

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

- AAM -the abbreviation to identify the adopting agency
- 01 -the *State Register* issue number
- 96 -the year
- 00001 -the Department of State number, assigned upon receipt of notice
- E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; or EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Agriculture and Markets

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Animal Health Requirements for Cattle Entering State or County Fairs

I.D. No. AAM-10-07-00004-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: This is a consensus rule making to amend section 351.6 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18(6), 31-b and 72(3)

Subject: Animal health requirements for cattle entering state or county fairs.

Purpose: To better protect the health of cattle exhibited at fairs by requiring proof that all such cattle have a negative test for being persistently infected with bovine viral diarrhea.

Text of proposed rule: Section 351.6 of 1 NYCRR is amended to read as follows:

In addition to the requirements listed in sections 351.4 and 351.5 of this Part, all cattle presented for admission to a fair must be accompanied by an original intrastate or interstate certificate of veterinary inspection that

contains *proof that the cattle have tested negative for being persistently infected with bovine viral diarrhea* and proof that the cattle [to be admitted] are currently vaccinated against bovine respiratory disease complex, including bovine respiratory syncytial virus, bovine viral diarrhea, infectious bovine rhinotracheitis, and parainfluenza with a product administered in a manner and time frame adequate to confer protective immunity for these diseases for the duration of the fair.

Text of proposed rule and any required statements and analyses may be obtained from: John P. Huntley, Director, Division of Animal Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-3502

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Consensus Rule Making Determination

The Department has considered the proposed amendment to section 351.6 and has determined that this rule making is a consensus rule making within the meaning of section 101(11) of the State Administrative Procedure Act (SAPA), in that no person is likely to object to the rule as written, since it is noncontroversial. The basis for the Department's determination is that the proposed amendment is a necessary and beneficial animal disease control measure which would benefit all regulated parties at a minimal cost.

The proposed amendment to section 351.6 would require that all cattle entering a state or county fair be accompanied with proof that the animals have tested negative for being persistently infected with bovine viral diarrhea (BVD).

BVD is a disease of cattle which is caused by a pestivirus from the family Flaviviridae. The disease afflicts cattle in one of two ways. Acutely infected animals are often unvaccinated against the disease and upon exposure, manifest symptoms, including mucosal erosions and diarrhea. BVD reduces productivity and increases mortality in these animals. Persistently infected animals are exposed to BVD during mid-gestation, which results in the fetus incorporating the virus into its biological chemistry. Consequently, the fetus never recognizes the BVD virus as a foreign invader and upon birth, becomes a carrier of the disease, shedding the virus in such great numbers that vaccinated as well as unvaccinated animals are often at risk for contracting BVD. Although occasionally exhibiting decreased weight gain, increased disease susceptibility and reduced fertility, persistently infected animals often exhibit no clinical signs of BVD. For this reason, a test is the only way to determine whether an animal is persistently infected with BVD and thus a threat to vaccinated as well as unvaccinated animals.

Section 351.6 currently requires that cattle presented for admission to a fair be accompanied with proof that the animals are vaccinated against BVD. However, since persistently infected animals pose a threat to vaccinated animals, the proposed amendment would help further protect cattle in New York State against BVD by requiring all cattle entering state and county fairs to have a negative test for being persistently infected with BVD. Approximately 6,000 dairy cattle and 2,000 beef cattle are exhibited at state and county fairs each year. Under the proposal, these animals would have to be tested in the first year at a cost to regulated parties of \$10.00 per animal. However, since BVD is present in persistently infected animals at birth and continues through the animal's life, only one test per animal is necessary. Accordingly, testing costs would be lower in subsequent years, since approximately 50 percent of the dairy cattle and 10-

percent of the beef cattle are shown in subsequent years and would not require further testing.

In light of the foregoing, the Department concludes that the proposed amendment is a necessary and beneficial animal disease control measure which would benefit all regulated parties at minimal cost. For this reason, the Department has determined that this rule making is a consensus rule making, in that no person is likely to object to the rule as written, since it is noncontroversial.

Job Impact Statement

The proposed amendment to section 351.6 would require that all cattle entering a state or county fair be accompanied with proof that the animals have tested negative for being persistently infected with bovine viral diarrhea (BVD).

The proposed amendments would have no detrimental impact on jobs and employment opportunities in New York State but rather, could better ensure the retention of jobs in New York State. By requiring all cattle entering state and county fairs to have a negative test for being persistently infected with BVD, the proposed amendment would help further protect cattle in New York State against this disease, thereby helping protect regulated parties against potential financial losses. This would help protect jobs in New York State for farm workers engaged in such activities as trucking of cattle; building and maintaining fencing and shelter for cattle; brokering cattle and locating sources and markets for the cattle; and moving and watering cattle as needed.

Office of Children and Family Services

NOTICE OF ADOPTION

Medical Examinations for Prospective Adoptive and Foster Families

I.D. No. CFS-52-06-00011-A

Filing No. 214

Filing date: Feb. 20, 2007

Effective date: March 7, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 421.16 and 443.2 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 372-b(3)

Subject: Medical examinations for prospective adoptive and foster families.

Purpose: To permit medical examinations to be conducted and medical reports required for certification or approval of a foster parent or adoptive parent to be prepared by nurse practitioners, physician assistants, and other qualified health care practitioners, in addition to a physician.

Text or summary was published in the notice of proposed rule making, I.D. No. CFS-52-06-00011-P, Issue of December 27, 2006.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

Assessment of Public Comment

The agency received no public comment.

Education Department

NOTICE OF ADOPTION

Voluntary Institutional Accreditation for Title IV Purposes

I.D. No. EDU-48-06-00005-A

Filing No. 215

Filing date: Feb. 20, 2007

Effective date: March 8, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Subpart 4-1 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 210 (not subdivided), 214 (not subdivided), 215 (not subdivided), and 305(1) and (2)

Subject: Voluntary institutional accreditation for Title 8 purposes.

Purpose: To establish requirements and clarify existing standards and procedures that must be met by institutions of higher education voluntarily seeking institutional accreditation or renewal of such accreditation by the Board of Regents and the Commissioner of Education.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-48-06-00005-P, Issue of November 29, 2006.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Assessment of Public Comment

The proposed rule was published in the State Register on November 29, 2006. Below is a summary of written comments received by the State Education Department (SED) and SED's assessment of issues raised.

COMMENT: The regulation requires greater accountability for all Regents-accredited institutions of higher education, without exception. All New York State students should benefit from these practices no matter what Regents accredited college they attend.

RESPONSE: SED agrees with the comment. No response to this comment is necessary.

COMMENT: We support the fact that the regulation provides flexibility in cases where there is good cause to extend the term of accreditation.

RESPONSE: No response to this comment is necessary.

COMMENT: Accrediting bodies are responding to the nationwide appeal to assist colleges in demonstrating student learning outcomes and in assessment. The emphasis placed on learning outcomes, assessment and related provisions in the regulation are welcome.

RESPONSE: No response to this comment is necessary.

COMMENT: The changing and ever more demanding higher education environment requires that one explore seriously and act upon every opportunity to articulate and apply criteria and standards that will better guarantee the appropriate delivery of higher education to all students in New York State.

RESPONSE: SED agrees. This regulation requires greater accountability from Regents-accredited institutions which, in turn, will benefit students enrolled in higher education institutions in New York State.

COMMENT: The elevation of accrediting standards embodied in the regulation renders the Board of Regents as an accrediting body on par with regional accrediting associations. Some colleges that may have previously contemplated pursuing regional accreditation may now be seriously tempted to consider the Regents accreditation instead.

RESPONSE: No response to this comment is necessary.

COMMENT: This regulation requires regionally accredited institutions to accept transfer credits from Board of Regents accredited institutions.

RESPONSE: This comment is incorrect. The regulation only applies to higher education institutions that have chosen the Regents as their institutional accreditor. This regulation does not affect higher education institutions accredited by a different accrediting agency. This regulation prohibits a Regents-accredited institution from denying transfer credit solely on the sending institution's choice of an accrediting agency approved by the U. S. Secretary of Education and requires the learning objectives of each course offered by a Regents-accredited institution be at a level and rigor

that warrants transfer acceptance. This change was made to encourage institutions accredited by other accrediting agencies to do the same.

COMMENT: The regulation revises the current standards for graduation and job placement rates. While the three percent annual improvement rate in the prior regulation was ineffective, the new requirement that institutions submit a plan if its graduation or job placement rates fall more than five percentage points below the statewide mean may not have sufficient rigor. The Department should closely monitor the new standards over a two-year period to ascertain the extent of the regulation's impact and determine whether further revisions are needed.

RESPONSE: The three percent annual improvement rate in the previous regulation was ineffective. This regulation holds institutions more accountable for their graduation and job placement rates. The five percentage point requirement is a stepping stone for those institutions who are currently just meeting the three percent annual improvement standard. SED will monitor the effect of the new standards for graduation and job placement to see whether these standards should be made more rigorous in the future.

COMMENT: The regulation gives the Commissioner the flexibility to extend a term of accreditation for up to 12 years for good cause.

RESPONSE: This comment is incorrect. The proposed amendment provides the Commissioner with the ability to extend a term of accreditation for up to 12 months for good cause; not 12 years as the comment suggests.

COMMENT: A commenter supports the regulation to the extent it expands on what should be included in an institutional mission statement, upgrading the minimum credentials expected of faculty teaching in undergraduate programs, and requiring an institution to file a notice of intent to appeal an adverse decision or a decision to grant probationary accreditation before commencing an appeal.

RESPONSE: No response to this comment is necessary.

COMMENT: The proposed regulation assumes that the goal of higher education is job placement. As many as one-third of the students at our institution are enrolled not for the purposes of "job placement" but personal enrichment. Furthermore, there exists no "standard" by which to measure job placement in ministry; as defined by our institutional mission, we prepare for ministry lay persons (volunteers) as well as clergy.

RESPONSE: The current regulation, specifically § 4-1.4(b)(3)(ii) of the Rules of the Board of Regents uses job placement rates as an evaluation standard. The regulation amends the current job placement standard to make institutions more accountable for their job placement rates. The Board of Regents cannot ignore job placement as a dimension of assessment of student achievement. The U.S. Secretary of Education requires every Nationally Recognized Accrediting Agency to include, as appropriate, job placement rates in its assessment of "[s]uccess with respect to student achievement in relation to the institution's mission" [34 CFR § 602.16(a)(i)]. Moreover, § 4-1.4(b)(3)(ii) of the Rules of the Board of Regents does not assume that "the goal of higher education is job placement". In fact, the regulation limits the applicability of job placement rates to "an institution whose mission includes preparation of students for employment." If an institution's mission includes the preparation of some of its students for employment, the requirement for job placement rates will only apply with respect to those students seeking gainful employment. Therefore, no revision to the regulation is necessary.

COMMENT: The regulation requires all institutions to provide instruction in information literacy. As a graduate institution, our institution requires information literacy as a prerequisite.

RESPONSE: If an institution requires information literacy as a prerequisite for admission, then in SED's judgment the institution would meet this requirement of the regulation.

COMMENT: The proposed amendment would require an institution to archive annually all print and online catalogs and retain archived copies permanently. The commenter asked whether permanently meant "eternally and beyond," whether such a requirement is necessary and realistic, and whether it is the intent of the regulation to require an institution to archive both print and online catalogs.

RESPONSE: Permanent is defined as "continuing or enduring without fundamental or marked change: stable" [Merriam-Webster On-Line Dictionary and Thesaurus]. Consequently, this regulation requires an institution to maintain a continuing or enduring archive of both its print and online catalogs. SED believes this requirement is both necessary and realistic. It would codify, for accredited institutions, an SED policy applicable to all degree-granting institutions in the State to assure that both former students and peer reviewers have access to historical as well as

current information about an institution and its programs and services. Therefore, no revision is necessary.

COMMENT: A commenter supports the regulation to the extent that it provides a plan to improve student achievement for institutions reporting associate degree completion rates more than five percentage points below the mean associate degree completion rate for all institutions in the state.

RESPONSE: No response to this comment is necessary.

COMMENT: The regulation provides that an institution "shall not refuse a student's request for transfer of credit based solely upon the source of accreditation of the sending institution". It is recommended that the Regents and the Department enact similar regulatory language applying to all degree-granting institutions in New York State.

RESPONSE: This regulation only applies to higher education institutions that have chosen the Regents as their accrediting agency. However, it was made to encourage institutions accredited by other accrediting agencies to do the same. Applying such language to all degree-granting institutions in the State would require amending Part 52 of the Regulations of the Commissioner of Education, which is not before the Board of Regents at this time.

COMMENT: The proposed amendments are appropriate and likely to improve the accreditation process and the institutions affected.

RESPONSE: SED agrees. No response to this comment is necessary.

NOTICE OF ADOPTION

Examination Requirements for Licensure in Public Accountancy

I.D. No. EDU-48-06-00006-A

Filing No. 216

Filing date: Feb. 20, 2007

Effective date: March 8, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 70.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a) and (3)(a), 6508(2) and 7404(1)(4)

Subject: Examination requirements for licensure in public accountancy.

Purpose: To amend standards and procedures relating to the examination for licensure in public accountancy.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-48-06-00006-P, Issue of November 29, 2006.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Regents Diploma with Honors

I.D. No. EDU-48-06-00007-A

Filing No. 217

Filing date: Feb. 20, 2007

Effective date: March 8, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 100.5(b)(7)(ii) of Title 8 NYCRR.

Statutory authority: 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)

Subject: Regents diploma with honors.

Purpose: To revise and clarify diploma requirements, provide flexibility to schools, and alternatives for students who seek a Regents diploma with honors or a Regents diploma with advanced designation with honors.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-48-06-00007-P, Issue of November 29, 2006.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Supplemental Educational Services**

I.D. No. EDU-49-06-00003-A

Filing No. 218

Filing date: Feb. 20, 2007

Effective date: March 8, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 120.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1), (2) and (33), 308 (not subdivided), 309 (not subdivided) and 3713(1) and (2)

Subject: Supplemental Educational Services (SES).

Purpose: To prescribe requirements regarding the use of rewards and incentives by SES providers; revise reporting dates for SES providers and local educational agencies (LEAs); and correct inaccurate references in the SES regulations.

Text of final rule: Pursuant to Education Law sections 101, 207, 305, 308, 309 and 3713

1. Paragraph (2) of subdivision (d) of section 120.4 of the Regulations of the Commissioner of Education is amended, effective March 8, 2007, as follows:

(2) The commissioner shall approve an eligible applicant for inclusion on the department's list of approved supplemental educational service providers, upon the commissioner's determination that its application satisfies each of the following criteria:

- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .
- (vi) . . .
- (vii) . . .
- (viii) . . .

(ix) the applicant is fiscally sound and will be able to fulfill its agreement to provide services to the eligible child and the local educational agency pursuant to paragraph [(f)(6)] (f)(8) of this section;

- (x) . . .
- (xi) . . .
- (xii) . . .

(xiii) the applicant shall provide additional assurances that:

- (a) . . .
- (b) . . .
- (c) . . .
- (d) . . .

(e) the applicant will provide parents and teachers of eligible students receiving supplemental educational services and the appropriate title I LEA with information on the progress of such students in increasing achievement in a format, and to the extent practicable, in a language or other mode of communication that such parents can understand; [and]

(f) the applicant has adequate insurance for liability, property loss and personal injury involving students receiving supplemental educational services from the applicant; and

(g) the applicant shall not make any offer or advertisement of rewards, gifts, incentives, gratuities, payments, or compensation of any kind to parents, students, LEAs, LEA staff and/or school staff for purposes of, or tending to have the effect of, soliciting enrollment, encouraging parents to switch providers once students are enrolled, and/or attempting to influence parents, students, LEAs, LEA staff and/or school staff; provided that nothing herein shall be deemed to prohibit the use, as part of the instructional program, of nominal rewards or incentives as defined in subparagraph (xvii) of paragraph (8) of subdivision (f) of this section.

2. A new paragraph (3) of subdivision (d) of section 120.4 of the Regulations of the Commissioner of Education is added, effective March 8, 2007, as follows:

(3) Where an applicant uses alternate methods for delivery of services, which may include online, Internet-based approaches, as well as other distance-learning technologies, the provision of equipment, including computers, to students to use or keep as a means of receiving such

supplemental educational services, must be approved by the commissioner as part of the applicant's instructional program.

3. Subdivision (f) of section 120.4 of the Regulations of the Commissioner of Education is amended, effective March 8, 2007, as follows:

(f) Local educational agency responsibilities. A title I LEA that is required to arrange for the provision of supplemental educational services with an approved provider pursuant to section 1116(e) of the NCLB, 20 U.S.C. section 6316(e) (Public Law, section 107-110, section 1116[e], 115 STAT. 1491-1494; Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9328; 2002; available at the Office of Counsel, State Education Building, Room 148, Albany, NY 12234) shall:

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) . . .
- (6) . . .
- (7) . . .

(8) contact providers selected by the parents and enter into a contractual agreement with each such provider that includes:

- (i) . . .
- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .
- (vi) . . .
- (vii) . . .
- (viii) . . .
- (ix) . . .
- (x) . . .
- (xi) . . .
- (xii) . . .
- (xiii) . . .
- (xiv) . . .
- (xv) . . .

(xvi) a requirement that the provider submit to the title I LEA, [commencing on May 31, 2003 and annually thereafter,] *annually on or before September 30*, a final written report in a form prescribed by the commissioner that summarizes the progress of eligible students provided with supplemental educational services *during the preceding academic year*, pursuant to its agreement(s) with the local educational agency;

(xvii) a provision stating: "*The provider is prohibited from making any offer or advertisement of rewards, gifts, incentives, gratuities, payments, or compensation of any kind to parents, students, LEAs, LEA staff and/or school staff for purposes of, or tending to have the effect of, soliciting enrollment, encouraging parents to switch providers once students are enrolled, and/or attempting to influence parents, students, LEAs, LEA staff and/or school staff; provided that nothing herein shall be deemed to prohibit the use, as part of the instructional program, of nominal rewards or incentives as defined in 8 NYCRR section 120.4(f)(8)(xvii).*"

For purposes of this subparagraph, a nominal reward or incentive is defined as an award or incentive that:

(a) does not exceed a total value of \$25 per student per year;

(b) is directly linked to documented meaningful attendance benchmarks and/or completion of assessment and program objectives; and

(c) is approved by the commissioner as part of the provider's instructional program.

(9) monitor the following:

(i) . . .

(ii) the responsibilities of each approved provider with which the title I LEA has contracted with to:

- (a) . . .
- (b) . . .
- (c) . . .
- (d) . . .

(e) comply with the applicable contractual agreement pursuant to paragraph [(5)] (8) of this subdivision;

(10) notify the State Education Department of any noncompliance by an approved provider with respect to the provider's responsibilities as listed in subparagraph [(7)(ii)] (9)(ii) of this subdivision, including immediate notification of the department of any noncompliance involving a threat to the health and/or safety of students;

(11) [commencing on June 30, 2003 and annually thereafter,] submit to the State Education Department, *annually on or before October 31*, a monitoring report of supplemental educational services provided during

the preceding academic year, in a form prescribed by the commissioner, together with a copy of each provider's report prepared pursuant to subparagraph [(5)(xvi)] (8)(xvi) of this subdivision.

Final rule as compared with last published rule: Nonsubstantive changes were made in introductory paragraph 1.

Text of rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on December 6, 2006, a nonsubstantive revision was made to the proposed rule. In the introductory paragraph numbered 1., a reference to "division" (d) of section 120.4 of the Commissioner's Regulations was corrected to read "subdivision."

The proposed rule, as so revised, does not require any changes to the Regulatory Impact Statement previously published herein.

Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on December 6, 2006, a nonsubstantive revision to the proposed rule was made as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed rule, as so revised, does not require any changes to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on December 6, 2006, a nonsubstantive revision to the proposed rule was made as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed rule, as so revised, does not require any changes to the previously published Rural Area Flexibility Analysis.

Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on December 6, 2006, a nonsubstantive revision to the proposed rule was made as described in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The proposed amendment, as so revised, relates to the provision of supplemental educational services by school districts, boards of cooperative educational services (BOCES), charter schools, and private non-profit and for-profit providers pursuant to section 1116(e) of the federal No Child Left Behind Act of 2001, Pub. L. 107-110. The proposed revised amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the regulation that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regents Accreditation of Teacher Education Programs

I.D. No. EDU-10-07-00005-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of section 4-2.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 210 (not subdivided), 214 (not subdivided), 215 (not subdivided), and 305(1) and (2)

Subject: Regents accreditation of teacher education programs.

Purpose: To clarify existing procedures for institutions of higher education seeking accreditation of teacher education programs, or renewal of such accreditation, by the Board of Regents.

Text of proposed rule: 1. Paragraph (10) of subdivision (a) of section 4-2.6 of the Rules of the Board of Regents is amended, effective June 14, 2007, as follows:

(10) Deputy commissioner's review. The deputy commissioner shall review the recommendations and report of the standards board or subcommittee and the entire record before the standards board or subcommittee, including but not limited to the documentation listed in subparagraphs

(9)(ii) and (iii) of this subdivision. *The deputy commissioner may accept and/or request additional written information from the institution. The deputy commissioner may also request additional written information from the standards board or subcommittee, provided that the deputy commissioner shall transmit such additional written information to the institution by first class mail within fifteen days of receiving such information.* Based upon [this] a review of the record and/or any additional information submitted, the deputy commissioner shall prepare recommendations on accreditation action and program reregistration to the commissioner, together with a report of the factual basis and findings in support of the deputy commissioner's recommendations. The department shall transmit a copy of the report and recommendations to the institution by first class mail with return receipt requested.

2. Paragraph 7 of subdivision (b) of section 4-2.6 of the Rules of the Board of Regents is amended, effective June 14, 2007, as follows:

(7) Deputy commissioner's review. The deputy commissioner shall review the recommendations and report of the standards board or subcommittee and the entire record before the standards board or subcommittee; including but not limited to the documentation listed in subparagraphs (6)(ii) and (iii) of this subdivision. *The deputy commissioner may accept and/or request additional written information from the institution. The deputy commissioner may also request additional written information from the standards board or subcommittee, provided that the deputy commissioner shall transmit such additional written information to the institution by first class mail within fifteen days of receiving such information.* Based upon [this] a review of the record and/or any additional information submitted, the deputy commissioner shall prepare recommendations on accreditation action and program reregistration to the commissioner, together with a report of the factual basis and findings in support of the deputy commissioner's recommendations. The department shall transmit a copy of the recommendations and report to the institution by first class mail with return receipt requested.

3. Paragraph 7 of subdivision (c) of section 4-2.6 of the Rules of the Board of Regents is amended, effective June 14, 2007, as follows:

(7) Deputy commissioner's review. The deputy commissioner shall review the recommendations and report of the standards board or subcommittee and the entire record before the standards board or subcommittee, including but not limited to the documentation listed in subparagraphs (6)(ii) and (iii) of this subdivision. *The deputy commissioner may accept and/or request additional written information from the institution. The deputy commissioner may also request additional written information from the standards board or subcommittee, provided that the deputy commissioner shall transmit such additional written information to the institution by first class mail within fifteen days of receiving such information.* Based upon [this] a review of the record and/or any additional information submitted, the deputy commissioner shall prepare recommendations on accreditation action and program reregistration to the commissioner, together with a report of the factual basis and findings in support of the deputy commissioner's recommendations. The department shall transmit a copy of the report and recommendations to the institution by first class mail with return receipt requested.

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of the Professions, Education Department, 2M West Wing Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: opdepcom@mail.nysed.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 210 of the Education Law empowers the Regents to register institutions in terms of New York standards.

Section 214 of the Education Law provides that higher educational institutions that are incorporated in New York State shall be members of The University of the State of New York.

Section 215 of the Education Law authorizes the Board of Regents or the Commissioner of Education, or their representatives, to visit, examine into, and inspect institutions in The University of the State of New York and to require such institutions to submit reports.

Subdivision (1) of section 305 of the Education Law authorizes the Commissioner of Education to enforce all laws relating to the educational system of the State and execute all educational policies determined by the Board of Regents.

Subdivision (2) of section 305 of the Education Law charges the Commissioner of Education with general supervision over all schools and institutions subject to the Education Law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment implements the intent of the aforementioned statutes by revising existing procedures for institutions of higher education seeking accreditation of their teacher education programs, or renewal of such accreditation by the Board of Regents.

3. NEEDS AND BENEFITS:

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

Under the current rules, the Deputy Commissioner must review the record before the standards board, and the recommendations and report of the standards board or subcommittee when making an accreditation recommendation. However, in some instances, the Deputy Commissioner may want to request and/or receive additional information from either the institution or the standards board in order to further inform the Deputy Commissioner's decision. This amendment would provide the Deputy Commissioner with the flexibility to accept and/or request additional information from the institution and/or standards board before making a recommendation. It also provides the institution with the opportunity to notify the Deputy Commissioner if it has corrected any identified deficiencies.

4. COSTS:

(a) Costs to State government. The State Education Department will use existing staff to accredit teacher education programs under the proposed standards and procedures. The amendment would impose additional costs on the State Education Department to distribute any additional information submitted by the standards board to the institution. The Department estimates that these costs will total approximately \$50 each year. The amendment would not impose costs on any other State agency.

(b) Costs to local government. None.

(c) Costs to private regulated parties. The proposed accreditation standards and procedures for teacher education programs apply only to institutions that seek such accreditation of their teacher education programs by the Board of Regents. The proposed amendment will require institutions to submit additional information upon request by the Deputy Commissioner. This amendment is likely to result in only nominal costs to institutions, including those that are located in rural areas of the State. The State Education Department estimates that the nominal cost of providing such information to the Department will be approximately \$1.00 per institution.

(d) Costs to the regulatory agency. These are estimated above under Costs to State Government.

5. LOCAL GOVERNMENT MANDATES:

The amendment would not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The amendment would require each institution that chooses the Board of Regents as the accrediting agency for its teacher education programs to prepare and submit additional information to the Department, upon the Deputy Commissioner's request.

7. DUPLICATION:

The proposed standards for Regents accreditation of teacher education programs are consistent with program registration standards set forth in Part 52 of the Regulations of the Commissioner of Education. This deliberate consistency subjects regulated parties to uniform standards, where possible.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered.

9. FEDERAL STANDARDS:

There are no applicable standards of the Federal government establishing accreditation requirements for teacher education programs.

10. COMPLIANCE SCHEDULE:

The amendment would be effective on its stated effective date. Because of the nature of the proposed amendment, no additional period of time is needed to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment clarifies existing procedures for institutions of higher education seeking accreditation of teacher education programs, or renewal of such accreditation, by the Board of Regents. On the basis of the most recent data transmitted to the State Education Department, 0 of the 23 institutions of higher education that have voluntarily chosen the Board of Regents as their institutional accreditor are for-profit small businesses with fewer than 100 employees. Five additional higher education institutions (with additional branch campuses) have applied to the Board of Regents for institutional accreditation but have not yet been accredited. The Department estimates that none of them are for-profit small businesses with fewer than 100 employees.

Because it is evident from the nature of the amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to institutions voluntarily seeking Regents accreditation of their teacher education programs, including those located in the State's 44 rural counties and 71 towns in urban counties with a population density of 150 per square mile or less. At the present time, there are 23 institutions accredited by the Board of Regents and 5 other institutions (with additional branch campuses) that are currently seeking accreditation of their teacher education programs by the Board of Regents. Of these institutions, the Department estimates that 16 are located in a rural area of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS, AND PROFESSIONAL SERVICES:

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

Under the current rules, the Deputy Commissioner must review the record before the standards board, and the recommendations and report of the standards board or subcommittee when making an accreditation recommendation. However, in some instances, the Deputy Commissioner may want to request and/or receive additional information from either the institution or the standards board in order to further inform the Deputy Commissioner's decision. This amendment would provide the Deputy Commissioner with the flexibility to accept and/or request additional information from the institution and/or standards board before making a recommendation. It also provides the institution with the opportunity to notify the Deputy Commissioner if it has corrected any identified deficiencies.

The proposed amendment is not expected to cause regulated parties to have to hire additional professional services in order to comply.

3. COSTS:

The proposed amendment will require institutions to submit additional information requested by the Deputy Commissioner. This amendment is likely to result in only nominal costs to institutions, including those that are located in rural areas of the State. The State Education Department estimates that the nominal cost of providing this information to the Department will be approximately \$1.00 per institution.

4. MINIMIZING ADVERSE IMPACT:

Because of the nature of the proposed amendment, establishing different standards for institutions of higher education in rural areas of New York State is inappropriate.

5. RURAL AREA PARTICIPATION:

During the development of the proposed amendment, the content of the proposed amendment was discussed with the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including secondary and post-secondary faculty and administrators.

Job Impact Statement

The proposed amendment establishes and clarifies existing procedures that must be met by institutions of higher education seeking accreditation, or renewal of accreditation, by the Board of Regents for teacher education programs. The State Education Department expects that higher education institutions will use existing faculty to meet the proposed requirements.

Because it is evident from the nature of this proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Certified Dental Assistants and Dental Hygienists

I.D. No. EDU-10-07-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of sections 52.26 and 61.9, repeal of section 61.13 and addition of new section 61.13 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6506(1), 6507(2)(a), 6606(2), 6608 (not subdivided) and 6608-b(4)

Subject: Scope of practice for certified dental assistants and dental hygienists and the education requirements for certification as a dental assistant.

Purpose: To implement the requirements of section 6608 of the Education Law, as added by L. 2006, ch. 300 by expanding the scope of practice for certified dental assistants and dental hygienists and amending the curriculum requirements for registration as a program leading to licensure in certified dental assisting.

Text of proposed rule: 1. Paragraph (3) of subdivision (a) of section 52.26 of the Regulations of the Commissioner of Education is amended, effective June 14, 2007, as follows:

(3) Clinical content area shall mean course work in clinical procedures which includes, but is not limited to, the following curricular areas:

(i) chairside dental assisting and dental laboratory procedures appropriate to the practice of certified dental assisting[;] which shall include, but not be limited to, specific course work in the following clinical procedures subject to the restrictions set forth in subdivision (c) of section 61.13 of this title:

- (a) placing and removing temporary restorations;
- (b) placing, condensing, and carving amalgam restorations;
- and
- (c) placing, condensing, and finishing non-metallic restorations.

- (ii) . . .
- (iii) . . .
- (iv) . . .
- (v) . . .

2. Subparagraph (ii) of paragraph (1) of subdivision (b) of section 52.26 of the Regulations of the Commissioner of Education is amended, effective June 14, 2007, as follows:

(ii) an alternate course of study in certified dental assisting, which requires the student to complete equivalent study as that required in a program prescribed in subparagraph (i) of this paragraph and in an educational setting prescribed in section 6608-b(4)(B)(ii) of the Education Law, such course of study to include:

- (a) . . .
- (b) . . .

3. Subdivision (c) of section 61.9 of the Regulations of the Commissioner of Education is amended, effective June 14, 2007, as follows:

(c) The following services may be performed only under the personal supervision of a licensed dentist:

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .

(5) . . .

[(6)] placing and removing temporary restorations. Temporary restorations shall include only nonmetallic substances generally used for temporary intracoronal filling materials. Placing and removing temporary restorations shall not include cutting or excising hard or soft tissue or the use of mechanical instrumentation;]

[(7)] (6) . . .

[(8)] (7) . . .

[(9)] (8) . . .

[(10)] (9) . . .

[(11)] (10) . . .

[(12)] (11) . . .

[(13)] (12) . . .

4. Subdivision (d) of section 61.9 of the Regulations of the Commissioner of Education is added, effective June 14, 2007, as follows:

(d) The dental supportive services that a licensed dentist authorizes a certified dental assistant to perform under paragraph (18) of subdivision (b) of section 61.13 of this Part, designated in such paragraph as other dental supportive services, may be performed by a licensed dental hygienist under the personal supervision of a licensed dentist who has delegated such function to the licensed dental hygienist, unless general supervision for such service is otherwise expressly prescribed in this section.

5. Subdivision (e) of section 61.9 of the Regulations of the Commissioner of Education is added, effective June 14, 2007, as follows:

(e) In accordance with section 29.1(b)(9) and (10) of this Title, a licensed dental hygienist is not permitted to provide dental services or dental supportive services that the licensed dental hygienist knows or has reason to know that he or she is not competent to perform, and a licensed dentist is not permitted to delegate to a licensed dental hygienist dental services or dental supportive services that the licensed dentist knows or has reason to know that the licensed dental hygienist is not qualified by training, experience or by licensure to perform.

6. Section 61.13 of the Regulations of the Commissioner of Education is repealed and a new section 61.13 is added, effective June 14, 2007, as follows:

61.13 Practice of certified dental assisting.

(a) The practice of certified dental assisting shall be that practice defined in section 6608 of the Education Law. In accordance with section 6608 of the Education Law, the practice of certified dental assisting must be supportive services to a licensed dentist in the dentist's performance of dental services and must be performed under the direct personal supervision of a licensed dentist. For purposes of this section, under the direct personal supervision of a licensed dentist shall mean supervision of dental procedures based on instructions given by a licensed dentist in the course of a procedure who remains in the dental office where the supportive services are being performed, personally diagnoses the condition to be treated, personally authorizes the procedures, and before dismissal of the patient, who remains the responsibility of the licensed dentist, evaluates the services performed by the dental assistant. Such practice shall include the dental supportive service prescribed in subdivision (b) of this section and shall exclude the dental supportive services prescribed in subdivision (c) of this section.

(b) The practice of certified dental assisting shall include the following supportive services to a licensed dentist while under the direct personal supervision of the licensed dentist:

- (1) providing patient education;
- (2) taking preliminary medical histories and vital signs to be reviewed by the dentist;
- (3) placing and removing rubber dams;
- (4) selecting and prefitting provisional crowns;
- (5) selecting and prefitting orthodontic bands;
- (6) removing orthodontic arch wires and ligature ties;
- (7) placing and removing matrix bands;
- (8) taking impressions for study casts or diagnostic casts;
- (9) removing periodontal dressings;
- (10) removal of sutures placed by a licensed dentist;
- (11) taking impressions for space maintainers, orthodontic appliances, and occlusal guards;
- (12) removing temporary cement;
- (13) applying topical anticariogenic agents to the teeth;
- (14) applying desensitizing agents to the teeth;
- (15) placing and removing temporary separating devices;
- (16) placing orthodontic ligatures;
- (17) taking x-rays in accordance with the requirements of section 3515(4)(c) of the Public Health Law; and

(18) other dental supportive services authorized by the licensed dentist while the certified dental assistant is under the direct personal supervision of the licensed dentist, provided that such other dental supportive services are not excluded in subdivision (c) of this section.

(c) Excluded dental supportive services. The practice of certified dental assisting shall not include the following dental supportive services:

(1) diagnosing;

(2) performing surgical procedures;

(3) performing irreversible procedures;

(4) performing procedures that would alter the hard or soft tissue of the oral and maxillofacial area;

(5) dental supportive services prescribed in section 61.9 of this Part which are services that a dental hygienist may perform, unless such services are expressly permitted as dental supportive services in paragraphs (1) through (17) of subdivision (b) of this section; and

(6) such dental supportive services that a certified dental assistant would not reasonably be qualified to perform based upon meeting the requirements for certification as a certified dental assistant in section 6608-b of the Education Law, and/or obtaining additional legally authorized experience in the practice of certified dental assisting.

(d) In accordance with section 29.1(b)(9) and (10) of this Title, a certified dental assistant is not permitted to provide dental supportive services that the certified dental assistant knows or has reason to know that he or she is not competent to perform, and a licensed dentist is not permitted to delegate to a certified dental assistant dental supportive services the licensed dentist knows or has reason to know that the certified dental assistant is not qualified by training, experience or by licensure to perform.

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of the Professions, Education Department, 89 Washington Ave., 2M West Wing Education Bldg., Albany, NY 12234, (518) 474-3862, e-mail: opdepcom@mail.nysed.gov

Public comment will be received until: 45 days after publication of this notice.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to supervise the practice of the professions and to promulgate rules to carry out such supervision.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the practice of the professions.

Subdivision (2) of section 6606 of the Education Law authorizes the commissioner to promulgate regulations defining the functions a dental hygienist may perform, consistent with the training and qualifications for a license as a dental hygienist.

Section 6608 of the Education Law defines the scope of practice for certified dental assistants and authorizes the Commissioner of Education to promulgate regulations authorizing the dental assistant to perform certain dental supportive services. This section also permits the Commissioner of Education to promulgate regulations defining what dental supportive services a dental hygienist may perform under a dentist's supervision.

Section 6608-b authorizes the Commissioner of Education to promulgate regulations relating to the education and experience requirements for certification as a certified dental assistant.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment to the Regulations of the Commissioner of Education carries out the intent of the aforementioned statutes by expanding the scope of practice for dental assistants and dental hygienists and clarifying the curriculum requirements for registration as a program leading to licensure in certified dental assisting.

3. NEEDS AND BENEFITS:

Chapter 300 of the Laws of 2006 amends Sections 6608 and 6608-b of the Education Law by expanding the scope of practice for certified dental assistants and dental hygienists and amending the curriculum requirements for registration as a program leading to licensure in certified dental assist-

ing. The purpose of the proposed amendment is to implement these requirements.

Currently, certified dental assistants are only allowed to perform certain dental supportive services, as delineated in a list set forth in Section 6608 of the Education Law. Chapter 300 of the Laws of 2006 expands this list by permitting licensed certified dental assistants to perform any other dental supportive services authorized by the supervising dentist, provided that such services do not include diagnosing and/or performing surgical procedures, irreversible procedures or procedures that would alter the hard or soft tissue of the oral and maxillofacial area or any other procedures determined by the Education Department. The proposed amendment amends the current regulations to expand the scope of practice for dental assistants to conform to these requirements, and establishes a definition of unprofessional conduct relating to such practice.

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

The proposed amendment also impacts the scope of practice of dental hygienists in New York State. Section 6608 of the Education Law provides that all dental supportive services performed by certified dental assistants may also be performed by currently registered dental hygienists. With the expansion of the scope of practice of dental assistants, this amendment also amends the scope of practice for dental hygienists to include any dental supportive services that a licensed dentist authorizes a certified dental assistant to perform, and establishes a definition of unprofessional conduct relating to such practice.

4. COSTS:

(a) Costs to State Government: The proposed amendment implements statutory requirements and establishes standards as directed by statute. It will not impose will not impose any additional cost on State government.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None. The proposed amendment will not impose any cost on private regulated parties, beyond those imposed by the statute.

(d) Cost to the regulatory agency: As stated above in "Costs to State Government", the proposed amendment does not impose costs on the State Government, including the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment implements the requirements of sections 6608 and 6608-b of the Education Law, as amended by Chapter 300 of the Laws of 2006, relating to the scope of practice for certified dental assistants and dental hygienists and the curriculum requirements for registration as a program leading to licensure as a dental assistant. It does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment will not require any additional paperwork for the licensee.

7. DUPLICATION:

The proposed amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered. The amendment implements statutory requirements.

9. FEDERAL STANDARDS:

There are no federal standards that define the scope of certified dental assistants or dental hygienists.

10. COMPLIANCE SCHEDULE:

The proposed amendment must be complied with on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF RULE:

The proposed amendment to the Regulations of the Commissioner of Education applies to licensed and registered certified dental assistants and dental hygienists in New York State. All 683 certified dental assistants and 9,439 dental hygienists registered to practice in New York would be subject to the requirements of the proposed amendment.

2. COMPLIANCE REQUIREMENTS:

Chapter 300 of the Laws of 2006 amends Sections 6608 and 6608-b of the Education Law by expanding the scope of practice for certified dental assistants and dental hygienists and amending the curriculum requirements for registration as a program leading to licensure in certified dental assisting. The purpose of the proposed amendment is to implement these requirements.

Currently, certified dental assistants are only allowed to perform certain dental supportive services, as delineated in a list set forth in Section 6608 of the Education Law. Chapter 300 of the Laws of 2006 expands this list by permitting licensed certified dental assistants to perform any other dental supportive services authorized by the supervising dentist, provided that such services do not include diagnosing and/or performing surgical procedures, irreversible procedures or procedures that would alter the hard or soft tissue of the oral and maxillofacial area or any other procedures determined by the Education Department. The proposed amendment amends the current regulations to expand the scope of practice for dental assistants to conform to these requirements, and establishes a definition of unprofessional conduct relating to such practice.

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

The proposed amendment also impacts the scope of practice of dental hygienists in New York State. Section 6608 of the Education Law provides that all dental supportive services performed by certified dental assistants may also be performed by currently registered dental hygienists. With the expansion of the scope of practice of dental assistants, this amendment also amends the scope of practice for dental hygienists to include any dental supportive services that a licensed dentist authorizes a certified dental assistant to perform, and establishes a definition of unprofessional conduct relating to such practice.

3. PROFESSIONAL SERVICES:

No professional services are expected to be required by small businesses to comply with the proposed amendment.

4. COMPLIANCE COSTS:

The proposed amendment will not impose any costs beyond those required to comply with the statutory requirements.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not impose any special technological requirements on regulated parties. As stated above in "Compliance Costs," the amendment will not result in additional costs to regulated parties.

6. MINIMIZING ADVERSE IMPACT:

The amendment expands the scope of practice for certified dental assistants and dental hygienists and amends the curriculum requirements for registration as a program leading to licensure in certified dental assisting. Because of the nature of the proposed amendment, there will be no adverse impact on small businesses. Therefore, establishing different standards for certified dental assistants and dental hygienists based upon the size of the business where they are employed is unnecessary.

7. SMALL BUSINESS PARTICIPATION:

Members of the State Board for Dentistry, many of whom have experience in a small business environment, provided input during the development of the proposed amendment. In addition, comments on the proposed amendment were solicited from statewide organizations representing all parties having an interest in the practice of dentistry. Included in the group were New York Dental Assistants Association, Dental Hygienists' Associ-

ation of the State of New York and the New York State Dental Association. These organizations include membership who own and operate small businesses or are employed by small businesses.

(b) Local Governments:

The proposed amendment concerns the scope of practice for individuals licensed as certified dental assistants and dental hygienists in New York State and the curriculum requirements for registration as a program leading to licensure in certified dental assisting. The amendment will not affect local governments in New York State. The measure will not impose any adverse economic, reporting, recordkeeping, or any other compliance requirements on local governments. Because it is evident from the nature of the rule that it does not affect local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis**1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:**

The proposed amendment to the Regulations of the Commissioner of Education applies to certified dental assistants and dental hygienists, including those that are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. At the present time, of the 683 certified dental assistants and the 9,439 dental hygienists licensed and registered to practice in New York State, 245 certified dental assistants and 1,959 dental hygienists reported that their permanent address of record is in a rural county.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

Chapter 300 of the Laws of 2006 amends Sections 6608 and 6608-b of the Education Law by expanding the scope of practice for certified dental assistants and dental hygienists and amending the curriculum requirements for registration as a program leading to licensure in certified dental assisting. The purpose of the proposed amendment is to implement these requirements.

Currently, certified dental assistants are only allowed to perform certain dental supportive services, as delineated in a list set forth in Section 6608 of the Education Law. Chapter 300 of the Laws of 2006 expands this list by permitting licensed certified dental assistants to perform any other dental supportive services authorized by the supervising dentist, provided that such services do not include diagnosing and/or performing surgical procedures, irreversible procedures or procedures that would alter the hard or soft tissue of the oral and maxillofacial area or any other procedures determined by the Education Department. The proposed amendment amends the current regulations to expand the scope of practice for dental assistants to conform to these requirements, and establishes a definition of unprofessional conduct relating to such practice.

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

The proposed amendment also impacts the scope of practice of dental hygienists in New York State. Section 6608 of the Education Law provides that all dental supportive services performed by certified dental assistants may also be performed by currently registered dental hygienists. With the expansion of the scope of practice of dental assistants, this amendment also amends the scope of practice for dental hygienists to include any dental supportive services that a licensed dentist authorizes a certified dental assistant to perform, and establishes a definition of unprofessional conduct relating to such practice.

3. COSTS:

The proposed amendment does not impose additional costs on certified dental assistants or dental hygienists, including those that are located in rural areas, beyond those imposed by statute.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements statutory requirements and makes no exception for certified dental assistants or dental hygienists located in rural areas. In any event, consistent practice requirements should apply no matter the geographic origin of the licensee to ensure a uniform high standard of competency across the State. Because of the nature of the proposed amendment, establishing different standards for certified dental assistants and dental hygienists located in rural areas of New York State is inappropriate.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from statewide organizations representing all parties having an interest in the practice of dentistry. Included in the group were the State Board for Dentistry, New York Dental Assistants Association, Dental Hygienists' Association of the State of New York and the New York State Dental Association, which represent among others individuals, certified dental assistants and dental hygienists who live or work in rural areas.

Job Impact Statement

The purpose of the proposed amendment is to implement the requirements of Sections 6608 and 6608-b of the Education Law, as added by Chapter 300 of the Laws of 2006, by expanding the scope of practice for certified dental assistants and dental hygienists and amending the curriculum requirements for registration as a program leading to licensure in certified dental assisting. The amendment implements statutory requirements and will have no impact on jobs or employment opportunities in the fields of dental assisting or dental hygiene or any other field. Because it is evident from the nature of this proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Human Immunodeficiency Virus Tests

I.D. No. EDU-10-07-00007-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of section 64.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6507(2)(a), 6527(6), 6902(1) and 6909(4)(d) and (5)

Subject: Execution by registered professional nurses of non-patient specific orders to administer human immunodeficiency virus tests.

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

Text of proposed rule: Section 64.7 of the Regulations of the Commissioner of Education is amended, effective June 14, 2007, as follows:

64.7 Immunizations, emergency treatment of anaphylaxis, [and] purified protein derivative (PPD) mantoux tuberculin skin tests and human immunodeficiency virus (HIV) tests pursuant to non-patient specific orders and protocols.

- (a) . . .
- (b) . . .
- (c) . . .

(d) Human Immunodeficiency Virus (HIV) tests.

(1) As used in this subdivision, human immunodeficiency virus (HIV) test means HIV-related test as defined in section 63.1 of the Rules and Regulations of the New York State Department of Health (10 NYCRR 63.1).

(2) Pursuant to section 6909(5) of the Education Law, a registered professional nurse shall be authorized to execute an order to administer HIV tests, pursuant to a non-patient specific order and protocol prescribed and ordered by a licensed physician or a certified nurse practitioner, provided the order and protocol meet the requirements of paragraph (3) of this subdivision. The following provisions apply to the administration of an HIV test pursuant to a non-patient specific standing order when such test is administered by a registered professional nurse.

(3) Order and Protocol.

(i) The registered professional nurse shall either maintain or ensure the maintenance of a copy of the non-patient specific order and protocol prescribed by a licensed physician or a certified nurse practitioner, which authorizes a registered professional nurse to execute the

order to administer an HIV test, in accordance with the requirements of paragraph (2) of this subdivision. The order prescribed in subparagraph (ii) of this paragraph shall incorporate a protocol that meets the requirements of subparagraph (iii) of this paragraph. Such order and protocol shall be considered a record of the patient who has received an HIV test and be maintained as a record for the period of time prescribed in paragraph 29.2(a)(3) of this Title.

(ii) The order shall authorize one or more named registered professional nurses, or registered professional nurses who are not individually named but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, to execute the order to administer HIV tests for a prescribed period of time. In instances in which the registered professional nurses are not individually named in the order, but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, such registered professional nurses shall not be authorized by such order to execute the order to administer HIV tests outside of such employment or contract. The order shall contain but shall not be limited to the following information:

(a) identification of the HIV test;

(b) the period of time that the order is effective, including the beginning and ending dates;

(c) the name and license number of the registered professional nurse(s) authorized to execute the order to administer the HIV test; or the name of the entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services with whom registered professional nurses who are not individually named are employed or under contract to execute the order to administer the HIV test;

(d) in instances in which registered professional nurses are not individually named in the order, but are identified as employed or under contract with an entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services, the order shall contain a statement limiting registered professional nurses to execute the order to administer HIV tests only in the course of such employment or pursuant to such contract; and

(e) the name, license number, and signature of the licensed physician or certified nurse practitioner that has issued the order.

(iii) The protocol, incorporated into the order prescribed in subparagraph (ii) of this paragraph, shall require the registered professional nurse to meet the following requirements:

(a) The registered professional nurse shall ensure that each potential recipient is assessed for conditions that would preclude HIV testing and ensure that each recipient's record of the HIV test with manufacturer and lot number or a potential recipient's refusal to be tested is documented in accordance with paragraph 29.2(a)(3) of this Title.

(b) The registered professional nurse shall execute the order to administer an HIV test in accordance with applicable State laws and regulations, including but not limited to, Article 27-F of the Public Health Law and Part 63 of the Rules and Regulations of the New York State Department of Health.

(c) The registered professional nurse shall certify that he/she obtained the written, informed consent of the recipient, or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for such individual, prior to ordering the performance of the HIV test. Informed consent shall include pre-test counseling to the recipient, or if the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for such individual. The written informed consent and the pre-test counseling shall be obtained and conducted in accordance with Article 27-F of the Public Health Law and Part 63 of the Rules and Regulations of the New York State Department of Health.

(d) A physician or nurse practitioner who issues a non-patient specific order for HIV testing shall retain responsibility for communication of a confirmatory, positive HIV test result to the recipient, or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for such individual. A registered professional nurse is not authorized to deliver a final confirmatory HIV positive test result through a non-patient specific order. A registered professional nurse may only deliver a confirmatory, positive HIV test result through a patient specific order as directed by the treating physician or nurse practitioner.

(e) The registered professional nurse shall, upon request, ensure that the recipient, or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for such individual, is provided with a signed certificate of HIV testing and results,

with the recipient's name, date of the test, address where the test was administered, the name of the administering nurse, manufacturer and product lot number.

(f) With the consent of the recipient or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for such individual, and with an appropriate authorization for the release of confidential HIV information, the registered professional nurse shall ensure that this information is communicated to the recipient's primary health care provider if one exists in accordance with the requirements of Article 27-F of the Public Health Law and Part 63 of the Rules and Regulations of the New York State Department of Health.

(g) Each registered professional nurse shall ensure that a record of all persons so tested including the recipient's name, date of the test, address where the test was administered, administering nurse, test results, manufacturer, lot numbers and such other information as may be necessary pursuant to the protocol is recorded and maintained in accordance with section 29.2(a)(3) of this Title and Article 27-F of the Public Health Law and Part 63 of the Rules and Regulations of the New York State Department of Health.

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of the Professions, Education Department, 2M West Wing Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: opdepcom@mail.nysed.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to Education.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Subdivision (6) of section 6527 of the Education Law authorizes a licensed physician to prescribe and order a non-patient specific regimen for execution by a registered professional nurse for administering human immunodeficiency virus tests, pursuant to regulations promulgated by the Commissioner of Education.

Subdivision (1) of section 6902 of the Education Law defines the practice of the profession of nursing as a registered professional nurse.

Paragraph (d) of subdivision (4) of section 6909 of the Education Law authorizes a licensed physician or certified nurse practitioner to prescribe and order a non-patient specific regimen to a registered professional nurse for the administration of tests to determine the presence of the human immunodeficiency virus (HIV).

Subdivision (5) of section 6909 of the Education Law authorizes a registered professional nurse to execute a non-patient specific order pursuant to regulations promulgated by the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes in that it establishes requirements that a registered professional nurse must meet to execute non-patient specific orders prescribed by licensed physicians or certified nurse practitioners when administering HIV tests.

3. NEEDS AND BENEFITS:

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

Section 6909 (5) of the Education Law directs the Commissioner of Education to promulgate regulations concerning the execution of such non-patient specific orders by registered professional nurses. The purpose of the proposed amendment is to establish uniform requirements for registered professional nurses to meet when executing non-patient specific orders to administer HIV tests. Specifically, the proposed amendment defines what information should be included in the non-patient specific order and the requirements that must be set forth in the protocol, for a

registered professional nurse to follow when administering an HIV test through a non-patient specific order. The proposed amendment also requires registered professional nurses to either maintain or ensure the maintenance of a copy of the non-patient specific order and protocol for a specified period of time.

The non-patient specific order must contain the following information: (a) identification of the HIV-related test; (b) the period of time that the order is effective; (c) the name(s) and license number(s) of the registered professional nurse(s) authorized to execute the order or the name of the entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services; (d) in instances in which registered professional nurses are identified as employed or under contract with an entity, the order shall contain a statement limiting registered professional nurses to execute such order only in the course of such employment; and (e) the order must contain the name, license number, and signature of the licensed physician or certified nurse practitioner that has issued the order.

The proposed amendment further requires that the protocol, which must be incorporated into the order, contain the following procedures: the registered professional nurse shall ensure that each potential recipient is assessed for conditions that would preclude HIV-related testing; that each recipient's record of the test or refusal to be tested is documented; that the registered professional nurse execute the non-patient specific order in accordance with applicable State laws and regulations and that the registered professional nurse certify that he/she obtained the written, informed consent of the recipient, or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for such individual, and provide pre-test counseling prior to ordering the performance of the HIV-related test. The registered professional nurse must also provide the recipient, or other person legally responsible for the recipient, upon request, with a signed certificate of HIV testing containing prescribed information. The registered professional nurse must also ensure, with appropriate consent, that information about the test is communicated to the recipient's primary health care provider, if one exists.

This amendment is needed to advise registered professional nurses of the requirements that they must meet to execute a non-patient specific order for the administration of HIV tests; to provide uniformity and consistency in the information that must be contained in the order and the protocols to be followed when administering such tests and the requirements for the maintenance of such records. At the present time, about 168,000 registered professional nurses are licensed to practice in New York State. Consequently, a significant number of individuals will be affected by the proposed amendment.

The amendment is also needed to protect the public health. Providing such testing through non-patient specific orders and protocols prescribed by licensed physicians and certified nurse practitioners allows for a more effective response to the public health need for HIV testing for many segments of the population of New York State.

4. COSTS:

(a) Costs to State government: The proposed amendment will not impose any additional cost on State government, including the State Education Department.

(b) Cost to local government: None.

(c) Cost to private regulated parties: The amendment is likely to result in only nominal costs to entities that employ registered professional nurses to execute the non-patient specific orders to administer HIV tests. These entities will likely have to bear a small additional cost to provide prescribed written information and issue a certificate of testing to each recipient who requests such a certificate. The State Education Department estimates that the nominal cost of providing this information and issuing the certificate will be approximately \$.25 per recipient. The other paperwork requirements relate to maintenance of patient records, which are already subject to the requirements of section 29.2(a)(3) of the Regents Rules, and consequently will not result in additional costs.

(d) Cost to the regulatory agency: As stated above in "Costs to State Government", the proposed amendment does not impose additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment requires the non-patient specific order to contain the following information: (a) identification of the HIV-related test; (b) the period of time that the order is effective; (c) the name(s) and license number(s) of the registered professional nurse(s) authorized to

execute the order or the name of the entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services; (d) in instances in which registered professional nurses are identified as employed or under contract with an entity, the order shall contain a statement limiting registered professional nurses to execute such order only in the course of such employment and (e) the order must contain the name, license number, and signature of the licensed physician or certified nurse practitioner that has issued the order.

7. DUPLICATION:

The proposed amendment does not duplicate any existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment and none were considered because of the nature of the amendment, which implements statutory requirements.

9. FEDERAL STANDARDS:

There are no Federal standards that establish requirements that registered professional nurses must meet to administer HIV tests, pursuant to non-patient specific orders and protocols.

10. COMPLIANCE SCHEDULE:

The proposed amendment implements and clarifies statutory requirements. Regulated parties must comply with the proposed amendment on its effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment prescribes requirements that licensed registered professional nurses must meet to execute non-patient specific orders issued by licensed physicians or certified nurse practitioners to administer human immunodeficiency virus (HIV) tests.

The amendment imposes requirements on individual registered professional nurses who execute such orders. Since the State Education Department has determined that it is unlawful for small businesses to employ nurses based on the New York State Corporation Law, this amendment would have no impact on small business.

The measure will not impose any adverse economic, reporting, record-keeping, or any other compliance requirements on local governments such as local health departments. In fact, the use of non-patient specific orders and protocol by local health departments would streamline the process of HIV testing and result in less recordkeeping and paperwork than patient specific orders.

Because it is evident from the nature of the regulation that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS: The proposed amendment to the Regulations of the Commissioner of Education applies to licensed and registered professional nurses in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. At the present time, there are approximately 168,000 licensed registered professional nurses that will be subject to the requirements of the proposed amendment when they execute non-patient specific orders for the administration of HIV tests. Of these licensed and registered professional nurses, approximately 13,000 live in a rural county of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS, AND PROFESSIONAL SERVICES:

Chapter 429 of the Laws of 2005, effective August 2, 2005, added a new paragraph (d) to section 6909 of the Education Law, permitting registered professional nurses to execute non-patient specific orders prescribed by a licensed physician or a certified nurse practitioner for the administration of HIV tests. Section 6909 (5) of the Education Law directs the Commissioner of Education to promulgate regulations concerning the execution of such non-patient specific orders by registered professional nurses. The purpose of the proposed amendment is to establish uniform requirements for registered professional nurses to meet when executing non-patient specific orders to administer HIV tests. Specifically, the proposed amendment defines what information should be included in the non-patient specific order and the requirements that must be set forth in the protocol, for a registered professional nurse to follow when administering an HIV test through a non-patient specific order. The proposed amendment also requires registered professional nurses to either maintain or ensure the maintenance of a copy of the non-patient specific order and protocol for a specified period of time.

The non-patient specific order must contain the following information: (a) identification of the HIV-related test; (b) the period of time that the order is effective; (c) the name(s) and license number(s) of the registered professional nurse(s) authorized to execute the order or the name of the entity that is legally authorized to employ or contract with registered professional nurses to provide nursing services; (d) in instances in which registered professional nurses are identified as employed or under contract with an entity, the order shall contain a statement limiting registered professional nurses to execute such order only in the course of such employment; and (e) the order must contain the name, license number, and signature of the licensed physician or certified nurse practitioner that has issued the order.

The proposed amendment further requires that the protocol, which must be incorporated into the order, contain the following procedures: the registered professional nurse shall ensure that each potential recipient is assessed for conditions that would preclude HIV-related testing; that each recipient's record of the test or refusal to be tested is documented; that the registered professional nurse execute the non-patient specific order in accordance with applicable State laws and regulations and that the registered professional nurse certify that he/she obtained the written, informed consent of the recipient, or when the recipient lacks capacity to consent, a person authorized pursuant to law to consent to health care for such individual, and provide pre-test counseling prior to ordering the performance of the HIV-related test. The registered professional nurse must also provide the recipient, or other person legally responsible for the recipient, upon request, with a signed certificate of HIV testing containing prescribed information. The registered professional nurse must also ensure, with appropriate consent, that information about the test is communicated to the recipient's primary health care provider, if one exists.

The proposed amendment is not expected to cause regulated parties to have to hire additional professional services in order to comply.

3. COSTS:

The amendment is likely to result in only nominal costs to entities that employ registered professional nurses to execute the non-patient specific orders to administer HIV tests, including those that are located in rural areas of the State. These entities will likely have to bear a small additional cost to provide prescribed written information and issue a certificate of testing to each recipient. The State Education Department estimates that the nominal cost of providing this information and issuing the certificate will be approximately \$.25 per recipient. The other paperwork requirements relate to maintenance of patient records, that are already subject to the requirements of section 29.2(a)(3) of the Regents Rules, and consequently will not result in additional costs.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements statutory directives to establish requirements for registered professional nurses to execute non-patient specific orders prescribed by licensed physicians or certified nurse practitioners for the administration of HIV tests and makes no exception for licensed registered professional nurses who live or work in rural areas. In any event, consistent practice requirements should apply no matter the geographic origin of the licensee to ensure a uniform high standard of competency across the State and that HIV testing is performed safely in all areas of the State. Because of the nature of the proposed amendment, establishing different standards for licensed registered professional nurses in rural areas of New York State is inappropriate.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from Statewide organizations representing all parties having an interest in the practice of professional nursing. Included in this group were the New York State Nurses Association, which has members who live or work in rural areas of New York State, and the New York State Department of Health. The Department of Health cooperated with the State Education Department by seeking input on the proposed amendment from interested parties including the New York City Department of Health and those located in rural areas of the State. Comments from these entities were considered during the development of the amendment.

Job Impact Statement

The purpose of the proposed amendment is to implement the requirements of section 6909 (d) of the Education Law, as added by Chapter 429 of the Laws of 2005, by establishing requirements that registered professional nurses must meet to execute non-patient specific orders prescribed or ordered by a licensed physician or certified nurse practitioner for the administration of human immunodeficiency virus tests.

This amendment implements statutory requirements and will have no impact on jobs or employment opportunities in the field of registered

professional nurses or any other field. Because it is evident from the nature of this proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Operating Standards Aid Plan

I.D. No. EDU-10-07-00008-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Repeal of section 175.43 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), and 3602(12), (12-b) and (38); and L. 2003, ch. 62, Part A2, section 15; L. 2004, ch. 57, Part C, section 26; L. 2005, ch. 53; and L. 2006, ch. 53

Subject: Operating standards aid plan.

Purpose: To eliminate a reporting requirement specifically associated with a category of State aid that is no longer individually calculated and paid to school districts.

Text of proposed rule: Section 175.43 of the Regulations of the Commissioner of Education is repealed, effective June 14, 2007.

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Deborah H. Cunningham, Coordinator for Educational Management Services, Education Department, Rm. 876 EBA, Albany, NY 12234, (518) 474-6541, e-mail: dcunning@mail.nysed.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents as its head, and authorizes the Regents to appoint the Commissioner as chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Board of Regents and the Commissioner to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the Department by law.

Education Law section 305(1) designates the Commissioner as chief executive officer of the State system of education and the Regents, and authorizes the Commissioner to enforce laws relating to the educational system and to execute the Regents' educational policies. Section 305(2) authorizes the Commissioner to have general supervision over schools subject to the Education Law.

Education Law section 3602(38), as amended by section 35 of Part L of Chapter 405 of the Laws of 1999, provided that school districts shall be eligible for an apportionment of Operating Standards Aid for its services and expenses in helping students improve achievement in order to meet the new high learning standards and assessments established by the Board of Regents, in accordance with a district plan.

Education Law section 3602(12-b), as amended by section 15 of Part A2 of Chapter 62 of the Laws of 2003, consolidated Operating Standards Aid into Comprehensive Operating Aid. Section 26 of Part C of Chapter 57 of the Laws of 2004 continued the consolidation of Operating Standards Aid into Comprehensive Operating Aid. Operating Standards Aid was subsequently consolidated into FLEX aid by Chapter 53 of the Laws of 2005 and Chapter 53 of the Laws of 2006.

LEGISLATIVE OBJECTIVES:

The proposed repeal is consistent with the authority conferred by the above statutes and is necessary to eliminate a documentation requirement no longer applicable.

NEEDS AND BENEFITS:

The proposed repeal will relieve school districts of the necessity to complete a report associated with a category of State Aid that no longer exists. Specifically, the proposed repeal will eliminate a reporting requirement associated with Operating Standards Aid, which was consolidated

into Comprehensive Operating Aid with the 2003-04 school year pursuant to section 15 of Part A2 of Chapter 62 of the Laws of 2003 and section 26 of Part C of Chapter 57 of the Laws of 2004, and subsequently consolidated into FLEX aid by Chapter 53 of the Laws of 2005 and Chapter 53 of the Laws of 2006. This repeal is part of a Regents initiative to streamline school district planning and reporting. The contents of the Operating Standards Aid Plan, specifically associated with Operating Standards Aid, will become part of school districts' comprehensive improvement planning.

COSTS:

- (a) Costs to State government: None.
- (b) Costs to local government: None.
- (c) Costs to private regulated parties: None.
- (d) Costs to regulating agency for implementation and continued administration of this rule: None.

LOCAL GOVERNMENT MANDATES:

The proposed repeal does not impose any additional program, service, duty or responsibility upon local governments. The proposed repeal will relieve school districts of the necessity to complete a report associated with a category of State Aid that no longer exists.

PAPERWORK:

The proposed repeal will reduce paperwork by school districts or boards of cooperative educational services by eliminating a requirement to complete a report associated with a category of State Aid that no longer exists.

DUPLICATION:

The proposed repeal does not duplicate existing State or federal regulations.

ALTERNATIVES:

There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

The proposed repeal eliminates an obsolete reporting requirement. Since Operating Standards Aid no longer exists, school districts and boards of cooperative educational services do not have to meet a compliance schedule.

Regulatory Flexibility Analysis

Small Businesses:

The proposed repeal eliminates a reporting requirement associated with a category of State Aid to school districts that no longer exists. Specifically, the proposed repeal will eliminate a specific reporting requirement associated with Operating Standards Aid, which, commencing with the 2003-04 school year, was consolidated into Comprehensive Operating Aid, and subsequently, commencing with the 2005-2006 school year, consolidated into FLEX aid. The proposed repeal does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed repeal that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

EFFECT OF RULE:

The proposed repeal applies to all public school districts in the State.

COMPLIANCE REQUIREMENTS:

The proposed repeal does not impose any compliance requirements on local governments. The proposed repeal will relieve school districts of the necessity to complete a report associated with a category of State Aid that no longer exists. Specifically, the proposed repeal will eliminate a reporting requirement associated with Operating Standards Aid, which, commencing with the 2003-2004 school year, was consolidated into Comprehensive Operating Aid pursuant to section 15 of Part A2 of Chapter 62 of the Laws of 2003 and section 26 of Part C of Chapter 57 of the Laws of 2004, and subsequently, commencing with the 2005-2006 school year, consolidated into FLEX aid pursuant to Chapter 53 of the Laws of 2005 and Chapter 53 of the Laws of 2006.

PROFESSIONAL SERVICES:

The proposed repeal does not impose any additional professional services requirements.

COMPLIANCE COSTS:

The proposed repeal does not impose any additional costs to school districts. School districts may realize a savings as a result of this repeal.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed repeal does not impose any additional costs or new technological requirements on school districts.

MINIMIZING ADVERSE IMPACT:

This repeal is part of a Regents initiative to streamline school district planning and reporting. The proposed repeal will relieve school districts of the necessity to complete a report associated with a category of State Aid that no longer exists. Specifically, the proposed repeal will eliminate a reporting requirement associated with Operating Standards Aid, which, commencing with the 2003-2004 school year, was consolidated into Comprehensive Operating Aid pursuant to section 15 of Part A2 of Chapter 62 of the Laws of 2003 and section 26 of Part C of Chapter 57 of the Laws of 2004, and subsequently, commencing with the 2005-2006 school year, consolidated into FLEX aid pursuant to Chapter 53 of the Laws of 2005 and Chapter 53 of the Laws of 2006. The contents of the Operating Standards Aid Plan, specifically associated with Operating Standards Aid, will become part of school districts comprehensive improvement planning.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed repeal were solicited from school districts through the offices of the district superintendents of each supervisory district in the State. In addition, the State Education Department has presented on, and discussed this topic extensively with school districts across New York State.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to all school districts, including those in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed repeal does not impose any reporting, recordkeeping or other compliance requirements on school districts, including those in rural areas. The proposed repeal will relieve school districts of the necessity to complete a report associated with a category of State Aid that no longer exists. Specifically, the proposed repeal will eliminate a reporting requirement associated with Operating Standards Aid, which, commencing with the 2003-2004 school year, was consolidated into Comprehensive Operating Aid pursuant to section 15 of Part A2 of Chapter 62 of the Laws of 2003 and section 26 of Part C of Chapter 57 of the Laws of 2004, and subsequently, commencing with the 2005-2006 school year, consolidated into FLEX aid pursuant to Chapter 53 of the Laws of 2005 and Chapter 53 of the Laws of 2006. There will be no professional services required.

COMPLIANCE COSTS:

The proposed repeal does not impose any additional costs to school districts, including those located in rural areas. School districts may realize a savings as a result of this repeal.

MINIMIZING ADVERSE IMPACT:

This repeal is part of a Regents initiative to streamline school district planning and reporting. The proposed repeal will relieve school districts of the necessity to complete a report associated with a category of State Aid that no longer exists. Specifically, the proposed repeal will eliminate a reporting requirement associated with Operating Standards Aid, which, commencing with the 2003-2004 school year, was consolidated into Comprehensive Operating Aid pursuant to section 15 of Part A2 of Chapter 62 of the Laws of 2003 and section 26 of Part C of Chapter 57 of the Laws of 2004, and subsequently, commencing with the 2005-2006 school year, consolidated into FLEX aid pursuant to Chapter 53 of the Laws of 2005 and Chapter 53 of the Laws of 2006. The contents of the Operating Standards Aid Plan, specifically associated with Operating Standards Aid, will become part of school districts comprehensive improvement planning.

RURAL AREA PARTICIPATION: Comments on the proposed repeal were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas. In addition, the State Education Department has presented on, and discussed this topic extensively with school districts across New York State, including rural school districts.

Job Impact Statement

The proposed repeal eliminates a reporting requirement associated with a category of State Aid to school districts that no longer exists. Specifically, the proposed repeal will eliminate a specific reporting requirement associated with Operating Standards Aid, which, commencing with the 2003-04 school year, was consolidated into Comprehensive Operating Aid, and subsequently, commencing with the 2005-2006 school year, consolidated into FLEX aid. The proposed repeal will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature and purpose of the proposed repeal that it will have no impact on

jobs or employment opportunities, no further measures were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

EMERGENCY RULE MAKING

Bait Fish Regulations and Fish Health Inspection Reports

I.D. No. ENV-49-06-00014-E

Filing No. 207

Filing date: Feb. 16, 2007

Effective date: Feb. 16, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of Parts 10, 35 and 188 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0303, 11-0305 and 11-0325

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: Viral hemorrhagic septicemia virus (VHS) is a serious pathogen of fish that is causing an emerging disease in the Great Lakes region of the United States and Canada. This disease causes the hemorrhaging of the fish's tissues, including internal organs, and affects all sized of fish. Not all infected fish develop the disease, but they can continue to carry it and spread it to others. There is no known cure for VHS.

VHS was first confirmed in New York waters in May 2006 when it was linked to the death of round gobies and muskellunge in Lake Ontario and the St. Lawrence River. Most recently, VHS caused the death of walleye in Conesus Lake. The virus has now been confirmed in round goby, burbot, smallmouth bass, muskellunge, pumpkinseed, rock bass, bluntnose minnow, emerald shiner and walleye in infected waters in New York State.

Due to the potential adverse effects of the disease on fish populations and the desire to prevent or delay its spread to other states, a Federal Order was issued (October 24, 2006) by the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) that prohibits the importation of certain species of live fish from Ontario and Quebec and the interstate movement of the same fish species from eight states bordering the Great Lakes.

The Federal Order does not, however, address the movement of fish within New York State. In-state movement of fish could potentially lead to the spread of VHS in New York and significant adverse impacts to the state's fish resources. Moreover, the spread of VHS in New York could result in negative impacts to the state economy. More than a million New Yorkers hold state fishing licenses. Freshwater sportfishing contributes an estimated \$1.4 billion annually to the state's economy, supporting over 17,000 jobs.

Therefore, the Department is adopting regulations which address the commercial collection of bait fish, personal possession and use of bait fish, and requirements for fish health inspection reports. The promulgation of this regulation on an emergency basis is necessary in order to prevent the spread of VHS in New York and to protect New York's fish resources. It is also necessary to prevent negative impacts to the state's economy that would be associated with the spread of VHS in New York.

Subject: Possession and personal use of bait fish, taking bait fish for commercial purposes, and fish health inspection requirements.

Purpose: To prevent the spread of VHS in New York and protect New York's fish resources, and prevent negative impacts to the State's economy that would be associated with the spread of VHS in New York.

Text of emergency rule: Part 10 of Title 6 of the Codes, Rules and Regulations of the State of New York (NYCRR) is amended as follows:

Paragraph 10.1(a)(3) is amended to read as follows:

(3) possess, kill or unnecessarily injure fish of a species listed in excess of the daily limit specified for such species except that fish caught

and returned to the water immediately without unnecessary injury will not be counted as part of the daily limit[.]; or

New Paragraphs 10.1(a) (4) and (5) are added to read as follows:

(4) *Except in the marine and coastal district, as defined in Environmental Conservation Law Section 13-0103, no person shall possess for personal use more than 100 bait fish in the aggregate of the species listed in Environmental Conservation Law Section 11-1315 (1)(a); or*

(5) *Except in the marine and coastal district, as defined in Environmental Conservation Law Section 13-0103, bait fish collected for personal use from any water of the State of New York shall only be possessed or used in the water from which such bait fish were collected, and shall not be used or possessed in any other water of the State.*

Part 35 of Title 6 of NYCRR is amended as follows:

Paragraphs 35.2(d)(5) and (6) are amended to read as follows:

(5) Cayuga County. Barge Canal (Seneca Canal); Cayuga Lake and Canal; Crane Brook; Cross Lake; [Fair Haven Bay (Little Sodus Bay);] Lake Como; [Lake Ontario]; Little Gully, Town of Springport; North Brook, from Route 31 to Seneca River; Paines Creek, Town of Ledyard; Seneca River; Sennett Brook, from N.Y.C.R.R. main line to Seneca River; Sterling Valley Creek, from road bridge on Route 104 to Lake Ontario).

(6) Chautauqua County. Alder Bottom Creek; Baker Creek in Town of Busti; Brokenstraw Creek, from State line to Jaquins Pond; [Canadaway Creek, from mouth to Route 5; Cattaraugus Creek, from mouth to Route 5; Crooked Brook, from mouth to Route 5;] Dry Brook in Town of Poland; East Branch of Little Brokenstraw; Frew Run; Kiantone Creek [, Lake Erie]; Lindquist Creek in Town of Busti; [Little Canadaway Creek, from mouth to Route 5; Silver Creek, from mouth to Route 5;] Stillwater Creek in Town of Kiantone only; town stream, downstream of Clymer Pond only; Twentyeighth Creek in Town of Ellington [, Walnut Creek, mouth to Route 5].

Paragraph 35.2(d)(14) is repealed, and paragraphs 35.2(d)(15) through (52) are renumbered as paragraph 35.2(d)(14) through paragraph 35.2(d)(51).

Paragraph 35.2(d)(53) is repealed, and paragraph 35.2(d)(54) is renumbered as paragraph 35.2(d)(53).

Newly renumbered paragraph 35.2(d)(21) is amended to read as follows:

(21) Jefferson County. [Beaver Meadow Creek; Bedford Creek;] Butterfield Lake; [Chaumont River;] Clear Lake; [Cranberry Creek; Crooked Creek; Flat Rock Creek; Fox Creek; French Creek and tributaries, excepting lower three miles of French Creek;] Grass Lake; [Guffins Creek; Horse Creek;] Hyde Creek; Hyde Lake; Indian River, west of Route 11; [Lake Ontario; Little Stony Creek and tributaries, all above the first road crossing (not including Six Town Pond); Mill Creek and tributaries, from first road crossing to Stowell Corners;] Moon Lake; [Mud Creek; Mullet Creek and tributaries, excepting Mullet Creek below Route 12; Muskalong Creek;] Muskalong Lake; [North Sand Creek, from the highway bridge in Woodville upstream to the Ellisburg-Adams town line; Otter Creek and tributaries; Perch River;] Philomel Creek and tributaries; Red Lake; [St. Lawrence River; Skinner Creek and tributaries, downstream from the Lum Road, also called McDonald Hill Road, located approximately 3.5 miles southwest of Mannsville; South Sandy Creek, from bridge at Ellisburg on Route 193 up stream to Route 11;] Stony Creek, above Henderson Pond upstream to the bridge on the Adams Center Sackets Harbor County Road, also known as South Harbor Road; Three Mile Creek].

(i) No person licensed to take bait fish shall use nets longer than 10 feet to take bait fish in Lake Ontario and the St. Lawrence River, March 1 through June 10.]

(ii)(i) No person licensed to take bait fish shall take bait fish with nets or traps in any waters in Jefferson County east of US Route 11.

Newly renumbered paragraph 35.2(d)(22) is amended as follows:

(22) Livingston County. [Conesus Lake,] Hemlock Lake.

Newly renumbered paragraph 35.2(d)(24) is amended as follows:

(24) Monroe County. Barge Canal; [Braddock's Bay; Buck Pond; Cranberry Pond,] East Lake, Town of Sweden; Genesee River *upstream of the lower falls in Rochester* [, Irondequoit Bay; Lake Ontario; Long Pond; Round Pond; Salmon Creek, north of Ridge Road].

Newly renumbered paragraph 35.2(d)(26) is amended as follows:

(26) Niagara County. Barge Canal;] *east of Lock E35* [Lake Ontario; Niagara River including the Little Rivers; Tonawanda Creek/Erie Barge Canal, from Niagara River east to junction with Barge Canal near Pendleton; East Branch Twelve Mile Creek, from mouth to Route 18].

Newly renumbered paragraph 35.2(d)(31) is amended as follows:

(31) Orleans County. Barge Canal; [Johnson Creek, from Kuckville to Lake Ontario; Lake Ontario; Oak Orchard Creek, from waterport to Lake Ontario;] Swetts Dam (Medina Dam).

Newly renumbered paragraph 35.2(d)(32) is amended as follows:

(32) Oswego County. [Blind Creek and tributaries west of Route 11; Catfish Creek north of the hamlet of New Haven; Eight Mile Creek north of Route 104A; Lake Ontario; Lindsey Creek to Jefferson county line; first tributary of Lindsey Creek, lower one-half mile; Little Sandy Creek west of Route 11; Nine Mile Creek north of Route 104A;] Oneida Lake; Oneida River; [Oswego Canal;] Oswego River *above the Varick dam in Oswego*; Ox Creek; [Rice or Three Mile Creek north of Fruit Valley; Salmon River from Pulaski to Lake Ontario; Skinner Creek;] all streams in Towns of Hastings, West Monroe and Constantia, from Oneida Lake to Route 49 [, North Sandy Pond].

(i) No person licensed to take bait fish shall take bait fish with nets or traps in Scriba Creek from Oneida Lake to Route 49 from December 16th through September 14th of the following year.

(ii) No person licensed to take bait fish shall take bait fish in North Sandy Pond or take such fish with seines longer than 150 feet from May 16th through September 14th of the following year.]

Newly renumbered paragraph 35.2(d)(37) is amended as follows:

(37) St. Lawrence County. Black Lake; Beaver Creek, Town of De Peyster; [Big Sucker Creek, Towns of Lisbon, Waddington;] Birch Creek from Lee Bridge to Indian Point, Town of Macomb; [Black Creek, Town of Hammond;] Bostwick Creek, Town of Rossie; [Brandy Brook, Towns of Waddington and Madrid; Chippewa Bay; Chippewa Creek, Town of Hammond;] Cook Creek and its tributaries; Farr Creek, Town of DeKalb; Fish Creek, from Black Lake to Popes Mills, Town of Macomb; Grass Lake; Hickory Lake, Town of Macomb; Indian Creek, Town of DeKalb; Indian River, Towns of Hammond and Rossie; [Lisbon Creek, Towns of Oswegatchie and Lisbon; Little Sucker Brook, Town of Waddington;] Mud Lake, Town of De Peyster; Oswegatchie River *above the dam in Ogdensburg*; [St. Lawrence River; St. Regis River, from Helena to the St. Lawrence River, Town of Brasher;] South Brook, Town of DeKalb; Sucker Creek, Town of Oswegatchie; Tibbits Creek, Town of Oswegatchie;] Tupper Lake.

(i) No person licensed to take bait fish shall use nets longer than 10 feet to take bait fish in Chippewa Bay, Chippewa Creek downstream from the Star Route 12, or in the St. Lawrence River from the Jefferson St. Lawrence county line downstream to Chippewa Point from March 1st through June 10th.

Note: As provided in section 11-1309 of the Environmental Conservation Law, fishing for all species of fish is prohibited from January 1st through April 30th in the Oswegatchie River and its tributaries below the dam in Ogdensburg.]

Newly renumbered paragraph 35.2(d)(50) is amended as follows:

(50) Wayne County. Barge Canal; [Bear Creek; Black Brook; Blind Sodus Bay; Blind Sodus Creek;] Clyde River; [East Bay; First Creek;] Ganargua Creek; [Lake Ontario;] Old Erie Canal; [Port Bay;] Red Creek, Towns of Palmyra and Marion; [Salmon Creek; Second Creek, below falls at Red Mill;] Seneca River; [Sodus Bay; Swales Creek; Wolcott Creek].

Part 188 of Title 6 of NYCRR, entitled "Fish Health Inspection Requirements" is amended as follows:

Section 188.1 is repealed, and new sections 188.1 and 188.2 are added to read as follows:

Section 188.1 Prohibitions. Except in the marine and coastal district, as defined in Environmental Conservation Law Section 13-0103, no person shall place live fish into the waters of the State, or possess, import or transport live fish for purposes of placing them into waters of the State, unless such fish are accompanied by a fish health inspection report issued within the previous twelve (12) months. This section shall not prohibit the personal use of bait fish in accordance with paragraph 10.1(a)(5) of Part 10 of this Chapter. All fish health inspection reports required by this section shall comply with section 188.2 of this Part.

Section 188.2 Fish Health Inspections

(a) *A fish health inspection report shall certify that the fish are free of:*

- (1) *Viral Hemorrhagic Septicemia (VHS);*
- (2) *Aeromonas salmonicida (Furunculosis);*
- (3) *Yersinia ruckeri (Enteric Red Mouth);*
- (4) *Infectious Pancreatic Necrosis Virus (IPN);*
- (5) *Spring Viremia of Carp Virus (Infectious carp dropsy);*
- (6) *Heterosporis.*

(b) *Additional fish health inspection requirements for Salmonidae. In addition to the requirements of subdivision (a) of this section, a fish health inspection report for Salmonidae shall certify that the fish are free of:*

- (1) *Myxobolus cerebralis* (whirling disease);
- (2) *Renibacterium salmoninarum* (bacterial kidney disease);
- (3) *Infectious Hematopoietic Necrosis Virus* (IHN).

(c) *Fish health inspection reports shall be issued by one of the following independent qualified inspectors:*

- (1) *American Fisheries Society certified fish pathologists;*
- (2) *American Fisheries Society certified fish health inspectors;*
- (3) *licensed veterinarians with demonstrated capability to perform fish health inspections;*
- (4) *government employees with demonstrated capability to perform fish health inspections;*
- (5) *university or college personnel with demonstrated capability to perform fish health inspections; or*
- (6) *private laboratory personnel with demonstrated capability to perform fish health inspections.*

(d) *Fish health inspection reports required by this section shall be based upon and conform with testing methods and procedures recognized by the American Fisheries Society or the World Organization of Animal Health.*

(e) *Fish health inspection reports required by this Part shall contain the following information:*

- (1) *Name, business address and business phone number of the inspector;*
- (2) *Facility name, physical address of the facility, and business phone number of the facility from which the tested fish came from;*
- (3) *Date fish were taken for testing;*
- (4) *Lot number of fish tested;*
- (5) *Species of fish tested;*
- (6) *Number of fish tested;*
- (7) *Pathogens tested for;*
- (8) *Type of test used; and*
- (9) *Results of the test.*

(f) *A fish health inspection report shall not be required for fish placed into an aquarium or possessed for purposes of placing such fish into an aquarium.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of emergency/proposed rule making, I.D. No. ENV-49-06-00014-EP, Issue of December 6, 2006. The emergency rule will expire March 9, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Shaun Keeler, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8920, e-mail: sxkeeler@gw.dec.state.ny.us

Additional matter required by statute: A Programmatic Impact Statement is on file with the Department of Environmental Conservation.

Regulatory Impact Statement

Statutory authority:

The Commissioner of Environmental Conservation, pursuant to Environmental Conservation Law (ECL) Sections 3-0301, 11-0303, and 11-0305, has authority to protect the fish and wildlife resources of New York State.

Environmental Conservation Law Section 11-0325 provides the Department of Environmental Conservation (Department) with authority to take action necessary to protect fish and wildlife from dangerous diseases. If the Department determines that an epizootic disease which endangers the health and welfare of native fish populations exists in any area of the state, or is in imminent danger of developing or being introduced into the state, the Department is authorized to adopt measures or regulations necessary to prevent the development, spread or introduction of such disease.

Legislative objectives:

The legislative objective of ECL Sections 3-0301, 11-0303, and 11-0305 is to grant the Commissioner the powers necessary for the Department to protect New York's natural resources, including fish resources, in accordance with the environmental policy of the state.

The legislative objective of ECL Section 11-0325 is to provide the Department with broad authority to respond to the presence or threat of a disease that endangers the health or welfare of fish or wildlife populations.

Needs and benefits:

Viral hemorrhagic septicemia virus (VHS) is a serious pathogen of fish that is causing an emerging disease in the Great Lakes region of the United States and Canada. This disease causes the hemorrhaging of the fish's tissues, including internal organs, and affects all sizes of fish. Not all infected fish develop the disease, but they can continue to carry it and spread it to others. There is no known cure for VHS.

VHS was first confirmed in New York waters in May 2006 when it was linked to the death of round gobies and muskellunge in Lake Ontario and the St. Lawrence River. Most recently, VHS caused the death of walleye in Conesus Lake. The virus has now been confirmed in round goby, burbot, smallmouth bass, muskellunge, pumpkinseed, rock bass, bluntnose minnow, emerald shiner and walleye in infected waters in New York State.

Due to the potential adverse effects of the disease on fish populations and the desire to prevent or delay its spread to other states, a Federal Order was issued (October 24, 2006) by the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) that prohibits the importation of certain species of live fish from Ontario and Quebec and the interstate movement of the same fish species from eight states bordering the Great Lakes: Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin. The Federal Order does not, however, address the movement of fish within New York State. In-state movement of fish could potentially lead to the spread of VHS in New York and significant adverse impacts to the state's fish resources. Moreover, the spread of VHS in New York could result in negative impacts to the state economy. More than a million New Yorkers hold state fishing licenses. Freshwater sportfishing contributes an estimated \$1.4 billion annually to the state's economy, supporting over 17,000 jobs.

Therefore, the Department is adopting regulations which address the commercial collection of bait fish, personal possession and use of bait fish, and requirements for fish health inspection reports. The promulgation of this regulation on an emergency basis is necessary in order to prevent the spread of VHS in New York and to protect New York's fish resources. It is also necessary to prevent negative impacts to the state's economy that would be associated with the spread of VHS in New York.

Costs:

Commercial hatchery operators, bait fish dealers, and other entities that possess or transport fish intended for release in New York waters, will incur costs associated with fish health inspection reports required by these regulations.

From consulting with those in the field of disease testing, the cost for the supplies and materials needed for testing a "lot" of fish (i.e., 60 fish) is approximately \$600. Factoring in accompanying services provided by a qualified tester (personnel service and use of laboratory facilities) results in a total estimated cost of approximately \$1,600.

Local government mandates:

The proposed rule does not impose any mandates on local government.

Paperwork:

Commercial hatchery operators, bait fish dealers, and other entities that possess or transport fish intended for release in New York waters, will be required to maintain documentation associated with fish health inspections.

Duplication:

The proposed amendment does not duplicate any state or federal requirement.

Alternatives:

No Action: The Department has considered and rejected the option of taking no action to address VHS. Failing to act to address VHS would allow the disease to spread unchecked to other waters of the state. The spread of VHS could compromise the health of New York's freshwater fish populations and could have significant economic impacts on commercial and recreational activities associated with the state's freshwater fish populations.

Federal standards:

The United States Department of Agriculture-Animal and Plant Health Inspection Service (USDA-APHIS) issued a federal order (October 24, 2006) that prohibits the importation of certain species of live fish from Ontario and Quebec and interstate movement of the same fish species from eight states bordering the Great Lakes.

Compliance schedule:

Immediate compliance will be required.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed rule will allow the Department to take actions designed to prevent the spread of viral hemorrhagic septicemia virus (VHS), a serious pathogen of fish that is causing an emerging disease in the Great Lakes region of the US and Canada. Due to the potential adverse effects of the disease on fish populations and the desire to prevent or delay its spread to other states, a Federal Order has already been issued (October 24, 2006) by the USDA Animal and Plant Health Inspection Service (APHIS) that prohibits the importation of certain species of live fish from Ontario and Quebec and interstate movement of the same fish species from eight states

bordering the Great Lakes (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin). The rule will prevent the collection of bait fish from VHS positive waters as well as require that all fish to be released to the waters of New York be certified as disease free. The number of commercial bait fish licenses (allowing for the collection and/or selling of bait) that have been issued, statewide, by DEC is approximately 400, of which an estimated 250 reside in the area of the state with VHS positive waters. In addition to commercial bait fish operators, private hatchery operations will also be affected by this rule. This year, DEC issued 35 licenses to rear/sell trout and salmon, and 25 licenses to rear/sell black bass (In-state). These operations will now be required to certify that fish in their possession are disease free, prior to release to the waters of New York.

2. Compliance requirements:

Fish being sold for release to state waters, largely by commercial bait fish dealers and hatcheries, must be accompanied by fish health inspection reports, from a qualified tester, certifying that the fish have been tested for the required pathogens and are disease free.

3. Professional services:

A fish health inspection report, issued by an independent qualified inspector, certifying that fish are disease free, will be required for the release of fish into the waters of New York by any of the regulated parties.

4. Compliance costs:

Commercial hatchery operators, bait fish dealers, and other entities that possess or transport fish intended for release in New York waters, will incur costs associated with fish health inspection reports required by these regulations.

From consulting with those in the field of disease testing, the cost for the supplies and materials needed for testing a "lot" of fish (i.e., 60 fish) is approximately \$600. Factoring in accompanying services provided by a qualified tester (personnel service and use of laboratory facilities) results in a total estimated cost of approximately \$1,600.

5. Economic and technological feasibility:

Testing for a group of pathogens will be required for the small businesses that sell fish to be released to the waters of New York. Since the testing will need to be conducted by qualified testers, the small businesses will not need to establish any new technology at their facilities. This requirement does not effect or apply to local governments. The costs of the testing is described above.

6. Minimizing adverse impact:

The rulemaking does not prohibit the collection of bait from waters in New York that have not tested positively for VHS. Therefore, some waters in New York remain available for bait fish collection by commercial operators. The rulemaking also allows the commercial hatcheries to sell freshwater fish for release into the waters of New York once they have been determined to be disease free.

7. Small business and local government participation:

The emergency rulemaking process does not provide opportunity for public hearings and/or public meetings. The immediate outreach efforts of the Department included the issuance of a statewide news release (10/31/06) informing the public of this crisis and indicating that the Department was contemplating measures that could be taken to address VHS. In addition, DEC forwarded copies of a VHS New York information sheet, the APHIS Industry Alert, and the APHIS Federal Order to the holders of Fishing Preserve Licenses in New York, licensed Private Hatchery Operators, holders of Great Lakes commercial fishing licenses, and those licensed by the Department to collect and/or sell bait fish.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas:

The proposed rule will affect all rural areas in New York. Most commercial bait fish dealers and licensed fish hatcheries and most of their customers that are seeking to stock private waters pursuant to a Department permit are located in rural areas. The number of commercial bait fish licenses (allowing for the collection and/or selling of bait) that have been issued, statewide, by DEC is approximately 400, of which an estimated 250 reside in the area of the state with VHS positive waters. In addition to commercial bait fish operators, private hatchery operations will also be affected by this rule. This year, DEC issued 35 licenses to rear/sell trout and salmon, and 25 licenses to rear/sell black bass (In-state). Some rural counties own and operate trout hatcheries. Examples include Essex County and Warren County.

2. Reporting, Recordkeeping, and other Compliance Requirements; and Professional Services:

Commercial hatchery operators, bait fish dealers, and other entities that possess or transport fish intended for release in New York waters, will be

required to maintain documentation associated with fish health inspections.

3. Costs:

Commercial hatchery operators, bait fish dealers, and other entities that possess or transport fish intended for release in New York waters, will incur costs associated with fish health inspection reports required by these regulations.

From consulting with those in the field of disease testing, the cost for the supplies and materials needed for testing a "lot" of fish (i.e., 60 fish) is approximately \$600. Factoring in accompanying services provided by a qualified tester (personnel service and use of laboratory facilities) results in a total estimated cost of approximately \$1,600.

4. Minimizing Adverse Impact:

The rulemaking does not prohibit the collection of bait from waters in New York that have not tested positively for VHS. Therefore, some waters in New York remain available for bait fish collection by commercial operators. The rulemaking also allows the commercial hatcheries to sell freshwater fish for release into the waters of New York once they have been determined to be disease free.

5. Rural Area Participation:

The emergency rulemaking process does not provide opportunity for public hearings and/or public meetings. The immediate outreach efforts of the Department included the issuance of a statewide news release (10/31/06) informing the public of this crisis and indicating that the Department was contemplating measures that could be taken to address VHS. In addition, DEC forwarded copies of a VHS New York information sheet, the APHIS Industry Alert, and the APHIS Federal Order to the holders of Fishing Preserve Licenses in New York, licensed Private Hatchery Operators, holders of Great Lakes commercial fishing licenses, and those licensed by the Department to collect and/or sell bait fish.

Job Impact Statement

The Department has determined that this emergency rulemaking will not have a substantial adverse impact on jobs and employment opportunities, and that by its nature and purpose (protecting the freshwater fish species resource), the proposed rule will protect jobs and employment opportunities. Therefore, the Department has determined that a job impact statement is not required.

Due to the potential adverse effects of Viral Hemorrhagic Septicemia (VHS) on fish populations and the desire to prevent or delay its spread to other states, the USDA Animal and Plant Health Inspection Service (APHIS) issued a Federal Order on October 24, 2006, that prohibits the importation of certain species of live fish from Ontario and Quebec and interstate movement of the same species from eight states bordering the Great Lakes, including New York.

This rulemaking is necessary to protect New York's freshwater fish species and their populations from VHS by preventing the spread of this virus to additional waters, thereby safeguarding the health of the freshwater fisheries of New York State. New York's freshwater sportfishing industry currently contributes an estimated \$1.4 billion annually to the state's economy, supporting over 17,000 jobs. Some additional jobs are likely to be generated, in order to accommodate the required fish collection, sampling and testing.

Commercial bait fish dealers and private hatchery operators are the two employment areas that will most likely be affected by this rulemaking.

For licensed commercial bait fish dealers (approximately 400), this rulemaking will prohibit the commercial harvest or collection of bait fish from VHS positive waters, and will require that fish to be released in the waters of New York be certified as disease free. However, it is unlikely that these restrictions will result in a substantial adverse impact on jobs due to several qualifying factors. First, not all licensed dealers engage in the restricted activities. For example, some licensees may operate retail establishments that do not collect fish from the waters of New York or release fish to the wild. Second, a portion of the licensed commercial baitfish dealers sell bait as just one component of their business (e.g. in conjunction with selling fishing tackle, fishing clothing, operating a marina), and would therefore remain viable even without the sale of bait fish. Third, a portion of the licensees obtain their bait fish from waters in New York that are not VHS positive. Of the 400 licensed dealers, approximately 150 dealers reside in portions of the state containing waters where VHS has not been detected. Fourth, a portion of the licensed commercial bait fish operators obtain their bait fish from fish farms and do not collect bait fish from the wild. Fifth, many bait fish operators purchase fish from a disease free source (e.g. fish farms) and therefore will not need to test the fish for disease.

Private hatchery operators will also be affected by the restrictions on fish movement noted above. In 2006, DEC issued 35 licenses to rear/sell trout and salmon, and 25 licenses to rear/sell black bass in New York. The regulations will require that these operations certify that their fish as disease free if the fish are to be sold for bait for use in the waters of the state of New York. The estimated cost for the supplies and materials needed for testing a "lot" of fish (i.e., 60 fish) is approximately \$600. With the additional cost of services provided by a qualified tester (personnel service and use of laboratory facilities), the total estimated cost is approximately \$1600. While this is not an insignificant sum, the presence of VHS in New York will likely dictate a market in which buyers require certification from sellers that the fish are disease free. Therefore, the testing requirements in the proposed regulations will likely contribute to the marketability of the hatchery operator's product. For this reason, it does not appear that the Department's regulations on disease testing will result in a loss of fish hatchery jobs.

The Department has determined that this emergency rulemaking will not have a substantial adverse impact on jobs and employment opportunities, and that by its nature and purpose (protecting the freshwater fish species resource), the proposed rule will in fact protect jobs and employment opportunities dependent on New York's fishery resources. While it is difficult to determine exactly how many jobs may be affected by this rulemaking, based on the above, the Department does not believe it will result in the decrease of more than one hundred jobs (or the equivalent). Therefore, the Department has determined that a job impact statement is not required.

Department of Health

NOTICE OF ADOPTION

Expansion of the New York State Newborn Screening Panel

I.D. No. HLT-49-06-00005-A

Filing No. 213

Filing date: Feb. 20, 2007

Effective date: March 7, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 69-1.2 and 69-1.3 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2500-a

Subject: Expansion of the NYS newborn screening panel.

Purpose: To add Krabbe disease to the NYS newborn screening panel and clarify the requirement for timely specimen transfer.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-49-06-00005-P, Issue of December 6, 2006.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Criminal History Record Checks

I.D. No. MRD-52-06-00010-E

Filing No. 209

Filing date: Feb. 16, 2007

Effective date: Feb. 16, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of sections 633.22 and 633.98 and amendment of sections 633.5, 633.99, 635-10.5, 679.6, 680.12, 681.14, 687.4, 687.8 and 690.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.33; and Executive Law, section 845-b

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: The regulations require fingerprinting and criminal history record checks for various individuals who provide services to people with developmental disabilities in the OMRDD system. The regulations are necessary to keep certain convicted criminals, including violent felons and sexual predators, out of positions that include regular and substantial contact with people with developmental disabilities. If regulations were not adopted as an emergency measure, convicted criminals could have unrestricted and unsupervised contact with consumers as new employees or volunteers or family care providers, which would endanger the health, safety and general welfare of people receiving services. Consumers could be unnecessarily victimized by people with criminal history records for the period of time between April 1, 2005 and the earliest date that regulations could be finalized using the regular regulatory process.

Subject: Requirements related to criminal history record checks.

Purpose: To promulgate regulations necessary to implement L. 2004, ch. 575, concerning criminal history record checks. The regulations require that agencies, sponsoring agencies and providers of services request history record checks for specified employees, volunteers, family care providers and parties who are to reside in a family care home.

Substance of emergency rule: • Effective February 16, 2007. Replaces similar emergency regulations that were effective April 1, June 30, September 28, December 27, 2005, March 27, June 23, September 21 and December 20, 2006.

• No changes have been made compared to the December 20, 2006 emergency regulations.

• Applies to all providers, including residences (ICFs, IRAs, and CRs), family care homes, day programs (day treatment, day habilitation, day training, sheltered workshops, prevocational services), HCBS waiver services, Article 16 clinics, family support services, and individualized support services.

• Applies to some entities that have a contract with OMRDD.

• Establishes a requirement that providers of services apply to become "registered providers" if they contract with a voluntary agency, entity on behalf of the voluntary agency or DDSO and provide transportation services or staff.

• Requires agencies to appoint an "authorized party" to request criminal history record checks and receive the results.

• Requires that prospective employees, volunteers, and operators that have "regular and substantial unsupervised or unrestricted physical contact" with people receiving services consent to a criminal history record check.

• Requires that agencies ask applicants about pending criminal charges, in addition to convictions.

• Defines employees of the provider that are subject to a criminal history record check to include people that are directly employed by the provider and other people providing similar services for the provider who are employed by other entities, such as temporary employment agencies or contractors.

- Includes a list of jobs that are presumed to include this type of contact.

- Provides that while the results of criminal history record checks are pending, employees and volunteers may not have unsupervised physical contact with people receiving services. Regulations specify restrictions placed on “temporarily approved provisional” employees and volunteers.

- Provides that oversight of temporarily approved provisional employees and volunteers can be provided by an employee who has completed required training in incidents and abuse, and who was not subject to a criminal history record check or whose criminal history record check has been completed.

- Provides that temporarily approved provisional employees and volunteers may not be assigned personal care activities which require privacy unless the employee providing oversight is in the same room.

- Provides that temporarily approved provisional employees and volunteers may not work the night shift in a residence.

- Requires that requests for criminal history record checks be made through OMRDD. If a subject party is also subject to another criminal history record check from the New York State Office of Mental Health (OMH) at the same time because of other responsibilities of the potential employment with the same agency or provider of services. In that case, the individual need only to be fingerprinted through one of the agencies; however OMH and OMRDD will make separate determinations.

- Provides that OMRDD will make a determination in each case either to issue a denial (or direct the provider to issue a denial) or not to issue a denial (or not direct the provider to issue a denial). The determination process is put on hold for pending felony charges and may be put on hold for misdemeanor charges.

- Establishes standards for OMRDD determinations that replicate the standards in the statute, with certain specified crimes that are presumptive disqualifying crimes. A new section 633.98 lists these crimes.

- Provides that OMRDD will send a summary of the criminal history record information to agencies, which can assist in further decision-making by the agency (such as evaluating whether the applicant provided false information about convictions or pending charges). Registered providers will not receive the summary unless OMRDD is issuing a denial.

- Provides that once a person has had a criminal history record check, OMRDD will let the provider know about future arrests. When they are notified, providers must take appropriate steps to protect people receiving services.

- Requires that providers notify OMRDD when employees and volunteers separate from service, so that OMRDD can remove the name from its database.

- Includes a requirement that agencies and providers of services submit an annual criminal history record check statement to OMRDD.

- Identifies actions that OMRDD may take for non-compliance.

- Makes minor changes in current requirements to assess applicant backgrounds.

Family care homes.

- Includes family care respite providers, and adults living in homes where respite is provided.

- Requires prospective family care providers and people who are to reside in a family care home and who are age 18 years and older to consent to a criminal history record check (except for individuals receiving family care services).

- Requires current family care providers and residents of a family care home to consent to a criminal history record check, at the time of recertification.

- Establishes that checks related to family care homes are requested by the sponsoring agency (DDSOs for most family care homes) and information is received by the sponsoring agency.

- Requires criminal history record checks for current residents at the time of their 18th birthday.

- Requires that a criminal history record check be conducted prior to or shortly after a new adult moves into the family care home. Additional processes are specified to safeguard people receiving services before the results of the criminal history record check are received.

- Requires notifications to OMRDD about residency and provider status so that names can be removed from the OMRDD database.

- Requires additional notifications by family care providers about changes in residents of the family care home and arrests of household members.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule

making, I.D. No. MRD-52-06-00010-P, Issue of December 27, 2006. The emergency rule will expire March 11, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

Regulatory Impact Statement

1. Statutory Authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities’ (OMRDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, as stated in Section 13.07 of the New York State Mental Hygiene Law.

b. OMRDD’s authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in Section 13.09(b) of the Mental Hygiene Law.

c. OMRDD’s authority, as stated in Section 16.33 of the Mental Hygiene Law, to require providers of services to request that a criminal history record check be conducted in specified situations.

d. OMRDD’s responsibility, pursuant to section 845-b of the Executive Law, to promulgate regulations concerning criminal history record checks.

2. Legislative Objectives:

These amendments further the legislative objectives embodied in sections 13.07, 13.09(b), and 16.33 of the Mental Hygiene Law and section 845-b of the Executive Law. The promulgation of these amendments will enhance the safety of people with developmental disabilities who receive services certified, authorized, approved or funded by OMRDD. Providers of services, with some exceptions, are required to comply, including certified residences and day programs, HCBS waiver services, Medicaid Service Coordination, family support services, and individual support services.

3. Needs and Benefits:

The new law and these implementing regulations require fingerprinting and criminal history record checks, which include information from the New York State Division of Criminal Justice Services (DCJS) for prospective employees and volunteers, family care providers and adults who are to reside in a family care home.

Based on the results of the criminal history record check, individuals who have been convicted of certain types of crimes will be denied positions which involve regular and substantial unsupervised or unrestricted physical contact with people receiving services. The results of the check will also enable providers (except for “registered providers”) to verify criminal history record information provided in applications and make their own determinations about employment suitability, when OMRDD has not directed the denial of the application for the “subject party.”

The regulations also include measures that can be used at the discretion of the provider (except for “registered providers”) to temporarily approve new applicants while the results of the criminal history record check are pending. During this time, the activities of these employees and volunteers must be monitored. In this manner, new employees can be hired while people receiving services are safeguarded.

The new law and regulations will enhance consumer safety by keeping certain known offenders who have been convicted of certain crimes out of jobs that involve regular and substantial unsupervised or unrestricted physical contact with people receiving services.

The regulations extend requirements to employees of entities under contract with provider agencies.

In addition, the regulations establish mechanisms for some providers of services to become “registered providers.” Providers of services that contract with agencies to provide transportation services or staff are required to apply to OMRDD to become “registered providers.”

4. Costs:

a. Costs to the Agency and to the State and its local governments: OMRDD estimates that the new requirements will result in approximately 50,000 requests for a criminal history record check on an annual basis. The total annual cost is estimated to be approximately \$6,085,000. This cost includes the costs of the processing fee charged by the Division of Criminal Justice Services, which is \$75 per check, and the related costs, including administrative costs, which are incurred by OMRDD.

OMRDD estimates that approximately 79 percent of the annual aggregate cost will be eligible for Medicaid funding. Therefore, approximately \$4,807,150 of the total costs will be subject to a 50 percent Federal share, and approximately \$1,277,850 will be borne entirely by the State. The new

requirements will therefore result in the expenditure of approximately \$2,403,575 in Federal funds, and approximately \$3,681,425 in costs to the State.

OMRDD anticipates adopting proposed regulations which will include a request for a criminal history record check from the Federal Bureau of Investigation pursuant to Chapter 673 of the Laws of 2006, effective March 12, 2007. This will change the above noted costs.

There will be no cost to local governments as a result of the new requirements.

b. Costs to private regulated parties: There are no initial capital investment costs or initial non-capital expenses. The new requirements will not generally result in any costs to private regulated parties.

For programs eligible for Medicaid funding, the cost of obtaining criminal history record information and OMRDD review of that information will be a state-paid item, so that providers will not be incurring out-of-pocket expenses. These expenses will be considered an allowable cost in the rates and fees established for the programs.

For programs ineligible for Medicaid funding, the cost of obtaining criminal history record information and OMRDD review of that information will be borne by the State.

OMRDD will make facilities available for fingerprints to be taken at no out-of-pocket cost to the provider or subject party. However, OMRDD is permitting the provider or subject party to choose to use another entity to take the fingerprints (e.g. a local police department or some voluntary agencies) which may charge for that service. OMRDD is not providing reimbursement for those charges, so this cost must be borne by the provider.

5. Local Government Mandates:

There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork:

Chapter 575 of the Laws of 2004 requires two forms to be developed for use in the process of requesting criminal history record information. The forms are an informed consent form to be completed by the subject party and the request form to be completed by the authorized party designated by the provider. Temporarily approved employees and volunteers are required to complete an attestation regarding incidents/abuse. Adults who are to reside in a family care home must provide an attestation regarding convictions and pending charges. In addition, other forms will be required by OMRDD, such as a form to designate an authorized party, forms to be completed when someone who has had a criminal history record check is no longer subject to the check, and an annual statement completed by the chief executive officer.

The regulations also contain a requirement to keep a current roster of subject parties.

7. Duplication:

The regulatory amendment does not duplicate existing State or federal requirements.

It should be noted that the Office of Mental Health (OMH) has a similar statutory requirement and is promulgating its own regulations on this subject, as required via Chapter 575. Staff from OMRDD and OMH have met to explore opportunities to share fingerprint technology across both Agencies. In terms of technology, OMH and OMRDD hope to integrate systems at a later date to arrive at a single technology solution. In anticipation of that effort, OMRDD and OMH selected the same vendor, which was already under contract to provide a LiveScan solution for a joint project between other state agencies. To facilitate future integration, a common, consistent hardware and software platform was purchased by OMH and OMRDD. In addition, OMRDD has begun efforts with the Fingerprint technology vendor to electronically share between OMRDD and OMH. This would facilitate staff from OMRDD providers being printed at OMH locations, as well as staff from OMH providers being printed at OMRDD locations. OMRDD has had preliminary discussions with the vendor as to the architecture, software and connectivity required to accomplish this goal.

With the release of enhanced LiveScan stations and software, the capability exists to share fingerprints electronically through the NyeNet. As all NYS Agencies utilize the NyeNet, this capability provides for future expansion beyond OMH for State Agencies who also utilize this technology. In addition, this will also allow voluntary agencies that serve both OMH and OMRDD consumers to forward prints to the appropriate State Agency for processing.

OMRDD has also expanded the number of sites available for electronic fingerprinting by implementing fingerprint technology at a limited number of voluntary agencies. The technology utilized is equivalent to that being

used at OMRDD DDSOs and increases the number of locations to serve large population centers, as well as more remote locations where there are no DDSO Livescan stations. Support is being provided by OMRDD to ensure the success of these new sites. Additional expansion in the future is anticipated in response to the numerous requests from voluntary agencies for this capability.

8. Alternatives:

OMRDD had considered standards requiring that the oversight provided for temporarily approved provisional employees and volunteers could only be provided by a supervisor or someone with one year's experience. However, OMRDD determined that this requirement might be difficult for some providers to implement and would not enhance consumer safety.

9. Federal Standards:

The amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule:

OMRDD filed a similar emergency regulation on April 1, 2005 to implement Chapter 575 of the Laws of 2004, which became effective on April 1, 2005. Subsequent emergency regulations were filed June 30, 2005, September 28, 2005, December 27, 2005, March 27, 2006, June 23, 2006, September 21, 2006 and December 20, 2006.

OMRDD intends to finalize the proposed amendments within the time frames provided for by the State Administrative Procedure Act (SAPA).

Regulatory Flexibility Analysis

1. Effect of rule: These regulatory amendments will apply to providers of services that operate all programs certified, authorized, approved or funded through contract by OMRDD, except for the State and some other specified entities. In addition, small businesses providing transportation services or staff that contract with voluntary agencies or NYS are required to comply with provisions related to "registered providers."

OMRDD has determined, through a review of the certified cost reports, that the organizations which operate the facilities or provide the developmental disabilities services employ fewer than 100 employees at the discrete certified or authorized sites and would, therefore, be classified as small businesses.

The amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will not cause undue hardship to small business providers due to increased costs for additional services or increased compliance requirements.

2. Compliance requirements: The new law and implementing regulations require a variety of compliance activities. These activities include: developing policies and procedures, designating authorized parties, completing criminal history record check request forms, denying employment at the direction of OMRDD, reviewing the summary of criminal history record information, evaluating the safety of consumers when a subject party is subsequently arrested, developing and maintaining records, and notifying OMRDD when employees separate from service.

3. Professional services: No additional professional services are required as a result of these amendments. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs: There are no costs to local governments.

For programs eligible for Medicaid funding, the cost of obtaining criminal history record information and OMRDD review of that information will be a state-paid item, so that providers will not be incurring out-of-pocket expenses. These expenses will be considered an allowable cost in the rates and fees established for the programs.

For programs ineligible for Medicaid funding, the cost of obtaining criminal history record information and OMRDD review of that information will be borne by the State.

OMRDD will make facilities available for fingerprints to be taken at no out-of-pocket cost to the provider or subject party. However, OMRDD is permitting the provider or subject party to choose to use another entity to take the fingerprints (e.g. a local police department or some voluntary agencies) which may charge for that service. OMRDD is not providing reimbursement for those charges, so this cost must be borne by the provider.

5. Economic and technological feasibility:

The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse impact: These amendments impose no adverse economic impact on local governments. As mentioned in the Regulatory Impact Statement, OMRDD had considered requiring that oversight could only be provided by supervisors or employees with at least one year of

experience. OMRDD determined that this requirement might be difficult for some providers to implement and would not enhance consumer safety, and has minimized any related adverse economic impact on providers of services by not incorporating these qualifications for the employees providing oversight.

7. Small business and local government participation: OMRDD convened a Criminal Background Check Advisory Group which included consumer representatives, family members, and provider representatives. The group met on Nov. 8, 2004 and on March 22, 2005. In addition, the OMRDD Criminal Background Check Regulations Workgroup included provider representatives, and met on four occasions beginning in December, 2004. Presentations were made to various affected groups including the Family Care Advisory Council and the Family Support Services Advisory Council. A series of informational mailings were sent to affected providers beginning in January, 2005. OMRDD also held a series of twelve Executive Overview sessions in February and March in various locations from Buffalo to Long Island and also presented six video conferences to locations throughout the State. A series of training sessions was conducted in September, 2005 related to contractors. OMRDD has also posted relevant information on its website at www.omr.state.ny.us.

OMRDD distributed similar emergency regulations in April, June, September and December of 2005, March, June, September and December of 2006. OMRDD also posted the regulations on the Agency website. No comments were received regarding the emergency regulations.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas because of the location of their operations (rural/urban). The amendments are concerned with requiring that providers of services request criminal history record checks for prospective employees and volunteers, and that checks are requested for family care providers and adult household members of family care homes. OMRDD expects that adoption of the amendments will not have adverse effects on regulated parties because of the location of their operations. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations. Specific effects of the rule on providers of services have been discussed in the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Job Impact Statement

A Job Impact Statement for these amendments is not submitted because it is apparent from the nature and purposes of the amendments that they will not have an adverse impact on jobs and/or employment opportunities. It is expected that the amendments will have a modest positive impact on jobs/employment opportunities because OMRDD anticipates creating new employment opportunities to take fingerprints, to process the results of the criminal history record check, and to make determinations based on the results.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Criminal History Record Checks

I.D. No. MRD-52-06-00010-A

Filing No. 208

Filing date: Feb. 16, 2007

Effective date: March 12, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of sections 633.22 and 633.98 and amendment of sections 633.5, 633.99, 635-10.5, 679.6, 680.12, 681.14, 687.4, 687.8, and 690.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), and 16.33; and Executive Law, section 845-b

Subject: Requirements related to criminal history record checks.

Purpose: To promulgate regulations necessary to implement L. 2004, ch. 575 and L. 2006, ch. 673 concerning criminal history record checks. The regulation requires that agencies, sponsoring agencies and providers of services request criminal history record checks for specified employees, volunteers, family care providers and parties who are to reside in a family care home.

Text or summary was published in the notice of proposed rule making, I.D. No. MRD-52-06-00010-P, Issue of December 27, 2006.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Initial Tariff Schedule by Muller Water Supply

I.D. No. PSC-07-06-00015-A

Filing date: Feb. 20, 2007

Effective date: Feb. 20, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Feb. 16, 2007, adopted an order directing Muller Water Supply to cancel its initial tariff schedule, P.S.C. No. 1.

Statutory authority: Public Service Law, section 89-e(2)

Subject: Initial tariff schedule—electronic filing.

Purpose: To cancel Muller Water Supply's tariff schedule, P.S.C. No. 1—Water.

Substance of final rule: The Commission adopted an order directing Muller Water Supply to file a consecutively numbered supplement, on not less than one day's notice, on or before February 28, 2007 announcing cancellation of its tariff schedule, P.S.C. No. 1—Water, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-W-0076SA1)

NOTICE OF ADOPTION

Initial Tariff Schedule by Brookside Meadows Water-Works Corp.

I.D. No. PSC-16-06-00014-A

Filing date: Feb. 20, 2007

Effective date: Feb. 20, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: The commission, on Feb. 16, 2007, adopted an order approving Brookside Meadows Water-Works Corp.'s initial tariff schedule, P.S.C. No. 1—Water to become effective Feb. 26, 2007.

Statutory authority: Public Service Law, section 89-e(2)

Subject: Initial tariff schedule—electronic filing.

Purpose: To approve a tariff schedule, P.S.C. No. 1—Water for Brookside Meadows Water-Works Corp. which sets forth the initial rates, charges, rules and regulations under which the company will operate.

Substance of final rule: The Commission adopted an order approving Brookside Meadows Water-Works Corp.'s initial tariff schedule, P.S.C. No. 1—Water to become effective February 26, 2007, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (06-W-0391SA1)

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Public Service Commission publishes a new notice of proposed rule making in the *NYS Register*.

Modification of the Current Environmental Disclosure Program

I.D. No.	Proposed	Expiration Date
PSC-07-06-00009-P	February 15, 2006	February 15, 2007

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Lightened Regulation and Financing Approval by Canandaigua Power Partners, LLC

I.D. No. PSC-10-07-00009-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering whether to grant or deny, (in whole or in part,) a request by Canandaigua Power Partners, LLC (CPP) for lightened regulation and financing approval.

Statutory authority: Public Service Law, sections 4(1), 66(1), 69, 70 and 110

Subject: CPP's request for lightened regulation and financing approval.

Purpose: To consider CPP's request for lightened regulation and financing approval.

Substance of proposed rule: In a petition filed January 26, 2007 Canandaigua Power Partners, LLC (CPP) seeks a Certificate of Public Convenience and Necessity to construct and operate a wind-power generating facility and related facilities in the towns of Cohocton and Avoca. In connection with this request for licensing, CPP requests lightened regulation as an electric corporation and approval of financing (including financing flexibility) in an amount up to \$185 million.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(07-E-0138SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Water Rates and Charges by Robinn Meadows Development Corporation

I.D. No. PSC-10-07-00010-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, tariff revisions filed by Robinn Meadows Development Corporation to make various changes in

the rates, charges, rules and regulations in its tariff schedule, P.S.C. No. 3—Water, to become effective March 1, 2007.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10)

Subject: Water rates and charges.

Purpose: To increase Robinn Meadows Development Corporation's annual revenues by about \$25,138 or 57.4 percent.

Substance of proposed rule: On January 31, 2007, Robinn Meadows Development Corporation (Robinn Meadows or the company) filed to become effective March 1, 2007, Leaf No. 12, Revision 2, to its electronic tariff schedule, P.S.C. No. 3—Water. Robinn Meadows requests to increase its annual revenues by about \$25,138 or 57.4%. The company provides metered water service to 128 customers in a real estate development known as Robinn Meadows in the Town of Wawayanda, Orange County. The average customer's annual metered bill for 70,000 gallons would increase from \$371 to \$571.24. Robinn Meadow's quarterly minimum rate for the first 12,000 gallons currently is \$63.60 and would increase to \$109.81. For each additional 1,000 gallons the current rate is \$5.30 and would increase to \$6.00. Robinn Meadows' tariff, along with its proposed changes (Leaf No. 12, Revision 2) is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us)—located under the Commission Documents—Tariffs. The Commission may approve or reject, in whole or in part, or modify Robinn Meadows' request.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(06-W-1454SA2)

Department of State

**EMERGENCY
RULE MAKING**

Firefighter Training

I.D. No. DOS-10-07-00002-E

Filing No. 210

Filing date: Feb. 20, 2007

Effective date: Feb. 20, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 438 to Title 19 NYCRR.

Statutory authority: Executive Law, section 156(6); and L. 2006, ch. 615

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: L. 2006, ch. 615 requires that regulations concerning firefighter training be adopted by Feb. 12, 2007.

Subject: Firefighter training.

Purpose: To set forth standards concerning firefighter training and describe the process whereby firefighter training hours and additional training hours will be allocated to counties.

Substance of emergency rule:

PART 438

MINIMUM STANDARDS REGARDING OUTREACH FIRE TRAINING PROGRAM

[Statutory Authority: Executive Law, § 156(6)]

Sec.

438.1 Purpose

438.2 Definitions

438.3 Training Standards (including instructor and student requirements)

438.4 Training Hours and Course Allocations

438.5 Additional Training Hours and Course Allocations

438.6 Supplemental Training Program

438.7 Restrictions

438.8 Exemptions

Section 438.1 of the rule recites its purpose. The purpose of this rule is to implement the requirements of subdivision 6 of section 156 of the Executive Law, as enacted by Chapter 615 of the Laws of 2006. This subdivision empowers the State Fire Administrator to plan, coordinate, and provide training related to fire and arson prevention and control for firefighters, both paid and volunteer, and related governmental officers and employees. Subdivision 6 also directs the Office of Fire Prevention and Control (OFPC) to adopt rules and regulations relating to such training, including but not limited to training standards used, the process by which training hours will be allocated to counties, and the establishment of a uniform procedure for counties to request and OFPC to provide additional training hours.

Section 438.2 contains definitions of terms used in Part 438.

Section 438.3 describes training standards which will be followed by OFPC in its implementation of the rule. Included are items dealing with instructor qualifications, student requirements, requirements concerning live fire training, and a listing of the standards, manuals, statutes, and regulations which will be used to provide the training authorized by subdivision 6 of section 156 of the Executive Law.

Section 438.4 deals with firefighter training hours, course allocations and scheduling procedures.

Section 438.5 deals with additional firefighter training hours.

Section 438.6 deals with a supplemental firefighter training program.

Section 438.7 deals with restrictions on matters found in Part 438.

Section 438.8 exempts regional delivery of training courses sponsored by the New York State Academy of Fire Science operated by the Office of Fire Prevention and Control from the requirements of Part 438.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 20, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Nathan A. Hamm, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740

Regulatory Impact Statement

1. STATUTORY AUTHORITY

Section 156(6) of the Executive Law requires that the Office of Fire Prevention and Control of the Department of State (OFPC) provide fire and arson prevention and control training to firefighters and related governmental officers and employees. This section requires OFPC to adopt rules related to such training. These rules must include statements concerning training standards used by OFPC, the process by which OFPC allocates training hours to counties, and a uniform procedure for counties to request and OFPC to provide additional training hours.

2. LEGISLATIVE OBJECTIVES

The legislative objectives behind section 156(6) are to make more transparent the process by which OFPC allocates training hours to counties, to establish a uniform procedure for counties to request and OFPC to provide additional training hours, and to require that OFPC state the training standards which it will follow when it delivers training.

3. NEEDS AND BENEFITS

Section 156(6) of the Executive Law requires that OFPC adopt a rule which deals with firefighter training. Adoption of this rule would add transparency to the process by which firefighter training hours are allocated to counties, describe the training standards which will be followed by OFPC when it delivers training, and prescribe a uniform procedure for counties to request and OFPC to provide additional training hours.

4. COSTS

a. Cost to regulated parties for the implementation of and continuing compliance with the proposed rule.

Fire departments would experience no additional out-of-pocket costs if the rule is adopted. The equipment and facilities required by the training provided for in this rule are already in the possession of these departments.

b. Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule.

The cost to the Office of Fire Prevention and Control for the implementation of the proposed rule is approximately \$1,500,000 per year. This amount is currently expended for training outreach programs; no additional costs beyond this amount would be required if this rule is adopted.

There would be no costs to local governments for the implementation and continuation of the proposed rule.

5. LOCAL GOVERNMENT MANDATES

This rule making will not impose any program, service, duty or responsibility upon counties, cities, towns, villages, school districts, fire districts or other special districts. Participation in the firefighter training provided for in this rule is at the option of each fire department.

6. PAPERWORK

Several new forms would be required as a result of the rule:

County fire coordinators desiring that training be provided to fire departments within their jurisdiction will be required to answer a survey related to such training and submit a proposed training schedule.

If this rule is adopted, state fire instructors, municipal fire instructors, and county fire instructors would be required to complete student attendance cards, and state fire instructors would be required to submit payroll vouchers.

7. DUPLICATION

No rules or other legal requirements of either the state or federal government exist at the present time which duplicate, overlap, or conflict with the proposed rule.

8. ALTERNATIVES

Section 156(6) of the Executive Law requires that OFPC adopt a rule which deals with firefighter training. This section requires that the rule describe the process by which firefighter training hours are allocated to counties, the training standards which will be followed by OFPC when it delivers such training, and prescribe a uniform procedure for counties to request and OFPC to provide additional training hours. Since OFPC does not have statutory authority to consider any alternative other than to adopt a rule addressing these issues, no other significant alternatives were considered.

9. FEDERAL STANDARDS

No standards have been set by the federal government for the same or similar subject areas addressed by this proposed rule.

10. COMPLIANCE SCHEDULE

Fire departments interested in receiving the training which is provided for in this proposed rule can comply immediately with the requirements of the rule.

Regulatory Flexibility Analysis

1. Effect of rule

The proposed rule potentially would affect all of the counties and all of the approximately 1850 fire departments located in New York State. The proposed rule would not affect small businesses located in New York State.

2. Compliance requirements

Counties and fire departments wishing to avail themselves of the training offered by the proposed rule would be required to submit a proposed fire training schedule to the Office of Fire Prevention and Control of the Department of State.

3. Professional services

Counties and fire departments will not need any additional professional services in order to comply with the proposed rule.

4. Compliance costs

There would be no initial capital costs to counties or fire departments which would be associated with compliance with the rule, or annual costs to these entities for continuing compliance with the rule.

5. Economic and technological feasibility

The proposed rule sets forth a voluntary process whereby counties and fire departments may make requests for firefighter training. The only requirement that the rule imposes on these counties and fire departments is that they make requests for this training. It is therefore economically and technologically feasible for these counties and fire departments to comply with this rule.

6. Minimizing adverse impact

The proposed rule sets forth a voluntary process whereby counties and fire departments may make requests for firefighter training. Since the rule would regulate the administration of a state program rather than the activi-

ties of counties and fire departments, engaging in this voluntary process would not have any adverse economic impact on these entities.

7. Small business and local government participation

Representatives of fire departments and local governments participated in legislative hearings at which they urged the implementation of a more transparent process for the allocation of firefighter training resources. This resulted in the passage of Chapter 615 of the Laws of 2006, which requires the promulgation of these rules.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas

The proposed rule would apply throughout New York State. All of the counties and all of the approximately 1850 fire departments in New York State, including those located in rural areas as that term is defined in section 102(10) of the State Administrative Procedure Act ("SAPA"), would potentially be affected by the rule.

The proposed rule would not regulate any activities of private entities in rural areas of the State.

2. Reporting, recordkeeping and other compliance requirements; and professional services

Counties wishing to avail themselves of the training offered by the proposed rule would be required to submit a proposed fire training schedule to the Office of Fire Prevention and Control of the Department of State. Counties and fire departments located in rural areas will not need any additional professional services in order to comply with the proposed rule.

3. Costs

There would be no initial capital costs to counties and fire companies located in rural areas associated with compliance with the rule, or annual cost for continuing compliance with the rule by these entities.

4. Minimizing adverse impact

The proposed rule sets forth a voluntary process whereby counties may make requests for firefighter training. The rule would regulate the administration of a state program rather than the activities of public or private entities located in rural areas. Since this process is voluntary, it would not have any adverse economic impact on rural areas of New York State.

5. Rural area participation

Representatives of rural areas participated in legislative hearings at which they urged the implementation of a more transparent process for the allocation of firefighter training resources. This resulted in the passage of Chapter 615 of the Laws of 2006.

Job Impact Statement

1. Nature of impact

The nature of the impact that the rule will have on jobs and employment opportunities is minimal. The rule will result in the employment of several additional Office of Fire Prevention and Control (OFPC) fire protection specialists and may result in the employment of several temporary part time instructors by OFPC.

2. Categories and numbers affected

The rule will result in the employment of several additional fire protection specialists and may result in the employment of several temporary part time instructors by OFPC.

3. Regions of adverse impact

The minimal impact that the rule will have on jobs and employment opportunities will not result in an disproportionate impact on any region of the state.

4. Minimizing adverse impact

The proposed rule would not have any adverse impact on existing jobs. The intent of Chapter 615 of the laws of 2006 is to provide firefighter training, not to promote the development of new employment opportunities.

EMERGENCY RULE MAKING

Appliance and Equipment Energy Efficiency Standards

I.D. No. DOS-10-07-00003-E

Filing No. 212

Filing date: Feb. 20, 2007

Effective date: Feb. 20, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Parts 910, 911 and 912 to Title 19 NYCRR.

Statutory authority: Energy Law, section 16-106

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: Energy Law, section 16-106(2) requires that matters which are necessary to insure the proper implementation and enforcement of the provisions of art. 16 of the Energy Law dealing with appliance and equipment energy efficiency standards be adopted on and after June 30, 2006.

Subject: Appliance and equipment energy efficiency standards.

Purpose: To adopt provisions dealing with implementation and enforcement of art. 16 of the Energy Law.

Substance of emergency rule: Article 16 of the Energy Law provides for Appliance and Equipment Energy Efficiency Standards and directs the Secretary of State in consultation with the President of the New York State Energy Research and Development Authority (NYSERDA) to promulgate regulations to achieve the purposes of the article. This rule making adds three new Parts to Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York and implements in part the requirements and directives of Article 16 of the Energy Law.

Part 910 entitled General Requirements sets forth the purpose and applicability of Article 16 of the Energy Law and the regulations adopted to implement the statute. It lists the fourteen categories of appliances/equipment that are subject to the statute and the associated regulations (section 910.1). It defines a number of terms, many of which are also defined in the statute, which clarify the types of products to which energy efficiency standards shall apply (section 910.2). Finally, Part 910 imposes the requirement that manufacturers, whose products are subject to Article 16 and the associated regulations, shall submit written confirmation attesting that each model of the product sold or offered for sale in New York State conforms with the applicable efficiency standard. As an alternative to certification, a manufacturer may submit to the Department of State a letter stating that the product at issue is certified in the State of California as meeting the applicable standards of the California Code of Regulations (section 910.3).

Part 911 entitled Preempted Standards addresses the circumstances created by adoption of the Energy Policy Act of 2005 by the United States Congress subsequent to New York's adoption of Article 16 of the Energy Law. Section 16-106(1)(b) of the Energy Law provides that no standard adopted pursuant to Article 16 of the Energy Law shall go into effect if federal government energy efficiency performance standards regarding a product preempt the state standards, unless such preemption is waived pursuant to federal law. The Energy Policy Act of 2005 provides for the adoption of energy conservation standards for ten of the fourteen categories of products that Article 16 of the Energy Law lists as subjects for New York energy efficiency standards. Therefore, absent a waiver of federal preemption, any New York standard for one of the ten categories of product covered by the federal statute would be preempted. Part 911 sets forth an affirmative statement that the Secretary of State in consultation with the President of NYSERDA has determined that it is not in the interests of New York to petition the federal government for a waiver of federal preemption. The Secretary, however, reserves the right to petition for such a waiver in the future if it is determined to be in the interests of New York State.

Part 912 entitled Metal Halide Lamp Fixtures provides that, on or after January 1, 2008, metal halide lamp fixtures that are capable of operating a lamp in a vertical operating position or within 15 degrees of a vertical operating position, and are capable of operating lamps rated equal to or greater than 150 watts and less than or equal to 500 watts, shall not be sold, offered for sale, or installed in New York State if they contain a probe start ballast. In addition, manufacturers of metal halide lamp fixtures shall be required to submit to the Department of State a written certification attesting to compliance with applicable standards for each model of metal halide lamp fixture subject to the regulation. A certification shall include the following information for each fixture listed therein: trade name on package; model number; lamp orientation (vertical base-up, vertical base-down, horizontal, universal, or other); type of ballast; and lamp rating in watts.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 20, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Steven Rocklin, Department of State, 41 State St., Albany, NY 12231, (518) 474-4073, e-mail: srocklin@dos.state.ny.us

Regulatory Impact Statement

1. Statutory Authority

Paragraph b of subdivision 1 of Energy Law § 16-106 authorizes the Secretary of State, in consultation with the President of the New York State

Energy Research and Development Authority ("NYSERDA"), to promulgate regulations establishing energy efficiency performance standards for products listed in subdivision 1 of Energy Law § 16-104. Section 16-106 further provides that no standard shall go into effect if federal government energy efficiency performance standards regarding such product preempt state standards, unless preemption has been waived pursuant to federal law. Subdivision 1 of Energy Law § 16-104 states that the provisions of Article 16 of the Energy Law apply to the testing, certification and enforcement of efficiency standards for metal halide lamp fixtures sold, offered for sale, or installed in New York. In addition, subparagraph (iii) of paragraph b of subdivision 2 of Energy Law § 16-106 reads as follows:

Each metal halide lamp fixture that is sold, offered for sale or installed in New York state on or after January first, two thousand eight and that operates a lamp in a vertical position (including fixtures that operate lamps rated for use within fifteen degrees of vertical) and that is capable of operating lamps rated equal to or greater than one hundred fifty Watts and less than or equal to five hundred Watts shall not contain a probe start metal-halide ballast.

2. Legislative Objectives

Chapter 431 of the Laws of 2005 adopted Article 16 of the Energy Law. Article 16, entitled Appliance and Equipment Energy Efficiency Standards, sets forth provisions for the testing, certification, and enforcement of efficiency standards for certain appliances sold, offered for sale, or installed in New York. Although no purpose is explicitly stated in the statute, its implicit purpose is to reduce or restrain growth in the use of energy by mandating that specified appliances use electrical energy and water in a more efficient manner. The Legislature listed fourteen categories of appliances in Article 16 for which efficiency standards are required to be adopted. Among the listed categories are metal halide lamp fixtures.

When Article 16 was enacted, the Legislature considered the possibility that the Federal government might adopt standards for such appliances at some future date, and provided that any standards which might be adopted by New York would not remain effective if preempted by federal standards. Subsequent to the adoption of Article 16, the United States Congress enacted the Energy Policy and Conservation Act (EPCA) of 2005 (42 U.S.C. 6291 et seq.). Sections 135 and 136 of the Act direct the Department of Energy to establish energy efficiency standards for certain categories of appliances. Ten categories of appliances regulated pursuant to EPCA are also specified in Article 16. These categories are:

- automatic commercial ice cube machines;
- ceiling fan light kits;
- commercial pre-rinse spray valves;
- commercial refrigerators, freezers and refrigerator-freezers;
- illuminated exit signs;
- very large commercial packaged air-conditioning and heating equipment;
- pedestrian traffic signal modules;
- torchiere lighting fixtures;
- unit heaters; and
- vehicular traffic signal modules.

Section 6297 of the Energy Policy and Conservation Act provides that energy conservation standards promulgated by the Department of Energy supersede any state regulation with regard to testing and labeling requirements [42 U.S.C. 6297(a)(1)(A)]. However, there are EPCA provisions which permit States to petition the Department of Energy for a waiver of Federal preemption [42 U.S.C. 6297(d)]. The Federal standards have been adopted and no waiver of Federal preemption has been sought. The purposes of Article 16 would not be advanced by promulgating standards for products for which Federal standards have been established.

3. Needs and Benefits

The rule notifies affected entities that the Secretary of State, in consultation with the President of NYSERDA, has determined that it is not in the interests of the State at this time to petition the Secretary of Energy for a waiver for products subject to federal energy efficiency standards. The rule reserves the right to petition for a waiver at some future time. The rule also notifies manufacturers that as of January 1, 2008, the sale of metal halide lamp fixtures that use probe start ballasts will be prohibited.

In the case of metal halide lamp fixtures, the State Legislature established a specific standard by prohibiting the sale or installation of fixtures that use probe start ballasts. The rule includes definitions needed to identify which products are covered and which products are exempted from the rule. It establishes a certification system for all covered products as required by Section 16-106.2(a)(iii) of the Energy Law, prohibits sale, offering for sale or installation of non-complying metal halide fixtures, and identifies information required for the certification of metal halide fixtures.

The provisions for certification [19 NYCRR 910.3] provide two alternatives to manufacturers of covered products; they may certify products directly with New York State or, where the product is certified in the State of California, they may notify the Department of State of the particulars of the State of California certification. In recent years, several states, including Arizona, California, Connecticut, Massachusetts, Maryland, New Jersey, Oregon, Pennsylvania, Rhode Island and Washington have established appliance and equipment energy efficiency standards. California implemented a program in advance of other states, and as a result of such action, standards and procedures established by the California Energy Commission (CEC) have become a benchmark for other states implementing energy efficiency programs. Benefits accrue to the Department and to regulated parties from acceptance of CEC certification. The Department of State benefits from acceptance of CEC certification in that workload and the need for additional staff, database systems and other resources will be reduced. Manufacturers will benefit from a reduction in the burden of submitting certification documentation to multiple states.

The regulatory provisions regarding metal halide fixtures closely follow the explicit provisions of section 16-106.2(b)(iii) of the Energy Law. They provide an exception for floodlights intended for exterior installation. These fixtures are designed mostly for the use of universal position metal halide lamps, which can operate at any angle. As the most frequent use of exterior rated metal halide floodlights is for parking lots and facade illumination, they are most often installed in a vertical or near-vertical orientation, but need to have the capability to be aimed at angles exceeding 15 degrees from vertical. In order to limit the number of different fixture designs that would otherwise be required, it is necessary to include this exception. There are drawbacks to using universal operating position metal halide lamps and fixtures compared with those designed specifically for vertical operation. They are less efficient in their use of electrical energy, and may have shorter lamp life thereby raising life-cycle costs. The floodlight exception is therefore narrowly drawn.

It is estimated that when fully implemented, the removal of probe start ballasts from the metal halide fixture market will result in annual energy savings of 405.9 million kilowatt-hours. This would lead to a consequent reduction of greenhouse gas emissions of 608.9 tons of sulphur dioxide, 304.4 tons of oxides of nitrogen and 221,623.0 tons of carbon dioxide. At the statewide estimated electricity cost (provided by NYSERDA) of \$ 0.1038 per kWh, the estimated annual savings for electricity would be over 42 million dollars. The net economic benefit calculated over an anticipated fifteen year metal halide fixture life is \$ 546,957,000. This is estimated to provide a total net present value benefit of \$ 576,632,000.

4. Costs

a. Costs to Regulated Parties for Implementation of and Compliance with the Rule

While there are a number of alternative technologies to probe start ballasts for metal halide fixtures, the most economical alternative is a fixture using a magnetic pulse start ballast. It is therefore assumed that the rule will lead regulated parties to install fixtures which utilize pulse start ballasts. Pulse start fixtures for wattage ratings up to approximately 300 watts are approximately 25 percent higher in cost than equivalent probe start fixtures. However, pulse start fixtures for 368/462 wattage rating are approximately 20 percent less expensive than equivalent probe start fixtures. Depending upon wattage rating, lamps for pulse start fixtures are approximately 14 percent to 58 percent more expensive than equivalent rated lamps for probe start fixtures. The net present value of life cycle costs for discontinuing the use of pulse start metal halide fixtures has been estimated at \$ 29,675,000.

It is anticipated that manufacturers of metal halide lamp fixtures will reduce the quantity of probe start fixtures and lamps that they manufacture, and increase the quantity of production of other technologies, primarily pulse start fixtures and lamps. Distributors and retailers will similarly modify their purchases. Manufacturers, distributors and retailers may experience additional costs if they do not accurately project demand for probe start fixtures for the period between adoption of this rule and January 1, 2008, at which date Article 16 would prohibit the sale of such fixtures. In order to minimize potential negative impact, the rule would allow continued sale of existing stock for three months following January 1, 2008.

b. Costs to the Agency, the State, and Local Governments for the Implementation and Continuation of the Rule

The rule will require the Department of State to establish a certification system and maintain records of certifications. This will result in increased costs for staff and information technology. The rule will reduce other potential costs for the Department of State by relieving it of the need to

develop efficiency standards, test procedures, and a certification system for those products where Federal standards have pre-empted State regulation. Other State agencies and local governments will not incur costs as no action on their part is necessary to implement the rule.

5. Local Government Mandates

Adoption of the rule will not impose any mandates on local governments.

6. Paperwork

This rule will impose reporting and record keeping requirements on manufacturers, distributors, and retailers of covered products. Manufacturers will be required to prepare and submit certifications of compliance with the regulations, or letters that attest to submission of certifications to the California Energy Commission (CEC). Distributors and retailers will be required to maintain copies of certifications or letters attesting to CEC certification for products in their inventory. Paperwork requirements are minimized by permitting verification of certification by the California Energy Commission to substitute for a de novo certification by New York State. This will reduce the amount of paperwork required to be submitted to the Department of State, as well as simplifying the operations of regulated parties.

7. Duplication

The proposal does not duplicate, nor is it inconsistent with any existing Federal or State law.

8. Alternatives

As an alternative to accepting Federal energy efficiency standards, the Department considered developing New York standards for products covered by the Federal standards. After taking that step, the Department would have been required to petition the Secretary of Energy for a waiver to implement the New York standards. The Secretary of State, in consultation with the President of NYSERDA, determined that such alternative should not be pursued at this time. This determination is based upon a substantial likelihood that pursuing this alternative would not meet the test required by 42 U.S.C. 6297(d)(1)(B). That section provides that in considering petitions, the Secretary of Energy must find that a state regulation ". . . has established by a preponderance of evidence that such State regulation is needed to meet unusual and compelling State or local energy or water interests." "Unusual and compelling State or local energy or water interests" is defined as meaning those which are substantially different than those prevailing in the United States generally, and are such that differences in cost, benefits, burdens and reliability of savings resulting from State regulation make it preferable or necessary.

The Department considered not permitting certification with the California Energy Commission to be acceptable for certification in New York, but determined there is no benefit to be gained from establishing a separate certification system where one already exists. The specificity of Article 16 of the Energy Law does not permit any substantive alternatives with regard to standards for metal halide lamp fixtures.

9. Federal Standards

Federal standards for categories of appliances are set forth in 10 CFR 430 and 431. There are no Federal standards for metal halide lamp fixtures that are capable of operating a lamp in a vertical operating position or within fifteen degrees of a vertical operating position, where the lamps are rated at 150 watts to 500 watts.

10. Compliance Schedule

Regulated parties will be able to comply with the rule at the time the individual provisions take effect. The requirements pertaining to the sale, offer for sale, and installation of metal halide lamp fixtures will take effect January 1, 2008.

Regulatory Flexibility Analysis

1. Effect of rule

All parts of New York State will be subject to the rule. There will be no different impact on small businesses or local governments than there is on other New York entities. This rule making establishes a certification system for all covered products and sets forth certain requirements for metal halide lamp fixtures sold, offered for sale or installed on and after January 1, 2008. Manufacturers are required to submit certifications to the Department of State, unless they have previously submitted certifications to the California Energy Commission (CEC). Manufacturers are also required to provide copies of certifications to distributors and retailers of covered products, who will be required to maintain copies of such certifications.

2. Compliance Requirements

The rule making will impose no compliance requirements on local governments. Manufacturers of appliances covered by the regulation must submit documentation certifying their products as compliant with the regulations. Some of these manufacturers may be small businesses. In

addition, there are numerous distributors of electrical products, many of which are small businesses. The rule making will impose a requirement on them to maintain records.

3. Professional Services

No professional services will be required specifically for the purpose of compliance with the rule.

4. Compliance Costs

This rule making will not impose any compliance costs on local governments. Affected small businesses are likely to incur compliance costs. Distributors and retailers of electrical equipment will be prohibited from selling probe start metal halide lamp fixtures on and after January 1, 2008. To the extent that they make inaccurate judgements concerning product demand and timing, there is likely to be an economic impact from maintaining unsalable inventory or not having adequate inventory to meet demand. Distributors and retailers will also be required to maintain copies of certifications provided by manufacturers in their files.

5. Economic and Technological Feasibility

While there are a number of alternative technologies to probe start ballasts for metal halide fixtures, the most economical alternative is a fixture using a magnetic pulse start ballast. Adoption of the rule will likely lead regulated parties to install fixtures which utilize pulse start ballasts. Pulse start fixtures for wattage ratings up to approximately 300 watts are approximately 25 percent higher in cost than equivalent probe start fixtures. However, pulse start fixtures for 368/462 wattage rating are approximately 20 percent less expensive than equivalent probe start fixtures. Depending upon wattage rating, lamps for pulse start fixtures are approximately 14 percent to 58 percent more expensive than equivalent rated lamps for probe start fixtures. The net present value of life cycle costs for discontinuing the use of pulse start metal halide fixtures has been estimated at \$ 29,675,000.

6. Minimizing Adverse Impact

Adoption of the rule will not adversely impact small businesses and local governments. Regulated parties will not need to expend efforts to bring products into compliance with State standards in addition to applicable Federal standards. The rule will remove uncertainty regarding whether a petition to waive preemption to the Secretary of Energy would be successful, in whole or part. It will also eliminate potential costs related to tracking and segregating products to be sold within New York State from products intended to be sold in other states.

The acceptance of certification with the California Energy Commission (CEC) is expected to reduce the burden of compliance on regulated parties. Regulated parties which have previously certified their products to CEC will not be required to undertake additional compliance activities, except for reporting such compliance to the Department of State.

If distributors or retailers are prohibited from selling existing inventory after January 1, 2008, they may have to absorb the costs of having purchased such stock and of disposing of it to locations where the sale and installation has not been prohibited. In order to minimize this potential negative impact, the Department of State proposes to allow the continued sale of existing stock for three months following January 1, 2008.

7. Small Business and Local Government Participation

To assist the Department of State and NYSERDA in the development of this proposed rule, an appliance efficiency advisory committee was appointed by NYSERDA. Members of the advisory committee have presented the interests of small businesses and local governments. The advisory committee consists of representatives of energy efficiency and consumer advocacy groups, manufacturers, retailers, state agencies and federal agencies. The advisory committee has met four times. The Department of State and NYSERDA presented to the advisory committee their intention not to seek a waiver from federal standards for the ten classes of products for which the federal Department of Energy is promulgating standards, but to retain the authority to seek such waiver if it is determined at some later date to be in the interests of the State. Energy efficiency and consumer advocates have stated that such retention of authority is important. The Department and NYSERDA also presented a draft of this rule making to the advisory committee and representatives of manufacturers and business did not object to the Department's proposed course of action.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas:

This rule will be applicable in all areas of New York. All rural areas will be subject to the rule.

2. Reporting, Recordkeeping and other Compliance Requirements; and Professional Services:

This rule making establishes a certification system for all products subject to its provisions and establishes requirements for metal halide lamp

fixtures sold, offered for sale, or installed in New York on and after January 1, 2008. The new regulations require manufacturers to submit certifications to the Department of State, unless they have previously submitted certifications to the California Energy Commission (CEC). Manufacturers are also required to provide copies of certifications to distributors and retailers of covered products, who will be required to maintain copies of such certifications. With regard to metal halide lamp fixtures, the rule making prohibits the installation of fixtures that operate in a vertical position and use a probe start ballast. Compliance with the rule will not require a need for professional services in rural areas beyond those services currently provided by architects or engineers who prepare specifications for lighting projects.

3. Costs:

Regulated parties will incur costs in complying with the rule. While there are a number of alternative technologies to probe start ballasts for metal halide fixtures, the most economical alternative is a fixture using a magnetic pulse start ballast. It is therefore assumed that adoption of the rule will lead regulated parties to install fixtures which utilize pulse start ballasts. Pulse start fixtures for wattage ratings up to approximately 300 watts are approximately 25 percent higher in cost than equivalent probe start fixtures. However, pulse start fixtures for 368/462 wattage rating are approximately 20 percent less expensive than equivalent probe start fixtures. Depending upon wattage rating, lamps with pulse start fixtures are approximately 14 percent to 58 percent more expensive than equivalent rated lamps with probe start fixtures. The net present value of life cycle costs for discontinuing the use of pulse start metal halide fixtures has been estimated at \$ 29,675,000.

Building owners and developers as well as manufacturers, distributors and retailers of lighting fixtures and lamps may incur costs in complying with the rule. Manufacturers will reduce the quantity of probe start fixtures and lamps that they manufacture, and increase the quantity of production of other technologies, primarily pulse start fixtures and lamps. Distributors and retailers will similarly modify their purchases.

As the rule is applicable statewide, there will be no impacts on rural areas that differ from impacts incurred in non-rural areas.

4. Minimizing Adverse Impact:

Regulated parties will not need to expend efforts to bring covered products into compliance with State standards in addition to Federal standards, since the rule provides that New York State will not petition the Secretary of Energy for an exemption from federal standards at this time. The rule will also reduce potential costs for regulated parties related to tracking and segregating products to be sold within New York State from products intended to be sold in other states.

The acceptance of certification with CEC is expected to reduce the burden of compliance on regulated parties. Regulated parties which have previously certified their products to CEC will not be required to undertake additional compliance activities, except for reporting such compliance to the Department of State.

Reporting and record keeping costs will have an adverse impact on regulated parties. As there is no laboratory testing of metal halide lamp fixtures required as a result of this proposed rule, such impacts are expected to be minimal. If distributors or retailers are prohibited from selling existing inventory after January 1, 2008, they may have to absorb the costs of having purchased such stock and of disposing of it to locations where the sale and installation has not been prohibited. In order to minimize this potential negative impact, the Department of State intends to provide for the continued sale of existing stock for a three month period following January 1, 2008.

5. Rural Area Participation:

To assist the Department of State and NYSEDA in the development of the rule, an Appliance Efficiency Advisory Committee was appointed by NYSEDA. While no member of the committee was appointed for the specific purpose of representing interests of rural areas, individuals representing consumer interests, including interests of consumers living in rural areas, are members of the advisory committee. Also, members of the committee representing business interests represent the interests of all businesses in the state, including businesses in rural areas.

Job Impact Statement

The Department of State has determined that it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities. This rule will establish procedures for certification of products regulated pursuant to Article 16 of the Energy Law and will establish energy efficiency standards provided for in Article 16 for certain metal halide lamp fixtures. Although the proposed rule will increase costs for construction and maintenance of buildings, it is esti-

ated that it will reduce annual electricity demand by 405.9 million kilowatt hours when fully phased in. Calculated over the fifteen year estimated life span for metal halide lamp fixtures, energy savings are expected to exceed higher installation costs, resulting in a positive economic impact of \$473 million. Therefore, this rule making will not have a substantial net adverse impact on jobs and employment opportunities within New York.

NOTICE OF ADOPTION

Public Access to Records

I.D. No. DOS-45-06-00003-A

Filing No. 211

Filing date: Feb. 20, 2007

Effective date: March 7, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 80.2, 80.4, 80.5, 80.6, 80.7; repeal of section 80.3 and addition of a new section 80.3 to Title 19 NYCRR.

Statutory authority: Public Officers Law, sections 87 and 89; and Executive Law, sections 91 and 96

Subject: Public access to records.

Purpose: To update the regulations governing inspection and copying of public records.

Text or summary was published in the notice of proposed rule making, I.D. No. DOS-45-06-00003-P, Issue of November 8, 2006.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Senior Attorney, Department of State, 41 State St., Albany, NY 12231, (518) 474-6740, e-mail: counsel@dos.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor and Diesel Motor Fuel

I.D. No. TAF-47-06-00011-A

Filing No. 205

Filing date: Feb. 14, 2007

Effective date: Feb. 14, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning Jan. 1, 2007, and ending March 31, 2007, and reflect the aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-47-06-00011-P, Issue of November 22, 2006.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.state.ny.us

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

NOTICE OF ADOPTION

Amount of Sales and Use Tax

I.D. No. TAF-47-06-00012-A

Filing No. 204

Filing date: Feb. 14, 2007

Effective date: March 7, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 532.1 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided)

Subject: Amount of sales and use tax to be collected.

Purpose: To update and simplify Part 530 of the sales and use taxes regulations by eliminating obsolete and unnecessary sales and use tax rates that are set by and pursuant to the Tax Law; and eliminating other provisions of Part 530 that would merely be redundant without such tax rate information.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-47-06-00012-P, Issue of November 21, 2006.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Security Training Tax Credit

I.D. No. TAF-52-06-00008-A

Filing No. 203

Filing date: Feb. 14, 2007

Effective date: March 7, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Subparts 5-4 and 20-7 and section 106.3 to Title 20 NYCRR.

Statutory authority: Tax Law, sections 26(a); 171, subd. First; 697(a); and 1096(a)

Subject: Security training tax credit.

Purpose: To provide a credit proration rule where a qualified security officer is not employed for a full year.

Text or summary was published in the notice of proposed rule making, I.D. No. TAF-52-06-00008-P, Issue of December 27, 2006.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.state.ny.us

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel

I.D. No. TAF-10-07-00001-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c); 509(7); 523(b); and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon of the fuel use tax on motor fuel and diesel motor fuel for the calendar quarter beginning April 1, 2007, and ending June 30, 2007, and reflect the aggregate rate per gallon on such fuels for such calendar quarter for purposes of the joint administration of the fuel use tax and the art. 13-A carrier tax.

Text of proposed rule: Pursuant to the authority contained in subdivision First of section 171, subdivision (c) of section 301-h, subdivision 7 of section 509, subdivision (b) of section 523, and subdivision (a) of section 528 of the Tax Law, the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner of Taxation and Finance, hereby makes and adopts the following amendment to the Fuel Use Tax Regulations, as published in Article 3 of Subchapter C of Chapter III of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (xlv) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(xlv) January - March 2007					
14.0	22.0	38.6	14.0	22.0	36.85
(xlvi) October - December 2006					
14.0	22.0	38.6	14.0	22.0	36.85

Text of proposed rule and any required statements and analyses may be obtained from: John W. Bartlett, Tax Regulations Specialist 4, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-2254, e-mail: tax_regulations@tax.state.ny.us

Data, views or arguments may be submitted to: Marilyn Kaltenborn, Director, Technical Services Division, Department of Taxation and Finance, Bldg. 9, State Campus, Albany, NY 12227, (518) 457-1153, e-mail: tax_regulations@tax.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Thruway Authority

NOTICE OF ADOPTION

Maximum Speed Limit on the Thruway and Electronic Toll Collection

I.D. No. THR-46-06-00023-A

Filing No. 206

Filing date: Feb. 16, 2007

Effective date: March 7, 2007

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Repeal of section 103.2 and addition of new section 103.2 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 354(5) and (15) and 361(1)(a); Vehicle and Traffic Law, section 1180-a and 1630

Subject: Maximum speed limit on the thruway and electronic toll collection.

Purpose: To reflect that the majority of the speed limit on the thruway is now 65 miles per hour; amend the regulations to clarify that the speed limit for travel through toll plaza lanes dedicated for electronic toll collection shall be as posted and the speed limits for electronic toll collection at highway speed shall be the maximum speed limit on the thruway system unless otherwise posted; and update the regulations to reflect the adminis-

trative process that is currently used for addressing electronic toll collection speed violations and appeals.

Text or summary was published in the notice of proposed rule making, I.D. No. THR-46-06-00023-P, Issue of November 15, 2006.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Marcy Pavone, Legal Assistant, Thruway Authority, 200 Southern Blvd., Albany, NY 12209, (518) 436-3188, e-mail: marcy_pavone@thruway.state.ny.us

Assessment of Public Comment

The agency received no public comment.