

# RULE MAKING ACTIVITIES

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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.

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## Department of Agriculture and Markets

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### EMERGENCY RULE MAKING

#### Sanitation Requirements for Poultry Dealers and Poultry Transporters

**I.D. No.** AAM-22-04-00007-E  
**Filing No.** 599  
**Filing date:** May 18, 2004  
**Effective date:** May 18, 2004

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

**Action taken:** Amendment of Part 45 of Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 16, 18 and 72

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

**Specific reasons underlying the finding of necessity:** The amendments to Part 45 will expand and strengthen the department's avian influenza control program by requiring a poultry dealer or poultry transporter holding a valid domestic animal health permit who buys or sells poultry to be sold or offered for sale in a live poultry market, or transports poultry to a live poultry market, to maintain a facility such that it can be cleaned and disinfected on a year round basis, to possess and utilize a mechanical crate

washer to clean and disinfect crates between uses on a year round basis, to use an all-season truck or vehicle wash facility to clean and disinfect trucks or vehicles between uses on a year round basis and to compile and maintain records of the dates and times that the crates and the trucks or vehicles were cleaned and disinfected. The amendments also clarify the requirement that the certificate of veterinary inspection shall remain with DAHP holder (*i.e.*, poultry dealer or poultry transporter) and the invoice shall accompany the poultry to the live poultry market.

Avian influenza is caused by a virus that can strike susceptible poultry populations and may produce severe morbidity and mortality in a short period of time. It spreads rapidly, within and between flocks, through the movement of infected birds and contaminated fomites. The highly pathogenic virus produces the following signs: bloody nasal discharge, swelling and purple discoloration of the wattles and combs, diarrhea, pinpoint hemorrhages, loss of coordination and lack of energy and appetite.

The live poultry markets play a key role in the ability of the avian influenza virus to cause severe morbidity and mortality in a poultry population. The virus becomes established in the markets through the introduction of infected birds by poultry distributors. As additional uninfected birds enter the markets, the virus undergoes changes affecting its pathogenicity as it spreads.

In the past 20 years, avian influenza has posed a threat and has resulted in millions of dollars in damages to the poultry industry in New York State and other northeastern states. In 1983 and 1984, an avian influenza outbreak in the United States was responsible for the destruction of nearly 17 million birds in Pennsylvania, Maryland, New Jersey and Delaware. The eradication effort cost \$65 million dollars to complete and was responsible for an increase in poultry prices to the consumer of \$349 million dollars.

In December of 1992, avian influenza was diagnosed in a 30,000 bird turkey flock in Pennsylvania. By January of 1993, state officials throughout the northeastern United States were testing live poultry markets for avian influenza. The tests revealed that avian influenza was present in eight markets in New York, five markets in New Jersey and one market in Pennsylvania. The virus was also isolated on farms in Maryland, New Jersey and Pennsylvania as well as a poultry exhibition in Pennsylvania. Although the 1992-1993 avian influenza outbreak did not infect any large commercial flocks, the virus had managed to spread through five states in only two months.

In 1995 and 1996, avian influenza was isolated in flocks supplying poultry markets in the New York City metropolitan area. The costs of clean-up to the state and the owners of the flocks exceeded \$100,000 per flock. In 1997, Pennsylvania diagnosed avian influenza in a supply flock which provides birds to live poultry markets in New York City. Avian influenza was later detected in ten nearby commercial operations, the clean-up of which consisted of slaughtering over one million birds at a cost of \$5 million dollars.

In 1998, live poultry from all of the 78 live poultry markets in the New York City metropolitan area were tested for avian influenza. The virus was found in birds from 54, or 69%, of those markets. The prevalence of the virus in the live poultry markets prompted the adoption, on an emergency basis, of regulations which immediately prohibited the movement of poultry from infected flocks to the live poultry markets, by requiring that only birds from tested or monitored source flocks be allowed into the markets. Those regulations were subsequently adopted on a permanent basis. It was hoped that the new regulations would prevent the continued reintroduction of the virus. However, these control measures have not been entirely successful.

In June and July 2001, the United States Department of Agriculture (USDA) conducted a survey of live poultry markets. The survey revealed that approximately 60 percent of the markets contained the avian influenza virus. In December 2001 and January 2002, an outbreak of avian influenza in six poultry flocks in Pennsylvania resulted in the destruction of 135,000 birds.

The continuing prevalence of avian influenza in the live poultry markets and the outbreak of the virus in the flocks in Pennsylvania prompted the department, on January 24, 2002, to adopt, on an emergency basis, a regulation which provided that no live poultry shall be moved anywhere from a poultry market in the City of New York or in the Counties of Nassau and Westchester, unless specifically authorized by the Commissioner or his designee. This regulation was subsequently amended on an emergency basis to prohibit the movement of poultry from any poultry market, rather than just those markets in the City of New York and the Counties of Nassau and Westchester. This regulation, as amended, was ultimately adopted on a permanent basis in an effort to help limit the lateral transmission of avian influenza between the markets. However, this control measure has not been entirely successful, since as of December 2003, approximately 18 percent of the live poultry markets tested positive for the virus.

In the past two years, outbreaks of avian influenza in the United States have resulted in the destruction of approximately 5 million birds. In February 2004, outbreaks of avian influenza in Delaware, Maryland and a broiler flock in Texas resulted in the destruction of 436,600 birds on the farms as well as the depopulation, cleaning and disinfection of the nine live poultry markets in New York City which had received birds from those farms. In response to these latest outbreaks, 35 countries have placed embargoes on poultry and poultry products in the United States, 16 of which are nationwide embargoes that include New York State.

Adequate sanitation practices are key components in the control and eradication of avian influenza. This is evident based upon the results of a cooperative program, implemented in April 2002 by the department and the USDA, whereby the 80 live poultry markets in the New York City metropolitan area were required to close their premises, depopulate their poultry stock and clean and disinfect their premises prior to reopening. At the same time, five poultry distributors in New York voluntarily closed, depopulated their poultry stock and cleaned and disinfected their premises. The closures took place between April 8 and April 10, 2002, during which time, environmental samples were taken from each market and distributor following the cleaning and disinfection process. These environmental samples were subsequently analyzed and found to be negative for avian influenza.

In conclusion, the department believes that these amendments are essential disease control measures, since they will limit the transmission of avian between poultry distributors and the live poultry markets, thereby helping to protect the economic viability of New York's \$125,000,000 per year poultry industry. Promulgation of these amendments on an emergency basis is necessary because establishment of the virulent avian influenza in New York's domestic poultry populations would be devastating to the State and our poultry industry from both, an animal health and economic standpoint.

**Subject:** Sanitation requirements for poultry dealers and poultry transporters.

**Purpose:** To prevent the spread of avian influenza through the live poultry markets.

**Text of emergency rule:** Section 45.1 of Title One of the Official Compilation of Codes, Rules and Regulations of the State of New York (1 NYCRR) is amended to read as follows:

(i) [Poultry] *Live poultry* market means any premises where live poultry are assembled and held for sale and slaughter. It does not include livestock auction buildings [regulated pursuant to] *as defined in Part 49 of this title or USDA inspected poultry slaughter plants located outside the City of New York and the counties of Nassau and Westchester.*

(m) [Poultry distributor means any person, firm or corporation which assembles live poultry for subsequent distribution to poultry markets.] *Poultry dealer and poultry transporter shall have the meaning accorded those terms in section 90-b of Article 5 of the Agriculture and Markets Law.*

Subdivisions (a), (b) and (c) of section 45.6 of Title 1 of 1 NYCRR are re-lettered subdivisions (b), (c) and (a), respectively, and amended to read as follows:

§ 45.6[(c)] (a) No live poultry more than seven days old shall be moved into a *live* poultry market other than [directly from source flocks] *by a poultry dealer or poultry transporter holding a valid domestic animal*

*health permit and from flocks* which meet the requirements of subdivision [(a)] (b) of this section.

§ 45.6[(a)] (b)(1) No live poultry more than seven days old may be moved into a *live* poultry market unless [accompanied by] *the poultry dealer or poultry transporter possesses an approved certificate of veterinarian inspection which states that either:*

[(1)] (i) the poultry identified thereon are moving [directly] *through a poultry dealer or poultry transporter* from a source flock which is certified by the state or country of origin as an avian influenza monitored source; or

[(2)] (ii) the poultry identified thereon are moving [directly] *through a poultry dealer or poultry transporter* from a source flock in which a random sample of 10 birds were blood-tested negative for avian influenza within 10 days prior to the date of movement, using a test approved by the United States Department of Agriculture.

(2) *The approved certificate of veterinary inspection required by this subdivision shall remain in the possession of the poultry dealer or poultry transporter moving the poultry directly to a live poultry market and further, the poultry shall be accompanied by an invoice setting forth:*

(i) *the name and address of the poultry dealer or poultry transporter that is moving the poultry;*

(ii) *the name and address of the live poultry market into which the poultry are being moved;*

(iii) *the number and type of poultry being moved;*

(iv) *the avian influenza status of the poultry; and*

(v) *the date of the movement of such poultry into the market.*

§ 45.6[(b)] (c) No live poultry more than seven days old which [are] *is held on premises where within the previous 12 months there has been a positive avian influenza serology, [or] culture or a trace back to said premises of birds that tested positive for avian influenza [in] within the previous 12 months shall be moved into a live poultry market unless the State Animal Health Official of the state or country of origin certifies that:*

(1) all birds held on the premises at or after the time of the positive serology, [or] culture, *or trace back* and prior to the cleaning and disinfection of the premises were removed to slaughter or slaughtered and the premises were thereafter cleaned and disinfected under official supervision *and the replacement flock complies with (2) below, or*

(2) tracheal and cloacal swabs were obtained for virus isolation from 150 randomly selected birds in a flock held on such premises or from all of the birds in such flock, whichever is less, and such tests demonstrated that avian influenza was not present, and no bird in such flock exhibited clinical signs of avian influenza in the 45 days preceding the date of sampling. *If the birds so tested are waterfowl, then only cloacal swabs shall be required.* Such samples may be pooled in groups of up to five samples per culture.

§ 45.6(f)(1) [A poultry distributor may apply for approved poultry wholesaler status by submitting to the commissioner a statement under oath or affirmation in which it agrees to:] *A poultry dealer or poultry transporter who buys or sells poultry to be sold or offered for sale in a live poultry market, or transports poultry to a live poultry market shall:*

(i) properly maintain, under supervision of the State Animal Health Official of the state in which it resides, the approved certificates of veterinary inspection required by this section, together with records of the poultry it receives and the poultry it ships; *and*

(ii) immediately make such records available for inspection and/or immediately provide copies thereof when requested to do so by representatives of the New York State Department of Agriculture and Markets, the United States Department of Agriculture and/or the appropriate State Animal Health Official; *and*

(iii) accept only poultry meeting the requirements of this section [.] *and*

(iv) *have a facility that can be routinely cleaned and disinfected on a year round basis to prevent survival of avian disease agents including avian influenza, and*

(v) *possess and utilize a working mechanical crate washer which cleans and disinfects crates between uses on a year round basis, provided such crate washer shall not be located or operated at a live poultry market, auction premises or poultry farming operation and provided further that crates which have been cleaned and disinfected shall not be exposed to or contaminated by crates which have not been cleaned and disinfected; and*

(vi) *use an all-season truck or vehicle wash facility to clean and disinfect trucks or vehicles between uses, provided such all-season truck or vehicle wash facility shall not be located or operated at a live poultry market, auction premises or poultry farming operation; and*

(vii) compile, maintain and make available for inspection, for a period of two years, records of the dates and times such crates and trucks or vehicles were cleaned and disinfected.

[Said statement shall be endorsed by the State Animal Health Official of the state in which the distributor resides. If satisfied of the ability and willingness of the poultry distributor to maintain and make such records available, accept only such poultry, and to otherwise comply with the requirements of this section, the commissioner may grant the distributor approved poultry wholesaler status.

(2) Live poultry from a distributor which has been granted approved poultry wholesaler status may move into a poultry market without being accompanied by the approved certificate of veterinary inspection required by subdivision (a) of this section, provided that such certificate has been issued and is in the possession of the distributor at the time of such movement, and further provided, that the poultry are accompanied by an invoice setting forth:

(i) the name and address of the distributor with approved wholesaler status that is moving the poultry;

(ii) the name and address of the market into which the poultry are being moved;

(iii) the type of poultry being moved;

(iv) the avian influenza status of the poultry; and

(v) the date of the movement of such poultry into the market.

(3) The approved wholesaler status of a poultry distributor may be withdrawn if the commissioner concludes there is reason to believe that the distributor has:

(i) moved or attempted to move into a live poultry market poultry infected with, or exposed to, avian influenza;

(ii) failed to comply with the written agreement it executed and submitted to the department; or

(iii) failed to comply with the requirements of this section.]

**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 August 15, 2004.

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

#### **Regulatory Impact Statement**

##### 1. Statutory authority:

Section 16 of the Agriculture and Markets Law (Law) provides, in part, that the Commissioner shall have the power to execute and carry into effect the laws of the State and the rules of the Department, relative to the production, transportation, storage, marketing and distribution of food.

Section 18 of the Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department.

Section 72 of the Law authorizes the Commissioner to adopt and enforce rules and regulations for the control, suppression or eradication of communicable diseases among domestic animals and to prevent the spread of infection and contagion.

Section 72 of the Law also provides that whenever a communicable disease affecting domestic animals shall exist or be brought into this State, the Commissioner shall take measures promptly to suppress the same and to prevent such disease from spreading.

##### 2. Legislative objectives:

The statutory provisions pursuant to which these regulations are adopted are aimed at controlling, preventing and eradicating infectious and communicable diseases affecting domestic animals in the State.

The Department's amendments to Part 45 will further these legislative goals by expanding the Department's avian influenza control program to require a poultry dealer or a poultry transporter holding a valid domestic animal health permit who buys or sells poultry to be sold or offered for sale in a live poultry market, or transports poultry to a live poultry market, to have facilities that can be cleaned and disinfected on a year round basis; to possess and utilize mechanical crate washers to clean and disinfect crates between uses on a year round basis; to use all-season trucks or vehicle wash facilities to clean and disinfect trucks or vehicles between uses on a year round basis; and to compile and maintain records of the dates and times that the crates and the trucks or vehicles were cleaned and disinfected. The amendments also clarify the requirement that the certificate of veterinary inspection shall remain with DAHP holder (*i.e.* poultry dealer or

poultry transporter) and the invoice shall accompany the poultry to the live poultry market.

##### 3. Needs and benefits:

Avian influenza is caused by a virus that can strike susceptible poultry populations and may produce severe morbidity and mortality in a short period of time. It spreads rapidly, within and between flocks, through the movement of infected birds and contaminated fomites. The highly pathogenic virus produces the following signs: bloody nasal discharge, swelling and purple discoloration of the wattles and combs, diarrhea, pinpoint hemorrhages, loss of coordination and lack of energy and appetite.

In the past 20 years, avian influenza has posed a threat and has resulted in millions of dollars in damages to the poultry industry in New York State and other northeastern states. In 1983 and 1984, an avian influenza outbreak in the United States was responsible for the destruction of nearly 17 million birds in Pennsylvania, Maryland, New Jersey and Delaware. The eradication effort cost \$65 million dollars to complete and was responsible for an increase in poultry prices to the consumer of \$349 million dollars.

In December of 1992, avian influenza was diagnosed in a 30,000 bird turkey flock in Pennsylvania. By January of 1993, state officials throughout the northeastern United States were testing live poultry markets for avian influenza. The tests revealed that avian influenza was present in eight markets in New York, five markets in New Jersey and one market in Pennsylvania. The virus was also isolated on farms in Maryland, New Jersey and Pennsylvania as well as a poultry exhibition in Pennsylvania. Although the 1992-1993 avian influenza outbreak did not infect any large commercial flocks, the virus had managed to spread through five states in only two months.

In 1995 and 1996, avian influenza was isolated in flocks supplying poultry markets in the New York City metropolitan area. The costs of clean-up to the state and the owners of the flocks exceeded \$100,000 per flock. In 1997, Pennsylvania diagnosed avian influenza in a supply flock which provides birds to live poultry markets in New York City. Avian influenza was later detected in ten nearby commercial operations, the clean-up of which consisted of slaughtering over one million birds at a cost of \$5 million dollars.

In 1998, live poultry from all of the 78 live poultry markets in the New York City metropolitan area were tested for avian influenza. The virus was found in birds from 54, or 69%, of those markets. The prevalence of the virus in the live poultry markets prompted the adoption, on an emergency basis, of regulations which immediately prohibited the movement of poultry from infected flocks to the live poultry markets, by requiring that only birds from tested or monitored source flocks be allowed into the markets. Those regulations were subsequently adopted on a permanent basis. It was hoped that the new regulations would prevent the continued reintroduction of the virus. However, these control measures have not been entirely successful.

In June and July 2001, the United States Department of Agriculture (USDA) conducted a survey of live poultry markets. The survey revealed that approximately 60 percent of the markets contained the avian influenza virus. In December 2001 and January 2002, an outbreak of avian influenza in six poultry flocks in Pennsylvania resulted in the destruction of 135,000 birds.

The continuing prevalence of avian influenza in the live poultry markets and the outbreak of the virus in the flocks in Pennsylvania prompted the Department, on January 24, 2002, to adopt, on an emergency basis, a regulation which provided that no live poultry shall be moved anywhere from a poultry market in the City of New York or in the Counties of Nassau and Westchester, unless specifically authorized by the Commissioner or his designee. This regulation was subsequently amended on an emergency basis to prohibit the movement of poultry from any poultry market, rather than just those markets in the City of New York and the Counties of Nassau and Westchester. This regulation, as amended, was ultimately adopted on a permanent basis in an effort to help limit the lateral transmission of avian influenza between the markets. However, this control measure has not been entirely successful, since as of December 2003, approximately 18 percent of the live poultry markets tested positive for the virus.

In the past two years, outbreaks of avian influenza in the United States have resulted in the destruction of approximately 5 million birds. In February 2004, outbreaks of avian influenza in Delaware, Maryland and a broiler flock in Texas resulted in the destruction of 436,600 birds on the farms as well as the depopulation, cleaning and disinfection of the nine live poultry markets in New York City which had received birds from those farms. In response to these latest outbreaks, 35 countries have placed embargoes on

poultry and poultry products in the United States, 16 of which are nationwide embargoes that include New York State.

Adequate sanitation practices are key components in the control and eradication of avian influenza. This is evident based upon the results of a cooperative program, implemented in April 2002 by the Department and the USDA, whereby the 80 live poultry markets in the New York City metropolitan area were required to close their premises, depopulate their poultry stock and clean and disinfect their premises prior to reopening. At the same time, five poultry distributors in New York voluntarily closed, depopulated their poultry stock and cleaned and disinfected their premises. The closures took place between April 8 and April 10, 2002, during which time, environmental samples were taken from each market and distributor following the cleaning and disinfection process. These environmental samples were subsequently analyzed and found to be negative for avian influenza.

Part 45 of 1 NYCRR currently requires the cleaning and disinfection of any truck, coop, cage, crate or other conveyance for the purpose of removing, delivering or transporting live poultry prior to entering New York State and prior to entering any farm in New York State. Part 45 also requires all persons entering any premises containing live poultry within New York State with any poultry truck, feed delivery and/or service vehicle to take every sanitary precaution possible to prevent the introduction or spread of avian influenza, including the disinfection of all footwear before entering and after leaving any premises containing live poultry and the washing and disinfecting of the cabs, tires and bodies of all vehicles between each entry of a premises containing live poultry.

The Department's amendments to Part 45 will expand and strengthen the Department's avian influenza control program by requiring a poultry dealer or a poultry transporter holding a valid domestic animal health permit who buys or sells poultry to be sold or offered for sale in a live poultry market, or transports poultry to a live poultry market, to have facilities that can be cleaned and disinfected on a year round basis; to possess and utilize mechanical crate washers to clean and disinfect crates between uses on a year round basis; to use all-season truck or vehicle wash facilities to clean and disinfect trucks or vehicles between uses on a year round basis; and to compile and maintain records of the dates and times that the crates and the trucks or vehicles were cleaned and disinfected. The amendments also clarify the requirement that the certificate of veterinary inspection shall remain with DAHP holder (*i.e.*, poultry dealer or poultry transporter) and the invoice shall accompany the poultry to the live poultry market.

In conclusion, the Department believes that the amendments are essential disease control measures, since they will limit the transmission of avian influenza to live poultry markets from poultry dealers and poultry transporters.

#### 4. Costs:

##### (a) Costs to regulated parties:

Under the amendments, poultry dealers and poultry transporters holding a valid domestic animal health permit who buy or sell poultry to be sold or offered for sale in a live poultry market, or transport poultry to a live poultry market, will have to purchase equipment to clean and disinfect crates between uses. Commercial devices capable of cleaning and disinfecting 400 crates per hour may be purchased new at a cost of \$50,000 or purchased used at auction for approximately \$12,000. Delivery and installation of either a new or used crate washer would cost between \$10,000 and \$12,000. However, based upon outreach with industry, the Department has determined that five (5) of the eight (8) poultry dealers and/or poultry transporters in New York State already have crate washers on their premises. Poultry dealers and poultry transporters will also have to use an all-season truck or vehicle wash facility in order to clean and disinfect trucks or vehicles between uses. Based upon outreach with industry, the Department has determined that three (3) of the eight (8) poultry dealers and/or poultry transporters in New York State already have on-site truck wash facilities. In lieu of establishing truck wash facilities, poultry dealers and poultry transporters will be able to comply with the amendments by using a commercial truck wash facility. Such facilities capable of cleaning and disinfecting trucks as large as 18-wheel rigs charge \$100 to \$400 per washing.

##### (b) Costs to the agency, state and local governments:

None.

##### (c) Source:

Costs are based upon observations of business practices in the industry as well as outreach with regulated parties.

#### 5. Local government mandates:

The amendments will not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

#### 6. Paperwork:

Under the amendments, poultry dealers and poultry transporters holding a valid domestic animal health permit who buy or sell poultry to be sold or offered for sale in a live poultry market, or transport poultry to a live poultry market, will be required to compile, maintain and make available for inspection, for a period of two years, records of the dates and times that crates and trucks or vehicles were cleaned and disinfected. Such poultry dealers and poultry transporters will also be required to retain the certificate of veterinary inspection for the poultry they buy, sell or transport to a live poultry market.

#### 7. Duplication:

None.

#### 8. Alternatives:

The first alternative considered was not to amend the regulations. This alternative was rejected due to the fact that the present regulations do not adequately protect New York State's live poultry markets from avian influenza. The prevalence of the virus in approximately 18% of the live poultry markets in the New York City metropolitan area shows that current control measures are not sufficient. In light of the prevalence of virus in the markets and the recent outbreaks of avian influenza in Delaware and Texas, the Department believes that the amendments are essential disease control measures, since they will limit the transmission of avian influenza from poultry dealers and poultry transporters to the live poultry markets.

The second alternative considered was to require poultry dealers and poultry transporters to establish and maintain a truck wash facility to clean and disinfect trucks and other vehicles used to carry poultry between uses. However, due to the availability of commercial truck wash facilities in New York State, this alternative was rejected as an excessive financial burden on regulated parties.

#### 9. Federal standards:

The federal government has no standards.

#### 10. Compliance schedule:

Immediate compliance by the industry is expected.

### **Regulatory Flexibility Analysis**

#### 1. Effect of rule:

There are eight (8) poultry dealers and/or poultry transporters in New York State, all of which are small businesses. There are also 38 poultry dealers and/or poultry transporters in other states and Canada.

The amendments will have no impact upon local governments.

#### 2. Compliance requirements:

Under the amendments, poultry dealers and poultry transporters holding a valid domestic animal health permit who buy or sell poultry to be sold or offered for sale in a live poultry market, or transport poultry to a live poultry market, will be required to compile, maintain and make available for inspection, for a period of two years, records of the dates and times that crates and trucks or vehicles were cleaned and disinfected. Such poultry dealers and poultry transporters will also be required to retain the certificate of veterinary inspection for the poultry they buy, sell or transport to a live poultry market.

The amendments will have no impact upon local governments.

#### 3. Professional services:

None.

#### 4. Compliance costs:

Under the amendments, poultry dealers and poultry transporters holding a valid domestic animal health permit who buy or sell poultry to be sold or offered for sale in a live poultry market, or transport poultry to a live poultry market, will have to purchase equipment to clean and disinfect crates between uses. Commercial devices capable of cleaning and disinfecting 400 crates per hour may be purchased new at a cost of \$50,000 or purchased used at auction for approximately \$12,000. Delivery and installation of either a new or used crate washer would cost between \$10,000 and \$12,000. However, based upon outreach with industry, the Department has determined that five (5) of the eight (8) poultry dealers and/or poultry transporters in New York State already have crate washers on their premises. Poultry dealers and poultry transporters will also have to use an all-season truck or vehicle wash facility in order to clean and disinfect trucks or vehicles between uses. Based upon outreach with industry, the Department has determined that three (3) of the eight (8) poultry dealers and/or poultry transporters in New York State already have on-site truck wash facilities. In lieu of establishing truck wash facilities, poultry dealers and poultry transporters will be able to comply with the amendments by using a commercial truck wash facility. Such facilities capable of cleaning and

disinfecting trucks as large as 18-wheel rigs charge \$100 to \$400 per washing.

5. Economic and technological feasibility:

The economic and technological feasibility of complying with the amendments has been assessed.

The amendments are economically and technologically feasible. The Department has determined that a number of poultry dealers and/or poultry transporters in New York State already have crate washers and on-site truck wash facilities. In lieu of establishing truck wash facilities, poultry dealers and poultry transporters will be able to comply with the amendments by using a commercial truck wash facility.

The amendments will have no impact upon local governments.

6. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-b(1), the amendments were drafted to minimize economic impact and reporting requirements for all regulated parties, including small businesses.

The Department has previously implemented less burdensome measures on regulated parties in an effort to help prevent the spread of avian influenza through the live poultry markets. Those measures include the requirement that only birds from tested or monitored source flocks be allowed into the markets and the prohibition against moving poultry between live poultry markets. Unfortunately, these measures have not been entirely successful, as evidenced by the prevalence of the virus in the markets.

The Department's amendments will expand and strengthen the Department's avian influenza control program by requiring poultry dealers and poultry transporters holding a valid domestic animal health permit who buy or sell poultry to be sold or offered for sale in a live poultry market, or transport poultry to a live poultry market, to have facilities that can be cleaned and disinfected on a year round basis; to possess and utilize crate washers to clean and disinfect crates between uses on a year round basis; to use all-season truck or vehicle wash facilities to clean and disinfect trucks or vehicles between uses on a year round basis; and to compile and maintain records of the dates and times that the crates and the trucks or vehicles were cleaned and disinfected. Although these amendments will result in a greater regulatory burden on regulated parties, the Department has nonetheless minimized adverse impact on them by allowing regulated parties to use commercial truck wash facilities rather than establishing and maintaining their own facilities.

The amendments will have no impact upon local governments.

7. Small business and local government participation:

In light of the continued prevalence of avian influenza in the live poultry markets in New York and the recent outbreaks of the virus in poultry flocks in Delaware and Texas, the Department has been in contact with regulated parties, including small businesses, in an effort to determine how to strengthen the avian influenza control program. The need for adequate sanitation of crates housing poultry as well as of trucks or other vehicles transporting poultry was addressed.

Since the amendments will have no impact on local governments, there has been no outreach with local governments.

**Rural Area Flexibility Analysis**

1. Types and estimated number of rural areas:

There are eight (8) poultry dealers and/or poultry transporters in New York State, a number of which are located in rural areas.

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

Under the amendments, poultry dealers and poultry transporters holding a valid domestic animal health permit who buy or sell poultry to be sold or offered for sale in a live poultry market, or transport poultry to a live poultry market, will be required to compile, maintain and make available for inspection, for a period of two years, records of the dates and times that crates and trucks or vehicles were cleaned and disinfected. Such poultry dealers and poultry transporters will also be required to retain the certificate of veterinary inspection for the poultry they buy, sell or transport to a live poultry market.

3. Costs:

Under the amendments, poultry dealers and poultry transporters holding a valid domestic animal health permit who buy or sell poultry to be sold or offered for sale in a live poultry market, or transport poultry to a live poultry market, including those located in rural areas, will have to purchase equipment to clean and disinfect crates between uses. Commercial devices capable of cleaning and disinfecting 400 crates per hour may be purchased new at a cost of \$50,000 or purchased used at auction for approximately \$12,000. Delivery and installation of either a new or used crate washer

would cost between \$10,000 and \$12,000. However, based upon outreach with industry, the Department has determined that five (5) of the eight (8) poultry dealers and/or poultry transporters in New York State already have crate washers on their premises. Poultry dealers and poultry transporters, including those in rural areas, will also have to use an all-season truck or vehicle wash facility in order to clean and disinfect trucks or vehicles between uses. Based upon outreach with industry, the Department has determined that three (3) of the eight (8) poultry dealers and/or poultry transporters in New York State already have on-site truck wash facilities. In lieu of establishing truck wash facilities, poultry dealers and poultry transporters will be able to comply with the amendments by using a commercial truck wash facility. Such facilities capable of cleaning and disinfecting trucks as large as 18-wheel rigs charge \$100 to \$400 per washing.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the amendments were drafted to minimize reporting and testing requirements for all regulated parties, including those in rural areas.

The Department has previously implemented less burdensome measures on regulated parties in an effort to help prevent the spread of avian influenza through the live poultry markets. Those measures include the requirement that only birds from tested or monitored source flocks be allowed into the markets and the prohibition against moving poultry between live poultry markets. Unfortunately, these measures have not been entirely successful, as evidenced by the prevalence of the virus in the markets.

The Department's amendments will expand and strengthen the Department's avian influenza control program by requiring poultry dealers and poultry transporters holding a valid domestic animal health permit who buy or sell poultry to be sold or offered for sale in a live poultry market, or transport poultry to a live poultry market, to have facilities that can be cleaned and disinfected on a year round basis; to possess and utilize crate washers to clean and disinfect crates between uses on a year round basis; to use all-season truck or vehicle wash facilities to clean and disinfect trucks or vehicles between uses on a year round basis; and to compile and maintain records of the dates and times that the crates and the trucks or vehicles were cleaned and disinfected. Although the amendments will result in a greater regulatory burden on regulated parties, the Department has nonetheless minimized adverse impact on them by allowing poultry dealers and poultry transporters to use commercial truck wash facilities rather than establishing and maintaining their own facilities.

5. Rural area participation:

In light of the continued prevalence of avian influenza in the live poultry markets in New York and the recent outbreaks of the virus in poultry flocks in Delaware and Texas, the Department has been in contact with regulated parties, including those in rural areas, in an effort to determine how to strengthen the avian influenza control program. The need for adequate sanitation of crates housing poultry as well as of trucks or other vehicles transporting poultry was addressed.

**Job Impact Statement**

The amendments will expand the Department's avian influenza control program by requiring poultry dealers and poultry transporters holding a valid domestic animal health permit who buy or sell poultry to be sold or offered for sale in a live poultry market, or transport poultry to a live poultry market, to have facilities that can be cleaned and disinfected on a year round basis; to possess and utilize crate washers to clean and disinfect crates between uses on a year round basis; to use all-season truck or vehicle wash facilities to clean and disinfect trucks or vehicles between uses on a year round basis; and to compile and maintain records of the dates and times that the crates and the trucks or vehicles were cleaned and disinfected. The amendments also clarify the requirement that the certificate of veterinary inspection shall remain with DAHP holder (*i.e.*, poultry dealer or poultry transporter) and the invoice shall accompany the poultry to the live poultry market.

The amendments will have no detrimental impact on jobs and employment opportunities in New York State but rather, are the most favorable alternative to retaining jobs in New York State. If nothing is done about controlling the spread of avian influenza to live poultry markets from poultry dealers and poultry transporters, it is possible that outbreaks of the disease will continue. The recent outbreak of avian influenza in poultry flocks in Delaware and Texas have prompted 35 countries to place embargoes on poultry and poultry products from those two states. However, of those 35 embargoes, 16 of them are nationwide in scope and as such, include poultry imports from New York as well as the rest of the United States. If this and other foreign embargoes of poultry products were to

continue, it is possible that poultry markets would have to close to protect the poultry industry in the northeast United States. If this scenario were to occur, it is estimated that approximately 750-1,000 jobs in live poultry markets would be lost. It is also estimated that 750 to 1,000 jobs provided by poultry dealers and poultry transporters would be lost, since they would have no markets for their birds.

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## Banking Department

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

#### Personnel Interlocks between a Banking Organization and a Firm Primarily Engaged in Securities Underwriting Activities

**I.D. No.** BNK-22-04-00006-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 repeal Part 17 and Supervisory Procedure 114 of Title 3 Banking.

**Statutory authority:** Banking Law, sections 14, 14-e

**Subject:** Personnel interlocks between a banking organization and a firm primarily engaged in securities underwriting activities.

**Purpose:** To conform the general regulations of the Banking Board.

**Text of proposed rule:** It is proposed to repeal Part 17 of the General Regulations of the Banking Board, NYCRR Title 3, as follows:

#### PART 17

##### PERMISSION TO HAVE DIRECTORS AND OTHER PERSONNEL WITH CERTAIN UNDERWRITING RELATIONSHIPS

[Repealed]

It is proposed to repeal Banking Department Supervisory Procedure CB 114, NYCRR Title 3, as follows:

##### SUPERVISORY PROCEDURE CB 114

##### PERMISSION TO HAVE DIRECTORS AND OTHER PERSONNEL WITH CERTAIN UNDERWRITING RELATIONSHIPS

[Repealed]

**Text of proposed rule and any required statements and analyses may be obtained from:** Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

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

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

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

#### Consensus Rule Making Determination

No person is likely to object to the proposed repeal of Part 17 and CB 114. The regulations implement authority given to the Banking Board to make exceptions to the provisions of Sections 130(4) and 143(1) prohibiting management interlocks between banks and bank holding companies, on the one hand, and securities underwriting companies, on the other. These sections of the law have been repealed.

Under the authority of Banking Law Section 14-e, the Section 130(4) prohibition on interlocks was extended to apply to stock-form savings banks and stock-form savings and loan associations. Part 17 provides that the exceptions to the interlock prohibition will be available to these entities as well.

With the repeal of Sections 130(4) and 143(1), the exception processes provided by Part 17 and CB 114 have no purpose.

#### Job Impact Statement

The purpose of the proposed amendment is to repeal Part 17 of the General Regulations of the Banking Board, which permitted certain management interlocks between banking institutions and securities underwriters, and Banking Department Supervisory Procedure 114, which provides a process for applying for Banking Board approval of other such interlocks. Accordingly, a job impact statement is not submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

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## Department of Environmental Conservation

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### EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

#### Sanitary Condition of Shellfish Lands

**I.D. No.** ENV-22-04-00003-EP

**Filing No.** 596

**Filing date:** May 13, 2004

**Effective date:** May 13, 2004

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

**Action taken:** Amendment of Part 41 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 13-0307 and 13-0319

**Finding of necessity for emergency rule:** Preservation of public health.

**Specific reasons underlying the finding of necessity:** Environmental Conservation Law § 13-0307 requires that the Department examine shellfish lands and certify those that are in such sanitary condition that shellfish may be taken therefrom and used as food; all other lands must be designated as uncertified.

Recent sanitary surveys and water quality evaluations of shellfish lands in and adjacent to the Towns of Babylon and Islip (Great South Bay), in and adjacent to the Town of Southold (Southold Bay and Cutchogue Harbor), and adjacent to the Town of Southampton (Little Peconic Bay), indicate that particular areas, which are currently designated as certified either year-round or during part of the year, no longer meet criteria for certified shellfish lands as set forth in Title 6 of NYCRR Part 47, "Certification of Shellfish Lands." Therefore, these lands must be designated as uncertified during the portion of the year they fail to meet those criteria. This rule will immediately designate shellfish lands that do not meet water quality criteria as uncertified, and close such lands to shellfish harvesting.

It is necessary to adopt this rule through emergency rule making in order to protect the public health. The closure of shellfish lands that do not meet the bacteriological criteria for certification will help to ensure that shellfish found thereon are not harvested and marketed to the general public for consumption.

**Subject:** Sanitary condition of shellfish lands.

**Purpose:** To change the classification of shellfish lands in the Towns of Babylon, Islip, Southampton and Southold.

**Text of emergency/proposed rule:** Section 41.0 through clause 41.3(b)(1)(i)('d') remains unchanged.

A new clause 41.3(b)(1)(i)('e') is adopted to read:

*('e') All that area of Great South Bay, including the Oak Island Channel, the State Boat Channel, and the "Lead" (local names), lying southerly and easterly of Oak Island and southerly of a line extending westerly from the westernmost point of land at Seganus Thatch at the former site of the State Channel Marina (local name), to the northernmost point of the bulkhead protecting the residence at number 58 Oak Island (said residence is a yellow, two-story house), continuing southeasterly around the northeast facing shoreline of Oak Island to its easternmost tip and continuing southwesterly to a point located immediately opposite the residence at number 8 Oak Island; and all that area lying easterly of a line extending southerly from the chimney at the western corner of the residence at number 8 Oak Island (said residence is a one-story wood shingle house with a green roof), proceeding southerly across "the Lead" (local name), to utility pole number 468 on the north side of Ocean Parkway, Jones Beach Island; and all that area lying northerly of a line extending easterly from utility pole number 468 to utility pole number 478 on the north side of Ocean Parkway, Jones Beach Island; and all that area lying westerly of a line extending northeasterly across the State Boat Channel to the southernmost point of land at Seganus Thatch, thence proceeding northwesterly along the shoreline to the westernmost point of land at Seganus Thatch.*

Subparagraph 41.3(b)(1)(ii) through clause 41.3(b)(2)(i)('a') remains unchanged.

Clause 41.3(b)(2)(i)('b') is repealed, and a new clause 41.3(b)(2)(i)('b') is adopted to read:

(*b*) All that area of Great South Bay, including tributaries, creeks, and canals, lying easterly of a line extending southerly from the northernmost point of land at the base of the eastern span of the Robert Moses Causeway to light pole number 60 (sixth aluminum light pole south of the base of the bridge on the east side of the east span); and all that area lying northerly of a line extending easterly from light pole number 60 on the eastern span of Robert Moses Causeway to the southwesternmost corner of the bath house serving the west bathing area at Heckscher State Park (located east of the entrance to the boat basin at Heckscher State Park).

Clause 41.3(b)(2)(i)('c') is repealed, and a new clause 41.3(b)(2)(i)('c') is adopted to read:

All creeks and canals lying between Nicoll Point and Timber Point.

Clause 41.3(b)(2)(i)('d') through clause 41.3(b)(2)(i)('k') remains unchanged.

Clause 41.3(b)(2)(i)('l') is repealed, and a new clause 41.3(b)(2)(i)('l') is adopted to read:

(*l*) During the period May 15 through September 30, both dates inclusive, all that area of Clam Pond (local name) in and adjacent to the Village of Saltaire, lying southerly of a line extending southeasterly from the northernmost corner of the bulkhead protecting the property and residence located at the easternmost end of East Bay Promenade, Saltaire, to the northwesternmost corner of the eastern ferry dock at Fair Harbor; thence proceeding southerly along the eastern side of the dock to the shoreline at Fair Harbor.

A new clause 41.3(b)(2)(i)('m') is adopted to read:

(*m*) All that area of the marina boat basin, including entrance canal, at Captree State Park.

Clause 41.3(b)(2)(ii)('a') through clause 41.3(b)(3)(i)('i') remains unchanged.

A new clause 41.3(b)(3)(i)('j') is adopted to read:

(*j*) During the period May 15 through September 30, both dates inclusive, all that area of Clam Pond (local name) in and adjacent to the Village of Saltaire, lying southerly of a line extending southeasterly from the northernmost corner of the bulkhead protecting the property and residence located at the easternmost end of East Bay Promenade, Saltaire, to the northwesternmost corner of the eastern ferry dock at Fair Harbor; thence proceeding southerly along the eastern side of the dock to the shoreline at Fair Harbor.

Clause 41.3(b)(3)(ii)('a') through subparagraph 41.3(b)(4)(xii) remains unchanged.

Subparagraph 41.3(b)(4)(xiii) is amended to read:

(xiii) Fresh Pond. All that area of Fresh Pond and its tributaries and all that area of Little Peconic Bay within 600 feet of the mouth of Fresh Pond.

Subparagraph 41.3(b)(4)(xiv) through clause 41.3(b)(7)(iii)('a') remains unchanged.

Clause 41.3(b)(7)(iii)('b') is repealed, and a new clause 41.3(b)(7)(iii)('b') is adopted to read:

(*b*) East Creek, Mud Creek, Haywater Cove, and Broadwater Cove.

(*1*) Broadwater Cove. During the period May 15 through October 31, all that area of Broadwater Cove lying west of a line extending southerly from the southeast corner of the house located at 8000 Skunk Lane (local name) to the opposite shore.

(*2*) East Creek, Mud Creek and Haywater Cove. All that area of East Creek, Mud Creek and Haywater Cove west and north of a line extending southerly from the southernmost end of the boat ramp at the western end of Mason Drive to the intersection of Haywaters Road and Landing Road (local names).

(*3*) Cutchogue Harbor. All that area of Cutchogue Harbor within 500 feet of the mouth of the East Creek, Mud Creek, Haywater Cove and Broadwater Cove Complex (local names).

Clause 41.3(b)(7)(iii)('c') remains unchanged.

Clause 41.3(b)(7)(iii)('d') is repealed, and clause 41.3(b)(7)(iii)('e') is renumbered as 41.3(b)(7)(iii)('d').

Subparagraph 41.3(b)(7)(iv) through subparagraph 41.3(b)(7)(xi) remains unchanged.

Clause 41.3(b)(7)(xii)('a') is repealed, and a new clause 41.3(b)(7)(xii)('a') is adopted to read:

(*a*) Boat Basins.

(*1*) During the period May 15 through October 31, both dates inclusive, all that area of the Paradise Point Boat Basin and all that area of the combined Reydon Shores and the Plock property boat basin (local names).

(*2*) All that area of the boat basin north and west of Harbor Lights Drive and all that area of Southold Bay within 250 feet of the mouth of the boat basin.

Clause 41.3(b)(7)(xii)('b') remains unchanged.

Clause 41.3(b)(7)(xii)('c') is repealed, and a new clause 41.3(b)(7)(xii)('c') is adopted to read:

(*c*) Petty's Pond. All that area of Petty's Pond (also known as Beixedon Creek) and all that area of Southold Bay within 500 feet of the mouth of Petty's Pond (local names).

Clause 41.3(b)(7)(xii)('d') is repealed, and a new clause 41.3(b)(7)(xii)('d') is adopted to read:

(*d*) Goose Creek. During the period April 15 through December 31, both dates inclusive, all that area of Goose Creek lying south and west of the Goose Creek Bridge (local landmarks).

Subparagraph 41.3(b)(7)(xiii) through the end of Part 41 remains unchanged.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire August 10, 2004.

**Text of rule and any required statements and analyses may be obtained from:** Carol Hoffman, Department of Environmental Conservation, 205 N. Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444-0482, e-mail: cjhoffma@gw.dec.state.ny.us

**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

Statutory authority:

The statutory authority for designating shellfish lands as certified or uncertified is Environmental Conservation Law (ECL) Section 13-0307. Subdivision 1 of Section 13-0307 of the ECL requires the Department to periodically conduct examinations of shellfish lands within the marine district to ascertain the sanitary condition of said lands. Subdivision 2 of this Section requires that the Department certify which shellfish lands are in such sanitary condition that shellfish may be taken for food. Such lands are designated as certified shellfish lands. All other shellfish lands are designated as uncertified.

The statutory authority for promulgating regulations with respect to the harvest of shellfish is Section 13-0319 of the ECL.

Legislative objectives:

There are two purposes of the legislation: to protect public health and to ensure that shellfish lands are appropriately classified as certified or uncertified for the harvest of shellfish. This legislation requires the Department to examine shellfish lands and determine which shellfish lands meet the sanitary criteria for a certified shellfish land, as set forth in regulation, Part 47 of Title 6 NYCRR, promulgated pursuant to Section 13-0319 of the ECL. Shellfish lands which meet criteria must be designated as certified. Shellfish lands which do not meet criteria must be designated as uncertified to prevent the harvest of shellfish from those lands.

Needs and benefits:

To protect public health and to comply with ECL 13-0307, the Bureau of Marine Resources' shellfish sanitation program conducts and maintains sanitary surveys of shellfish growing areas (SGA) in the marine district of New York State. Maintenance of these surveys includes the regular collection and bacteriological examination of water samples to monitor the sanitary condition of shellfish growing areas.

Annually, water quality evaluation reports are prepared by the staff of the shellfish sanitation program for each SGA which contains certified shellfish lands. These reports present the results of statistical analyses of water quality data gathered by the program, and annual updates to the shoreline pollution source surveys. Each report includes a summary and recommendations for the appropriate classification of that particular shellfish growing area. The report summary may state that all or portions of an SGA should be designated as uncertified for the harvest of shellfish or that all, or portions of, an SGA should be designated as certified for the harvest of shellfish based on criteria in 6 NYCRR Part 47. These reports are on file at the Bureau of Marine Resources office in East Setauket, NY.

In "Shellfish Land #3, Great South Bay - Babylon, Amityville Channel to Robert Moses Causeway. Triennial Review of Bacteriological Water Quality" dated June, 2003, data analyses demonstrated that water quality in the vicinity of Oak Island no longer meets bacteriological criteria for

certified shellfish lands as specified in 6 NYCRR Part 47, "Certification of Shellfish Lands." The review recommends that this area be designated as uncertified throughout the year.

In "Shellfish Land #4, Great South Bay - Islip, Triennial Review of Water Quality" dated February 2004, data analyses demonstrated that water quality in two portions of this growing area no longer meets bacteriological criteria for certified shellfish lands as specified in 6 NYCRR Part 47, "Certification of Shellfish Lands". The review recommends that the seasonally certified areas on the north side of the bay, as well as some adjacent areas that are presently certified, be designated as uncertified throughout the year. The report also recommends that the area in the vicinity of Clam Pond, on the Fire Island National Seashore, be designated as uncertified during months when the shellfish lands fail to meet criteria.

In "Triennial Evaluation of Bacteriological Water Quality, Southold Bay, Shellfish Growing Area 22" dated January 2004, data analyses demonstrate that water quality in three portions of the growing area no longer meets bacteriological criteria for certified shellfish lands as specified in 6 NYCRR Part 47, "Certification of Shellfish Lands." It recommends that one of these three portions of Southold Bay be designated as uncertified during months when the shellfish lands fail to meet criteria, and that the other two portions be designated as uncertified throughout the year.

In "Triennial Evaluation of Bacteriological Water Quality, Little Peconic Bay, Shellfish Growing Area 26" dated February 2004, data analyses demonstrate that water quality in a portion of the growing area no longer meets bacteriological criteria for certified shellfish lands as specified in 6 NYCRR Part 47. It recommends that this portion of Little Peconic Bay be designated as uncertified throughout the year.

In "Triennial Evaluation of Bacteriological Water Quality, Cutchogue Harbor, Shellfish Growing Area 27" dated February 2004, data analyses demonstrate that water quality in three portions of the growing area no longer meets bacteriological criteria for certified shellfish lands as specified in 6 NYCRR Part 47. It recommends that these portions of Cutchogue Harbor be designated as uncertified throughout the year.

Regulations which designate shellfish lands as uncertified, as proposed for Great South Bay - Babylon and Islip, Southold Bay, Little Peconic Bay and Cutchogue Harbor are needed to prevent the harvest and subsequent sale for consumption of shellfish from lands which do not meet the criteria for certified shellfish lands. The direct harvest of shellfish for use as food is allowed from certified shellfish lands only. Shellfish harvested from uncertified shellfish lands have a greater potential to cause human illness due to the possible presence of pathogenic bacteria or viruses which may cause the transmission of infectious disease to the shellfish consumer.

This rule making provides the benefit of protecting the public health, specifically the health of shellfish consumers, by designating areas as uncertified. The taking of shellfish from uncertified shellfish lands is prohibited by Section 13-0309 of the Environmental Conservation Law. These regulations also benefit the shellfish industry. Seafood wholesalers, retailers, and restaurants are adversely affected by public reaction to instances of shellfish related illness. By preventing the harvest of shellfish from lands which fail to meet the sanitary criteria, these regulations are intended to ensure that only wholesome shellfish are allowed to be harvested and sold to shellfish consumers.

#### Costs:

There will be no costs to State or local governments. No direct costs will be incurred by regulated commercial shellfish harvesters in the form of initial capital investment or initial non-capital expenses, in order to comply with these proposed regulations. The annual cost of continuing compliance may take the form of potential lost income if productive harvest areas are closed.

The Department cannot provide an estimate of potential lost income to shellfish harvesters when areas are designated as uncertified, due to a number of variables that are associated with commercial shellfish harvesting. Those variables are listed in the following three paragraphs.

As of February 20, 2004, the Department had issued 1,144 New York State shellfish digger's permits. However, the actual number of those individuals who harvest shellfish commercially full time is not known. Recreational harvesters who wish to harvest more than the daily recreational limit of 100 hard clams, with no intent to sell their catch, can only do so by purchasing a New York State digger's permit. The number of individuals who hold shellfish diggers permits for that type of recreational harvest is unknown. The Department's records do not differentiate between full-time and part-time commercial or recreational shellfishing.

The number of harvesters working in a particular area cannot be estimated for the reason stated above. In addition, the number of harvesters in a particular area is dependent upon the season, the amount of shellfish resource in the area, the price of shellfish and other economic factors, unrelated to the Department's proposed regulatory action.

Estimates of the existing shellfish resource in a particular embayment are not known. Recent shellfish population assessments have not been conducted by the Department. Without this information, the Department cannot determine the effect a closure or reopening would have on the existing shellfish resource.

The Department's actions to designate areas as certified or uncertified are not dependent on the resources in a particular area. They are based solely on public health concerns and legal mandates.

There is no cost to the Department. Administration and enforcement of the proposed amendment are covered by existing programs.

#### Local government mandates:

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

#### Paperwork:

No new paperwork is required.

#### Duplication:

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

#### Alternatives:

There are no significant alternatives. By law (ECL, Section 13-0307), once the Department has determined that a shellfish land no longer meets the sanitary criteria for a certified shellfish land, the Department must designate that land as uncertified for the harvest of shellfish. This is necessary to protect public health. Conversely, once the Department has determined that an uncertified shellfish land meets the sanitary criteria, the Department must designate the land as certified and open the area to shellfish harvesting.

#### Federal standards:

There are no federal standards regarding the certification of shellfish lands. New York and other shellfish producing and shipping states participate in the National Shellfish Sanitation Program (NSSP) which provides guidelines intended to promote uniformity in shellfish sanitation standards among members. The NSSP is a cooperative program consisting of the federal government, states and the shellfish industry. Participation in the NSSP is voluntary - each state adopts its own standards. The U.S. Food and Drug Administration (FDA) evaluates state programs and standards relative to NSSP guidelines. Substantial non-conformity with NSSP guidelines can result in sanctions being taken by FDA and the NSSP, including removal of a state's shellfish shippers from the Interstate Certified Shellfish Shippers List. This would effectively bar a non-conforming state's product from interstate commerce.

#### Compliance schedule:

Immediate compliance with any regulation designating shellfish lands as uncertified is necessary to protect public health. Shellfish harvesters are notified of changes to SGA classification by mail either prior to, or concurrent with, the adoption of new regulations.

Compliance with new regulations designating areas as certified or uncertified does not require additional capital expense, paperwork, record-keeping or any action by the regulated parties in order to comply, except that harvesters must observe the new closure lines. Therefore, immediate compliance can be readily achieved.

#### **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 proposed rule making, I.D. No. ENV-18-04-00003-P, Issue of May 5, 2004.

#### **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 proposed rule making, I.D. No. ENV-18-04-00003-P, Issue of May 5, 2004.

#### **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 proposed rule making, I.D. No. ENV-18-04-00003-P, Issue of May 5, 2004.

## NOTICE OF ADOPTION

## Asian Carp and Snakehead Fish

I.D. No. ENV-04-04-00007-A

Filing No. 597

Filing date: May 13, 2004

Effective date: June 2, 2004

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

**Action taken:** Addition of section 180.9 to Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 3-0301 and 11-0511

**Subject:** Prohibition of the sale, possession, transport, import, or export of live individuals or viable eggs of Asian carp or snakeheads in New York State except for the five boroughs of New York City and the Towns of Rye, Harrison and Mamaronek in Westchester County.

**Purpose:** To prevent the introduction of Asian carp and snakehead fish into the waters of New York State, and the damage that could be caused if introduction were to occur.

**Text of final rule:** Part 180 of Title 6 of NYCRR is amended by adding a new section 180.9, entitled "Fish dangerous to indigenous fish populations," to read as follows:

§ 180.9 Fish dangerous to indigenous fish populations.

(a) Purpose. The purpose of this section is to list species of native or non-native fish that present a danger to the health or welfare of indigenous fish populations, and to the health or welfare of people of the state.

(b) Prohibitions.

(1) Except as provided in subdivisions c and d of this section, no person shall buy, sell, trade, barter, offer for sale, possess, transport, import or export, or cause to be transported, imported or exported, live individuals or viable eggs of the following species of fish, which the Department of Environmental Conservation (department) has determined present a danger to indigenous fish populations:

(i) Silver carp (*Hypophthalmichthys molitrix*)

(ii) Bighead carp (*Hypophthalmichthys nobilis*)

(iii) Black carp (*Mylopharyngodon piceus*)

(iv) Snakehead fish of the genera *Channa* and *Parachanna* (or the generic synonyms *Bostrychoides*, *Opicephalus*, *Ophiocephalus*, and *Parophiocephalus*) of the Family *Channidae*, including but not limited to:

(a) *Channa amphibeus* (Chel or Borna snakehead)

(b) *Channa argus* (Northern or Amur snakehead)

(c) *Channa asiatica* (Chinese or Northern Green snakehead)

(d) *Channa aurantimaculata*

(e) *Channa bankanensis* (Bangka snakehead)

(f) *Channa baramensis* (Baram snakehead)

(g) *Channa barca* (barca or tiger snakehead)

(h) *Channa bleheri* (rainbow or jewel snakehead)

(i) *Channa cyanospilos* (bluespotted snakehead) (j) *Channa gachua* (dwarf, gaucha, or frog snakehead)

(k) *Channa harcourtbutleri* (Inle snakehead)

(l) *Channa lucius* (shiny or splendid snakehead)

(m) *Channa maculata* (blotched snakehead)

(n) *Channa marulius* (bullseye, murrel, Indian, great, or cobra snakehead)

(o) *Channa maruloides* (emperor snakehead)

(p) *Channa melanoptera*

(q) *Channa melasoma* (black snakehead)

(r) *Channa micropeltes* (giant, red or redline snakehead)

(s) *Channa nox*

(t) *Channa orientalis* (Ceylon of Ceylonese Green snakehead)

(u) *Channa panaw*

(v) *Channa pleurophthalmus* (ocellated, spotted, or eyespot snakehead)

(w) *Channa punctata* (dotted or spotted snakehead)

(x) *Channa stewartii* (golden snakehead)

(y) *Channa striata* (chevron or striped snakehead)

(z) *Parachanna africana* (Niger or African snakehead)

(aa) *Parachanna insignis* (Congo, square-spotted African, or light African snakehead)

(bb) *Parachanna obscura* (dark African, dusky or square-spotted snakehead)

(2) No person shall liberate to the waters of the state any species listed in this section, cause such species to be liberated to the waters of the

state or allow such species to exist in a state or condition where it is likely to escape into the wild.

(c) Exceptions. Notwithstanding the prohibitions contained in this section, Bighead carp may be sold, possessed, transported, imported and exported in the five boroughs of the City of New York (Manhattan, Bronx, Queens, Brooklyn, and Staten Island) and the Westchester County Towns of Rye, Harrison, and Mamaronek and all the incorporated cities or villages located therein. Live bighead carp offered for sale in any retail establishment shall be killed by the seller before the purchaser takes possession of said fish. Failure of a retail seller to kill a live bighead carp before transferring possession of the fish to the retail purchaser shall constitute a violation of this section.

(d) Permits. The department may issue permits, the term of which shall not exceed one year, to possess, transport, import or export species of live fish listed in this section only for educational, exhibition or scientific purposes, as defined in section 175.2 of this chapter. Permits issued pursuant to this section may contain terms, conditions and standards designed to prevent escapement while fish species listed in the permit are held in captivity, and to ensure safe disposition of those species following expiration of the permit or cessation of the permitted activity. The permit fee shall be \$500, except that the fee may be waived for bona fide employees, representatives or affiliates of accredited colleges or universities, research institutions, government agencies, or public museums or aquariums.

(e) Seizure. Environmental conservation officers, forest rangers and members of the state police may seize species of fish listed in this section that are possessed without a permit. No action for damages shall lie for such seizure, and disposition of seized animals shall be at the discretion of the department.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 180.9(b)(1), (2) and (c).

**Text of rule and any required statements and analyses may be obtained from:** William J. Culligan, Department of Environmental Conservation, Lake Erie Unit, 178 Point Dr. N, Dunkirk, NY 14048-1031, (716) 366-0228, e-mail: wjcullig@gw.dec.state.ny.us

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

Minor changes appear in subparagraphs 180.9(b)(1), 180.9(b)(2), and 180.9(c) of the rule as adopted when compared to the last published version of the proposed rule. The changes made to the previously published proposed rule simply clarify the definitions of selling, waters-of-the-state, and the requirement to kill all fish at the point of retail sale. These changes do not necessitate any revision of the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

**Assessment of Public Comment**

Two comments were received concerning the proposed regulations:

Comment #1:

Recommend that the Department add the following permit and reporting requirements:

a) require a transportation permit for all shipments;

b) require 8" labeling on the outside of all vehicles identifying the contents;

c) require monthly transportation reports;

d) require sellers to maintain all sales records for two (2) years;

e) require a permit for all buyers;

f) require bi-annual reporting from all buyers.

Response:

Although these requirements would be more protective and allow for easier law enforcement, the additional recordkeeping involved would be considerably burdensome on both small businesses and state resources. The Department believes that the protections implemented under the current proposal are sufficient to prevent the introduction of invasive species.

Comment #2:

Support the proposal with additional requirements: export of bighead carp outside the five boroughs of New York City should be specifically prohibited, and reporting and permit requirements (listed in Comment 1 above) should be included.

Response:

With regard to the export suggestion, the proposed regulations prohibit the importation of bighead carp to all areas of New York State outside the five boroughs of New York City and the excepted portion of Westchester County. Sale, possession, transportation, import, and export of the listed species is specifically prohibited outside the excepted area. The Depart-

ment believes that these protections are sufficient to prevent the introduction of invasive species.

Reporting and permit suggestions are addressed in the Response to Comment #1 above.

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

#### Otter Creek and Sand Bay State Forests

**I.D. No.** ENV-22-04-00002-P

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

**Proposed action:** This is a consensus rule making to repeal sections 190.30 and 190.32 and add new section 190.30 to Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301 and 9-0105

**Subject:** Otter Creek and Sand Bay State Forests.

**Purpose:** To provide consistent management on both State forests by limiting camping to five consecutive nights except by permit on Otter Creek State Forest during the northern zone big game hunting season.

**Text of proposed rule:** 1. Sections 190.30 and 190.32 of Part 190 of 6 NYCRR are repealed and a new Section 190.30 is added to Part 190 of 6 NYCRR to read as follows:

*Notwithstanding other provisions of law, the following provisions apply to Otter Creek State Forest and Sand Bay State Forest:*

*(a) Description.*

*(1) For the purposes of this section, Otter Creek State Forest means all those State lands lying and situated in the Town of Greig, Lewis County and being parts of Lots 56, 57, 78 and all of Lots 58, 59 and 60 as acquired from the Central New York Power Corporation under a deed on December 9, 1949; and all of Lot 41 as acquired from Wellington G. Snyder, Ivan Fenton and Ada Palmer under a deed recorded on July 1, 1959.*

*(2) For the purpose of this section, Sand Bay State Forest means all those State lands lying and situated in the Town of Diana, Lewis County, and being parts of lots 919 and 920 of Great Lot 4, as acquired from the United States of America through the Administrator of General Services by deed on August 19, 1964.*

*The following provisions apply to both Otter Creek State Forest and Sand Bay State Forests unless otherwise indicated:*

*(b) Camping.*

*(1) Camping must be at designated sites only.*

*(2) Camping must be limited to five consecutive nights except by permit during the northern zone big game hunting season.*

*(3) Camping is prohibited from 11:00 a.m. Tuesday until 11:00 a.m. Thursday except by permit at Otter Creek State Forest during the northern zone big game hunting season.*

*(4) Camping must be limited to six persons or to a single family group of the same household at each site.*

*(c) Day users must park at designated parking areas only.*

*(d) Fires are prohibited excepted for the purposes of warmth, cooking or smudge. Fires must be located in fire rings at the designated camping and day use sites.*

*(e) It is illegal to possess alcoholic beverages in glass containers or in containers with a capacity greater than seven gallons.*

*(f) Quiet must be observed between 10 p.m. and 7 a.m.*

*(g) Other general provisions of Part 190 relating to State Forests also apply to the Otter Creek State Forest and Sand Bay State Forests except wherein such provisions are inconsistent, then the provisions of this Section apply.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Thomas Wolfe, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4254, (518) 402-9428, e-mail: tbwolf@gw.dec.state.ny.us

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

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

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

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

#### Consensus Rule Making Determination

It is not anticipated that there will be any objections to the promulgation of this regulation. Two existing regulations are being combined into one to provide consistent management on these two state forests. The availability of camping opportunities is not expected to change. Campers will no longer be required to obtain a permit prior to setting up a camp. Other state lands are managed in this way.

#### Job Impact Statement

A job impact statement is not submitted with this proposal because the proposal will have no adverse impact on existing or future jobs and employment opportunities.

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## Industrial Board of Appeals

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### NOTICE OF ADOPTION

#### Form and Content of Petition

**I.D. No.** IBA-11-04-00002-A

**Filing No.** 594

**Filing date:** May 13, 2004

**Effective date:** June 2, 2004

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

**Action taken:** Amendment of section 72.3 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Form and content of petitions filed with the board in an application for a stay from a notice of a dangerous condition.

**Purpose:** To standardize the form and content of the caption to a petition.

**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-11-04-00002-P, Issue of March 17, 2004.

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

**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Form and Content of Petition

**I.D. No.** IBA-11-04-00003-A

**Filing No.** 593

**Filing date:** May 13, 2004

**Effective date:** June 2, 2004

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

**Action taken:** Amendment of section 71.4 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Form and content of petitions.

**Purpose:** To standardize the form and content of the caption to a petition.

**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-11-04-00003-P, Issue of March 17, 2004.

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

**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

#### Assessment of Public Comment

The agency received no public comment.

## NOTICE OF ADOPTION

## Appeals Filed with the Board

**I.D. No.** IBA-11-04-00004-A  
**Filing No.** 587  
**Filing date:** May 13, 2004  
**Effective date:** June 2, 2004

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

**Action taken:** Amendment of section 71.1 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Appeals filed with the board.

**Purpose:** To delete an obsolete notation.

**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-11-04-00004-P, Issue of March 17, 2004.

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

**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

## Form and Content of Petition

**I.D. No.** IBA-11-04-00005-A  
**Filing No.** 592  
**Filing date:** May 13, 2004  
**Effective date:** June 2, 2004

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

**Action taken:** Amendment of section 70.3 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Form and content of petitions.

**Purpose:** To standardize the form and content of the caption to a petition.

**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-11-04-00005-P, Issue of March 17, 2004.

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

**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

## Content of Petition

**I.D. No.** IBA-11-04-00006-A  
**Filing No.** 591  
**Filing date:** May 13, 2004  
**Effective date:** June 2, 2004

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

**Action taken:** Amendment of section 69.3 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Application of the board's rule.

**Purpose:** To amend the form and content of petitions filed with the board.

**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-11-04-00006-P, Issue of March 17, 2004.

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

**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

## Construction of Petition

**I.D. No.** IBA-11-04-00007-A  
**Filing No.** 590  
**Filing date:** May 13, 2004  
**Effective date:** June 2, 2004

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

**Action taken:** Amendment of section 69.4 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Construction of petition.

**Purpose:** To correct a typographical error.

**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-11-04-00007-P, Issue of March 17, 2004.

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

**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

## Procedures for Commencing a Proceeding

**I.D. No.** IBA-11-04-00008-A  
**Filing No.** 589  
**Filing date:** May 13, 2004  
**Effective date:** June 2, 2004

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

**Action taken:** Amendment of section 68.2 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Procedures for commencing a proceeding.

**Purpose:** To delete reference to the use of a no longer existing form, and add a reference directing parties to follow the format set forth in Part 66 of this Subchapter.

**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-11-04-00008-P, Issue of March 17, 2004.

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

**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

## NOTICE OF ADOPTION

## Registration and Revocation Proceedings for Union Labels, Brands and Marks

**I.D. No.** IBA-11-04-00009-A  
**Filing No.** 586  
**Filing date:** May 13, 2004  
**Effective date:** June 2, 2004

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

**Action taken:** Amendment of section 68.1 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Registration and revocation proceedings for union labels, brands and marks.

**Purpose:** To update the current mailing addresses.

**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-11-04-00009-P, Issue of March 17, 2004.

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

**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION****Applications**

**I.D. No.** IBA-11-04-00010-A

**Filing No.** 588

**Filing date:** May 13, 2004

**Effective date:** June 2, 2004

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

**Action taken:** Amendment of section 67.2 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Application of board's rules.

**Purpose:** To update and simplify the procedure.

**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-11-04-00010-P, Issue of March 17, 2004.

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

**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION****Application of the Board's Rules**

**I.D. No.** IBA-11-04-00011-A

**Filing No.** 595

**Filing date:** May 13, 2004

**Effective date:** June 2, 2004

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

**Action taken:** Amendment of section 67.1 of Title 12 NYCRR.

**Statutory authority:** Labor Law, section 101

**Subject:** Application of board's rules.

**Purpose:** To update the application of the board's rules.

**Text or summary was published** in the notice of proposed rule making, I.D. No. IBA-11-04-00011-P, Issue of March 17, 2004.

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

**Text of rule and any required statements and analyses may be obtained from:** John G. Binseel, Industrial Board of Appeals, Empire State Plaza, Agency Bldg. 2, 20th Fl., Albany, NY 12233, (518) 474-4785, e-mail: USCJGB@labor.state.ny.us

**Assessment of Public Comment**

The agency received no public comment.

Health Law, sections 4403, 4403-a, 4403(c)(12) and 4408-a; and L. 2002, ch. 599

**Subject:** Financial statement filings and accounting practices and procedures.

**Purpose:** To update a citation in section 83.2(c) to refer to an accounting manual entitled *Accounting Practices and Procedures Manual* as of March 2004 (instead of 2003).

**Text of proposed rule:** Subdivision (c) of Section 83.2 of Part 83 is amended to read as follows:

(c) To assist in the completion of the Financial Statements, the NAIC also adopts and publishes from time to time certain policy, procedures and instruction manuals. The latest of these manuals, the *Accounting Practices and Procedures Manual* as of March [2003\*] 2004\* ("Accounting Manual") includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs").

The footnote to subdivision (c) of Section 83.2 is amended to read as follows:

\*ACCOUNTING PRACTICES AND PROCEDURES MANUAL AS OF MARCH [2003] 2004. Copyright 1999, 2000, 2001, 2002, 2003, 2004 by National Association of Insurance Commissioners, in Kansas City, Missouri.

**Text of proposed rule and any required statements and analyses may be obtained from:** Eric Mangan, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5257, e-mail: emangan@ins.state.ny.us

**Data, views or arguments may be submitted to:** Sam Wachtel, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5269, e-mail: swachtel@ins.state.ny.us

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

**Consensus Rule Making Determination**

This Part is being amended to update a citation in Section 83.2(c) referring to the publication date of the accounting manual entitled *Accounting Practices and Procedure Manual as of March 2004* (instead of 2003). The change in Section 83.2(c) regarding the citation for the accounting manual will have the effect of including in the regulation technical modifications made in the accounting manual since the publication of the 2003 manual. These modifications are technical changes in accounting practices and procedures which were proposed, discussed, commented upon, and adopted by the National Association of Insurance Commissioners in the past year, in accordance with the procedure described in Section 83.2(g). It is unlikely that any person will object to these technical changes.

**Job Impact Statement**

The proposed rule changes should have no impact on jobs and employment opportunities in New York State. The changes merely update a citation in Section 83.2(c) to the publication date of the accounting manual entitled *Accounting Practices and Procedure Manual as of March 2004* (instead of 2003). The change in the publication date reference includes technical amendments in the accounting manual, none of which have any impact on jobs or employment opportunities.

**Division of the Lottery****EMERGENCY  
RULE MAKING****Video Lottery Gaming**

**I.D. No.** LTR-28-03-00009-E

**Filing No.** 598

**Filing date:** May 17, 2004

**Effective date:** May 17, 2004

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

**Action taken:** Addition of Part 2836 to Title 21 NYCRR.

**Statutory authority:** Tax Law, section 1617-a

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

**Insurance Department****PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Financial Statement Filings and Accounting Practices and Procedures**

**I.D. No.** INS-22-04-00005-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 83.2 (Regulation 172) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public

**Specific reasons underlying the finding of necessity:** (1) The nature and location of the general welfare need:

The New York Lottery operates lottery games to fund education in New York State. The current financial situation in New York State is such that funds are urgently needed to meet revenue shortfalls, particularly after the September 11th disaster and the general economic downturn that followed. It is projected that the operation of video lottery gaming in New York State may generate over \$1 Billion for education annually when fully implemented. Any game delay that jeopardizes start up of video lottery gaming this fiscal year could result in a loss of approximately \$1 to 4 Million weekly in aid to education.

Since passage of the legislation in October 2001 authorizing the Division to license the operation of video lottery gaming at racetracks around New York State, the Division has worked diligently with contractors and racetrack owners to develop the game and the gaming facilities. With commencement of gaming anticipated sometime around the end of this year, the Division continues to finalize the gaming product and to work with the racetracks to design their business operations. These regulations are a result of that product development, and have only now been completed. Consequently, this is the earliest the regulations could have been drafted, leaving inadequate time prior to the anticipated start date to comply with the normal rulemaking procedure set forth in the State Administrative Procedure Act Section 202(1).

(2) Description of the cause, consequences, and expected duration of the need to file emergency rules:

The cause of the need is set forth in paragraph #1 above. The consequence of filing this emergency rulemaking is that the Division will begin to generate needed aid to education through the operation of video lottery gaming. In July 2003, the first draft of these regulations was published. The Division received a number of comments during the public comment period. Revisions to the proposed regulations based on comments received from the public and arising from internal product development are included in these emergency regulations. The Division intends to file shortly a Notice of Revised Rulemaking pursuant to the State Administrative Procedure Act Section 202(4-a) to continue the normal rulemaking procedures relative to these regulations.

(3) Compliance with the requirements of § 202(1) of the State Administrative Procedure Act would be contrary to the public interest because it would delay implementation of the game and deprive the state of needed revenue to education. The approximately \$1 to 4 Million in weekly aid to education lost this fiscal year by this delay would need to be taken from other revenue sources.

(4) Circumstances necessitate that the public and interested parties be given less than the minimum period of 30 days for notice and comment because any game delay would result in a loss of approximately \$1 to 4 Million weekly this fiscal year in aid to education. As mentioned above, the Division continues to finalize the gaming product and to work with the racetracks to design their business operations. These regulations are a result of that product development, and have only now been completed. Consequently, this is the earliest the regulations could have been finalized, leaving inadequate time prior to the anticipated start date to comply with the normal rulemaking procedure set forth in the State Administrative Procedure Act Section 202(1). Delaying the commencement of gaming for the time needed to utilize the normal rulemaking process would mean a loss in aid to education of approximately \$1 to 4 Million per week which would have to be made up from other state revenues.

**Subject:** Video lottery gaming.

**Purpose:** To allow for the licensed operation of video lottery gaming.

**Substance of emergency rule:** Chapter 383 of the Laws of 2001 as amended by Chapter 85 of the Laws of 2002, as amended by Chapter 62 of the Laws of 2003, codified as § 1617-a of the New York State Tax Law, authorized the Division of the Lottery to license the operation of video lottery gaming at eligible racetracks around New York State. That legislation directed the Division to promulgate rules and regulations for the licensing and operation of those games.

The regulations begin by setting forth the general provisions, construction, and application of the rules. This section contains the definitions for key terms that are used throughout the body of the document.

Many of the regulations set forth the licensing procedures for the various participants needed to bring video lottery gaming into operation. Licensees include the racetracks that are eligible under the enabling legislation to operate video lottery gaming, and their employees, as well as gaming and non-gaming vendors that will supply goods and services to both the Division and the racetracks. Licensing procedures include financial disclosure and, in some instances, background investigations for prin-

ciples and key employees. Non-gaming vendors supplying goods and services below a certain threshold will not be required to undergo the licensing process, but will have to register as suppliers.

The racetracks, referred to in the regulations as video lottery gaming agents, will be required to submit business plans for approval by the Division prior to licensing, and to establish a set of internal control procedures pursuant to guidelines provided by the Division. The agents will be required to submit periodic financial reports and undertake other financial controls. The regulations set forth the continuing obligations of video lottery gaming agents following licensure, and identify penalties that may be imposed on licensees for violation of the regulations.

The regulations establish rules for the conduct and operation of video lottery gaming. Movement of the terminals is closely regulated, and surveillance and security systems are established at each facility.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. LTR-28-03-00009-P, Issue of July 16, 2003. The emergency rule will expire July 15, 2004.

**Text of emergency rule and any required statements and analyses may be obtained from:** Robert J. McLaughlin, General Counsel, New York Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301, (518) 388-3408, e-mail: rmclaughlin@lottery.state.ny.us

**Additional matter required by statute:** A negative declaration has been prepared and is on file for this rule making.

#### **Revised Regulatory Impact Statement**

1. Statutory Authority: On October 31, 2001, Governor Pataki signed into law Part C of Chapter 383 of the Laws of 2001, as amended by Chapter 85 of the laws of 2002, as amended by Chapters 62 and 63 of the Laws of 2003, codified as 1617-a and 1612 of the New York State Tax Law, which authorizes the New York State Division of the Lottery ("Division") to license the operation of video lottery gaming at racetrack locations around the state. That legislation directs the Division to promulgate regulations allowing for the licensed operation of video lottery gaming. These regulations fulfill that mandate, enabling the licensing and operation of video lottery gaming at authorized racetracks.

2. Legislative Objectives: These proposed regulations advance the legislative objective of raising additional revenue for education by establishing video lottery gaming.

3. Needs and Benefits: The regulations satisfy a legislative mandate directing the Division to promulgate regulations for the design, licensing and implementation of video lottery gaming. Pursuant to a Memorandum of Understanding between the Division and the Racing and Wagering Board, potential duplicative licensing requirements for the racetrack employees have been eliminated.

The regulations set forth the manner in which the regulated community will be licensed to conduct video lottery gaming. Additionally, they describe the game operation, financial operations, terminal design, the manner in which the security systems must operate, and certain requirements for the physical layout of the gaming facilities. These regulations provide the regulated community with the details and guidance to effectively implement video lottery gaming in New York State.

While the Division considers video lottery gaming to be very similar to other lottery games that the Division has successfully conducted for over twenty-five years, some components set it apart from those more traditional games. For example, most of the Division's current licensed agents are food and beverage retailers. Video lottery gaming will require the Division to license racetrack venues as video lottery gaming agents, in addition to licensing video lottery gaming and non-gaming suppliers, as well as principals, key employees, and employees.

In furtherance of its statutory mandate to design a game that is comparable to others in the industry, the Division has spent a considerable amount of time since the legislation was signed studying video lottery gaming venues in other states, namely, Delaware, Rhode Island, and West Virginia. In some respects, the video lottery gaming design in these regulations is modeled after those states; however, there are significant differences. For example, the video lottery games and the video lottery terminals are designed to meet specific legal requirements unique in this state.

A Notice of Proposed Rulemaking was published in July 2003. Since that time, the game design has continued to develop during the start up phase of the project. Because of this, and based on comments received during the public comment period, it was necessary to revise the proposed regulations. These emergency regulations include the revisions. By way of example, sections were added authorizing the issuance of badges for temporary employees, expressly setting forth a procedure to request exemp-

tion from the regulations, and authorizing the video lottery gaming agents to use Division logos and other copyrighted material to advertise and promote video lottery gaming at the licensed facilities.

In response to comments received from prospective licensees, the video lottery gaming agents were given increased latitude in managing their business operations. For example, rather than adhering to internal controls procedures prescribed by the Division, each agent will design their own in compliance with guidelines established by the Division. License applications with minor deficiencies can be resubmitted without the need to wait a lengthy resubmission time. If temporary employees are needed intermittently, they may utilize a badging system instead of undergoing a lengthy licensing process. Gaming agents will be able to utilize a Division logo in their advertising program, and will be able to sell all lottery products. Grammatical and formatting changes were made for clarity and ease of use.

These regulations will assist the regulated parties to fully understand and comply with all the requirements of the operation of video lottery gaming, while generating sales and revenue to aid education in the State of New York.

4. Costs: This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming. It is expected that the decision to apply for a license will result from the exercise of sound business judgment.

The regulations, as well as the legislation, require facilities be in conformance with state and local building codes. These requirements, in addition to the necessary changes to facilities to accommodate video lottery terminals and related peripheral equipment, will result in each video lottery gaming agent incurring construction costs.

According to data provided by the racetracks, total costs for new construction, rehabilitation of facilities and readying facilities for the installation of the video lottery terminals will approximate \$450 million if all eligible venues participate. Each racetrack's proposed project differs. The cost for each facility ranges from \$4 million to \$250 million dollars. The regulations require video lottery gaming agents housing over 2500 terminals to equip the facility with an alternate emergency power source. It is estimated that this could cost those agents an additional \$250-\$300 per video lottery terminal. The individual facilities will also be incurring closing costs and interest expenses on any funds borrowed to pay project costs. Each track's expenditures in readying the facility for compliance with the regulations include adequate heating, venting, air conditioning, cashier's cages, electrical and communication upgrades.

The racetracks will incur certain labor costs associated with operating video lottery gaming. The gaming facilities throughout the state are expected to employ upwards of a total estimated 4,000 people. Individual gaming agents will be employing approximately 200 to 1,200 people. The average number of employees at each facility is estimated to be over 500. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual salaries ranging from \$22,000 to \$250,000. Total annual payroll for each racetrack could range from \$3.0 million to over \$15 million.

There are other incidental costs that will be incurred by the video lottery gaming agents. These include costs relative to providing sufficient internal controls to satisfy Division guidelines as well as auditing, both expected to exceed what is currently in place at the racing facilities. It is anticipated that most of these controls will be established through sufficient experienced racetrack personnel. Additional external auditing costs are expected to average approximately \$65,000 annually.

Members of the regulated community will be required to expend money for licensing costs. Gaming vendors will be required to pay a \$10,000 licensing fee to cover costs related to conducting background investigations of their principals and key employees. Principals and employees will be required to pay approximately \$100 to cover the cost of fingerprints.

Total costs for the State, the tracks and vendors for start up and a full year of operations are estimated to be approximately \$500 million, with total revenue for the project for that time period estimated to be over \$1.2 billion.

5. Local Government Mandates: No local mandates are imposed by rule upon any county, city, village, etc. The legislation permits local communities which have racetracks not expressly identified in the legislation to pass local laws authorizing video lottery gaming at racetracks in their communities, if they so choose.

6. Paperwork: The regulations require that the regulated entities complete a licensing application, including fingerprints, and to update and renew the application periodically. The application will follow a standard

multi-state format used by other states that license similar gaming activities. Completion of these applications will be a new responsibility for the video lottery gaming agents, their principals, and key employees. Agents, their principals and key employees will be required to provide more detailed disclosure than they have previously been required to provide for licensure. This level of disclosure is common in other gaming states. Provisional licenses will be granted under certain circumstances, so that the licensing review process is not expected to pose a barrier to immediate entry into the business.

The regulated vendors should be familiar with these licensing forms and reporting requirements as they are similar to those required in other states where these vendors currently do business. In fact, gaming vendors routinely have regulatory compliance departments to assist in fulfillment of these requirements.

Vendors supplying goods or services not directly related to gaming must register to do business with the video lottery gaming agents. However, if their contracts exceed certain thresholds outlined in the regulations, they will be required to undergo a full licensing procedure. In particular, non-gaming vendors will be required to submit license applications if any of the following conditions exist:

(a) the non-gaming vendor has a contract with a video lottery gaming agent that exceeds \$100,000.00 in any twelve (12) month period;

(b) the non-gaming vendor has contracts with more than one video lottery gaming agent that combined exceed \$150,000.00 in any twelve (12) month period;

(c) the non-gaming vendor has contract(s) for a portion of a video lottery gaming facility construction project that exceeds \$500,000.00 in any twelve (12) month period;

(d) the non-gaming vendor has combined contracts for a portion of more than one video lottery gaming facility construction project exceeding \$1,000,000.00 within any twelve (12) month period.

Agents will be required to submit business plans that will include floor plans of the gaming areas, staffing plans, internal control procedures, marketing plans, and security plans. These will need to be updated periodically.

In order to ensure the financial integrity and security of video lottery gaming, the video lottery gaming agents will be required to develop internal control procedures, to undergo an auditing process and to submit financial reports. These financial reports are produced during the regular course of business, and their submission should not prove burdensome. These will need to be updated periodically.

7. Duplication: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules. Currently, the New York State Racing and Wagering Board must license the operation of pari-mutuel wagering at the racetracks as well as licensing racetrack employees. Because the operation of video lottery gaming is separate and distinct from pari-mutuel wagering, and further because only the Division may license the operation of video lottery gaming, dual licensing of the racetracks is not duplicative. Pursuant to a Memorandum of Understanding between the Division and that agency, potential duplicative licensing requirements for the racetrack employees have been eliminated.

8. Alternatives: In furtherance of its statutory mandate to design a game that is comparable to others in the industry, the Division has spent a considerable amount of time since the legislation was signed studying video lottery gaming venues in other states, namely, Delaware, Rhode Island, and West Virginia. In some respects, the video lottery gaming design in these regulations is modeled on those states; however, there are significant differences. For example, the video lottery games and the video lottery terminals are designed to meet specific legal requirements unique in this state.

Prior to publication of the first proposed regulations, members of the regulated community were contacted and comments to the proposed draft regulations solicited. In response, the Division received hundreds of comments that were carefully and thoroughly examined. These comments fell broadly into the following general categories:

(a) That the requirements to become licensed and operate video lottery gaming appeared oftentimes unclear or vague;

(b) That many of the requirements established in the proposed draft regulations were overly burdensome;

(c) That the licensing authority of the Division was questionable;

(d) That the regulations imposed excessive costs to satisfy unnecessary regulatory requirements; and

(e) That the regulations contained definitions that were inconsistent, inaccurate or ambiguous.

As a result of this outreach effort, a number of revisions were made and included in the first proposed regulations published in July 2003. The public comment period which followed elicited a number of comments primarily from prospective licensees. Many of those comments proved valuable in drafting these emergency regulations which both meet the needs of the regulated community while maintaining the high standards established by the Division to operate and regulate its games. All comments received are available for public review by contacting Robert J. McLaughlin, Esq., General Counsel, New York State Division of the Lottery at One Broadway Center, P.O. Box 7500, Schenectady, New York 12301 or by calling 518-388-3408 or e-mailing to [rmclaughlin@lottery.state.ny.us](mailto:rmclaughlin@lottery.state.ny.us).

While the majority of requests for revision were accommodated whenever feasible, the Division did not accept any requests for change that in its estimation would undermine the security and integrity of the game. For example, when asked to make changes which would reduce the costs of developing or operating their businesses, the Division generally accommodated those requests when possible. Conversely, though comments were received that the stringent licensing application process was overly burdensome, the Division did not lessen these requirements.

As another alternative, the Division entered into a Memorandum of Understanding with the Racing and Wagering Board to avoid potential duplicative licensing requirements for the racetrack employees.

9. Federal Standards: This rule will not duplicate, overlap or conflict with any State or Federal statute or rules.

10. Compliance Schedule: The licenses must be issued prior to commencement of video lottery gaming. In many instances, the license applicants will be issued provisional licenses immediately upon filing their application. All requirements concerning the conduct and operation of video lottery gaming must be complied with prior to actual commencement of the games and maintained on-going throughout the operation of the games.

#### **Regulatory Flexibility Analysis**

##### **1. Effect of Rule:**

The Division of the Lottery finds that the rule will not adversely affect local government. The rule will impact a number of different types of businesses:

(a) Licensed racetracks: It is expected that the racetracks will employ greater than 100 employees at their facilities and, therefore, are not "small businesses" as that term is defined in New York State Administrative Procedure Act § 102;

(b) Gaming vendors: Vendors wishing to supply gaming products and services must be licensed. These include the supplier of the central computer system that will support the video lottery games, the companies supplying the games and terminals, management companies and certain leaders. It is anticipated that once video lottery gaming has commenced, these companies will recoup any costs associated with licensing and start-up;

(c) Non-gaming vendors: Most vendors supplying goods and services not directly related to gaming will be required to complete a registration process. However, if their contract exceeds a certain value, they will be required to comply with licensing provisions. While it is difficult to estimate all costs associated with doing business with a video lottery gaming agent, the costs of registration will be minimal. The costs of licensing, should that be necessary, will conform to the costs of licensing discussed in paragraph (c) below. However, non-gaming vendors who must undergo a licensing process will not be required to pay a licensing fee other than the costs of fingerprinting.

Participation in video lottery gaming by any of these entities is voluntary and it is expected they will use good business judgment when deciding whether or not to participate in these games. It is expected there will be no adverse economic impact on any of these regulated businesses.

2. Compliance Requirements: These rules will not require small businesses to complete burdensome forms or reports. To the extent that any small business becomes a non-gaming vendor to a video lottery agent, a contract value threshold of \$100,000 applies before licensing is necessary. Completion of the licensing application will be required. Certain small vendors may not even be required to register.

3. Professional Services: It is not anticipated that any professional services by a small business or local government will be needed to comply with these proposed rules.

4. Compliance Costs: This is a voluntary program. Members of the regulated community need only apply for licenses if they choose to enter into video lottery gaming. It is expected that the decision to apply for a license will result from the exercise of sound business judgment.

The regulations, as well as the legislation, require facilities be in conformance with state and local building codes. These requirements, in addition to the necessary changes to facilities to accommodate video lottery terminals and related peripheral equipment, will result in each video lottery gaming agent incurring construction costs.

Based on forecasted estimates provided by the racetracks themselves, total costs for new construction, rehabilitation of facilities and readying facilities for the installation of the video lottery terminals will exceed \$240 million if all eligible venues participate. Each facility's proposed project differs. The cost for each facility ranges from \$4 million to over \$100 million dollars. The regulations require video lottery gaming agents housing over 2,500 terminals to equip the facility with an alternate emergency power source. It is estimated that this will cost those agents an additional \$250-\$300 per installed video lottery terminal. The individual facilities will also be incurring closing costs and interest expenses on any funds borrowed to pay project costs. Each track's expenditures in readying the facility for compliance with the regulations include adequate heating, venting, air conditioning, cashier's cages, electric and communication upgrades.

The gaming facilities throughout the state are expected to employ upwards of a total estimated 1,900 people. Individual gaming agents will be employing between approximately 70 to 700 people. The average number of employees at each facility is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual hourly salaries between \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

There are other incidental costs which will be incurred by the video lottery gaming agents. These include costs relative to providing sufficient internal controls to satisfy Lottery guidelines as well as auditing, both expected to exceed what is currently in place at the racing facilities. The majority of these controls are put in place through adequate experienced personnel and the personnel costs are set forth above. Additional external auditing costs are expected to average approximately \$65,000 annually.

Members of the regulated community will be required to expend money for licensing costs. Gaming vendors will be required to pay a \$10,000 licensing fee to cover costs related to conducting background investigations of their principals and key employees. Principals and employees will be required to pay approximately \$100 to cover the cost of fingerprints.

5. Economic and Technological Feasibility: The economic and technological impact of these rules on local government is minimal.

There are no expected adverse economic or technological impact on small businesses in complying with these regulations.

6. Minimizing Adverse Impact: In the case of smaller, non-gaming vendor contracts, these vendors will not be required to comply with licensing and background checks. Small businesses supplying non-gaming goods and services pursuant to contracts valued at less than \$25,000 annually will be exempt from any registration or licensing requirements, and businesses supplying non-gaming goods and services pursuant to contracts valued at less than \$100,000 will only need to complete a registration process.

7. Small Business and Local Government Participation: During the pre-proposal stage of the regulatory process, members of the regulated community were contacted and given the opportunity to participate in the formation of these regulations. The New York Lottery received numerous comments from members of the community, many of which were incorporated during the final drafting of the proposed regulations. After publication of the Notice of Proposed Rulemaking on July 16, 2003, the Lottery received numerous comments mostly from prospective licensees, during the public comment period. These emergency regulations include revisions made to the regulations as a result of that comment period.

#### **Rural Area Flexibility Analysis**

Many of the racetracks eligible for video lottery gaming licenses are located within "rural areas" as that term is defined in New York State Executive Law Section 481(7): Batavia Downs in Genesee County, Finger Lakes Racetrack in Ontario County, Saratoga Harness Track in Saratoga County, and Monticello Racetrack in Sullivan County.

However, the Division has determined that these regulations will impose no adverse impact on these rural areas. The rule places no additional requirements on racetracks, other businesses or communities located within the rural areas than it does on racetracks, businesses or communities located outside rural areas.

The Division believes that there will be positive impact on these rural areas, as this new industry brings increased levels of business and employment to the communities.

#### **Job Impact Statement**

The Division has determined that the rule will not have a substantial adverse impact on jobs and employment opportunities. To the contrary, the agency has determined the rule will have a positive impact on jobs and employment opportunities.

According to estimates provided by the racetracks, it is anticipated that racetracks, or gaming agents, throughout the state are expected to employ upwards of 1,900 people. Individual gaming agents will be employing between approximately 70 to 700 people. The average number of employees at each gaming facility (incremental over current operations) is estimated to be over 240. Hourly wages are expected to range from minimum wage to \$65 per hour, with annual salaries between \$22,000 to \$250,000. Total annual payroll for each racetrack will range from \$1.8 million to over \$10.8 million, with an average payroll of over \$6.6 million.

In addition to added employment from gaming operations, needed construction to the racetrack facilities will generate many new jobs. Undoubtedly, employment in the surrounding communities will increase to service the increased labor population and influx of patrons to the racetracks.

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## Department of Motor Vehicles

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### NOTICE OF ADOPTION

#### **Driving Privileges After License Suspension or Revocation**

**I.D. No.** MTV-12-04-00002-A

**Filing No.** 601

**Filing date:** May 18, 2004

**Effective date:** June 2, 2004

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

**Action taken:** Amendment of sections 134.7, 135.7 and 140.4 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 530, 1196(7)(a) and 1198

**Subject:** Driving privileges after license suspension or revocation.

**Purpose:** To ensure that inexperienced drivers whose license has been suspended or revoked do not enjoy the same privileges as more experienced drivers.

**Text or summary was published** in the notice of proposed rule making, I.D. No. MTV-12-04-00002-P, Issue of March 24, 2004.

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

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

#### **Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

#### **Driver's License Endorsement for Operation of Large Recreational Vehicles**

**I.D. No.** MTV-13-04-00019-A

**Filing No.** 600

**Filing date:** May 18, 2004

**Effective date:** June 2, 2004

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

**Action taken:** Amendment of section 3.2 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 385(1)(h) and 501(2)(b)

**Subject:** Driver's license endorsement for operation of large recreational vehicles.

**Purpose:** To clarify that a personal use endorsement is required for operation of a recreational vehicle which exceeds 40 feet in length.

**Text or summary was published** in the notice of emergency/proposed rule making, I.D. No. MTV-13-04-00019-EP, Issue of March 31, 2004.

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

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

#### **Assessment of Public Comment**

The agency received no public comment.

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## Niagara Frontier Transportation Authority

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

#### **Procurement Guidelines**

**I.D. No.** NFT-22-04-00001-P

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

**Proposed action:** This is a consensus rule making to amend Part 1159 of Title 21 NYCRR.

**Statutory authority:** Public Authorities Law, sections 1299-e(5) and 1299-t

**Subject:** Procurement guidelines.

**Purpose:** To make technical corrections, conform to changes in State Law and update references.

**Substance of proposed rule (Full text is not posted on a State website):**

1. SCOPE: Amendment to Part 1159.1. References to the Niagara International Transportation Technology Coalition ("NITTEC") are added throughout the Guidelines.

2. DEFINITIONS: Amendments to Part 1159.3. The term advertisement was amended to provide for advertising on the NFTA's website and to eliminate the requirement of posting advertisements on Authority property. Definitions were added defining terms set forth in Executive Order 127. Other definitions were amended to conform to changes in the law. The purchase of catering services was added as purchase exempt from the operation of the Procurement Guidelines.

3. BUY AMERICA: Amendment to Part 1159.4(b). Updated references to the general waiver established by the Federal Transit Administration were added.

4. FOREIGN BUSINESS ENTERPRISES: Amendment to Part 1159.4(c). Amendment to conform regulation to existing law regarding contracting with foreign business enterprises.

5. SEALED BIDDING: Amendment to Part 1159.4(f). Amendment to provide that sealed bidding not required if Board votes that such an action is not in the best interests of the Authority.

6. NEGOTIATION: Amendment to Part 1159.4(h). Add procedure for Statement of Qualifications review and eliminate the requirement for separate technical and price proposals.

7. NEW YORK STATE CONTRACT REPORTER: Amendment to Part 1159.4(j). Deleting outdated reporting requirements.

8. Small Purchases: Amendment to Part 1159.4(n). Deletion of certain reporting requirements.

9. STATE, FEDERAL, AND COUNTY CONTRACT LISTS: Amendment to Part 1159.4(o). References to the Federal General Services Administration contract prices deleted.

10. PROFESSIONAL SERVICE CONTRACTS: Amendment to Part 1159.4(q). References dealt with elsewhere in the Guidelines are deleted.

11. CONFIDENTIALITY AND CONFLICTS OF INTEREST: Amendment to Part 1159.4(s). Addition of language implementing Executive Order 127.

12. EMERGENCY OR EXIGENCY: Amendment to Part 1159.4(v). Reporting requirements changed in order to be consistent with other guidelines.

13. RECORDS RETENTION: Amendment to Part 1159.4(x). Separate retention section deleted and New York State Records Retention Manual made applicable.

**Text of proposed rule and any required statements and analyses may be obtained from:** Ruth Keating, Niagara Frontier Transportation Authority, 181 Ellicott St., Buffalo, NY 14203, (716) 855-7398, e-mail: ruth\_keating@nfta.com

**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 Niagara Frontier Transportation Authority has determined that no person is likely to object to the rule being repealed or the rule as written for the following reasons:

1. Many of the changes are being made to conform the regulations to existing laws and regulations and/or are technical in nature.
2. None of the changes are controversial.

**Job Impact Statement**

The Niagara Frontier Transportation Authority has determined adoption of the proposed rule will have no impact on jobs or employment opportunities for the following reasons:

1. The subject of the proposed rule are technical corrections to the NFTA's Procurement Guidelines. Changes to the rules will not impact the level of procurements made by the NFTA, and therefore will not impact jobs or employment opportunities.

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## Public Service Commission

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**NOTICE OF ADOPTION**

**Allocation of a Tax Refund by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island**

**I.D. No.** PSC-33-02-00013-A

**Filing date:** May 12, 2004

**Effective date:** May 12, 2004

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

**Action taken:** The commission, on May 5, 2004, adopted an order in Case 02-M-0917 authorizing KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KeySpan) to retain half of a \$5.1 million Nassau County tax refund and distribute the remainder to its Long Island gas delivery customers.

**Statutory authority:** Public Service Law, sections 113 and 89.3

**Subject:** Allocation of a tax refund.

**Purpose:** To allow KeySpan and gas delivery customers to retain a portion of property tax refund.

**Substance of final rule:** The Commission approved a request by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KeySpan) to retain half of a \$5.1 million property tax refund from the County of Nassau and return the remainder with interest to its Long Island gas delivery customers.

**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. (02-M-0917SA1)

**NOTICE OF ADOPTION**

**Rules and Guidelines in the Environmental Disclosure Program**

**I.D. No.** PSC-45-03-00008-A

**Filing date:** May 12, 2004

**Effective date:** May 12, 2004

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

**Action taken:** The commission, on May 5, 2004, adopted an order in Case 94-E-0952 extending the settlement period in the Environmental Disclosure Program from a three-month to a six-month cycle.

**Statutory authority:** Public Service Law, section 66

**Subject:** Rules and guidelines for the settlement period in the Environmental Disclosure Program.

**Purpose:** To provide the load serving entities additional flexibility when purchasing seasonal or intermittent sources of energy, such as wind and hydro power.

**Substance of final rule:** The Commission expanded the current aggregation period of energy transactions in the Environmental Disclosure program from a three month to a six month cycle that would extend periodically from January to June and July to December of each year.

**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. (94-E-0952SA33)

**NOTICE OF ADOPTION**

**Water Rates and Charges by Rural Atlantic Water Company**

**I.D. No.** PSC-45-03-00012-A

**Filing date:** May 14, 2004

**Effective date:** May 14, 2004

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

**Action taken:** The commission, on May 5, 2004, adopted an order in Case 03-W-1499 approving revisions to Rural Atlantic Water Company's (Rural) tariff schedule, P.S.C. No. 2—Water, effective May 15, 2004.

**Statutory authority:** Public Service Law, section 89-c(10)

**Subject:** Tariff filing.

**Purpose:** To increase rates and establish an escrow account.

**Substance of final rule:** The Commission allowed Rural Atlantic Water Company (Rural) to establish a \$10,000 escrow account and authorized an increase in Rural's tariff rates to provide additional annual revenues of \$5,978 or 62%. This increase will be phased in equally over a two year period and will become effective on May 15, 2004, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-W-1499SA1)

## NOTICE OF ADOPTION

**Calculation of Franchise Fees by Cablevision of Wappingers Falls, Inc.**

**I.D. No.** PSC-48-03-00018-A  
**Filing date:** May 14, 2004  
**Effective date:** May 14, 2004

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

**Action taken:** The commission, on March 16, 2004, adopted an order in Case 98-V-0942 granting Cablevision of Wappingers Falls, Inc. a waiver of section 595.1(o)(2) pertaining to the calculation of franchise fees.

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

**Subject:** Waiver of section 9 NYCRR section 595.1(o)(2).

**Purpose:** To exclude franchise fees collected in the Village of Pomona from inclusion in Cablevision of Wappingers Falls, Inc.'s calculation of gross receipts.

**Substance of final rule:** The Commission approved a request from Cablevision of Wappingers Falls, Inc. for a waiver of Section 595.1(o)(2) of the Commission rules to permit exclusion of franchise fee collections from the calculation of gross receipts for the purpose of determining the franchise fee to be paid to the Village of Pomona, subject to the terms and conditions set forth in the Order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
 (98-V-0942SA1)

## NOTICE OF ADOPTION

**Franchising Process by the Town of Lorraine**

**I.D. No.** PSC-48-03-00019-A  
**Filing date:** May 14, 2004  
**Effective date:** May 14, 2004

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

**Action taken:** The commission, on March 16, 2004, adopted an order in Case 03-V-1604 granting the Town of Lorraine a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

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

**Subject:** Waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(ii).

**Purpose:** To allow the Town of Lorraine to waive certain franchising standards.

**Substance of final rule:** The Commission approved the request from the Town of Lorraine for a waiver of 594.1 through 594.4 and 594.4(b)(ii) pertaining to the franchising process.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
 (03-V-1604SA1)

## NOTICE OF ADOPTION

**Refund of Transmission Service Overcharge by the Village of Rouses Point**

**I.D. No.** PSC-07-04-00020-A  
**Filing date:** May 12, 2004  
**Effective date:** May 12, 2004

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

**Action taken:** The commission, on May 5, 2004, adopted an order in Case 04-E-0060 allowing the Village of Rouses Point to use approximately \$474,000 of transmission fee refunds for imminent extraordinary capital projects.

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

**Subject:** Refund related to transmission service overcharges.

**Purpose:** To approve for the allocation of a refund to purchase a new distribution substation.

**Substance of final rule:** The Commission approved a request by the Village of Rouses Point to use approximately \$474,000 of transmission fee refunds it received from New York State Electric & Gas Corporation to partially offset the cost of completing a new distribution substation and associated system upgrades.

**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.  
 (04-E-0060SA1)

## NOTICE OF ADOPTION

**Refund of Transmission Service Overcharge by the Village of Greene**

**I.D. No.** PSC-07-04-00021-A  
**Filing date:** May 12, 2004  
**Effective date:** May 12, 2004

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

**Action taken:** The commission, on May 5, 2004, adopted an order in Case 04-E-0061 allowing the Village of Greene to use approximately \$65,219 of transmission fee refunds for an imminent extraordinary capital project.

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

**Subject:** Refund related to transmission service overcharges.

**Purpose:** To approve for the allocation of a refund to purchase a new billing system and equipment.

**Substance of final rule:** The Commission approved a request by the Village of Greene to use approximately \$65,219 of a transmission fee refund it received from New York State Electric & Gas Corporation for the installation of a new computer billing system and associated peripheral equipment.

**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.  
 (04-E-0061SA1)

## NOTICE OF ADOPTION

**Refund of Transmission Service Overcharges by the Village of Castile****I.D. No.** PSC-07-04-00023-A**Filing date:** May 12, 2004**Effective date:** May 12, 2004

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

**Action taken:** The commission, on May 5, 2004, adopted an order in Case 04-E-0093 allowing the Village of Castile to devote approximately \$58,237 of transmission fee refunds for an imminent extraordinary capital project.

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

**Subject:** Refund related to transmission service overcharges.

**Purpose:** To approve for the allocation of a refund to purchase equipment.

**Substance of final rule:** The Commission approved a request by the Village of Castile to use approximately \$58,237 of a transmission fee refund it received from New York State Electric & Gas Corporation to partially offset the cost of a new bucket truck.

**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.

(04-E-0093SA1)

## NOTICE OF ADOPTION

**Major Rate Increase by the Village of Rockville Centre****I.D. No.** PSC-09-04-00011-A**Filing date:** May 17, 2004**Effective date:** May 17, 2004

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

**Action taken:** The commission, on May 5, 2004, adopted an order in Case 03-E-1568 approving revisions to the Village of Rockville Centre's tariff schedule, P.S.C. No. 3—Electricity.

**Statutory authority:** Public Service Law, sections 66(12) and 113(2)

**Subject:** Tariff amendments.

**Purpose:** To allow the Village of Rockville Centre to increase its annual electric revenues.

**Substance of final rule:** The Commission granted, with modifications, the request of the Village of Rockville Centre to increase its annual electric revenues and to use deferred accounting for the rate case expenses, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(03-E-1568SA1)

## NOTICE OF ADOPTION

**Overpayment Refunds by the Village of Spencerport****I.D. No.** PSC-09-04-00013-A**Filing date:** May 12, 2004**Effective date:** May 12, 2004

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

**Action taken:** The commission, on May 5, 2004, adopted an order in Case 04-E-0087 allowing the Village of Spencerport to use approximately \$34,380 of a refund from New York Power Authority (NYPA) for extraordinary capital improvements.

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

**Subject:** Refund from overcharges for ancillary services and hydroelectric power charges.

**Purpose:** To approve for the allocation of a refund to purchase equipment.

**Substance of final rule:** The Commission approved a request by the Village of Spencerport to use approximately \$34,380 of a refund from overcharges it received from the New York Power Authority to offset the cost of a new pole trailer, compact excavator and associated trailer.

**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.

(04-E-0087SA1)

## NOTICE OF ADOPTION

**Investigation into the Transactions of Camfield-Purcell Water Works, Inc.****I.D. No.** PSC-10-04-00004-A**Filing date:** May 17, 2004**Effective date:** May 17, 2004

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

**Action taken:** The commission, on May 17, 2004, adopted an order in Case 04-W-0214 making permanent the provisions of the Feb. 24, 2004 order regarding the acts and practices of Camfield-Purcell Water Works, Inc. (Camfield-Purcell) and Brickyard Road Water System (Brickyard).

**Statutory authority:** Public Service Law, section 89(b)

**Subject:** Investigation into the adequacy of water service.

**Purpose:** To ensure uninterrupted water service.

**Substance of final rule:** The Commission adopted as a permanent rule the provisions of the February 24, 2004 Order regarding the acts and practices of Camfield-Purcell Water Works, Inc. and Brickyard Road Water System, subject to the terms and conditions set forth in the Order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(04-W-0214SA1)

## NOTICE OF ADOPTION

**Refund of Overpayments for Hydroelectric Charges by the Village of Rockville Centre**

**I.D. No.** PSC-10-04-00015-A  
**Filing date:** May 17, 2004  
**Effective date:** May 17, 2004

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

**Action taken:** The commission, on May 5, 2004, adopted an order in Case 02-E-0322 allowing the Village of Rockville Centre to use a portion of a refund received from the New York Power Authority to complete transmission system upgrades.

**Statutory authority:** Public Service Law, sections 66(12) and 113(2)

**Subject:** Allocation of a refund.

**Purpose:** To authorize the Village of Rockville Centre to use a portion of a refund to imminent extraordinary capital projects.

**Substance of final rule:** The Commission granted the Village of Rockville Centre's request to use the remaining portion of a refund received by the New York Power Authority to finance extraordinary capital improvements, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(02-E-0322SA3)

## NOTICE OF ADOPTION

**Transfer of Land by Consolidated Edison Company of New York, Inc.**

**I.D. No.** PSC-10-04-00022-A  
**Filing date:** May 18, 2004  
**Effective date:** May 18, 2004

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

**Action taken:** The commission, on May 5, 2004, adopted an order in Case 03-M-1748 authorizing the sale and transfer of 126 acres of vacant land by Consolidated Edison Company of New York, Inc. (Con Edison).

**Statutory authority:** Public Service Law, sections 5(b), (c), 65(1), 66(1), (2), (5), (8), (9), (10), (11), (12) and 70

**Subject:** Transfer of real property.

**Purpose:** To allow Con Edison to transfer and sell property to Nicolas Russo.

**Substance of final rule:** The Commission approved a request by Consolidated Edison Company of New York, Inc. for the sale and transfer of approximately 126 acres of vacant land, located at East Kerleys Corners Road in the Town of Red Hook, New York to Mr. Nicolas Russo, subject to the terms and conditions set forth in the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(03-M-1748SA1)

## NOTICE OF ADOPTION

**Schedule for Gas Service by Orange and Rockland Utilities, Inc.**

**I.D. No.** PSC-11-04-00035-A  
**Filing date:** May 13, 2004  
**Effective date:** May 13, 2004

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

**Action taken:** The commission, on May 5, 2004, adopted an order in Case 04-G-0196 authorizing revisions to Orange and Rockland Utilities, Inc.'s (O&R) schedule for gas service—P.S.C. No. 4.

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

**Subject:** Tariff amendments.

**Purpose:** To allow O&R to bill customers through its customer information management system and cancel its interruptible transportation service.

**Substance of final rule:** The Commission approved a request by Orange and Rockland Utilities, Inc. (O&R) to restate all rates under S.C. No. 3 – Interruptible Sales Service and S.C. No. 8 – Interruptible Transportation and Supplemental Sales Service on a per 100 cubic feet basis and authorized the cancellation of O&R's S.C. No. 4 – Interruptible Transportation Service which is no longer available to customers, subject to the terms and conditions set forth in the Order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

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

(04-G-0196SA1)

PROPOSED RULE MAKING  
HEARING(S) SCHEDULED**Major Rate Increase by Consolidated Edison Company of New York, Inc.**

**I.D. No.** PSC-22-04-00013-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 whether to approve or reject, in whole or in part, or modify, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes to the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 9—Gas. The effective date of the filing has been suspended through Oct. 18, 2004.

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

**Subject:** Major gas rate increase.

**Purpose:** To provide an increase in annual gas revenues of about \$107.5 million or 9.8 percent.

**Public hearing(s) will be held at:** 10:30 a.m., on June 21, 2004 (continuing daily as required) at Department of Public Service, One Penn Plaza, New York, 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.

**Substance of proposed rule:** Consolidated Edison Company of New York, Inc. has made a tariff filing to revise its rates and charges to provide an increase in annual gas revenues of about \$107.5 million or 9.8%. The effective date of the filing is currently suspended through October 18, 2004 in Case 03-G-1671. The Commission may approve, modify or reject the rate filing in whole or part.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

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

**Public comment will be received until:** five days after the last scheduled public hearing.

**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. (03-G-1671SA1)

**PROPOSED RULE MAKING HEARING(S) SCHEDULED**

**Major Rate Increase by Consolidated Edison Company of New York, Inc.**

**I.D. No.** PSC-22-04-00014-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes to the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 3—Steam. The effective date of the filing has been suspended through Oct. 18, 2004.

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

**Subject:** Major rate increase.

**Purpose:** To provide an increase in annual steam revenues of about \$65 million or 14.6 percent.

**Public hearing(s) will be held at:** 10:30 a.m., on June 21, 2004 (continuing daily as required) at Department of Public Service, One Penn Plaza, New York, 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.

**Substance of proposed rule:** Consolidated Edison Company of New York, Inc. (Con Edison) has made a tariff filing to revise its rates and charges to provide a net increase in annual steam revenues of about \$65 million or 14.6% after the expected fuel savings from the new East River Repowering Project (ERRP) are taken into account. The proposed increase in base rates would be \$128.9 million prior to reflecting the expected ERRP fuel savings. The effective date of the filing is currently suspended through October 18, 2004 in Case 03-S-1672. The Commission may approve, modify or reject the rate filing in whole or part.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

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

**Public comment will be received until:** five days after the last scheduled public hearing.

**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. (03-S-1672SA1)

**PROPOSED RULE MAKING HEARING(S) SCHEDULED**

**Major Rate Increase by Heritage Hills Water Works Corporation**

**I.D. No.** PSC-22-04-00015-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 filing by which Heritage Hills Water Works Corporation seeks to make various changes in the rates, charges, rules and regulations contained in its tariff schedules, P.S.C. Nos. 67, 68 and 69 so as to increase its annual revenues by an estimated \$439,100 or 40.28 percent. The effective date of the proposed changes is suspended through July 27, 2004 in Case 03-W-1182.

**Statutory authority:** Public Service Law, section 89-c(8)

**Subject:** Major rate increase.

**Purpose:** To increase annual revenues by about \$439,100 or 40.28 percent.

**Public hearing(s) will be held at:** 5:00 p.m., on June 28, 2004 at Activities Center, Heritage Hills of Westchester, Somers, 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.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a filing by which Heritage Hills Water Works Corporation seeks to make various changes in the rates, charges, rules and regulations contained in its tariff schedules P.S.C. Nos. 67, 68, and 69 so as to increase its annual revenues by an estimated \$439,100 or 40.28%. The effective date of the proposed changes is suspended through July 27, 2004 in Case 03-W-1182.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-3204

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

**Public comment will be received until:** five days after the last scheduled public hearing.

**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. (03-W-1182SA1)

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

**Modification of Mass Migration Guidelines**

**I.D. No.** PSC-22-04-00008-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 whether to modify, in whole or in part, the mass migration guidelines adopted in December 2001 in Case 00-C-0188, and as revised in January 2003. The proposed modifications are set out in the notice requesting comments, issued May 17, 2004 in this case and include consumer protections in the event of a default in payment for wholesale services to Verizon or other underlying carriers.

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

**Subject:** Modification of mass migration guidelines.

**Purpose:** To consider the modifications.

**Substance of proposed rule:** The Commission is consider whether to modify, in whole or in part, the Mass Migration Guidelines adopted in December 2001 in Case 00-C-0188, and as revised in January 2003. The proposed modifications are set out in the Notice Requesting Comments, issued May 17, 2004 in this case and include consumer protections in the event of a default in payment for wholesale services to Verizon or other underlying carriers.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting 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.  
(00-C-0188SA7)

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

**Submetering of Electricity by Walnut Hill Preservation, L.P.**

**I.D. No.** PSC-22-04-00009-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 a request filed by Walnut Hill Preservation, L.P., to submeter electricity at Walnut Hill Apartments in the Town of Haverstraw, New York.

**Statutory authority:** Public Service Law, sections 65(1), 66(1)-(5), (12) and (14)

**Subject:** Case 26988—Submetering of electricity for new master metered residential rental units owned or operated by private or government entities.

**Purpose:** To permit electric submetering at Walnut Hill Apartments in the Town of Haverstraw, New York.

**Substance of proposed rule:** The Commission will consider individual submetering proposals on a case-by-case basis in the category of new, renovated or existing residential properties owned or operated by private or government entities according to established guidelines. The Owner at Walnut Hill Apartments in the Town of Haverstraw, New York, New York, Walnut Hill Preservation, L.P., has submitted a proposal to master meter and submeter this residential complex that is undergoing renovation. The total electric building usage for this complex will be master metered and each residential unit will be individually submetered.

The submetering plan sets forth proposals on electric rates, security, grievance procedures and dispute resolution, economic benefits and metering systems in compliance with the Home Energy Fair Practices Act (HEFPA). The Commission may accept, deny or modify, in whole or in part, the proposal to submeter electricity at Walnut Hill Apartments in the Town of Haverstraw, New York, New York.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting 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.

(04-E-0593SA1)

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

**Approval of New Types of Electricity Meters by Powell Power Electronic Company**

**I.D. No.** PSC-22-04-00010-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 request filed by Powell Power Electronic Company on behalf of Consolidated Edison for approval of the PE-1250 electronic residential meter.

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

**Subject:** Approval of new types of electricity meters, transformers, and auxiliary devices.

**Purpose:** To permit electric utilities and other entities in New York State to use the PE-1250 electronic meter.

**Substance of proposed rule:** The Commission will consider a request from Powell Power Electronics Company for the approval of PE-1250 electronic residential meter, for use in New York State. This device has the capability of collecting, storing, transmitting electric KWh consumption, and provides a host of add-on options.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting 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.

(04-E-0596SA1)

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

**Transfer of Ownership Interests by Atlantic Renewable Projects LLC and Zilkha Renewable Energy, LLC**

**I.D. No.** PSC-22-04-00011-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 to approve, reject, or modify, a joint petition filed by Atlantic Renewable Projects LLC, Zilkha Renewable Energy, LLC (Sellers), a to-be-named affiliate of Constellation Generation Group, LLC (Purchaser), Flat Rock Windpower LLC (Flatrock) and Flat Rock Windpower II, LLC for approval of the transfer of ownership interests from Sellers to Purchaser, for approval of the transfer of real property interests and other assets from Flat Rock Windpower LLC to Flat Rock Windpower II LLC (which real property interests and other assets are necessary to Phase II of the wind power project to be constructed by Flat Rock Windpower II LLC), and for approval of the transfer from Flat Rock Windpower LLC to Flat Rock Windpower II LLC of certain rights under a certificate of public convenience and necessity issued to Flat Rock Windpower pursuant to Public Service Law, section 68.

**Statutory authority:** Public Service Law, section 70

**Subject:** Transfer of ownership interests, real property interests and other assets, and certain rights under a certificate of public convenience and necessity from one electric corporation to another, and related matters.

**Purpose:** To consider the transfer.

**Substance of proposed rule:** By Joint Petition filed May 14, 2004, Sellers seek to transfer their ownership interests in Flat Rock to Purchaser. Moreover, Flat Rock seeks to transfer certain real property and other assets (including rights to construct and operate Phase II of its project) to Flat Rock Windpower II, LLC. Petitioners request a waiver of 16 NYCRR § 31.1(a), (c), (d) and (f)-(l). They also request confirmation that Flat Rock will continue to be subject to lightened regulation.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Acting 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.

(04-E-0630SA1)

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

**Lightened Regulation by Black River Power LLC and Black River Generation LLC**

**I.D. No.** PSC-22-04-00012-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 petition from Black River Power LLC and Black River Generation LLC requesting that their 50 MW coal-fired generation facility located near Watertown, NY and its owners be lightly regulated. The commission may adopt, modify or reject, in whole or in part, the relief requested.

**Statutory authority:** Public Service Law, sections 2(13), 5(b), 64-69, 69-a, 70-72, 72-a, 75, 105-114, 114-a, 115, 117, 118, 119-b, 119-c

**Subject:** Lightened regulation.

**Purpose:** To approve lightened regulation of a 50 MW coal-fired generation facility and its owners.

**Substance of proposed rule:** To Commission is considering a petition from Black River Power LLC and Black River Generation LLC requesting that their 50 MW coal-fired generation facility located near Watertown, NY and its owners be lightly regulated. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillig, Acting 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. (04-E-0632SA1)

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

**Master Metering of Water by South Liberty Corporation**

**I.D. No.** PSC-22-04-00016-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, an application by South Liberty Corporation, the developer of Liberty Ridge Condominium, a 115-unit senior citizen rental complex, for a waiver of section 3,4(d) of the tariff of United Water New York which requires installation of separated water meters for each dwelling within an apartment, co-operative or condominium development constructed on or after April 15, 1991.

**Statutory authority:** Public Service Law, section 65(1)-(5), (12) and (14)

**Subject:** Master metering of water for a residential complex.

**Purpose:** To waive the requirement for installation of separate water meters.

**Substance of proposed rule:** The Public Service Commission will consider a request filed by South Liberty Corporation, to waive the requirement of United Water New York (UWNY), to install separate water meters for each rental dwelling unit within Liberty Ridge Condominium.

**Text of proposed rule may be obtained from:** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

**Data, views or arguments may be submitted to:** Jaclyn A. Brillig, Acting 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. (04-W-0325SA1)

**Office of Temporary and Disability Assistance**

**NOTICE OF EXPIRATION**

The following notice has expired and cannot be reconsidered unless the Office of Temporary and Disability Assistance publishes a new notice of proposed rule making in the *NYS Register*.

**Temporary Housing Assistance**

I.D. No.	Proposed	Expiration Date
TDA-19-03-00011-P	May 14, 2003	May 13, 2004

**Department of Transportation**

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

**Safety of Operations and Equipment by Motor Carriers**

**I.D. No.** TRN-22-04-00004-P

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

**Proposed action:** Repeal of Parts 507, 819, 820, 822, 824 and section 845.3 and addition of a new Part 820 and section 845.3 to Title 17 NYCRR.

**Statutory authority:** Transportation Law, sections 14, 14-f, 138(2), 140, 143 and 145; and Vehicle and Traffic Law, art. 19-B

**Subject:** Safety of operations and equipment by motor carriers.

**Purpose:** To provide consistency, regarding commercial motor vehicles and operational requirements for drivers involved in commerce, with the standards and requirements of the Code of Federal Regulations that have been incorporated by reference and provide clearer language to describe what is required to better preserve public safety.

**Substance of proposed rule (Full text is not posted on a State website):** Because of the number of sections to be affected by rule changes, the New York State Department of Transportation (NYSDOT or the Department) is submitting this summary of changes to Parts 507, 819, 820, 822, 824 and 845 of 17 NYCRR.

Basically there are only six areas of changes and most are clerical in nature or are updating state regulations to current federal standards. They are as follows:

1. Revise current commercial vehicle identification requirements by adopting the federal identification requirements for those commercial motor vehicles transporting property in interstate commerce. For-hire motor carriers of property which are currently required to identify their motor vehicles with a "NYSDOT" identification number will replace the "NYSDOT" number with a "USDOT" identification number issued by the Department with a phase in period over the next two years. Phase-in of a new commercial motor vehicle identification requirement for those motor carriers operating solely on an intrastate basis and transporting property in commerce will be required to display their company name and "USDOT" number issued by the Department on each side of their motor vehicles by July of 2006.

2. Outdated references to deleted or revised sections of the Code of Federal Regulations are updated and corrected.

3. Combining Parts 507, 819, 820 822 and 824 into a new Part 820 and eliminating existing Parts 507, 819, 822 and 824. Moreover, replace the

identification provisions of Section 845.3 with language cross-referencing the motor carrier identification provisions of the new Section 820.2 for added consistency and enhanced compliance.

4. Update the state's commercial vehicle safety regulations by adopting the 2003 edition of the Code of Federal Regulations.

5. Update the state's hours of service and load securement regulations also set forth in the 2003 edition of the Code of Federal Regulations.

The update to these regulations is essential to prevent jeopardizing the 7 million dollars of federal funding New York State receives annually to perform commercial vehicle safety programs. This update ensures uniformity in enforcement efforts for those motor carriers traveling solely within New York State as well as for those carriers traveling through the State. Since the majority of the motor carrier industry is already subject to the current federal regulations, the revisions we propose will have no adverse affect on them.

**Text of proposed rule and any required statements and analyses may be obtained from:** William Leonard, Department of Transportation, Passenger and Freight Safety Division, POD 53, 50 Wolf Rd., Albany, NY 12232, (518) 457-2019, e-mail: wleonard@dot.state.ny.us

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

**Public comment will be received until:** 60 days after publication of this notice.

#### **Regulatory Impact Statement**

1. Statutory Authority: The statutory authority for the New York State Department of Transportation ("NYSDOT" or the "Department") to promulgate these rules is found in the Transportation Law ("TL") and the Vehicle and Traffic Law ("VTL").

TL § 14 sets forth the Department's general powers and specifically in § 14(26) authorizes the Department to exercise those powers which were transferred to the Department from the Department of Motor Vehicles; § 14(12) authorizes the Department to exercise all powers relating to traffic regulation and control as set forth in the VTL or in other laws; and § 14(18) authorizes the Department to make rules and regulations to discharge the Department's powers and duties.

TL § 14-f authorizes the Department to promote safety in the transportation of hazardous materials by all modes of transportation and particularly in § 14-f(1)(a) gives the Department the power to promulgate regulations governing transportation of hazardous materials, which shall mean a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce, by all modes.

TL § 138 sets forth the Department's general powers regarding all motor carriers and specifically in § 138(2) authorizes the Department to promulgate regulations for the administration of all provisions of TL Article 6 entitled Matters Relating to All Motor Carriers.

TL § 140 describes the Department's general authority regarding safety requirements and particularly states in § 140(2)(a), (b) and (c) that the Department shall have the power to adopt rules and regulations governing the safety of operation of various types of motor vehicles and the inspection of all such motor vehicles.

TL § 143 sets forth vehicle identification requirements in accordance with the Department's promulgated rules and regulations for any motor carrier holding a certificate or permit from the Commissioner to operate any motor vehicle upon State highways.

TL § 145 sets forth penalties and forfeitures for violations pertaining to the failure to comply with the provisions of TL Article 6 (Matters Relating to All Motor Carriers) or any related order, regulation or certificate or permit.

TL § 211 gives the Department the authority to promulgate rules and regulations governing the hours of service of drivers of motor trucks and motor buses.

TL § 212, specifically § 212(a) gives the Department the authority to prescribe the form of records that show the day, hour and place of performance of the duties of every driver of a motor truck or motor bus and the Department may require other information for the enforcement of this law.

VTL Article 19-B sets forth special requirements regarding certain commercial motor carriers and specifically in § 509-y therein authorizes the Department to promulgate regulations to implement these special requirements of this article.

2. Legislative Objectives: The proposed amendments to the regulations follow the legislative intent by revising the existing commercial motor vehicle and driver operational requirements to reflect the current 2003 version of Title 49 of the Code of Federal Regulations, as well as to better meet the needs of motor carriers while at the same time maintaining safety for motor carriers and the general public. The previous amendments to the

various Department regulations currently being revised herein, adopted the 1997 and 1999 versions of Title 49 of the Code of Federal Regulations.

3. Need and Benefits: We are updating our regulations to reflect current federal safety standards for commercial motor vehicles and operational requirements for drivers involved in commerce. As a result, the proposed regulations are more easier to understand and consistent with current federal regulations.

Key changes are as follows:

a. Revise existing commercial vehicle identification requirements by adopting the current federal identification requirements for those commercial motor vehicles involved in interstate commerce. For-hire motor carriers of property which are now required to identify their motor vehicles with a "NYSDOT" identification number will, pursuant to the proposed regulations, replace the existing "NYSDOT" number with a "USDOT" identification number issued by the Department by July of 2005. Phase-in of a new commercial motor vehicle identification requirement for those motor carriers operating solely on an intrastate basis and transporting property in commerce will be required to display their company name and "USDOT" number issued by the Department on each side of their motor vehicles by July of 2006.

b. Revise the driver hours of service rules to mirror the new federal hours of service rules.

c. Outdated references to deleted sections or revised sections of the Code of Federal Regulations will be corrected.

d. Combine parts 507, 819, 820, 822 and 824 into a new part 820 to make the regulations more user friendly and therefore, enhance compliance. Moreover, replace the identification provisions of Section 845.3 with language cross-referencing the motor carrier identification provisions of the new Section 820.2 for added consistency and enhanced compliance.

e. Update the state's commercial vehicle safety regulations by adopting the 2003 edition of the Code of Federal Regulations.

f. Update the state's load securement requirements by adopting the recently published federal load securement regulations also set forth in the 2003 edition of the Code of Federal Regulations.

In summary, the revised rules are consistent with current federal requirements, provide clearer language to describe what is required and correct errors and omissions while maintaining public safety.

4. Costs: The compliance cost are minimal as the new vehicle identification requirement for intrastate carriers (name and USDOT #) is estimated at a cost of \$25 per vehicle. Of the approximately 1,700 new motor carriers who received USDOT numbers last year, 60% had one vehicle and 95% had five or less vehicles.

5. Local Government Mandates: None associated with this update to the Department's commercial vehicle safety regulations.

6. Paperwork: No additional paperwork will be created with the update to the Department's commercial vehicle safety regulations.

7. Duplication: None.

8. Alternatives: The alternatives would be to apply inconsistent and outdated standards to the motor carrier industry based on outdated 1997 and 1999 Federal regulations. By not updating the adoption of the 2003 Code of Federal Regulations, New York State jeopardizes 7 million dollars of federal funding to perform commercial vehicle safety programs.

9. Federal Standards: The proposed regulations are consistent with current Federal Motor Carrier Safety Regulations (FMCSR) - 49 CFR Parts 107, Parts 171 (except for Section 171.1, Federal Purpose and Scope, which was not adopted) through 199, Parts 390 through to 393 and Parts 395 through 397.

10. Compliance Schedule: Effective 60 days after publication of the final rule in the State Register in order to provide drivers, motor carriers and State inspection personnel sufficient time to adjust to the updated requirements.

#### **Regulatory Flexibility Analysis**

1. Effect of Rule - The updates, corrections and clarification of Parts 507, 819, 820, 822, 824 and 845 will especially benefit the smaller carriers. The updated regulations will be more consistent with federal requirements which will facilitate a better understanding of what is required of the drivers and motor carriers operating vehicles subject to both NYSDOT and USDOT safety requirements. In most cases, the Department has made its commercial vehicle safety regulations consistent with the current Federal requirements and State statutes. As a result, there will be less confusion for drivers and motor carriers operating in both intrastate and interstate commerce.

2. Compliance Requirements - The update to the 2003 version of the Code of Federal Regulations should make compliance with the requirements much easier.

3. Professional Services - No additional or unique services are required. The updates to current Federal requirements and clarifications and corrections of Parts 507, 819, 820, 822, 824 and 845 should facilitate a better understanding of Department requirements when such services are required.

4. Compliance Costs - The compliance costs are minimal as the new vehicle identification requirement for intrastate carriers (name and USDOT #) is estimated at \$25 per vehicle. Of the approximately 1,700 new motor carriers who received USDOT numbers last year, 60% had one vehicle and 95% had five or less vehicles.

5. Economic and Technology Feasibility - The proposed modifications to the regulations allow for new technologies for both current and emerging commercial vehicle construction technologies. The changes do not add any increased requirements that would have a significant economic impact.

6. Minimizing Adverse Impact - This proposal will permit operators to purchase and maintain commercial vehicles in accordance with current Federal mandates, while ensuring that public safety is not compromised.

7. Small Business and Local Government Participation - These revisions were presented as an agenda item at five Commercial Driver Seminars held across New York State with industry and government representatives including the New York Motor Truck Association. In addition, the Department participates in regional industry outreach sessions with members of the motor carrier industry where we discuss the proposed changes in greater detail. Because the proposed updates and changes correct errors and omissions and provide further clarification and flexibility, there is not expected to be any adverse impact on small businesses. Furthermore, the revisions do not increase the level of regulatory mandates or requirements on local governments.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: The amendments, updates and corrections to Parts 507, 819, 820, 822, 824 and 845 will apply to all rural areas in the New York State including but not limited to all agricultural, residential, commercial and industrial rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The amendments, updates and corrections to Parts 507, 819, 820, 822, 824 and 845 pose no additional reporting or recordkeeping requirements. The combination of the various parts has been done in an effort to clearly specify what requirements pertain to what type of motor carrier operation. The updated regulations will especially benefit the smaller property carriers who reside in rural areas as a more user friendly product which will facilitate a better understanding of what is required of the rural operators in maintaining and operating vehicles subject to NYS-DOT and USDOT safety requirements. No additional or unique professional services are required. The adoption of current federal safety regulations, clarifications and corrections should facilitate a better understanding of Department requirements when such services are required.

3. Costs: The compliance cost are minimal as the new vehicle identification requirement for intrastate carriers (name and USDOT #) is estimated at \$25 per vehicle. Of the approximately 1,700 new motor carriers who received USDOT numbers last year, 60% had one vehicle and 95% had five or less vehicles.

4. Minimizing adverse impact: This proposal will permit rural operators to maintain commercial vehicles in accordance with current federal mandates, while ensuring that public safety is not compromised.

5. Rural area participation: These revisions were presented as an agenda item at five Commercial Driver Seminars held across New York State with industry and government representatives including the New York Motor Truck Association. In addition, the Department participates in regional industry outreach sessions with members of the motor carrier industry where we discuss the proposed changes in greater detail. Because the proposed updates and changes correct errors and omissions and provide further clarification and flexibility, there is not expected to be any adverse impact on rural areas or small businesses. Furthermore, the revisions do not increase the level of regulatory mandates or requirements on local rural governments.

#### **Job Impact Statement**

A Job Impact Statement is not submitted because the proposed revisions to Parts 507, 819, 820, 822, 824 and 845, by its very nature, will not have an adverse impact on jobs or employment opportunities. The proposed revisions to the Department's safety regulations adopt current federal regulations, safety standards, correct errors and omissions and provide further clarification to the motor carrier industry, while preserving public safety. Compliance with the revised State regulations shall become more uniform throughout the State because they will be consistent with current federal

requirements. Although uniformity should have a positive fiscal impact, it is not possible to quantify the impact on jobs and employment opportunities. Consequently, the proposed revisions will have either a positive impact or no impact on jobs and employment opportunities.