

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; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing; or C for first Continuation.)

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

Office of Children and Family Services

EMERGENCY RULE MAKING

Caseworker Contacts with Foster Children, Their Relatives and Caregivers

I.D. No. CFS-45-06-00002-E
Filing No. 1359
Filing date: Nov. 13, 2006
Effective date: Nov. 13, 2006

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

Action taken: Amendment of sections 441.21 and 443.4 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 398(6)(a)

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

Specific reasons underlying the finding of necessity: This rule making revises the frequency and location of certain casework contacts with children in foster care, their relatives and their caretakers and clarifies the purposes for such contacts. Casework contacts are important to assess and maintain the safety of foster children and to determine whether they are receiving appropriate care, supervision and services that support their

health and well-being and promote permanency. The regulations need to be adopted on an emergency basis so that the casework contact requirements better promote the health, safety and welfare of foster children as soon as possible.

Subject: Caseworker contacts with foster children, their relatives and caregivers.

Purpose: To revise the casework contacts requirements for foster children, their relatives and caretakers to better promote the health, safety and welfare of foster children.

Text of emergency rule: Subdivisions (b) through (e) of Section 441.21 are amended to read as follows:

(b) Casework contact with parent or relatives. (1) Casework contacts with the child's parents or relatives [shall be] *is* defined as individual or group face-to-face contacts between the case planner, or assigned caseworker, as directed by the case planner, *or the case manager*, and the child's parents or relatives for the purpose of *assessing whether the child would be safe if he or she was to return home, and the potential for future risk of abuse or maltreatment if he or she was to return home*. Such contacts are also for the purpose of guiding the child's parents or relatives towards a course of action aimed at resolving problems or needs of a social, emotional, developmental or economic nature [which] *that* are contributing to the reason(s) why such child is in foster care. *In the case of children with the permanency planning goal of another planned living arrangement with a permanency resource or adult residential care, such contacts are for the purpose of mobilizing and encouraging family support of the youth's effort's to function independently, and to increase his/her capacity to be self-maintaining; evaluating the ability of the parents or relatives to establish or reestablish a connection with the youth and serve as a resource to the youth; and, where appropriate, encouraging an ongoing relationship between the parents or relatives and the youth.* For purposes of this section, a case planner is defined as the person who is responsible for assessing the need for, providing or arranging for, coordinating and evaluating the provision of services to children in foster care and services to parents of children in foster care and such additional responsibilities as set forth in *subdivision (c) of section 428.2(c)* of this Title.

(2) Frequency of casework contacts with parents or relatives. During the first [month] *30 days* of placement, casework contacts [shall] *are to be* held with the child's parents or relatives as often as is necessary [to implement the services tasks in the family and children's services plan], but at a minimum, [shall] *must* occur at least twice unless compelling reasons are documented why such contacts are not possible. After the first [month] *30 days* of placement, casework contacts [shall] *are to be* held with the child's parents or relatives at least once every month [if the permanency planning goal for the child is return to parents or relatives and at least quarterly if the child's permanency planning goal is adult residential care or another planned living arrangement with a permanency resource] unless compelling reasons are documented why such contacts are not possible. [In the case of children with the permanency planning goal of another planned living arrangement with a permanency resource or adult residential care, the local social services district or the purchase of service agency shall facilitate such monthly contacts for the purpose of mobilizing and encouraging family support of the child's efforts to function independently, and to increase his/her capacity to be self-maintaining.]

(3) [Frequency of in-home] *Location of casework [contact] contacts* with parents *or relatives*.

(i) For children with a permanency planning goal of return to parents or relatives, casework contacts with the child's parents or relatives

are to be scheduled to occur in the home of the parents or relatives to whom the child will be discharged as often as is necessary [to implement the service tasks in the family and children's services plan], but no less than the required frequency noted in subparagraph (ii) of this paragraph, unless compelling reasons are documented why such contacts are not possible.

(ii) Casework contacts with the child's parents or relatives are to be scheduled to occur in the home of the parents or relatives:

(a) at least once during the first [90] 30 days of placement; and

(b) at least once [within] every 90 days thereafter, for as long as the child remains in foster care, unless compelling reasons are documented why such contacts are not possible [before the planned discharge of the child to the home of the parents or relatives; and

(c) at least twice every 12 months following the contact referred to in clause (a) of this subparagraph if the necessity of placement in foster care is due in some extent to a circumstance related to the health and safety of the child, as described in section 430.10(c)(1) of this Title, or a parent service need, as described in section 430.10(c)(4) of this Title; or

(d) at least once every 12 months following the contact referred to in clause (a) of this subparagraph if the necessity of placement in foster care is due entirely to a circumstance other than one related to the health and safety of the child as described in section 430.10(c)(1) of this Title, or a parent service need as described in section 430.10(c)(4) of this Title].

(4) [For all children with a permanency planning goal of return to parents or relatives, the] The local social services district or the purchase of service agency, if required by the purchase of service agreement, is to facilitate casework contacts by scheduling contacts at least as often as required by this subdivision and by providing notice of the scheduled contact to the parents or relatives either by phone or through the mail. [In those cases where the parents or relatives have failed to attend the scheduled session, the case planner or, the caseworker as directed by the case planner, must attempt to contact the parents or relatives and schedule another session. If the parents or relatives fail to meet with the case planner or, the caseworker as directed by the case planner, for a period of two months despite diligent efforts at contacting the parents or relatives and rescheduling missed contacts, the case planner or, the caseworker as directed by the case planner, must have an in-home contact with the parents or relatives. This contact is to be considered the monthly contact required to be held by paragraph (2) of this subdivision and must be held prior to the end of the month which necessitated the scheduling of this contact.

(5) The provisions of paragraphs (3) and (4) of this subdivision concerning in-home casework contact requirements shall be waived with respect to children with a permanency planning goal of return to parents if such children are 13 years of age or older and placed by the court as PINS or juvenile delinquents in an institution more than 100 miles from their homes. Appropriate in-home contacts with the parents shall be arranged at the time a discharge plan is developed for such children.]

(5) The provisions of subdivision (b) of this section are waived for any parent who has had his or her rights to the child in foster care terminated.

(6) The provisions of subdivision (b) of this section are waived for any parent, where the court has issued a finding that reasonable efforts to return the child to his or her home are no longer required, except that ongoing casework contacts must be made, to the extent practicable, for the purpose of discussing alternatives to termination of parental rights in accordance with section 384-b of the Social Services Law, such as surrender, including conditional surrender; and counseling the parent with respect to relinquishing the child and how the parent could help the child come to terms with the possibility and consequences of relinquishment.

(c) Casework contacts with the child. (1) Casework contacts with the child [shall be] is defined as individual or group face-to-face contacts between the case planner, or the caseworker assigned to the child, as directed by the case planner, or the case manager, and the child. The purpose of the contacts is to assess the child's current safety and well being, to evaluate or re-evaluate the child's permanency needs and permanency goal, and to guide the child towards a course of action aimed at resolving problems of a social, emotional or developmental nature [which] that are contributing towards the reason(s) why such child is in foster care.

(2) During the first [month] 30 days of placement, casework contacts [shall] are to be held with the child as often as is necessary to implement the services tasks in the family and children's services plan but [shall] must occur at least twice. At least one of the two contacts must be held at the child's placement location. The focus of the initial contacts with the child must include, but need not be limited to, determining the child's reaction to the separation and his/her adjustment to the out-of-home placement and arranging for services necessary to meet his/her needs. After the first

[month] 30 days of placement, casework contacts [shall] are to be held with the child at a minimum of once a month [if the necessity of a child's placement in foster care is due in whole or in part to a circumstance related to a child service need as described in section 430.10(c)(5) of this Title, or at a minimum, quarterly if the necessity of a child's placement in foster care is due entirely to a parent or child circumstance other than a circumstance related to a child service need as described in such paragraph. In all cases, the focus of the initial contact with the child shall include, but need not be limited to determining the child's reaction to the separation and his/her adjustment to the out-of-home placement and arranging for services necessary to meet his/her needs]. At least two of the monthly contacts every 90 days must be at the child's placement location. If the youth is age 18 or older and is attending an educational or vocational program 50 miles or more outside the local social services district, the casework contacts may be made by telephone or mail.

(d) Casework contacts with the child's caretakers. (1) Casework contacts with the child's caretaker [shall be] is defined as face-to-face contacts by the case planner, or the caseworker assigned to the child, as directed by the case planner, or the case manager with those persons immediately responsible for the child's day-to-day care for the purpose of obtaining information as to the child's adjustment to foster care and for facilitating the caretaker's role in achieving the desired course of action specified in the child and family services plan.

(2) During the first [month] 30 days of placement, casework contacts are to be held with the child's caretaker as often as is necessary, [to implement the services tasks in the family and children's services plan] but at a minimum must occur at least [twice] once at the child's placement location. After the first [month] 30 days of placement, casework contacts must be held with the child's caretaker at least [quarterly] monthly, and at least one of the monthly contacts every 90 days must be at the child's placement location. [In addition, the case planner or, the caseworker as directed by the case planner, must maintain, at a minimum, monthly contacts with the child's caretaker which may include either face-to-face contacts or telephone consultations].

(e) Services, contacts, visits, interviews and information required by this section [shall] must be recorded in progress notes in accordance with section 428.5 of this Title.

Section 443.4 is amended to read as follows:

Section 443.4 Supervision. Supervision of children placed in foster homes [shall] is to be maintained [by the placing agency or its representative through visits made to the home at least quarterly in the case of children at board, at least semiannually in the case of children in free homes, or at such shorter period as may be required by this Title. A written record of such visits showing dates and findings of visitation shall be kept by the placing agency. Such supervision shall be continued in each case until the child reaches the age of 21 or is adopted or placed under legal guardianship, or married or transferred to the care of another agency or otherwise discharged] through the provision of casework contacts in accordance with section 441.21 of this Title.

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. CFS-45-06-00002-P, Issue of November 8, 2006. The emergency rule will expire February 10, 2007.

Text of emergency 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

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care within the State.

Section 398(6)(a) of the SSL requires the local commissioners of social services to determine what assistance and care, supervision or treatment foster children require.

Section 471(a)(15) (b)(ii) of the Social Security Act requires local social services district commissioners to make reasonable efforts to enable foster children to return home safely or to finalize the children's permanency plans.

2. Legislative objectives:

Enhanced casework contact standards support the legislative overall goal that children be served by the child welfare system in settings where they are safe and receiving appropriate care and supervision, and that such children reside in permanent homes as soon as reasonably can be accomplished. Frequent casework contacts with foster children are important to assess and maintain the children's safety and well-being. Similarly, regular casework contacts with the children's caretakers are an important factor in evaluating placement stability and ascertaining the foster children's services needs. And, on-going casework contacts with the foster children's parents or relatives are necessary to pursue reunification or to determine whether another appropriate permanency goal needs to be pursued.

3. Needs and benefits:

The regulations expand the casework contact requirements for children who are placed in foster care solely due to a parent service need to be consistent with the monthly casework contact requirements that already exist for children placed in foster care due to a child service need or a combination of a parent and child service need. They also clarify the purpose of casework contacts and revise where some of the existing casework contacts must occur to provide for more reviews of the places where foster children are living and the homes to which they are scheduled to return.

New York State is one of only seven states that did not require monthly casework contacts with all foster children. In addition, the federal Administration for Children and Families (ACF), as part of the required Child and Family Service Reviews (CFSRs) it conducts in each state, reviews the state's casework contacts with foster children to determine the sufficiency of such contacts to monitor the children's safety and well-being and whether the contacts appropriately focus on issues pertinent to case planning, service delivery and goal attainment. As a result of New York's first CFSR, the state was required to submit a Program Improvement Plan to ACF. One of the initiatives detailed in that plan dealt with assessing the regulatory and practice structure for casework contacts with children in foster care, their parents and caretakers. A workgroup of local districts, including the Administration for Children's Services (ACS) in New York City and voluntary authorized agencies obtained information about casework contacts from child welfare professionals in New York State and information regarding the policies of other states, to help formulate recommendations. OCFS considered the workgroup's recommendations in developing these regulations.

ACF indicates that in 14 other states that have had a CFSR, a correlation exists between the number of casework contacts and positive outcomes for foster children, including: achieving reunification or other permanent placements; preserving the foster child's connections and relationship with family members; and involving children and parents or relatives in case planning. In addition, the Child Welfare League of America recommends monthly visits as a protective measure.

In New York State, monthly casework contacts are already required for foster children with a child service need. In addition, many social services districts, including ACS, already exceed the current regulatory requirements by providing monthly casework contacts for all foster children. These emergency regulations expand the monthly casework contact requirements for all districts to include children placed in foster care due solely to a parent service need, thereby, providing a consistent, statewide standard that reflects the generally accepted good child welfare practice regarding the frequency of such contacts.

4. Costs:

The regulations expand the casework contact requirements for children who are placed in foster care solely due to a parent service need to be consistent with the requirements for children placed in foster care due to a child service need or a combination of a parent and child service need. Foster children who are placed in foster care solely due to a parent service need constitute approximately seven percent of the total number of children in foster care. In addition, more than half of the social services districts currently provide at least monthly casework contacts with all children in foster care, consistent with these emergency regulations. These districts account for approximately 77 percent of the children in care. Therefore, it is estimated that less than two percent of the children in foster care (444 children) would be impacted by this regulatory amendment, which will generate an additional 3,552 visits annually. It is projected that this could potentially require seven full-time equivalent caseworkers statewide at a total estimated gross cost of \$378,000. These expenditures may be eligible for Title IV-E Federal reimbursement. Alternatively, depending on local district caseworker caseload, these added visits may be assigned to currently funded caseworkers.

5. Local government mandates:

The social services districts that are not already conducting monthly casework contacts with children placed in foster care solely due to a parent service need will have to increase these contacts. It is estimated that this new requirement will affect less than half of the social services districts and apply to less than two percent of the children in foster care. However, the regulations provide expand the persons who are permitted to make casework contacts to include the child's case manager. The regulations also clarify certain instances where contacts with the children's parents or relatives are not required.

6. Paperwork:

All casework contacts must be documented in the Uniform Case Record in accordance with 18 NYCRR Part 428. Documentation of casework contacts by paper is not allowed. Such documentation must be made electronically in the state's CONNECTIONS system. Existing case workers and other staff who will be required to enter the additional casework contacts required by these regulations into the Progress Notes dialog in CONNECTIONS have been comprehensively trained to use the system.

7. Duplication:

The regulations do not duplicate other State requirements.

8. Alternatives:

These regulations are necessary to improve the health, safety and well-being of foster children. Therefore, there are no alternatives to these regulations.

9. Federal standards:

There are no specific federal standards that address casework contacts. However, this proposal promotes safety and facilitates permanency planning for foster children and assists New York State to comply with federal standards set forth in the federal Adoption and Safe Families Act of 1996 (ASFA).

10. Compliance schedule:

Compliance with the regulations must begin immediately upon emergency filing.

Regulatory Flexibility Analysis

1. Effect of Rule:

The regulations will affect the 58 social services districts and the St. Regis Mohawk Tribe, which is authorized by section 371(1)(b) of the Social Services Law to provide child welfare services pursuant to its State/Tribal Agreement with OCFS. Voluntary authorized agencies also will be affected by the proposed regulation. There are approximately 111 such agencies.

2. Compliance Requirements:

The regulations impose new requirements on local social services districts and voluntary authorized agencies in relation to making casework contacts with foster children, their parents or relatives and caretakers. The regulations expand the casework contact requirements for children who are placed in foster care solely due to a parent service need to be consistent with the monthly casework contact requirements that already exist for children placed in foster care due to a child service need or a combination of a parent and child service need. This new requirement will affect less than two percent of the children in foster care. The regulations also clarify the purpose of casework contacts and revise where some of the existing casework contacts must occur to provide for more reviews of the places where foster children are living and the homes to which they are scheduled to return.

3. Professional Requirements:

It is expected that most social services districts and voluntary authorized agencies will not have to hire additional staff to implement the regulations as they can be assigned to existing staff. Caseworkers will have to enter the additional casework contacts required by the regulations into the Progress Notes dialog in CONNECTIONS system. They have been comprehensively trained to use the system.

4. Compliance Costs:

The regulations expand the casework contact requirements for children who are placed in foster care solely due to a parent service need to be consistent with the requirements for children placed in foster care due to a child service need or a combination of a parent and child service need. Foster children who are placed in foster care solely due to a parent service need constitute approximately seven percent of the total number of children in foster care. In addition, more than half of the social services districts currently provide at least monthly casework contacts with all children in foster care, consistent with these emergency regulations. These districts account for approximately 77 percent of the children in care. Therefore, it is estimated that less than two percent of the children in foster care (444 children) would be impacted by this regulatory amendment, which will generate an additional 3,552 visits annually. It is projected that

this could potentially require seven full-time equivalent caseworkers statewide at a total estimated gross cost of \$378,000. These expenditures may be eligible for Title IV-E Federal reimbursement. Alternatively, depending on local district caseworker caseload, these added visits may be assigned to currently funded caseworkers.

5. Economic and Technological Feasibility:

Those social services districts that are not already conducting monthly casework contacts with foster children who are placed in foster care due solely to a parent service need will have to increase these contacts. However, the regulations provide increased flexibility regarding the persons who are permitted to make such contacts. The regulations also clarify certain instances where such contacts are not required. Therefore, it is estimated that a maximum of seven new caseworkers will be needed statewide. Districts and agencies will not need additional computers to perform these regulatory functions beyond those they already have.

6. Minimizing Adverse Impact:

The revisions to the casework contact requirements included in the regulations are necessary to better promote the health, safety and well-being of foster children. However, to minimize any potential adverse impact on the social services districts and voluntary authorized agencies, the regulations expand the persons who are permitted to make casework contacts to include the child's case manager. The regulations also clarify certain instances where casework contacts with a child's parents or relatives are not required.

7. Small Business and Local Government Participation:

A workgroup of local districts, including the Administration for Children's Services (ACS) in New York City and voluntary authorized agencies, obtained information on casework contacts from child welfare professionals in New York State and information regarding the policies of other states, to help formulate recommendations. OCFS considered the workgroup's recommendations in developing these regulations.

Rural Area Flexibility Analysis

1. Effect on Rural Areas:

The regulations will affect the 44 social services districts that are in rural areas and the St. Regis Mohawk Tribe, which is authorized by section 371(10)(b) of the Social Services Law to provide child welfare services pursuant to its State/Tribal Agreement with OCFS. Those voluntary authorized agencies in rural areas that contract with social services districts to provide foster care and adoption services also will be affected by the regulations. Currently, there are approximately 29 such agencies.

2. Compliance Requirements:

The regulations impose new requirements on local social services districts and voluntary authorized agencies in relation to making casework contacts with foster children, their parents or relatives and caretakers. The regulations expand the casework contact requirements for children who are placed in foster care solely due to a parent service need to be consistent with the monthly casework contact requirements that already exist for children placed in foster care due to a child service need or a combination of a parent and child service need. This new requirement will affect less than two percent of the children in foster care. The regulations also clarify the purpose of casework contacts and revise where some of the existing casework contacts must occur to provide for more reviews of the places where foster children are living and the homes to which they are scheduled to return.

3. Professional Services:

It is expected that most social services districts and voluntary authorized agencies will not have to hire additional staff to implement the regulations. The additional casework contacts required by the regulations will have to be entered into CONNECTIONS, the state's computerized child welfare case management system. Case workers and other staff who will be required to enter casework contacts into the Progress Notes dialog in CONNECTIONS have been comprehensively trained to use the system.

4. Compliance Costs:

The regulations expand the casework contact requirements for children who are placed in foster care solely due to a parent service need to be consistent with the requirements for children placed in foster care due to a child service need or a combination of a parent and child service need. Foster children who are placed in foster care solely due to a parent service need constitute approximately seven percent of the total number of children in foster care. In addition, more than half of the social services districts currently provide at least monthly casework contacts with all children in foster care, consistent with these emergency regulations. These districts account for approximately 77 percent of the children in care. Therefore, it is estimated that less than two percent of the children in foster care (444 children) would be impacted by this regulatory amendment,

which will generate an additional 3,552 visits annually. It is projected that this could potentially require seven full-time equivalent caseworkers statewide at a total estimated gross cost of \$378,000. These expenditures may be eligible for Title IV-E Federal reimbursement. Alternatively, depending on local district caseworker caseload, these added visits may be assigned to currently funded caseworkers.

5. Minimizing Adverse Impact:

The revisions to the casework contact requirements included in the regulations are necessary to better promote the health, safety and well-being of foster children. However, to minimize any potential adverse impact on the social services districts and voluntary authorized agencies, the regulations expand the persons who are permitted to make casework contacts to include the child's case manager. The regulations also clarify certain instances where such contacts with a child's parents or relatives are not required.

6. Small Business Participation:

A workgroup of local districts, including the Administration for Children's Services (ACS) in New York City and voluntary authorized agencies, obtained information on casework contacts from child welfare professionals in New York State and information regarding the policies of other states, to help formulate recommendations regarding casework contacts. OCFS considered the workgroups recommendations in developing these regulations.

Job Impact Statement

The regulations address functions of social services districts, the St. Regis Mohawk Tribe and voluntary authorized agencies in relation to making casework contacts with foster children and their parents or relatives and caretakers. It is anticipated that for those social districts and agencies that are not currently making the number of contacts required by the emergency regulations, the additional contacts will be able to be made by their current staff for the most part. However, a few districts or voluntary agencies may need to hire a staff person on a full or part-time basis to meet the requirements. The regulations will not have a negative impact on jobs or employment opportunities in either public or private child welfare agencies. A full job statement has not been prepared for these regulations as it is assumed that the regulations will not result in the loss of any jobs.

EMERGENCY RULE MAKING

Child Protective Investigations

I.D. No. CFS-46-06-00002-E

Filing No. 1358

Filing date: Nov. 13, 2006

Effective date: Nov. 13, 2006

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

Action taken: Amendment of section 432.2 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 421(3)

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

Specific reasons underlying the finding of necessity: The rule clarifies important child protective services investigatory procedures to obtain access to the children or home and obtaining information from collateral contacts, thus potentially averting serious threats to the health, safety and welfare of children who are involved in these cases.

Subject: Child protective investigations.

Purpose: To clarify the procedures for cases where a child or home cannot be accessed by child protective service staff to conduct a safety assessment and to clarify the possible collateral contacts who may provide information relevant to a child protective investigation.

Text of emergency rule: Subparagraph (ii) of paragraph (3) of subdivision (b) of section 432.2 is amended to read as follows:

(ii) The full child protective investigation [shall] *must* include the following activities:

(a) face-to-face interviews with subjects of the report and family members of such subjects, including children named in the report. *If at any time during an investigation the subject of the report or another family member refuses to allow a child protective service worker to enter the home and/or to observe or talk to any child in the household, or if a child in the household cannot be located, the child protective service worker must assess whether it is necessary to seek a court order to obtain access to the*

child or home or to compel production of the child or whether other emergency action must be taken. The assessment must be made, at a minimum, in consultation with a child protective service supervisor as soon as necessary under the circumstances, but no later than 24 hours after the refusal or failure to locate the child or access the home. When it is assessed that it may be appropriate to seek a court order, legal staff who represent the child protective service must also be consulted, if possible. The assessment and the decision must be clearly documented in the progress notes for the investigation;

(b) [the] obtaining [of] information from the reporting sources and other collateral contacts [such as] which may include, but are not limited to, hospitals, family medical providers, schools, police, [and] social service agencies and other agencies providing services to the family, relatives, extended family members, neighbors and other persons who may have information relevant to the allegations in the report and to the safety of the children; provided however, the name or other information identifying the reporter and/or source of a report of suspected child abuse or maltreatment, as well as the agency, institution, organization, [and/or] program and/or other entity with which such person(s) is associated must only be recorded or documented in progress notes and such documentation must be recorded in the manner specified by OCFS pursuant to section 428.5(c)(2) of this Title;

(c) within seven days of receipt of the report, conducting a preliminary assessment of safety to determine whether the child named in the report and any other children in the household may be in immediate danger of serious harm. If any child is assessed to be unsafe, undertaking immediate and appropriate controlling interventions to protect the child(ren); the results of each safety assessment must be documented in the case record in the form and manner required by [the department] OCFS;

(d) a determination of the nature, extent and cause of any condition enumerated in such report and any other condition that may constitute abuse or maltreatment;

(e) obtaining the name, age and condition of other children in the home; and

(f) after seeing that the child or children named in the report are safe, notifying the subjects and other persons named in the report, except children under the age of 18 years, in writing, no later than seven days after receipt of the oral report, of the existence of the report and the subject's rights pursuant to title 6 of article 6 of the Social Services Law concerning amendment or expungement of the report.

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. CFS-46-06-00002-P, Issue of November 15, 2006. The emergency rule will expire February 10, 2007.

Text of emergency 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

Regulatory Impact Statement

1. Statutory Authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the New York State Office of Children and Family Services (OCFS), as successor agency to the former New York State Department of Social Services, to establish rules, regulations and policies to carry out its powers and duties under the SSL.

Section 421(3) of the SSL requires OCFS to promulgate regulations setting forth requirements for the performance by local social services districts of the duties and powers imposed and conferred upon them by the provisions of Title 6 of Article 6 of the SSL regarding child protective services and Article 10 of the Family Court Act regarding child protective proceedings.

2. Legislative Objectives:

The regulations carry out the intent of Section 421(3) of the SSL, which requires OCFS to promulgate regulations governing the provision of child protective services. Additionally, the regulations support the legislative findings and purpose contained in Section 411 of the SSL, as it pertains to having local district child protective services "... capable of investigating such reports swiftly and competently and capable of providing protection for the child or children from further abuse or maltreatment..."

3. Needs and Benefits:

These regulations clarify two important aspects of child protective investigation practice relating to obtaining access to children involved in reports of suspected child abuse or maltreatment and obtaining information from collateral contacts. Recently, OCFS discovered that some child pro-

tective service staff are confused regarding these practices. Therefore, it is necessary to adopt these regulatory clarifications on an emergency basis to reinforce the existence of these practices that help to preserve the health, safety and welfare of children involved in child protective services cases.

Existing statute and regulations require child protective service staff to conduct a preliminary assessment of the safety of the children involved in a report of suspected child abuse or maltreatment to determine whether the children are in immediate danger and to assess whether family court or criminal court intervention is necessary. Training for child protective service staff further explains the various legal options available to protect the children involved in a report including what actions should be taken when the children or home cannot be accessed. However, the existing regulations do not specify what child protective workers must do when they are unable access the children or the home. Therefore, the emergency regulations explicitly require that when a child protective service worker is prevented from entering the home or from seeing or talking to a child and/or when a child cannot be located, the worker must assess whether it is necessary to seek a court order to obtain access to the child or home or to compel production of a child, or whether other emergency action must be taken. This assessment must be done with a child protective service supervisor as soon as necessary under the circumstances but no later than 24 hours after access has been refused or failed. When a court order is thought to be necessary, legal staff also must be consulted if possible. While most child protective service staff regularly uses these practices, the new regulatory requirements codify these important practices. It is necessary to adopt these regulatory provisions on an emergency basis given the inability of child protective service staff to assess accurately the potential danger to a children if the children or home are intentionally or unintentionally made unavailable to child protective service staff, especially when the children are not in regular contact with other institutions such as schools.

Existing regulations also require that a child protective investigation include obtaining information from collateral contacts such as hospitals, schools, police and social services agencies. The intent of the existing regulations is for child protective service staff to contact those entities and persons who may have information relevant to the allegations made in the child protective services report and to the safety of children in the home. This intent is reinforced in the current training and other information provided to child protective service staff. OCFS recently learned that despite the wording of the existing regulations that indicates the list is illustrative and despite the fact that more complete information is currently provided in training, some district staff incorrectly believes that the only collateral contacts they can make are with the four types of entities listed as examples in the existing regulations. Therefore, the emergency regulations clarify that collateral contacts also may include family medical providers, other agencies providing services to the family, relatives, extended family members, neighbors, and other persons who may have information relative to the investigation and to the safety of the children. This clarification should avoid future confusion on the part of child protective service staff regarding the collateral contacts they should make.

4. Costs:

These regulations clarify and codify existing child protective services investigation practices. Therefore, there is no fiscal impact on the State or local social services districts.

5. Local Government Mandates:

These regulations make explicit two existing child protective services investigation practices. As such, they are not new mandates on local governments. These regulations support child protective service staff's overall statutory mandates to investigate reports of suspected child abuse and maltreatment and to protect children from further abuse or maltreatment.

6. Paperwork:

No new forms or other paperwork are required by these regulations. However, these activities, like all case activities performed by child protective service staff, must be clearly documented in the appropriate part of the child protective services electronic case record.

7. Duplication:

These regulations do not duplicate or impede any other state or federal requirements.

8. Alternate Approaches:

Significant alternatives to the proposed regulations were not considered once the Office discovered that some local district staff involved in child protective services were confused regarding these existing practices. The Office determined that emergency regulations were the best way to clarify these existing child protective services investigation practices that help protect New York State's vulnerable children.

9. Federal Standards:

These regulations exceed the minimum standards of the federal government in that federal standards do not specify activities for investigations of allegations of suspected child abuse and maltreatment. These activities need to be included in State regulations as they reflect important practices in serving New York's vulnerable children.

10. Compliance Schedule:

The actions required in these regulations are already part of good practice in New York's local social services districts. As such, districts should not need any additional time to comply with the regulations. Therefore, compliance will be required upon the effective date of the regulations.

Regulatory Flexibility Analysis

1. Effect on Small Businesses and Local Governments:

The regulations apply to all fifty-eight (58) of New York State's local social services districts.

2. Compliance Requirements:

These regulations clarify two important aspects of child protective services investigation practice relating obtaining access to children and the homes involved in reports of suspected child abuse or maltreatment and to obtaining information from collateral contacts during child protective services investigations.

The regulations explicitly require that when a child protective service staff is prevented from entering the home or from seeing or talking to a child and/or when a child cannot be located, the staff must assess if it is necessary to seek a court order to obtain access to the child or home or compel production of the child, or if other emergency action must be taken. This assessment must be done as soon as necessary under the circumstances but no later than 24 hours of the refusal or failure to locate the child, and must be completed in consultation with a child protective service supervisor and, when a court order is necessary, legal staff. As with all child protective services practice, actions and results must be appropriately documented in the case record.

Furthermore, the intent of existing regulations is for the child protective service staff to contact those entities and persons who may have information relevant to the allegations contained in a child protective services report during the investigation of such report. Therefore, the emergency regulations amend the existing regulations to clarify that collateral contacts also may include family medical providers, other agencies providing services to the family, relatives, extended family members, neighbors, and other persons who may have information relative to the investigation and to the safety of the children. This clarification should avoid future confusion on the part of child protective service staff regarding the collateral contacts they should make.

3. Professional Services:

The regulations do not create the need for additional professional services.

4. Compliance Costs:

These regulations clarify and codify existing child protective services practices. Therefore, there is no fiscal impact on the State or local social services districts.

5. Economic and Technological Feasibility:

Social services districts currently have the economic and technological ability to comply with the regulations through the case recording system and the legal offices associated with each child protective service.

6. Minimizing Adverse Impact:

These regulations make explicit two existing child protective services investigation practices. As such, they are not new mandates and will not result in any adverse impact on social services districts.

7. Small Business and Local Government Participation:

The regulations clarify existing practices and are designed to eliminate any confusion about how the child protective services should and may proceed. As such, at this time no participation of local government is necessary.

Rural Area Flexibility Analysis

1. Effect on rural areas:

The proposed regulations will apply to the 44 social services districts that are in rural areas and the St. Regis Mohawk Tribe, which is authorized by section 371(10)(b) of the Social Services Law to provide child protective services pursuant to its State/Tribal Agreement with the Office of Children and Family Services.

2. Compliance requirements:

These regulations clarify two important aspects of child protective services practice relating to obtaining access to the children and homes involved in reports of suspected child abuse or maltreatment and obtaining

information from collateral contacts during child protective services investigations.

The regulations explicitly require that when a child protective service staff is prevented from entering the home or from seeing or talking to a child and/or when a child cannot be located, the staff must assess if it is necessary to seek a court order to obtain access to the child or home or compel production of the child, or if other emergency action must be taken. This assessment must be done as soon as necessary under the circumstances but no later than 24 hours of the refusal or failure to locate the child, and must be completed in consultation with a child protective service supervisor and, when a court order is necessary, legal staff. As with all child protective services practice, actions and results must be appropriately documented in the case record.

Furthermore, the intent of existing regulations is for the child protective service staff to contact those entities and persons who may have information relevant to the allegations contained in a child protective services report during the investigation of such report. Therefore, the emergency regulations amend the existing regulations to clarify that collateral contacts also may include family medical providers, other agencies providing services to the family, relatives, extended family members, neighbors, and other persons who may have information relative to the investigation and to the safety of the children. This clarification should avoid future confusion on the part of child protective services staff regarding the collateral contacts they should make.

3. Professional services:

No additional professional service beyond the child protective services staff is required.

4. Costs:

These regulations clarify and codify existing child protective services practices. Therefore, there is no fiscal impact on the State or local social services districts.

5. Minimizing adverse impact:

These regulations will not result in any adverse impact upon small businesses or social services districts in rural areas.

6. Rural area participation:

The regulations clarify existing practices and are designed to eliminate any confusion about how the child protective services should and may proceed. As such, no participation of local interests in rural areas is necessary at this time.

Job Impact Statement

The Office of Children and Family Services has determined that these regulations would not result in the loss of any jobs. It is apparent from the nature and purpose of the regulations that they will not have any impact on jobs and employment opportunities. As such, a full job impact statement is not necessary for these regulations.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Voluntary Institutional Accreditation for Title IV Purposes

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

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

Proposed action: Amendment of 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 IV 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 Commissioner of Education.

Substance of proposed rule (Full text is posted at the following State website: www.highered.nysed.gov): The Board of Regents proposes to amend Subpart 4-1 of the Rules of the Board of Regents relating to voluntary institutional accreditation for Title IV purposes.

Subdivisions (c), (h), and (j) of section 4-1.2 are amended to clarify the definitions of "Accreditation with condition," "Certificate," and "Curriculum or program," respectively. Subdivision (j) is further amended to include "program of study" as a defined term to be included with "Curriculum or program".

Subdivision (b) of section 4-1.3 is amended to authorize the Commissioner of Education to extend a term of accreditation for up to 12 months beyond its expiration date on one or more occasions for good cause.

Subdivision (c) of section 4-1.3 is amended to renumber citations internal to Subpart 4-1.

Subdivision (e) of section 4-1.3 is deleted and a new subdivision (e) is added with paragraphs (1) and (2) added to include the two sentences previously contained in former subdivision (e) and adding a new paragraph (3) requiring the Department to consider in an accreditation review information provided by the U.S. Secretary of Education concerning an institution's compliance with HEA Title IV program responsibilities. This provision was relocated from its former location in subdivision (k) of section 4-1.4.

Paragraph (1) of subdivision (f) of section 4-1.3 is amended to renumber a citation internal to Subpart 4-1.

Subdivision (a) of section 4-1.4 is amended to clarify that a statement of institutional mission may include its academic purposes and its commitment to the social and economic context within which it operates; the relative roles of teaching, creation and preservation of knowledge, and service; the nature of constituents to be served; and the basis for setting priorities.

Paragraph (1) of subdivision (b) of section 4-1.4 is amended for clarity and to add a provision that the required plan for assessment of student achievement shall include retention rates and may include information important to the institution's achievement of its mission, such as transfer rates and the subsequent educational success of its graduates.

Clauses (a) and (b) of subparagraph (i) of paragraph (3) of subdivision (b) of section 4-1.4 are amended to require an institution to submit a plan, acceptable to the commissioner, to improve graduation rates if its most recent graduation rate falls more than five percentage points below the mean associate degree completion rate or mean baccalaureate degree completion rate in the State, respectively. The former regulation enabled institutions to avoid submitting such a plan if they improved their completion rates by at least three percent over the preceding year, and provided that the plan need only be designed to achieve an annual three percent improvement in completion rates over a two-year period.

Clauses (a), (b), and (c) of subparagraph (ii) of paragraph (3) of subdivision (b) of section 4-1.4 are amended to require an institution to submit a plan, acceptable to the commissioner, to improve job placement rates if its most recent job placement rate for associate degree graduates falls more than five percentage points below the mean placement rate for associate degree graduates or if its baccalaureate job placement rate or graduate degree job placement rate, respectively, fall below 80 percent. The former clauses enabled institutions to avoid submitting such a plan if they improved their job placement rates by at least three percent over the preceding year, and provided that the plan need only be designed to achieve an annual three percent improvement in job placement over a two-year period.

Subdivision (c) of section 4-1.4 is renamed "programs of study" and section 4-1.4 is amended throughout to substitute the phrase, "program of study," for the word, "curriculum."

Subparagraph (iii) of paragraph (1) of subdivision (c) of section 4-1.4 is added to require that the learning objectives of each course offered by an accredited institution be of a level that warrants transfer by other institutions of higher education.

Subparagraph (i) of paragraph (2) of subdivision (c) of section 4-1.4 is amended to require the competencies expected of students completing a program to be clearly defined in writing, as well as the program's goals.

Subparagraph (iii) of paragraph (2) of subdivision (c) of section 4-1.4 is amended to require that course syllabi be distributed to each student in the course and that it include the course's learning objectives as well as its subject matter and requirements.

Paragraph (3) of subdivision (c) of section 4-1.4 is amended to require an institution to provide a written plan to assess their success in achieving objectives, no less every five years, as opposed to their previous requirement of every five to seven years. This paragraph was further amended to require institutions to document actions taken to improve student learning and development.

Subparagraph (i) of paragraph (1) of subdivision (d) of section 4-1.4 is amended to provide that the requirements of faculty competence shall be in support of the institution's mission.

Subparagraph (ii) of paragraph (1) of subdivision (d) of section 4-1.4 is added to require that faculty teaching in certificate and undergraduate degree programs shall hold at least a master's degree in the field in which they teach or a related field, or be actively pursuing graduate study in such field or related field, or demonstrate, in other widely recognized ways, their competence in the field in which they teach. This subparagraph further requires that, upon the Commissioner of Education's request, an institution shall provide documentation confirming that faculty members who do not hold such master's degrees and are not pursuing graduate study have such demonstrated competence.

The former subparagraphs (ii) and (iii) of paragraph (1) of subdivision (d) of section 4-1.4 are renumbered subparagraphs (iii) and (iv), respectively and subparagraph (iv) is amended to require that, upon the Commissioner of Education's request, an institution shall provide documentation confirming that faculty members teaching a program of study leading to a graduate degree that do not hold a doctoral or other terminal degree demonstrate competence in the field in which they direct graduate students.

Subparagraph (i) of paragraph (3) of subdivision (d) of section 4-1.4 is amended to specify that members of the instructional staff new to the institution receive special supervision. Former Subparagraph (ii) requires supervision for inexperienced faculty and is amended for clarity.

Subparagraph (i) of paragraph (2) of subdivision (e) of section 4-1.4 is amended to clarify that an institution shall have libraries that provide access to print and non-print collections.

Subparagraph (ii) of paragraph (2) of subdivision (e) of section 4-1.4 is amended for clarity.

Subparagraph (iii) of paragraph (2) of subdivision (e) of section 4-1.4 is added to require that an institution ensure that all students receive instruction in information literacy.

Subparagraph (ii) of paragraph (1) of subdivision (f) of section 4-1.4 is amended for clarity.

Subparagraph (v) of paragraph (1) of subdivision (f) of section 4-1.4 is amended for clarity.

Subparagraph (vi) of paragraph (1) of subdivision (f) of section 4-1.4 is added to require that an institution not be in violation of a State or Federal statute where such violation demonstrates, in the Commissioner of Education's judgement, incompetence and/or fraud in the management of the institution.

Paragraphs (1) and (2) are added to subdivision (g) of section 4-1.4 for clarity. Paragraph (1) contains the language currently in subdivision (g) of section 4-1.4 and paragraph (2) is added to require that an institution that admits students with academic deficiencies provide sufficient supplemental academic services to enable them to make satisfactory progress toward program completion.

Paragraphs (1) and (2) of subdivision (h) of section 4-1.4 are amended for clarity.

Paragraph (3) of subdivision (h) of section 4-1.4 is amended to clarify the regulation to require institutions to take measures to increase enrollment in academic programs at all degree levels by persons from historically underrepresented groups consistent with the institution's mission.

Paragraph (4) of subdivision (h) of section 4-1.4 is added to prohibit an institution from denying a student's request for transfer credit solely on the source of the accreditation of the sending institution.

Subdivision (i) of section 4-1.4 is amended by lettering the opening sentence to be paragraph (1) and by renumbering the former paragraphs (1) through (4) to be subparagraphs (i) through (iv).

As renumbered, subparagraph (i) of paragraph (1) of subdivision (i) of section 4-1.4 is amended to require the institution to disclose information on the institution's standards of progress, if different from those utilized for State student financial aid programs.

As renumbered, subparagraph (iii) of paragraph (1) of subdivision (i) of section 4-1.4 is amended to require the institution to include its policy on student withdrawal from the institution in its catalog.

As renumbered, clause (b) of subparagraph (iv) of paragraph (1) of subdivision (i) of section 4-1.4 is amended to require that program descriptions include a description of program objectives.

As renumbered, clause (e) of subparagraph (iv) of paragraph (1) of subdivision (i) of section 4-1.4 is amended to add a requirement that information about faculty also indicate their full-time or part-time status.

Subparagraph (v) of paragraph (1) of subdivision (j) of section 4-1.4 is added to require institutions to include in their catalogs information on

their code of conduct for students, with a description of the institution's disciplinary process.

Paragraph (2) of subdivision (i) of section 4-1.4 is added to provide that an institution producing a multi-year catalog may use an annual printed addendum to update its information or, if the catalog is also online, a website update, and to require an institution archive all print and online catalogs annually and retain the archived copies permanently.

Paragraph (3) of subdivision (i) of section 4-1.4 is added to provide that an institution demonstrate that it continuously assesses the effectiveness of its efforts to provide students and prospective students with timely, accurate, and complete consumer information.

Former paragraph (5) of subdivision (i) of section 4-1.4 is renumbered to be paragraph (4).

Subdivision (k) of section 4-1.4 is amended by deleting paragraph (1) and by renumbering paragraphs (2) and (3) as paragraphs (1) and (2). Former paragraph (1) is moved to Section 4-1.3(e)(3).

Section 4-1.5 is amended by deleting subdivision (a) and by renumbering subdivisions (b) through (e) to be (a) through (d). Former subdivision (a) contains transitional review procedures that are no longer needed.

Subparagraph (ii) of paragraph (9) of subdivision (a) of section 4-1.5 is added to provide that an institution or the Deputy Commissioner for Higher Education seeking to commence an appeal of a recommendation by the Regents Advisory Council on Institutional Accreditation shall file a notice of appeal within ten days of the date on which the institution receives notice of the recommendation.

Former subparagraphs (ii) and (iii) are renumbered subparagraph (iii) and (iv) and subparagraph (iii), as renumbered, is amended to increase the time period an institution and/or the Deputy Commissioner has to commence an appeal from 15 days to 25 days from the date the institution receives notification of the Regents Advisory Council's recommendation.

Subparagraph (ii) of paragraph (11) of subdivision (a) of section 4-1.5 is added to provide that an institution seeking to commence an appeal of an adverse action by the Board of Regents shall file a notice of appeal within five days of the date of the Regents determination.

The former subparagraphs (ii) through (vii) of paragraph (11) of subdivision (a) of section 4-1.5 are renumbered (iii) through (viii) and subparagraph (iii) is amended to increase the institution's period to appeal from 15 days to 20 days from the date of the Regents determination.

Paragraphs (8) and (10) of subdivision (b) of section 4-1.5 are amended to renumber internal citations.

Paragraphs (8) and (10) of subdivision (c) of section 4-1.5 are amended to renumber internal citations.

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 grants to the Board of Regents the authority to register domestic and foreign 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 Commissioner of Education to visit, examine, and inspect schools or institutions under the educational supervision of the State and require reports from such schools.

Subdivision (1) of section 305 of the Education Law empowers 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 authorizes the Commissioner of Education to have general supervision over all schools and institutions subject to the Education Law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives of the above-referenced statutes by clarifying the standards and procedures that must be met by institutions of higher education that voluntarily seek institutional accreditation by the Board of Regents and the Commissioner of Education in order to participate in programs established by Title IV of the Higher Education Act.

3. NEEDS AND BENEFITS:

In June 2001, the Board of Regents adopted Part 4 of the Rules of the Board of Regents, Voluntary Institutional Accreditation for Title IV Purposes (now Subpart 4-1) as part of a process of complying with the requirements in regulations of the U.S. Department of Education (34 CFR Part 602) for continued recognition of the Board of Regents as an institutional accrediting agency. One of the Federal regulations requires each Nationally Recognized Accrediting Agency to have "a systematic program of review that demonstrates that its standards are adequate to evaluate the quality of the education or training provided by the institutions and programs it accredits and relevant to the educational or training needs of students". (34 CFR 602.21[a])

In compliance with the Federal requirement, the Department began a multi-year review of the institutional accreditation standards and procedures. This review included examination of the standards of other accrediting agencies; surveys of accredited institutions and of New York higher education institutions accredited by other agencies; annual colloquia on selected standards involving faculty and administrators from accredited institutions and from other New York degree-granting institutions, members of the Regents Advisory Council on Institutional Accreditation, and Department accreditation staff; review of the findings of peer review teams in site visits for institutional accreditation and extended discussions by the Regents Advisory Council. As a result of this multi-year process, this amendment was proposed to provide clarity and address any deficiencies in the existing regulation.

Under the current rules, an institution's term of accreditation is 10 years. Due to the challenges institutions face in preparing for accreditation or renewal of accreditation, and the demands on the Department in scheduling so many site visits, the Department believes a brief extension of the accreditation term for good cause is necessary to provide regulatory flexibility. The amendment permits the Commissioner to extend the term of accreditation for up to 12 months on one or more occasions for good cause.

As recommended by the Regents Advisory Council, more direction is needed to reinforce the importance of the institutional mission in accreditation. The amendment expands on what should be included in an institutional mission statement to ensure it is of sufficient scope and depth to be able to evaluate an institution's activities in support of their mission.

Section 4-1.4 of the Rules of the Board of Regents currently enables institutions to avoid submitting a student achievement plan to the Commissioner if the institution improves their graduation completion rates or job placement rates by at least three percent over the preceding year, and even if the institution is required to submit a plan, it need only be designed to achieve an annual three percent improvement in completion or job placement rates over a two-year period. A three percent increase in the number of students graduating or placed in jobs does not adequately show progress. This amendment requires an institution to submit a plan, acceptable to the commissioner, to improve graduation rates or job placement rates if its most recent rates fall more than five percentage points below the statewide mean. This amendment is needed to hold institutions more accountable for their graduation and job placement rates.

The lack of transferability of courses from institutions accredited by the Board of Regents to regionally accredited institutions has also been identified as a problem. This amendment prohibits institutions from denying transfer credits based solely on the sending institutions' choice of an accrediting agency approved by the U.S. Department of Education and requires the learning objectives of each course to be at a level and rigor that warrant acceptance in transfer by other higher education institutions. The proposed amendment defines and clarifies the minimum credentials expected of faculty teaching in undergraduate programs. It requires all faculty members teaching in an undergraduate degree program to hold or be in the process of pursuing at least a master's degree, or the institution must demonstrate in other widely recognized ways that such faculty members have competence in the field in which they teach.

The amendment establishes as a standard for accreditation that an institution shall not be in violation of a State or Federal statute, where such violation demonstrates incompetence and/or fraud in the management of the institution. The amendment is needed to assure that accredited institutions are not operating fraudulently or incompetently, in terms of New

York State or Federal statutes, and thereby to strengthen the Regents standards for the operation of accredited institutions.

The amendment requires that any institution admitting students with academic deficiencies provide adequate support services so that students admitted by accredited institutions with "open admission" policies receive the academic services they need in order to successfully complete their programs. It further requires that all students receive instruction in information literacy to assure that all students can utilize the institution's library effectively in their courses and other academic requirements.

The amendment clarifies requirements that institutions must meet in reference to catalogs. The amendment requires institutions to archive annually all print and online catalogs, and requires archived copies to be retained permanently. This amendment is needed to address the use of multi-year and online catalogs and how the information contained in such catalogs is to be maintained by institutions.

The amendment requires an institution and/or the Deputy Commissioner, if they plan on appealing the findings of the Advisory Board pursuant to section 4-1.5 of the Rules of the Board of Regents, to file a notice of intention to appeal within 10 days of receipt of the Advisory Council's recommendation. Similarly, the amendment requires an institution intending to file an appeal of a Regents adverse determination under section 4-1.5 of the Rules of the Board of Regents to file a notice of intention to appeal within five days of such determination. The Department believes this amendment is necessary for regulatory flexibility and to provide the Commissioner with adequate time and notice to process the appeal.

4. COSTS:

(a) Costs to State government. This amendment will not impose any additional costs on State government over and above the current costs for accrediting institutions pursuant to Subpart 4-1 of the Rules of the Board of Regents. The Department will use existing personnel and resources to review institutions for accreditation under this Subpart.

(b) Costs to local government. None.

(c) Costs to private regulated parties. The proposed amendment requires institutions seeking or maintaining accreditation by the Board of Regents to archive all print and online catalogs annually and to retain all archived copies permanently. The Department believes that currently accredited institutions are already performing these tasks and, therefore, there will be no additional cost to the institution. The other requirements of the proposed amendment will not impose additional costs on institutions of higher education.

(d) Costs to the regulatory agency. As stated above under Costs to State Government, the proposed amendment would not impose additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment concerns the institutional accreditation of institutions of higher education. It does not impose any program, service, duty, or responsibility on local governments.

6. PAPERWORK:

The proposed amendment imposes minimal additional paperwork for institutions voluntarily applying to the Board of Regents and the Commissioner of Education for institutional accreditation.

Section 4-1.4 of the Rules of the Board of Regents already requires each institution to prepare a course description for each course it offers. This amendment requires the course syllabi to be provided to each student in the course, which is standard practice in the field of higher education.

Section 4-1.4 of the Rules of the Board of Regents requires institutions to prepare a written plan to assess the effectiveness of faculty no less than every five to seven years. This amendment changes this requirement to every five years and requires an institution to document actions taken to improve student learning and development in their assessment plan.

The proposed amendment also requires institutions to provide, upon request, documentation to the Commissioner confirming that faculty members teaching programs for an undergraduate degree who do not hold a master's degree have demonstrated competence in the field in which they teach. Institutions would include this information in the self-studies they otherwise must provide as part of the process of applying for initial accreditation or for renewal of accreditation.

The proposed amendment requires the following additional information to be provided in the institution's catalogs: (1) the institution's withdrawal policy; (2) a description of its student disciplinary process and (3) the institution's standards of progress if different from those utilized for State student financial aid programs. Section 4-1.4 now requires that institutions adopt, publish, and enforce such policies. This amendment merely requires that such publication take place in the institutions' cata-

logs. The proposed amendment also requires that all print and online catalogs be archived annually and archived copies be retained permanently.

The proposed amendment further requires the institution and/or the Deputy Commissioner to file a notice of intention to appeal to the commissioner within 10 days of the date it receives notification of the findings and recommendations of the advisory council. In addition, institutions will be required to file a notice of intention to appeal within five days of an adverse determination by the Board of Regents.

Since the amendment proposes minimal reporting and recordkeeping requirements, the State Education Department expects that existing faculty and staff at colleges will have the necessary expertise to satisfy the requirements of the proposed amendment as part of their ongoing responsibilities.

7. DUPLICATION:

The standards and procedures for voluntary institutional accreditation build on requirements and standards for the registration of undergraduate and graduate programs set forth in Part 52 of the Regulations of the Commissioner of Education. In some cases, additional requirements are imposed for accreditation but these standards do not conflict with program registration standards.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

The proposed amendment is consistent with Federal requirements, which specify subject categories for which an accrediting agency, approved by U.S. Secretary of Education, must have standards and procedures for the accreditation of higher education institutions, and the requirement of periodic review of the standards by the accrediting agency.

10. COMPLIANCE SCHEDULE:

The amendment would be effective on its stated effective date.

Regulatory Flexibility Analysis

(a) Small Businesses:

1. EFFECT OF RULE:

The proposed amendment to the Rules of the Board of Regents applies to institutions of higher education applying for institutional accreditation or renewal of such accreditation by the Board of Regents and the Commissioner of Education for Title IV purposes. On the basis of the most recent data transmitted to the State Education Department, 14 of the 20 institutions of higher education that have voluntarily chosen the Commissioner and the Board of Regents as their institutional accreditor are for-profit small businesses with 100 or fewer employees. Four additional higher education institutions have applied to the Board of Regents and the Commissioner of Education for institutional accreditation but have not yet been accredited. The Department estimates that two of them are for-profit small businesses with fewer than 100 employees.

2. COMPLIANCE REQUIREMENTS:

The purpose of the proposed amendment is 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.

Under the current rules, an institution's term of accreditation is up to 10 years. The amendment permits the Commissioner to extend the term of accreditation for up to 12 months on one or more occasions for good cause.

The amendment also expands on what should be included in an institutional mission statement to ensure that the mission statement is of sufficient scope and depth to be able to evaluate an institution's activities in support of their mission.

Section 4-1.4 of the Rules of the Board of Regents currently enables institutions to avoid submitting a student achievement plan to the Commissioner if the institution improves their graduation completion rates or job placement rates by at least three percent over the preceding year, and even if an institution is required to submit a plan, it need only be designed to achieve an annual three percent improvement in completion or job placement rates over a two-year period. The proposed amendment changes the requirement to require an institution to submit a plan, acceptable to the commissioner, to improve graduation rates or job placement rates if its most recent rates fall more than five percentage points below the statewide mean.

This amendment establishes as a standard for accreditation that an institution shall not be in violation of a state or Federal statute, where such violation demonstrates incompetence and/or fraud in the management of the institution.

This amendment prohibits institutions from denying transfer credits based solely on the sending institutions' choice of an accrediting agency approved by the U.S. Department of Education. It explicitly requires the learning objectives of each course to be at a level and rigor that warrant acceptance and transfer by other higher education institutions.

The proposed amendment defines and clarifies the minimum credentials expected of faculty teaching in undergraduate programs. It requires all faculty members teaching in an undergraduate degree program to hold or be in the process of pursuing at least a master's degree or the institution must demonstrate in other widely recognized ways that such faculty members have competence in the field in which they teach.

The amendment requires that any institution admitting students with academic deficiencies provide adequate support services so that such students can complete the program in a timely manner. It requires that all students receive instruction in information literacy.

The amendment requires an institution and/or the Deputy Commissioner, if they plan on appealing the findings of the Advisory Board pursuant to section 4-1.5 of the Rules of the Board of Regents, to file a notice of intention to appeal within 10 days of receipt of the Advisory Council's recommendation. Similarly, the amendment requires an institution intending to file an appeal of a Regents adverse determination under section 4-1.5 of the Rules of the Board of Regents to file a notice of intention to appeal within five days of such determination.

The proposed amendment imposes minimal additional paperwork for institutions voluntarily applying to the Board of Regents and the Commissioner of Education for institutional accreditation.

Section 4-1.4 of the Rules of the Board of Regents already requires each institution to prepare a course description for each course it offers. This amendment requires the course syllabi to be provided to each student in the course, which is standard practice in the field of higher education.

Section 4-1.4 of the Rules of the Board of Regents also requires institutions to prepare a written plan to assess the effectiveness of faculty no less than every five to seven years. This amendment changes this requirement to every five years and requires an institution to document actions taken to improve student learning and development in their assessment plan.

The proposed amendment also requires institutions to provide, upon request, documentation to the Commissioner confirming that faculty members teaching programs for an undergraduate degree who do not hold a master's degree have demonstrated competence in the field in which they teach. Institutions will also be required to provide, upon request documentation to the Commissioner that faculty members teaching a program leading to a graduate degree who do not hold a doctorate or terminal degree have special competence in the field in which they teach.

The proposed amendment requires the following additional information to be provided in the institution's catalogs: (1) the institution's withdrawal policy from the institution; (2) the institution's code of conduct and a description of its student disciplinary process and (3) the institution's standards of progress if different from those utilized for State student financial aid programs. The proposed amendment also requires that all print and online catalogs be archived annually and archived copies be retained permanently.

3. PROFESSIONAL SERVICES:

The Department expects that existing faculty and administrative staff of the institutions, including those that are small businesses, will meet the requirements of the proposed amendment as part of their on-going responsibilities.

No additional 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 costs beyond those currently required under Subpart 4-1 of the Rules of the Board of Regents.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not impose any additional technological requirements on colleges and universities that voluntarily choose the Board of Regents and the Commissioner of Education as their institutional accrediting agency. As stated above in "Compliance Costs," the amendment will not result in additional costs to regulated parties.

6. MINIMIZING ADVERSE IMPACT:

In developing the proposed amendment, the State Education Department considered the approaches suggested in section 202-b(1) of the State Administrative Procedure Act for minimizing any adverse impact on small businesses. Those approaches were not feasible. The standards for institutional accreditation are in the subject categories prescribed in Federal regulations (34 CFR Part 602) for which an accrediting agency, recognized

by U.S. Secretary of Education, must have standards for the review of higher education institutions. Standards must be met in each of these subject categories regardless of the size of the institution or whether it is a small business.

The State Education Department has determined that uniform standards for institutional accreditation are necessary to help ensure the quality of all institutions that are accredited. Because of the nature of the proposed amendment, different standards for institutions that are small businesses are not feasible.

7. SMALL BUSINESS PARTICIPATION:

Over a four-year period beginning in 2001, all accredited institutions, including those that are small businesses, were invited to send faculty members and administrators to participate in annual colloquia to discuss existing standards and ways to improve the requirements for institutional accreditation. Over that period, all accredited institutions, including those that are small businesses, participated in one or more of the colloquia. In addition, all accredited institutions, including those that are small businesses, were invited to respond to several questionnaires about existing standards and ways to improve them, and staff from these institutions have been trained to participate in site visits to evaluate institutions' compliance with such standards. Following such visits, members of review teams were asked to suggest ways to improve the accreditation standards.

In addition, the State Education Department consulted with the Regents Advisory Council on Institutional Accreditation during the development of the proposed amendment. The Advisory Council is comprised of several members that are small businesses.

(b) Local governments:

The proposed amendment establishes requirements and clarifies existing standards and procedures for voluntary institutional accreditation of higher education institutions by the Board of Regents and the Commissioner of Education. It does not impose any adverse economic impact, reporting, recordkeeping, or other compliance requirements on local governments. Because it is evident from the nature of the proposed amendment 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 applies to institutions of higher education voluntarily choosing to apply to the Board of Regents and the Commissioner of Education for institutional accreditation. Two of these institutions, one an independent college and the other a proprietary college, 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. Of the four institutions that have applied for, but have not yet received institutional accreditation, none are located in rural counties with less than 200,000 inhabitants or the 71 urban counties with a population density of 150 per square mile or less.

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

The purpose of the proposed amendment is 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.

Under the current rules, an institution's term of accreditation is up to 10 years. The amendment permits the Commissioner to extend the term of accreditation for up to 12 months on one or more occasions for good cause.

The amendment also expands on what should be included in an institutional mission statement to ensure that the mission statement is of sufficient scope and depth to be able to evaluate an institution's activities in support of their mission.

Section 4-1.4 of the Rules of the Board of Regents currently enables institutions to avoid submitting a student achievement plan to the Commissioner if the institution improves their graduation completion rates or job placement rates by at least three percent over the preceding year, and even if an institution is required to submit a plan, it need only be designed to achieve an annual three percent improvement in completion or job placement rates over a two-year period. The proposed amendment changes the requirement to require an institution to submit a plan, acceptable to the commissioner, to improve graduation rates or job placement rates if its most recent rates fall more than five percentage points below the statewide mean.

This amendment establishes as a standard for accreditation that an institution shall not be in violation of a State or Federal statute, where such violation demonstrates incompetence and/or fraud in the management of the institution.

This amendment prohibits institutions from denying transfer credits based solely on the sending institutions' choice of an accrediting agency approved by the U.S. Department of Education. It explicitly requires the learning objectives of each course to be at a level and rigor that warrant acceptance and transfer by other higher education institutions.

The proposed amendment defines and clarifies the minimum credentials expected of faculty teaching in undergraduate programs. It requires all faculty members teaching in an undergraduate degree program to hold or be in the process of pursuing at least a master's degree or the institution must demonstrate in other widely recognized ways that such faculty members have competence in the field in which they teach.

The amendment requires that any institution admitting students with academic deficiencies provide adequate support services so that such students can complete the program in a timely manner. It requires that all students receive instruction in information literacy.

The amendment requires an institution and/or the Deputy Commissioner, if they plan on appealing the findings of the Advisory Board pursuant to section 4-1.5 of the Rules of the Board of Regents, to file a notice of intention to appeal within 10 days of receipt of the Advisory Council's recommendation. Similarly, the amendment requires an institution intending to file an appeal of a Regents adverse determination under section 4-1.5 of the Rules of the Board of Regents to file a notice of intention to appeal within five days of such determination.

The proposed amendment imposes minimal additional paperwork for institutions voluntarily applying to the Board of Regents and the Commissioner of Education for institutional accreditation.

Section 4-1.4 of the Rules of the Board of Regents already requires each institution to prepare a course description for each course it offers. This amendment requires the course syllabi to be provided to each student in the course, which is standard practice in the field of higher education.

Section 4-1.4 of the Rules of the Board of Regents also requires institutions to prepare a written plan to assess the effectiveness of faculty no less than every five to seven years. This amendment changes this requirement to every five years and requires an institution to document actions taken to improve student learning and development in their assessment plan.

The proposed amendment also requires institutions to provide, upon request, documentation to the Commissioner confirming that faculty members teaching programs for an undergraduate degree who do not hold a master's degree have demonstrated competence in the field in which they teach. Institutions will also be required to provide, upon request, documentation to the Commissioner that faculty members teaching a program leading to a graduate degree who do not hold a doctorate or terminal degree have special competence in the field in which they teach.

The proposed amendment requires the following additional information to be provided in the institution's catalogs: (1) the institution's withdrawal policy from the institution; (2) the institution's code of conduct and a description of its student disciplinary process and (3) the institution's standards of progress if different from those utilized for State student financial aid programs. The proposed amendment also requires that all print and online catalogs be archived annually and archived copies be retained permanently.

3. COSTS:

The State Education Department expects that existing faculty and staff at colleges and universities choosing the Board of Regents as their institutional accrediting agency, will have the necessary expertise to satisfy the requirements of the proposed amendment as part of their ongoing responsibilities. The amendment will not impose additional costs on such colleges and universities beyond those required to comply with existing accreditation standards.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment makes no exception for institutions that are located in rural areas. The standards for institutional accreditation are in the subject categories prescribed in Federal regulations (34 CFR Part 602) for which an accrediting agency, recognized by U.S. Secretary of Education, must have standards for the review of higher education institutions. Pursuant to these Federal regulations, the requirements in each of these subject categories must be met regardless of the location of the institution.

In any event, consistent institutional requirements should apply no matter the geographic origin of the institution to help ensure the quality of all institutions seeking accreditation. Because of the nature of the proposed

amendment, establishing different standards for institutions located in rural areas of New York State is inappropriate.

5. RURAL AREA PARTICIPATION:

Over a four-year period beginning in 2001, all accredited institutions, including the two in rural areas, were invited to send faculty members and administrators to participate in annual colloquia to discuss existing standards and ways to improve the requirements for institutional accreditation. Over that period, all accredited institutions, including the two located in rural areas, participated in one or more of the colloquia. In addition, all accredited institutions, including the two located in rural areas, were invited to respond to several questionnaires about existing standards and ways to improve them, and staff from these institutions have been trained to participate in site visits to evaluate institutions' compliance with such standards. Following such visits, members of review teams were asked to suggest ways to improve the accreditation standards.

Job Impact Statement

The proposed amendment establishes requirements and clarifies existing standards and procedures that must be met by institutions of higher education seeking voluntary accreditation by the Board of Regents and the Commissioner of Education. The State Education Department expects that the proposed amendment will not have a negative impact on the number of jobs or employment opportunities at higher education institutions or in any other field, and that higher education institutions will use existing staff to satisfy accreditation requirements as part of their on-going responsibilities. Therefore, the amendment will have no impact on jobs or employment opportunities at these institutions. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, no further steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement was not required and one was not prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Examination Requirements for Licensure in Public Accountancy

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

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

Proposed action: Amendment of 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 of proposed rule: 1. Subdivision (b) of section 70.3 of the Regulations of the Commissioner of Education is amended, effective March 8, 2007, as follows:

(b) Passing score. The passing score in each section shall be 75.0 [and shall be reported on a pass/fail basis].

2. Paragraph (1) of subdivision (c) of section 70.3 of the Regulations of the Commissioner of Education is amended, effective March 8, 2007, as follows:

(1) *For purposes of this paragraph, examination window means a three-month period in which the examination is available within a quarter of the year, the beginning and ending of which shall be established by the examination provider. A candidate may take the required sections of the examination individually and in any order. Credit for any section passed shall not be valid for more than 18 months, calculated from the [actual date the candidate took that section of the examination] last day of the examination window in which the candidate sat for such section of the examination. A candidate must pass all four sections of the examination within a rolling 18-month period, which begins on the [date that a passed section of the examination is taken] last day of the examination window in which the candidate sat for any section of the examination that the candidate passed. A candidate may not retake a failed section of the examination in the same examination window [, meaning a two-month period in which the examination is available within a quarter of the year].*

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 Depart-

ment, 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.

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.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

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

Paragraph (a) of subdivision (3) of section 6507 of the Education Law authorizes the State Education Department, assisted by the board for each profession, to establish standards for the licensing examinations for that profession.

Subdivision (2) of section 6508 of the Education Law provides that state boards for the professions, or their licensing committees, shall select or prepare licensing examinations and assist the State Education Department in other licensing matters as prescribed by the Board of Regents.

Paragraph (4) of subdivision (1) of section 7404 of the Education Law requires an applicant to pass an examination, satisfactory to the State Board for Public Accountancy and in accordance with the Commissioner's regulations, in order to qualify for a license as a certified public accountant.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of the aforementioned statutes that the Commissioner of Education shall promulgate regulations establishing standards for licensing examinations in the profession of public accountancy.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to amend standards and procedures relating to the examination for licensure in public accountancy. Specifically, the proposed amendment makes the following changes:

The proposed amendment changes the grading of the licensure examination from pass/fail to a numeric score. In 2003, with the transition to a computer-based licensure examination, the regulation was amended to require examination results to be reported to candidates on a pass/fail basis. Based upon information provided by the examination vendor, this change was made because the Department expected the computer-based examination would provide candidates with detailed diagnostic information with the pass/fail result, making numeric scores unnecessary. However, over the last three years, the diagnostic information provided to candidates has not been as detailed as expected and the numeric scores will help candidates who have failed sections of the examination to understand areas in which they need to improve.

The proposed amendment is also needed to lengthen the period of time of validity for passed sections of the licensure examination and the period of time in which all four sections must be passed. This is needed because the examination provider has not provided examination results to candidates as frequently as expected, in some cases resulting in candidates having difficulty passing all four sections of the examination in the time limits prescribed in the regulation. At present, the passed score on a section of the examination is valid for 18 months from the actual date the candidate took the section, and all four sections must be passed within 18 months of the date a passed section is taken. The proposed amendment would lengthen these periods, permitting an examination score on a section to be valid for 18 months from the end of a three-month examination window, and requiring all four sections to be passed within 18 months of the end of a three-month examination window. These changes will allow a candidate to maintain credit for passed sections of the examination for longer periods of time, providing additional time to re-take a failed section of the examination and meet the time requirements for passing all four sections.

The proposed changes are recommended by the State Board for Public Accountancy. The change concerning numeric scoring is also recommended by a task force of the New York State Society of Certified Public Accountants.

4. COSTS:

(a) Cost to State government: The proposed amendment will not impose additional costs on the State Education Department or any other State agency.

(b) Cost to local government: There are no additional costs to local government.

(c) Cost to private regulated parties: The proposed amendment will not impose additional costs on any private regulated parties, including candidates for the licensure examination in public accountancy.

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

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates to examination requirements applicable to candidates for licensure as a certified public accountant. The amendment does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The amendment does not establish additional reporting or recordkeeping requirements for applicants for licensure beyond those currently imposed.

7. DUPLICATION:

There are no other State or Federal requirements on the subject matter of the proposed amendment. Therefore, 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.

9. FEDERAL STANDARDS:

There are no Federal standards concerning the subject matter of the amendment, examination requirements for licensure in certified public accountancy.

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 with the regulation.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to amend standards and procedures relating to the examination in public accountancy. The amendment concerns licensure examination requirements applicable to individual candidates for licensure. It requires licensure examination results to be reported to candidates based upon a numeric score, rather than pass/fail. It also lengthens the period of time of validity of passed sections of the examination.

The amendment does not regulate small businesses or local governments. It does not impose any reporting, recordkeeping, or other compliance requirements on small business or local governments, or have any adverse economic effect on them. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no affirmative 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 NUMBER OF RURAL AREAS:

The proposed amendment will affect individuals who apply for licensure as certified public accountants (CPA), 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. Each year about 1,750 individuals apply for licensure as a certified public accountant. The Department estimates that each year about eight percent or about 140 come from a rural county of New York State.

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

The proposed amendment amends standards and procedures relating to the examination for licensure in public accountancy.

Under current regulations, the examination scores for public accountants are reported on a pass/fail basis. This amendment changes the manner in which examination scores for public accountants are reported from a pass/fail basis to a numeric basis.

The proposed amendment also lengthens the period of time of validity for passed sections of the licensure examination and the period of time in which all four sections must be passed. At present, the passed score on a section of the examination is valid for 18 months from the actual date the candidate took the section, and all four sections must be passed within 18 months of the date a passed section is taken. The proposed amendment

would lengthen these periods, permitting an examination score on a section to be valid for 18 months from the end of a three-month examination window, and requiring all four sections to be passed within 18 months of the end of a three-month examination window. These changes will allow a candidate to maintain credit for passed sections of the examination for longer periods of time, providing additional time to re-take a failed section of the examination and meet the time requirements for passing all four sections.

The proposed amendment will not require regulated parties, including applicants for licensure in public accountancy located in rural areas, to hire professional services in order to comply. The amendment imposes no additional paperwork or recordkeeping requirements.

3. COSTS:

The proposed amendment will not impose any additional cost on applicants for licensure in public accountancy, including those located in rural areas of New York State.

4. MINIMIZING ADVERSE IMPACT:

This amendment changes the manner in which examination scores are reported for public accountants and lengthens the period of validity for passed section of the licensure examination in public accountancy. Because of the nature of the proposed amendment, which liberalizes validity requirements and provides additional scoring information, it will have no adverse impact on applicants for licensure located in rural areas of New York State. In any event, consistent examination requirements should apply no matter the geographic origin of the applicant for licensure, to help ensure that individuals who are licensed in public accountancy are competent for entry-level professional practice.

5. RURAL AREA PARTICIPATION:

The State Board for Public Accountancy assisted in the development of the proposed amendment and approved the changes. This Board includes members who live and work in rural areas of New York State. In addition, the Department consulted with the New York State Society of Certified Public Accountants and its task force on the computer-based CPA examination. The Society represents membership in all areas of the State, including rural areas.

Job Impact Statement

The purpose of the proposed amendment is to amend standards and procedures relating to the examination for licensure in public accountancy, requiring the reporting of numeric grades rather than pass/fail results to applicants for licensure and lengthening the period of time that passed sections of the examination remain valid. The amendment will provide applicants for licensure with additional information concerning examination results and liberalize time validity requirements for passed sections of the examination.

The amendment will have no effect on the number of jobs or the number of employment opportunities available in the field of public accountancy or any other field. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities in public accounting or any other field, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Regents Diploma with Honors

I.D. No. EDU-48-06-00007-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 100.5 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 of proposed rule: 1. Subparagraph (ii) of paragraph (7) of subdivision (b) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective March 8, 2007, as follows:

(ii) *Regents Diploma with Honors.*

a. A local school district may award a student a Regents diploma with honors or a Regents diploma with advanced designation with honors [To earn honors, a student shall achieve] *to a student who achieves*

an average of 90 percent in all Regents examinations [, or their equivalent pursuant to section 100.2(p) of this Part,] required for the diploma. Each Regents examination score carries a weight of one and such score shall not be multiplied by the number of units of study being examined. Averages below 90.0 percent shall not be rounded upward to 90 percent.

(b) *Notwithstanding the provisions of clause (a) of this subparagraph, a district may award a Regents diploma with honors or a Regents diploma with advanced designation with honors to a student who has substituted no more than two alternative assessments approved pursuant to section 100.2(f) of this Part for a Regents examination required for the diploma. In such instance, the student's score on any substituted alternative assessments shall not be considered in the calculation to determine whether such student has achieved an average of 90 percent.*

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: Jean Stevens, Interim Deputy Commissioner, State Education Department, Office of Elementary, Middle, Secondary and Continuing Education, Education Building Annex, Rm. 873, Albany, NY 12234, (518) 474-5915

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

STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department 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 laws of the State regarding education and the functions and duties conferred on the Department by law.

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 305 (1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and shall execute all educational policies determined by the Board of Regents.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3204 (3) provides for required courses of study in the public schools and authorizes the State Education Department to alter the subjects of required instruction.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to the State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement.

NEEDS AND BENEFITS:

The proposed amendment will revise and clarify diploma requirements, provide flexibility to the schools, and alternatives for students who seek a Regents Diploma with honors or a Regents Diploma with Advanced Designation with honors. Specifically, students who use approved alternative assessments in lieu of required Regents examinations will have the oppor-

tunity to be awarded the "Honors" designation on their diploma, if no more than two approved alternative examinations are substituted.

COSTS:

(a) Costs to State government: None. The proposed amendment creates no additional costs.

(b) Costs to local government: None. School districts will incur no additional costs to their programs.

(c) Costs to private regulated parties: None. This proposed amendment does not fiscally impact private parties in any way.

(d) Costs to regulating agency for implementation and continued administration of this rule: This proposed amendment will require no additional costs to the State Education Department as regulating agency.

LOCAL GOVERNMENT MANDATES:

The proposed amendment imposes no additional program, service, duty or responsibility upon local governments, but will ensure that all students have continued opportunities to complete requirements for a high school diploma. Local school districts interested in offering the Regents diploma with honors or the Regents diploma with advanced designation with honors will implement testing requirements consistent with the State's learning standards, complete assessment procedures, maintain student records, and award diplomas.

The proposed amendment will 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. Specifically, students who use approved alternative assessments in lieu of required Regents examinations will have the opportunity to be awarded the "Honors" designation on their diploma, if no more than two approved alternative examinations are substituted.

PAPERWORK:

The proposed amendment creates no additional paperwork for local school districts.

DUPLICATION:

The proposed amendment 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:

It is anticipated that school districts will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment revises high school graduation and diploma requirements consistent with policy adopted by the Board of Regents. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment 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 amendment applies to each of the 708 public school districts in the State, and to charter schools that are authorized to issue local and Regents diplomas with respect to State assessments and high school graduation and diploma requirements. At present, there are 4 charter schools offering a full high school program, 5 charter schools offering only 9th grade instruction, 1 charter school offering only 9th and 10th grade instruction, and 5 charter schools offering only 9th, 10th and 11th grade instruction.

COMPLIANCE REQUIREMENTS:

The proposed amendment imposes no additional compliance requirements, but will revise graduation and diploma requirements, consistent with policy adopted by the Board of Regents, to ensure that all students in public schools have the skills, knowledge and understandings they will need to succeed. The proposed amendment will 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. Specifically, students who use approved alternative assessments in lieu of required Regents examinations will have the opportunity to be awarded the "Honors" designation on their diploma, if no more than two approved alternative examinations are substituted.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment will not impose any costs on local governments.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy adopted by the Board of Regents. The proposed amendment has been carefully drafted to meet statutory requirements and Regents policy while minimizing the impact on school districts. Where possible, the regulations have incorporated existing requirements and eliminated redundant requirements to minimize work at the local level and have emphasized local flexibility in meeting the regulatory requirements.

The proposed amendment will 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. Specifically, students who use approved alternative assessments in lieu of required Regents examinations will have the opportunity to be awarded the "Honors" designation on their diploma, if no more than two approved alternative examinations are substituted.

LOCAL GOVERNMENT PARTICIPATION:

The Board of Regents and the State Education Department engaged the educational community (teachers, administrators, members of boards of education, professional organization representatives, community members and others) in drafting the initial regulations. Members of the educational community were contacted for their input on this proposed amendment. In addition, comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts in the State, including those 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. The proposed amendment also applies to charter schools in such areas, to the extent they offer instruction in the high school grades and issue Regents diplomas and local diplomas. At present, there are no such charter schools located in rural areas.

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

The proposed amendment imposes no additional reporting, recordkeeping or other compliance requirements, but will revise graduation and diploma requirements, consistent with policy adopted by the Board of Regents, to ensure that all students in public schools have the skills, knowledge and understandings they will need to succeed. The proposed amendment will 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. Specifically, students who use approved alternative assessments in lieu of required Regents examinations will have the opportunity to be awarded the "Honors" designation on their diploma, if no more than two approved alternative examinations are substituted.

School districts and charter schools will need to retain the services of qualified personnel who are appropriately certified to provide the necessary instruction, complete assessment procedures, calculate grade point averages, and maintain student records. However, the proposed amendment imposes no new professional services requirements.

COMPLIANCE COSTS:

School districts and charter schools will incur no additional costs to their programs.

MINIMIZING ADVERSE IMPACT:

The proposed amendment implements policy adopted by the Board of Regents. The proposed amendment has been carefully drafted to meet statutory requirements and Regents policy while minimizing the impact on school districts in rural areas. Where possible, the regulations incorporate existing requirements and eliminated redundant requirements to minimize work at the local level and have emphasized local flexibility in meeting the regulatory requirements. The Regents policy upon which the amended regulations are based applies to all school districts throughout the State. Therefore, it was not possible to establish different compliance and reporting requirements for school districts in rural areas, or exempt them from the provisions.

RURAL AREA PARTICIPATION:

The Board of Regents and the State Education Department engaged the educational community (including teachers, administrators, members of boards of education, community members and others) from rural areas in the drafting of the initial regulations. Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment revises high school graduation and diploma requirements consistent with policy adopted by the New York State Board of Regents. The assessments and graduation requirements help ensure that all students in New York State public schools have the skills, knowledge, and understandings they will need to succeed. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Since the amendment revises and clarifies diploma requirements, provides flexibility to schools and alternatives for students, 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.

Department of Environmental Conservation

NOTICE OF ADOPTION

Environmental Remediation Programs

I.D. No. ENV-46-05-00010-A

Filing No. 1362

Filing date: Nov. 14, 2006

Effective date: 30 days after filing

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

Action taken: Repeal of Part 375 and addition of new Part 375 to Title 6 NYCRR.

Statutory authority: L. 2003, ch. 1, as amended by L. 2004, ch. 577; Environmental Conservation Law, art. 27, titles 13 and 14, art. 56, title 5 and art. 71, title 36; and State Finance Law, art. 6, section 97-b

Subject: Environmental remediation programs.

Purpose: To revise, reorganize, and restructure existing Part 375 to cover the requirements provided by, and to provide for the implementation of, the 2003 and 2004 Superfund/Brownfield Acts.

Substance of final rule: This rule making is proposed by the New York State Department of Environmental Conservation (Department) to amend 6 NYCRR 375, the statewide regulations that implement the State Superfund Program, Article 27, Title 13 of the Environmental Conservation Law (ECL), and the Environmental Restoration Program, Article 56, Title 5 of the ECL. The revisions are aimed at incorporating recent statutory changes, clarifying and streamlining the current regulations and addressing issues raised by state and local agencies, the public, and project sponsors since the last regulatory update of Part 375 in 1996.

New York State, in furtherance of its commitment to environmental protection and economic revitalization and growth in the State, has created an array of programs and resources to help clean up and reuse contaminated sites. New York State offers programs that provide for financial assistance, as well as technical assistance and liability protection, for the investigation, remediation and redevelopment of brownfield sites. This rule making ensures the continued protection of public health and the environment. It will also assure the most efficient utilization of public and private funding sources for the investigation and remediation of sites under such remedial programs and will ensure remediation efforts are completed as quickly as possible.

Specific to this rule making, the State administers the State Superfund Program (SSF), created in 1979; the Brownfield Cleanup Program (BCP), created in 2003; and the Environmental Restoration Program (ERP), created in 1996.

Chapter 1 of the Laws of 2003 added a new ECL Article 27 Title 14 (the BCP); made extensive amendments to existing ECL Article 27 Title

13 (the SSF) and to existing ECL Article 56 Title 5 (the ERP); and made other related amendments. As a result of these statutory changes, it is necessary and desirable to revise the Department's regulations to conform to Chapter 1. Additionally, it is also necessary and desirable to revise the Department's regulations, both to conform to previous legislation and to make adjustments to conform to experience acquired, and in the interest of administrative efficiency.

Accordingly, the Department is:

1. Incorporating requirements of New York State's Chapter 1, Laws of 2003;

2. Revising/enhancing the Inactive Hazardous Waste Disposal Site Remedial Program and Environmental Restoration Program regulations to address necessary legal, technical, and policy developments, as well as to reflect our extensive experience in remediating sites, that have occurred since the last major revisions to Part 375 in 1992 and 1996, respectively; and

3. Establishing a regulation for the Brownfield Cleanup Program.

The Department's current regulations governing the SSF and ERP are contained in 6 NYCRR Part 375. Revising, reorganizing, and restructuring existing Part 375, including the provision of regulations for the BCP is necessitated to cover the requirements provided by, and to provide for the implementation of, the 2003 and 2004 statutory changes. These laws were enacted subsequent to the previous Part 375 rule making. Further, they will incorporate statutory changes that occurred after the current Part 375 was finalized and will improve the readability of the regulations and decrease confusion.

This action is not intended to mandate any specific remedial technology or approach. However, it will define the remedial process and the use-based soil cleanup objectives for the remedial programs. The following outline highlights the reorganization of Part 375.

Subpart 375-1: GENERAL REMEDIAL PROGRAM REQUIREMENTS

This rule identifies those requirements that are common to each of the remedial programs. Further, it incorporates the statutory changes since the previous Part 375 rule making, and makes adjustments to conform to experience acquired, and in the interest of administrative efficiency.

Subpart 375-2: INACTIVE HAZARDOUS WASTE DISPOSAL SITE REMEDIAL PROGRAM

This rule maintains, but reorganizes and restructures, much of the existing Part 375, and makes adjustments to conform to experience acquired, and in the interest of administrative efficiency. These rule changes primarily conform to the recent statutory changes and provide for greater consistency with the other remedial programs.

Subpart 375-3: BROWNFIELD CLEANUP PROGRAM (BCP)

This is a new rule that implements recent changes to the law, which create the BCP. There are no substantive requirements that are not required by statute.

Subpart 375-4: ENVIRONMENTAL RESTORATION PROGRAM (ERP)

This rule conforms the existing subpart 375-4 to recent changes in the law and provides for some modest changes to increase consistency between the other remedial programs. This rule maintains, but reorganizes and restructures, much of the existing subpart 375-4, and makes adjustments to conform to experience acquired, and in the interest of administrative efficiency.

Subpart 375-6: REMEDIAL PROGRAM SOIL CLEANUP OBJECTIVES

Subpart 375-6 contains soil cleanup objectives applicable to the remedial programs set forth in subparts 375-2 through 375-4. Separate sets of soil cleanup objectives were developed in consideration of public health, groundwater, and ecological resources. Additionally, this subpart sets forth the procedures for development of soil cleanup objectives for compounds not included in the soil cleanup objective tables.

In summary, this rule making will incorporate the statutory changes since the previous Part 375 rule making, and make adjustments to conform to experience acquired. The revisions are intended to clarify and streamline the current regulations and to address issues raised by program stakeholders. This rule making will facilitate the clean up and reuse of contaminated sites, thus stimulating economic revitalization while ensuring the continued protection of public health and the environment.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 375-1.1(a), (b), (e), (g), 375-1.2(a), (c), (g), (u), (x), (z), (an), 375-1.5(b)(5), 375-1.6(a)(3), (b)(3)(iii), 375-1.8(a)(4), (5), (d)(1)(ii), (2)(i)(c), (3)(ii)(b), (f)(9), (g)(4), (5), (h)(3)(ii)(a), (iv), (v), 375-1.11(b), 375-2.2(b), (c), (e), 375-2.7(b)(2)(ii), (3), 375-2.8(a),

(b)(1)(i), (ii), (c)(3), (4), (e), 375-2.10(c), (g)(5)(ii)(c), 375-3.2(b)(2)(iii), 375-3.3(a)(3)(ii), (4), 375-3.5(d), 375-3.7(a)(2), (b)(2)(ii), 375-3.8(a)(3)(i), (b)(1), (2)(i), (c)(3), (d)(2), (e)(1)(i), (2)(vi), (3), (4)(i), (iii)(a)(2), (b)(2), (c)(2), (f)(2)(i), (g)(2), (4)(ii)(c), 375-3.9(a), 375-3.10(c)(5)(ii)(c), 375-4.2(d), 375-4.4(a), 375-4.8(a), (c)(1)(i), (ii), 375-4.11(b)(2), 375-6.1(a), 375-6.2(b), 375-6.3(a), (b), 375-6.4(a), (c)(3), 375-6.5(a), 375-6.6(a), (a)(1), (2), (b)(1), 375-6.6(c), 375-6.6(c)(1), 375-6.7(d)(1), (2), (3), 375-6.8(a) footnotes, (b) footnotes, (b), (c), (d) and (e). **Revised rule making(s) were previously published in the State Register on July 12, 2006.**

Text of rule and any required statements and analyses may be obtained from: Robert W. Schick, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, <http://www.dec.state.ny.us/website/der>, (518) 402-9662, e-mail: derweb@gw.dec.state.ny.us

Additional matter required by statute: SEQR per ECL, article 8; Environmental Board per ECL, article 5; Inactive Hazardous Waste Disposal Site Review Board per ECL, article 27, section 1315.

Regulatory Impact Statement

The public comments received and revisions made to the Express Terms published with this Notice of Adoption do not require a change to the revised Regulatory Impact Statement that was last published in the July 12, 2006 issue of the State Register. No substantial revisions were made to the express terms and the changes made merely provided further clarification of the rule.

Regulatory Flexibility Analysis

The public comments received and revisions made to the Express Terms published with this Notice of Adoption do not require a change to the revised Regulatory Flexibility Analysis that was last published in the July 12, 2006 issue of the State Register. No substantial revisions were made to the express terms and the changes made merely provided further clarification of the rule.

Rural Area Flexibility Analysis

The public comments received and revisions made to the Express Terms published with this Notice of Adoption do not require a change to the revised Rural Area Flexibility Analysis that was last published in the July 12, 2006 issue of the State Register. No substantial revisions were made to the express terms and the changes made merely provided further clarification of the rule.

Job Impact Statement

The public comments received and revisions made to the Express Terms published with this Notice of Adoption do not require a change to the revised Job Impact Exemption Statement that was last published in the July 12, 2006 issue of the State Register. No substantial revisions were made to the express terms and the changes made merely provided further clarification of the rule.

Assessment of Public Comment

New York State, in furtherance of its commitment to environmental protection and economic revitalization and growth in the State, has created an array of programs and resources to help clean up and reuse contaminated sites. The New York State Department of Environmental Conservation (Department) offers programs that provide for financial assistance, as well as technical assistance and liability protection, for the investigation, remediation and redevelopment of brownfield sites. Specific to this rule making, the State has the Inactive Hazardous Waste Disposal Site Remedial Program (commonly known as the State Superfund Program (SSF)), created in 1979; the Brownfield Cleanup Program (BCP), created in 2003; and the Environmental Restoration Program (ERP), created in 1996.

The Department issued a draft revised 6 NYCRR Part 375, the regulation that has implemented the SSF and the ERP. The revised Part 375 will also now include the regulation to implement the BCP. The draft regulation and supporting documentation were available for a 120-day public comment period at repositories and on the Department website.

That regulation is proposed to incorporate the statutory changes since the previous Part 375 rule making, and make adjustments to conform to experience acquired. The revisions are intended to clarify and streamline the current regulations and to address issues raised by program stakeholders. This proposed rule will facilitate the cleanup and reuse of contaminated sites which will stimulate economic revitalization, while ensuring the continued protection of public health and the environment.

The Department formally proposed 6 NYCRR Part 375 on November 16, 2005 and received written comments through March 27, 2006. In response to these comments substantial revisions were made to the proposed 6 NYCRR Part 375, including the creation of a subpart 375-6 to include the soil cleanup objectives (SCO) previously included in subpart 375-3. Therefore the rule was again noticed for public comment on July

12, 2006 and a 45-day comment period was identified for the revised rule. During this comment period two public meetings were scheduled to present the revised rule, one in Buffalo, NY on Tuesday, July 18, 2006 and the other in New York City on Wednesday, July 19, 2006. A public hearing was also held in Albany, NY on Tuesday, August 15, 2006.

The Department received written comments through Friday, August 25, 2006. Comments received on the revised rule fell into four categories:

1. Comments commending the Department for revisions to the original draft rule issued for comment on November 16, 2005;
 2. Comments previously answered in the June 2006 Response to Comment;
 3. Comments on portions of the proposed rule that were not changed subsequent to the March 27, 2006 comment period; and
 4. Comments on the new or revised sections of the proposed rule issued on July 12, 2006.
- Regarding comments in the first category, the Department appreciates the supportive comments.

Comments in the second category are those on portions of the revised regulations which raise issues that were previously asked and addressed in the assessment of public comment included in that notice of revised rule making (June 2006 Response to Comment). These comments need not be addressed again in this assessment of public comment. These comments are set forth in Appendix A of the October 2006 Assessment of Public Comment.

For comments in the third category, the public comment period for those portions of the regulation that were not subject to substantial revision closed on March 27, 2006. Because these comments addressed text of the proposed regulation that was not subject to substantial revision, it is untimely and will not be addressed as part of this assessment of public comment. These comments are set forth in Appendix B of the October 2006 Assessment of Public Comment.

Comments in the final category are comments on new or revised sections of the proposed rule received during this comment period and at the hearing. The Department responses are presented by topic (as shown in the Table of Contents) in seven parts, which parallel the subparts generally:

- Part A – Comment on Part 375 Generally;
- Part B – Comments on Subpart 375-1 (provisions applicable to all subparts);
- Part C – Comments on Subpart 375-2 (State Superfund Program);
- Part D – Comments on Subpart 375-3 (Brownfield Cleanup Program);
- Part E – Comments on Subpart 375-4 (Environmental Restoration Program);
- Part F – Comments on Subpart 375-6 (Remedial Program Soil Cleanup Objectives); and
- Part G – Comments on Matters Outside Part 375.

This summary highlights the central issues raised by commenters. For additional detail, the October 2006 Assessment of Public Comment should be consulted.

PART A: COMMENTS ON PART 375 GENERALLY

COMMENT: A comment noted site background levels in heavily urban or industrialized areas may exceed the SCO cleanup levels in the tables requiring owners of “contaminated” sites to reduce exposures to surface soils simply because the levels have been determined by investigation while allowing owners of non brownfield sites, where background levels likely exceed the SCO, to pursue their projects without investigation or remediation. The Department should allow site owners to develop site specific cleanup standards based on site background levels no matter what they are, as long as the owner can demonstrate that the higher levels truly represent background conditions.

RESPONSE: The proposed rule provides for the consideration of site background in each of the three remedial programs subject to these regulations. The use of background, is set forth for the State Superfund, BCP and ERP programs and is completely consistent with past practice. Site background levels will be determined through the application of Department guidance. The Department does not consider soils exhibiting levels less than background to be contaminated as a result of activities at the site. The remedial program normally does not set cleanup levels below anthropogenic background concentrations. This is consistent with the United States Environmental Protection Agency’s (USEPA) approach to cleanups and background.

PART B: COMMENTS ON SUBPART 375-1 (provisions applicable to all subparts)

COMMENT: The definition of “historic fill” casts a distinction between historic fill sites and sites contaminated through subsequent activi-

ties, even though it may be the case that contamination at historic fill sites may equal or exceed contamination levels at non-historic fill sites. Moreover, the Division of Solid and Hazardous Materials (DSHM) is currently revising Part 360 and has proposed a different definition of "historic fill" than the one currently proposed in Part 375.

RESPONSE: The definition of historic fill has been revised to clearly address these issues and closely track the Part 360 definition.

COMMENT: The requirement that the Department must determine the existence of an actual "off-site source of contamination, located on one or more up gradient locations, that has come to impact on-site groundwater as a result of the migration of the contaminant in or on groundwater" may be ineffective and overly burdensome in practice. In many circumstances, tracking groundwater contamination to a specific up gradient source may be impossible, especially in an urbanized setting where there are a large number of potential sources and the contamination may be ubiquitous.

RESPONSE: The regulation does not require the Department to determine the "actual" off-site source of contamination. Rather, the Department would consider a remedial party's demonstration that there is not an on-site source causing or contributing to the identified groundwater contamination, to be appropriate and consistent with what is required. The issue of ubiquitous contamination is more appropriately addressed in the groundwater strategy being developed pursuant to ECL 15-3109.

COMMENT: The Department added a new track 2 "residential" category to the existing three categories (restricted residential, commercial and industrial). This is a new restricted single-family homes category instead of leaving residential in Track 1.

RESPONSE: The new Track 2 residential use column utilizes the same public health protection values developed for use in the original unrestricted (farms excluded) public health SCO presented in the original Track 1 SCO table (Table 375-3.8(e)(1)). As noted in the response to comment D.8.16 in the June 2006 Response to Comment, the reason some of the protection of public health SCOs in the original Track 1 SCO table are lower than the new table is that the protection of public health column in Table 375-3.8(e)(1) was generated using the lowest of the public health based residential use SCOs and protection of groundwater (PGW) SCOs in the current Table 375-6.8(b). For many compounds, notably the volatile organic compounds, the PGW SCO would have been the determining value in the original unrestricted table, not the health based SCO.

COMMENT: Where a remedial party makes the conservative decision to voluntarily install a soil vapor barrier, passive sub-slab venting system, or other protective measure as a voluntarily protective measures and not to address any remaining on-site contamination, the Department should not consider them to be engineering controls that would prevent an otherwise acceptable site from being developed as single family housing.

RESPONSE: Where a remedial work plan does not include a requirement for the installation of a sub-slab venting system, the installation of such a system "voluntarily" by a remedial party would not be considered an engineering control requiring an institutional control.

COMMENTS ON SUBPART 375-2 (State Superfund Program)

COMMENT: The revised regulations for both Superfund and ERP sites allow applicants to utilize the soil cleanup objectives set forth in the new subpart 375-6, or develop site-specific SCOs as set forth in the new section 375-6.9. Furthermore, the Department has stated that "after the rule making is complete the final disposition of TAGM 4046 will be decided." In addition, the revised draft regulations specify that the department will consider unrestricted use SCO's as representative of pre-disposal conditions for Superfund cleanups.

RESPONSE: The Department notes that the proposed regulation provides that the Department will generally consider unrestricted use SCO's, as set forth in Table 375-6.8(a), as representative of pre-disposal conditions for Superfund cleanups. Further, that land use will only be considered where a cleanup to pre-disposal conditions is not feasible as set forth in paragraph 375-2.8(c)(2). The response to comment C.8.1 from the June 2006 Response to Comment appropriately addresses this comment relative to the consideration of land use in the State Superfund and Environmental Restoration Programs. As to TAGM 4046, the Department will be updating the information and procedures.

PART D: COMMENTS ON SUBPART 375-3 (Brownfield Cleanup Program)

COMMENT: It is unclear what the Department means by reference to "adjacent properties or parcels" noted above. An adjacent parcel by definition is not part of the brownfield site. The addition of "adjacent properties or parcels" might also be misconstrued to imply that the Department may require a volunteer to remediate conditions migrating from the brownfield site.

RESPONSE: This reference is in the context of determining an eligible BCP site and means that a brownfield site may consist of multiple adjacent parcels or portions of such parcels. The commenter is confusing parcels adjacent to an eligible brownfield site with adjacent parcels (or portions thereof) determined to comprise an eligible brownfield site. This was added in response to comments requesting that the Department allow parties to apply for "adjacent parcels" under one application. This does not impart any "off-site" obligation as suggested. However, to clarify this intent, the Department has replaced "adjacent" with "contiguous".

COMMENT: BCP eligibility issues were again commented on extensively. Requests to incorporate the current guidance, not to incorporate the current guidance, and to incorporate new factors (socio-economic, affordable housing, urban centers) were received. Additionally, there was requests to omit the "on-site" source requirement and define or delete the historic fill reference.

RESPONSE: The Department reiterates that this rule provides a framework for the consideration of eligibility. Further, that the Department's Eligibility Guidance is appropriate and should be consulted.

COMMENT: The regulations should reference the regulatory definition of "remedial investigation."

RESPONSE: The definition of remedial investigation, as set forth at subdivision 375-1.2(an), is based upon the current regulatory definition of remedial investigation (375-1.3(t)). The Department notes that there is no statutory definition of "remedial investigation" in ECL 27-1301 or ECL 27-1405, which are the sources for most of the definitions included in this regulation. The Department elected to continue the present regulatory definition of "remedial investigation", albeit with some minor updating to reflect some current concepts (e.g., site management plan) as well as to account for the remedial investigation work plan requirements set forth in ECL 27-1411(1).

COMMENT: The need for soil vapor controls or long-term monitoring should not be a basis for disqualification from Track 1.

RESPONSE: The Department has considered this comment and cannot revise the regulation due to statutory constraints.

COMMENT: Track 2 residential cleanups should be preserved, but not at the expense of losing the ability to do residential cleanups under Track 1 in urban areas.

RESPONSE: Track 2 residential cleanups was preserved from the original proposal, and in fact were expanded to include a second residential scenario in response to comments. Track 1 continues to allow residential uses since this is the unrestricted use Track; thus any development could occur without restriction, except as provided by the one exception identified under the Track 1 requirements.

PART E: COMMENTS ON SUBPART 375-4 (Environmental Restoration Program)

No substantive comments were received.

PART F: Comments on Subpart 375-6 (Remedial Program Soil Cleanup Objectives)

COMMENT: The revised draft regulations contain a substantial amount of more detailed language regarding the determination of when and where the SCOs for protection of ecological resources will apply to sites (revised draft 375-6.6.). The language continues to raise concern. As currently drafted it is very hard to follow and seems inconsistent. Clarification is needed.

RESPONSE: Section 375-6.6 has been rewritten to provide the clarity requested by the comment, but the Department declines to extend the protection of ecological resources to aquatic environments and non-wild biota or areas where there are no important ecological resources.

COMMENT: In a new section of the regulations the Department added requirements regarding the regulatory status of the material (it must be unregulated) as well as the concentration of contaminants allowed in the fill. This approach is unreasonably restrictive for backfill, which should only be required to meet the SCOs selected for the site soils. There is no reason why only material determined by Department regulation to be "unregulated" can be used for backfill.

RESPONSE: The Department does have a very good reason to control the nature and quality of fill brought to a site as part of the remedial program since it is providing releases to the remedial party and, in the case of the BCP, significant tax credits. Importing a new problem to a site is not protective of public health or the environment.

COMMENT: The new cleanup tables unrestricted use cleanup numbers may now be unachievable. It is unclear what benefit there is of having cleanup standards that are so clean no place actually reaches that level of cleanliness. If the concern is farming, and vegetable consumption, then there should be a separate table for these uses, which may reflect the new

numbers. The Track 1 incentive was causing many developers to perform Track 1 cleanups. If the numbers are not reasonable to attempt to achieve, then this incentive is eliminated.

RESPONSE: The soil cleanup objectives were calculated in accordance with the statutory provisions.

PART G: COMMENTS ON MATTERS OUTSIDE PART 375

The Department reviewed comments received on several matters that do not pertain directly to the Part 375 rule making. Responses to these comments are included in this section.

NOTICE OF ADOPTION

Use of Disease-Resistant or Immune Cultivars of the Genus *Ribes*

I.D. No. ENV-32-06-00005-A

Filing No. 1363

Filing date: Nov. 14, 2006

Effective date: Nov. 29, 2006

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

Action taken: Repeal of Part 192 and addition of a new Part 192 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), 3-0301(1)(b), (2)(m) and 9-1301(5)

Subject: Use of disease-resistant or immune cultivars of the genus *Ribes*.

Purpose: To allow the planting of disease-resistant or immune cultivars of the genus *Ribes*.

Text of final rule: 6 NYCRR Part 192 is hereby repealed, and a new Part 192 is adopted to read as follows:

FOREST INSECT AND DISEASE CONTROL

(Statutory authority: Environmental Conservation Law, § 9-1301)

§ 192.1 Certain cultivars of black currants prohibited.

The planting, growing, propagating, cultivating or selling of plants, roots, or cuttings of cultivated black currants (*Ribes nigrum*), other than those cultivars that are immune or resistant to white pine blister rust disease or currant rust (*Cronartium ribicola*) as described in Section 192.2 of this rule, is prohibited, except in designated fruiting currant districts as defined in Section 192.3 of this rule.

§ 192.2 Immune and resistant cultivars of currants and gooseberries.

(a) Certification of cultivars.

Any person wishing to plant, propagate, cultivate or sell plants, roots, or cuttings of cultivated black currants (*Ribes nigrum*) outside of designated fruiting districts, and any person wishing to plant, propagate, cultivate or sell plants, roots, or cuttings of any cultivated plants of the genus *Ribes* within designated white pine blister rust quarantine districts, must obtain written certification from the Department that the cultivar(s) to be planted are immune or resistant to white pine blister rust disease. Such certification shall only apply to the cultivar(s) and location(s) listed on the certificate, and will be valid for the life of the planting unless revoked by the Department. Persons seeking cultivar certification must submit application to the NYSDEC, Division of Lands & Forests, 625 Broadway, Albany, NY 12233-4253. Application for certification must include name, address and phone number of applicant; and name of cultivar(s) proposed for certification and locations to be planted.

(b) Grounds for certification.

The Department shall respond to all cultivar certification applications within 60 days or less from the receipt of a complete application. In reviewing applications for cultivar certification, the Department shall take into consideration relevant peer-reviewed scientific literature, the advice of expert plant pathologists and geneticists, and any topographic or climatic factors that would influence the epidemiology of white pine blister rust disease.

(c) Revocation of certification.

The Department reserves the right to revoke any certification if the plants so certified become visibly infected by white pine blister rust disease, or if it finds clear scientific evidence that the plant(s) or cultivar(s) in question pose a serious threat to the health of forests.

§ 192.3 Fruiting currant districts.

The following districts where the growing of plants of the genus *Ribes* (currants and gooseberries) for the production of fruit is carried on extensively, or is a potentially important commercial enterprise, are hereby designated as fruiting currant districts:

(a) All of Cattaraugus, Cayuga, Chautauqua, Columbia, Dutchess, Erie, Nassau, Niagara, Onondaga, Ontario, Orange, Putnam, Rockland,

Schuyler, Seneca, Steuben, Suffolk, Tompkins, Westchester and Yates counties.

(b) In Clinton County, all of the Towns of Altona, Beekmantown, Champlain, Chazy, Clinton, Keeseville, Mooers, Peru, Plattsburgh, Rouses Point and Schuyler Falls.

(c) In Greene County, all of the Towns of Athens, Catskill, Coxsackie, Greenville and New Baltimore.

(d) In Ulster County, all of the Towns of Esopus, Gardiner, Kingston, Lloyd, Marletown, Marlborough, New Paltz, Plattekill, Rosendale, Saugerties, Shawangunk and Ulster.

§ 192.4 White pine blister rust quarantine districts. The bringing into, planting, possession or propagation of plants of the genus *Ribes* (currants and gooseberries), unless otherwise permitted as specified in section 192.2, is hereby forbidden in the following localities:

(a) All of Essex, Hamilton, Herkimer, Sullivan and Warren Counties.

(b) In Clinton, Franklin, Greene and Ulster Counties, all of the Towns not listed in section 192.3 of this title.

(c) In Delaware County, all of the Towns of Andes, Colchester, Fleischmanns, Margaretville and Middletown.

(d) In Fulton County, all of the Towns of Bleecker, Broadalbin, Caroga, Mayfield, Northampton and Stratford.

(e) In Lewis County, all of the Towns of Croghan, Diana, Greig, Harrisville, Lyonsdale and Watson.

(f) In Oneida County, all of the Town of Forestport.

(g) In St. Lawrence County, all of the Towns of Clare, Clifton, Colton, Fine, Hopkinton, Parishville and Piercefield.

(h) In Washington County, all of the Towns of Dresden, Fort Ann and Putnam.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 192.3(c), (d) and 192.4(e), (f), (g) and (h).

Text of rule and any required statements and analyses may be obtained from: Jason Denham, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-9425, e-mail: jbdenham@gw.dec.state.ny.us

Additional matter required by statute: A negative declaration has been prepared in compliance with article 8 of the Environmental Conservation Law.

Summary of Regulatory Impact Statement

1. Statutory authority.

By ECL section 9-1301 the Department is authorized to control white pine blister rust. White pine blister rust is a fungal disease which is caused by the organism 'Cronartium ribicola', and infects both 5-leafed pines and plants belonging to the genus 'Ribes', (currants and gooseberries). Environmental Conservation Law (ECL) section 3-0301(2)(m) authorizes the Department to adopt rules and regulations "as may be necessary, convenient or desirable to effectuate the purposes of (the ECL)".

The Department has general authority to amend this regulation pursuant to ECL section 3-0301(2)(m). ECL section 1-0101(3)(b) directs the Department to guarantee "that the widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintentional consequences." ECL section 3-0301(1)(b) authorizes the Department to "promote and coordinate management of water, land, fish wildlife and air resources to assure their protection . . . and balanced utilization consistent with the environmental policy of the state." ECL section 9-1301(2) grants the Department authority to determine the location and extent of "fruiting currant districts" in conjunction with the State Department of Agriculture and Markets. Furthermore, ECL section 9-1301(5) grants the Department "the authority, by order, to establish quarantine districts in any part or parts of the state. In such districts, it may prohibit the possession of any five-leafed pine trees or plants of the genus *Ribes* (currants and gooseberries), or so much thereof as is deemed necessary" to control the white pine blister rust organism. ECL also prohibits the planting of 'Ribes nigrum' (black currant) anywhere in the state, with the exception of cultivars of 'Ribes nigrum' that are immune or resistant to white pine blister rust.

There are now commercially available plants of the genus 'Ribes' which do not act as a significant alternate host of white pine blister rust. Since the disease organism requires susceptible 'Ribes' plants as hosts to complete its life cycle, it cannot logically be deemed necessary to prohibit possession of immune and resistant plants in order to control the disease. Agricultural production of currants and gooseberries is potentially a beneficial use of the environment, and therefore should be allowed by the Department to the extent that it can be attained without risk of environmental degradation.

2. Legislative objectives.

Since 1952, the Department has maintained pursuant to 6 NYCRR Part 192 "fruiting currant districts" and "quarantine districts" in order to fulfill the legislative mandate to suppress and control the organism 'Cronartium ribicola' as stated in ECL section 9-1301. 'Cronartium ribicola' is a fungus which causes the fungal disease known as white pine blister rust (in five-leaved pines) and currant rust (in plants of the genus 'Ribes'). The disease has a range of symptoms in each host plant, and is more likely to be fatal to pines than to 'Ribes'. The disease requires the presence of both species to complete its life cycle, so removal of either species halts the development and spread of the disease.

At the time 6 NYCRR Part 192 was adopted, it was believed that all 'Ribes' species acted as alternate hosts for the rust disease. Recent research has indicated that cultivars of 'Ribes' exist that are immune or highly resistant to the disease.

In recognition of these advancements in horticultural science, and in order to enhance agricultural opportunities for fruit growers, in 2003 the State Legislature amended ECL Section 9-1301 to exempt immune or resistant cultivars of 'Ribes nigrum' from restrictions on planting or possession, and to expand those areas of the state where agricultural production of currants and gooseberries would be permitted.

3. Needs and benefits.

'Cronartium ribicola' was first introduced to the United States in the late 1800s, and has been a pathogen with serious impacts on five leaved pines. The fungus cannot complete its life cycle without occupying both 'Pinus' and 'Ribes' hosts. Historical methods of control have ranged from physical eradication of wild 'Ribes' to prohibition of the plants within designated quarantine districts. An active eradication program no longer exists in New York, but 6 NYCRR Part 192 still designates quarantine areas in which "the bringing into, planting, possession or propagation of currants and gooseberries is . . . forbidden".

This approach was effective in controlling white pine blister rust for many years. However, it no longer reflects the most recent scientific knowledge about resistance and immunity in some cultivars of 'Ribes'. Adoption of the proposed rule would permit those cultivars which do not act as a significant host for white pine blister rust to be possessed, planted, and propagated in those areas where they are presently prohibited.

There is both an environmental need and a legislative mandate for the Department to control white pine blister rust. There is also a need and mandate to ensure the widest possible range of beneficial uses of the environment. In order for these two requirements not to conflict in the case of white pine blister rust control, Department regulations must accurately reflect the best scientific knowledge available.

The benefits of adopting the proposed rule are both economic and environmental. Eastern white pines will benefit by being protected from white pine blister rust to the same degree as they are by the current regulation. By definition, immune plants do not contract the disease, and sufficiently resistant plants, though they may contract the disease, do not produce large quantities of the spores capable of infecting white pine.

Another environmental benefit of the proposed rule is that pesticide use is likely to decrease in proportion to any increase in agricultural production of immune currants and gooseberries, which generally require less use of agricultural pesticides than most other crops grown in New York State.

Potential economic benefits of the new regulation are a result of an increasing world demand for currants and gooseberries, their juice and other products. About 600,000 tons of Ribes fruit are produced annually, mostly in Europe. New York is thought to be even better suited to 'Ribes' production because of its climate. It is speculated that total U.S. production of black currants could match or exceed European levels. Consequently, in the past several years, several other states have relaxed or eliminated anti-'Ribes' regulations.

Presently 6 NYCRR Part 192 places New York producers at an unnecessary competitive disadvantage in the growing market. Most currants and gooseberries consumed in the U.S. are still grown overseas. New York State has the potential to capture a significant share of that market with a domestic agricultural product. Potential results within five years are expanded nursery production and sale of 'Ribes' to home growers, agricultural production totaling 4,000 acres valued at \$4,000 to \$5,000 per acre a year (potentially a \$16 to \$20 million annual crop production), and siting of a fruit processing plant. Another desired outcome is the creation of an economically viable use for some fallow agricultural lands. 'Ribes' production may help agriculturalists stay in business and keep lands free of development.

4. Costs.

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

There will be no significant cost to the regulated parties for achieving and continuing compliance with the proposed rule. Parties which have been in compliance with 6 NYCRR Part 192 previously will already be in compliance with the proposed rule, because the proposed rule is less restrictive than the present version. It is possible that parties exist who are not presently in compliance with the regulation, but would either be compliant with the new regulation already, or find it less costly to become compliant to the new regulation than had previously been the case.

b) Costs to the agency, the state and local governments for the implementation and continuation of the proposed rule.

The proposed regulation would be promulgated and implemented with existing Department staff. Department staff will be needed to educate the public about the new regulation, and for direct contacts with affected groups and individuals within previously established quarantine districts. Department staff will also be needed to administer an approval process for 'Ribes' cultivars, as detailed in the proposed rule. These activities can be done with existing staff resources as part of existing job responsibilities.

The proposed regulation would impose little, if any, additional costs to State government at large. Most of the resources needed to implement and continue the proposed regulation would also be required for the continuation of the present white pine blister rust regulation. To the extent that the adoption of the proposed regulation may result in an increased interest in commercial agricultural production of currants and gooseberries, the State's income from taxation may be increased by some undetermined amount.

The proposed regulation should not impose any significant additional costs on local governments. No increase in the workload of town courts due to citations for violating the proposed regulation is anticipated, as the proposed regulation is less restrictive than the present regulation. The Department intends to implement the new regulation primarily through education and outreach to the affected communities.

5. Paperwork.

The proposed regulations will not impose any reporting requirements or other paperwork on any private or public entity. They do not require any person or agency to complete or submit any forms, reports or documents, with the following exception: Parties wishing to plant or possess immune or resistant cultivars of 'Ribes' within quarantine districts, and/or wishing to plant or possess immune or resistant varieties of 'Ribes nigrum' outside of currant fruiting districts must obtain written certification from the Department that the cultivar(s) to be planted are immune or resistant to white pine blister rust disease. This will require a minimal expenditure of time and energy on the part of those parties.

6. Local government mandates.

The proposed regulations would impose no program, service, duty or responsibility upon any county, city, town, village, school district or other special district. They do not require any local government to take any action, perform any additional function, or initiate any program as a result of their implementation and/or continuance. Activities necessary for the enforcement of the proposed regulations are the responsibility of Department law enforcement staff.

7. Duplication.

Other rules and legal requirements of the state and federal governments would not duplicate, overlap or conflict with these regulations.

8. Alternatives.

The alternative to revising the present regulation is to allow the existing regulation to stand. This alternative is not desirable because it does not conform to statutory changes, which recognize improvements in scientific knowledge, nor does it provide the fruit-growing community with any information or guidelines about disease-resistant cultivars of Ribes.

The 'no action' alternative will not impact the white pine industry in New York; however, the current regulation strongly limits the 'Ribes' industry in the State. The Department could continue to accomplish the suppression and control of 'Cronartium ribicola' with the present regulation in place, but the potential benefits of agricultural production of immune or resistant cultivars would not be achieved.

9. Federal standards.

This regulation does not exceed any minimum standards of the federal government for the same or similar subject areas. There are no federal standards related to this proposed regulation.

10. Compliance schedule.

No time is needed for regulated persons to achieve compliance with the proposed regulation. Any persons in compliance with the current regulation would necessarily be in compliance with the new regulation as well. The proposed regulation becomes effective upon publication in the State Register, and all persons would be expected to comply with it at that time.

A person who violates the regulation will be subject to the potential penalties for a violation set forth in ECL section 71-0703.

The Department would seek to educate the public about the proposed regulation through the Department's internet web site and contact between Department staff and the regulated communities. The Department plans to use this public outreach as the primary tool for implementation of the new regulation.

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

The non-substantive changes made to the last published rule were typographical corrections that did not change the intent of the rule, therefore, did not necessitate revision to the previously published RFA, RAFA or JIS.

Assessment of Public Comment

Comment:

Expresses a desire to allow immune varieties of Ribes in quarantine districts.

Response:

Cultivars that are certified by the Department as immune or resistant to white pine blister rust are already allowed within quarantine districts under the express terms.

Comment:

Expresses concern over the large area of the state which is designated as neither fruiting district nor quarantine district. Suggests that these areas be designated as fruiting districts.

Response:

There is no requirement that all areas of the state be designated as either quarantine or fruiting districts. Sections 192.1 and 192.2 of the proposed rule apply to such undesignated areas. Districting in the proposed rule is based on geography, existing forest statistics and previous outreach done by this Department and the Department of Agriculture and Markets. The goal of this districting is to maximize opportunity for fruit growers and potential fruit growers to benefit from Ribes production, while at the same time protecting forest resources from a harmful disease. In some cases striking that balance need not require that an area be designated as either type of district.

Comment:

"To allow. . . currants to be grown in Dutchess County but not in [Greene County] escapes reason."

Response:

This is not an accurate reading of the proposed rule. Dutchess County and certain Towns in Greene County are designated as fruiting currant districts, in which any Ribes may be possessed, planted and grown. Other areas of Greene County are designated as white pine blister rust quarantine districts, in which cultivars of Ribes must be certified by the Department as immune or resistant to white pine blister rust disease before planting. As noted above, district boundaries in the proposed rule have been drawn using information from a variety of sources, and with the aim of maximizing agricultural opportunity for fruit growers while at the same time minimizing the risk of disease to forests.

Comments on the Regulatory Impact Statement (RIS)

Many of the comments received did not address the text of the proposed rule at all, but focused on the summary RIS that was published along with the proposed rule. Because there were so many of these comments, the Department has responded to them below.

Comment:

". . . Respectfully request that Subdivision 1 of the RIS be redrafted to emphasize that the reason for the promulgation of this rulemaking is to expand the area in which black currants can be cultivated, precisely because there is little relationship between the planting of Ribes and the mortality of white pine stands."

Response:

As this comment speaks more to legislative intent than to legal authority, Subdivisions 2 of the RIS and Summary RIS were revised to reflect the legislative intent of expanding opportunities to grow Ribes spp.

Comment:

Two comments suggest that the following statement be removed from the RIS or revised: "while the disease causes only aesthetic damage to 'Ribes', it is fatal to white pine".

Response:

The statement in question has been clarified to read as follows in the summary RIS and the full RIS: "The disease has a range of symptoms in either host plant, and is more likely to be fatal to pines than to 'Ribes'."

Comment:

The text fails to recognize that the USDA eliminated the eradication program for Ribes in 1963 because the program was declared ineffective in controlling WPBR.

Response:

The proposed rule is not an eradication program, nor does it eliminate an existing eradication program, so the comment, while factually true, is tangential to the issues addressed by the proposed rule. As there by law is a word limit on the summary RIS prepared by the Department, not every possible justification for the proposed rule can be fully discussed therein. It should also be noted that the USDA Ribes eradication program was nationwide, and that white pine blister rust continues to be a disease of major impact and importance to some Western pine species today, which may account for much of the ineffectiveness that led to the national program's elimination.

Comment:

Susceptible wild Ribes plants exist within quarantine districts, so why are they even necessary?

Response:

While white pine blister rust is not as prevalent today as it once was, it is an invasive disease that has historically caused widespread mortality of Eastern white pine. Quarantine districts enable the Department to minimize the risk of transmission of the disease from susceptible Ribes to susceptible pines. By allowing the use of immune or resistant Ribes cultivars only within quarantine districts, the proposed rule ensures that the currently low risk presented by native and wild plants is not unintentionally enhanced by human introduction of highly susceptible ones.

Comment:

The Department refers to eradication and quarantine of Ribes as being effective in controlling white pine blister rust, which is untrue.

Response:

The comment refers to the Needs and benefits section of the Regulatory Impact Statement, which states in part: "This policy was effective in controlling white pine blister rust for many years" (emphasis added). It is not the Department's position that eradication and quarantine would be an effective policy today, and in fact the RIS states later in the same paragraph that the policy no longer represents the most recent scientific knowledge. However, there is little question that during the time this policy was in place, the occurrence and severity of white pine blister rust in New York State did decline. Having at one time been one of the most economically destructive invasive species found here, the fungus is still observed occasionally in the forests of New York, with much reduced frequency and impact. This change took place over decades and likely had many causes, some of which probably have more to do with biological and cultural changes than with Department policy and programs. Nevertheless, the policy was continued by the State for many years precisely because it was seen as effective, in the context of the scientific knowledge and disease control goals of the time.

Department of Health

EMERGENCY RULE MAKING

Self Attestation of Resources for Medicaid Applicants and Recipients

I.D. No. HLT-41-06-00026-E

Filing No. 1356

Filing date: Nov. 9, 2006

Effective date: Nov. 9, 2006

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

Action taken: Amendment of section 360-2.3(c)(3) of Title 18 NYCRR.

Statutory authority: Social Services Law, section 366-a(2)

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

Specific reasons underlying the finding of necessity: The specific reasons underlying the finding of necessity to adopt as an emergency rule: Chapter 1 of the Laws of 2002 provides that Medicaid applicants and

recipients seeking coverage of long-term care services, other than short-term rehabilitation, must provide adequate documentation to verify the amount of their accumulated resources. Persons who are not seeking coverage of long-term care services, or who are seeking coverage of short-term rehabilitation services, as defined by the Commissioner of Health, are allowed to attest to the amount of their resources.

The proposed regulation would provide the definition of the term "short-term rehabilitation" required by Chapter 1 of the Laws of 2002 and necessary to implement the provisions of such Chapter. The sooner the provisions of the statute can be implemented, the sooner the statutory goal of simplifying Medicaid enrollment and recertification will be achieved, with a consequent benefit to public health in terms of easier access to necessary health care. Therefore, complying with the normal rule making requirements would be contrary to the public interest, and the immediate adoption of the rule is necessary.

Subject: Self attestation of resources for Medicaid applicants and recipients.

Purpose: To allow an applicant or recipient to attest to the amount of his or her resources unless the applicant or recipient is seeking Medicaid payment for long-term care services.

Text of emergency rule: Paragraph (3) of subdivision (c) of Section 360-2.3 is amended to read as follows:

(3) Verification of resources. (i) *The applicant may attest to the amount of his or her resources, unless the applicant is seeking coverage for long-term care services. For purposes of this paragraph, long-term care services shall include those services defined in subparagraph (ii) of this paragraph, with the exception of short-term rehabilitation as defined in subparagraph (iii) of this paragraph.* The applicant must provide documentation of all available or potentially available resources when applying for long-term care services. The social services district must record the documentation provided and determine the availability of such resources.

(ii) *Long-term care services shall include, but not be limited to care, treatment, maintenance, and services: provided in a nursing facility licensed under article twenty-eight of the public health law; provided in an intermediate care facility certified under article sixteen of the mental hygiene law; provided in a residential treatment facility certified by the Commissioner of Mental Health pursuant to Section 31.02(a)(4) of mental hygiene law; provided in a developmental center operated by the Office of Mental Retardation and Developmental Disabilities; provided by a home care services agency, certified home health agency or long-term home health care program as defined in section thirty-six hundred two of the public health law; provided by an adult day health care program in accordance with regulations of the department of health; provided by a personal care provider licensed or regulated by any other state or local agency; provided in a hospital that is equivalent to the level of care provided in a nursing facility; and provided by an assisted living program in accordance with regulations of the department of health. Long-term care services also shall include: private duty nursing; limited licensed home care services; hospice services including services provided by the hospice residence program in accordance with the regulations of the department of health; services provided in accordance with the consumer directed personal assistance program; services provided by the managed long-term care program; personal emergency response services; and care, services or supplies provided by the Care at Home Waiver program, Traumatic Brain Injury Waiver program, or Office of Mental Retardation and Developmental Disabilities Home and Community-Based Waiver program.*

(iii) *Short-term rehabilitation means one period of certified home health care, up to a maximum of 29 consecutive days, and/or one period of nursing home care, up to a maximum of 29 consecutive days, commenced within a twelve-month period.*

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. HLT-41-06-00026-P, Issue of October 11, 2006. The emergency rule will expire January 7, 2007.

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

Regulatory Impact Statement

Statutory Authority:

Section 206(1)(f) of the Public Health Law requires the Department of Health (Department) to enforce the provisions of the Medical Assistance

program, pursuant to titles eleven, eleven-A, and eleven-B of the Social Services Law (SSL). Section 363-a(2) of the SSL requires the Department to establish such regulations as may be necessary to implement the program of medical assistance for needy persons (Medicaid). Section 366-a(2)(a) of the SSL provides that a Medicaid applicant must provide information and documentation necessary for the determination of initial and ongoing eligibility. A new section 366-a(2)(b) of the SSL, as enacted by the Health Care Reform Act of 2002, provides that an applicant may attest to the amount of his or her resources, unless the applicant is seeking Medicaid coverage of long-term care services. An exception is made for short-term rehabilitation. For purposes of this provision, section 366-a(2)(b) of the SSL references the long-term care services described in paragraph (b) of section 367-f(1) of the SSL and authorizes the Commissioner of the Department to define the term "short-term rehabilitation".

Legislative Objectives:

Section 363-a of the SSL designates the Department as the single State agency responsible for implementing the Medicaid program in this State, and requires the Department to promulgate any necessary regulations which are consistent with federal and State law. The proposed regulatory amendment is necessary to define long-term care services and short-term rehabilitation for purposes of attestation of resources.

Needs and Benefits:

The purpose of the proposed regulatory amendment is to revise section 360-2.3(c)(3) of the Medicaid regulations concerning verification of resources. Currently, in determining whether an applicant is financially eligible for Medicaid, the applicant must provide documentation of all available or potentially available resources. A new subdivision (2) of section 366-a of the SSL, as enacted by the Health Care Reform Act of 2002, allows an applicant to attest to the amount of his or her resources, unless the applicant is seeking Medicaid coverage of long-term services. The section also allows an applicant to attest to the amount of his or her resources if Medicaid coverage is needed for short-term rehabilitation. The proposed regulatory amendment to section 360-2.3(c)(3) allows certain applicants to attest to the amount of their resources and to define the long-term care services for which resource documentation will still be required. Short-term rehabilitation means one period of certified home health care, up to a maximum of 29 consecutive days, and/or one period of nursing home care, up to a maximum of 29 consecutive days, commenced within a twelve-month period.

As required by section 366-a(2)(b) of the SSL, the proposed regulatory amendment includes in the definition of long-term care services, those services described in section 367-f (1)(b) of the SSL. These services include care, treatment, maintenance and services: provided in a nursing facility licensed under article twenty-eight of the public health law; provided by a home care services agency, certified home health agency or long term home health care program, as defined in section thirty-six hundred two of the public health law; provided by an adult day health care program in accordance with regulations of the Department of Health; or provided by a personal care provider licensed or regulated by any other state or local agency. In addition, the proposed regulatory amendment designates as long-term care services, for purposes of resource attestation, the following: a level of care provided in a hospital which is equivalent to the level of care provided in a nursing facility ("alternate level of care"); services provided in an intermediate care facility certified under article sixteen of the mental hygiene law; services provided in a residential treatment facility certified by the Commissioner of Mental Health pursuant to Section 31.02(a)(4) of the mental hygiene law; services provided in a developmental center operated by the Office of Mental Retardation and Developmental Disabilities; services provided by an assisted living program; private duty nursing; limited licensed home care services; hospice care including the hospice residence program; services provided in accordance with the consumer directed personal assistance program; services provided by the managed long-term care program; personal emergency response services; and care, services or supplies provided by the Care at Home Waiver program, Traumatic Brain Injury Waiver program, or Office of Mental Retardation and Developmental Disabilities Home and Community-Based Waiver program.

Section 366-a(2)(b) of the SSL allows attestation of resources by applicants seeking Medicaid coverage of short-term rehabilitation as defined by the Commissioner of the Department. Short-term rehabilitation means one period of certified home health care, up to a maximum of 29 consecutive days, and/or one period of nursing home care, up to a maximum of 29 consecutive days, commenced within a twelve-month period.

Costs:

There should be no additional costs associated with this regulatory amendment. An analysis of several eligibility simplification proposals was performed in 2001 and it was concluded that while a fiscal impact could occur if applicants provided inaccurate information about their resources, this was unlikely. Since neither the Child Health Plus (CHP) nor the Family Health Plus (FHP) program have resource tests, it was determined that those Medicaid applicants who had excess resources would most likely still be eligible for either CHP or FHP. Therefore, this proposal has been considered to be cost neutral.

Local Government Mandates:

The proposed regulatory amendment does not impose any new mandates. The amendment would remove the requirement that a Medicaid applicant submit proof of his or her resources for purposes of determining Medicaid eligibility, if the applicant is not seeking Medicaid coverage of long-term care services. The change simplifies the documentation requirements for local departments of social services administering the Medicaid program at the county level.

Paperwork:

No reporting requirements, forms, or other paperwork are necessitated by this proposed regulatory amendment. Currently, in determining Medicaid eligibility for long-term care services, social services districts must review resource documentation.

Duplication:

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

Alternatives:

Section 366-a(2)(b) of the SSL requires that the services specifically listed in Section 367-f(1)(b) of the SSL be included in the definition of long-term care services. No alternatives were considered to the inclusion of these services in the definition.

In addition, in accordance with the authority granted in Section 367-f(1)(b) of the SSL, the proposed regulatory amendment designates a number of services as long-term care services for purposes of resource attestation: hospice care; private duty nursing; alternate level of care in a hospital; assisted living program; intermediate care facility; residential treatment facility; developmental center; the Care at Home Waiver program; the Traumatic Brain Injury Waiver program; the Office of Mental Retardation and Developmental Disabilities Home and Community-Based Waiver program; limited licensed home care services; personal emergency response services; and the consumer directed personal assistance program. Alternatives were considered with respect to the inclusion or exclusion of particular services in this list. However, given the nature, duration, and cost of these services, as well as the fact that many of these services are delivered by the same providers who furnish the long-term care services specifically listed in SSL Section 367-f(1)(b), the Department determined that the best alternative was to require documentation of resources by applicants seeking coverage of these services.

For purposes of defining short-term rehabilitation, the Department formed a work group with representatives from local social services districts and solicited feedback from the local social services districts' provider community. It was reported that there is no durational difference between inpatient and community-based short-term rehabilitation. Therefore, the workgroup recommended that short-term rehabilitation not be defined solely by type of service. The workgroup recommended defining short-term rehabilitation as receipt of one annual episode of services lasting less than 30 days, because 30 days was the median length of stay for rehabilitation purposes according to information gathered from providers, and because this would eliminate cases that are subject to spousal impoverishment budgeting, which is not viewed as short-term care.

The workgroup recommended that alternate level of care in a hospital not be included in the definition, because the average alternate level of care stay extends beyond 30 days and because none of the providers viewed this as a short-term rehabilitation situation. Similarly, investigation by Department staff indicated that personal care services are provided to individuals who are chronically ill and require care on a long-term basis. Consequently, these services were not included in the definition of short-term rehabilitation.

Federal Standards:

The proposed regulatory amendment complies with federal statute.

Compliance Schedule:

Social services districts will be advised of the change when the amendment becomes effective.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required. The proposed amendment would not impose any adverse impact on businesses, either large or

small, nor will the proposal impose any new reporting, recordkeeping or other compliance requirements on a business.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for this proposed action is not required. As mentioned in the regulatory impact statement, the proposed amendment would allow certain Medicaid applicants to attest to the amount of their resources for purposes of determining Medicaid eligibility. This provision would not affect rural areas any more than non-rural areas. The proposed amendment does not impose any new reporting, recordkeeping or any other new compliance requirements on rural or non-rural areas.

Job Impact Statement

A Job Impact Statement is not required. The proposal will not have an adverse impact on jobs and employment opportunities. The proposed rule is required to allow certain Medicaid applicants to attest to the amount of their resources for purposes of determining eligibility for Medicaid.

Insurance Department

EMERGENCY RULE MAKING

Healthy New York Program

I.D. No. INS-48-06-00001-E

Filing No. 1357

Filing date: Nov. 10, 2006

Effective date: Nov. 10, 2006

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

Action taken: Addition of section 362-2.7 and amendment of sections 362-2.5, 362-3.2, 362-4.1, 362-4.2, 362-4.3, 362-5.1, 362-5.2, 362-5.3 and 362-5.5 of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327

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

Specific reasons underlying the finding of necessity: It is estimated that approximately 3 million New York citizens currently do not have health insurance coverage. Access to employer based insurance coverage is heavily impacted by changes in the economy. Many small businesses do not offer health insurance to their employees due to its cost. A significant percentage of the uninsured in this State and Nationwide are employed by small businesses which do not offer health insurance coverage. Chapter 1 of the Laws of 1999 authorized the development of the Healthy New York Program for the purpose of bringing affordable health insurance coverage to currently uninsured working people. The program targets uninsured small businesses with a significant percentage of low-wage workers and uninsured individuals at lower income levels. Since the program's commencement in 2001, over 27,000 uninsured workers have already benefited from Healthy New York. After several years of operation, we have determined that certain changes allowing for choice in health insurance benefit packages, improved and simplified eligibility and recertification requirements, and an increased reduction in premiums will encourage even more uninsured small businesses and uninsured low income individuals to purchase health insurance coverage.

Consequently, it is critical for this regulation to be adopted as promptly as possible. For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the public health and general welfare.

Subject: Healthy New York Program.

Purpose: To reduce Healthy New York premium rates by adjusting the stop loss reimbursement corridors to enable more uninsured businesses and individuals to afford health insurance; lessen complexity in eligibility determination; eliminate the well-child copayment; create a second benefit package; allow members to select a benefit package at annual recertification or when the premium rate changes; establish clear rules with respect to determining employment eligibility; clarify employer contribution requirements for part-time workers, qualify Healthy New York as coverage eligible for a Federal tax credit - generally improving the Healthy New York

Program based upon feedback of affected parties; change the loss ratio standard for Healthy New York contracts from small group to individual; require reports from the insurers pertaining to stop loss reimbursement or loss ratio to be certified.

Substance of emergency rule: The Second Amendment to Regulation 171 makes various changes to the Healthy New York program with respect to providing for choice in benefits, enhanced and simplified eligibility requirements and reduced premium rates.

Subsection 362-2.5(a) is amended to allow health maintenance organization to provide insured individuals with forms necessary for recertification 90 days prior to their due date.

Subsection 362-2.5(b) is amended to eliminate the requirement for supporting documentation with annual recertification.

Subsection 362-2.5(d) is deleted to discontinue the requirement that health plans mail Healthy NY a written reminder of their obligation to recertify sixty days prior to the date coverage would terminate due to a failure to recertify.

Subsection 362-2.5(e) is amended to delete a cross reference to a subsection that has been deleted and relabeled as subsection (d).

Subsection 362-2.5(f) is relabeled as subsection (e).

Subsection 362-2.7(a) is added to delete the copayment applied to well-child visits effective June 1, 2003.

Subsection 362-2.7(b) is added to require health plans to offer an additional Healthy New York benefit package which does not include prescription drugs and to allow qualifying small employers and qualifying individuals to choose among the Healthy New York benefit packages. The subsection also provides that qualifying small employers must elect to provide the same benefit package to all of their employees. The subsection also provides that once enrolled in the program, any change in the selection of a benefit package may occur at the time of annual recertification or at anytime the premium rate changes. Notice of this option must be included with any notice of rate change.

Subsection 362-2.7(c) is added to provide that individuals eligible for a federal tax credit under the Trade Adjustment Act of 2002 shall be deemed to have satisfied the pre-existing condition waiting period within the Healthy NY program in full.

Subsection 362-3.2(h) is revised to clarify that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution they make on behalf of part-time workers.

Subsection 362-3.2(j) is revised to provide that small employer applicants shall be considered to have provided group health insurance if they have arranged for group health insurance coverage on behalf of their employees and contributed more than a de-minimus amount on behalf of their employees. The subsection also defines de-minimus contributions through January 31, 2005 as those that do not exceed an average of \$50 per employee per month. Beginning February 1, 2005, de-minimus contributions are those that do not exceed an average of \$75 per employee per month for employers in the counties of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester or an average of \$50 per employee per month for employers in all other counties. De-minimus contributions shall not prevent small employers from qualifying to purchase health insurance coverage through the Healthy NY program.

Subsection 362-3.2(m) is amended to delete the requirement for supporting documentation with annual recertification.

Subsection 362-4.1(a) is revised to change the definition of "employed person" to include any person employed and receiving monetary compensation currently or within the past 12 months.

Subsection 362-4.1(b) is revised to delete the definition of "episodic employment."

Subsection 362-4.1(c) is re-labeled as subsection 362-4.1(b).

Subsection 362-4.2(i) is revised to delete the requirement for supporting documentation at annual recertification.

Subsection 362-4.2(k) is added to provide that applicants for qualifying individual health insurance contracts may meet the Healthy New York eligibility requirement regarding employment by demonstrating that their spouse (residing in their household) is an employed person.

Subsection 362-4.3(b) is amended to delete the requirement that child support be counted as parental income for the purposes of determining income eligibility.

Subsection 362-4.3(d) is revised to recognize that supporting documentation is not required upon annual recertification.

Subsection 362-5.1(b) is revised to amend the claims corridors for the small employer stop loss fund and the qualifying individual stop loss fund

to include claims paid on behalf of a covered member in excess of \$5,000 and less than \$75,000, beginning in calendar year 2003.

Subsection 362-5.1(d) is amended to delete an unnecessary description of the prior claims corridor amounts.

Subsection 362-5.2(c) is amended to change a reference to the prior claims corridor from a specific dollar amount to a general reference so that it is applicable regardless of the dollar amount.

Subsection 362-5.2(f) is amended to insert the word "the." This corrects a technical error.

Subsection 362-5.3(e) is amended to change the loss ratio standard for Healthy New York contracts from small group to individual.

Subsection 362-5.3(f) is added to provide that health maintenance organizations and participating insurers may reinsure their Healthy New York business in whole or in part if they determine it would favorably impact premium rates. The subsection also provides that the impact of any such reinsurance shall be factored into the premium rates for affected qualifying group health insurance premiums and individual health insurance premiums.

Subsection 362-5.3(g) is added to provide that no later than 30 days from the effective date of this regulation, health maintenance organizations and participating insurers shall submit the policy form amendments and premium rate adjustments necessitated by these amendments.

Subsection 362-5.5(a) is amended to require that reports pertaining to stop loss reimbursement or loss ratio be certified by an officer of the company that such report is accurate and complete.

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 January 7, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The authority for the amendment to 11 NYCRR 362 is derived from sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327 of the Insurance Law. Sections 201 and 301 authorize the superintendent to prescribe regulations interpreting the provisions of the Insurance Law as well as effectuating any power granted to the superintendent under the Insurance Law, to prescribe forms or otherwise to make regulations. Section 1109 authorizes the superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to the contracts between a health maintenance organization and its subscribers. Section 3201 authorizes the superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state. Section 3216 sets forth the standard provisions to be included in individual accident and health insurance policies written by commercial insurers. Section 3217 authorizes the superintendent to issue regulations to establish minimum standards, including standards of full and fair disclosure, for the form, content and sale of accident and health insurance policies. Section 3221 sets forth the standard provisions to be included in group or blanket accident and health insurance policies written by commercial insurers. Section 4235 defines group accident and health insurance and the types of groups to which such insurance may be issued. Section 4303 sets forth benefits that must be covered under accident and health insurance contracts. Section 4304 includes requirements for individual health insurance contracts written by non-profit corporations. Section 4305 includes requirements for group health insurance contracts written by not-for-profit corporations. Section 4318 sets forth requirements for accident and health insurance contracts that include a pre-existing condition provision. Section 4326 authorizes the creation of a program to provide standardized health insurance to qualifying small employers and qualifying working uninsured individuals. Section 4326(g) authorizes the superintendent to modify the copayment and deductible amounts for qualifying health insurance contracts. Section 4326(g) authorizes the superintendent to establish additional standardized health insurance benefit packages to meet the needs of the public after January 1, 2002. Section 4327 creates two stop-loss funds and requires the superintendent to promulgate regulations setting forth the procedures for the operation of the stop loss funds and distribution of monies therefrom. Section 4327(b) sets the stop loss corridors for calendar year 2001. Section 4327(d) provides that, except as specified in subsection (b) with respect to calendar year 2001, the level of stop loss coverage need not be the same. Section 2807-v(1)(h) & (i) of the Public Health Law directs the distribution of funds for purposes of services and expenses related to the Healthy New York program.

2. Legislative objectives: A significant number of New York residents are currently uninsured. A large portion of New York State's uninsured population is made up of individuals employed in small businesses. Due in part to the rising cost of health insurance coverage, many small employers are currently unable to provide health insurance coverage to their employees. Additionally, the problem of the uninsured has been exacerbated by national events impacting the labor market and access to employer based health insurance coverage. Chapter 1 of the Laws of 1999 enacted the Healthy New York Program; an initiative designed to encourage small employers to offer health insurance to their employees and to encourage uninsured individuals to purchase health insurance coverage.

3. Needs and benefits: This amendment to Part 362 of 11 NYCRR is necessary to introduce a second Healthy New York benefit package at a reduced premium rate. The second benefit package provides for a lower cost alternative and gives individuals and small businesses choice of a benefit package that meets their needs. Any change in benefit package selection may occur at the time of annual recertification or when the premium rate changes. Any notice of rate change must include notice of this option to change benefit packages. The amendment deletes the well child copayment applicable to Healthy New York in order to enhance access to preventive and primary care for children. The amendment permits Healthy New York to be considered qualifying health insurance under the federal Trade Act of 2002 to allow those qualifying for a federal tax credit to benefit from that credit. The amendment revises the eligibility requirements relating to employment in order to lessen complexity and enhance access. The amendment provides that child support payments shall not be treated as income of the parents for the purpose of determining household income eligibility equitably. The amendment deletes the applicability of certain documentation requirements in connection with the recertification process and facilitates re-certification closer to annual renewal date. This will allow for simplification of the re-certification process to assist in ensuring continuity of coverage for low income individuals. The amendment clarifies that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution on behalf these workers to encourage employers to extend coverage to part-time workers. The amendment provides that employers making a de-minimus contribution to employee premiums shall not be crowded out of the Healthy New York Program for this reason. Through January 31, 2005, de-minimus contributions are those that do not exceed an average of \$50 per employee per month. Beginning February 1, 2005, de-minimus contributions are those that do not exceed an average of \$75 per employee per month for employers in the counties of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester or an average of \$50 per employee per month for employers in all other counties. This de-minimus amendment will avoid penalizing vulnerable employers for such premium contributions and will encourage these employers to purchase Healthy New York subject to a 50% premium contribution requirement. The amendment clarifies that health maintenance organizations and participating insurers may reinsure their Healthy New York business if it achieves a favorable premium impact. The amendment also adjusts the stop loss corridors for the program in order to effectuate a level of premium reduction sufficient to encourage more currently uninsured businesses and individuals to purchase comprehensive health insurance coverage. These revisions should provide low-income individuals and vulnerable small businesses with enhanced access to Healthy New York. This amendment changes the loss ratio standard for Healthy New York contracts from small group to individual and requires that insurer's reports pertaining to stop loss reimbursement or loss ratio be certified.

4. Costs: The Health Care Reform Act allocated a fixed amount to the Healthy New York program to encourage uninsured businesses and individuals to purchase health insurance. This amendment will not alter the amounts dedicated to the program. However, this amendment will increase the per head cost to the State to be distributed from the overall allocation for the program for workers enrolled in Healthy New York. The amount of this increase will depend on the actual claims experience of the Healthy New York insured population. Because the amendment enhances access to Healthy New York, we would also expect that the amendment will cause the program to operate at enrollment levels which are consistent with the program's full funding capacity. At the same time, by bringing affordable insurance protections to the currently uninsured population, this amendment will avert costs to the State resulting from uninsured individuals accessing necessary and emergency health care services. Enhanced access to market based coverage will result in an introduction of private dollars into the New York's healthcare system along with a savings to heavily subsidized State programs. Further, enhanced access to preventive and

primary care services should result in cost savings related to improved children's health.

5. Local government mandates: This amendment imposes no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This amendment will not impose any new reporting requirements. This amendment simplifies the recertification process reducing the administrative burden and paperwork requirements for health plans and enrollees. This amendment requires that insurers certify all reports pertaining to stop loss reimbursement and loss ratio but does not require any additional reports.

7. Duplication: There are no known federal or other states' requirements that duplicate, overlap, or conflict with this regulation.

8. Alternatives: Throughout the initial implementation of Healthy New York, input has been obtained from interested parties including consumer groups; health plans; health plan associations; business groups; association groups; local chambers of commerce and academics. In addition, independent reports have been prepared examining the impact of the program on the uninsured population. In developing the reports, the contractor interviewed health plans, brokers, businesses and enrollees. Claims data submitted by the participating health plans has also been analyzed. The alternative to introducing a lower cost benefit package would be continuing the current structure of offering a single benefit package option. This alternative was rejected in order to provide businesses and individuals with choice of the benefit package which best meets their needs and to provide for a lower cost alternative. With respect to the amendment to delete the well child copayment, the alternative would be to retain a copayment on these services. This alternative was rejected because it discourages access to preventive and primary care for children. This change was requested by health plans, providers and consumers. The alternative to changing the pre-existing condition exclusion for those eligible to receive a federal tax credit would leave those covered by Healthy NY unable to benefit from the credit. The alternative to addressing employment standards would be to retain the existing fragmented definition of employment within the eligibility criteria. The amended employment standard will lessen complexity, facilitate the application process, and enhance access to the Healthy New York program. The alternative to providing that child support shall not be counted as the income of the parents in determining household income eligibility would be continuing to count such payments as parental income. Consistent with requests of consumers and health plans, this revision will enhance access to the program while ensuring more equitable consideration of parental income. The alternative to simplifying the re-certification process would be continuing with the current requirements on re-certification. The Department believes the revision will assist in ensuring continuity of coverage for low-income individuals. No alternative was considered on providing clarification of employer's ability to choose the appropriate level of premium contribution on behalf of part-time workers. The program was already administered to allow employers choosing to cover part-time workers to choose the premium contribution on their behalf. With respect to the provision providing a de minimus exception to the program's crowd out requirement for employers which are contributing minimally toward payment of employee premiums, the alternative would be continuing to bar employers contributing minimally to premiums from participation in Healthy New York. We have received feedback from employers, brokers, and health plans that providing for an exception would be most equitable. This amendment will permit such employers to purchase Healthy New York subject to a program requirement that they contribute a full 50% of the Healthy New York premium. Concerning the provision addressing reinsurance, the alternative would be an absence of clarification or guidance on the use of reinsurance mechanisms. The Department wishes to clearly advise of the availability of private reinsurance mechanisms to favorably impact Healthy NY premiums. The alternative to changing the stop loss reimbursement levels would be to continue with the current reimbursement levels. Based upon a review of the program's claims data by the Department, health plans and an independent contractor, we have determined that the adjusted stop loss corridors are the most appropriate for the program. We have received feedback from health plans, chambers of commerce, business groups, academics, consumer groups and consumers that the Healthy New York small business program would be improved by enhanced price separation between Healthy New York and other small group products. We have also received feedback that the individual program would be improved if the Healthy New York premium constituted a smaller percentage of the member's household income. Adjustment of the stop loss corridors will achieve enhanced price separation in the small group market while reducing the percentage of income

Healthy New York subscribers will need to commit to payment of premium. Increase of the loss ratio standard for Healthy New York contracts will increase the percentage of premium dollar that is received in claims by members. After two complete year's experience, the Department believes that the amendments set forth above will best serve the needs of the program.

9. Federal standards: The Federal Trade Adjustment Act of 2002 extends a federal tax credit to certain individuals to be applied towards the purchase of health insurance. This amendment adjusts the pre-existing condition exclusion period within the Healthy NY to bring it into compliance with the requirements of the Trade Adjustment Act in order to enable eligible individuals to obtain the benefit of this credit.

10. Compliance schedule: This rule making will be effective upon adoption. HMOs and providers achieved the June 1, 2003 compliance date without problems because this regulation was previously filed on an emergency basis in March, June, and September 2003.

Regulatory Flexibility Analysis

1. Effect of rule: The amendment will affect qualifying small employers, including individual proprietors, by providing them with even greater access to affordable options for comprehensive health insurance. Employers will be provided with choice in the health insurance benefit option that meets their needs, enhanced and simplified eligibility, and improved Healthy New York premium rates. These modifications should encourage the purchase of health insurance coverage through the Healthy New York program. In turn, this will diminish the number of uninsured in New York State. The amendment will not affect local governments. The amendment will affect health maintenance organizations and licensed insurers in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Procedure Act.

2. Compliance requirements: Qualifying small employers and individual proprietors must provide health maintenance organizations and insurers with a certification of eligibility on an annual basis for continued participation in the Healthy New York program. There are no compliance requirements for local governments. This amendment eases existing compliance requirements.

3. Professional services: The qualifying small employer and individual proprietor should not require professional services to comply with the amendment.

4. Compliance costs: The implementing legislation requires that small businesses wishing to participate in the Healthy New York program complete an initial form certifying as to their eligibility to participate in the program. There should be no costs associated with completing this form since the information requested in support of an applicant's eligibility certification is readily available to the small employer. This regulatory amendment does not impose any additional costs. The amendment should reduce insurance costs for small businesses. The amendment imposes no costs to local governments.

5. Economic and technological feasibility: The Healthy New York program is designed to make health insurance premiums more affordable to small businesses. Compliance with the amendment should be economically and technologically feasible for small businesses since it requires no action on their part.

6. Minimizing adverse impact: The amendment minimizes the adverse impact on small employers by lowering premium rates and increases access to affordable health coverage.

7. Small business and local government participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with Chambers of Commerce, small businesses and providers. Other changes to the program result from concerns expressed to the Department by providers, Chambers of Commerce, business councils, and small businesses. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with an additional opportunity to participate in the rule making process.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Health maintenance organizations and insurers to which this regulation is applicable do business in every county of the state, including rural areas as defined under Section 102(13) of the State Administrative Procedure Act. Small businesses and working uninsured individuals meeting the eligibility criteria for participation in the Healthy New York program and individuals in need of health insurance coverage are located in every county of the state including rural areas as defined under Section 102(13) of the State Administrative Procedure Act.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Healthy New York requires health maintenance organizations to report enrollment changes on a monthly basis and also requires an annual request for reimbursement of eligible claims. Twice a year, enrollment reports that discern enrollment on a county by county basis are submitted to the Insurance Department by the health maintenance organizations. This revision will not add any new reporting requirements. This amendment does require that a notice of rate change include a notice of the right to change benefit packages. Nothing in this revision distinguishes between rural and non-rural areas.

3. Costs: The Healthy New York program is funded from state monies as part of the Health Care Reform Act of 2000. There are no costs to local governments. Qualifying small businesses and individuals will benefit from the revisions to Part 362 due to the resulting reduced premium rates for Healthy New York insurance. This will benefit those businesses and individuals in both rural and non-rural areas of the State. Additionally, this amendment should facilitate the program's goals of encouraging individuals to purchase insurance on their own behalf and encouraging businesses to purchase insurance on behalf of their employees. This regulation has no impact unique to rural areas.

4. Minimizing adverse impact: Because the same requirements apply to both rural and non-rural entities, the amendment will impact all affected entities the same. Furthermore, the result of the amendment should ultimately be a favorable one since it decreases premium rates and reduces some program complexity.

5. Rural area participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with health plans, Chambers of Commerce, small businesses and consumers. Other changes to the program result from concerns expressed to the Department by providers, HMOs, Chambers of Commerce, business councils, small businesses, and consumers. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with further opportunity to participate in the rule making process.

Job Impact Statement

This amendment will not adversely affect jobs or employment opportunities in New York State. This amendment is intended to improve access to comprehensive health insurance for individuals, the working uninsured and small employers. This amendment reduces the cost of Healthy New York health insurance, a program for the uninsured, by creating choice in benefit structure, easing confusion regarding eligibility terms, and generally improving access to Healthy New York insurance.

NOTICE OF ADOPTION

Prohibition against Geographical Redlining and Discriminating in Certain Property/Casualty Policies

I.D. No. INS-36-06-00008-A

Filing No. 1355

Filing date: Nov. 9, 2006

Effective date: Nov. 29, 2006

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

Action taken: Amendment of Part 218 (Regulation 90) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 307, 308, 3429, 3429-a, 3430, 3433 and art. 34.

Subject: Prohibition against geographical redlining and discriminating in certain property/casualty policies.

Purpose: To issue, cancel (except where cancellation is for nonpayment of premium) or nonrenew a policy to include specific language.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-36-06-00008-P, Issue of September 6, 2006.

Final rule as compared with last published rule:

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Labor

NOTICE OF ADOPTION

Safety and Health Standards and General Rules

I.D. No. LAB-37-06-00006-A

Filing No. 1360

Filing date: Nov. 14, 2006

Effective date: Nov. 29, 2006

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

Action taken: Amendment of Parts 4, 8, 12, 14, 21, 23, 36, 39, 41, 43, 47, 50, 54, 700, 702 and 703 and Appendix C-2 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 21, 25, 27-a, 27, 29, 200, 202, 202-c, 202-d, 204, 241-a, 241-b, 255, 263, 299, 462, 470, 471, 472, 473, 474, 474-a, 867, art. 16; General Business Law, sections 482, 483, 484; Arts and Cultural Affairs Law, section 37.09; General Obligations Law, art. 18; Public Officers Law, sections 87, 94; and State Administrative Procedure Act, section 204

Subject: Safety and health standards and general rules.

Purpose: To correct typographical errors and outdated information included in the current rules.

Text or summary was published in the notice of proposed rule making, I.D. No. LAB-37-06-00006-P, Issue of September 13, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Diane Wallace Wehner, Department of Labor, Counsel's Office, State Office Campus, Bldg. 12, Rm. 509, Albany, NY 12240, (518) 457-4380, e-mail: diane.wehner@labor.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Enrollment and Appeals in Medicare Prescription Drug Plans

I.D. No. MRD-46-06-00017-E

Filing No. 1354

Filing date: Nov. 8, 2006

Effective date: Nov. 8, 2006

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

Action taken: Addition of Subpart 635-11 and amendment of section 635-99.1 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07(a), (c), 13.09(b) and 13.15(a)

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

Specific reasons underlying the finding of necessity: Since January 1, 2006 Medicare beneficiaries have been able to have their prescription drugs paid for under Medicare Part D. Certain individuals with both Medicare and Medicaid benefits, known as dually eligible persons, were automatically enrolled in Medicare Part D effective January 1, 2006. Unlike Medicaid and traditional Medicare, Part D benefits are paid not by the government, but by private companies, known as prescription drug plans. In order to receive these benefits, a person must enroll in a prescription drug plan.

In New York there are many prescription drug plans for persons to choose from. However, each plan has its own formulary (a list of drugs the

plan covers), participating pharmacies and other features. Formularies, participating pharmacies and other features vary from plan to plan.

Persons who are already dually eligible have been automatically enrolled in a prescription drug plan, and persons who will become dually eligible in the future will be automatically enrolled in a plan. In addition, each year some dual eligible persons will be automatically reassigned to a plan because their current plan will not be offered for the next year or because their current plan will be able to charge them premiums and co-pays during the next year (*i.e.*, will no longer be a benchmark plan). In all cases, assignment to a particular plan is done on a random basis. A person could be enrolled in a plan that is not right for him or her. For example, the plan could not cover the medications he or she needs, or could use a pharmacy that is not convenient for the person. In order to be in a plan that is better for the individual, the person has to change plans.

Beginning on November 15, 2005, Medicare beneficiaries could enroll in prescription drug plans, and persons who are dual eligible could change plans. Moreover, plans have exceptions and appeals processes whereby people can request additional coverage and benefits. OMRDD does not know how many people it serves are eligible for only Medicare. However, there are approximately 39,500 dual eligible persons to whom this regulation applies.

This regulation authorizes certain people to make enrollment and exceptions and appeals decisions for consumers receiving services from OMRDD or from an OMRDD regulated provider. Without the regulation, these parties cannot enroll consumers in a prescription drug plan, change plans for consumers or request that plans cover additional drugs for a consumer. Consumers would be left without a prescription drug plan or, if dually eligible, could be enrolled in plans that do not meet their needs. Consumers also could be unable to request coverage for drugs not on a plan's formulary. Consumers would then have to pay for their prescriptions themselves or, in the case of consumers living in residential facilities certified by OMRDD, the operator of the residential facility would have to pay for the prescriptions. The regulation needs to be effective immediately so that enrollment changes, initial enrollments, and other actions related to a Medicare Part D prescription drug plan can take place for these consumers.

Subject: Enrollment and appeals in Medicare prescription drug plans.

Purpose: To identify and authorize those parties who may enroll or act for a person who does not have the ability to enroll or act for herself or himself in a Medicare prescription drug plan.

Text of emergency rule: Add new Subpart 635-11 as follows:

Subpart 635-11 Enrollment in a Medicare prescription drug plan.

Section 635-11.1 Applicability and definitions.

(a) *This subpart sets forth rules concerning who can enroll beneficiaries in a Medicare Part D prescription drug plan or in a Medicare Advantage Plan with prescription drug coverage, and who can pursue grievances, complaints, exceptions and appeals in such plans. These rules only concern beneficiaries who receive services which are operated, certified, authorized or funded by OMRDD.*

(b) *Definitions. As used in this subpart:*

(1) *"Act in the Part D review process" means doing any of the following within the Part D program:*

(i) *filing a grievance;*

(ii) *submitting a complaint to the quality improvement organization;*

(iii) *requesting and obtaining a coverage determination (including, but not limited to, a request for prior authorization, an exception to a tiered cost sharing structure, a formulary exception and a request for expedited procedures); and*

(iv) *filing and requesting appeals and dealing with any part of the appeals process.*

(2) *"Enroll and enrollment" means enrollment in a PDP and disenrollment from a PDP.*

(3) *"Party" means someone or an entity or organization.*

(4) *"PDP" means a prescription drug plan offered under the Medicare Part D program or a Medicare Advantage Plan that provides prescription drug coverage offered under the Medicare Part D program.*

Section 635-11.2 Enrollment and reviews for persons residing in a residential facility operated or certified by OMRDD or a family care home.

(a) *If a person has the ability to choose a PDP, the person may enroll himself or herself in a PDP or appoint another party to enroll him or her. If a person has the ability to act in the Part D review process, the person may act in the Part D review process for himself or herself or appoint another party to act in the Part D review process for him or her.*

(b) If a person lacks the ability to choose a PDP, but has a guardian lawfully empowered to enroll him or her in a PDP, the guardian may enroll the person in a PDP or appoint another party to enroll the person. If a person lacks the ability to act in the Part D review process, but has a guardian lawfully empowered to act in the Part D review process for the person, the guardian may act in the Part D review process or may appoint another party to act in the Part D review process for the person.

(c) If a person is a minor and does not have a guardian lawfully empowered to enroll him or her in a PDP or to act in the Part D review process, a parent may enroll him or her or act in the Part D review process for the person, or may appoint another party to enroll or act in the Part D review process for him or her.

(d) In all other situations, the chief executive officer (CEO) (see section 635-99.1) of the agency operating the person's residential facility or sponsoring the family care home, or a designee of the CEO, may enroll the person or act in the Part D review process. The CEO or designee may also enroll the person or act in the Part D review process when any party specified in subdivisions (a)-(c) of this section who would otherwise enroll or act in the Part D review process is unwilling or unavailable.

(1) If a CEO or designee enrolls a person, he or she shall give written notice of such enrollment to the person's correspondent or advocate, and the person's Medicaid service coordinator.

(2) Process to request a different PDP.

(i) A correspondent or advocate may request that the person be enrolled in a different PDP. Such request must be in writing.

(ii) The agency or sponsoring agency shall consider the request and, if it agrees with the request, the CEO or designee shall enroll the person in the PDP requested and notify the advocate or correspondent of the enrollment.

(iii) If the agency or sponsoring agency does not agree with the request, the agency or sponsoring agency shall notify the correspondent or advocate in writing of the disagreement. The notice shall also inform the advocate or correspondent that he or she may appeal in writing to the DDSO Director.

(iv) If the advocate or correspondent appeals in writing to the DDSO Director, the DDSO Director shall review the request and relevant information and shall decide whether to enroll the person in a different PDP. Such decision shall be in writing and shall be sent to the correspondent or advocate and agency or sponsoring agency.

(v) While a request is being considered, the person shall remain enrolled in the PDP selected by the CEO or designee, or in a PDP in which the person is subsequently enrolled by the CEO or designee.

(3) Notwithstanding any other provision of this Title, if the person enrolls in a PDP (or a parent, guardian or appointee enrolls him or her) and the CEO or designee notifies the person, guardian, parent or appointee of the agency or sponsoring agency of the objection to the selection of the PDP, the agency or sponsoring agency is not fiscally responsible for any excess costs that may be incurred, as a result of the selection of the PDP, compared to the costs of the PDP that would have been selected by the CEO or designee. The agency or sponsoring agency's written notification of the objection must inform the person, guardian, parent or appointee that the excess costs are not the responsibility of the agency or sponsoring agency and that the person, guardian, parent or appointee (whoever completed the enrollment) is responsible for the additional costs. Receipt of the written notification must be documented.

Section 635-11.3 Enrollment and reviews for persons not residing in a residential facility or a family care home.

(a) If a person has the ability to choose a PDP, the person may enroll himself or herself in a PDP or appoint another party to enroll him or her. If a person has the ability to act in the Part D review process, the person may act in the Part D review process for himself or herself or appoint another party to act in the Part D review process for him or her.

(b) If a person lacks the ability to choose a PDP, but has a guardian lawfully empowered to enroll him or her in a PDP, the guardian may enroll the person in a PDP or appoint another party to enroll the person. If a person lacks the ability to act in the Part D review process, but has a guardian lawfully empowered to act in the Part D review process for the person, the guardian may act in the Part D review process or appoint another party to act in the Part D review process for the person.

(c) If the person is a minor and does not have a guardian lawfully empowered to enroll him or her in a PDP or to act in the Part D review process, a parent may enroll the person or act in the Part D review process, or may appoint another party to enroll the person or act in the Part D review process.

(d) In all other situations, or if any party specified in subdivisions (a)-(c) of this section who would otherwise enroll the person or act in the Part D review process is unwilling or unavailable, any of the following parties may enroll the person, act in the Part D review process or appoint another party to act in the Part D review process:

(1) an actively involved: spouse, parent, adult child, adult sibling, adult family member or friend, an advocate or correspondent; or

(2) if none of the above are willing and available, the CEO (or designee) of the agency providing service coordination for the person.

Section 635-11.4 Other responsibilities and rights of agencies and sponsoring agencies regarding enrollment and reviews.

(a) No CEO, officer, designee or employee of an agency or sponsoring agency shall solicit, accept or receive from a PDP, pharmacy or contractor of a PDP or pharmacy, for personal use or benefit (other than for the personal use or benefit of the person being enrolled), any payment, discount or other remuneration in consideration of, or as a result of, enrolling the person in a PDP.

(b) No CEO, officer, designee or employee of an agency or sponsoring agency shall charge, accept or receive payment from the person, family or anyone else for enrolling the person in a PDP, for providing advice and assistance in choosing a PDP or for acting for the person in the Part D review process.

(c) When a CEO or designee is authorized to act by this section or appointed to act in the Part D review process for a person, the CEO or designee may appoint a party outside of the agency to act in the Part D review process for the person.

(d) When a CEO or designee enrolls a person he or she shall choose a PDP based on the best interests of the person.

(e) Nothing in this Subpart shall be deemed to diminish or remove the authority of a physician to request a coverage determination or an expedited redetermination on behalf of a beneficiary.

Revisions to § 635-99.1 Glossary

(c) Agency. The ["agent" or] "operator" of a facility, program or service operated, [or] certified, authorized, or funded through contract by OMRDD. In the case of State-operated facilities, the [B/]DDSO is considered to be the "agency". [Certified] [f]Family care providers are not to be considered an agency (also see "agency, sponsoring").

(e) Agency, sponsoring. The administrator of one or more family care homes. In the case of family care homes operated under State auspice, the [B/]DDSO is considered to be the sponsoring agency.

Note: The following definitions are moved to the proper place in alphabetical order and the rest of the subdivisions renumbered accordingly.

(n) [B/] DDSO. *The Developmental Disabilities Services Office is [T] the local administrative unit [, responsible to the Division of Program Operations of OMRDD, that has major responsibility for the planning and development of community, residential and other program services. The B/ DDSO is responsible for coordinating the service delivery system within a particular service area, planning with community and provider agencies, and ensuring that specific placement of individuals and program plans and provider training programs are implemented. In New York City this unit is called the Borough Developmental Services Office (BDSO); elsewhere in the State it is called the Developmental Disabilities Services Office (DDSO).] of OMRDD. The governing body of the DDSO is the central office administration of OMRDD. The DDSO director is its chief executive officer.*

() Officer, chief executive. *Someone designated by the governing body (see section 635-99.1) with overall and ultimate responsibility for the operation of services certified, authorized or funded through contract by OMRDD, or his or her other designee for specific responsibilities and/or equipment as specified in written agency/facility policy. In a DDSO, this party is referred to as the director.*

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-46-06-00017-P, Issue of November 15, 2006. The emergency rule will expire January 6, 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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with

respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Regulatory Impact Statement

Statutory Authority:

a. Section 13.07(a) of the Mental Hygiene Law gives OMRDD responsibility for assuring the development of comprehensive plans, programs and services in the areas of prevention, care, treatment, habilitation, rehabilitation, vocational and other education and training of persons with mental retardation and developmental disabilities.

b. Section 13.07(c) of the Mental Hygiene Law gives OMRDD responsibility for seeing that persons with mental retardation and developmental disabilities are provided with services, including care and treatment; that such services are of high quality and effectiveness and that the personal and civil rights of persons receiving such services are protected. This section of the law also requires that the services provided seek to promote and attain independence, inclusion, individuality and productivity for persons with mental retardation and developmental disabilities.

c. Section 13.09(b) of the Mental Hygiene Law requires the Commissioner of OMRDD to adopt rules and regulations necessary and proper to implement any matter under his jurisdiction.

d. Section 13.15(a) of the Mental Hygiene Law requires the Commissioner to establish, develop, coordinate and conduct programs and services of prevention, care, treatment, rehabilitation and training for the benefit of persons with mental retardation and developmental disabilities. This section also requires the Commissioner to take all actions necessary, desirable or proper to implement the purposes of the Mental Hygiene Law and to carry out the purposes and objectives of OMRDD within available funding.

2. Legislative Objectives:

The emergency amendments further the legislative objectives embodied in sections 13.07(a), 13.07(c), 13.09(b) and 13.15(a) of the New York State Mental Hygiene Law by authorizing parties other than guardians to act on behalf of the many adult consumers served by OMRDD who do not have the capacity to make decisions about the Medicare prescription drug benefit and who do not have guardians. The emergency amendments also authorize other parties to pursue appeals and other reviews for these consumers, so that their rights in a prescription drug plan will be protected.

3. Needs and Benefits:

The new Medicare prescription drug program began January 1, 2006. This program is also known as Medicare Part D. Persons who are in Part D have their prescription drugs paid for through private insurance plans, known as prescription drug plans. Persons who have Medicare must enroll in a prescription drug plan in order to receive this benefit. However, persons who have Medicare and Medicaid are automatically enrolled in a plan. These persons are known as dual eligible persons.

Dual eligible persons were and will continue to be randomly assigned to a prescription drug plan as new persons become eligible for the benefit. The formularies (lists of drugs each plan covers), participating pharmacies and other services can vary from plan to plan, so that the plan to which a beneficiary is randomly assigned may not be the one best suited to that person's needs.

Unlike Medicare-only beneficiaries, dual eligible persons can change prescription drug plans at any time. From November 15 to December 31, 2005, dual eligible persons could change plans as often as they want. Since January 1, 2006, dual eligible persons can change plans once a month.

Prescription drug plans are required to have review processes. These will allow persons to, for example, complain about the plan, request payment for a drug not on the plan's formulary, request a lower co-pay for a drug in a higher payment tier and appeal from any decision of the plan that is not what the beneficiary requested.

Federal regulations and policy state that only certain persons can make decisions about what prescription drug plan to choose and about pursuing a review: the beneficiary, someone appointed by the beneficiary or someone whom state law authorizes to act on behalf of a beneficiary. Federal guidelines cite guardians as an example of those whom state law authorizes to act for a beneficiary.

There are approximately 39,500 consumers who are dually eligible and who receive services from OMRDD or from an OMRDD regulated provider. Many of these consumers are adults, do not have the capacity to make decisions about the Medicare prescription drug benefit and do not have guardians. OMRDD developed this regulation to help these consumers. These regulations serve as state law which will authorize other people to act on behalf of these consumers, so that they can be enrolled in the

prescription drug plan that is right for them. These regulations also serve as state law which will authorize other people to pursue appeals and other reviews for these consumers, so that their rights in a prescription drug plan will be protected.

Specifically, if the person is over 18, without the ability to decide, does not have a guardian and lives in a residential facility, the agency operating the residence can make the decisions. The executive director of the agency has this decision making authority, but he or she can also designate someone else in the agency to make these decisions. If a guardian or parent is supposed to make the decisions, but is unwilling or unavailable, the CEO or designee of the residential agency decides.

For adult consumers living at home or on their own who do not have the ability to make decisions about Part D, and who do not have a guardian, any of the following can make Part D decisions: an actively involved spouse, parent, adult child, adult sibling, adult family member, adult friend, advocate or correspondent. If none of these people are available or willing, the CEO (or designee) of the Medicaid Service Coordination agency can choose.

4. Costs:

OMRDD considers the emergency amendments to be cost neutral. These emergency amendments may result in some cost savings.

a. Costs to Regulated Parties: No new costs are projected to be incurred by the regulated parties due to the implementation and ongoing compliance with emergency amendments. The emergency amendments may result in cost savings because those consumers receiving services from OMRDD who are affected by the emergency amendments (or members of their families) will not have to seek guardianship to participate in a prescription drug plan or to switch to a more cost effective plan. In addition, the provider of residential services may experience some cost savings because the plan in which the dual eligible consumer is auto-enrolled may result in higher costs to the provider than the plan in which the consumer is enrolled through the mechanisms established by this regulation. Providers are responsible for the costs of all necessary medications that are not covered by a prescription drug plan or some other mechanism.

b. Costs to the Agency, the State and Local Governments: There are no costs to local governmental units or any other special districts. New York State may also experience savings as a provider of state-operated residences (see above). Additionally, New York State and its local governments may experience a savings in the cost of court operations since the emergency amendments make the guardianship process unnecessary for many consumers.

5. Local Government Mandates:

There are no new mandates on local governmental units or any other special districts.

6. Paperwork:

There are minimal new paperwork requirements resulting from the regulations. If the residential agency chooses to enroll residents the agency is required to notify the advocate or correspondent of the resident. On the other hand, paperwork associated with seeking guardianship and making guardianship decisions is avoided, if guardianship is necessary only to facilitate enrollment in a Medicare prescription drug plan. Paperwork necessary to enroll beneficiaries and act in the Part D review process would be necessary regardless of the promulgation of these regulations.

To facilitate enrollment processes, OMRDD has developed new forms that can be used to appoint someone to enroll the beneficiary. These optional forms can assist consumers, guardians, parents and others who seek to appoint someone else, and are available on the OMRDD website at www.omr.state.ny.us.

7. Duplication:

None.

8. Alternatives:

If OMRDD did not promulgate the emergency amendments, consumers receiving OMRDD services who are eligible for Medicare only, without the ability to choose a plan and without a guardian would be unable to participate in the Medicare Part D program. Consumers who are dually eligible and without the ability to choose the plan and without a guardian would be unable to move from plans that did not meet their needs, and possibly have to pay for medicines out-of-pocket (or have their residential providers incur such expenses), and have to pursue time-consuming exceptions and appeals that could be avoided by simply switching plans. For some consumers, even the most suitable will not cover all medications they need, and consumers in those plans will need to pursue coverage determinations, exceptions and appeals. Without this regulation, adult consumers without guardians who do not have the ability to pursue coverage determinations, exceptions and appeals would be unable to do so.

9. Federal Standards:

The emergency amendments do exceed any minimum standards of the Federal government.

10. Compliance Schedule:

No time is necessary for regulated parties to achieve compliance with the rule because similar standards have been in effect as an emergency rule since November 15, 2005. In addition, the rule itself does not contain any compliance requirements for the regulated parties. Instead, the rule establishes processes which may be utilized by regulated parties and others at their discretion.

Regulatory Flexibility Analysis

1. Effect on small businesses: These emergency amendments apply to providers of OMRDD residential services and/or providers of Medicaid Service Coordination (MSC), both State-operated and voluntary-operated.

OMRDD has determined, through a review of the certified cost reports, that the voluntary not-for-profit organizations which operate the facilities or provide MSC employ fewer than 100 employees at the discrete certified or authorized sites, and would, therefore, be classified as small businesses.

The emergency 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 businesses due to increased costs for additional services or increased compliance requirements. The amendments result in no new costs for these entities.

2. Compliance requirements: The emergency amendments require the regulated parties to notify the consumer's advocate (if applicable) and the correspondent (if applicable) of the plan when the CEO of an agency operating a certified residence or his or her designee enrolls the consumer in a prescription plan.

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

4. Compliance costs: There are no costs to local governments or small businesses.

5. Economic and technological feasibility: The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse economic impact: These emergency amendments impose no adverse economic impact on local governments or small businesses.

7. Small business and local government participation: OMRDD convened several task forces and committees concerning the implementation of the new Federal Medicare Part D benefit, including a work group that had as one of its specific charges the development of the emergency amendments. Membership of the various groups included providers of services, both State and voluntary-operated, provider association representatives, family members of consumers and other advocates for persons with mental retardation and developmental disabilities. Several of the task forces, committees and sub-committees will have continued to meet to oversee the Part D implementation throughout 2006.

Presentations and ongoing discussions have occurred with the Commissioner's Advisory Council on Family Care and the Statewide Committee on Family Support Services and also with the Part D task force (mentioned above) that helped develop this regulation. A series of informational mailings and frequent e-mail updates regarding Part D generally have been sent to affected providers beginning in June 2005. OMRDD promulgated a similar emergency regulation on November 15, 2005, February 13, 2006, May 12, 2006 and on August 10, 2006 and sent informational mailings about the regulations to affected parties. OMRDD has also posted relevant information on its website at www.omr.state.ny.us.

OMRDD has received only positive feedback on the amendments from providers of services, both voluntary and state-operated and family members of consumers since similar amendments first became effective on November 15, 2005.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for the emergency amendments has not been submitted. OMRDD has determined that the amendments will not impose any adverse impact, reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The emergency amendments identify and authorize those parties who may enroll or act for a person who does not have the ability to enroll or act for herself or himself in a Medicare prescription drug plan.

Job Impact Statement

A Job Impact Statement is not submitted because the amendment will not have an adverse impact on existing jobs or employment opportunities. The emergency amendments identify and authorize those parties who may enroll or act for a person who does not have the ability to enroll or act for herself or himself in a Medicare prescription drug plan.

NOTICE OF ADOPTION**Personal Allowance**

I.D. No. MRD-39-06-00025-A

Filing No. 1361

Filing date: Nov. 14, 2006

Effective date: Jan. 1, 2007

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

Action taken: Amendment of section 633.15 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Personal allowance.

Purpose: To increase the amount of personal allowance cash allowed to be maintained per person at his/her place of residence. The existing cash cap was set in 1988 and is no longer adequate to meet the needs of all persons served.

Text or summary was published in the notice of proposed rule making, I.D. No. MRD-39-06-00025-P, Issue of September 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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Assessment of Public Comment

Comment: There were questions regarding how the proposed maximum cash limit relates to all residential levels of care and how to calculate the amount.

Response: The regulation ties the cash limit directly to the highest monthly amount of personal allowance established each year by law, Congregate Care Level III, Enhanced Residential Care, plus \$20. The amount will change each year when the annual SSA Cost of Living Adjustment (COLA) is enacted into law, thereby automatically increasing the maximum limit. In 2007, the monthly personal allowance for Congregate Care level III will be \$164 plus \$20 for a total of \$184. This amount (\$184), therefore, will be the new maximum amount of cash allowed to be maintained per person in any OMRDD certified residential program for 2007. In 2008 and thereafter, the amount will increase in accordance with the COLA.

Comment: The commenter suggested that instead of stating the maximum cash amount as an "addition problem," OMRDD raise the cash limit to \$200 so that it is at a fixed amount and this issue may not need to be addressed again for another 10 years.

Response: OMRDD had considered raising the limit to a fixed amount, such as \$200 or \$250. However, even though this would solve the immediate problem, it would only be temporary and therefore would not completely address future increases in personal allowance which would eventually necessitate a future change in the regulation. OMRDD wanted to avoid making future changes in the regulation and therefore linked the maximum cash amount allowed to be maintained per person in a residence to the highest monthly amount of personal allowance allowed by law. By doing this, all residential providers, regardless of Congregate Care level, will be able to comply and the maximum amount will increase each year automatically when the annual SSA Cost of Living Adjustment is enacted in the Social Service law.

Public Service Commission

NOTICE OF ADOPTION

Lightened Regulation by Noble Ellenburg Windpark, LLC

I.D. No. PSC-02-06-00010-A

Filing date: Nov. 9, 2006

Effective date: Nov. 9, 2006

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

Action taken: The commission, on Nov. 8, 2006, adopted an order granting Noble Ellenburg Windpark, LLC (Noble Ellenburg) a certification of public convenience and necessity, and providing for lightened regulation in connection with the construction and operation of a wind generation facility.

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

Subject: Request by Noble Ellenburg for lightened regulation as an electric corporation.

Purpose: To approve Noble Ellenburg's request in connection with the construction and operation of an electric generating facility.

Substance of final rule: The Public Service Commission adopted an order granting Noble Ellenburg Windpark, LLC a Certificate of Public Convenience and Necessity, and providing for lightened regulation in connection with the construction and operation of a wind generation facility located in the Town of Ellenburg, Clinton County, 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. (05-E-1633SA1)

NOTICE OF ADOPTION

Line of Credit by Four Corners Water Works Corporation

I.D. No. PSC-04-06-00026-A

Filing date: Nov. 10, 2006

Effective date: Nov. 10, 2006

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

Action taken: The commission, on Nov. 8, 2006, adopted an order approving Four Corners Water Works Corporation's request to enter into a line of credit for not more than \$40,000.

Statutory authority: Public Service Law, sections 89-c and 89-f

Subject: Issues of stock, bonds and other forms of indebtedness and water rates and charges.

Purpose: To approve Four Corners Water Works request to obtain a line of credit and approval of its line of credit account statement.

Substance of final rule: The Commission adopted an order approving Four Corners Water Works Corporation's (Four Corners) request to enter into a line of credit for not more than \$40,000 and authorized Four Corners to file its Line of Credit Account Statement electronically, 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. (05-W-0615SA2)

NOTICE OF ADOPTION

Lightened Regulation as an Electric Corporation by Noble Bliss

I.D. No. PSC-13-06-00018-A

Filing date: Nov. 9, 2006

Effective date: Nov. 9, 2006

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

Action taken: The commission, on Nov. 8, 2006, adopted an order approving the request of Noble Bliss Windpark, LLC (Noble Bliss) for a certificate of public convenience and necessity, and providing lightened regulation of it as an electric corporation in connection with a wind energy generating project.

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

Subject: Request by Noble Bliss for lightened regulation as an electric corporation.

Purpose: To approve Noble Bliss' request in connection with the construction and operation of an electric generating facility.

Substance of final rule: The Commission approved the request of Noble Bliss Windpark LLC, for a Certificate of Public Convenience and Necessity, and for lightened regulation of it as an electric corporation in connection with a wind energy generating project to be located in the Town of Eagle, New York, 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-E-0135SA1)

NOTICE OF ADOPTION

Lightened Regulation as an Electric Corporation by Noble Altona Windpark, LLC

I.D. No. PSC-13-06-00020-A

Filing date: Nov. 9, 2006

Effective date: Nov. 9, 2006

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

Action taken: The commission, on Nov. 8, 2006, adopted an order granting Noble Altona Windpark, LLC (Noble Altona) a certificate of public convenience and necessity, and providing for lightened regulation in connection with the construction and operation of a wind generation facility.

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

Subject: Request by Noble Altona for lightened regulation as an electric corporation.

Purpose: To approve Noble Altona's request in connection with the construction and operation of an electric generating facility.

Substance of final rule: The Public Service Commission adopted an order granting Noble Altona Windpark, LLC a Certificate of Public Convenience and Necessity, and providing for lightened regulation in connection with the construction and operation of a wind generation facility in the Town of Altona, Clinton County, subject to the terms 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-E-0216SA1)

NOTICE OF ADOPTION

Major Rate Increase by St. Lawrence Gas Company, Inc.

I.D. No. PSC-20-06-00014-A

Filing date: Nov. 9, 2006

Effective date: Nov. 9, 2006

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

Action taken: The commission, on Nov. 8, 2006, adopted an order concerning a proposal filed by St. Lawrence Gas Company, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 3.

Statutory authority: Public Service Law, section 66(12)

Subject: Major rate increase.

Purpose: To adopt an increase in annual gas revenues for St. Lawrence Gas Company, Inc.

Substance of final rule: The Commission adopted an order approving the terms of a joint proposal that provides for a three year rate plan for St. Lawrence Gas Company, Inc., 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.
(05-G-1635SA1)

NOTICE OF ADOPTION

Waiver of Certain Application Requirements by New York Regional Interconnect Inc.

I.D. No. PSC-26-06-00007-A

Filing date: Nov. 10, 2006

Effective date: Nov. 10, 2006

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

Action taken: The commission, on Nov. 8, 2006, adopted an order denying, in part New York Regional Interconnect, Inc.'s (NYRI) motion for waivers and granting the motions under 16 NYCRR 2.5(b) requiring the submission of supplemental information as stated in the terms of the order.

Statutory authority: Public Service Law, sections 4(1), 20(1) and 122(1)(f)

Subject: Request by NYRI for waiver of certain application requirements.

Purpose: To deny in part, and grant in part NYRI's motion in connection with its application for authorization of the construction and operation of an electric transmission facility.

Substance of final rule: The Commission adopted an order denying in part New York Regional Interconnect, Inc.'s, motion for waivers and granting the motions under 16 NYCRR 2.5(b) requiring the submission of supplemental information, 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-T-0650SA1)

NOTICE OF ADOPTION

Energy Services Company Price Reporting Requirements

I.D. No. PSC-27-06-00016-A

Filing date: Nov. 8, 2006

Effective date: Nov. 8, 2006

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

Action taken: The commission, on Nov. 8, 2006, adopted an order regarding Energy Service Companies (ESCO) mandatory price reporting.

Statutory authority: Public Service Law, sections 2(12) and (13), 5(1)(b) and (2)

Subject: ESCO price reporting requirements.

Purpose: To adopt ESCO price reporting requirements.

Substance of final rule: The Commission adopted an order requiring Energy Service Companies (ESCO) to comply with mandatory price reporting, subject to modifications as described 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-M-0647SA1)

NOTICE OF ADOPTION

Transfer of Property between Orange and Rockland Utilities, Inc. and Verizon New York Inc.

I.D. No. PSC-31-06-00021-A

Filing date: Nov. 8, 2006

Effective date: Nov. 8, 2006

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

Action taken: The commission, on Nov. 8, 2006, adopted an order approving the request of Orange and Rockland Utilities, Inc. to transfer ownership of certain utility poles to Verizon New York Inc.

Statutory authority: Public Service Law, section 70

Subject: Transfer of property.

Purpose: To approve Orange and Rockland Utilities, Inc. to transfer ownership of certain utility poles to Verizon New York Inc.

Substance of final rule: The Commission approved the request of Orange and Rockland Utilities, Inc. to transfer ownership of certain utility poles to Verizon New York Inc.

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-E-0791SA1)

NOTICE OF ADOPTION

Exemption from Certain Legal Provisions by Fortuna Energy Inc. (Fortuna) and FUSI GP Inc. (FUSI)

I.D. No. PSC-36-06-00004-A
Filing date: Nov. 13, 2006
Effective date: Nov. 13, 2006

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

Action taken: The commission, on Nov. 8, 2006, adopted an order approving the request of Fortuna Energy Inc. (Fortuna) and FUSI GP Inc. (FUSI) for exemption from compliance with certain provisions of the Public Service Law pursuant to Public Service Law, section 66(13).

Statutory authority: Public Service Law, sections 4(1) and 66(12)

Subject: Request by Fortuna and FUSI for exemption from certain legal provisions.

Purpose: To allow Fortuna and FUSI an exemption from most regulation under article 4 of the Public Service Law, except for safety requirements and certain other generally applicable provisions.

Substance of final rule: The Commission adopted an order approving the request by Fortuna and FUSI for exemption from most regulation under Article 4 of the Public Service Law, except for safety requirements and certain other generally applicable provisions, 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-G-0944SA1)

NOTICE OF ADOPTION

Provisions of Water Service by Northrop Grumman Corporation, et al.

I.D. No. PSC-36-06-00016-A
Filing date: Nov. 13, 2006
Effective date: Nov. 13, 2006

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

Action taken: The commission, on Nov. 8, 2006, adopted an order approving the request of Northrop Grumman Corporation and Northrop Grumman Systems Corporation to provide oxygenated water to Occidental Petroleum Corporation (Occidental) in connection with Occidental's remediation of groundwater plume associated with the Hooker Chemical/Ruco Polymer Superfund Site located in Hicksville, NY.

Statutory authority: Public Service Law, sections 89-a, 89-b and 89-c

Subject: Provision of water service.

Purpose: To approve the provision of water service to Occidental.

Substance of final rule: The Commission adopted an order approving the request of Northrop Grumman Corporation and Northrop Grumman Systems Corporation to provide limited water service to Occidental Petroleum Corporation and granting exemptions from certain filing requirements, 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-0964SA1)

NOTICE OF ADOPTION

Transfer of Ownership of Stock between Corning Natural Gas Corporation and C&T Enterprises

I.D. No. PSC-37-06-00004-A
Filing date: Nov. 13, 2006
Effective date: Nov. 13, 2006

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

Action taken: The commission, on Nov. 8, 2006, adopted an order, in Case 06-G-0569, making permanent the order establishing the transfer of ownership of the stock of Corning Natural Gas Corporation (Corning) to C&T Enterprises (C&T) and other related approvals.

Statutory authority: Public Service Law, sections 5, 65, 66, 69, 70 and 110

Subject: Transfer ownership of the stock and other related approvals.

Purpose: To approve the request of Corning and C&T to transfer ownership of stock and other related approvals.

Substance of final rule: The Commission adopted an order, in Case 06-G-0569, making permanent the order establishing the transfer of ownership of the stock of Corning Natural Gas Corporation to C&T Enterprises and other related approvals.

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-G-0569SA2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**Safe Transportation of Natural Gas and Liquid Petroleum**

I.D. No. PSC-48-06-00002-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 Parts 10, 255 and 258 of Title 16 NYCRR.

Statutory authority: Public Service Law, section 66(1)

Subject: Transportation of natural gas and other gas by pipeline and transportation of hazardous liquids by pipeline.

Purpose: To conform to recent amendments of 49 CFR. The proposed amendments relate to the standards to be followed when using direct assessment to evaluate the corrosion risks on a pipeline, operator requirements to improve public awareness of pipeline operations and safety issues through enhanced communications with the public, and modification of operator qualification programs ensuring personnel have the appropriate training to perform covered tasks in a safe manner and that the appropriate regulatory agency is notified of significant modifications to the program.

Substance of proposed rule: The proposed rule will bring the Commission's regulation pertaining to safe transportation of natural gas and liquid petroleum into conformance with recent amendments to the Federal Regulations contained in 49 CFR Part 192, Transportation of Natural Gas (49 CFR Part 192) and 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline (49 CFR Part 195). The revisions to 16 NYCRR Part 10 will update the applicable referenced materials.

The proposed amendments relate to the standards to be followed when using direct assessment to evaluate the corrosion risks on a pipeline, operator requirements to improve public awareness of pipeline operations and safety issues through enhanced communications with the public, and modification of operator qualification programs ensuring personnel have the appropriate training to perform covered tasks in a safe manner and that the appropriate regulatory agency is notified of significant modifications to the program.

The proposed amendments contained in 16 NYCRR Sections 255.490 include the requirements from 49 CFR Part 192 relating to the use of direct assessment methods currently used for pipeline integrity management when direct assessment is used in other situations. Under the proposed regulation, if an operator chooses to use direct assessment to evaluate the threat of external corrosion, internal corrosion, or stress corrosion cracking on a regulated pipeline, the direct assessment would have to be completed according to the appropriate regulation sections for each type of review being conducted. The amendment allows the operator to utilize direct assessment methods for corrosion control purposes, separate from the direct assessment process. The proposed amendments to 16 NYCRR Section 255.604 relate to the operator qualification program which requires that personnel have the appropriate training to perform covered tasks in a safe manner, and that the appropriate regulatory agency is notified of significant modifications to the program.

The proposed amendments to 16 NYCRR Section 255.616 relate to the development and implementation of a public awareness program in compliance with the Pipeline Safety Improvement Act of 2002 and incorporate by reference the guidelines provided in the American Petroleum Institute Recommended Practice 1162, "Public Awareness Programs for Pipeline Operators." This requires the operators to improve public awareness of pipeline operations and safety issues through enhanced communications with the public in the vicinity of its rights-of-way and pipeline facilities, with State and local emergency response and planning officials, with local public officials and governing councils of municipalities and school districts, and excavators.

The proposed amendments to 16 NYCRR Part 258 update the incorporated-by-reference edition of 49 CFR Part 195 and thereby comes into conformance with recent federal amendments. These amendments relate to ensuring the qualifications of pipeline operator personnel who perform critical operating and maintenance tasks, addition of written continuing public education programs that follow the guidance provided in the American Petroleum Institute's Recommended Practice (RP) 1162 and various editorial and housekeeping corrections to reflect organizational changes at the department.

The proposed changes to the 16 NYCRR Part 10 - Referenced Material update referenced materials to their current editions and add materials referenced in the proposed amendments to 16 NYCRR Part 255.

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. Brillig, 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.

Consensus Rule Making Determination

This amendment is being proposed as a Consensus Rule because no objection to the rule as written is expected. The proposed changes to Part 10, Part 255 and Part 258 will bring Commission regulations into conformance with the current Federal Regulations contained in Title 49, Code of Federal Regulations (CFR), Part 192, Transportation of Natural and Other Gas by Pipeline and Title 49, Code of Federal Regulations, Part 195, Transportation of Hazardous Liquids by Pipeline and the affected persons and entities are aware of this and already subject to the Federal rules and regulations.

Job Impact Statement

This agency finds that the proposed amendments are to bring Part 10, Part 255 and Part 258 into conformance with recent amendments to the counterpart Federal Regulations contained in 49 CFR Part 192 and 49 CFR Part 195, and the amendments should not have any impact on job and employment opportunities because operators are currently required to comply with the requirements in the Federal Regulations.

(06-G-1112SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges by National Aqueous Corporation

I.D. No. PSC-48-06-00003-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, National Aqueous Corporation's request to establish a customer charge if it becomes necessary to fix or replace a shut off valve during the course of discontinuance or restoration of service. The charge will be the actual cost of fixing or replacing the shut off valve (including: parts, labor, excavation, backfilling, permits, repaving costs and restoration costs). The maximum charge will be \$1,000.

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

Subject: Water rates and charges.

Purpose: To establish an additional customer restoration of service charge.

Substance of proposed rule: On November 9, 2006, National Aqueous Corporation (NAC) filed to become effective January 18, 2007, Leaf No. 10, Revision 1, to its electronic tariff schedule, P.S.C. No. 1 — Water. The proposed tariff amendment would establish a customer charge, if it becomes necessary, to fix or replace a shut off valve during the course of discontinuance or restoration of service. The charge will be the actual cost of fixing or replacing the shut off valve (including: parts, labor, excavation, backfilling, permits, repaving costs and restoration costs). The maximum charge will be \$1,000. NAC provides flat rate water service to 62 customers in a development known as Melody Lake Estates located in the Town of Thompson in Sullivan County. NAC's tariff and proposed tariff amendment (Leaf No. 10, Revision 1) are 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 National Aqueous Corporation's 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. Brillig, 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-1362SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Franchise or Stocks by Gaz de France SA, et al.

I.D. No. PSC-48-06-00004-P

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

Proposed action: The commission is considering a joint petition filed on Nov. 9, 2006, by Gaz de France SA, Suez SA, United Water Resources Inc., United Waterworks Inc., United Water New York Incorporated, United Water New Rochelle Inc., United Water South County Water Inc., United Water Owego Inc., and United Water Nichols Inc., requesting a Declaratory Ruling disclaiming jurisdiction or, approval of the proposed merger of Gaz de France SA and Suez SA and resulting transfer of an indirect controlling interest in the listed companies.

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

Subject: Transfer of franchises or stocks.

Purpose: To approve the joint petition filed on Nov. 9, 2006.

Substance of proposed rule: On November 9, 2006, a Joint Petition was filed by Gaz de France SA (GdF), Suez SA (Suez); United Water Resources Inc., United Waterworks Inc., United Water New York Incorporated, United Water New Rochelle Inc., United Water South County Water Inc., United Water Owego Inc., and, United Water Nichols Inc. (Regulated Water Companies), requesting a Declaratory Ruling disclaiming jurisdiction or, approval of the merger proposal of GdF and Suez. In the event the Public Service Commission determines it has jurisdiction over the pro-

posed merger, the joint petitioners seek permission to enter into a transaction whereby Suez will be merged into GdF, with GdF as the surviving entity. The transaction will result in the transfer of an indirect controlling interest in the Regulated Water Companies. The joint petitioners state that the proposed merger will have no impact on the direct ownership, management, operations, employees or operating headquarters of the Regulated Water Companies and that no utility company plant, assets, franchises, contracts or permits will change or be transferred as the result of the merger.

The Commission may approve or reject, in whole or in part, or modify the joint petition.

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-1367SA1)