administrative Procedure Act, Review of Existing Rules, notice is hereby given of the following rules relating to banking which the Department of Financial Services will be reviewing this year to determine whether they should be continued or modified. These rules were adopted in 2013, 2011, 2006, and 2001. 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:

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2013 Rules

There were no new Banking regulation amendments or adoptions in 2013.

2011 Rules

Amendments to Part 20 of the General Regulations of the Superintendent (Payment of Interest on Commercial Bank Deposits)

a. Description of rule: This rule prohibits banks, trust companies,

private bankers, Article XII investment companies and branches and agencies of foreign banks from paying interest on deposits or credit balances which are payable on demand.

b. Legal basis for the rule: Banking Law § 14.

c. Need for rule: This rule was repealed.

Amendments to Part 301.6 of the General Regulations of the Superintendent (Security at Automated Teller Machines)

a. Description of rule: This rule implements the requirements of the ATM Safety Act, Article II of the Banking Law.

b. Legal basis for the rule: Banking Law §§ 12, 75-n as amended by l. 2011, chapter 62, part A, § 104(e), Financial Services Law §§ 202 and 302.

c. Need for rule: This rule is necessary to clarify the filing of the deadlines for the annual report of compliance and also to require that compliance was under the penalty of perjury.

2006 Rules

Adoption of New Part 6.8 of the General Regulations of the Superintendent (Overdraft Protection Charges)

a. Description of rule: This rule allows New York state-chartered banks, trust companies, savings banks and savings and loan associations to impose charges regarding insufficient funds to the same extent as national banks and federal savings associations.

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, trust companies, savings banks and savings and loan associations parity with national banks and federal savings associations with regard to overdraft charges.

Adoption of New Part 6.9 of the General Regulations of the Superintendent (Mergers with Non-Bank Affiliates)

a. Description of rule: This rule allows for merger of a bank or trust company to merge with a non-bank affiliate.

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

c. Need for rule: This rule is necessary to give New York state-chartered banks and trust companies parity with national banks and federal savings associations with regard to mergers with non-bank affiliates.

Adoption of New Part 6.10 of the General Regulations of the Superintendent (Investments in Public Deposit Banks by Savings Banks and Savings and Loan Associations)

a. Description of rule: This rule allows New York state-chartered savings banks and savings and loan associations to invest in to invest in public deposit bank subsidiaries.

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

c. Need for rule: This rule is necessary to give New York state-chartered savings banks and savings and loan associations parity with federal savings association with regard to investing without limitation in a public deposit bank subsidiary.

Amendment to Part 31 of the General Regulations of the Superintendent (Investments of Banks or Trust Companies in Certain Corporations)

a. Description of rule: This rule allows New York state-chartered banks and trust companies to make an investment in the capital stock of Atlantic Central Bankers Bank.

b. Legal Basis for the rule: Banking Law §§ 14(1)(d) and 97(5).

c. Need for rule: This rule is necessary to permit banks to acquire a membership interest in Atlantic Central Bankers Bank through a stock investment. A membership enables the banks to engage in business operations and offer products and services to their customers that could not be offered effectively or economically by the member institutions individually.

Amendment to Part 32 of the General Regulations of the Superintendent (Maximum Charges for Payments made against Insufficient Funds, Uncollected Balances and Return Items; Certain Disclosures)

a. Description of rule: This rule authorizes New York state-chartered banks, trust companies and thrift institutions to charge a daily overdraft or bounce protection fee on checks, other payment orders, or electronic transactions accepted or honored.

b. Legal Basis for the rule: Banking Law §§ 14(1), 108(8), 202, 235-c, 383(13).

c. Need for rule: This rule is necessary to clarify the provisions of the rule pertaining to charges for checks subject to in sufficient funds, return, and overdraft charges; to permit banking institutions to apply different charges with respect to the type of the account (e.g., consumer accounts, commercial accounts, etc.); and to vary the amount of such charges with respect to whether the checks are paid, accepted or returned. In addition, it clarifies that such charges also apply to electronic transactions such as ATM and point-of-sale transactions.

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

a. Description of rule: This rule pertains to the making of certain residential mortgage loans, referred to as high cost home loans.

b. Legal Basis for the rule: Banking Law §§ 6i, 6l, 13, and 14.

c. Need for rule: This rule is needed to conform the regulation to various provisions to Banking Law § 6-l.

Amendments to Part 76 of the General Regulations of the Superintendent (Compliance with Community Reinvestment Act Requirements)

a. Description of rule: This rule pertains to the framework and criteria by which the Department of Financial Services assesses a banking institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods.

b. Legal basis for the rule: Banking Law §§ 10, 14, 28-b and Art. XII.

c. Need for rule: This rule is needed to conform Part 76 to changes in the regulations of the federal bank regulatory agencies under the Community Reinvestment Act.

Adoption of New Part 114 of the General Regulations of the Superintendent (Supervision of Article XII Investment Company Holding Companies and Their Subsidiaries for Purposes of the European Union Financial Conglomerates Directive)

a. Description of rule: This rule outlines the Superintendent's examination, supervision, regulation and enforcement authority over Article XII investment company parent organizations and their subsidiaries for purpose of providing equivalent supervision as required under the European Union Financial Conglomerates Directive.

b. Legal basis for the rule: Banking Law § 14 and Art. XII.

c. Need for rule: This rule is needed to clarify the Superintendent's examination, supervision, regulation and enforcement authority over Article XII investment company parent organizations and their subsidiaries for purpose of providing equivalent supervision as required under the European Union Financial Conglomerates Directive.

Amendments to Part 400.1(a) of the General Regulations of the Superintendent (Licensed Cashers of Checks – Original Issuance of License or Change of Control of a License)

a. Description of rule: This rule outlines the requirements for the licensing and business of check cashers in New York.

b. Legal basis for the rule: Banking Law §§ 12, 37(3), 367, 369, 371 and 372.

c. Need for rule: This rule is necessary to conform Part 440.1(a) to amendments in the Banking Law which provide for the regulation of the business of check cashing, whether performed for customers who are natural persons or business entities.

Amendments to Part 400.1(g) of the General Regulations of the Superintendent (Licensed Cashers of Checks – Original Issuance of License or Change of Control of a License)

a. Description of rule: This rule outlines the requirements for the licensing and business of check cashers in New York.

b. Legal basis for the rule: Banking Law §§ 12, 37(3), 367, 369, 371 and 372.

c. Need for rule: This rule clarifies that the Superintendent may permit a location to be licensed which is closer than three tenths of a mile from an existing licensee, so long as the newly licensed location

is a “restricted location”, that is a location which is restricted to the cashing of checks.

Amendments to Part 400.11 of the General Regulations of the Superintendent (Licensed Cashers of Checks – Fees)

a. Description of rule: This rule outlines the requirements for the conduct of business of check cashers in New York.

b. Legal basis for the rule: Banking Law §§ 12, 37(3), 367, 369, 371 and 372.

c. Need for rule: This rule is necessary to clarify that check cashers must post a schedule of their fees.

Adoption of New Part 404 of the General Regulations of the Superintendent (Budget Planners/Delegation of Certain Activities)

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 §§ 12 and 587.

c. Need for rule: This rule is necessary to set forth the regulatory requirements and standards of operation for entities licensed under Article 12-C of the New York banking law to conduct the business of budget planning when licensees use the services of third party entities in making payments of debtor funds to creditors of debtors.

2001 Rules

Adoption of new Part 6.6 of the General Regulations of the Superintendent (Exemption from Requirements of Banking Law § 7010 Concerning Mandated Number of Meetings of Boards of Directors and Executive Committees of Banks and Trust Companies)

d. Description of rule: This rule sets forth the circumstances in which a board of directors of a bank or a trust company may meet only six times per year.

e. Legal basis for the rule: Banking Law §§ 13.4, 14, and 14-g.

f. Need for rule: Part 6.6 provides relief from Banking Law § 7010 regarding the required number of yearly board of director meetings for banks or trust companies that are well-capitalized, well-managed and have been in existence for more than five years.

Higher Education Services Corporation

Rule Review - 2016

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 2016. 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 2016 calendar year:

8 NYCRR § 2004.1 – Definitions

Description of Rule: This rule establishes the definitions used in Part 2004, which relates to the limitation, suspension or termination of a college’s or lender’s eligibility to participate in HESC-administered loan programs, which may impact participation in other programs administered by HESC.

Legal Basis for Rule: Education Law §§ 653, 655, 680, and 691.

Need for Rule: This rule defines various terms used throughout Part 2004 and therefore is necessary for consistent administration.

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

8 NYCRR § 2213.3 – College eligibility requirements

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 fixed rate private education loan to fill the gap between college costs and currently available State and federal student aid. This rule sets forth the college eligibility requirements for participation in the program.

Legal Basis for Rule: Education Law §§ 653, 655, 691(6), 691(10), and 692(9).

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 eligible colleges.

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

8 NYCRR § 2213.11 – Program loan verification requirements

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 fixed rate private education loan to fill the gap between college costs and currently available State and federal student aid. This rule establishes the program’s loan verification requirements.

Legal Basis for Rule: Education Law §§ 653, 655, 691(7), 691(10), and 692(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 criteria for all lender underwriting, including verification requirements.

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

8 NYCRR § 2213.14 – Processing program loan proceeds

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 fixed rate private education loan to fill the gap between college costs and currently available State and federal student aid. This rule establishes the requirements for processing program loan proceeds.

Legal Basis for Rule: Education Law §§ 653, 655, 691(8), and 691(10).

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 requirements for processing program loan proceeds.

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

8 NYCRR § 2213.22 – Default claims

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 fixed rate private education loan to fill the gap between college costs and currently available State and federal student aid. This rule establishes the requirements associated with processing default claims.

Legal Basis for Rule: Education Law §§ 653, 655, 691(6), 691(7), 691(10), 692(8), and 693(5).

Need for Rule: Program loan holders are required to file default claims with HESC in connection with borrowers (and cosigners) whose program loans enter default under the statute. Therefore, this rule is necessary to implement the statute.

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

NYS Higher Education Services Corporation

99 Washington Avenue, Room 1315

Albany, New York 12255

Telephone: (518) 474-5592

Email: regcomments@hesc.ny.gov

Department of Law

Pursuant to SAPA section 207, the Law Department submits the following list of its rules that were adopted during calendar year 2006 and invites public comment on the continuation or modification of

such rules. 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.

RULES ADOPTED IN 2006

(1) LAW-13-06-00001-A Registration of Charitable Entities

Renumbering of Parts 95 to 93, 103 to 97, 104 to 98 and 105 to 99; and addition of new Parts 90, 91, 92, 94, 95 and 96 to Title 13 NYCRR.

Analysis of the need for the rule: The purpose of the rules is to require registration of and financial filing by charitable entities and fundraising professionals and regulation of solicitation and administration of charitable contributions and assets.

Legal basis for the rule: Estates, Powers and Trusts Law, section 8-1.4(h); Executive Law, section 177.

Agency Representative: Written comments concerning the continuation or modification of the above rule may be submitted to: Karin Kunstler Goldman, Deputy Bureau Chief, 120 Broadway, 3rd Floor, New York, NY 10271, (212) 416-8392, Karin.KunstlerGoldman@ag.ny.gov.

Office of Mental Health

Rule Review – 2011, 2006 and 2001

Section 207 of the State Administrative Procedure Act requires that any rule adopted by a State agency after 1996 be reviewed after five years, and, thereafter, at five-year intervals. The purpose of the review is to establish whether or not the rule should be continued or modified. Consensus rule makings, emergency adoptions, rule makings which resulted in the repeal of a Part, and other rules that have expired are not subject to rule review.

In accordance with this statutory requirement, the New York State Office of Mental Health (OMH) hereby gives notice of rules that OMH adopted during the calendar years 2011 and 2006. The only two regulations that OMH adopted in 2001 were promulgated via the consensus process; therefore, no rules from 2001 are subject to this rule review.

The public is invited to review and comment on the continuation or modification of the rules listed below. Comments must be submitted in writing and received within 45 days of the date of publication of this Notice. Comments should be submitted to Office of Counsel, Bureau of Policy, Regulation and Legislation, New York State Office of Mental Health, 44 Holland Avenue, Albany, New York 12229 or via e-mail at regs@omh.ny.gov.

#OMH-32-11-00003-A Implementation of Medicaid Fee Reductions in Various OMH-Licensed Programs. Proposed in State Register on August 10, 2011; Adopted October 19, 2011

Purpose: Amendments were made to three separate Parts of Title 14 NYCRR – Part 512 (Personalized Recovery Oriented Services “PROS”); Part 588 (Medical Assistance Payment for Outpatient Programs); Part 591 (Medical Assistance Payment for Comprehensive Psychiatric Emergency Programs “CPEP”) to reduce rates for various non-State-operated programs consistent with the 2011-2012 enacted State budget.

Analysis of Need: The amendments to Part 512, Part 588 and Part 591 were necessary to implement Medicaid fee reductions for OMH-licensed programs including: PROS, Day Treatment, Partial Hospitalization, Intensive Psychiatric Rehabilitation Treatment Programs and CPEP. These amendments were required to implement a continuation of the 1.1% reduction to Medicaid, as required by the 2011-2012 enacted State budget. The rate decreases were effective as of April 1, 2011. The regulations were amended in 2012 and most recently in 2015 to reflect new rates consistent with the enacted State budget during those years.

Legal Base: Section 7.09 of the Mental Hygiene Law grants the Commissioner of OMH the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Section 43.01 of the Mental Hygiene Law gives the Commissioner the authority to set rates for outpatient services at facilities operated by OMH. Section 43.02 of the Mental Hygiene Law provides that under the Medical Assistance Program for services

at facilities licensed by OMH shall be at rates certified by the Commissioner of Mental Health and approved by the Director of Budget.

#OMH-32-11-00004-A Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth. Proposed in State Register on August 10, 2011; Adopted November 2, 2011.

Purpose: Amendments were made to 14 NYCRR Part 578 (Medical Assistance Rates of Payment for Residential Treatment Facilities “RTF” for Children and Youth) to adjust the reimbursement methodology for eligible pharmaceutical costs for RTFs and to freeze rates of payment to RTF providers effective July 1, 2011.

Analysis of Need: On February 2, 2011, OMH adopted as final amendments to this Part that specified that, on or after January 1, 2011, and contingent upon federal approval, allowable operating costs for RTFs for children and youth licensed by OMH shall not include the costs of pharmaceuticals listed on the New York State Medicaid formulary. The regulation further stated, “Such costs may be reimbursed, as appropriate, on a fee-for-service basis by the Medicaid program.” After this rule was promulgated, it was determined that a change was needed because when children are admitted to an RTF, there may be a significant lag of up to 90 days before they are deemed to be Medicaid eligible. To ensure that children in RTF settings receive necessary medications, OMH amended the regulation to provide that allowable operating costs for the RTFs shall include pharmaceutical costs incurred during the first 90 days after a child’s admission to an RTF or until Medicaid eligibility is established for the individual, whichever comes first. The rule also served to freeze rates paid to RTF providers for the period July 1, 2011 through June 30, 2012. This was consistent with the 2011-2012 enacted State budget and reflected the serious fiscal condition of the State. An amendment one year later extended the freeze in rates through June 30, 2013, which was consistent with the 2012-2013 enacted State budget.

Legal Base: Section 7.09 of the Mental Hygiene Law grants the Commissioner of OMH the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Section 43.02 of the Mental Hygiene Law provides that the Commissioner has the power to establish standards and methods for determining rates of payment made by government agencies pursuant to Title 11 of Article 5 of the Social Services Law for services provided by facilities, including residential treatment facilities for children and youth that are licensed by OMH.

#OMH-34-11-00017-A Implementation of 1.1% Medicaid Fee Reductions for Operating Rates of Continuing Day Treatment Programs. Proposed in State Register on August 24, 2011; Adopted November 2, 2011.

Purpose: Amendments were made to 14 NYCRR Part 588 (Medical Assistance Payment for Outpatient Programs) to reduce rates to be consistent with the 2011-2012 enacted State budget.

Analysis of Need: The amendments to Part 588 were necessary to implement Medicaid fee reductions for the operating rate of Continuing Day Treatment (CDT) Programs that are licensed pursuant to Article 31 of the Mental Hygiene Law and operated by agencies licensed pursuant to Article 28 of the Public Health Law, as well as to reduce the Medicaid fee for CDT programs licensed solely under Article 31 of the Mental Hygiene Law. These amendments were required to implement a continuation of the 1.1% reduction to Medicaid, as required by the enacted 2011-2012 State budget. The rate decreases were effective as of April 1, 2011.

Legal Base: Section 7.09 of the Mental Hygiene Law grants the Commissioner of OMH the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Section 43.01 of the Mental Hygiene Law gives the Commissioner the authority to set rates for outpatient services at facilities operated by OMH. Section 43.02 of the Mental Hygiene Law provides that under the Medical Assistance Program for services at facilities licensed by OMH shall be at rates certified by the Commissioner of Mental Health and approved by the Director of Budget.

#OMH-27-05-00003-A Patient Visiting Rights. Proposed in State Register on July 6, 2005; Continued on December 28, 2005; Adopted on July 5, 2006.

Purpose: Amendments were made to Section 527.2(c) of Title 14

NYCRR (Rights of Patients), a new Section 527.10 was added, and Part 21 (Communications and Visits) was repealed. These amendments were made to update regulations governing patients' rights to visitation and to repeal obsolete regulations.

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

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

Legal Base: Section 7.09 of the Mental Hygiene Law grants the Commissioner of OMH the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Section 33.05 of the Mental Hygiene Law requires the Commissioner to establish guidelines to ensure that patients at facilities have full opportunities for conducting correspondence, have reasonable access to telephones, and have frequent and convenient opportunities to meet with visitors.

Department of Motor Vehicles

Five Year Review of Rules Adopted by the Department of Motor Vehicles in Calendar Years 2001, 2006 And 2011 Required to be Reviewed in Calendar Year 2016

As required by section 207 of the State Administrative Procedure Act, the following is a list of rules that were adopted by the Department of Motor Vehicles in calendar years 2001, 2006 and 2011 which must be reviewed in calendar year 2016. 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.

2011

MTV-50-10-00002 Part 131 Points for Cell Phone Violations.

Analysis of the need for the rule: This regulation imposed two points for cell phone violations, because statistics demonstrated the serious highway safety risk posed by persons using cell phones while operating a motor vehicle. This regulation was superseded by subsequent regulatory amendments, resulting in the current assignment of 5 points for cell phone violations.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 510(3)(i).

MTV-51-10-00006 Part 77 Private Service Bureaus

Analysis of the need for the rule: This amendment required private service bureaus, which assist customers in obtaining licenses, registrations and titles, to post on their websites a disclaimer that the services they provide may be obtained for no additional charge directly from the Department of Motor Vehicles' website. This regulations is still required, in order to notify customers of their options.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 395.

MTV- 51-10-00008 Part 79 Inspection of stretch limousines

Analysis of the need for the rule: This amendment required stretch limousines carrying 10 or more passengers to be subject to the Department of Transportation's stringent bus safety inspection. This regulation remains necessary in order to insure the structural integrity of stretch limousines.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 301(a),(c) and 302(a) and (c), and section 140 of the Transportation Law.

MTV- 51-10-00010 Part 160 Fee for Driver's Manual

Analysis of the need for the rule: The regulation required entities to pay \$1 for the cost of a driver's manual; applicants for a learner's permit would still obtain the manual for free. The \$1 fee was necessary to defray the costs of publishing the manual, particularly bulk sales for the benefit of driving schools and the American Automobile Association (AAA). This regulation is still needed to defray the cost of producing the manual.

Legal basis for the rule: Vehicle and Traffic Law section 215(a) and Public Officers Law section 87(1)(b)

MTV-51-10-00023 Part 136 Relicensing After Revocation/ Problem Driver

Analysis of the need for the rule: The regulation strengthened the provisions related to relicensing after revocation, particularly in relation to "problem drivers" and in reviewing out-of-state alcohol related convictions when reviewing a driver's entire record. These amendments remain necessary and critical to the DMV's mission of keeping dangerous drivers off of our State's highways.

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

MTV-19-11-00002 Part 79 Application for inspection station license

Analysis of the need for the rule: This regulation limited the number of inspection stations in most counties in the State. Without such a limitation, the DMV was unable to audit and investigate such stations, in order to monitor their compliance with statutory and regulatory requirements. Non-compliance not only puts consumers at risk, but also threatens the State's compliance with the federal Clean Air Act. Such Act, which requires the State to annually conduct a specified number of audits of each inspection station. This regulation remains necessary to insure compliance with the Act and to provide consumer protection.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 301(a), (d)(1), 302(a),(e), 303(a)(1) and (d)(1).

MTV-31-11-00006 Part 131 Points for cell phone and texting violations

Analysis of the need for the rule: This regulation increased the points for cell phone violations from 2 to 3 points and assigned 3 points for texting violations. This regulation was superseded by a subsequent regulation, resulting in the current assignment of 5 points for cell phone and texting violations.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 510(3)(i)

2006

MTV-04-06-00002 Part 3 Driver license requirements

Analysis of the need for the rule: This regulation was adopted for three reasons. First, conforming regulatory changes were needed in light of Chapter 339 of 2005, which provided that a class D license is valid to operate a vehicle weighing up to 26,00 pounds. Thus, the O2 restriction was eliminated because it applied to trucks not exceeding 18,000 pounds. Second, chapter 60 of 2005 required that the tow truck endorsement should be "W," not "CT." Finally, an A3 restriction was created to provide that school bus and municipal drivers could hold a commercial driver's license without complying with federal medical requirements. Superseding amendments have renamed that restriction "med cert," but the scope of the restriction is still applicable.

Legal basis for rule: Vehicle and Traffic Law sections 215(a), 501 and 501-a.

MTV-27-06-00010 Part 136 Restoration of Commercial Driver's licenses

Analysis of the need for the rule: This regulation provides that if a person's driver's license is revoked and such person's underlying non-commercial driver's license is restored, then such person's commercial driver's license shall automatically be restored upon serving the minimum revocation period, unless such person commits additional violations of the law. A person whose license is revoked must apply for relicensure to the DMV upon serving the minimum period of revocation. The Commissioner conducts a thorough review of the person's driving record under Part 136. If the non-commercial portion of the license is restored, the commercial portion of such license will remain revoked even if the underlying non-commercial portion is restored—usually the commercial portion is revoked for a longer period of time. However, once such person serves the minimum revocation period related to commercial license sanctions, that portion of the license is automatically restored because the Commissioner has already conducted a full Part 136 review. The regulation benefits the customer because he/she does not have to apply again and it benefits the DMV because employee resources are conserved.

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

2001

MTV- 47-00-00009 Part 48 Transportation of Logs

Analysis of the need for the rule: This regulation incorporated by reference the New York State Department of Transportation rules regarding securing loads on commercial motor vehicles. State DOT's regulations incorporate by reference the federal standard for load securement. Incorporating DOT's regulation insured that operators of such vehicles must comply with only one standard and also diminished confusion in the law enforcement community about the appropriate standard.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) and 377(2).

MTV-52-00-00002 Part 46 Reflective tape on school buses

Analysis of the need for the rule: This regulation was necessary to conform to Chapter 525 of the Laws of 1999, which required reflective tape on school buses. Its purpose was to make school buses more visible to the motoring public. Since the statute regarding this requirement is still in place, this rule remains necessary.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) and 375(21-h).

MTV-26-01-00004 Part 78 Sale of special number plates by dealers

Analysis of the need for the rule: This regulation was necessary to comply with Chapter 452 of the Laws of 2000, which provided that dealers could assist customers in obtaining custom plates from the DMV. The law authorized dealers to charge \$5 for this service. The regulation required dealers to notify the customer of the \$5 fee and the cost of the plate. Since the law is still in place, this regulation remains necessary.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) and 403-b.

MTV-22-01-00003-Parts 82 and 127- Procedures for Hearings

Analysis of the need for the rule: The amendments to Parts 82 and 127 established uniform hearing procedures for all regulated parties: repair shops, dealers and inspection stations. The rule also conformed to Vehicle and Traffic Law section 415(9-a) to provide that if a dealer's registration is suspended pending hearing, such hearing must be held within 10 days. Finally, the rule extended the time within which a fatal accident hearing must be held, from 6 to 12 months. In light of the large number of fatal accidents and the length of time it takes for law enforcement to fully investigate such accidents, this extension remains warranted.

Legal basis for rule: Vehicle and Traffic Law sections 215(a), 398(f)(1)(b), 398-g(2) and 415(9-a), and section 301 of the State Administrative Procedure Act.

MTV-32-01-00001 Parts 121, 122, 123, 124 and 125 Traffic Violation Bureau hearings

Analysis of the need for the rule: This rule clarified procedures about how to answer summonses (by mail, phone or in person) and

how to reschedule a hearing in the DMV's Traffic Violation Bureaus. These amendments remain necessary to conform to TVB procedures.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 225(3), 226(1), 226(2) and 227(1).

MTV-25-01-00001 Part 79 Eliminate headlight aiming from inspection process

Analysis of the need for the rule: This amendment eliminated the requirement that the annual safety inspection assess whether a motor vehicle's headlights are properly aimed. Since this regulations required inspection stations to purchase expensive equipment to test the headlights with little documented benefit to the public, the DMV eliminated the requirement. The basis for this rule remains necessary.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 301(a) and 302(a).

MTV-33-01-00004 Part 32 Insurance identification cards

Analysis of the need for the rule: This amendment made several technical amendments to the regulations governing insurance identification cards. Most significantly, it required the use of an encrypted two dimensional bar code. Since this bar code assists with weeding out fraudulent ID cards, the regulation remains necessary.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a), 311(10), 312(4) and (5), 319(3) and 370(1).

MTV-39-01-00025 Part 35- Enforcement of Motor Vehicle Liability Insurance Laws

Analysis of the need for the rule: This regulation repealed and adopted a new Part 35, in relation to enforcement of the liability insurance rules. With the implementation of the Insurance Information Enforcement System (IIES), companies electronically report new policies and cancellations to the DMV. The amendments put motorists and insurers on notice about how the DMV notifies motorists about their failure to maintain insurance and the sanctions and penalties resulting from non-compliance. This rule is still valid and remains necessary.

Legal basis for the rule: Vehicle and Traffic Law 215(a), 312(4), 313(2)(c), 313(4), 318(1) and 319(1).

Public Service Commission

Pursuant to § 207 of the State Administrative Procedure Act: Review of Existing Rules, notice is hereby provided that the Public Service Commission proposes to continue the following rules adopted in 2001, 2006, and 2011 without modification or as revised. Comments are welcome on proposed continuation of the rules. Five copies of comments should be sent to: Kathleen Burgess, Secretary to the Commission, 3 Empire State Plaza, Albany, New York 12223-1350, on or before March 4, 2016. 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 Subpart 85-2 and Parts 86 and 88 (Case No. 06-M-1019).

a. Description of rules:

Amended the regulations implementing Article VII of the Public Service Law contained in 16 NYCRR Subpart 85-2, Procedures with Respect to All Electric Transmission Lines and Fuel Gas Transmission Lines 10 or More Miles Long, Part 86, General Exhibits, and Part 88, Exhibits for Electric Transmission Filings. In order to make it possible for the Commission to act on a National Interest Electric Transmission Corridor (NIETC) project within one year, a new § 85-2.9 was added to specify precisely the information an application for an electric transmission line in a NIETC must contain in order to be considered "filed." In addition, this section streamlined the review process by identifying those application requirements specific to portions of transmission lines that are proposed to be installed overhead, underground or underwater, thus avoiding the need to process a significant number of waiver requests. The amendments also clarified applicants' obligations regarding substantive local legal provisions and transmission system studies.

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

c. No hearings or public meetings are scheduled.

d. The rules are in effect and will continue.

e. Need for and legal basis of rules:

The rules address the impacts of electricity transmission limitations in New York State by speeding up the application process for NIETC projects. They precisely specify the information required on an application to install an electric transmission line, thus enabling the Public Service Commission to act on the proposed project within a year. The end result of quick approval of energy transmission projects is enhancement of transmission capacity, which furthers reliability and national security interests.

Pursuant to State Administrative Procedure Act (SAPA) § 207, we published, in the State Register on January 7, 2015, a Notice of Proposed Continuation of Rules adopted in 2000, 2005 and 2010. No comments were received.

Department of State

January, 2016

Review of Rules Adopted by the Department of State in Calendar Year 2013 Required to be Reviewed in Calendar Year 2016; Review of Rules Adopted by the Department of State in Calendar Year 2011 Required to be Reviewed in Calendar Year 2016; Review of Rules Adopted by the Department of State in Calendar Year 2006 Required to be Re-Reviewed in Calendar Year 2016; and Review of Rules Adopted by the Department of State in Calendar Year 2001 Required to be Re-Reviewed Again in Calendar Year 2016

Public comment on the continuation or modification of the rules listed below is invited and will be accepted until February 22, 2016. Comments may be submitted to the contact person indicated at the end of this list.

RULES ADOPTED IN 2013

As required by section 207 of the State Administrative Procedure Act (SAPA), the following list of rules adopted by the Department of State in calendar year 2013 must be reviewed in calendar year 2016. This list does not include rules that were adopted as consensus or emergency rules in 2013, or rules that subsequently have been amended or repealed. The original Notices of Proposed Rulemaking for all of the following rules required the preparation of a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

(1) DOS-22-12-00017 Administrative Expenses and Executive Compensation of Providers of Services to New Yorkers

Part 144 was added to Title 19 of NYCRR to address limits on the use of State funds/State-authorized payments for administrative expenses and executive compensation.

Analysis of the need for the rule: The rule was needed to implement Executive Order No. 38 of 2012, to ensure that State funds or State-authorized payments paid by this Department to certain providers (of critical services to New Yorkers) are not used to support excessive compensation or unnecessary administrative costs.

Legal basis for the rule: Executive Law, section 91

(2) DOS-43-12-00001 Real Estate Advertising

Section 175.25 was added to Title 19 of NYCRR to provide protection to the public and guidance to real estate licensees pertaining to advertising by real estate licensees.

Analysis of the need for the rule: The rule was needed to advance the legislative intent of Article 12-A of the Real Property Law, to protect consumers and provide guidance to real estate licensees on proper advertising practices so as to ensure that advertisements are not false or misleading.

Legal basis for the rule: Real Property Law, section 442-k(1)

(3) DOS-07-13-00002 Address Confidentiality Program

Part 134 was added to Title 19 of NYCRR to implement the Address Confidentiality Program, as required by Executive Law, section 108.

Analysis of the need for the rule: Chapter 2011 of the Laws of 2011, as amended by Chapter 491 of the Laws of 2012, require this Department to establish an Address Confidentiality Program and to promulgate regulations to implement the program.

Legal basis for the rule: Executive Law, section 108

(4) DOS-16-13-00005 Appraisal Trainee/Supervision Standards and Reciprocity

Sections 1101.4, 1103.4 and 1104.1 of Title 19 of NYCRR were amended to conform New York's regulations on real estate appraisers to new Federal requirements.

Analysis of the need for the rule: New York is required to comply with certain federal real estate appraisal standards in order to maintain federal recognition of its State appraisal program.

Legal basis for the rule: Executive Law, section 160-d

(5) DOS-16-13-00006 Distinguishability of Corporation and Other Business Entity Names

Section 156.2 is repealed and a new section 156.2 was added to Title 19 of NYCRR to implement distinguishability requirements pertaining to entity names.

Analysis of the need for the rule: This rule was needed to provide improved guidelines to determine whether a proposed name is acceptable as the name of an entity in the records of the Secretary of State

Legal basis for the rule: Executive Law, section 91

(6) DOS-18-13-00006 Temporary Licenses and Verification of Education

Sections 160.5 and 160.33 of Title 19 of NYCRR were amended to implement the appearance enhancement phase of the statewide "E-Licensing" initiative.

Analysis of the need for the rule: This Department was one of six pilot agencies selected to participate in an initiative to permit license applicants to apply on-line to schedule examinations and apply for licenses. This rule was needed for this Department to implement the pilot program related to processes impacting applicants for appearance enhancement licenses.

Legal basis for the rule: General Business Law, section 402

RULES ADOPTED IN 2011

As required by section 207 of the State Administrative Procedure Act (SAPA), the following list of rules adopted by the Department of State in calendar year 2011 must be reviewed in calendar year 2016. This list does not include rules that were adopted as consensus or emergency rules in 2011, or rules that subsequently have been amended or repealed. The original Notices of Proposed Rulemaking for all of the following rules required the preparation of a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

(1) DOS-47-10-00010 Regulation of Crematories Subject to Not-For-Profit Corporation Law

Part 203 was repealed and a new Part 203 of Title 19 of NYCRR was added to clarify procedures and record requirements for crematories, and to enhance consumer protection.

Analysis of the need for the rule: The rule was needed to eliminate inconsistencies between the prior Part 203 and section 1517 of the Not-For-Profit Corporation Law, and to create clarity and uniformity in the cremation and funeral trades.

Legal basis for the rule: Not-For-Profit Corporation Law, Article 15

RULES ADOPTED IN 2006

As required by section 207 of SAPA, the following list of rules adopted by the Department of State in calendar year 2006 must be reviewed in calendar year 2016. This list does not include rules that were adopted as consensus or emergency rules in 2006, or rules that subsequently have been amended or repealed. The original Notices of Proposed Rulemaking for all of the following rules required the preparation of a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

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

Subpart 197-2 of Title 19 of NYCRR was added to establish standards for home-inspection courses, as well as procedures for course approval.

Analysis of the need for the rule: The rule was needed to implement the home-inspection licensing program under Article 12-B of the Real

Property Law, as established by Chapter 461 of the Laws of 2004 and amended by Chapter 225 of the Laws of 2005.

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

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

Part 197 and subpart 197-1 of Title 19 of NYCRR were added to establish the type and amount of liability coverage required of licensed home inspectors.

Analysis of the need for the rule: The rule was needed, pursuant to Article 12-B of the Real Property Law, to further implement the home-inspection licensing program as established by Chapter 461 of the Laws of 2004 and amended by Chapter 225 of the Laws of 2005.

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

RULES ADOPTED IN 2001

As required by section 207 of SAPA, the following list of rules adopted by the Department of State in calendar year 2001 must be reviewed in calendar year 2016. This list does not include rules that were adopted as consensus or emergency rules in 2001, or rules that subsequently have been amended or repealed. The original Notices of Proposed Rulemaking for all of the following rules required the preparation of a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

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

Subdivisions (i), (j) and (k) were added to section 200.11 of Title 19 of NYCRR to establish procedures for public cemetery corporations to obtain monies from the State Cemetery Vandalism Restoration, Monument Repair or Removal and Administration Fund.

Analysis of the need for the rule: The rule was needed to establish a process for public cemetery corporations to apply for and utilize funds available for the repair or removal of monuments that create a dangerous condition, as authorized by Chapter 380 of the Laws of 2000.

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

(2) DOS-27-01-00005 Bail Enforcement Agents and Their Employes

Part 170 of Title 19 NYCRR was amended to provide for the licensing of bail enforcement agents.

Analysis of the need for the rule: The rule was needed to implement Chapter 562 of the Laws of 2000, which requires bail enforcement agents to be licensed.

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

(3) DOS-31-01-00001 Coastal Policies for Long Island Sound

Part 600 of Title 19 of NYCRR was amended to implement the Long Island Sound Coastal Management Program.

Analysis of the need for the rule: The rule was needed to implement the Long Island Sound Coastal Management Program (LIS CMP), which was released in January of 1999 after a multi-year public planning effort. The LIS CMP contains thirteen coastal policies that are specific to Long Island Sound.

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

(4) DOS-39-01-00024 Agency Notice and Filings

Parts 260 – 263 of Title 19 of NYCRR were amended to update and clarify notice and filing requirements applicable to State agency rule making.

Analysis of the need for the rule: The rule was needed to: address text formatting procedures applicable to rule filings, change the title of a rule making form, and correct the name of the Department division that receives rule filings.

Legal basis for the rule: Executive Law, 91, 102 and 146; State Administrative Procedure Act, section 202(9)

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

Section 195.11(a)(1) of Title 19 of NYCRR was repealed and a new

section 195.11(a)(1) was added to prescribe a new size and content for employee identification cards issued by licensed security and alarm installers.

Analysis of the need for the rule: The rule was needed to change regulatory provisions in order to make such cards less costly for licensees by changing the prescribed card size to conform to standard identification card dimensions, and by removing a provision that required information to be printed on both sides of the cards.

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

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

Part 191 of Title 19 of NYCRR was repealed and a new Part 192 was added to regulate the conduct of the business of dispensing hearing aids and individual dispensers.

Analysis of the need for the rule: The rule was needed to implement new Article 37-A of the General Business Law, which became effective on January 1, 2000.

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

(7) DOS-47-00-00010 Uniform Code: Reimbursement of Local Government Training Costs

Part 440 was added to Title 19 of NYCRR to provide for the disbursement of funds to local governments for reimbursement of training costs incurred in connection with local administration and enforcement of the New York State Uniform Fire Prevention and Building Code.

Analysis of the need for the rule: The rule was needed to establish a process for local governments to be reimbursed by the State for eligible training costs associated with administration and enforcement of the Uniform Fire Prevention and Building Code.

Legal basis for the rule: Chapter 56 of the Laws of 2000

Comments on any item appearing above may be submitted to: David Treacy, Esq., Office of General Counsel, New York State Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 1120, Albany, New York 12231-0001, (518) 474-6740; David.Treacy@dos.ny.gov. This Notice of Rule Review is posted on the Department's website: www.dos.ny.gov.

Office of Temporary and Disability Assistance

Pursuant to the State Administrative Procedure Act (SAPA) § 207, the Office of Temporary and Disability Assistance (OTDA) must review at 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 7, 2015, 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 2010, 2005, and 2000. Those regulations are set forth below:

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 place-

ments 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 Supplemental Nutrition Assistance Program ("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.

As of March 3, 2015, OTDA had not received substantive comments regarding its Rule Review published in the New York State Register on January 7, 2015.

OTDA is considering amendments that may impact the regulatory changes that were adopted in 2010, 2005, and 2000. OTDA is considering the following regulatory amendments: revise regulations to raise the level of the minimum annual Home Energy Assistance Program (HEAP) or other energy assistance benefit required to confer eligibility for the SNAP Heating and Cooling Standard Utility Allowance (HCSUA) from \$1.00 to \$21.00, amend HEAP regulations to reflect current practices and the provisions of the federally accepted HEAP State Plan, repeal the regulatory provision setting forth the child support standards chart, and adjust the rate setting process and authorize review and approval by OTDA of the room and board rates prior to their implementation by the SSDs. At this time, OTDA has determined that no additional modifications need to be made to its regulations adopted in 2010, 2005, and 2000, as amended.

OTDA has determined that in the ensuing calendar year, it should review its regulations from Title 18 NYCRR adopted in 2013, 2011, 2006, and 2001. These regulations from 2013, 2011, 2006, and 2001, listed below, are subject to the provisions of SAPA § 207. The regulations must be reviewed to determine whether they should be retained as written or modified. OTDA invites written comments on the continuation or modification of these regulations in order to assist in the required review. We will consider only those comments that are received by March 7, 2016.

Rules adopted in 2013

1. TDA-36-12-00001 Fair Hearings Process for the Home Energy Assistance Program*

Amended §§ 358-3.5(b)(4) and 393.5(e) of Title 18 NYCRR to eliminate the requirement that a fair hearing request concerning the Home Energy Assistance Program (HEAP) must be made within 105 days of the social services district's termination of the receipt of HEAP applications for the program year.

Analysis of the need for the rule: These amendments are necessary to comply with a court order and stipulation of settlement stemming from Pedersen v. Hansell, by eliminating the 105 day statute of limitations imposed on requesting a fair hearing regarding Home Energy Assistance Program (HEAP) funds, as well as clarifies that federal HEAP funds are available for a finite period of time.

Statutory basis: SSL §§ 20(3)(d), 22(8), and 97; 42 U.S.C. § 8621, et seq.

2. TDA-49-12-00014 Child Support*

Amended §§ 346.2 and 347.17 of Title 18 NYCRR to address child support services applications and notification requirements and the imposition of an annual service fee; and to set forth requirements concerning the provision of legal services and the recovery of associated costs.

Analysis of the need for the rule: The amendment of § 346.2 was made to help ensure the state's compliance with federal child support application and notification requirements pursuant to 45 CFR § 302.33, which requires that states must make available all services to any individual who files an application with the child support agency, and must provide information describing available services, the individual's rights and responsibilities, the state's fees, cost recovery, and distribution policies that must accompany all applications for services, and be provided to all applicants/recipients of Medicaid and assistance programs. In addition, the amendment to § 347.17 was made as a result of federal changes requiring the imposition of an annual service fee of \$25 for families who have never received assistance before.

Statutory basis: 42 USC § 654(6)(B)(ii); 45 CFR §§ 302.33 and 303.2; SSL §§ 20(3)(d), 111-a, 111-c(4)(a), 111-g(3)(a) and (b); FCA § 453(a).

3. TDA-38-13-00008 Standard Utility Allowances for the Supplemental Nutrition Assistance Program*

Amended § 387.12 of Title 18 NYCRR to update the Standard Utility Allowances for the Supplemental Nutrition Assistance Program (SNAP) to the federally approved levels as of October 1, 2013.

Analysis of the need for the rule: It was of great importance that the federally mandated and approved standard utility allowances for the Supplemental Nutrition Assistance Program (SNAP) were applied to

SNAP benefit calculations effective October 1, 2013. If the standard utility allowances were not updated on October 1, 2013, it could have resulted in thousands of SNAP dependent households receiving underpayments each month. Thus, the rule was necessary for the preservations of the public health and general welfare of SNAP dependent households.

Legal basis for the rule: SSL §§ 20(3)(d) and 95; 7 USC § 2014(e)(6)(C); 7 CFR 273.9(d)(6)(iii).

Rules adopted in 2011

4. TDA-35-10-00005 Child Support*

Amended §§ 347.2, 347.6, 347.7 and 347.8 of Title 18 NYCRR to conform to State and federal statutes and federal requirements concerning the use of locate sources.

Analysis of the need for the rule: These amendments conformed State regulations to federal regulations in regard to locator services, which require that location services be used in all cases referred to the child support enforcement unit and in all cases applying for child support services.

Legal basis for the rule: SSL §§ 20(3)(d), 34(3)(f), 111-a(1), 111-b(3), (4), 111-g, 111-h(9), 111-k(1), 111-r, 111-s(1), 111-v and 143; FCA § 542; 45 CFR §§ 301.1, 303.3(b)(1) and 303.101(b)(1); 42 USC 666(c)(1).

5. TDA-41-10-00005 Public Assistance*

Repeal of § 351.24, amendment of §§ 351.1(b)(2)(iv), 352.17(d), 352.19(b)(3), 366.3 and 366.4(g) and addition of § 366.11 to Title 18 NYCRR to eliminate quarterly reporting as a district optional requirement for the majority of public assistance recipients but keeping it a requirement for child assistance program participants.

Analysis of the need for the rule: These amendments were made due to quarterly reporting being eliminated as a district optional requirement for the majority of public assistance recipients, but still required for child assistance program recipients. Eliminating the optional reporting requirement for public assistance recipients simplifies reporting requirements, reduces administrative requirements, and saves money by no longer requiring the option to be included in the State's Welfare Management System.

Legal basis for the rule: SSL §§ 20(3)(d), 34(3)(f), 131(1), 131-t, 131-z(9) and 355(3).

6. TDA-16-11-00004 Standard Allowances for the Food Stamp Program*

Amended § 387.12(f)(3)(v)(a), (b) and (c); and added § 387.12(f)(3)(v)(d) to Title 18 NYCRR to set forth the federally approved standard allowances as of April 1, 2011 and to clarify OTDA's process for periodically reviewing and updating the standard utility allowances.

Analysis of the need for the rule: This rule was amended in order to ensure that thousands of food stamp dependent households did not receive overpayments after April 1, 2011. Overpayments to food stamp dependent households could have subjected the households to a 10% recoupment of their monthly food stamp benefits until the overpayment was recovered. Passage of the rule was necessary to preserve the public health and general welfare of food stamp dependent households.

Legal basis for the rule: SSL §§ 20(3)(d) and 95; 7 USC § 2014(e)(6)(C); and 7 CFR § 273.9(d)(6)(iii).

Rules adopted in 2006

7. TDA-13-05-00001 Verification of School Attendance*

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

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

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

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

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

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

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

9. TDA-51-05-00006 Treatment of Lump Sum Income*

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

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

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

Rules adopted in 2001

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Analysis of the need for the rule: This rule was developed to make technical changes to conform to existing policies and to remove references to outdated terminology.

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

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

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

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

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

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

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

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

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

*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: Matthew L. Tulio, Office of Temporary and Disability Assistance, 40 N. Pearl St., 16th Fl., Albany, NY 12243, (518) 486-9568, e-mail: Matthew.Tulio@otda.ny.gov.

