

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Procedures for Evaluating Petroleum Products

I.D. No. AAM-20-06-00009-A
Filing No. 1062
Filing date: Sept. 5, 2006
Effective date: Sept. 20, 2006

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

Action taken: Amendment of sections 224.2, 224.3(b), 224.5(g)(2) and 224.10(c) of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18 and 179

Subject: Procedures for evaluating petroleum products; standards for cetane rating of and “maximum cloud point” of diesel fuel.

Purpose: To incorporate by reference Book 5 of the 2006 edition of the Annual Book of ASTM Standards (“annual book”); incorporate by reference the 2005 revision of specification D975 in the annual book; and delete the requirement that distributors and refiners of diesel fuel must certify the “maximum cloud point” of such fuel.

Text or summary was published in the notice of proposed rule making, I.D. No. AAM-20-06-00009-P, Issue of May 17, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Ross Andersen, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-3146, e-mail: ross.andersen@agmkt.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Sanitation and Processing Procedures for Slaughterhouses

I.D. No. AAM-20-06-00017-A
Filing No. 1060
Filing date: Sept. 1, 2006
Effective date: Sept. 20, 2006

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

Action taken: Amendment of Part 245 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16(1), 18(6) and 96-a

Subject: Sanitation and processing procedures for slaughterhouses.

Purpose: To improve the sanitary conditions and processing procedures of slaughterhouses in order to help ensure the wholesomeness of meat and poultry produced therein.

Text or summary was published in the notice of proposed rule making, I.D. No. AAM-20-06-00017-P, Issue of May 17, 2006.

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

Text of rule and any required statements and analyses may be obtained from: J. Joseph Corby, Director, Division of Food Safety and Inspection, Department of Agriculture and Markets, 10B Airline Dr., Albany, NY 12235, (518) 457-4492

Assessment of Public Comment

By letter dated February 27, 2006, the Department received the following comments from the New York Poultry & Livestock Associates (NYPLA), a trade organization.

Comment: Section 245.2(b) which states, in part, that the outside premises shall be maintained in a condition that prevents it from becoming an attractant for pests, is ambiguous.

Response: The Department disagrees, since section 245.2(b) clearly specifies that garbage, refuse, debris and waste materials shall be stored as to minimize the development of odor and to prevent the outside premises from becoming an attractant and harborage or breeding place for pests.

Comment: “Page 2, Sec. 245.2(c) Delete the words “abundant” and “sufficient.”

Response: The Department disagrees, since these terms adequately define the degree of light and ventilation necessary to ensure sanitary conditions in the establishment.

Comment: “Page 2, Sec. 245.3(g) Please give the distributors reasonable time to pick up the cages from the markets. To wit, ...Twenty-four (24) hours...”

Response: The Department considered this time-frame, but concluded that it was too long a period of time from a disease control perspective. The longer an unclean crate remains in the live poultry market, the greater the chance for avian influenza to spread to that market in the event the crate is contaminated with virus. Avian influenza would readily establish itself in a live poultry market, if a contaminated crate were to remain there for 24 hours.

Environmental Facilities Corporation

NOTICE OF ADOPTION

New York State Drinking Water Revolving Fund (DWSRF) Program

I.D. No. EFC-28-06-00008-A

Filing No. 1056

Filing date: Aug. 31, 2006

Effective date: Sept. 20, 2006

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

Action taken: Amendment of Part 2604 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1284(5)

Subject: New York State Drinking Water State Revolving Fund (DWSRF) Program.

Purpose: To conform the DWSRF regulations to current practices and to certain changes in the Clean Water State Revolving Fund regulations which were recently amended. The proposed rule revises the definition of "corpus allocation" to refer to the applicable Public Health Law section, and allow EFC to use other security or funds to reduce financing costs to borrowers under the DWSRF program. The proposed rule also simplifies the definition of "interest rate subsidy" across the program. The proposed rule clarifies that the definition of loans also includes bonds purchased with moneys from the DWSRF. The proposed rule also raises the maximum project cost for projects eligible for grant and reduced interest rate loans from \$10 million to \$14 million. The word "grant" has also been added to the definition of "hardship assistance" to make it clear to prospective DWSRF recipients that grants are available under the DWSRF program.

Text or summary was published in the notice of proposed rule making, I.D. No. EFC-28-06-00008-P, Issue of July 12, 2006.

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

Text of rule and any required statements and analyses may be obtained from: James R. Levine, Senior Vice President and General Counsel, Environmental Facilities Corporation, 625 Broadway, Albany, NY 12207-2997, (518) 402-6969, e-mail: levine@nysefc.org

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Criminal History Record Check

I.D. No. HLT-38-06-00014-E

Filing No. 1057

Filing date: Sept. 1, 2006

Effective date: Sept. 1, 2006

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

Action taken: Addition of Part 402 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 899-a(4) and Executive Law, section 845-b(12)

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

Specific reasons underlying the finding of necessity: Emergency agency action is necessary for preservation of the public health, public safety and general welfare.

The regulation is needed on an emergency basis to implement the Department of Health's statutory duty to act on requests for criminal history record checks which are required by law. The law is intended to protect patients, residents, and clients of nursing homes and home health care providers from risk of abuse or being victims of criminal activity. These regulations are necessary to implement the law as of its effective date so that the Department of Health can fulfill its statutory duty of ensuring that the health, safety and welfare of such patients, residents and clients are not unnecessarily at risk.

Subject: Criminal history record check.

Purpose: To implement L. 2005, ch. 769 and a chapter of the Laws of 2006 (S. 6630) by requiring nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs to request criminal background checks of certain prospective employees.

Substance of emergency rule: This regulation adds a new Part 402 to Title 10 NYCRR.

Chapter 769 of the Laws of 2005, as amended by Chapter 331 of the Laws of 2006, imposed the requirement of criminal history record checks commencing September 1, 2006 for each prospective unlicensed employee of nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs who will provide direct care or supervision to patients, residents or clients of such providers. The purpose of this legislation was to enable such providers to identify appropriate individuals to staff their facilities and programs, through a review of both State and federal criminal history information.

The legislation requires the State Department of Health to promulgate regulations that establish standards and procedures for the criminal history record checks required by the statute. Accordingly, these regulations establish provisions governing the procedures by which fingerprints will be obtained, and describe the requirements and responsibilities of the Department and the aforementioned providers with regard to this process.

The proposed rule also describes the extent to which reimbursement is available to such providers to cover costs associated with criminal history record checks and obtaining the fingerprints necessary to obtain the criminal history record check.

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 November 29, 2006.

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

Regulatory Impact Statement

Statutory Authority:

Section 2899-a (4) of the Public Health Law requires the State Commissioner of Health to promulgate regulations implementing new Article 28-E of the Public Health Law which requires all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs ("the providers") to request, through the Department of Health ("the Department"), a criminal history record check for certain unlicensed prospective employees of such providers.

Subdivision (12) of section 845-b of the Executive Law requires the Department to promulgate rules and regulations necessary to implement criminal history information requests.

Legislative Objectives:

Chapter 769 of the Laws of 2005 and Chapter 331 of the Laws of 2006 establish a requirement for all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs to obtain criminal history record checks of certain unlicensed prospective employees who will provide direct care or supervision to patients, residents or clients of such providers. This is intended to enable such providers to identify and employ appropriate individuals to staff their facilities and programs and to ensure patient safety and security.

Needs and Benefits:

New York State has the responsibility to ensure the safety of its most vulnerable citizens who may be unable to protect and defend themselves from abuse or mistreatment at the hands of the very persons charged with providing care to them. While the majority of unlicensed employees in all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs are dedicated, compassionate workers who provide quality care, there are cases in which criminal activity and patient abuse by such employees has occurred. While

this proposal will not eliminate all instances of abuse, it will eliminate many of the opportunities for individuals with a criminal record to provide direct care or supervision to those most at risk. Pursuant to Chapter 769 of the laws of 2005 and Chapter 331 of the Laws of 2006 (“the Chapter Laws”), this proposal requires the providers to request the Department to obtain criminal history information from the Division of Criminal Justice Services (“the Division”) and a national criminal history check from the FBI, concerning each prospective unlicensed employee who will provide direct care or supervision to the provider’s patients, residents or clients.

Each provider subject to these requirements must designate one or more “authorized persons” who will be empowered to request, receive, and review this information. Before a prospective unlicensed employee who will provide direct care or supervision to patients, residents or clients can be permanently hired, he or she must consent to having his/her fingerprints taken and a criminal history record check performed. The fingerprints will be taken and sent to the Department, which will then submit them to the Division. The Division will provide criminal history information for each person back to the Department.

The Department will then review the information and will advise the provider whether or not the applicant has a criminal history, and, if so, whether the criminal history is of such a nature that the Department disapproves the prospective employee’s eligibility for employment. (e.g., the person has a felony conviction for a sex offense or a violent felony or for any crime specifically listed in section 845-B of the Executive Law and relevant to the prospective unlicensed employees of such providers). In some cases, a person may have a criminal background that does not rise to the level where the Department will disapprove eligibility for employment. The proposed regulations allow the provider, in such cases, to obtain sufficient information to enable it to make its own determination as to whether or not to employ such person. There will also be instances in which the criminal history information reveals a felony charge without a final disposition. In those cases, the Department will hold the application in abeyance until the charge is resolved. The prospective employee can be temporarily hired but not to provide direct care or supervision to patients, residents or clients of such providers.

The proposal implements the statutory requirement of affording the individual an opportunity to explain, in writing, why his or her eligibility for employment should not be disapproved before the Department can finally inform a provider that it disapproves eligibility for employment. If the Department maintains its determination to disapprove eligibility for employment, the provider must notify the person that the criminal history information is the basis for the disapproval of employment.

The proposed regulations establish certain responsibilities of providers in implementing the criminal history record review required by the law. For example, a provider must notify the Department when an individual for whom a criminal history has been sought is no longer subject to such check. Providers also must ensure that prospective employees who will be subject to the criminal history record check are notified of the provider’s right to request his/her criminal history information, and that he or she has the right to obtain, review, and seek correction of such information in accordance with regulations of the Division, as well as with the FBI with regard to federal criminal history information.

Costs:

Costs to State Government:

The Department estimates that the new requirements will result in approximately 108,000 submissions for a criminal history record check on an annual basis. This number of submissions for an initial criminal history record check will decrease over time as the criminal history record check database (CHRC) is populated overtime. The Department will allow providers to access any prior Department determination about a prospective employee at such time as the prospective employee presents himself or herself to such providers for employment. In the event that the prospective employee has a permanent record already on file with the Department, this information promptly will be made available to the provider who intends to hire such prospective employee.

The provider will forward with the request for the criminal history review, \$75 to cover the projected fee established by the Division for processing a State criminal history record check and a \$24 fee for a national criminal history record check. The Department estimates that the provider’s administrative costs for obtaining the fingerprints will be \$13.00 per print. The total annual cost to providers is estimated to be approximately \$12 million.

Requests by licensed home care services agencies (LHCSAs) are estimated to constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual cost to LHCSAs is estimated to be

approximately \$6 million. Reimbursement shall be made available to LHCSAs in an equitable and direct manner for the above fees and costs subject to funds being appropriated by the State Legislature in any given fiscal year for this purpose. Costs to State government will be determined by the extent of the appropriations.

The Department estimates that nursing homes, certified home health agencies and long term home health care programs will constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual costs to nursing homes, certified home health agencies and long term home health care programs is estimated to be approximately \$6 million. These providers may, subject to federal financial participation, claim the above fees and costs as reimbursable costs under the medical assistance program (Medicaid) and may recover the Medicaid percent of such fees and costs. Reimbursement to such providers will be determined by the percent of Medicaid days of care to total days of care. Therefore, approximately \$6 million of the total costs for these providers will be subject to a 50 percent federal share and approximately \$2.3 million will be borne entirely by the State.

Costs to Local Governments:

There will be no costs to local governments for reimbursement of the costs of the criminal history record check paid by LHCSAs. LHCSAs will receive reimbursement from the State subject to an appropriation (See “Costs to State Government”).

Costs to local governments for reimbursement of the costs of the criminal history record check paid by nursing homes, certified home health agencies, and long term home health care programs will be the local government share of Medicaid reimbursement to such providers which is estimated to be annual additional cost to local governments of approximately \$700,000 (See “Costs to State Government”).

Costs to Private Regulated Parties:

Costs to LHCSAs will be determined by the extent of annual appropriations by the State Legislature (See “Costs to State Government”).

Costs to nursing homes, certified home health agencies and long term home health care programs will be determined by their Medicaid percentage of total costs (See “Costs to State Government”).

Costs to the Department of Health:

Estimated start-up costs for the Department of Health which includes the purchase of equipment, activities and systems and staffing costs are approximately \$2.8 million.

Local Government Mandates:

The required criminal history record check is a statutory requirement, which does not impose any new or additional duties or responsibilities upon county, city, town, village, school or fire districts. The Chapter Laws state that they supercede any local laws or laws of any political subdivision of the state to the extent provided for such Chapter Laws.

Paperwork:

Chapter 769 of the Laws of 2005 and Chapter 331 of the Laws of 2006 require that new forms be developed for use in the process of requesting criminal history record information. The forms are, for example, an informed consent form to be completed by the subject party and the request form to be completed by the authorized person designated by the provider. Temporarily approved employees are required to complete an attestation regarding incidents/abuse. Provider supervision of temporary employees must be documented. In addition, other forms will be required by the department such as a form to designate an authorized party or forms to be completed when someone who has had a criminal history record check is no longer subject to the check.

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

Duplication:

This regulatory amendment does not duplicate existing State or federal requirements. The Chapter Laws state that they supercede and apply in lieu of any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

Alternatives:

No significant alternatives are available. The Department is required by the Chapter Laws to promulgate implementing regulations.

Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The Chapter Laws mandate that the providers request criminal history record checks for certain unlicensed prospective employees on and after September 1, 2006. These regulations are proposed to be effective on an emergency basis as of September 1, 2006.

Regulatory Flexibility Analysis

Effect of Rule on Small Businesses and Local Governments:

For the purpose of this Regulatory Flexibility Analysis, small businesses are considered any nursing home or home care agency within New York state which is independently owned and operated, and employs 100 individuals or less. Approximately 100 nursing homes and 200 home care services agencies would therefore be considered “small businesses,” and would be subject to this regulation.

For purposes of this regulatory flexibility analysis, small businesses were considered to be long term home health care programs with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the long term home health care program cost report 77 out of 110 long term home health care programs were identified as employing fewer than 100 employees. Twenty-eight local governments have been identified as operating long term home health care programs.

Compliance Requirements:

Providers must, by statute, on and after September 1, 2006, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform prospective unlicensed employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State and the FBI. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not the prospective employee’s eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

Professional Services:

No additional professional services will be required by small businesses or local governments to comply with this rule.

Compliance Costs:

For programs eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers (See “Regulatory Impact Statement - Costs to State Government”).

For LHCSAs which are unable to access reimbursement from state and /or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to an appropriation by the State Legislature (See “Regulatory Impact Statement - Costs to State Government”).

There will be costs to local governments only to the extent such local governments are providers subject to the regulations.

Economic and Technological Feasibility:

The proposed regulations do not impose on regulated parties the use of any technological processes. Fingerprints will be taken generally by the traditional “ink and roll” process. Under the “ink and roll” method, a trained individual rolls a person’s fingers in ink and then manually places the fingers on a card to leave an ink print. The card would then need to be mailed to the Division by the Department. However, before the Department could submit the card, demographic information would need to be filled in on the card (such as the person’s name, address, etc.) into the Department databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint card is difficult to read.

The Department hopes to move in the future to Live Scan. Live Scan is a technology that captures fingerprints electronically and would transmit the fingerprints directly to the Department to obtain criminal history information.

Minimizing Adverse Impact:

The Department considered the approaches for minimizing adverse economic impact listed in SAPA Section 202-b (1) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

Small Businesses and Local Government Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments were solicited from all affected parties. Informational briefings were held with such associations. There will be informational letters to providers prior to the effective date of the regulations.

Rural Area Flexibility Analysis

Effect of Rule:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population of greater than 200,000 includes towns

with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000.

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene	Saratoga	

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements:

Providers, including those in rural areas, must, by statute, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform covered unlicensed prospective employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

Professional Services:

No additional professional services will be necessary to comply with the proposed regulations.

Compliance Costs:

For programs located in rural areas eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers. (See “Regulatory Impact Statement – Costs to State Government”)

For LHCSAs located in rural areas which are unable to access reimbursement from state/and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to appropriation by the State Legislature. (See “Regulatory Impact Statement – Costs to State Government”)

Minimizing Adverse Impact:

The Department considered the approaches for minimizing adverse economic impact listed in SAPA section 202-bb (2) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

Rural Area Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments solicited from all affected parties. Such associations include members from rural areas. Informational briefings were held with such associations. There will be informational letters to providers to include rural area providers prior to the effective date of the regulations.

Job Impact Statement

A Job Impact statement is not necessary for this filing. Proposed new 10 NYCRR Part 402 will not have any adverse impact on the existing unlicensed employees of providers as they apply only to future prospective unlicensed employees hired or used on or after September 1, 2006. It is anticipated that the number of all future prospective unlicensed employees of providers who provide direct care or supervision to patients, residents or clients will be reduced to the degree that the criminal history record check reveals a criminal record barring such employment.

Insurance Department

EMERGENCY RULE MAKING

Claims for Personal Injury Protection Benefits

I.D. No. INS-38-06-00015-E

Filing No. 1058

Filing date: Sept. 1, 2006

Effective date: Sept. 1, 2006

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

Action taken: Amendment of Subpart 65-3 (Regulation 68-C) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2601, 5106 and 5221; and Vehicle and Traffic Law, section 2407

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

Specific reasons underlying the finding of necessity: Section 11 of chapter 452 of the Laws of 2005 amended section 5106(b) and added a new subsection (d) to section 5106 of the Insurance Law. These sections relate to the eligible insurer's liability to pay first party benefits. Section 11 codifies the rules contained within Insurance Department Regulation No. 68 that are applicable when multiple insurers may be responsible to the claimant for the processing of first party benefits. It also enhances the current arbitration procedures to provide an expedited eligibility hearing option, when required, to designate an insurer responsible for processing the first party benefits. The amendment uses the terms "special expedited arbitration" and "applicant" when referring to the "expedited eligibility hearing" and "claimant".

Chapter 452 of the Laws of 2005 becomes effective on September 8, 2005 and it is essential that this amendment be promulgated on an emergency basis in order to have the procedures in place to implement the provisions in the law. The amendment provides the mechanism for informing applicants of the availability of the special expedited arbitration option.

For the reasons cited above, this amendment is being promulgated on an emergency basis for the preservation of the general welfare.

Subject: Claims for personal injury protection benefits.

Purpose: To require insurers to issue no-fault denials with specific wording so that the applicants will be aware that they can apply for special expedited arbitration to resolve the issue of which eligible insurer is designated for first party benefits.

Text of emergency rule: Subdivisions (b) and (c) of Section 65-3.12 is amended to read as follows:

(b) If a dispute regarding priority of payment arises among insurers who otherwise are liable for the payment of first-party benefits, then the first insurer to whom notice of claim is given pursuant to section 65-3.3 or 65-3.4(a) of this Subpart, by or on behalf of an eligible injured person, shall be responsible for payment to such person. Any such dispute shall be resolved in accordance with the arbitration procedures established pursuant to section 5105 of the Insurance Law and section 65-4.11 of this Part. *Each insurer that concludes that it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

(c) If the source of first-party benefits is at issue because the status of the injured person as a pedestrian or an occupant of a motor vehicle is in dispute, the insurer to whom notice of claim was given or if such notice was given to more than one insurer, the first insurer to whom notice was given shall, within 15 calendar days after receipt of notice, obtain an

agreement with the other insurer or insurers as to which insurer will furnish no-fault benefits. If such an agreement is not reached within the aforementioned 15 days, then the insurer to whom such notice was first given shall process the claim and pay first-party benefits and resolve the dispute in accordance with the arbitration procedures established pursuant to section 5105 of the Insurance Law and section 65-4.11 of this Part. *Each insurer that concludes that it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

Paragraphs (2), (3) and (4) of Section 65-3.13(a) are amended to read as follows:

(2) An applicant who is a named insured or a relative of a named insured covered by additional personal injury protection benefits, and who, while an operator or occupant of a motor vehicle, sustains a personal injury arising out of the use or operation of such motor vehicle outside of New York State, shall institute the claim against the insurer of the named insured or the relative. Where there is more than one insurer which would be the source of benefits, the first such insurer applied to shall process the claim, unless the insurers agree among themselves that another such insurer will accept and pay the claim initially. (See subdivision [b] of this section.) *If the insurers do not reach an agreement, then each insurer that concludes it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

(3) An applicant who is a named insured or a relative of a named insured covered for additional personal injury protection benefits, and who is neither an operator nor an occupant of a motor vehicle or a motorcycle, and who sustains a personal injury through the use or operation of a motor vehicle or a motorcycle shall institute the claim against the insurer of the named insured or the relative. Where there is more than one insurer which would be the source of benefits, the first such insurer applied to shall process the claim, unless the insurers agree among themselves that another such insurer will accept and pay the claim initially. (See subdivision [b] of this section.) *If the insurers do not reach an agreement, then each insurer that concludes it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

(4) An applicant who is not a named insured or a relative of a named insured covered for additional personal injury protection benefits, and who is an occupant of an insured motor vehicle covered for additional personal injury protection benefits or a motor vehicle operated by a person covered for additional personal injury protection benefits, and who sustains a

personal injury through the use or operation of the insured motor vehicle outside of New York State, shall institute the claim against the insurer of the owner or operator of the insured motor vehicle. Where there is more than one insurer which would be the source of benefits, the first such insurer applied to shall process the claim unless the insurers agree among themselves that another such insurer will accept and pay the claim initially. (See subdivision [b] of this section.) *If the insurers do not reach an agreement, then each insurer that concludes it was not the first insurer contacted to provide first party benefits shall issue a denial of claim form (NF-10) that includes the following statement in box 33:*

If after contacting the insurer that we advised you has primary responsibility for the payment of first party benefits, that insurer denies coverage for your claim, you have the option to submit this dispute for expedited arbitration by providing a copy of the denial form and a written request along with a \$40.00 filing fee to the organization listed under option two on the back of this form. Your \$40.00 filing fee will be refunded to you by the insurer determined to be responsible for processing your claim. This arbitration is limited solely to determining the insurer to process your claim, and it will not resolve issues regarding pending bills or consider any other defense to payment. You do not need to submit bills for this arbitration.

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 November 29, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Mike Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

Consolidated Regulatory Impact Statement

1. Statutory authority: Sections 201, 301, 2601, 5221 and 5106 of the Insurance Law and Section 2407 of the Vehicle and Traffic Law. Sections 201 and 301 authorize the Superintendent to prescribe regulations interpreting the Insurance Law as well as effectuating any power granted to the Superintendent under the Insurance Law and to prescribe forms or otherwise make regulations. Section 2601 prohibits insurers from engaging in unfair claim settlement practices and requires insurers to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies. Section 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation (MVAIC) in the payment of no-fault benefits to qualified persons. Section 5106 of the Insurance Law sets forth an expedited eligibility hearing option and authorizes the superintendent to promulgate procedures to resolve disputes among eligible insurers using the expedited arbitration process that will designate the insurer responsible for the payment of first party benefits.

2. Legislative objectives: Regulation 68 contains provisions implementing Article 51 of the Insurance Law, known as the Comprehensive Motor Vehicles Insurance Reparations Act, popularly referred to as the No-Fault Law. No-fault insurance was introduced to rectify many problems that were inherent in the existing tort system utilized to settle claims, and to provide for prompt payment of health care and loss of earnings benefits. Chapter 452 of the Laws of 2005 which amends Section 5106 of the Insurance Law codifies the rules contained within Insurance Department Regulation No. 68 that are applicable when multiple insurers may be responsible to the claimant for the processing of the claim for first party benefits. It also enhances the current arbitration procedures to include an expedited eligibility hearing option, when required, to designate the insurer for first party benefits.

3. Needs and benefits: When there was a dispute regarding which insurer, among two or more responsible insurers regarding who would be responsible for the payment of the claim for first party benefits to the applicant (injured party or health care provider per assignment of benefits from the injured party), generally the insurer that received notice of the claim first was required by regulation to furnish the benefits. When an insurer failed to comply with this regulatory requirement, the applicant's recourse was to seek resolution of the dispute in arbitration or a court of competent jurisdiction. Because of the inherent delays in the resolution of cases in arbitration and court, a faster recourse was needed to assure accident victims that the failure of one or more insurers to meet their regulatory responsibility would not result in the failure of accident victims to be swiftly compensated for their economic losses. Chapter 452 of the Laws of 2005 provides for an expedited eligibility hearing option. These rules implement the law and require an insurer to issue a denial with specific language advising the applicant of the availability of special expedited arbitration to resolve the issue of which insurer is to be designated to process the claim for first party benefits. The rules also provide the

procedures for administration of the special expedited arbitration for disputes regarding the designation of the insurer for first party benefits. By providing notification of, and procedures for, administration of the special expedited arbitration, an applicant can utilize the special expedited arbitration to expeditiously resolve all disputes regarding which insurer should be liable for the payment of the claim for first party benefits.

4. Costs: The arbitration alternative is mandated by Chapter 452 of the Laws of 2005 but it is anticipated that the increase in cases utilizing the special expedited arbitration to resolve priority of payments disputes will be minimal, because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes. [Circular Letter No. 16 (2005) was issued to remind insurers that they should be in compliance with the aforementioned subdivisions and paragraphs]. Any additional costs associated with these rules would be the result of claims for which insurers or self-insurers do not comply with the procedures outlined in subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a) thus causing the applicant to go to arbitration to resolve the "priority of payment" dispute. The additional costs would include: the costs of defending cases, the reimbursement of the filing fee by the insurer determined to be responsible for processing your claim and paying applicants' attorney fees. These additional cases will increase the insurers' and self insurers' share of costs from the American Arbitration Association. However, all these costs should be offset by savings as the use of the special expedited arbitration will be in lieu of regular arbitration or a court of competent jurisdiction. Health care providers that may be considered small businesses and that accept assignments should not experience any adverse effects as a result of these amendments since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Since these procedures are intended to expedite no-fault payments in the rare cases where there is unresolved conflict between insurers, providers should find that the procedure will save them money.

5. Local government mandates: Some local governments are self-insured for no-fault benefits and those entities will have to comply with the requirements of these rules. The Department has not been able to determine the number of local governments that are self-insured. However, we did outreach by contacting a large local government that is self-insured to determine the impact this change would have on them. It was determined that there would be a very minimal impact since almost all injuries are work related and therefore covered by workers compensation rather than no-fault law.

6. Paperwork: To the extent that additional applicants have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on insurers and self insurers associated with defending cases in special expedited arbitration and submitting legal briefs and documentary evidence. However, under most circumstances, the submission of the paperwork will eliminate the requirement of the attendance of the applicant (unless the arbitrator determines that a hearing is necessary) thus saving the applicant the time and expense of attending the special expedited arbitration. Since the special expedited arbitration option is being utilized to resolve "priority of payment" disputes, the applicant does not have to submit bills for this arbitration and the specific notification language for the special expedited arbitration required by this rule has been amended to specifically inform the applicant that bills do not have to be submitted. There will also be paperwork associated with reimbursing filing fees and paying applicants their attorney fees. The insurers and self insurers will also incur additional paperwork to comply with record retention requirements. However, it is anticipated that there will be few requests for the special expedited arbitration because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes and therefore paperwork should be minimal.

7. Duplication: None.

8. Alternatives: The Department considered changing the NF-10 form to include the specific notification language for the special expedited arbitration pre-printed on it. However; because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes, it is anticipated that there will be few requests for the special expedited arbitration and the specific notification language would be rarely used. Therefore, the Department decided against changing the form since the costs in-

volved, i.e., insurers and self-insurers would have to discard the current forms in use and print new forms, far outweigh the benefits of having pre-printed language. It was deemed preferable, for those rare instances where the language is needed, to have the affected entities write the prescribed language in space provided on the current form.

The Department considered using a shorter specific notification language for the special expedited arbitration. However, after receiving comments, and based on the Department's evaluation of these comments including assessment of the needs and benefits as well as any potential negative consequences that would result from making the change, it was determined that it would be appropriate to expand the specific notification language to provide further clarification.

It was also suggested that any filing fee be initially financed by the Department. The Department does not have the legislative authorization to fund an arbitration between private parties; therefore, the filing fee cannot be waived. However, in accordance with the regulation's existing provision that the filing fee will be refunded to the applicant by the insurer determined to be responsible for processing the claim, the Department has revised the required specific notification language to advise applicants of this provision.

9. Federal standards: None.

10. Compliance schedule: These rules have an immediate effective date because of the effective date of Chapter 452 of the Laws of 2005. The AAA, insurers, and self insurers will be able to implement these rules immediately upon the regulation taking affect.

Consolidated Regulatory Flexibility Analysis

1. Effect of the rule: The Insurance Department finds that these rules will generally not impose reporting, recordkeeping or other requirements on small businesses or local governments except as noted below. The basis for this finding is that these rules are primarily directed to property/casualty insurance companies authorized to do business in New York State and self-insurers, none of which fall within the definition of "small business". The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized property/casualty insurers and determined that none of them would fall within the definition of "small business", because there are none which are both independently owned and have less than one hundred employees. Self-insurers are typically large enough to have the financial ability to self insure losses and the Department has no information to indicate that any self-insurers are small business.

A health care provider and eligible injured person may agree to an assignment of benefits, which effectively transfers both the right to receive benefits and the responsibility for pursuing available remedies when claims are denied from the eligible injured person to the health care provider. Some health care providers may be considered small business.

Some local governments are self-insured for no-fault benefits. The Department has not been able to determine the number of local governments that are self-insured. However, we did outreach by contacting a large local government that is self-insured to determine the impact this change would have on them. It was determined that there would be a very minimal impact since almost all injuries are work related and therefore covered by workers compensation rather than no-fault law.

2. Compliance requirements: To the extent that additional applicants have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on health care providers in filing for special expedited arbitration and providing documentary evidence. There will be additional paperwork requirements imposed on local governments that are self insured for no-fault benefits associated with defending cases in special expedited arbitration and submitting legal briefs and documentary evidence. There will also be paperwork associated with the reimbursement of the filing fee by the insurer determined to be responsible for processing the claim and paying applicants their attorney fees. The local governments will also incur additional paperwork to comply with record retention requirements. However, the arbitration alternative is mandated by Chapter 452 of the Laws of 2005. It is anticipated that there will be few requests for the special expedited arbitration because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes [Circular Letter No. 16 (2005) was issued to remind insurers that they should be in compliance with the aforementioned subdivisions and paragraphs] and therefore paperwork should be minimal and the procedures established by this regulation should minimize adverse impact on the parties.

3. Professional services: The health care provider and local government are not required to use professional services to comply with the rules. However, it is at their option if they wish to use attorneys for the special expedited arbitration.

4. Compliance costs: Health care providers that may be considered small businesses and that accept assignments should not experience any adverse effects as a result of these amendments since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Since these procedures are intended to expedite no-fault payments in the rare cases where there is unresolved conflict between insurers, providers should find that the procedure will save them money. Additional arbitration requests may be filed against local governments who are self insured for no-fault benefits because applicants can seek the resolution of priority of payments disputes in special expedited arbitration. Such disputes will require the self-insurers to incur the costs of defending cases, the reimbursement of the filing fee by the insurer determined to be responsible for processing the claim and paying applicants their attorney fees. The additional cases will increase the self insured local government's costs from the American Arbitration Association. However, all these costs should be offset by savings as the use of the special expedited arbitration will be in lieu of regular arbitration or a court of competent jurisdiction. The arbitration alternative is mandated by Chapter 452 but it is anticipated that the increase in cases utilizing the special expedited arbitration to resolve priority of payments disputes will be minimal, because self-insurers are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a). As such, it is also anticipated that the additional aforementioned costs to self-insurers should be minimal.

5. Economic and technological feasibility: Compliance with the rules should be economically and technologically feasible for health care providers since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Compliance with the rules by self insured local governments should be economically and technologically feasible since the rules are using the procedures already in place for disputes involving late notices to now also apply to disputes involving which insurer is to be designated to process the claim for first party benefits. In addition, the notice requirements are using a form already in use by the companies.

6. Minimizing adverse impact: This rule applies uniformly to regulated parties and is mandated by statute. This rule does not impose any additional burden on small businesses and local governments. It is anticipated that there will be few requests for the special expedited arbitration because insurers and self-insurers already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes and therefore paperwork should be minimal and the procedures established by this regulation should minimize adverse impact on the parties.

7. Small business and local government participation: This agency action appeared as a proposal in the Insurance Department's current Regulatory Agenda.

Consolidated Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Insurers and self-insurers covered by this regulation do business in every county in this state, including rural areas as defined under Section 102 (10) of the State Administrative Procedure Act. Some of the home offices of these insurers and self-insurers lie within rural areas. Some government entities that are self-insurers for no-fault benefits may be located in rural areas.

A health care provider and eligible injured person may agree to an assignment of benefits, which effectively transfers both the right to receive benefits and the responsibility for pursuing available remedies when claims are denied from the eligible injured person to the health care provider. Some health care providers are in rural areas.

2. Reporting, recordkeeping and other compliance requirements: To the extent that additional applicants (injured party or health care provider per assignment of benefits from the injured party) have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on insurers and self-insurers (including local governments self-insured for no-fault benefits) associated with defending cases in special expedited arbitration and submitting legal briefs and documentary evidence. There will also be paperwork associated with the reimbursement of the filing fee by the insurer determined to be responsible for processing the claim and paying applicants their attorney fees. The insurers and self-insurers will also incur additional paperwork to comply with record retention requirements. To the extent that additional applicants will

also have to go to arbitration to resolve priority of payment disputes, there will be additional paperwork requirements imposed on health care providers in filing for special expedited arbitration and providing documentary evidence. However, under most circumstances, the submission of the paperwork will negate the requirement of the attendance of the applicant (unless the arbitrator determines that a hearing is necessary). Since the special expedited arbitration option is being utilized to resolve "priority of payment" disputes, the applicant does not have to submit bills for this arbitration and the specific notification language for the special expedited arbitration required by this rule has been amended to specifically inform the applicant that bills do not have to be submitted. In addition, the arbitration alternative is mandated by Chapter 452 of the Laws of 2005. It is anticipated that there will be few requests for the special expedited arbitration and therefore paperwork should be minimal and the procedures established by this regulation should minimize adverse impact on the parties because insurers and self-insurers are already required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of "priority of payment" disputes. [Circular Letter No. 16 (2005) was issued to remind insurers that they should be in compliance with the aforementioned subdivisions and paragraphs].

3. Costs: The arbitration alternative is mandated by Chapter 452 of the Laws of 2005 but it is anticipated that the increase in cases utilizing the special expedited arbitration to resolve priority of payments disputes will be minimal, because insurers and self-insurers (including local governments self insured for no-fault benefits) already are required to be in compliance with subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a), which provide for the resolution of most "priority of payment" disputes. Any additional costs associated with these rules would be the result of claims for which insurers or self-insurers do not comply with the procedures outlined in subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a) thus causing the applicant to go to arbitration to resolve the "priority of payment" dispute. The additional costs would include: the costs of defending cases, the reimbursement of the filing fee by the insurer determined to be responsible for processing the claim and paying applicants' attorney fees. These additional cases will increase the insurers' and self insurers' share of costs from the American Arbitration Association. However, all these costs should be offset by savings as the use of the special expedited arbitration will be in lieu of regular arbitration or a court of competent jurisdiction. Health care providers that may be considered small businesses and that accept assignments should not experience any adverse effects as a result of these amendments since the rules are providing them an option of using the special expedited arbitration under certain circumstances as specified in the rules. Since these procedures are intended to expedite no-fault payments in the rare cases where there is unresolved conflict between insurers, providers should find that the procedure will save them money.

4. Minimizing adverse impact: This rule applies uniformly to regulated parties that do business in both rural and nonrural areas of New York State and is mandated by statute. This rule does not impose any greater burden on persons located in rural areas, and the Insurance Department does not believe that it will have an adverse impact on rural areas. Any additional costs associated with these rule would be the result of claims for which insurers or self-insurers do not comply with the procedures outlined in subdivisions (b) and (c) of section 65-3.12 and paragraphs (2), (3) and (4) of section 65-3.13(a) thus causing the applicant to go to arbitration to resolve the "priority of payment" dispute.

5. Rural area participation: This agency action appeared as a proposal in the Insurance Department's current Regulatory Agenda.

Job Impact Statement

These rules will not have any adverse impact on jobs and employment opportunities in this State since the changes made only require insurers to issue no-fault denials with specific wording so that the applicants will be aware that they can apply for special expedited arbitration to resolve the issue of which eligible insurer is designated for first party benefits and provide the procedures for administration of the special expedited arbitration for disputes regarding the designation of the insurer for first party benefits.

EMERGENCY RULE MAKING

Arbitration

I.D. No. INS-38-06-00016-E

Filing No. 1059

Filing date: Sept. 1, 2006

Effective date: Sept. 1, 2006

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

Action taken: Amendment of Subpart 65-4 (Regulation 68-D) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2601, 5106 and 5221; and Vehicle and Traffic Law, section 2407

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

Specific reasons underlying the finding of necessity: Section 11 of Chapter 452 of the Laws of 2005 amended Section 5106(b) and added a new subsection (d) to Section 5106 of the Insurance Law. These sections relate to the insurer's liability to pay first party benefits. Section 11 codifies the resolution process when multiple insurers may be responsible to the claimant for the processing of first party benefits. It also enhances the current arbitration procedures to provide an expedited eligibility hearing option, when required, to designate an insurer responsible for processing the first party benefits. The amendment uses the term "special expedited arbitration" and "applicant" when referring to the "expedited eligibility hearing" and "claimant".

Chapter 452 of the Laws of 2005 becomes effective on September 8, 2005 and it is essential that this amendment be promulgated on an emergency basis in order to have the procedures in place to implement the provisions in the law. The amendment provides the procedures for administration of the special expedited arbitration for disputes regarding the designation of an insurer for the processing of first party benefits. By making the insurers and applicants aware of these procedures, applicants will be able to utilize special expedited arbitration when there is a dispute between multiple eligible insurers over which carrier has primary responsibility for the payment of first party benefits.

For the reasons cited above, this amendment is being promulgated on an emergency basis for the preservation of the general welfare.

Subject: Arbitration.

Purpose: To provide the procedures for administration of the special expedited arbitration for disputes regarding the designation of the insurer for the first party benefits.

Text of emergency rule: Subdivision (b) of Section 65-4.5 is amended to read as follows:

(b) Special expedited arbitration.

(1) Special expedited arbitration shall be available for disputes involving [the]:

(i) The failure to submit notice of claim within 30 calendar days after the accident and where it has been determined by the insurer that reasonable justification for late notice has not been established; and

(ii) The proper application of subdivisions (b) and (c) of Section 65-3.12 of this Part and of paragraphs (2), (3) and (4) of Section 65-3.13(a) of this Part.

(2)(i) An applicant may request special expedited arbitration for resolution of the dispute involving late notice within 30 calendar days after mailing of the denial of claim by the insurer stating that reasonable justification for late notice has not been established.

(ii)(a) In regard to disputes related to subdivisions (b) and (c) of Section 65-3.12 or paragraphs (2), (3) and (4) of section 65-3.13(a) of this Part, an applicant may request special expedited arbitration to designate an insurer that is responsible for processing first-party benefits and additional first party benefits, after each insurer has issued a Denial of Claim form (NF-10) stating that the insurer is not the insurer eligible to process the first-party benefits claimed.

(ii)(b) Special expedited arbitration required by clause (a) of this subparagraph shall only designate an insurer to commence processing the claim based upon the first insurer notified that is otherwise liable for the payment of first party benefits. The insurer designated by the arbitration shall retain all rights of investigation afforded under statute and regulation, and the ultimate liability for payment of benefits shall be resolved in accordance with section 65-4.11 of this Subpart.

(3) At the time of [such] a request for special expedited arbitration, the applicant shall make a complete written submission supporting his or her position. [No] Any further written submissions shall be accepted [unless requested by] into evidence at the discretion of the arbitrator.

[(3)] (4) Applications for special expedited arbitration shall be submitted to the conciliation center of the designated organization and shall comply with the requirements for initiation of arbitration contained in [paragraph 65-4.2(b)(1)] subparagraph 65.4.2(b)(1)(iii) of this Subpart.

[(4)] (5) The applicant's submission shall be forwarded by the conciliation center to the insurer within 3 business days of receipt. The insurer may provide the center with reasonable special mailing or transmittal instructions to facilitate the processing of these arbitration requests.

[(5)] (6) The insurer shall respond in writing to the applicant's submission within 10 business days after the mailing by the center. No further submissions shall be accepted unless requested by the arbitrator.

[(6)] (7) The dispute shall be resolved solely upon the basis of written submissions unless the arbitrator concludes that the issues in dispute require an oral hearing.

[(7)] (8) The arbitrator shall issue a written decision within 10 business days after receipt of all written submissions from the parties or at the conclusion of an oral hearing.

[(8)] (9) For the purpose of special expedited arbitration, the superintendent may appoint arbitrators, qualified in accordance with the provisions of this section, to serve on a per diem basis. Such arbitrators shall contract with the designated organization. The rate of per diem compensation shall be determined by the designated organization, after consultation with the no-fault arbitrator screening committee subject to the approval of the superintendent. Such arbitrators shall be independent contractors, and shall not be employees or agents of the designated organization or the Insurance Department.

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 November 29, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Mike Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of emergency rule making, I.D. No. INS-38-06-00015-E, Issue of Sept. 20, 2006.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of emergency rule making, I.D. No. INS-38-06-00015-E, Issue of Sept. 20, 2006.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of emergency rule making, I.D. No. INS-38-06-00015-E, Issue of Sept. 20, 2006.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of emergency rule making, I.D. No. INS-38-06-00015-E, Issue of Sept. 20, 2006.

requirements of the New York State Administrative Procedure Act, but is required to publish its proposed and final standards pursuant to the provisions of County Law § 327. This Notice is published pursuant to those provisions.

Amendments to Minimum Standards Regarding Call-Taker/Dispatcher Training. Summary. At its meeting of May 9, 2006, the Board proposed amended standards relating to minimum training requirements for call-takers/dispatchers who receive wireless 911 calls. These amendments add the IS-700 course to the required curriculum for call-takers/dispatchers. They also, for the first time, set forth a set of course requirements for call-takers/dispatchers who are in a supervisory position. The Notice of Proposed Standards was published in the May 31, 2006, issue of the *Register*. Following a period of public comment, the Board at its meeting of August 2, 2006, adopted the amendments as the final standards which appear in this Notice. These final standards are identical to the standards as originally proposed.

For further information, contact Thomas J. Wutz, Chief, Fire Service Bureau, New York State Department of State, Office of Fire Prevention and Control, 41 State Street, Albany NY 12231, phone: (518) 474-6746.

Text of rule: Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Section § 5201.3, is amended to read as follows:

§ 5201.3 Basic training standards.

(a) Emergency Services Dispatch Training Evaluation Program.

(1) The authority shall have in place for each PSAP an Emergency Services Dispatch Training/Evaluation Program (ESDTEP). Except for those commencing employment in such capacity prior to January 1, 2004, all call-takers/dispatchers must satisfactorily demonstrate competency in the performance criteria established therein.

(2) The ESDTEP shall consist of a minimum of 200 hours of training, including, but not limited, to:

- (i) specific performance criteria;
- (ii) daily written evaluations;
- (iii) observation of the trainee while interacting with the public and all relevant public safety agencies and organizations serviced by the PSAP.

(3) A call-taker/dispatcher who is otherwise subject to the training requirements set forth in this section, but who has been previously employed in such capacity, may in lieu of completing the training requirements, show competency in specific performance areas pursuant to a protocol established by the employing jurisdiction.

(4) Completion time. Every call-taker/dispatcher subject to the training requirements of this section shall satisfactorily complete the ESDTEP training program:

- (i) within 18 months of the date of initial appointment for persons employed more than 20 hours per week; or
- (ii) within 24 months of the date of initial appointment for persons employed 20 hours per week or less.

(5) Supervision.

(i) The ESDTEP program training shall occur under the immediate supervision of a competent trainer.

(ii) Call-takers/dispatchers shall not be assigned to unsupervised duty until the training is satisfactorily completed.

(6) Administrative requirements. The authority shall:

(i) maintain accurate and current copies of curricula consisting of course outlines and descriptions, and specific lesson plans for all training courses;

(ii) maintain and make available accurate training records of all trainees, including daily written evaluations.

(b) Classroom and related instruction.

(1) In addition to the ESDTEP program training, all call-takers/dispatchers shall complete the following:

(i) a course of classroom instruction consisting of a minimum of 40 hours, including but not limited to, the following topics:

- (a) Roles and Responsibilities;
- (b) Legal Aspects;
- (c) Interpersonal Communications;
- (d) Technologies;
- (e) Telephone Techniques;
- (f) Call Classification;
- (g) Radio Communications;
- (h) Stress Management; and

(ii) a course of study in Incident Command System, to include, but not be limited, to [the ICS 100 course available from the New York State Emergency Management Office]:

New York State 911 Board

INFORMATION NOTICE

NOTICE OF ADOPTION OF MINIMUM STANDARDS

The New York State 911 Board is established pursuant to County Law § 326. The Board is charged with assisting local governments, service suppliers, wireless telephone service suppliers and appropriate state agencies by facilitating the most efficient and effective routing of wireless 911 emergency calls; developing minimum standards for public safety answering points; promoting the exchange of information, including emerging technologies; and encouraging the use of best practice standards among the public safety answering point community. The Board is exempt from the

(a) IS-700, or the equivalent, as required by Homeland Security Presidential Directive Number Five; and

(b) ICS-100, or the equivalent, as required by Homeland Security Presidential Directive Number Five.

[(2) The Board may establish a list of approved classroom and related instructional programs which meet the requirements set forth above.

(3)(2) Completion time. Every call-taker/dispatcher subject to the training requirements of this section shall satisfactorily complete the classroom and related instruction training set forth above within 12 months of the date of initial appointment.

(3) The Board may establish a list of approved classroom and related instructional programs which meet the requirements set forth above.

(4) All call-takers/dispatchers who are in a supervisory position shall complete the following:

(i) IS-700, or the equivalent, as required by Homeland Security Presidential Directive Number Five;

(ii) ICS-100, or the equivalent, as required by Homeland Security Presidential Directive Number Five; and

(iii) ICS-200, or the equivalent, as required by Homeland Security Presidential Directive Number Five.

(5) Every call-taker/dispatcher who is in a supervisory position shall satisfactorily complete the training requirements set forth in the section above within 12 months of the date of appointment to a supervisory position.

[(4)] (6) Administrative requirements. The authority shall:

(i) maintain accurate and current copies of curricula consisting of course outlines and descriptions, and specific lesson plans for all training courses;

(ii) maintain and make available accurate training records of all trainees, including daily written evaluations.

(c) Extensions of time.

(1) The Board may grant an extension of time for completion of the training required under subdivision (b) of this section under the following conditions:

(i) illness;

(ii) injury;

(iii) military service;

(iv) special duty assignment required and performed in the public interest;

(v) administrative leave involving the determination of workers' compensation or disability retirement issues, or suspension pending investigation or adjudication of an offense; or

(vi) any other reason documented by the authority, which reason shall be specifically described.

(2) Prior to the expiration of the time required for completion, the authority shall present written notification that the trainee is unable to complete such training due to one or more of the reasons set forth in paragraph (1) herein, accompanied by appropriate documentation.

(3) Any extension of time approved by the Board shall not exceed a single 12-month extension.

(d) The training standards set forth in this rule shall be met through attendance at either a recognized training academy or through an in-house training program. Trainees shall be required to attend all classes and shall not be placed on duty or on call during such training except in cases of emergency.

Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Part 5201, Appendix A, is amended to read as follows:

APPENDIX A

A-1 The following courses of instruction meet or exceed the classroom instruction requirements set forth in 21 NYCRR § 5201.3(b)(1)(i):

A-1.1 Association of Public Safety Communications Officials Basic Telecommunicator Course, Fourth Edition, Version 3 (2000).

A-1.2 National Academies of Emergency Dispatch, Emergency Telecommunicator Manual, Edition 1 (2001).

A-1.3 New York State Municipal Police Training Council, Public Safety Telecommunicator's Course.

A-2 The following programs meet or exceed the NHTSA EMD approved program of instruction:

A-2.1 Priority Dispatch;

A-2.2 PowerPhone.

Public Service Commission

NOTICE OF ADOPTION

New Types of Electricity Meters, Transformers and Auxiliary Devices by HVB AE Power Systems Incorporated

I.D. No. PSC-22-06-00016-A

Filing date: Aug. 30, 2006

Effective date: Aug. 30, 2006

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

Action taken: The commission, on Aug. 23, 2006, adopted an order approving HVB AE Power Systems, Inc.'s request for approval of the Nissin Electric Company's voltage transformer system SVR-34C to be used for metering purposes by Consolidated Edison Company of New York, Inc. at the Mott Haven Substation.

Statutory authority: Public Service Law, section 67(1)

Subject: New types of electricity meters, transformers, and auxiliary devices.

Purpose: To approve electric utilities in New York State to use the Nissin Electric Company Voltage Transformer Type SVR-34C.

Substance of final rule: The Commission adopted an order approving HVB AE Power Systems, Inc.'s request for the use of the Nissin Electric Company's Voltage Transformer Type SVR-34C to be used for metering purposes by Consolidated Edison Company of New York, Inc. at the Mott Haven Substation.

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-0342SA1)

NOTICE OF ADOPTION

New Types of Electricity Meters, Transformers and Auxiliary Devices by Rochester Gas and Electric Corporation

I.D. No. PSC-22-06-00017-A

Filing date: Aug. 30, 2006

Effective date: Aug. 30, 2006

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

Action taken: The commission, on Aug. 23, 2006, adopted an order approving Rochester Gas and Electric Corporation's request for approval for use of the SENTRY family of isolation relays manufactured by Austin International Incorporated.

Statutory authority: Public Service Law, section 67(1)

Subject: New types of electricity meters, transformers, and auxiliary devices.

Purpose: To approve electric utilities in New York State to use the SENTRY family of isolation relays in commercial and industrial metering applications.

Substance of final rule: The Commission adopted an order approving Rochester Gas and Electric Corporation's request for approval to use the SENTRY 30-E (revision C), 50, and 70 isolation relays, manufactured by Austin International Incorporated.

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-0453SA1)

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

Inter-Carrier Telephone Service Quality Standards and Metrics by the Carrier Working Group

I.D. No. PSC-38-06-00002-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 modification to existing inter-carrier telephone service quality measures and standards as proposed by the Carrier Working Group and recommended by staff.

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

Subject: Inter-carrier telephone service quality standards and metrics.

Purpose: To review recommendations from the Carrier Working Group to incorporate appropriate modifications to the existing inter-carrier telephone service quality measures and standards.

Substance of proposed rule: The Commission is considering modifications to the New York State Inter-Carrier Service Quality Guidelines (the C2C Guidelines), which were established, and are routinely updated, in Case 97-C-0139. Revisions to the C2C Guidelines are proposed by the Carrier Working Group (CWG), an industry group that meets regularly and whose active participants includes the incumbent and competitive local exchange telecommunications carriers in New York State and the staff of the Department of Public Service. Department staff will be making recommendations to modify the C2C Guidelines applicable to Verizon New York Inc. and Frontier Telephone of Rochester, which may be derived by consensus of the Carrier Working Group or by analysis of the CWG parties' non-consensus positions. Modifications to the C2C Guidelines being considered by the Commission in this action include: administrative changes, i.e., non-process changes of a clerical nature or that correct minor errors and modifications developed by the Joint Subcommittee which incorporate the findings of audits conducted in other state C2C proceedings; and other CWP-proposed process modifications that affect metrics in the Pre-Order, Ordering, Provisioning or Billing domains. The most recent version of the C2C Guidelines is available at: <http://www.dps.state.ny.us/Version12EastC2CguidelinesBlackline.pdf>. A link to the Commission Order approving the most recent version of the C2C Guidelines is available at <http://www.dps.state.ny.us/carrier.htm>.

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

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

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

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

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

(97-C-0139SA28)

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

Interconnection Agreement between Frontier Telephone of Rochester Inc. and Time Warner Telecom—NY, L.P.

I.D. No. PSC-38-06-00003-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Frontier

Telephone of Rochester, Inc. and Time Warner Telecom—NY, L.P. to revise the interconnection agreement effective on June 20, 2005.

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

Subject: Intercarrier agreements to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Frontier Telephone of Rochester, Inc. and Time Warner Telecom—NY, L.P. in October 2001. The companies subsequently have jointly filed amendments to clarify the existing tandem transit service terms and conditions. The Commission is considering these changes.

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

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

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

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

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

(01-C-1286SA2)

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

Interconnection Agreement between Verizon New York Inc. and Jet Wave Corp.

I.D. No. PSC-38-06-00004-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal and Amendment No. 1 filed by Verizon New York Inc. and Jet Wave Corp. for approval of an interconnection agreement executed on July 11, 2006.

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

Subject: Interconnection of networks 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 Jet Wave Corp. have reached a negotiated agreement whereby Verizon New York Inc. and Jet Wave Corp. 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 and Amendment No. 1 establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until July 10, 2008 or as 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: Jaclyn A. Brillig, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(06-C-1051SA1)

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

Interconnection Agreement between Verizon New York Inc. and MMG Holdings Inc.

I.D. No. PSC-38-06-00005-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 and Amendment No. 1 filed by Verizon New York Inc. and MMG Holdings Inc. for approval of an interconnection agreement executed on July 20, 2006.

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

Subject: Interconnection of networks 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 MMG Holdings Inc. have reached a negotiated agreement whereby Verizon New York Inc. and MMG Holdings Inc. 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 and Amendment No. 1 establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until July 19, 2008, or as 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: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(06-C-1052SA1)

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

Interconnection Agreement between Verizon New York Inc. and Y Tel Inc.

I.D. No. PSC-38-06-00006-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 is considering whether to approve or reject, in whole or in part, a proposal and Amendment No. 1 filed by Verizon New York Inc. and Y Tel Inc. for approval of an interconnection agreement executed on June 19, 2006.

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

Subject: Interconnection of networks 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 Y Tel Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Y Tel Inc. 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 and Amendment No. 1 establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 18, 2008, or as 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: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(06-C-1053SA1)

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

Interconnection Agreement between Verizon New York Inc. and Dynalink Communications Inc.

I.D. No. PSC-38-06-00007-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 Dynalink Communications Inc. for approval of an interconnection agreement executed on April 24, 2006.

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

Subject: Interconnection of networks 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 Dynalink Communications Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Dynalink Communications Inc. 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 December 14, 2006 or as 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: Jaclyn A. Brillling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(06-C-1054SA1)

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

Interconnection Agreement between Verizon New York Inc. and National CLEC Services, LLC

I.D. No. PSC-38-06-00008-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 and Amendment No. 1 filed by Verizon New York Inc. and National CLEC Services, LLC for approval of an interconnection agreement executed on Aug. 3, 2006.

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

Subject: Interconnection of networks 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 National CLEC Services, LLC have reached a negotiated agreement whereby Verizon New York Inc. and National CLEC Services, 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 and Amendment No. 1 establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until August 2, 2008, or as 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: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(06-C-1055SA1)

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

Interconnection Agreement between Verizon New York Inc. and KMC Data, LLC

I.D. No. PSC-38-06-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal and Amendment No. 1 filed by Verizon New York Inc. and KMC Data, LLC for approval of an interconnection agreement executed on April 24, 2006.

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

Subject: Interconnection of networks 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 KMC Data, LLC have reached a negotiated agreement whereby Verizon New York Inc. and KMC Data, 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 and Amendment No. 1 establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until June 13, 2008, or as 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: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(06-C-1057SA1)

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

Interconnection Agreement between Verizon New York Inc. and DSLnet Communications, LLC

I.D. No. PSC-38-06-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and DSLnet Communications, LLC for approval of an interconnection agreement executed on June 15, 2006.

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

Subject: Interconnection of networks 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 DSLnet Communications, LLC have reached a negotiated agreement whereby Verizon New York Inc. and DSLnet Communications, 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 December 14, 2006, or as 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: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

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

(06-C-1068SA1)

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

Submetering of Electricity by ADD Development & Management

I.D. No. PSC-38-06-00011-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 grant, deny or modify, in whole or part, the petition filed by ADD Development & Management to submeter electricity at three Care Lane, Saratoga Springs, NY.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1) and 67(1)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of ADD Development & Management to submeter electricity at Three Care Lane, Saratoga Springs, 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 ADD Development & Management to submeter electricity at 3 Care Lane, Saratoga Springs, New York.

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. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(06-E-1048SA1)

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

Utility Hedging Practices and Commodity Portfolio Management Strategies and Reporting

I.D. No. PSC-38-06-00012-P

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

Proposed action: As discussed in an order instituting proceeding and notice soliciting comments issued Aug. 28, 2006 in Case 06-M-1017, the Public Service Commission is considering the adoption of policies, practices and procedures on the hedging practices and commodity portfolio management strategies electric utilities should implement, the time period over which both gas and electric utilities should attempt to mitigate volatility, and the utility commodity portfolio information that should be reported to the public.

Statutory authority: Public Service Law, sections 5(1)(b), 64, 65(1), 66(1), (5), (9), (10) and (12)

Subject: Utility hedging practices and commodity portfolio management strategies and reporting.

Purpose: To adopt policies, practices and procedures on utility hedging practices and commodity portfolio management strategies and reporting.

Substance of proposed rule: As discussed in an Order Instituting Proceeding and Notice Soliciting Comments issued August 28, 2006 in Case 06-M-1017, the Public Service Commission is considering the adoption of policies, practices and procedures on the hedging practices and commodity portfolio management strategies electric utilities should implement, the time period over which both gas and electric utilities should attempt to mitigate volatility, and the utility commodity portfolio information that should be reported to the public. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(06-M-1017SA1)

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

Water Rates and Charges by Southside Water Inc.

I.D. No. PSC-38-06-00013-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 tariff revisions filed by Southside Water Inc. 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 Dec. 1, 2006.

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

Subject: Water rates and charges.

Purpose: To recover the cost of purchased water.

Substance of proposed rule: On August 31, 2006, Southside Water Inc. (Southside or the company) filed to become effective December 1, 2006, revisions to its electronic tariff schedule, P.S.C. No. 1 — Water. Southside requests recovery of the cost of purchased water arising from the difference in the quantity of water purchased from the City of Watertown and the quantity of water sold to customers. The company requests permission to recover \$3,202 over two quarters with a \$.90/Ccf surcharge which will be applied to the February and May 2007 billings. The company also requests permission to recover, on an ongoing basis, \$3,631 per year through a \$.44/Ccf surcharge as a result of the metering differences since the City of Watertown's master meter was replaced. Southside's electronic tariff, along with the company's proposed changes, is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us located under Commission Documents). Southside provides metered water service to approximately 103 customers in a development known as Lettiere Tract, located in the Town of Watertown, Jefferson County. The Commission may approve or reject, in whole or in part, or modify the company'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.
(06-W-1062SA1)

Racing and Wagering Board

EMERGENCY RULE MAKING

Post-Race Blood Gas Testing Procedures for Thoroughbred and Harness Race Horses

I.D. No. RWB-38-06-00017-E

Filing No. 1061

Filing date: Sept. 5, 2006

Effective date: Sept. 5, 2006

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

Action taken: Amendment of Parts 4038, 4043, 4109 and 4120 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 207, 227, 301, 305 and 902

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

Specific reasons underlying the finding of necessity: In January 2005, the U.S. Justice Department arrested a New York-licensed thoroughbred trainer and a prominent New York-licensed harness driver and charged the two with milkshaking a thoroughbred at Aqueduct Raceway in December 2003 to increase the odds that the horse, A One Rocket, would win. According to the Justice Department, this was not an isolated incident and such violations occurred regularly. This case has brought national attention to the issue of milkshaking and the need to adopt testing programs and penalties for such "milkshaking" practices. Clearly, the practice of milkshaking race horses is detrimental to the integrity of the sport of horse racing, erodes public confidence in pari-mutuel wagering events, and invites criminal abuse and exploitation.

Subject: Post-race blood gas testing procedures for thoroughbred and harness race horses.

Purpose: To detect and deter the prohibited practice known as “milkshaking.”

Substance of emergency rule: 4043.8(a) Authorizes pre-race and post-race methods of testing thoroughbred racehorses to detect excess levels of total carbon dioxide (TCO₂), establishes the threshold for excess TCO₂ at 37 millimoles per liter, and 39 millimoles for horses that have been administered furosemide.

4043.8(b) Establishes procedures in cases where excess TCO₂ levels are found and an owner or trainer challenges the findings to assert a claim of naturally occurring excess TCO₂ levels in a horse.

4043.8(c) Establishes minimum standards for guarded quarantine of a thoroughbred race horse at a race track operated by a track association.

4043.8(d) Establishes minimum penalties for excess TCO₂ violations in a thoroughbred racehorse ranging from a minimum 60-day license suspension and \$1,000 fine for a first offense to a minimum one-year license suspension with a \$5,000 fine with a possible additional suspension term prescribed by the Board. Authorizes an additional two-year suspension for race-day medication violation. Includes provision for purse redistribution in case of a positive excess TCO₂ test.

4043.8(e) Directs that horses that are found to have excess TCO₂ levels will be disqualified, any monies won will be forfeited/redistributed and pre-race detention shall be imposed.

4043.9(a) Establishes pre-race detention procedures and requirements where a racehorse has been tested and found to have excess TCO₂ levels that are not physiologically normal, including a minimum six-month period of detention.

4043.9(b) Establishes pre-race detention where a trainer has had more than one racehorse under his or her care have excess TCO₂ levels in a 12-month period, including a minimum eight-month period of detention for all horses under the trainer’s care.

4043.10 Establishes punishment for failure to cooperate in the thoroughbred TCO₂ testing program.

4038.18(f) Allows claimants in a claiming race to void a claim on a thoroughbred horse that is subsequently found to have excess TCO₂ levels that are not physiologically normal.

4120.13(a) Authorizes pre-race and post-race testing of harness racehorses to detect excess levels of total carbon dioxide (TCO₂), establishes the threshold for excess TCO₂ at 37 millimoles per liter, and 39 millimoles for horses that have been administered furosemide.

4120.13(b) Establishes procedures in cases where excess TCO₂ levels are found and an owner or trainer challenges the findings to assert a claim of naturally occurring excess TCO₂ levels in a horse.

4120.13(c) Establishes minimum standards for guarded quarantine of a harness racehorse at a race track operated by a track association.

4120.13(d) Establishes minimum penalties for excess TCO₂ violations in a harness racehorse ranging from a minimum 60-day license suspension and \$1,000 fine for a first offense to a minimum one-year license suspension with a \$5,000 fine with a possible additional suspension term prescribed by the Board. Authorizes an additional two-year suspension for race-day medication violations. Includes provision for purse redistribution in case of a positive excess TCO₂ test.

4120.13(e) Directs that horses that are found to have excess TCO₂ levels will be disqualified, any monies won will be forfeited/redistributed and pre-race detention shall be imposed.

4120.14(a) Establishes pre-race detention procedures and requirements where a racehorse has been tested and found to have excess TCO₂ levels that are not physiologically normal, including a minimum six-month period of detention.

4120.14(b) Establishes pre-race detention where a trainer has had more than one racehorse under his or her care have excess TCO₂ levels in a 12-month period, including a minimum eight-month period of detention for all horses under the trainer’s care.

4120.15 Establishes punishment for failure to cooperate in the Board’s TCO₂ testing.

4109.7(f) Allows claimants in a claiming race to void a claim on a harness racehorse that is subsequently found to have excess TCO₂ levels.

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 December 3, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wa-

gaming Board, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 395-5400, e-mail: info@racing.state.ny.us

Regulatory Impact Statement

(a) Statutory authority. Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 207, 227, 301 and 305.

(b) Legislative objectives. This amendment advances the legislative objective of regulating the conduct of pari-mutuel wagering in a manner designed to maintain the integrity of racing while generating a reasonable revenue for the support of government.

(c) Needs and benefits. This rule making is necessary to assure the public’s confidence and continue the high degree of integrity in racing at the pari-mutuel betting tracks. Through pre—race and post-race testing, this rule making will detect and deter the administration of alkali agents to thoroughbred racehorses and harness racehorses for the purpose of affecting the performance of such horse during a pari-mutuel wagering race.

The administration of alkali agents into a racehorse is commonly known as “milkshaking,” where a person administers a mixture of sodium bicarbonate, sugar and water to a horse prior to a race mitigate the effects of lactic acid on the horse’s muscles during the race, thereby gaining an advantage. Lactic acid is a naturally occurring byproduct of intense muscular exercise in mammals, and the accumulation of lactic acid in such muscles causes fatigue. Some people associated with racehorses believe that the administration of an alkaline substance, such as bicarbonate of soda, can neutralize the effect of lactic acid in a horse’s muscles. This has resulted in the use of alkalinizing agents, or “milkshakes” which are administered to a racehorse in an attempt to alter the performance of the horse. Based on this belief, people have administered milkshakes to racehorses on the day of a race with the intent to gain a racing advantage.

This rule making is necessary to establish empirical standards and testing procedures for the enforcement of Board Rule 4043.3(d) and Board Rule 4120.3(d), which apply to thoroughbred and harness racehorses respectively and state “No person shall, attempt to, or cause, solicit, request, or conspire with another or others to... administer a mixture of bicarbonate of soda and sugar in any of their forms in any manner to a horse within 24 hours of a racing program at which such horse is programmed to race. It shall be the trainer’s responsibility to prevent such administration.”

Horses that have received an alkalinizing agent will exhibit elevated levels of TCO₂ over and above normal levels. This rule making will establish the ion selective electrode method with a clinical auto analyzer as a standard means of detecting elevated TCO₂ in horses. The rule will establish a TCO₂ threshold of 37 millimoles per liter for horses who have not been administered furosemide (Lasix) prior to a race, and 39 millimoles for horses that have been administered furosemide prior to a race.

In January 2005, the U.S. Justice Department arrested a New York licensed thoroughbred trainer and a prominent New York harness driver and charged the two with milkshaking a thoroughbred at Aqueduct Raceway in December 2003 to increase the odds that the horse, A One Rocket, would win. According to the Justice Department, this was not an isolated incident and such violations occurred regularly. This case has brought national attention to the issue of milkshaking and the need to adopt testing programs and penalties for such “milkshaking” practices. Clearly, the practice of milkshaking race horses is detrimental to the integrity of the sport of horse racing, erodes public confidence in pari-mutuel wagering events, and invites criminal abuse and exploitation.

This rule making will benefit thoroughbred and harness racing by ensuring the betting public that horses that compete in pari-mutuel races have not been tampered with through the administration of alkali agents, thereby ensuring that no extraordinary advantage has been given to the horse through prohibited substances.

(d) Costs.

(i) Thoroughbred horse owners may be subject to the cost of a pre-race guarded quarantine imposed upon any single horse found to have excess TCO₂ levels that has not been determined to be physiologically normal for such horse. The licensed track association sponsoring the race is responsible for making available a pre-race quarantine stall, and for maintaining an access log system in either paper or electronic form. The length of time for such quarantine shall be determined by the stewards or judges, and will have an impact on the cost of guarded quarantine. The cost of a paper log is approximately \$10 retail for a ring binder and 500 pages of paper. The cost of an electronic record, such as a personal computer or laptop computer, starts at \$400 in ordinary retail stores.

(ii) There are no costs imposed upon the Racing and Wagering Board, the state or local government because the TCO₂ testing program will be implemented utilizing the Board’s existing medication testing program, personnel and facilities.

(iii) The Board cannot fully provide a statement of costs the trainers for pre-race guarded quarantine because the actual cost of establishing a pre-race guarded quarantine varies greatly from location to location in New York State, and the physical characteristics of the buildings within which a horse of quarantine. All horses that race at a New York State thoroughbred or harness racetrack are currently afforded stable space for free, so the only added cost that can be expected will be the cost of a guard. A pre-race guarded quarantine may require one guard per horse, or one guard for many horses, depending upon the access points that need to be controlled for an effective guarded quarantine. The Board's rule making requires that the subject horse is kept in an area where access to the subject horse is restricted to authorized licensed trainers, owners and veterinarians as submitted by the owner, that guards maintain a record of all licensed persons who have had access to the horse while in guarded quarantine, along with the time and purpose of the visit. In addition to the distinctive limitations that the guarded quarantine barn will have upon the cost, the wages of a guard varies depending upon the racetrack itself. According to track representatives, the hourly cost of guard may range from \$7 per hour up to \$20 per hour, depending on the individual racetrack, experience required for the specific duties (e.g., a stable guard who is responsible for surveillance only compared to a quarantine supervisor who is responsible for also identifying illegal paraphernalia, treatments or procedures) and local pay scale. The minimum time that a horse is to be quarantined is six hours, and the maximum time for quarantine is 72 hours.

(e) Paperwork. Owners of any horse that has been found to have an excess levels of TCO2 will be required to submit a letter to the steward or judge of the track where the subject horse is to race, stating that the subject horse has a normally elevated level of TCO2. Such a letter is necessary for a horse to continue racing while under a guarded quarantine. Track associations will be required to maintain access logs, either paper or electronic, for a period of 90 days after the guarded quarantine period.

(f) Local government mandates. This rule making will not impose any program, service, duty, or responsibility upon any county, city, town, village, school district fire district or other special district.

(g) Duplication. Since the New York State Racing & Wagering Board is exclusively responsible for the regulation of pari-mutuel wagering activities in New York State, there are no other relevant rules or other legal requirements of the state or federal government regarding total carbon dioxide testing of thoroughbred racehorses and harness racehorses in New York State.

(h) Alternative approaches. The Board did not consider any other significant alternatives because no other significant alternates are available. The rule making is based upon an established TCO2 testing program already adopted and in use by the New Jersey Racing Commission. The testing procedure included in this rule making is the only TCO2 test that has been reviewed and declared reliable by a state court, in this case, the New Jersey Supreme Court recognized the reliability of the Beckman test generally and as applied by the New Jersey Racing Commission (*Campbell v. New Jersey Racing Commission*, New Jersey Supreme Court, 169 N.J. 579, 781 A.2d 1035, October 11, 2001.) The TCO2 threshold levels in this rule are supported by findings of the Canadian Pari-Mutual Agency, which are published "Effects of Sampling and Analysis Times and Furosemide Administration on TCO2 Concentrations in Standardbred and Thoroughbred Horses." This paper was presented at the 13th International Conference of Racing Analysts and Veterinarians in Cambridge, U.K., in 2000 and published in the Conference Proceedings. The data in this study supports the thresholds of 37 mmol/L (non-furosemide) and 39 mmol/L (furosemide) which has been adopted in both Canada and Australia.

(i) Federal standards. There are no federal standards applicable to the subject area of state-regulated parimutuel wagering activity.

(j) Compliance schedule. The practice known as "milkshaking" of horses in already prohibited by rule under 9E NYCRR 4043.3 for thoroughbred racehorses and 9E NYCRR 4120.3 for harness racehorses. All of the provisions of this rule making shall be effective immediately upon filing with the Department of State.

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 would expand the existing medication testing rules to include a test for alkalinizing agents in thoroughbred and harness race horses. This testing will utilize the current framework for post-race testing. The pre-race testing component will merely require that a veterinarian take a few minutes to obtain a blood sample from a horse, which is a routine procedure and imposes no new burden upon regulated parties. These amendments do not

impact upon State Administrative Procedure Act section 102(8), nor do they 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 for the reasons set forth above, because the Board rules has existing rules for post-race testing for the presence of performance altering drugs and other substances.

Office of Real Property Services

PROPOSED RULE MAKING HEARING(S) SCHEDULED

License Fees

I.D. No. RPS-38-06-00001-P

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

Proposed action: Amendment of section 190-3.2 of Title 9 NYCRR.

Statutory authority: Real Property Tax Law, section 202(1)(l); and State Finance Law, section 97-kk

Subject: License fees for users of Real Property Service (RPS).

Purpose: To amend the annual license fee.

Public hearing(s) will be held at: 2:00 p.m., Oct. 10, 2006 at Office of Real Property Services, 16 Sheridan Ave., Albany, NY.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Text of proposed rule: The State Board of Real Property Services hereby amends section 190-3. of Title 9 of the Official Compilation of Codes, Rules and Regulations as follows:

§ 1. Section 190-3.2 is amended to read as follows:

§ 190-3.2 Services to local government. (a) The State Office shall provide technical services, including the provision of electronic data processing time and software, and technical valuation processing services for the improvement of local real property tax administration.

(b) Each county, city, town and village assessing unit which uses RPS shall pay an annual licensing fee to defray the cost of ongoing software development, software maintenance, system documentation, user documentation and distribution of software and documentation. Those municipalities that have executed a coordinated assessment agreement, consolidated their assessing units or contracted with the county for all assessment services pursuant to sections 579, 1602 or 1537 of the Real Property Tax Law are considered a single assessing unit for this purpose. The annual licensing fee shall be as follows:

Number of Parcels	Fee
Over 40,000	[\$1450] \$2200
20,001 - 40,000	[\$1400] \$2100
10,001 - 20,000	[\$1300] \$1950
8,001 - 10,000	[\$1150] \$1750
6,001 - 8,000	[\$1100] \$1650
4,001 - 6,000	[\$1000] \$1500
3,001 - 4,000	[\$ 850] \$1300
2,001 - 3,000	[\$ 800] \$1200
1,001 - 2,000	[\$ 650] \$1000
501 - 1,000	[\$ 550] \$850
0 -500	[\$ 500] \$750

In any county where the county coordinates the use of RPS, by providing RPS processing or support services to the assessing unit, the county shall pay the annual fee for each city, town and assessing unit village which uses such system. This payment shall constitute full payment for all assessing units for which that county coordinates the use of RPS.

(c) In addition to the fees described in Paragraph (b), the following shall be imposed:

(1) Where a county uses RPS to process data from municipalities not using RPS, the county will be charged an annual licensing fee for each such municipality processed. The annual licensing fee charged shall be equal to the lowest licensing fee listed in 9 NYCRR 190-3.2(b).

(2) School districts wishing to purchase RPS software will be charged an annual licensing fee equal to the [lowest] *highest* licensing fee listed in 9 NYCRR 190-3.2(b).

(3) Anyone wishing to purchase RPS for purposes other than those described above will be charged \$2,500 (per version) for the initial purchase of the software and will be charged an annual license fee equal to the highest annual licensing fee listed in 9 NYCRR 190-3.2(b) except as provided in Paragraph (d).

(d) A vendor who has a processing agreement in effect with a municipality who is paying a licensing fee for the use of RPS may install RPS at a site other than the municipal processing site for purposes of completing required work for that municipality at no additional charge upon authorization by the municipality.

(e) Payment of the licensing fee shall provide for the use of any or all of the available RPS software. No partial payment of the licensing fee will be accepted.

(f) In addition to the annual fee prescribed in subdivision (b) of this section, the Executive Director or his or her designee shall establish a fee schedule, for each State fiscal year, for computer and technical valuation processing services provided to local governments using RPS. This schedule shall also include costs of materials used in conjunction with the services provided. This schedule shall be established on or before June 1st of the preceding fiscal year and shall be available at the State Office of Real Property Services located in Albany and at each regional office.

§ 2. This amendment shall first apply to annual fees imposed on or after April 1, 2007.

Text of proposed rule and any required statements and analyses may be obtained from: James J. O'Keefe, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821

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

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

Regulatory Impact Statement

1. Statutory Authority: Section 202(1)(l) of the Real Property Tax Law (RPTL) authorizes the State Board of Real Property Services to adopt such rules "as may be necessary for the exercise of its powers and the performance of its duties."

Section 97-kk of the State Finance Law directs that all revenue received by the Office of Real Property Services (ORPS) from fees for services related to the Real Property System (RPS) be deposited in the Local Services Account within the Miscellaneous Special Revenue Fund.

2. Legislative Objectives: The proposal will further the legislative objective of recovering a portion of the expenses incurred by ORPS in providing technical services to local governments, including software, for the improvement of real property tax administration.

3. Needs and Benefits: Section 190-3.2 of Title 9 provides that ORPS shall provide certain technical services for local governments. Included among these services is a set of software and procedures commonly known as RPS. Section 190-3.2 further provides that each local government that uses RPS must pay an annual license fee to defray the costs of ongoing software development, maintenance, documentation and distribution. The amount paid by a particular local government depends upon the number of parcels in the assessing unit. At present approximately 95% of the county, city and town assessing units in the State use RPS.

At its April 27, 2004 meeting, the State Board adopted by Resolution 04-13 (Item V-B) amendments making changes to the schedule of annual fees paid by users of RPS (RPS-06-04-00003). That schedule was developed in consultation with the RPS Governance Group, a committee made up of representatives of ORPS, the New York State County Real Property Tax Directors' Association, the New York State Assessors' Association and the New York State Local Government Information Technology Directors' Association. This fee schedule, for the billing periods 2004-2006, was designed to provide one third of the costs necessary to maintain the RPS program in terms of development, implementation and support.

At the June 14, 2005 meeting of the RPS Governance Group, ORPS staff proposed a new fee schedule to become effective for annual RPS license billing for 2007. The existing fee schedule was intended to apply through March 31, 2006. This schedule is no longer adequate and would only recoup approximately one-fifth of the current costs per year. Current

costs to support the RPS program for fiscal year 2004-05 have been estimated at \$4,058,000, one-third of which is roughly \$1,352,000. In addition, it is estimated that costs will continue to rise over the next few years. Costs are expected to rise to approximately \$4,759,000 by fiscal year 2007-08 which is the year the proposed fee increase would take effect. This projection is based on constant levels in the areas of staffing levels, travel, training, supplies and equipment. Increasing costs must be accounted for in an adjustment to license fee schedule beginning with fees collected in 2007. The agreement in place provides for a three-year average be used to determine program cost. Given costs of \$3,458,047 (FY 2002-03), \$3,491,800 (FY 2003-04) and \$4,058,000 (FY 2004-05), an average cost of \$3,669,282 is derived; one-third of which is roughly \$1,223,000. This translates to a fee increase of roughly 50%. Discussions occurred at both June and September Governance Group meetings with no decision reached.

After extensive discussions between agency staff, local government officials and representatives of the Division of the Budget, as well as among Agency management, ORPS staff presented a compromise position at the December 7, 2005 RPS Governance Group meeting. In exchange for agreeing to the originally proposed fee increase presented at the June 14, 2005 RPS Governance Group meeting, the agency agreed to two important concessions. First, there would be a four year agreement instead of the standard three years. Second, and more important, ORPS would move forward with a stalled initiative to modernize and improve the RPS cost system at no additional expense to the local governments. While the final details of a contract are still being worked out with the vendor (Marshall & Swift), it appears that the cost of this program will be significant (approximately \$970,000). This will be spread out over a number of years (5 based on current negotiations). This project is critically important to the agency and RPS users. The solution provides local governments with something they need while at the same time providing the agency with a stable revenue source. The key to this agreement is that ORPS will not add the costs of developing the new system into the calculations for determining any future RPS fee increases. The proposed increased fees in conjunction with the two concessions were approved by a vote of 8 to 3 by the RPS Governance Group.

The new fee schedule is contained in this proposal. The proposal also includes a provision putting school licensees at the highest rather than the lowest charge. At present there are no school licensees. Staff believe that any school district would require additional support services beyond those of usual subscribers and that the schedule up should reflect this.

4. Costs: (a) To State Government: For the current fiscal year, none. As the program is implemented, starting in 2007-08, there will be additional payments to ORPS of approximately \$400,000 to defray the costs of the program.

(b) To local governments: The implementation of the proposal would result in fee increases to local governments of \$250 to \$750 beginning in fiscal 2006-2007.

(c) To school districts: There are no school districts in this program. The implementation of the proposal would result in fee increases of \$1,700.

(d) To private regulated parties: There are no private regulated parties in this program. Private purchasers of RPS will continue to pay \$2,500.

(e) Basis of cost estimates: The increases contained in the proposal.

5. Local Government Mandates: None. Use of RPS is optional with local governments.

6. Paperwork: The proposal would impose no additional paperwork on the State or local governments.

7. Duplication: There are no comparable State or Federal requirements.

8. Alternatives: The proposal could have imposed a greater or lesser fee on users of RPS. The increase imposed has been negotiated.

9. Federal Standards: There are no Federal regulations concerning this subject.

10. Compliance Schedule: The increase would first occur in fiscal 2007-2008.

Regulatory Flexibility Analysis

The amendment proposed would not impose any adverse economic conditions or any reporting, recordkeeping or other compliance requirements on small businesses. The rule will increase the annual fee for RPS users by from \$250 to \$750. It will not increase the fee for small businesses, or any other private user. This increase is necessary given the costs of maintaining and improving RPS.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this rule making because the amendment would not impose any adverse economic conditions, any

reporting, recordkeeping or compliance requirements on public or private entities in rural areas. It provides for a revised fee schedule that affects all RPS users. The new provision applies to all assessing units.

Job Impact Statement

A job impact statement is not required for this rule making because the amendment only concerns the annual license fee paid by RPS users. There is no increase for private users, only local governments. Since the increase ranges from \$250 to \$750 for local governments, the amendments has no impact on employment opportunities.

Text of proposed rule and any required statements and analyses may be obtained from: Dona S. Bulluck/Marti Anne Ellermann, State University of New York, State University Plaza, 353 Broadway, Albany, NY 12246, (518) 443-5400, e-mail: dona.bulluck@suny.edu or marti.ellermann@suny.edu

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

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

Consensus Rule Making Determination

The State University of New York has determined that no person is likely to object to this rule as written because it provides timely State operating assistance to public community colleges of the State and City University of New York and adopts amendments to the tuition regulations for community colleges under the program of the State University of New York for the 2006-2007 fiscal year.

Job Impact Statement

No job impact statement is submitted with this notice because the adoption of this rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This rule making governs the financing of community colleges operating under the program of the State University and will not have any adverse impact on the number of jobs or employment opportunities in the state.

State University of New York

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Basic State Financial Assistance

I.D. No. SUN-38-06-00018-P

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

Proposed action: This is a consensus rule making to amend section 602.8(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(1)(c) and 6304(1)(b); and L. 2006, ch. 53

Subject: State basic financial assistance for operating expenses of community colleges under the program of State University of New York and City University of New York.

Purpose: To modify existing limitations formula for basic State financial assistance for operating expenses of community colleges of the State University and City University of New York in order to conform to the provisions of the Education Law and the 2006-2007 Budget Bill.

Text of proposed rule: 602.8(c) Basic State financial assistance.

(1) Full opportunity colleges. The basic State financial assistance for community colleges, implementing approved full opportunity programs, shall be the lowest of the following:

(i) two-fifths (40%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) two-fifths (40%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the current college fiscal year the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$2350] \$2525; and

(b) up to one-half (50%) of rental costs for physical space.

(2) Non-full opportunity colleges. The basic State financial assistance for community colleges not implementing approved full opportunity programs shall be the lowest of the following:

(i) one-third (33%) of the net operating budget of the college, or campus of a multiple campus college, as approved by the State University trustees;

(ii) one-third (33%) of the net operating costs of the college, or campus of a multiple campus college; or

(iii) for the college fiscal year current, the total of the following:

(a) the budgeted or actual number (whichever is less) of full-time equivalent students enrolled in programs eligible for State financial assistance multiplied by [\$1959] \$2,105; and

(b) up to one-half (50%) of rental cost for physical space.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this subdivision, a community college or a new campus of a multiple campus community college in the process of formation shall be eligible for basic State financial assistance in the amount of one-third of the net operating budget or one-third of the net operating costs, whichever is the lesser, for those colleges not implementing an approved full opportunity program plan, or two-fifths of the net operating budget or two-fifths of the net operating costs, whichever is the lesser, for those colleges implementing an approved full opportunity program, during the organization year and the first two fiscal years in which students are enrolled.