

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.)

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

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Podiatric Ankle Surgery Privileges

I.D. No. EDU-48-13-00001-P

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

Proposed Action: Addition of section 65.8 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6507(2)(a), 7001(1), (2), 7009(1), (2), 7010; and L. 2012, ch. 438

Subject: Podiatric ankle surgery privileges.

Purpose: Specifies the required training and experience for issuance of the podiatric standard and advanced ankle surgery privileges.

Text of proposed rule: Section 65.8 of the Regulations of the Commissioner of Education is added, effective February 26, 2014, to read as follows:

§ 65.8 Podiatric ankle surgery privileges.

(a) Definitions. As used in this section:

(1) "Accrediting agency acceptable to the department" shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting podiatric residencies and as having accreditation standards that are applied in a fair, consistent, and nondiscriminatory manner.

(2) "Certification standards acceptable to the department" shall mean standards accepted by the department as reliable for the purpose of granting board qualification and certification to podiatrists engaged in reconstructive rearfoot and ankle surgery and applied in a fair, consistent, and nondiscriminatory manner.

(b) For issuance of a privilege to perform podiatric standard ankle surgery, as that term is used in Education Law section 7001(2), the applicant shall:

- (1) file an application with the department;
- (2) be licensed as a podiatrist in the state;
- (3) pay a fee of \$220 to the department; and
- (4) either:

(i)(a) have graduated on or after June 1, 2006 from a three-year residency program in podiatric medicine and surgery that was accredited by an accrediting agency acceptable to the department; and

(b) be certified in reconstructive rearfoot and ankle surgery by a national certifying board having certification standards acceptable to the department; or

(ii)(a) have graduated on or after June 1, 2006 from a three-year residency program in podiatric medicine and surgery that was accredited by an accrediting agency acceptable to the department; and

(b) be board qualified but not yet certified in reconstructive rearfoot and ankle surgery by a national certifying board having certification standards acceptable to the department; and

(c) provide documentation acceptable to the department that he or she has acceptable training and experience in standard or advanced midfoot, rearfoot and ankle procedures that consist of not less than 10 ankle procedures in the five years immediately preceding application, provided that not less than five procedures shall be osseous procedures and not less than five procedures shall be soft tissue procedures, and further provided that procedures performed in a residency program in podiatric medicine may be used to satisfy the requirements of this clause, if performed within the time constraints of this clause; or

(iii)(a) have graduated before June 1, 2006 from a two-year residency program in podiatric medicine and surgery that was accredited by an accrediting agency acceptable to the department; and

(b) be certified in reconstructive rearfoot and ankle surgery by a national certifying board having certification standards acceptable to the department; and

(c) provide documentation acceptable to the department that he or she has acceptable training and experience in standard or advanced midfoot, rearfoot and ankle procedures that consist of not less than 20 ankle procedures in the five years immediately preceding application, provided that not less than 10 procedures shall be osseous procedures and not less than 10 procedures shall be soft tissue procedures.

(c) For issuance of a privilege to perform podiatric advanced ankle surgery, as that term is used in Education Law section 7001(2), the applicant shall:

- (1) file an application with the department;
- (2) be licensed as a podiatrist in the state;
- (3) pay a fee of \$220 to the department; and
- (4) either:

(i)(a) have graduated on or after June 1, 2006 from a three-year residency program in podiatric medicine and surgery that was accredited by an accrediting agency acceptable to the department; and

(b) be certified in reconstructive rearfoot and ankle surgery by a national certifying board having certification standards acceptable to the department; and

(c) provide documentation acceptable to the department that he or she has acceptable training and experience in advanced midfoot, rearfoot and ankle procedures that consist of:

(1) not less than 10 ankle procedures in the five years immediately preceding application, provided that not less than five procedures shall be osseous procedures and not less than five procedures shall be soft tissue procedures, and further provided that procedures performed in a residency program in podiatric medicine may be used to satisfy the requirements of this subclause, if performed within the time constraints of this subclause; and

(2) not less than 15 procedures in the following categories in the ten years immediately preceding application, which shall include the

specified numbers for each type of procedure, provided that procedures performed in a residency program in podiatric medicine may be used to satisfy the requirements of this subclause, if performed within the time constraints of this subclause, and further provided that the same procedure may be used to satisfy the requirements of both this subclause and subclause (1) of this clause, if it, in fact, meets the requirements of both:

(i) not less than three ankle fracture fixation procedures, which may include, but are not limited to:

(A) the insertion or removal of external fixation pins into or from the tibial diaphysis at or below the level of the myotendinous junction of the triceps surae; and

(B) the insertion and removal of retrograde tibiototalcanneal intramedullary rods and locking screws up to the level of the myotendinous junction of the triceps surae;

(ii) not less than three ankle fusion procedures; and

(iii) not less than one ankle arthroscopy; or

(ii)(a) have graduated before June 1, 2006 from a two-year residency program in podiatric medicine and surgery that was accredited by an accrediting agency acceptable to the department; and

(b) be certified in reconstructive rearfoot and ankle surgery by a national certifying board having certification standards acceptable to the department; and

(c) provide documentation acceptable to the department that he or she has acceptable training and experience in advanced midfoot, rearfoot and ankle procedures that consist of:

(1) not less than 20 ankle procedures in the five years immediately preceding application, provided that not less than 10 procedures shall be osseous procedures and not less than 10 procedures shall be soft tissue procedures; and

(2) not less than 15 procedures in the following categories in the ten years immediately preceding application, which shall include the specified numbers for each type of procedure, provided that procedures performed in a residency program in podiatric medicine may be used to satisfy the requirements of this subclause, if performed within the time constraints of this subclause, and further provided that the same procedure may be used to satisfy the requirements of both this subclause and subclause (1) of this clause, if it, in fact, meets the requirements of both:

(i) not less than three ankle fracture fixation procedures, which may include, but are not limited to:

(A) the insertion or removal of external fixation pins into or from the tibial diaphysis at or below the level of the myotendinous junction of the triceps surae; and

(B) the insertion and removal of retrograde tibiototalcanneal intramedullary rods and locking screws up to the level of the myotendinous junction of the triceps surae;

(ii) not less than three ankle fusion procedures; and

(iii) not less than one ankle arthroscopy.

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, 89 Washington Avenue, 2M, Albany, NY 12234, (518) 486-1765, email: opdepcom@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

Subdivisions (1) and (2) of section 7001 of the Education Law define the practice of podiatry. Subdivision (2) of section 7001 of the Education Law authorizes those podiatrists who have received a podiatric ankle surgery privilege to perform surgery on parts of the ankle that were previously beyond the scope of practice of podiatry.

Subdivision (1) of section 7009 of the Education Law establishes the requirements for podiatrists to qualify for the privilege to perform podiatric standard ankle surgery and authorizes the State Education Department to determine appropriate residency, board certification, and training and experience requirements for such privilege. Subdivision (2) of section 7009 of the Education Law establishes the requirements for podiatrists to qualify for the privilege to perform podiatric advanced ankle

surgery and authorizes the State Education Department to determine appropriate residency, board certification, and training and experience requirements for such privilege. Subdivisions (1) and (2) of section 7009 also establish fees on applicants for the podiatric standard and advanced ankle surgery privileges. In addition to the submission of an application, licensure as a podiatrist, and the payment of a fee, the applicant must meet specified training and certification requirements. There are three training and certification routes available to podiatrists seeking the standard privilege and two routes available to those seeking the advanced privilege.

Education Law section 7010 establishes ankle surgery limited permits to authorize the performance of podiatric standard ankle surgery only under the direct personal supervision of a licensed podiatrist holding a standard or advanced privilege or of a licensed physician certified in orthopedic surgery by a national certifying board having certification standards acceptable to the department. The limited permits will enable licensed podiatrists to obtain the additional training they may need to qualify for an ankle surgery privilege. Section 7010 also establishes fees for the ankle surgery limited permit.

Chapter 438 of the Laws of 2012, which will become effective on February 17, 2014, amended the Education Law to expand the scope of practice of podiatry. In addition, the statute authorizes the provision of ankle surgery by podiatrists who obtain a privilege from the State Education Department to perform such surgery. The law provides for the issuance of two levels of privilege. Holders of the standard ankle surgery privilege will be able to perform soft tissue and osseous procedures on the ankle, except for those procedures which are reserved to podiatrists holding the advanced ankle surgery privilege. The reserved procedures are:

- ankle fracture fixation;

- ankle fusion;

- ankle arthroscopy;

- insertion or removal of external fixation pins into or from the tibial diaphysis at or below the level of the myotendinous junction of the triceps surae; and

- insertion and removal of retrograde tibiototalcanneal intramedullary rods and locking screws up to the level of the myotendinous junction of the triceps surae.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the authority conferred by the above statutes and is necessary to implement Chapter 438 of the Laws of 2012 by establishing the required training and experience for issuance of the podiatric standard or advanced ankle surgery privileges.

3. NEEDS AND BENEFITS:

Each of the routes for obtaining an ankle surgery privilege requires completion of an accredited residency program in podiatric medicine and surgery and either national board certification or qualification in reconstructive rearfoot and ankle surgery. Four of the five routes also require additional training, acceptable to the Department, in midfoot, rearfoot, and ankle procedures. The proposed regulations:

1. define the term "accrediting agency acceptable to the department" with regard to the accreditation of podiatric residencies;

2. define the term "certification standards acceptable to the department" with regard to the certification of podiatric residency programs; and

3. set the requirements for the approval of the additional training that may be required for issuance of an ankle surgery privilege. Within each level of the privilege, the shorter the residency program undertaken by the podiatrist and the lower his or her board certification status, the greater the amount of additional training and experience required by the Department.

4. COSTS:

- (a) Costs to State government: None beyond those inherent in the legislation, which will be offset by the fees imposed by law for the podiatric standard and advanced ankle privileges and for the ankle surgery limited permit.

- (b) Costs to local government: None.

- (c) Cost to private regulated parties: The only fees are those imposed by law on the applicant including fees of \$220 for the podiatric standard and advanced ankle surgery privileges, a fee of \$105 for the ankle surgery limited permit and a renewal fee of \$50 for the limited permit.

- (d) Cost to the regulatory agency: None beyond those inherent in the legislation, which will be offset by the fees imposed by law for the podiatric standard and advanced ankle privileges and for the ankle surgery limited permit.

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

The proposed rule does not impose any new recordkeeping, reporting or other paperwork requirements beyond those inherent in Chapter 438 of the Laws of 2012. As required by Education Law section 7009, as added by Chapter 438 of the Laws of 2012, applicants who seek the privilege to perform podiatric standard or advanced ankle surgery will be required to file an application with the State Education Department.

7. DUPLICATION:

The proposed rule is necessary to implement Chapter 438 of the Laws of 2012 by establishing the required training and experience for issuance of the podiatric standard or advanced ankle surgery privileges. There are no other State or Federal requirements on the subject matter of the proposed rule. Therefore, the amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

The proposed rule implements statutory requirements. Consideration was given to limiting the acceptable board certifications to one particular certification, but this alternative was rejected in favor maintaining flexibility by allowing the Department to accept other certification agencies if they are found to be reliable and to have acceptable accreditation standards.

Consideration was also given to alternative suggestions for the additional training and experience needed for some of the routes to the ankle surgery privileges. Ultimately it was decided that the standards included in the proposed rule, taken together with the procedures performed during the required residencies and those performed to obtain board certification, provide the required public protection without unnecessarily burdening podiatrists seeking one of the privileges.

9. FEDERAL STANDARDS:

There are no relevant Federal standards.

10. COMPLIANCE SCHEDULE:

Chapter 438 of the Laws of 2012 takes effect on February 17, 2014. It is anticipated that podiatrists seeking a podiatric ankle surgery privilege will be able to apply for such privilege on or after that date.

Regulatory Flexibility Analysis

Section 7009 of the Education Law, as added by Chapter 438 of the Laws of 2012, establishes the requirements for individual podiatrists licensed in New York State to apply for a privilege to perform podiatric standard or advanced ankle surgery. The proposed rule implements the new law which expands the scope of practice of licensed podiatrists who obtain one of the podiatric surgery privileges. The amendment will not impose any new reporting, recordkeeping, or other compliance requirements beyond those inherent in the law, or have any adverse economic impact, on small businesses or local governments.

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

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

The proposed rule would implement Chapter 438 of the Laws of 2012 and therefore applies to all New York State licensed podiatrists who wish to perform podiatric standard or advanced ankle surgery, including those who are located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

As required by Education Law section 7009, as added by Chapter 438 of the Laws of 2012, applicants who seek the privilege to perform podiatric standard or advanced ankle surgery will be required to file an application with the State Education Department.

No professional services are expected to be required to comply with the proposed rule.

3. COSTS:

There are no costs beyond those imposed by Chapter 438 of the Laws of 2012, which include fees on the applicant of \$220 for the podiatric standard and advanced ankle surgery privileges and a fee of \$105 for the ankle surgery limited permit. A renewal fee of \$50 for the limited permit shall also apply.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule implements statutory requirements. Consideration was given to limiting the acceptable board certifications to one particular certification, but this alternative was rejected in favor maintaining flexibility by allowing the Department to accept other certification agencies if they are found to be reliable and to have acceptable accreditation standards.

Consideration was also given to alternative suggestions for the additional training and experience needed for some of the routes to the ankle surgery privileges. Ultimately it was decided that the standards included in the proposed rule, taken together with the procedures performed during the required residencies and those performed to obtain board certification, provide the required public protection without unnecessarily burdening podiatrists seeking one of the privileges.

5. RURAL AREAS PARTICIPATION:

Comments on the proposed rule were solicited from the State Board for Podiatry and from statewide organizations representing podiatrists and orthopedic surgeons. These groups have members who live or work in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements under Education Law section 7009 and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

Section 7009 of the Education Law, as added by Chapter 438 of the Laws of 2012, establishes the requirements for individual podiatrists licensed in New York State to apply for a privilege to perform podiatric standard or advanced ankle surgery. The proposed rule implements the new law which expands the scope of practice of licensed podiatrists who obtain one of the podiatric surgery privileges and thus will not have a substantial adverse impact on jobs and employment opportunities. Moreover, any impact on jobs and employment opportunities is attributable to the statutory requirement, not the proposed rule, which simply specifies the required training and experience for a podiatric surgery privilege, as required by law.

Because it is evident from the nature of the proposed rule, which implements specific statutory requirements and directives, that the proposed rule will have no impact on jobs and employment opportunities attributable to its adoption or only a positive impact, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

New York State Gaming Commission

NOTICE OF ADOPTION**Substitution of Plasma for Urine as the Medium for Anabolic Steroid Testing**

I.D. No. RWB-08-13-00003-A

Filing No. 1106

Filing Date: 2013-11-08

Effective Date: 2013-11-27

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

Action taken: Amendment of sections 4043.15, 4120.12, 4120.2(e)(9) and (i) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Substitution of plasma for urine as the medium for anabolic steroid testing.

Purpose: To enhance the integrity and safety of thoroughbred horse racing.

Text of final rule: Section 4043.15 of 9 NYCRR is amended to read as follows:

4043.15 Anabolic steroids

(a) [The use of one of four approved a]Anabolic steroids shall [be permitted] *not be administered except that the following substances may be administered during permitted time frames and at concentrations that on race day are less than these thresholds* [under the following conditions]:

(1) [Not to exceed the following permitted urine or plasma threshold concentrations:

(i) 16 B-hydroxystanozolol (metabolite of stanozolol [Winstrol]) - 1 ng/ml in urine;

(ii) Boldenone [(Equipoise) in male horses other than geldings,]: *All horses may have less than 100 pg/ml (including free boldenone and boldenone liberated from its conjugates) [15 ng/ml in urine] in plasma;*

- (2) [(iii)] Nandrolone: [-]
 (i) Female horses and geldings may have less than 100 pg/ml in plasma; and
 (ii) Intact male horses may have less than [1 ng/ml in urine] 500 pg/ml in plasma.

(3) Stanozolol (Winstrol): All horses may have less than 100 pg/ml in plasma.

- (4) [(iv)] Testosterone:
 [(a) In geldings - 20 ng/ml in urine; and
 (b) In fillies and mares - 55 ng/ml in urine.]
 (i) Female horses and geldings may have less than 100 pg/ml in plasma; and
 (ii) Intact male horses may have less than 2,000 pg/ml in plasma.

(5) In addition, no anabolic steroid shall be administered by injection into a joint at any time.

[(2)] (b) Any other anabolic steroids are prohibited to be administered.
 [(3) The presence of more than one of the above four approved anabolic steroids above the approved thresholds is not permitted.

(4) (c) Post-race [urine or] plasma samples collected from intact males must be identified to the laboratory.

[(5)] (d) Any horse to which a[n] permissible anabolic steroid has been administered in order to assist in the recovery from an illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug[in urine]. Once the concentration is below the designated plasma threshold the horse is eligible to be removed from the list.

[(b)] (e) A violation of this section shall be considered a positive test within the meaning of this Part.

Section 4120.12 of 9 NYCRR is amended to read as follows:

4120.12 Anabolic steroids

(a) [The use of one of four approved a]Anabolic steroids shall [be permitted] not be administered except that the following substances may be administered during permitted time frames and at concentrations that on race day are less than these thresholds [under the following conditions]:

(1) [Not to exceed the following permitted urine or plasma threshold concentrations:

(i) 16 B-hydroxystanozolol (metabolite of stanozolol [Winstrol]) - 1 ng/ml in urine;

(ii) Boldenone [(Equipose) in male horses other than geldings,] All horses may have less than 100 pg/ml (including free boldenone and boldenone liberated from its conjugates) [15 ng/ml in urine] in plasma;

(2) [(iii)] Nandrolone: [-]
 (i) Female horses and geldings may have less than 100 pg/ml in plasma; and

(ii) Intact male horses may have less than [1 ng/ml in urine] 500 pg/ml in plasma.

(3) Stanozolol (Winstrol): All horses may have less than 100 pg/ml in plasma.

(4) [(iv)] Testosterone:
 [(a) In geldings - 20 ng/ml in urine; and
 (b) In fillies and mares - 55 ng/ml in urine.]

(i) Female horses and geldings may have less than 100 pg/ml in plasma; and

(ii) Intact male horses may have less than 2,000 pg/ml in plasma.

(5) In addition, no anabolic steroid shall be administered by injection into a joint at any time.

[(2)] (b) Any other anabolic steroids are prohibited to be administered.
 [(3) The presence of more than one of the above four approved anabolic steroids above the approved thresholds is not permitted.

(4) (c) Post-race [urine or] plasma samples collected from intact males must be identified to the laboratory.

[(5)] (d) Any horse to which a[n] permissible anabolic steroid has been administered in order to assist in the recovery from an illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug[in urine]. Once the concentration is below the designated plasma threshold the horse is eligible to be removed from the list.

[(b)] (e) A violation of this section shall be considered a positive test within the meaning of this Part.

Paragraph 9 of Subdivision (e) of Section 4120.2 of 9 NYCRR is amended to read as follows:

(e) The following substances are permitted to be administered by any means until 48 hours before the scheduled post time of the race in which the horse is to compete:

(9) hormones and non-anabolic steroids, [(e.g., [testosterone,] progesterone, estrogens, chorionic gonadotropin, glucocorticoids (e.g., Prednisolone, Depomedrol), [and anabolic steroids (e.g. Equipose),] except in [conjunction with] joint [aspiration] injections as restricted in subdivision (i) of this section]; the use of anabolic steroids is governed by Rule 4120.12];

Subdivision (i) of Section 4120.2 of 9 NYCRR is amended to read as follows:

(i) In addition, a horse that has had a joint injected [aspirated (in conjunction] with a steroid [injection]) may not race for at least five days following such procedure, and whenever such procedure is performed, the trainer shall notify the stewards of such fact, in writing, before the horse is entered to race.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 4043.15(a)(1) and 4120.12(a)(1).

Revised rule making(s) were previously published in the State Register on August 28, 2013.

Text of rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Schenectady, NY 12305, (518) 395-5400, email: info@gaming.ny.gov

Revised Regulatory Impact Statement

No revision of the Regulatory Impact Statement that was published in the August 28, 2013 State Registry is necessary. The only change made to the proposed text of this rule was not a substantive change. The proposed rule included a parenthetical reference to the trade name of an anabolic steroid that was identified by its scientific name, Boldenone (Equipose). Boldenone is no longer sold under the trade name Equipose. The Commission decided to omit the parenthetical reference to an obsolete trade name from the adopted rule. No other charges were made to the proposed text.

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

No revision of the Consolidated Statement that was published in the August 28, 2013 State Registry is necessary. The only change made to the proposed text of this rule was not a substantive change. The proposed rule included a parenthetical reference to the trade name of an anabolic steroid that was identified by its scientific name, Boldenone (Equipose). Boldenone is no longer sold under the trade name Equipose. The Commission decided to omit the parenthetical reference to an obsolete trade name from the adopted rule. No other charges were made to the proposed text.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Three public comments were received in response to the publication of the proposed rule-making in the August 28, 2013 State Register. A race-track official wrote in support and a representative of a thoroughbred horseperson's organization sought, and received, an assurance that the urine thresholds would be discontinued.

The third public comment made several suggestions for the proposed rule and resulted in the Commission omitting the trade name (Equipose) of a discontinued product from the rule. The author suggested not making mention in the rule of the permitted time frames within which the four specified anabolic steroids may be administered. The Commission rejected this approach because the rule has an express provision for the return to racing of a horse that has been treated with the four specified anabolic steroids, and because there is an independent Commission rule that restricts the time of administration of anabolic steroids before a horse's next race. Another suggestion was to adopt a zero threshold for stanozolol, a long-lasting steroid that can be detected for months after a lawful administration. The Commission rejected taking such action on its own, without a multi-state phase out period, in order to continue permitting horses lawfully treated out-of-state to participate in New York racing. A request was made for research data regarding the nandrolone threshold for an intact male horse, but the Commission has relied on research that was conducted elsewhere. Finally, the Commission did not agree to adopt, by rule, different thresholds for screening and confirming the presence of a target analyte in a sample, because the testing laboratory itself is able to determine an appropriate way to screen samples.

NOTICE OF ADOPTION

Video Lottery Gaming Advertising

I.D. No. SGC-35-13-00002-A

Filing No. 1107

Filing Date: 2013-11-12

Effective Date: 2013-11-27

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

Action taken: Addition of section 5116.6(b)(3) to Title 9 NYCRR.

Statutory authority: Tax Law, sections 1604 and 1617-a; and Racing, Pari-Mutuel and Breeding Law, section 104

Subject: Video Lottery Gaming advertising.

Purpose: To conform with the Memorandum of Understanding between the Seneca Nation of Indians and the State of New York.

Text of final rule: Pursuant to the authority granted by Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law and Sections 1604 and 1617-a of the Tax Law, the New York State Gaming Commission hereby promulgates this amendment of Section 5116.6 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

§ 5116.6. Advertising.

(a) Advertising generally.

(1) The content or concept of all advertising and any advertisement shall be provided as prescribed by the commission.

(2) A video lottery gaming agent shall be responsible for all advertising and advertisements that are made by the agents or representatives of such video lottery gaming agent, regardless of whether the video lottery gaming agent participated directly in such advertising's development, preparation, placement or dissemination.

(3) Issuance of a video lottery gaming agent license pursuant to these regulations permits conducting video lottery gaming in a manner approved by the commission. Use of any name, logo or design owned by the commission or the video lottery gaming machine manufacturers without a valid license may constitute a violation of Federal and State copyright and trademark laws. Permitted use of the logo by a licensee must be in compliance with approved guidelines.

(b) Criteria governing advertising.

(1) Approved advertising criteria shall be published from time to time by the commission.

(2) The following practices shall be prohibited with respect to all advertisements:

(i) The use or statement of any information, representation, or description that contrasts or compares video lottery gaming agents or facilities with regard to total payout.

(ii) The failure to maintain any offer for the advertised period of availability or in a quantity sufficient to meet reasonably anticipated demand. Should anticipated demand be exceeded, items of equal or greater value may be substituted on notice to the commission.

(3) No video lottery agent [located] operating within the geographic area defined by:

(i) to the east, State Route 14 from Sodus Point to the Pennsylvania border with New York;

(ii) to the north, the border between New York and Canada;

(iii) to the south, the Pennsylvania border with New York; and

(iv) to the west, the border between New York and Canada and the border between Pennsylvania and New York,

is permitted, with respect to operations in such geographic area, to use the terms "slots," "slot machines," and "casino" or "casinos" for marketing or other purposes.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 5116.6(3).

Text of rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, Gaming Commission, One Broadway Center, PO Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, email: Gamingrules@gaming.ny.gov

Revised Regulatory Impact Statement

The unsubstantial changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement.

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

Changes made to the last published rule do not necessitate revisions to the previously published Regulatory Flexibility Statement, Rural Flexibility Statement or Job Impact Statement. There will be no adverse impact on jobs, rural areas, small business or local governments.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

One comment was received regarding this proposed rulemaking. The comment from the Seneca Nation of Indians requested that the text of the rule

be revised to ensure that it is accurately interpreted regarding the restriction upon certain video lottery facilities from using certain terminology to describe such facilities. The commenter was concerned that the rule as previously written could be interpreted to allow a video lottery agent located outside the described geographic area to operate a video gaming facility within the described geographic area using the prohibited terminology. In response to the comment, the proposed rule was revised to clarify that a video gaming agent operating within the described geographic area is prohibited from using certain terminology with respect to operations within the described geographic area. The intent of the rule remains the same.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for Submetering of Electricity

I.D. No. PSC-48-13-00002-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 548 4th, LLC to submeter electricity at 548 4th Avenue, Brooklyn, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for submetering of electricity.

Purpose: To consider the request of 548 4th, LLC to submeter electricity at 548 4th Avenue, Brooklyn, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 548 4th LLC to submeter electricity at 548 4th Avenue, Brooklyn, New York, located in the territory of Consolidated Edison of New York, Inc.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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.

(13-E-0501SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of 16 NYCRR Sections 86.3(a)(2), (b)(2) and 88.4(a)(4)

I.D. No. PSC-48-13-00003-P

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

Proposed Action: The Commission is considering a motion of Central Hudson Gas & Electric Corporation for a waiver of certain regulatory requirements for applications under PSL Article VII for a Certificate of Environmental Compatibility and Public Need.

Statutory authority: Public Service Law, sections 4 and 122

Subject: Waiver of 16 NYCRR sections 86.3(a)(2), (b)(2) and 88.4(a)(4).

Purpose: To ensure the content of the application for transmission line siting is reasonable and adequate.

Substance of proposed rule: The Commission is considering a motion by

Central Hudson Gas & Electric Corporation for a waiver or partial waiver of certain requirements for the content of an application for authority to construct and operate an electric transmission line pursuant to a Certificate of Environmental Compatibility and Public Need under Article VII of the Public Service Law. Central Hudson proposes to commence construction of the A and C Line Rebuild Project, involving replacement of approximately 10.85 miles of 115 Kilovolt Transmission Lines within existing rights-of-way in the Towns of Pleasant Valley, LaGrange, Wappinger and East Fishkill, Dutchess County. Central Hudson specifically seeks waivers of 16 NYCRR §§ 86.3(a)(2), 86.3(b)(2), and 88.4(a)(4) relating to a System Reliability Impact Study, maps, and aerial photographs.

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.ny.gov/f96dir.htm>. For questions, contact: Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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.

(13-T-0469SP1)

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Standard Utility Allowances for the Supplemental Nutrition Assistance Program

I.D. No. TDA-38-13-00008-A

Filing No. 1108

Filing Date: 2013-11-12

Effective Date: 2013-11-27

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

Action taken: Amendment of section 387.12 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 95; 7 USC section 2014(e)(6)(C); and 7 CFR section 273.9(d)(6)(iii)

Subject: Standard Utility Allowances for the Supplemental Nutrition Assistance Program.

Purpose: These regulatory amendments set forth the federally mandated and approved standard utility allowances as of October 1, 2013.

Text or summary was published in the September 18, 2013 issue of the Register, I.D. No. TDA-38-13-00008-EP.

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

Text of rule and any required statements and analyses may be obtained from: Jeanine S. Behuniak, NYS Office of Temporary and Disability Assistance, 40 North Pearl St., 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@otda.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2016, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.