

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Animal Health Requirements for Cattle Entering State or County Fairs

I.D. No. AAM-10-07-00004-A
Filing No. 1129
Filing date: Oct. 22, 2007
Effective date: Nov. 7, 2007

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

Action taken: Addition of section 351.6 to Title 1 NYCRR.
Statutory authority: Agriculture and Markets Law, sections 18(6), 31-b and 72(3)
Subject: Animal health requirements for cattle entering State or county fairs.

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

Text or summary was published in the notice of proposed rule making, I.D. No. AAM-10-07-00004-P, Issue of March 7, 2007.

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

Text of rule and any required statements and analyses may be obtained from: John P. Huntley, DVM, Director, Division of Animal

Industry, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-3502

Assessment of Public Comment

The Department received comments from Cornell University's Cooperative Extension of Wyoming County; the Wyoming County Fair Association; and the New York Farm Bureau, Inc. Each of the comments expressed support for the proposed amendments. The Department agrees with these comments.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-07-00003-A
Filing No. 1121
Filing date: Oct. 19, 2007
Effective date: Nov. 7, 2007

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-29-07-00003-P, Issue of July 18, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-07-00004-A
Filing No. 1124
Filing date: Oct. 19, 2007
Effective date: Nov. 7, 2007

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

Action taken: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify a position in the exempt class in the Department of State.

Text was published in the notice of proposed rule making, I.D. No. CVS-29-07-00004-P, Issue of July 18, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-07-00005-A

Filing No. 1119

Filing date: Oct. 19, 2007

Effective date: Nov. 7, 2007

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Correctional Services.

Text was published in the notice of proposed rule making, I.D. No. CVS-29-07-00005-P, Issue of July 18, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-07-00006-A

Filing No. 1120

Filing date: Oct. 19, 2007

Effective date: Nov. 7, 2007

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-29-07-00006-P, Issue of July 18, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-07-00007-A

Filing No. 1122

Filing date: Oct. 19, 2007

Effective date: Nov. 7, 2007

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the non-competitive class in the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-29-07-00007-P, Issue of July 18, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-07-00008-A

Filing No. 1123

Filing date: Oct. 19, 2007

Effective date: Nov. 7, 2007

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the Executive Department.

Text was published in the notice of proposed rule making, I.D. No. CVS-29-07-00008-P, Issue of July 18, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-29-07-00009-A

Filing No. 1125

Filing date: Oct. 19, 2007

Effective date: Nov. 7, 2007

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

Action taken: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the non-competitive class in the State University of New York.

Text was published in the notice of proposed rule making, I.D. No. CVS-29-07-00009-P, Issue of July 18, 2007.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Correctional Services

NOTICE OF ADOPTION

Mid-State Correctional Facility

I.D. No. COR-34-07-00003-A
Filing No. 1126
Filing date: Oct. 19, 2007
Effective date: Nov. 7, 2007

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

Action taken: Addition of section 100.111(d) to Title 7 NYCRR.

Statutory authority: Correction Law, sections 70 and 73

Subject: Mid-State Correctional Facility.

Purpose: To add a residential treatment facility.

Text or summary was published in the notice of proposed rule making, I.D. No. COR-34-07-00003-P, Issue of August 22, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 485-9613, e-mail: AJAnnucci@docs.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Local High School Equivalency Diploma

I.D. No. EDU-45-07-00008-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 100.8 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), 309 (not subdivided) and 3204(3)

Subject: Local high school equivalency diploma.

Purpose: To extend for three years the provision in section 100.8 of the commissioner's regulations that allows boards of education specified by the commissioner to award a local high school equivalency diploma based upon experimental programs approved by the commissioner.

Text of proposed rule: Section 100.8 of the Regulations of the Commissioner of Education is amended, effective February 7, 2008, as follows:
 100.8 Local high school equivalency diploma.

Boards of education specified by the commissioner may award a local high school equivalency diploma based upon experimental programs approved by the commissioner until [January 31, 2008] *June 30, 2011*, after which date such boards may no longer award a local high school equivalency diploma.

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 Higher Education, Education Department, Rm. 979, Education Bldg. Annex, 879 Washington Ave., Albany, NY 12234, (518) 474-5851, e-mail: hedepcom@mail.nysed.gov

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

Regulatory Impact Statement

1. 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 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.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy to extend for three years the provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner. The existing provision will otherwise sunset on January 31, 2008.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to implement Regents policy to extend the time period that allows boards of education and BOCES to award local high school equivalency diplomas based upon experimental programs approved by the Commissioner.

The extension will allow the continuation of the External Diploma Program (EDP), which is a complete assessment program that allows adults to demonstrate and document the lasting outcomes and transferable skills for which a high school diploma is awarded. EDP is a competency-based, applied performance assessment system that expects adults to demonstrate their ability in a series of simulations that parallel job and life situations. Participants are evaluated against a criterion of excellence instead of by comparison with others. They take responsibility for acquiring instruction through existing community resources to achieve mastery of all the competencies required, plus an occupational or specialized skill.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: None.

The proposed amendment will not impose any costs on the State, local governments, private regulated parties or the State Education Department. It merely extends for three years the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district. It merely extends an existing provision related to the issuance of a local high school equivalency diploma.

6. PAPERWORK:

The proposed amendment merely extends an existing provision related to the issuance of a local high school equivalency diploma, and does not impose any additional paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

The proposed amendment is necessary to enact Regents policy to extend the time period that allows boards of education and BOCES to award local high school equivalency diplomas based upon experimental programs approved by the Commissioner. There are no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards in this area.

10. COMPLIANCE SCHEDULE:

Because of the nature of the proposed amendment, which merely extends for three years the existing provision in section 100.8 of the Commissioner's Regulations, it is anticipated that school districts and boards of cooperative educational services will be able to achieve compliance with this rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment merely extends for three years the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and boards of cooperative educational services (BOCES) specified by the Commissioner to award a local high school equivalency diploma for adults over age 21, based upon experimental programs approved by the Commissioner, and will not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed 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 Governments:

EFFECT OF RULE:

The proposed amendment applies to boards of education and boards of cooperative educational services (BOCES) that are specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner. At present, there are 4 school districts and 9 BOCES offering such programs.

COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any new compliance requirements but merely extends for three years the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner.

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. It merely extends for three years the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment will not impose any costs or new technological requirements on local governments.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents. The proposed amendment does not impose any new compliance requirements or costs on local governments, but merely extends the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES to award local high school equivalency diplomas based upon experimental programs approved by the Commissioner.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendments 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 and boards of cooperative educational services (BOCES) that are specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner, 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. At present 1 such school district and 8 such BOCES serve rural areas.

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

The proposed amendment does not impose any new compliance requirements on rural areas but merely extends for three years the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner. The proposed amendment does not impose any additional professional services requirements.

COMPLIANCE COSTS:

The proposed amendment will not impose any costs on rural areas. It merely extends for three years the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner.

MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents. The proposed amendment does not impose any new compliance requirements on rural areas, but merely extends the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education and BOCES to award local high school equivalency diplomas based upon experimental programs approved by the Commissioner.

RURAL AREA PARTICIPATION:

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 merely extends for three years the existing provision in section 100.8 of the Commissioner's Regulations that allows boards of education specified by the Commissioner to award a local high school equivalency diploma based upon experimental programs approved by the Commissioner, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have 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 Health

NOTICE OF ADOPTION

Blood Banks

I.D. No. HLT-27-07-00008-A

Filing No. 1130

Filing date: Oct. 23, 2007

Effective date: Nov. 7, 2007

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

Action taken: Amendment of Subpart 58-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, art. 31 and section 3121(5)

Subject: Blood banks.

Purpose: To reflect currently accepted nomenclature and technology, update practice standards and provide need clarification of provisions for regulation of blood banks and transfusion services.

Substance of final rule: This amendment to Subpart 58-2 reflects currently accepted nomenclature and technology, updates practice standards, and provides needed clarification of provisions for regulation of blood

banks and transfusion services. Definitions have been revised for the terms intraoperative blood recovery, allogeneic collection, and medical director, while new definitions are added for the terms clinical laboratory technician, clinical laboratory technologist, health care provider, nurse practitioner, physician, physician assistant, and physician designee. References to solvent/detergent-treated plasma have been deleted from definitions for the terms blood components and derivatives.

The minimum age for allogeneic blood donors is lowered from 17 to 16 years, with written parental permission.

The amendment requires that blood donor samples undergo nucleic acid testing for detection of human immunodeficiency virus and hepatitis C virus. Current regulatory language is modified to reflect the industry standard of utilizing a combination test for human T-lymphotropic virus types I and II. To recognize advances in technology, the requirement for weakly reactive controls is made generic so as to apply to any test methodology that might be employed.

Testing of a specimen collected subsequent to the date of donation is permitted for autogeneic donors.

Repeated listings of individual blood grouping and infectious disease tests are replaced by references to the section that specifies the required tests.

Requirements for labeling pre-transfusion specimens are expanded to include identification of the individual drawing the specimen.

Centrifuge maintenance and frequency of functional calibration requirements are specified. The amendment also clarifies initiation of the time limit for storage of blood recovered during or after surgery, and for blood collected for normovolemic hemodilution.

Requirements for collection, by serial plasmapheresis, of plasma for fractionation are separated from those for collection, by infrequent apheresis, of plasma for transfusion. A new provision requires that all floor supervisors complete a training program that includes documented satisfactory performance of donor apheresis procedures. The amendment specifies that a person specifically trained in recognizing and addressing reactions that may occur in association with the procedures being performed to be immediately available on the premises during an apheresis procedure, rather than relying solely on educational credentials for qualification of staff.

The amended regulation specifies that a supervisor must possess one year of experience in overseeing allogeneic blood collections, and specific training in the recognition and treatment of any reactions that may occur.

The roles and responsibilities of transfusion staff within and outside a health care setting are delineated. Identification procedures for the unit of blood to be transfused, the accompanying paperwork, and the recipient are clarified.

The maximum temperature of blood warmers is changed from 42 degrees Celsius to "the temperature specified in a written protocol, in conformance with the system manufacturer's instructions." The amendment specifies that blood warmer temperatures be recorded on each day of use.

Minimums for apheresis donor hemoglobin, hematocrit, and weight are clarified, and maximum permissible red blood cell loss is increased.

Required elements are enumerated for full documentation of the product name, lot number, and expiration date of infused plasma derivatives.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 58-2.16(f).

Text of rule and any required statements and analyses may be obtained from: Katherine E. Ceroalo, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqna@health.state.ny.us

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

A nonsubstantive change was made in the text of this regulation. There were no changes made to the previously published statements: Summary, RIS, RFA, RAFA, JIS.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Swimming Pools

I.D. No. HLT-29-07-00001-A

Filing No. 1131

Filing date: Oct. 23, 2007

Effective date: Nov. 7, 2007

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

Action taken: Amendment of Subpart 6-1 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

Subject: Swimming pools.

Purpose: To modify instructional swimming supervision requirements and correct an inconsistency between the requirements for supervision level IV use rules and the written statement/brochure requirements.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-29-07-00001-P, Issue of July 18, 2007.

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

Text of rule and any required statements and analyses may be obtained from: Katherine E. Ceroalo, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqna@health.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Health publishes a new notice of proposed rule making in the NYS Register.

Serialized Official New York State Prescription Form

I.D. No.	Proposed	Expiration Date
HLT-42-06-00005-P	October 18, 2006	October 18, 2007

Insurance Department

NOTICE OF ADOPTION

Rules Relating to the Processing of Claims

I.D. No. INS-33-07-00003-A

Filing No. 1133

Filing date: Oct. 23, 2007

Effective date: Nov. 7, 2007

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

Action taken: Addition of Part 56 (Regulation 183) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305 and 4802 and art. 49

Subject: Rules relating to the processing of claims.

Purpose: To clarify when plans may exclude coverage for cosmetic surgery.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-33-07-00003-P, Issue of August 15, 2007.

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

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.

NOTICE OF ADOPTION

Minimum Standards for the Form, Content and Sale of Health Insurance

I.D. No. INS-33-07-00004-A

Filing No. 1132

Filing date: Oct. 23, 2007

Effective date: Nov. 7, 2007

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

Action taken: Amendment of section 52.16(c)(5) (Regulation 62) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305 and 4802 and art. 49

Subject: Minimum standards for the form, content, and sale of health insurance.

Purpose: To clarify when plans may exclude coverage for cosmetic surgery.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-33-07-00004-P, Issue of August 15, 2007.

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

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.

NOTICE OF ADOPTION

Healthy New York Program

I.D. No. INS-34-07-00016-A

Filing No. 1118

Filing date: Oct. 18, 2007

Effective date: Nov. 7, 2007

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

Action taken: Addition of sections 362-2.7(d), (e) and (f) and 362-2.8 to Title 11 NYCRR.

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

Subject: Minimum standards for the form and content of policies and contracts subject to the provisions of section 4326 of the Insurance Law.

Purpose: To offer high deductible health plans in conjunction with the Healthy New York Program and add additional benefits to the program.

Text or summary was published in the notice of proposed rule making, I.D. No. INS-34-07-00016-P, Issue of August 22, 2007.

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

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.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 1198(3)

Subject: Ignition interlock devices.

Purpose: To define terms for issuance of a post-revocation conditional license.

Text of proposed rule: Subdivision (a) of section 140.1 is amended to read as follows:

(a) Intent. Section 1198 of the Vehicle and Traffic Law establishes an ignition interlock program [in Albany, Erie, Nassau, Onondaga, Monroe, Westchester and Suffolk Counties], [This program] which authorizes courts in [these] all counties of the State to require persons convicted of driving while intoxicated to equip their vehicles with an ignition interlock device. This Part establishes guidelines for the implementation of this program.

Paragraph (2) of subdivision (b) of section 140.1 is amended to read as follows:

(2) Program. As hereinafter used in this Part, the term program shall refer to the ignition interlock device program [located in Albany, Erie, Nassau, Onondaga, Monroe, Westchester and Suffolk Counties].

Section 140.2 is amended to read as follows:

§ 140.2 Participants in the program. The court may require that any person who has been convicted of a violation of subdivision two, two-a or three of section 1192 of the Vehicle and Traffic Law [,] may participate in the program and may be eligible for a post-revocation conditional license as provided for in section 140.4. In addition, a court may require a defendant who is convicted of [or] any crime defined by such law or the Penal Law of which an alcohol-related violation of any provision of section 1192 of this chapter is an essential element, and has been sentenced to a period of probation, to install and maintain as a condition of probation, a functioning ignition interlock device. Such defendants, however, shall not be eligible for the post-revocation conditional license.

Paragraph (1) of subdivision (a) of section 140.4 is amended to read as follows:

(1) such person has been convicted of a violation of subdivision 2, 2-a or 3 of section 1192 of the Vehicle and Traffic Law;

Paragraphs (5), (7) and (8) of subdivision (c) of section 140.4 are amended to read as follows:

(5) The person has been penalized under section 1193(1)(d)(1) of the Vehicle and Traffic Law for any violation of subdivision 2, 2-a, 3, [or] 4 or 4-a of such section.

(7) The person has other open suspension or revocation orders on their record, other than for a violation of section 1192(1), (2), 2-a, (3), [or] (4) or 4-a of the Vehicle and Traffic Law.

(8) The person has two convictions of a violation of section 1192 3, 4 or 4-a of the Vehicle and Traffic Law where physical injury has resulted in both instances.

Subdivision (c) of section 140.5 is amended read as follows:

(c) Employer vehicles. The holder of a post-revocation conditional license, who is required to operate a motor vehicle owned by said person's employer in the course and scope of his employment, may operate that vehicle only in the course and scope of such employment without installation of an approved ignition interlock device if the employer has been notified that the person's driving privilege has been restricted pursuant to section 1198 of the Vehicle and Traffic Law and the person subject to such restriction has [acknowledgment of] provided the court and probation department with written documentation indicating the [employer's notification in his or her possession while operating] employer has knowledge of the restriction imposed and has granted permission for the person to operate the employer's vehicle for normal business duties. The holder of the post-revocation conditional license must notify the court and the probation officer of his or her intention to operate the employer's vehicle. A motor vehicle owned by a business entity which is all or partly controlled by a person subject to the provisions of section 1198 of the Vehicle and Traffic Law is not a vehicle for the purposes of this exemption.

Text of proposed rule and any required statements and analyses may be obtained from: Carrie L. Stone, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: carrie.stone@dmv.state.ny.us

Data, views or arguments may be submitted to: Ida L. Traschen, First Assistant Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

Consensus Rule Making Determination

Department of Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Ignition Interlock Devices

I.D. No. MTV-45-07-00001-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 Part 140 of Title 15 NYCRR.

This consensus rule is necessary to make technical amendments to conform to Chapter 732 of the Laws of 2006 and Chapter 669 of the Laws of 2007.

Chapter 732 amended Vehicle and Traffic Law (VTL) section 1198 to provide that an ignition interlock device could be required by a court if the person was convicted of VTL section 1192(2-a), as well as 1192(2) and (3) in the existing law. Persons convicted of such a charge would be eligible to apply to the Commissioner of Motor Vehicles for a post-revocation conditional license.

Chapter 669 amended VTL section 1198 to make additional amendments to VTL section 1198 regarding the use of and restrictions pertaining to an interlock device, when required as a condition of probation. This proposed regulation simply amends Part 140 to reflect those statutory amendments. Thus, a consensus rulemaking is the appropriate vehicle to make these revisions.

Job Impact Statement

A Job Impact Statement is not submitted with this proposal because it will not have an adverse impact on job development or job creation in the State.

Action taken: The commission, on Oct. 17, 2007, adopted an order setting permanent rates for Orange & Rockland Utilities, Inc. (O&R).

Statutory authority: Public Service Law, sections 66(5), 72 and 114

Subject: Setting permanent rates for O&R.

Purpose: To make the electric rates of O&R permanent.

Substance of final rule: The Public Service Commission adopted an order setting permanent rates for Orange and Rockland Utilities, Inc. (O&R) or the company) increasing the allowance included in the rates for the costs of pensions and other post employment benefits incurred by the company, and reconciling ratepayer over-payments, made during the temporary rate period, by applying that amount to the deferred balances of amounts due and owing to the company for pension and other post-employment benefits expense, 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-1433SA2)

Public Service Commission

NOTICE OF ADOPTION

Water Rates and Charges and Electronic Tariff Filing by Windham Ridge Water Corp.

I.D. No. PSC-51-06-00023-A

Filing date: Oct. 19, 2007

Effective date: Oct. 19, 2007

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

Action taken: The commission, on Oct. 17, 2007, adopted and order approving Windham Ridge Water Corp.’s request to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 1 — Water, to become effective Oct. 29, 2007.

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

Subject: Water rates and charges and electronic tariff filing.

Purpose: To approve an increase of Windham Ridge Water Corp.’s annual revenues by \$9,092 or 17.8 percent and approve an electric tariff schedule.

Substance of final rule: The Commission adopted an order approving an increase in Windham Ridge Water Corp.’s (the company) annual revenues of \$9,092 or 17.8%, effective October 29, 2007, and approved the company’s electronic tariff schedule, 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-1470SA1)

NOTICE OF ADOPTION

Rates, Practices, Terms and Conditions by Orange & Rockland Utilities, Inc.

I.D. No. PSC-06-07-00017-A

Filing date: Oct. 18, 2007

Effective date: Oct. 18, 2007

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

NOTICE OF ADOPTION

Transfer of Property by New York State Electric and Gas Corporation

I.D. No. PSC-09-07-00012-A

Filing date: Oct. 18, 2007

Effective date: Oct. 18, 2007

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

Action taken: The commission, on Oct. 17, 2007, adopted an order granting the petition of New York State Electric and Gas Corporation (NYSEG) for the transfer of its customer service center building and adjoining land located in the Town of Southeast, Putnam County, New York to the New York State Association of Retarded Children, Inc.

Statutory authority: Public Service Law, section 70

Subject: Transfer of property.

Purpose: To approve NYSEG’s petition to transfer ownership of its customer service building to the New York State Association of Retarded Children, Inc.

Substance of final rule: The Public Service Commission adopted an order granting the petition of New York State Electric and Gas Corporation for the transfer of its Customer Service Center Building and adjoining land located in the Town of Southeast, Putnam County, New York to the New York State Association of Retarded Children, 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.

(07-M-0174SA1)

NOTICE OF ADOPTION

Disposition of Benefits by Orange and Rockland Utilities, Inc.**I.D. No.** PSC-18-07-00007-A**Filing date:** Oct. 18, 2007**Effective date:** Oct. 18, 2007

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

Action taken: The commission, on Oct. 17, 2007, adopted an order allowing Orange and Rockland Utilities, Inc. (O&R) to retain 10 percent of the tax benefits received as a result of its settlement of litigation with the Towns of Orangetown and Haverstraw.

Statutory authority: Public Service Law, section 113

Subject: Disposition of benefits from settlement of property tax litigation.

Purpose: To approve the disposition of benefits from the settlement of property tax litigation.

Substance of final rule: The Public Service Commission adopted an order allowing Orange and Rockland Utilities, Inc. to retain 10% of the tax benefits received as a result of its settlements of litigation with the Towns of Orangetown and Haverstraw for its shareholders. The remaining tax benefits attributable to ratepayers are included in the netting of regulatory credits and debits, 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-1547SA1)

NOTICE OF ADOPTION

Expansion of Photovoltaic Net Metering Load by Central Hudson Gas and Electric Corporation**I.D. No.** PSC-28-07-00006-A**Filing date:** Oct. 19, 2007**Effective date:** Oct. 19, 2007

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

Action taken: The commission, on Oct. 17, 2007, adopted an order expanding the ceiling on Central Hudson Gas and Electric Corporation's (Central Hudson) photovoltaic net metering load to 10 MW and allowing Central Hudson to defer revenue losses resulting from the growth of the solar generation system production.

Statutory authority: Public Service Law, sections 66(12) and 66-j

Subject: Expansion of the photovoltaic net metering load and deferred revenue losses.

Purpose: To expand the ceiling on the photovoltaic net metering load to 10 MW and defer revenue losses.

Substance of final rule: The Public Service Commission adopted and order expanding the ceiling on Central Hudson Gas and Electric Corporation's (Central Hudson) photovoltaic net metering load, and directing Central Hudson to file such tariff amendments as are necessary to increase to 10 MW, the ceiling for the net metering of photovoltaic systems sized at 10 kW or less, installed at residential locations pursuant to PSL § 66-j(3)(a). The tariff amendments shall take effect on November 1, 2007. The Commission authorized Central Hudson to defer, beginning July 1, 2007, those revenue losses attributable to photovoltaic production in excess of the 0.8 MW level assumed in its existing Rate Plan, 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. (07-E-0437SA2)

NOTICE OF ADOPTION

Waiver of Certain Preliminary Franchising Procedures by the Town of Decatur**I.D. No.** PSC-29-07-00026-A**Filing date:** Oct. 22, 2007**Effective date:** Oct. 22, 2007

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

Action taken: The commission, on Oct. 17, 2007, adopted an order approving the Town of Decatur's request for a waiver of 16 NYCRR sections 894.1 through 894.4(b)(2) pertaining to the franchise renewal process.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 through 894.4(b)(2) pertaining to the franchising process.

Purpose: To allow the Town of Decatur to waive certain preliminary franchising procedures.

Substance of final rule: The Commission granted the Town of Decatur, Otsego County a waiver of 16 NYCRR, Parts 894.1 through 894.4(b)(2) to expedite the franchising process.

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. (07-V-0541SA1)

NOTICE OF ADOPTION

Standby Contract Demand Charge by Niagara Mohawk Power Corporation**I.D. No.** PSC-34-07-00023-A**Filing date:** Oct. 17, 2007**Effective date:** Oct. 17, 2007

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

Action taken: The commission, on Oct. 17, 2007, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 207.

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

Subject: Standby contract demand charge—Service Classification No. 7.

Purpose: To extend the waiver of the competitive transition charge (CTC) contained in special provision L.

Substance of final rule: The Public Service Commission adopted an order allowing Niagara Mohawk Power Corporation d/b/a National Grid to extend Special Provision L permitting waiver of Competitive Transition Charges associated with standby demand charges for qualifying combined heat and power distributed generation projects installed on or after July 1, 2002.

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.
(07-E-0907SA1)

NOTICE OF ADOPTION

New Incremental Gas Supply Charge by New York State Electric & Gas Corporation

I.D. No. PSC-34-07-00024-A

Filing date: Oct. 17, 2007

Effective date: Oct. 17, 2007

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

Action taken: The commission, on Oct. 17, 2007, approved New York State Electric & Gas Corporation's (the company) request to make various changes in the rates, charges, rules and regulations contained in its schedules for gas service P.S.C. Nos. 87 and 90.

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

Subject: Establishment of an incremental gas supply charge for daily metered transportation customers requesting supply service from the company.

Purpose: To approve an incremental gas supply charge.

Substance of final rule: The Public Service Commission approved the filing of New York State Electric & Gas Corporation (the company) for an Incremental Gas Supply Charge applicable to daily metered transportation customers requesting supply service from the company.

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.
(07-G-0920SA1)

NOTICE OF ADOPTION

New Incremental Gas Supply Charge by Rochester Gas & Electric Corporation

I.D. No. PSC-34-07-00025-A

Filing date: Oct. 17, 2007

Effective date: Oct. 17, 2007

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

Action taken: The commission, on Oct. 17, 2007, approved Rochester Gas & Electric Corporation's (the company) request to make various changes in the rates, charges, rules and regulations contained in its schedules for gas service P.S.C. No. 16.

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

Subject: Establishment of an incremental gas supply charge for daily metered transportation customers requesting supply service from the company.

Purpose: To approve an incremental gas supply charge.

Substance of final rule: The Public Service Commission approved the filing of Rochester Gas and Electric Corporation (the company) for an Incremental Gas Supply Charge applicable to daily metered transportation customers requesting supply service from the company.

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.
(07-G-0921SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Verizon New York Inc. and Peerless Network of New York, LLC

I.D. No. PSC-45-07-00003-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, a proposal filed by Verizon New York Inc. and Peerless Network of New York, LLC for approval of an interconnection agreement on Oct. 11, 2007.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of the networks between Verizon New York Inc. and Peerless Network of New York, LLC for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and Peerless Network of New York, LLC have reached a negotiated agreement whereby Verizon New York Inc. and Peerless Network of New York, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until October 10, 2009, or an extended.

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: Jaelyn 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.
(07-C-1241SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Submetering of Electricity by Atlantic Court, LLC

I.D. No. PSC-45-07-00004-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, the petition filed by Atlantic Court, LLC, to submeter electricity at 87 Smith St., Brooklyn, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Atlantic Court, LLC, to submeter electricity at 87 Smith St., Brooklyn, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Atlantic Court, LLC, to submeter electricity at 87 Smith Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact:

Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

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

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

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

(07-E-1238SA1)

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

Customer Incentive Programs by Orange and Rockland Utilities, Inc.

I.D. No. PSC-45-07-00005-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, a proposal filed by Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service, P.S.C. No. 4—Gas, to become effective Feb. 1, 2008.

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

Subject: Customer incentive programs.

Purpose: To establish a tariff provision describing the availability of customer incentive programs that assist customers in defraying costs associated with conversions to gas service.

Substance of proposed rule: The Commission is considering Orange and Rockland Utilities, Inc.'s (O&R) request to revise its gas tariff schedule, P.S.C. No. 4, to establish a tariff provision describing the availability of customer incentive programs. The tariff provision refers to O&R's Gas Transportation Operating Procedures for detailed program descriptions. The proposed filing has an effective date of February 1, 2008. The Commission may approve, reject or modify, in whole or in part, O&R'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. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(07-G-1263SA1)

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

Monetary Incentives by the National Resources Defense Council

I.D. No. PSC-45-07-00006-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 has instituted a proceeding, in Case 07-M-0548, to explore and develop the means by which the State's electric energy consumption can be decreased by 15 percent from expected levels by the year 2015, and will include development of an electric and natural gas energy efficiency portfolio standard. In this proceeding, the commission is considering a proposal dated Oct. 12, 2007 by the National Resources Defense Council (NRDC) that the commission establish monetary incentives (consisting of both rewards and penalties) to

encourage investor-owned utilities to implement and conduct energy efficiency programs.

Statutory authority: Public Service Law, sections 2, 5 and 66

Subject: The commission is considering a proposal by NRDC that the commission establish monetary incentives to encourage investor-owned utilities to implement and conduct energy efficiency programs.

Purpose: To consider whether the commission should establish incentives to help achieve energy efficiency goals.

Substance of proposed rule: The Public Service Commission has instituted a proceeding, in Case 07-M-0548, to explore and develop the means by which the State's electric energy consumption can be decreased by 15% from expected levels by the year 2015, and will include development of an electric and natural gas Energy Efficiency Portfolio Standard. In comments in the proceeding dated October 12, 2007, the National Resources Defense Council (NRDC) stated:

The award of incentives should be based largely on actual verified performance of achieving efficiency results and should be scaled, with higher incentives for higher achievement. The target award level should be based on aggressive but achievable goals, with the opportunity to earn greater incentives for exemplary performance beyond these base goals. The largest portion of incentives should be based on achieving actual benefits, ideally based on total resource net benefits, but could be based on therm, kWh and peak kW savings as well, or a combination of the three. For each company, the goals should be set so as to achieve the 15 by 15 target within their service territories.

Incentives can be annual or multi-year. Finally, all incentive earnings should be subject to stringent independent verification of achievements (savings), and not pre-specified based on simply completing certain milestones. A good example of an appropriate performance incentive structure for utilities was included in the California PUC's August 9, 2007 Proposed Decision in Rulemaking 06-04-010, which the PUC approved on 9/20/07. Building on this model, we propose that a threshold be set at 85 percent of the base energy savings goal. At this threshold, a utility company would start earning an incentive of 9 percent of the net benefits. The incentive should be stepped up to 12 percent if the company's DSM performance level achieves 100 percent or more of the goals. This structure is important because if it is clear prior to the end of the period that a utility will not reach the target, it should still have an incentive for pursuing as much efficiency as possible.

Utilities should also be penalized for poor performance on their savings goals. Penalties should be assessed if the company's performance falls to or below 65 percent of the base goal, at which point penalties should be assessed per kWh or therm for each unit below the goal. Such a penalty would ensure that the company will have a consistent incentive to improve performance.

The Commission may approve, reject, or modify, in whole or in part, NRDC's proposal that the Commission establish monetary incentives to encourage investor-owned utilities to implement and conduct energy efficiency programs, and it may also consider other related matters.

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

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

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

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

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

(07-M-0548SA10)

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

Delegation of Authority

I.D. No. PSC-45-07-00007-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 delegating to the secretary authority to approve routine water company tariff schedules with minor changes, certain waivers, and requests for short notice.

Statutory authority: Public Service Law, section 89-c(1)

Subject: Delegation of authority to the secretary for approval of routine water company tariff schedules.

Purpose: To consider delegation of authority.

Substance of proposed rule: The Commission is considering delegating to the Secretary authority to approve routine water company tariff schedules with minor changes, certain waivers, and requests for short notice.

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

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

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

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

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

(07-W-0929SA1)

Racing and Wagering Board

EMERGENCY RULE MAKING

Internet and Telephone Account Wagering on Horseracing

I.D. No. RWB-33-07-00005-E

Filing No. 1127

Filing date: Oct. 19, 2007

Effective date: Oct. 21, 2007

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

Action taken: Addition of Part 5300 to Title 9 NYCRR.

Statutory authority: Racing, Part-Mutuel Wagering and Breeding Law, sections 101, 222, 301, 401, 518, 520, 1002 and 1012

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

Specific reasons underlying the finding of necessity: These amendments are necessary to detect and deter unlawful financial activity in off-track betting over the internet and telephone. These amendments give regulatory force and effect to the statutory amendments that permit the use of the Internet in account wagering which went into effect on Jan. 22, 2007, and are contained in chapter 314 of the Laws of 2006 as codified in section 1012 of the RPWBL. Specifically, the amendments are necessary to provide guidelines and safeguards that allow for the use of state-of-the-art communication equipment in account wagering while preserving the integrity of pari-mutuel wagering in New York State, thereby ensuring substantial revenue for state and local governments and strengthening and furthering the racing, breeding and pari-mutuel wagering industry in New York State. The 2002 Breeders' Cup Ultra Pick 6 scandal, which involved the use of telephone account wagering in the fraudulent placing of bets and threatened to undermine public confidence in off-track betting, demonstrated the need for heightened scrutiny of account wagering. These rules are designed to detect and deter such unlawful activity which potentially threatens government revenue derived from off-track betting.

Subject: Internet and telephone account wagering on horseracing.

Purpose: To ensure the integrity of parimutuel wagering by adopting licensing and regulatory standards for internet and telephone account wagering; and establish reporting, recordkeeping, operational and application

requirements for race track operators and off-track betting corporations within New York State that offer internet and telephone account wagering.

Substance of emergency rule: 5300.1 Definitions and general provisions.

Contains definitions of various words and terms, when used in this chapter including: Account, Account holder, Account wager, Account wagering, Account wagering center, Account activity, Authorized pari-mutuel wagering entity, Board, Internet, Official, Stored value instrument, Totalisator system, and Wagering device.

5300.2 Account wagering, general.

Allows authorized pari-mutuel wagering entities (hereinafter "entity") to offer account wagering with prior board approval, restricting accounts to wagering purposes only; and determines which entities account wagers are deemed to be on track wagers and which are to be deemed off-track;

5300.3 Approval of account wagering.

Provides that entities authorized to conduct account wagering shall have a Board approved written plan of operation, including at least a proposed system of accepting wagers, internal controls, system security details, account wagering rules, and an independent recording for each transaction.

5300.4 Establishment of an account.

(a) Sets forth minimum criteria for establishment of accounts, allowable purposes, information to be provided, who may open an account, standards for verification of identity, notification standards, information allowed to be collected.

(b) Bearer accounts.

Provides standards for the use of bearer accounts evidenced by a card with a PIN number for customers without collecting identity information.

5300.5 Official address.

Provides that the entity may use the address listed on the account wagering application for listed purposes, until the entity is informed by the account holder of a change in address.

5300.6 Changes to account information.

Requires the entity to provide a method for the account-wagering holder to make official changes to his/her account information.

5300.7 Right to refuse an account.

Provides for refusal of account based on business judgment, and for mandatory exclusion of certain persons.

5300.8 Segregation of funds.

Requires the entity to deposit account holder's money within 72 hours of receipt in a segregated account.

5300.9 Conduct of wagering.

Provides rules for acceptance of wagers from established account holders via the telephone, internet, or other means subject to an approved plan of operation.

5300.10 Record of wager; pari-mutuel tickets.

This section deems all wagers placed through the account wagering system pari-mutuel tickets subject to all rules and laws governing pari-mutuel tickets.

5300.11 Withdrawals and other debits to accounts.

Sets forth standards for withdrawals from accounts, including identity, means, record keeping and time requirements; authorizes electric fund transfers.

5300.12 Credits to accounts.

States requirements for making and crediting deposits and winning payoffs, effect of IRS requirements, and other credits.

5300.13 Account statements.

Sets requirements for frequency, means of delivery and content of account statements.

5300.14 Recordkeeping.

Sets forth record keeping requirements for entities, including details and time required to be kept, and how account liabilities are to be recorded on books and records.

5300.15 Confidentiality of accounts.

Requirement for keeping accounts confidential, states exceptions.

5300.16 Closing of accounts.

Sets requirements for closing of accounts at request of account holders.

5300.17 Dormant accounts.

States rule for distribution of dormant accounts.

5300.18 Surcharge.

States rule for suspension of surcharge on accounts.

5300.19 Vouchers.

Defines vouchers and states these are not accounts or account wagers.

5300.20 Reports to board.

Sets forth time and content requirements for reports on handle, number of accounts or other reports.

5300.21 Yearly Audit

Contains minimum frequency requirements for audits.

5300.22 Disputes/Complaints

Sets forth requirements for handling customer disputes including documentation and audit requirements.

5300.23 Cooperation with officials.

Sets forth requirement for entity to cooperate with Board officials upon request.

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. RWB-33-07-00005-P, Issue of August 15, 2007. The emergency rule will expire December 17, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: info@racing.state.ny.us

Regulatory Impact Statement

(1) Statutory Authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 104, 222, 301, 401, 518, 520, 1002 and 1012. Subdivision 1 of section 101 of the Racing, Pari-Mutuel Wagering and Breeding Law (RPWBL) vests the Racing and Wagering Board (the Board) with general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State. Section 222 authorizes the conduct of pari-mutuel betting on horse races for the purpose of deriving a reasonable revenue for the support of government and to promote agriculture and breeding of horses in New York State. Subdivision 1 of section 301 grants the Board the authority to supervise generally all harness race meetings in New York State at which pari-mutuel betting is conducted and the authority to adopt rules accordingly. Subdivision 1 of section 401 grants the Board the power to supervise generally all quarterhorse race meetings in the state at which pari-mutuel betting is conducted. Section 518 authorizes off-track pari-mutuel betting so long as it is conducted under the administration of the Board. Subdivision 1 of section 520 grants general jurisdiction to the Board over the operation of all off-track pari-mutuel betting facilities within the state, and directs the Board to issue rules and regulations regarding off-track pari-mutuel betting activity. Subdivision 1 of section 1002 grants the Board general jurisdiction and rulemaking power over the simulcasting of horse races within the state. Subdivision 4 of section 1012 requires that the maintenance and operation of telephone accounts for wagers placed on licensed pari-mutuel racing shall be subject to rules and regulations of the New York State Racing and Wagering Board. Subdivision 4-a of section 1012 was added by Chapter 314 of the Laws of 2006 to expand authorized telephone account wagering to include wired or wireless communications, including the internet.

(2) Legislative Objectives: These amendments give regulatory force and effect to the statutory amendments contained in Chapter 314 of the Laws of 2006 as codified in Section 1012 of the RPWBL. Specifically, the amendments provide the necessary definitions, guidelines and safeguards that allow for the use of state-of-the-art communication equipment in account wagering while preserving the integrity of pari-mutuel wagering in New York State, thereby ensuring substantial revenue for state and local governments and strengthening and furthering the racing, breeding and pari-mutuel wagering industry in New York State.

(3) Needs and Benefits: The New York State and the Racing and Wagering Board needs to ensure that the hundreds of millions of dollars that may potentially be wagered by telephone and the Internet in any given year can be accounted for using uniform and reliable methods. These regulatory amendments are necessary to implement the statutory provisions of Chapter 314 of the Laws of 2006, which becomes effective January 22, 2007 and amends Section 1012 of the Racing, Pari-Mutuel Wagering and Breeding Law (RPWBL) by expanding the authorized method of placing account wagers to include "all those wagers which utilize any wired or wireless communication device, including but not limited to wireline telephones, wireless telephones, wireless telephones, and the internet." This rule is necessary to ensure the integrity of Internet and telephone account wagering in New York State. While Chapter 314 authorized in general terms the use of certain electronic devices in pari-mutuel wagering activities, this rule establishes the specific guidelines necessary for practical implementation of the statutory amendments. Telephone account wagering has been available in New York State for approximately 30 years, but there have been no comprehensive Board rules for account wagering. This will establish such rules. The New York State

Legislature has recognized the potential of Internet account wagering in bolstering New York horse racing, and these rules will ensure that the use of the Internet in pari-mutuel wagering will be conducted in an open and honest manner.

(4) Costs:

(i) The costs for the implementation of, and continuing compliance with, the rule to regulated persons will be negligible. Racetrack operators and off-track betting corporations already make telephone account wagering available and can comply with this rule by using existing accounting equipment and personnel. Such entities also have their own web sites and web server networks.

(ii) There would be no new costs for the implementation of, and continued administration of, the rule to the New York State Racing and Wagering Board, and the state and local governments. The Board and the Department of Taxation and Finance currently monitor telephone account wagering, and can continue to use current resources to administer this rule. The addition of internet wagering as a method of account wagering will not impose any new costs given the inherent accountability qualities of Internet servers and software systems. There would be no new costs to local governments because they do not regulate pari-mutuel wagering.

(iii) The information regarding costs was determined by Board staff. It made this determination based upon practical knowledge of the existing telephone account wagering systems, which it currently supervises pursuant to its general powers under the RPWBL.

(5) Paperwork: This rule does not impose any specific form requirement, but does include reporting requirements.

Authorized pari-mutuel wagering entities will be required to maintain for three years documentation of all persons excluded from opening an internet wagering account. Entities will also be required to maintain documentation of customer disputes and complaints for three years. All such documents must be made available to the Racing and Wagering Board upon request.

Authorized pari-mutuel wagering entities will be required to submit a written plan of operations for approval by the Racing and Wagering Board.

Authorized pari-mutuel wagering entities will be required to furnish monthly account statements to their customers.

Authorized pari-mutuel entities will be required submit annual reports detailing handle information and account activity from the previous calendar year. Entities will also be required to conduct annual audits of the account wagering system data input and account updates.

(6) Local Government Mandates: There are no local government mandates. Pari-mutuel wagering activities in New York State are exclusively regulated by the New York State Racing and Wagering Board.

(7) Duplication: Because the New York State Racing and Wagering Board has exclusive regulatory authority over pari-mutuel wagering activity, there are no other state or federal rules that duplicate, overlap or conflict with this rule. This rule is intended to give force and effect to Chapter 314 of the Laws of 2006. This rule is consistent with the provisions of the federal Unlawful Internet Gambling Enforcement Act of 2006, which amends Chapter 53 of Title 31, United States Code.

(8) Alternative Approaches: Several alternatives were considered. Board staff considered the Advance Deposit Wagering Rules of the Association of Racing Commissioners International and the telephone account wagering practices currently used in New York State. Board staff also reviewed and considered the account wagering rules of other jurisdictions, including Maryland, Louisiana, Massachusetts, Idaho, South Dakota, Washington, California and New Jersey. All of these similar rules and practices are relatively uniform.

In drafting this rule, the Board solicited and considered public comment from all entities engaged in pari-mutuel wagering in the State of New York, including thoroughbred and harness track operators, off-track betting corporations, and pari-mutuel wagering totalizator companies. There was general support for the Board's approach to accountability and reporting. The Board did revise certain aspects of the rule based upon public comments, but ultimately retained the overall regulatory approach as originally proposed.

Board staff considered the need for general age proof requirements in the rule and determined that none were necessary. Paragraph 1 of subdivision (a) of section 5300.4 requires that an account holder "shall be a natural person eighteen (18) years of age or older." This requirement is consistent with section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law, which states that "No association or corporation which is licensed or franchised by the board shall permit any person who is actually and apparently under eighteen years of age to bet on a horse race conducted by it nor shall such person be permitted to bet at an establishment of a regional

corporation conducting off-track betting.” The association, corporation or off-track regional corporation is responsible for ensuring that no person – including persons who hold bearer accounts or wish to wager under a bearer account – is under the age of eighteen if they wish to place a bet. Section 5300(a)(1) simply reiterates the section 104 restriction so as to provide clear language and guidance to regulated parties. No additional rules were included in regard to general age proof requirements because Board staff has determined that Section 104 is self-executing and does not require additional rules in order to effectively enforce its provisions. The Board expects licensees to apply the same age proof requirements for section 5300.4(a)(1) as it does for section 104 of RPWBL.

(9) Federal Standards: There are no federal standards which specifically govern these pari-mutuel wagering activities. The Unlawful Internet Gambling Act of 2006 states that “unlawful Internet gambling” shall not include any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.).

(10) Compliance Schedule: These rules will become effective upon the date of publication in the State Register subsequent to final adoption by the Board. It is anticipated that regulated entities can achieve compliance on the date of publication of this rule.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment addresses the limited issue of operational and administrative aspects of Internet and telephone account wagering. This rule would affect race track operators and off-track betting corporations throughout New York State, all of who currently offer telephone account wagering. This rule is consistent with current practices employed by such entities, as well as certain disclosure and operational plan requirements of the Racing and Wagering Board. This rule is intended to modify the Board’s rules to properly regulate the expansion of pari-mutuel wagering into the realm of the Internet and telephone wagering as authorized by the Legislature in 2006. It does not limit job opportunities. In fact, the increased revenue from pari-mutuel wagering over the Internet may help preserve and expand economic opportunities in the New York State horse racing industry by capturing revenue that is wagered over the Internet on horseracing in other states and countries. Establishing Internet and telephone account wagering standards does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102 (8) because race track operators and off-track betting corporations are not small businesses. Nor does this rule affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry because the race track operators and off-track betting corporations are able to use the current telephone account wagering and Internet server technology that they currently possess.

Article 12-B of the Real Property Law (Home Inspection Professional Licensing Act, which became effective Dec. 31, 2005), requires that no person shall conduct a home inspection for compensation unless that person is licensed as a home inspector in accordance with requirements set forth in the statute, including meeting specific standards for education and experience. Further, section 444-f(1) of article 12-B, requires that applicants for renewal of a license as a home inspector must complete a course of continuing education approved by the Secretary of State. Accordingly, to ensure that prospective applicants continue to meet the educational standards required for their profession, this rule has been adopted on an emergency basis. As such, it is similar to those required by other regulatory statutes, and provides a greater measure of assurance to the general public that home inspectors are qualified for licensure. As part of fulfilling its ongoing obligation to provide appropriate guidelines and standards for the profession, the state home inspection council has only recently adopted the number of course hours required for meeting the continuing education requirement, thus necessitating the adoption of this rule on an emergency basis. This rule is being adopted on an emergency basis so that it can remain in effect until it is adopted on a permanent basis.

Subject: Continuing education requirements for licensed home inspectors.

Purpose: To establish standards for continuing education courses for licensed home inspectors.

Text of emergency rule: An Amendment to 19 NYCRR Part 197 is adopted to read as follows:

SUBPART 197-3. HOME INSPECTION CONTINUING EDUCATION COURSES

Section 197-3.1 General requirements.

(a) *Renewals.* For all home inspection licenses that expire prior to December 31, 2008, no renewal license shall be issued unless said licensee has completed 6 hours of approved continuing education within the two-year period immediately preceding such renewal. For all home inspection licenses that expire on or after December 31, 2008, no renewal license shall be issued unless said licensee has completed 24 hours of approved continuing education within the two-year period immediately preceding such renewal.

(b) *Course approval.* No offering of a course of study in the home inspection field for the purpose of compliance with the continuing education requirements of subdivision (a) of this section shall be acceptable for credit unless such course of study has been approved by the Department of State under the provisions of this Part.

Section 197-3.2 Approved entities.

Continuing education home inspection courses may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency approved by the Commissioner of Education; public or private schools; and home inspection related professional societies and organizations. Types of instruction which shall not be acceptable as meeting continuing education requirements include, but are not limited to:

(a) offerings in basic computer skills training, instructional navigation of the Internet, instructional use of generic computer software or industry specific report writing software, instruction in personal motivation, business marketing, salesmanship, radon and pests.

Section 197-3.3 Request for approval of course of study.

The following applies to courses to be presented in a class-room setting where the instructor is present with the class. Requests for approval of courses of study in the home inspection field to be given to satisfy the requirements for continuing education under the provisions of this Part shall be made 60 days before the proposed course is to be given. The request shall include the following:

- (a) name, address and telephone number of the applicant;
- (b) if applicant is a partnership, the names of the partners in the entity; if a corporation, the names of any persons who own five percent or more of the stock of the entity;
- (c) title of each course to be offered;
- (d) location of each course offered;
- (e) duration and time of each course offered;
- (f) procedure for taking attendance;
- (g) a detailed outline of the subject matter of each course or seminar containing at least one hour of instruction up to 24 hours of instruction, together with the time sequence of each segment thereof and teaching techniques used in each segment; and
- (h) description of materials to be distributed to the participants.

Section 197-3.4 Program Approval.

Department of State

EMERGENCY RULE MAKING

Licensed Home Inspectors

I.D. No. DOS-45-07-00002-E
Filing No. 1128
Filing date: Oct. 19, 2007
Effective date: Oct. 19, 2007

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

Action taken: Addition of Subpart 197-3 to Title 19 NYCRR.

Statutory authority: Real Property Law, section 444-f

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

Specific reasons underlying the finding of necessity: This rule was adopted on an emergency basis to preserve and enhance the public welfare.

Sponsors delivering a course may file an application for approval within 30 days of the completion of that course. The sponsor must advise registrants that approval is not guaranteed.

Section 197-3.5 Successful completion of course.

(a) Any course for continuing education shall be accepted for credit on the basis of attendance only. The course administrator must submit to the Department of State within 15 days of completion of the class, the names of all individuals who successfully complete the approved course together with the unique identification number assigned by the Department of State to all such individuals.

(b) Evidence of successful completion of the course must be furnished to students in certificate form. The certificates must indicate the following: the name of the approved entity, the name of the course, the code number of the course, and that the student who shall be named has satisfactorily completed a continuing education course approved by the Department of State and the number of hours earned. The certificate must be signed and dated by the person authorized to sign certificates.

Section 197-3.6 Equivalency Credit.

(a) A licensee who teaches an approved home inspection course pursuant to Subpart 197-2 of this Part or an approved course offered for continuing education shall be credited with two hours for each hour of actual teaching performed. Records of such teaching shall be maintained by the person or organization presenting the course and certified on forms prescribed by the Department of State. The records of such teaching shall be deemed records of attendance for all purposes of these rules. Credit shall not be awarded for teaching the same course more than once in a license cycle. Instructors must submit evidence of such teaching experience with an equivalency application.

(b) Individuals who complete a course of study offered outside of the State of New York, which course has not been approved by the Department of State, may file a request to the Department of State for review and evaluation. All applicants for such consideration must be submitted with official documentation of satisfactory completion and the official descriptions of the course of study.

(c) All applications for and evidence of equivalency credit must be submitted to the Department of State for consideration at least 30 days prior to the expiration of the license.

Section 197-3.7 Extension of time to complete courses.

The Department of State may grant a waiver to any licensee who evidences bona fide hardship precluding completion of the continuing education requirements prior to the time the renewal application is to be filed. A licensee seeking such a waiver shall submit a written request, together with the evidence demonstrating such hardship. The licensee will be notified if their extension has been granted.

Section 197-3.8 Computation of instruction time.

To meet the minimum statutory requirement, attendance shall be computed on the basis of an hour equaling 60 minutes.

Section 197-3.9 Attendance and Record Retention.

(a) No licensed person shall receive credit for any course presented in a class-room setting if he or she is absent from the class room, during any instructional period, for a period or periods totaling more than 10 percent of the time prescribed for the course pursuant to section 197-3.3(g) of this Part, and no licensed person shall be absent from the class room except for a reasonable and unavoidable cause.

(b) The person or organization conducting the course shall certify to the Department of State the name of each licensed person who successfully completed the course of study and his or her unique identification number as assigned by the Department of State, and shall maintain its attendance records and a copy of such report for three years and, in addition, shall maintain the following records concerning the course:

(1) the approval number issued by the Department of State for the course;

(2) title and description of the course;

(3) the dates and hours the course was given; and

(4) the names and Unique Identification numbers of the persons who took the course and whether they completed it successfully.

Section 197-3.10 Policies concerning course cancellation and tuition refund.

Any educational institution or other organization requesting from the Department of State approval for home inspection courses must have a policy relating to course cancellation and tuition refunds. Such policy must be provided in writing to prospective students prior to the acceptance of any fees.

Section 197-3.11 Auditing.

A duly authorized designee of the Department of State may audit any course offered and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

Section 197-3.12 Change in approved course of study.

There shall be no change or alteration in any approved course of study without prior written notice to, and approval by, the Department of State.

Section 197-3.13 Suspensions and denials of school approval.

The Department of State may deny, suspend or revoke the approval of a home inspection school, if it is determined that they are not in compliance with the law and rules. If disciplinary action is taken, a written order of suspension, revocation, or denial of approval will be issued. Anyone who objects to such denial, suspension or revocation shall have the opportunity to be heard by the Secretary of State or his or her designee.

Section 197-3.14 Open to public.

All courses approved pursuant to this Part shall be open to all members of the public regardless of the membership of the prospective student in any home inspection professional society or organization.

Section 197-3.15 Facilities.

Each course shall be presented in such premises and in such facilities as shall be necessary to properly present the course.

Section 197-3.16 Faculty.

(a) Each instructor for an approved home inspection course of study must be approved by the Department of State. To be approved, an instructor must submit an application along with a resume reflecting three years of experience as a home inspector during which time the applicant has completed at least 250 home inspections.

(b) An instructor who does not qualify under subdivision (a) of this section may be approved as a technical expert if the instructor submits an application and resume establishing, to the satisfaction of the Department of State, that the applicant is an expert in and has at least three years' experience in a specific technical subject related to home inspection. Approval by the Department of State shall specify the subject(s) within the home inspection course or course module for which approval is given.

Section 197-3.17 Continuing education credit.

No continuing education course will be considered for continuing education credit more than once within the two year cycle of renewal.

Section 197-3.18 Registration period.

Each registration or renewal period for approved programs or courses shall be for 12 months or a part thereof, said period to commence on January 1 or date thereafter and to continue until December 31.

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 16, 2008.

Text of emergency rule and any required statements and analyses may be obtained from: Whitney A. Clark, Department of State, 41 State St., Albany, NY 12231, (518) 473-2728, e-mail: whitney.clark@dos.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Article 12-B (Home Inspection Professional Licensing Act) of the Real Property Law, enacted as Chapter 461 of the Laws of 2004, and amended by the Laws of 2005, ch. 225, provides that no person shall perform a home inspection for compensation unless that person is licensed as a home inspector. The statute sets forth minimum standards of education and experience required to obtain a license as a home inspector. These include the successful completion of an extensive course of study of not less than one hundred forty hours, including at least forty hours of field-based inspections in the presence of a licensed home inspector, professional engineer or architect; performance of not less than one hundred home inspections under the direct supervision of a home inspector, professional engineer or architect; and passing a standardized written examination.

Real Property Law, § 444-f (1) provides that licenses for home inspectors shall be valid for two years, and are subject to renewal only after successful completion of a course of continuing education approved by the Secretary of State in consultation with the home inspection council. This rule fulfills that obligation by outlining the continuing education requirements for home inspectors, and setting appropriate standards for approval of home inspection courses. Accordingly, the Secretary of State has expressed authority to adopt this rule.

2. Legislative objectives:

In enacting Article 12-B of the Real Property Law, the legislature emphasized the significant role played by home inspectors, and the reliance consumers place upon their reports in purchasing homes, especially when encouraged to do so by mortgage lenders. Recognizing that not all

persons providing this service may be reliable, this legislation was enacted to provide additional assurance to consumers that those individuals performing such inspections are qualified to do so. The statute sets minimum standards for the home inspection profession, which include an extensive course of study of not less than one hundred forty hours, including at least forty hours of field based inspections in the presence of a licensed home inspector, professional engineer or architect; the performance of not less than one hundred home inspections under the direct supervision of a home inspector, professional engineer or architect; and passing a standardized written examination. In addition, all applicants for renewal of a license must have successfully completed a course of continuing education approved by the Secretary of State.

Thus, Article 12-B was designed to “protect the public,” especially from those who present themselves as qualified professionals, but without the necessary education and experience.¹ This rule re-enforces the stated objectives of the Legislature when it enacted Article 12-B, by providing appropriate standards for maintaining the skills required by professional home inspectors.

3. Needs and benefits:

Real Property Law § 444-f(1) requires all home inspectors seeking renewal of their licenses to have successfully completed a course of continuing education approved by the Secretary of State, in consultation with the home inspection council. Created by statute, the home inspection council is an advisory board that advises the Secretary of State on the need for certain regulatory action, including continuing education. The home inspection council has advised the Secretary of State that this rule making is necessary to ensure that all home inspectors who apply for renewal of their licenses will have had the opportunity to meet the statutory continuing education requirement.

The rule making will pro rate the continuing education requirement for certain licensees. Licensees whose licenses expire prior to December 31, 2008 will have to complete six hours of approved continuing education. Those whose licenses expire on or after December 31, 2008 will be required to complete the full 24 hours of continuing education.

In addition, consumers benefit from the assurance that persons hired to inspect the homes they purchase continue to meet the qualifications and experience needed to render professional service.

4. Costs:

a. Costs to regulated parties:

Licensees seeking renewal will be required to pay the cost of attending and completing an approved course of study for the required number of hours. The Department has conferred with several education providers throughout the State and estimates that course providers will charge an average of \$500 for 24 hours of continuing education courses.

b. Costs to the Department of State:

The Department of State anticipates that the cost and implementation will be minimal, and administration of this rule will be accomplished using existing resources.

c. Costs to State and local governments:

The rule does not otherwise impose any implementation or compliance costs on State or local governments.

5. Local government mandates:

The rule does not impose any program, service, duty or other responsibility on local governments.

6. Paperwork:

The rule requires that each applicant seeking renewal of a home inspector’s license obtain and retain certificates as evidence of the successful completion of the required number of hours of continuing education.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

During regular meetings, the state home inspection council reviewed and considered various proposals for compliance with the statutory mandate for continuing education standards, ultimately recommending approval of the number of hours, courses of study, and methods of ensuring compliance adopted by this rule. The home inspection council considered waiving the continuing education requirement completely, or reducing the requirement to a de minimus amount. The Department, in consultation with the council determined that six hours of continuing education was appropriate insofar as it provides an accommodation to licensees whose licenses expire prior to December 31, 2008, while providing protections to consumers by guaranteeing that all licensed home inspectors complete an appropriate amount of continuing education.

9. Federal standards:

There are currently no federal standards requiring continuing education courses for licensed home inspectors.

10. Compliance schedule:

Applicants for renewal of a home inspector’s license have two years in which to comply with the continuing education requirement, with a pro-rated reduction for renewal of licenses expiring less than two years from the effective date of this rule. The Department of State maintains a list on its website of approved continuing education providers, with their relevant contact information to assist licensees to locate approved continuing education courses. Therefore, regulated parties will be on notice of, and have adequate time to comply with the requirements imposed by the proposed rule making.

¹McKinney’s Session Laws of New York, 2005, P. 1951

Regulatory Flexibility Analysis

1. Effect of rule:

The rule affects all licensed home inspectors (individuals, firms, companies, partnerships, limited liability companies, or corporations) who seek renewal of a home inspector’s license. Each such applicant will be required to expend the time and incur the costs of attending the required number of hours needed for successful completion of an approved course of continuing education, and obtain a certificate as evidence of successful completion of that requirement. However, it is not anticipated that this requirement will place an undue financial burden, or impose a hardship for those applicants seeking to maintain their qualifications for providing professional services to consumers.

The rule does not apply to local governments.

2. Compliance requirements:

Applicants seeking renewal of their licenses will be required to attend and complete an approved course of study of continuing education, and obtain certificates as proof of the successful completion of these courses.

3. Professional services:

Small businesses will not need professional services in order to comply with this rule.

4. Compliance costs:

It is anticipated that small businesses will incur only the costs of any fees required for attending and completing an approved course of continuing education. It is estimated that the cost of completing 24 hours of continuing education will be \$500 per licensee.

5. Economic and technological feasibility:

With the exception of the cost associated with taking the required continuing education courses as set forth under the compliance costs section of this statement, it is not anticipated that small businesses will incur any additional costs or require technical expertise as a result of implementation of this rule.

6. Minimizing adverse economic impact:

With the exception of the cost associated with taking the required continuing education courses as set forth under the compliance costs section of this statement, it is not anticipated that small businesses will incur any additional costs as a result of implementation of this rule.

7. Small business and local government participation:

The home inspection council, in consultation with the Secretary of State, recommended approval of the minimum requirements for continuing education adopted by this rule. Members of the home inspection council are diverse and include owners of small businesses. The subject matter of the proposed rule was further discussed at meetings of the home inspection council which were open to public comment.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies equally to all licensed home inspectors in all areas of the state—urban, suburban and rural. The rule does not apply to public entities located in rural areas.

2. Reporting, recordkeeping and other compliance requirements:

Reporting and recordkeeping requirements include the obligation of all applicants seeking renewal of their licenses to maintain course completion certificates as proof of completing the required continuing education. Applicants for renewal of a home inspector’s license in rural areas will not need to employ any additional professional services in order to comply with this rule.

3. Costs:

Other than the estimated cost of \$500 per licensee to complete 24 hours of continuing education, it is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any costs of compliance as a result of this rule.

4. Minimizing adverse impact:

Other than the estimated cost of \$500 per licensee to complete 24 hours of continuing education, it is not anticipated that small businesses, whether located in urban, suburban or rural areas, will incur any additional costs of compliance.

5. Rural area participation:

The home inspection council, in consultation with the Secretary of State, recommended approval of the minimum requirements for continuing education adopted by this rule. Members of the home inspection council represent geographically diverse areas including rural areas of New York State. In addition, the subject matter of the proposed rule was discussed during open meetings of the home inspection council and which were open to public comment.

Job Impact Statement

This rule will not have any substantial adverse impact on jobs and employment opportunities. As a result of enactment of Article 12-B of the Real Property Law, which became effective December 31, 2005, any person performing a home inspection for compensation in this state must obtain a license. Licenses are valid for two years, and may be renewed only upon successful completion of an approved course of continuing education. Inasmuch as this rule affects only those licensed home inspectors who seek renewal of license, it promotes employment opportunities by ensuring that only those qualified to provide this service, will be licensed.