RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

National Institute of Standards and Technology Handbook 44, 2007 Edition

I.D. No. AAM-07-07-00002-A
Filing No. 428
Filing date: April 24, 2007
Effective date: May 9, 2007

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

Action taken: Amendment of section 220.2 of Title 1 NYCRR.

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

Subject: Incorporation by reference of the 2007 edition of National Institute of Standards and Technology ("NIST") Handbook 44.

Purpose: To incorporate by reference the 2007 edition of NIST Handbook 44.

Text or summary was published in the notice of proposed rule making, I.D. No. AAM-07-07-00002-P, Issue of February 14, 2007.

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

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

Assessment of Public Comment
The agency received no public comment.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Harvest and Possession of Summer Flounder

I.D. No. ENV-19-07-00011-EP
Filing No. 427
Filing date: April 24, 2007
Effective date: April 24, 2007

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

Action taken: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0105 and 13-0340-b

Preservation of: General welfare.

Specific reasons underlying the finding of necessity: These regulations are necessary in order for New York to maintain compliance with the Fishery Management Plan (FMP) for Summer Flounder as adopted by the Atlantic States Marine Fisheries Commission (ASMFC).

Pursuant to § 13-0371 of the ECL, New York State is a party to the Atlantic States Marine Fisheries Compact which established the Atlantic States Marine Fisheries Commission (ASMFC). The Commission facilitates cooperative management of marine and anadromous fish species among the fifteen member states. The principal mechanism for implementation of cooperative management of migratory fish are the ASMFC's Interstate Fishery Management Plans for individual species or groups of fish. The Fisheries Management Plans (FMPs) are designed to promote the long term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have implemented, in a timely manner, provisions of FMPs with which they are required to comply. If ASMFC determines a state to be in non-compliance with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

ECL Sections 13-0105 and 13-0340-b, which authorize the adoption of regulations for the management of summer flounder, provide that such regulations must be consistent with the FMPs for these species adopted by the Atlantic States Marine Fisheries Commission and with applicable

provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act.

Under the FMP for summer flounder, ASMFC assigns each state an annual harvest target or quota. In addition, a projection is made for each state as to its expected harvest if the state's regulations remained unchanged and harvest patterns and rates remained the same as the previous year. ASMFC reviews each state's regulations and determines if they are compliant with the FMP. If the projected harvest for a state exceeds that state's assigned quota, the state is required to amend its harvest regulations so that they are sufficiently restrictive to prevent the state from exceeding its assigned quota. Failure by a state to adopt, in a timely manner, revised regulations may result in a determination of non-compliance by ASMFC and the Secretary of Commerce, and the imposition of a total closure of fishing for summer flounder in that state, which could result in significant adverse impacts to the state's economy.

New York's assigned recreational harvest limit for 2007 is 430,262 fish. Under current regulations, New York's projected recreational harvest of summer flounder in 2007 would exceed the state's assigned quota by 49%. The promulgation of this regulation on an emergency basis is necessary in order for the Department to maintain compliance with the FMP for summer flounder and to avoid closure of the summer flounder fisheries and the economic hardship that would be associated with such closure. The regulatory changes in this emergency rule are calculated, and have been approved by ASMFC, to achieve a harvest reduction of approximately 56% for summer flounder and to therefore achieve compliance with the FMP.

Subject: Harvest and possession of summer flounder.

Purpose: To control the recreational and commercial harvest and possession of summer flounder consistent with fisheries management plans.

Text of emergency/proposed rule: Section 40.1 (f) is amended as follows:

40.1 (f) Table A - Recreational Fishing:

Species	Open Season	Minimum Length	Possession Limit
Striped Bass (except the Hudson River north of the George Washington Bridge)	Apr 15 - Dec 15	Licensed Party/ Charter Boat anglers 28" TL	2
		All other anglers 28" to 40" TL	1
		>40" TL (Total Length) *	1
Red Drum	All year	No minimum size limit	No limit for fish less than 27" TL Fish greater than 27" TL shall not be possessed
Tautog	Oct 1 - May 31	14" TL	10
American Eel	All year	6" TL	50
Pollock	All year	19" TL	No limit
Haddock	All year	19" TL	No limit
Atlantic cod	All year	22" TL	No limit
Summer flounder	[May 6 - Sept. 12] *All year*	[18"] *19.5*" TL	4
Yellowtail Flounder	All year	13" TL	No limit
Atlantic Sturgeon	No possession allowed		
Spanish Mackerel	All year	14" TL	15
King Mackerel	All year	23" TL	3
Cobia	All year	37" TL	2
Monkfish (Goosefish)	All year	17" TL 11" tail length #	No limit
Weakfish	All year	16" TL 10" Fillet length + 12" Dressed length**	6
Bluefish	All year	No minimum size limit for the first 10 fish; 12" TL for the next 5 fish.	15, no more than 10 of which shall be less than 12" TL.
Winter Flounder	April 1 - May 30	12" TL	10
Scup (porgy) licensed Party/ Charter	June 1 - Aug. 31	10.5" TL	25
Boat anglers ****	Sept. 1 - Oct. 31	10.5" TL	60
Scup (porgy) All other anglers	June 1 - Oct. 31	10.5" TL	25
Black Sea Bass	All year	12" TL	25
American Shad	All year	No minimum size limit	5
Hickory Shad	All year	No minimum size limit	5
Oyster toadfish	Jan 1 - May 14 and July 16 - Dec 31	10" TL	3
Large & Small Coastal Sharks ##, ###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Pelagic Sharks ++, ###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###	As per Title 50 CFR, Part 635###
Prohibited Sharks***, ###	No possession allowed		

* Total length is the longest straight line measurement from the tip of the snout, with the mouth closed, to the longest lobe of the caudal fin (tail), with the lobes squeezed together, laid flat on the measuring device.

\# The tail length is the longest straight line measurement from the tip of the caudal fin (tail) to the fourth cephalic dorsal spine (all dorsal spines must be intact), laid flat on the measuring device.

\+ The fillet length is the longest straight line measurement from end to end of any fleshy side portion of the fish cut lengthwise away from the backbone, which must have the skin intact, laid flat on the measuring device.

** Dressed length is the longest straight line measurement from the most anterior portion of the fish, with the head removed, to the longest lobe of the caudal fin (tail), with the caudal fin intact and with the lobes squeezed together, laid flat on the measuring device.

Large and Small Coastal Sharks include those shark species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

++Pelagic sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

***Prohibited sharks include those species so defined as in Table 1 to Appendix A to Part 635 of Title 50 Code of Federal Regulations

###Applicable provisions of the following are incorporated herein by reference: 50 CFR Part 635-Atlantic Highly Migratory Species, final rule as adopted by U.S. Department of Commerce as published in the Federal Register, Volume 64, Number 103, pages 29135-29160, May 28, 1999, and as amended in volume 68, Number 247, pages 74746-74789, December 24, 2003. A copy of the federal rule incorporated by reference herein may be viewed at: New York State Department of Environmental Conservation, Bureau of Marine Resources, 205 N. Belle Mead Road, East Setauket, New York, 11733.

****See Special Regulations contained in 6NYCRR 40.1(h)(3).

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 July 22, 2007.

Text of rule and any required statements and analyses may be obtained from: Stephen W. Heins, Department of Environmental Conservation, 205 N. Belle Meade Rd. Suite 1, East Setauket, NY 117733-3400, (631) 444-0435, e-mail: swheins@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: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the department.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) Sections 13-0105 and 13-0340-b authorize the Department of Environmental Conservation (DEC or Department) to establish by regulation, open season, size, catch limits, possession and sale restrictions and manner of taking for summer flounder.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manage marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies and interstate FMPs.

3. Needs and benefits:

These regulations are necessary in order for New York to maintain compliance with the Fishery Management Plan (FMP) for Summer Flounder as adopted by the Atlantic States Marine Fisheries Commission (ASMFC).

Pursuant to § 13-0371 of the ECL, New York State is a party to the Atlantic States Marine Fisheries Compact which established the Atlantic States Marine Fisheries Commission (ASMFC). The Commission facilitates cooperative management of marine and anadromous fish species among the fifteen member states. The principal mechanism for implementation of cooperative management of migratory fish are the ASMFC's Interstate Fishery Management Plans for individual species or groups of fish. The Fisheries Management Plans (FMPs) are designed to promote the long term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

Under the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), ASMFC determines if states have implemented, in a timely manner, provisions of FMPs with which they are required to comply. If ASMFC determines a state to be in non-compliance with an FMP, it so notifies the U.S. Secretary of Commerce. If the Secretary concurs in the non-compliance determination, the Secretary promulgates and enforces a complete prohibition on all fishing for the subject species in the waters of the non-compliant state until the state comes into compliance with the FMP.

ECL Sections 13-0105 and 13-0340-b, which authorize the adoption of regulations for the management of summer flounder, provide that such regulations must be consistent with the FMPs for these species adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of fishery management plans adopted pursuant to the Federal Fishery Conservation and Management Act.

Under the FMP for summer flounder, ASMFC assigns each state an annual harvest target or quota. In addition, a projection is made for each state as to its expected harvest if the state's regulations remained unchanged and harvest patterns and rates remained the same as the previous year. ASMFC reviews each state's regulations and determines if they are compliant with the FMP. If the projected harvest for a state exceeds that state's assigned quota, the state is required to amend its harvest regulations so that they are sufficiently restrictive to prevent the state from exceeding its assigned quota. Failure by a state to adopt, in a timely manner, revised regulations may result in a determination of non-compliance by ASMFC and the Secretary of Commerce, and the imposition of a total closure of fishing for summer flounder in that state, which could result in significant adverse impacts to the state's economy.

New York's assigned recreational harvest limit for 2007 is 430,262 fish. Under current regulations, New York's projected recreational harvest of summer flounder in 2007 would exceed the state's assigned quota by 49%. The promulgation of this regulation on an emergency basis is necessary in order for the Department to maintain compliance with the FMP for summer flounder and to avoid closure of the summer flounder fisheries and the economic hardship that would be associated with such closure. The regulatory changes in this emergency rule are calculated, and have been approved by ASMFC, to achieve a harvest reduction of approximately 56% for summer flounder and to therefore achieve compliance with the FMP.

Specific major changes to the regulations include the following:

a) Implement a year-round open season for the summer flounder recreational fishery. The current fishing season for summer flounder is open from May 6 to September 12.

b) Raise the minimum size limit from 18 inches Total Length (TL) to 19.5 inches TL.

4. Costs:

(a) Cost to State government:

There are no new costs to state government resulting from this action.

(b) Cost to Local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

There are no new costs to regulated parties resulting from this action. Certain regulated parties (party/charter vessels, bait and tackle shops) may experience some adverse economic effects through lost economic opportunities due to the size-limit restrictions on summer flounder. These same regulated parties may experience some positive economic effects through new opportunities provided by the longer season.

(d) Costs to the regulating agency for implementation and continued administration of the rule:

The Department of Environmental Conservation will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational harvesters, party and charter boat operators and other recreational support industries of the new rules.

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

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

8. Alternatives:

The following significant alternatives have been considered by the Department and rejected for the reasons set forth below:

(1) One alternative considered was to keep the size limit at 18 inches TL or only raise it to 18.5 inches TL with a 2 or 4 fish possession limit. This would avoid aggravating the asymmetrical socio-economic impacts on the fishery, whereby higher size limits discriminate against shore-based anglers and those boating anglers who are restricted to fishing inside the bays where large fish are harder to find. The needed reduction in harvest would have to have come from shortening the season from the current four months to approximately 6 weeks. This alternative seems to provide the greater likelihood of achieving our management objectives for the stock. However, the potential economic consequences of such a limited season for one of the most important recreational fisheries in New York are believed to be particularly damaging to the industry, resulting in significant economic loss to bait and tackle shops, party and charter boat businesses and the supporting local economy. In addition, the closure of a significant portion of the summer flounder fishing season would shift fishing effort onto other species, the local populations of which may not respond positively to an increase in fishing effort. This analysis resulted in a rejection of this alternative.

(2) Another alternative considered and rejected was to raise the size limit to 19 inches TL with a 2 or 4 fish possession limit and a fishing season slightly shorter than that in place for 2006. Again, the potential large economic impacts and shift of effort resulting from shortening the season were the reason this alternative was rejected.

(3) No Action (no amendment to regulations).

The "no action" alternative would leave current regulations in place and defer short-term adverse socio-economic impacts to the fishery. This option would, however, give us no chance of achieving our management objectives for the stock and likely result in a Federal non-compliance determination, which would bring about a closure of all fishing for summer flounder in New York under ACFCMA. This would have a much more severe economic impact than the imposition of tighter restrictions, therefore, this option was rejected.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC and Regional Fishery Management Council FMPs.

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news releases and via the Department's website of the changes to the regulations. The emergency regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Effect of the regulations:

Pursuant to § 13-0371 of the ECL, New York State is a party to the Atlantic States Marine Fisheries Compact which established the Atlantic States Marine Fisheries Commission (ASMFC). The Commission facilitates cooperative management of marine and anadromous fish species among the fifteen member states. The principal mechanism for implementation of cooperative management of migratory fish are the ASMFC's Interstate Fishery Management Plans for individual species or groups of fish. The Fisheries Management Plans (FMPs) are designed to promote the long term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

ASMFC recently adopted annual quota changes and recreational harvest projections for summer flounder (fluke). The Department has chosen to amend its fluke regulations to comply with the requirements of the FMP. Failure to comply with FMPs and take required actions to protect our natural resources could cause the collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries.

There were 503 licensed party/charter vessels operating in New York during 2006. In 2006, there were also retail and wholesale marine bait and tackle shop businesses operating in New York; however, the Department does not have a record of the absolute number. The Department consulted the Marine Resources Advisory Council and, through various media outlets, invited comment from party and charter boat operators, bait and tackle shop owners and the general fishing public. The response to the Department's outreach effort indicates that there is a belief that an extension of the season, despite the higher size limit, will grant economic relief to these businesses because their customers will take advantage of the additional opportunities to go fishing for fluke. The responses received by the Department suggest that the longer season will result in more charter bookings, more party boat trips and more bait and tackle sales related to fluke fishing.

There are no local governments involved in the recreational fish harvesting business, nor do any participate in the sale of marine bait fish or

tackle. Therefore, no local governments are affected by these proposed regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule.

5. Minimizing adverse impact:

The promulgation of this regulation is necessary in order for the Department to maintain compliance with the FMP for summer flounder and to avoid closure of the summer flounder fisheries and the economic hardship that would be associated with such closure. Since these regulatory amendments are consistent with federal and interstate fishery management plans, the Department anticipates limited or no adverse impacts.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive affect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail outlets and other support industries for recreational fisheries. Failure to comply with FMPs and take required actions to protect our natural resources could cause the collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. These regulations are being proposed in order to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

6. Small business and local government participation:

The development of this proposal has drawn upon input from the Marine Resources Advisory Council, which is comprised of representatives from recreational and commercial fishing interests. The proposed regulations are also based upon consultation with and recommendations received from other interested and affected parties, including recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners, recreational anglers and state law enforcement personnel. There was no special effort to contact local governments because the rule does not affect them.

7. Economic and technological feasibility:

The proposed regulations do not require any expenditures on the part of affected businesses in order to comply with the changes. In addition, based on information provided by these businesses, it is anticipated that the extended season will result in an increase in economic benefits. The changes required by this action have been determined to be economically feasible for the affected parties.

There is no additional technology required for small businesses, and this action does not apply to local governments. Therefore, there are no economic or technological impacts for any such bodies.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The summer flounder fishery directly affected by the emergency rule is entirely located within the marine and coastal district, and is not located adjacent to any rural areas of the state. Further, the emergency rule does not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the emergency amendments of Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

The Department of Environmental Conservation (Department) has determined that this rule will not have a substantial adverse impact on jobs and employment opportunities and in fact may have a positive impact on jobs and employment opportunities. Therefore, a job impact statement is not required.

The promulgation of this regulation is necessary in order for the Department to maintain compliance with the FMP for summer flounder and to avoid closure of the summer flounder fisheries and the economic hardship that would be associated with such closure.

There were 503 licensed party/charter vessels operating in New York during 2006. In 2006, there were also retail and wholesale marine bait and tackle shop businesses operating in New York; however, the Department does not have a record of the absolute number. Many currently licensed party and charter boat owners and operators, as well as bait and tackle businesses, will be affected by these regulations. The regulations may result in an economic gain resulting from a increase in the season length. A longer season will increase the opportunity to fish for summer flounder and may, thereby, result in an increase in the number of angler trips made. Conversely, there may be an adverse affect on the number of fishing trips and/or lower bait and tackle sales during the upcoming fishing season as a result of the proposed increase in the size limit, which will affect the availability of legal-sized fish and may, therefore, negatively affect angler incentive for fishing.

The Department consulted the Marine Resources Advisory Council and, through various media outlets, invited comment from party and charter boat operators, bait and tackle shop owners and the general fishing public. The response to the Department's outreach effort indicates that there is a belief that an extension of the season, despite the higher size limit, will grant economic relief to these businesses because their customers will take advantage of the additional opportunities to go fishing for fluke. The responses received by the Department suggest that the longer season will result in more charter bookings, more party boat trips and more bait and tackle sales related to fluke fishing.

In the long term, the maintenance of sustainable fisheries will have a positive affect on employment for the fisheries in question, including party and charter boat owners and operators, wholesale and retail bait and tackle outlets and other support industries for recreational fisheries. Any short-term losses in participation and sales will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. Protection of the summer flounder resource is essential to the survival of the party and charter boat operations and bait and tackle businesses that support in these fisheries. These regulations are designed to protect stocks while allowing appropriate harvest, to prevent over-harvest and to continue to rebuild or maintain them for future utilization.

Based on the above and Department staff's knowledge and past experience with similar regulations, the Department has concluded that there will not be any substantial adverse impact on jobs or employment opportunities as a consequence of this rule making. Therefore, a job impact statement is not required.

Hudson River Park Trust

NOTICE OF ADOPTION

FOIL Regulations

I.D. No. HPT-19-06-00002-A
Filing No. 429
Filing date: April 20, 2007
Effective date: May 9, 2007

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

Action taken: Amendment of Part 750 of Title 21 NYCRR.

Statutory authority: Hudson River Park Act, L. 1988, ch. 592

Subject: FOIL regulations.

Purpose: To amend the regulations.

Text of final rule: 750.2 Designation of Records Access Officer

(a) The Hudson River Park Trust is responsible for insuring compliance with the regulations herein, and designates the following person(s) as records access officer(s):

Title	Bus. Address	Phone #
Counsel	Hudson River Park Trust	(212) *627-2020*
HRPT	*Pier 40, 2nd Floor*	
	West Street at West Houston Street	
	New York, NY 10014	

(b) Records access officers are responsible for insuring appropriate agency response to public requests for access to records of the Hudson River Park Trust. The designation of records access officers shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so.

Records access officers shall insure that personnel:

(1) Maintain an up-to-date subject matter list;

(2) Assist the requester in identifying requested records, if necessary;

(3) Upon locating the records, take one of the following actions:

(i) Make records available for inspection; or

(ii) Deny access to the records in whole or in part and explain in writing the reasons therefore;

(4) Upon request for copies of records:

(i) Make a copy available upon payment or offer to pay established fees, if any, in accordance with Section 8; or

(ii) Permit the requester to copy those records;

(5) Upon request, certify that a record is a true copy; and

(6) Upon failure to locate records, certify that:

(i) The Hudson River Park Trust is not the custodian for such records; or

(ii) The records of which the Hudson River Park Trust is a custodian cannot be found after diligent search.

750.3 Location

Records shall be available for public inspection and copying at:

Hudson River Park Trust
Pier 40, 2nd Floor
West Street at West Houston Street
New York, NY 10014

Requests can be mailed to:

Hudson River Park Trust
Pier 40, 2nd Floor
West Street at West Houston Street
New York, NY 10014

750.4 Hours for Public Inspection

Request for public access to records shall be accepted and records produced during all hours regularly open for business.

These hours are: Monday-Friday 9am-5pm

750.5 Requests for Public Access to Records

(a) Records requests shall be in writing.

(*b*) A request shall reasonably describe the record or records sought. Whenever possible, a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought.

(c) A response shall be given within five business days of receipt of request by:

(1) informing a person requesting records that the request or portion of the request does not reasonably describe the records sought, including direction, to the extent possible, that would enable that person to request records reasonably described;

(2) granting or denying access to records in whole or in part;

(3) acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and shall not be more than twenty business days after the date of the acknowledgment, or if it is known that circumstances prevent disclosure within twenty business days from the date of such acknowledgment, providing a statement in writing indicating the reason for inability to grant the request within that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part; or

(4) if the receipt of request was acknowledged in writing and included an approximate date when the request would be granted in whole or in part within twenty business days of such acknowledgment, but circumstances prevent disclosure within that time, providing a statement in writing within twenty business days of such acknowledgment specifying the reason for the inability to do so and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part.

(d) In determining a reasonable time for granting or denying a request under the circumstances of a request, personnel shall consider the volume of a request, the ease or difficulty in locating, retrieving or generating records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed, the number of requests received by the agency, and similar factors that bear on the ability to grant access to records promptly and within a reasonable time.

(e) A failure to comply with the time limitations described herein shall constitute a denial of a request that may be appealed. Such failure shall include situations in which an officer or employee:

(1) fails to grant access to the records sought, deny access in writing or acknowledge the receipt of a request within five business days of the receipt of a request;

(2) acknowledges the receipt of a request within five business days but fails to furnish an approximate date when the request will be granted or denied in whole or in part;

(3) furnishes an acknowledgment of the receipt of a request within five business days with an approximate date for granting or denying access in whole or in part that is unreasonable under the circumstances of the request;

(4) fails to respond to a request within a reasonable time after the approximate date given or within twenty business days after the date of the acknowledgment of the receipt of a request;

(5) determines to grant a request in whole or in part within twenty business days of the acknowledgment of the receipt of a request, but fails to do so, unless the agency provides the reason for its inability to do so in writing and a date certain within which the request will be granted in whole or in part;

(6) does not grant a request in whole or in part within twenty business days of the acknowledgment of the receipt of a request and fails to provide the reason in writing explaining the inability to do so and a date certain by which the request will be granted in whole or in part; or

(7) responds to a request, stating that more than twenty business days is needed to grant or deny the request in whole or in part and provides a date certain within which that will be accomplished, but such date is unreasonable under the circumstances of the request.

750.6 Subject Matter List

(a) The records access officer shall maintain a reasonably detailed current list by subject matter of all records in its possession, whether or not records are available pursuant to subdivision two of Section Eighty- Seven of the Public Officers Law.

(b) The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.

(c) The subject matter list shall be updated not less than twice per year. The most recent update shall appear on the first page of the subject matter list.

750.7 Denial of Access to Records

(a) Denial of access to records shall be in writing stating the reason therefore and advising the requester of the right to appeal to the individual or body established to determine appeals.

(b) If requested records are not provided promptly, as required in Section 5(d) of these regulations, such failure shall also be deemed a denial of access.

(c) The following person shall determine appeals regarding denial of access to records under the Freedom of Information Law:

Title	Bus. Address	Phone #
Executive Vice President	Hudson River Park Trust *Pier 40, 2nd Floor* *West Street at West Houston Street* *New York, NY 10014*	(212) *627-2020*

(d) The time for deciding an appeal by the individual or body designated to determine appeals shall commence upon receipt of a written appeal identifying:

i. The date of the appeal;

ii. The date and location of the requests for records;

iii. The records to which the requester was denied access;

iv. Whether the denial of access was in writing or due to failure to provide records promptly as required by Section 5 (d); and

v. The name and return address of the requester.

(e) A failure to determine an appeal within ten business days of its receipt by granting access to the records sought or fully explaining the reasons for further denial in writing shall constitute a denial of the appeal.

(f) The individual or body designated to determine appeals shall inform the requester of a decision in writing within ten business days of receipt of an appeal.

(g) The person or body designated to determine appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to:

Committee on Open Government Department of State
41 State Street
Albany, NY 12231

(h) The person or body designated to determine appeals shall inform the appellant and the Committee on Open Government of its determination in writing within ten business days of receipt of an appeal. The determination shall be transmitted to the Committee on Open Government in the same manner as set forth subdivision (g) of this section.

Final rule as compared with last published rule: Nonsubstantive changes were made 750.5(c).

Text of rule and any required statements and analyses may be obtained from: Nicolette Witcher, Senior Attorney, Hudson River Park Trust, Pier 40, 2nd Fl., West St. at W. Houston St., New York, NY 10014, (212) 627-2020, e-mail: nwitcher@hrpt.state.ny.us

Job Impact Statement

The Hudson River Park Trust has determined that the proposed FOIL regulations as adopted, will have no impact on jobs and employment opportunities. It is evident from the subject matter of the regulations; *i.e.*, to allow the public to access documents and statistics leading to government decisionmaking would have no impact on jobs and employment opportunities.

Assessment of Public Comment

The agency received no public comment.

Division of the Lottery

EMERGENCY RULE MAKING

Raffle to Riches Promotional Game

I.D. No. LTR-19-07-00001-E
Filing No. 425
Filing date: April 20, 2007
Effective date: April 20, 2007

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

Action taken: Addition of Part 2837 to Title 21 NYCRR.

Statutory authority: Tax Law, section 1604(a)

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

Specific reasons underlying the finding of necessity: The New York Lottery will be conducting New York's Raffle to Riches promotional games. Game sales are scheduled to commence on or about June 1, 2007, thereby leaving insufficient time for the normal rule making process under SAPA section 202 to be completed. This game is necessary to assist the Lottery in reaching its projected revenue target for this fiscal year. A notice of proposed rule making for this rule is expected to be filed shortly; however to commence sales of the game on June 1, 2007, this emergency adoption is necessary. This promotional game is intended to improve somewhat slow revenues and will provide needed aid to education by the end of this fiscal year.

Subject: New York's Raffle to Riches promotional game.

Purpose: To add New York's Raffle to Riches promotional game to current New York Lottery regulations.

Text of emergency rule:

Part 2837
NEW YORK LOTTERY
NEW YORK'S RAFFLE TO RICHES GAME

Section 2837.1 Definitions. The following definitions apply to New York's Raffle to Riches game.

(a) "Bet ticket" means the ticket generated by the computer terminal containing at a minimum a unique multiple-digit number constituting a single play or chance, the drawing date and validation data. Consecutively numbered on-line tickets will be sold through computer terminals. Players purchasing more than one bet ticket may not receive consecutively numbered tickets.

(b) "Computer terminal" means the device at the on-line retailer location authorized by the Lottery for the placing of game bets.

(c) "Director" means the director of the New York State Lottery or any other person to whom the director's authority is lawfully delegated.

(d) "Draw date" means the date determined by the director on which the process used to randomly select the winning game numbers takes place for the game.

(e) "Drawing" means the formal process which is used to randomly select the winning numbers for the game.

(f) "Game" means New York's Raffle to Riches Game which is a Lottery game where a player purchases number(s) generated by the Lottery's on-line gaming computer system.

(g) "Gross sales" means the value of the tickets eligible for the game.

(h) "Lottery" or "State Lottery" means the New York State Division of the Lottery operated pursuant to Article 34 of the Tax Law.

(i) "Lottery rules and regulations" means the rules and regulations currently in force as adopted by the Lottery.

(j) "Manual entry" means the capability of the computer terminal operator to enter the amount of dollars wagered by a player for the game into the terminal in response to verbal or written communication by the player. There is no other method of play at the terminal for the game.

(k) "New York's Raffle to Riches" means a game played at any on-line retailer location(s) by purchasing a ticket which will be sold for a limited sales period, and in which a maximum designated number of chances or plays will be offered, and the winning chances or plays will be selected from only those chances or plays eligible.

(l) "On-line retailer" means a person licensed to sell Lottery tickets, pursuant to Part 2801 of this Title.

(m) "Prize pool" means those funds available from the game sales or other sources to support the payment of prizes for the game.

(n) "Sales period" means the period of time starting from the initial sales date of the game tickets as specified by the director and ending on the date when all available numbers have been sold or a date specified by the director.

(o) "Ticket" means New York's Raffle to Riches game ticket produced by the Lottery and sold by a licensed retailer in an authorized manner containing at a minimum a unique nine digit number constituting a single play or chance, the drawing date and validation data. Raffle numbers are issued in sequence starting at X00000000 and continuing in single digit increments until all possible game numbers are distributed.

2837.2 Drawing. (a) Winning game numbers are the numbers randomly selected by the Lottery at a drawing which entitle the legitimate ticket holder to a prize. Such winning numbers shall be (i) randomly selected in accordance with existing Lottery draw procedures and (ii) announced publicly.

(b) The game drawing shall be conducted on or about a date which shall be determined by the director.

2837.3 Calculation and payment of prizes. (a) Prizes levels and amounts for the game shall be determined by the director prior to the sales period.

(b) The holder of a winning bet ticket shall only win one prize per winning number.

(c) The payment of prizes to persons under 18 years of age and to those who are known to have died before receiving any or all of the particular prize shall be paid as prescribed in Lottery rules and regulations as set forth in Part 2803 of this Title.

2837.4 Withholding. Federal, State and local withholding taxes shall be withheld by the Lottery from prize payments in such amounts as may be required in accordance with the applicable provisions of law.

2837.5 Procedures for claiming a prize. (a) All prizes must be claimed within one year of the drawing date. All prize claims must be made by surrendering the winning ticket, together with a completed prize claim form, to the Lottery in person at a Lottery office or by mail, addressed to: New York Lottery, Post Office Box 7533, Schenectady, NY 12301-7533.

(b) A bet ticket is deemed to be a bearer instrument. Neither the New York State Lottery nor its contractors shall be responsible for lost or stolen bet tickets, nor for alleged winning tickets thrown away by mistake.

2837.6 Disputes. In the event a dispute occurs between the Lottery and/or its contractors and the player as to whether a ticket is a winning ticket, and if the ticket prize is not paid, the director may, at his or her discretion, refund the entry cost of the wager placed by the player on that ticket. This shall be the sole and exclusive remedy of the player.

2837.7 Ticket sales. (a) No person shall sell a bet ticket at a price greater than that fixed by this Part.

(b) No person other than a licensed Lottery retailer shall sell a bet ticket.

(c) The price for a Raffle to Riches bet shall be determined by the director prior to the sales period.

(d) Each number shall constitute a single play or chance.

(e) A player shall not select specific game numbers. Numbers shall be generated in consecutive numerical order based on instruction from the on-line gaming central system with the next consecutive number. Players shall only be entitled to the next available game number(s) when purchasing a ticket.

2837.8 Prize funds. Any funds in the Lottery prize account may be utilized to support the prize structure of the game in relation to the prize pool.

2837.9 Determination of winning ticket prizes, chances of winning, allocation of winning prize pool. For the game, the number of tickets sold shall be limited as prescribed by the director prior to the sales period. Winning numbers shall be randomly selected and announced publicly. A game number can only be selected once during the draw. Any bet ticket having a match with the winning number shall be entitled to the prize for which the number was drawn. Prize categories and amounts shall be determined by the director prior to the sales period.

2837.10 Miscellaneous. (a) Where one person submits a ticket as agent or nominee for another person or persons, the Lottery shall not be deemed to have any knowledge of such transaction, and all dealings of the Lottery will be conducted solely with the bearer of the ticket.

(b) No claimant will be considered eligible to receive a prize without presentation of a valid winning bet ticket.

(c) The Lottery reserves the right to change the prize structures, frequency of draws, draw dates, or the games themselves.

(d) If, for any reason, an on-line bet ticket is not entirely legible or is misprinted or altered in any way, then the on-line computer record created at the time of sale will be the sole method of determining whether such ticket is a valid winning ticket.

(e) When any question shall arise as to the validity of a Lottery drawing for any reason whatsoever, the director shall make the determination as to the validity of said drawing on the basis of the information at his or her disposal. The director's determination shall be final.

(f) Bet tickets for the game may not be cancelled once issued by the computer terminal. However, the retailer may receive credit for any unreadable bet ticket issued, as these tickets (although unreadable) are recorded on the computer file as valid bets. A request for credit must be postmarked before the draw date to receive credit for any such unreadable bet ticket.

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 July 18, 2007.

Text of emergency rule and any required statements and analyses may be obtained from: Julie B. Silverstein Barker, Acting General Counsel, Division of Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: jbarker@lottery.state.ny.us

Regulatory Impact Statement

1. Statutory authority: Pursuant to the authority conferred in New York State Tax Law, Section 1604[a] and the Official Compilation of Codes, Rules and Regulations of the State of New York, Title 21, Chapter XLIV, Section 2804.6, the following official game rules shall take effect and shall remain in full force and effect throughout the New York Lottery's Raffle to Riches promotional game.

2. Legislative objectives: The purpose of operating Lottery games is to generate revenue for the support of education in the State. Amendment of these regulations forwards the mission of the New York State Lottery to generate revenue for education.

3. Needs and benefits: The New York Lottery has sustained competitive pressure from large jackpot lottery games in adjoining states. New Yorkers routinely travel outside the state to participate in those games. The New York Lottery's Raffle to Riches promotional game allows the New York Lottery to continue its effort to keep and enlarge its market share of players (from within New York State and those visiting New York State from other states) who participate in large jackpot lottery games. The New York Lottery's Raffle to Riches promotional game is anticipated to bring in more than $13.5 million in revenue to benefit education in the State.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing lottery games are expected to be sufficient to support this new game.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery's experience in operating State Lottery games for more than 30 years.

5. Local government mandates: None.

6. Paperwork: There are no changes in paperwork requirements. New game brochures will be issued by the New York State Lottery for public convenience at retailer locations free of charge.

7. Duplication: None.

8. Alternatives: The alternative to adding New York Lottery's Raffle to Riches promotional game is not to proceed and forfeit the investment already made by the New York State Lottery for the game. The failure to proceed will also result in lost revenue to education that is anticipated to be earned.

9. Federal standards: None.

10. Compliance schedule: None.

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

The proposal does not require a Regulatory Flexibility Statement, Rural Flexibility Statement or Job Impact Statement. There will be no adverse impact on jobs, rural areas, small business or local governments.

Office of Mental Retardation and Developmental Disabilities

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Office of Mental Retardation and Developmental Disabilities publishes a new notice of proposed rule making in the NYS *Register*.

Admission and Retention Standards

I.D. No.	Proposed	Expiration Date
MRD-16-06-00020-P	April 19, 2006	April 19, 2007

Power Authority of the State of New York

NOTICE OF ADOPTION

Rates for the Sale of Power and Energy

I.D. No. PAS-07-07-00008-A
Filing date: April 24, 2007
Effective date: May 1, 2007

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

Action taken: Increase in hydroelectric preference power rates.

Statutory authority: Public Authorities Law, section 1005(5)

Subject: Rates for the sale of power and energy.

Purpose: To maintain the system's fiscal integrity.

Substance of final rule:
See Appendix in the back of this issue.

Final rule as compared with last published rule: Substantial revisions were made as follows:

1st year 5/1/07-4/30/08 5.5% increase Instead of 7.1%;
2nd year 5/1/08-4/30/09 5.9% increase Instead of 5.8%

Text of rule and any required statements and analyses may be obtained from: Ann B. Cahill, Power Authority, 123 Main Street, 15-M, White Plains, NY 10601, (914) 390-8036, e-mail: secretarys.office@nypa.gov

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.

Public Service Commission

NOTICE OF ADOPTION

Rural Telephone Bank Dissolution

I.D. No. PSC-14-06-00008-A
Filing date: April 19, 2007
Effective date: April 19, 2007

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

Action taken: The commission, on April 18, 2007, adopted an order concerning how to utilize the proceeds from the dissolution of the rural telephone bank by certain rural incumbent local exchange carriers in New York.

Statutory authority: Public Service Law, sections 94 and 101

Subject: Rural telephone bank dissolution

Purpose: To determine how the proceeds from the dissolution of the rural telephone bank should be utilized in New York.

Substance of final rule: The Commission adopted an order concerning how to utilize the proceeds from the dissolution of the Rural Telephone Bank by certain rural Incumbent Local Exchange Carriers in New York, subject to the terms set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(06-C-0314SA1)

NOTICE OF ADOPTION

Potential Electric Delivery Rates Disincentives

I.D. No. PSC-28-06-00010-A
Filing date: April 20, 2007
Effective date: April 20, 2007

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

Action taken: The commission, on April 18, 2007, approved an order requiring the major electric utilities to file rate design proposals to reduce or eliminate recovery of utility fixed delivery costs and marginal consumptions blocks and to file revenue decoupling proposals.

Statutory authority: Public Service Law, sections 5(2), 65(1), 66(1) and (12)

Subject: Potential electric delivery rates disincentives.

Purpose: To assess the potential electric delivery rate disincentives against the promotion of energy efficiency, renewable technologies and distribution generation.

Substance of final rule: The Public Service Commission approved an order directing The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Corning Natural Gas Corporation, KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and St. Lawrence Gas Company, Inc. to develop proposals for ture-up based delivery service revenue decoupling mechanisms for consideration in individual utility rate cases, 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-0640SA1)

NOTICE OF ADOPTION

Potential Gas Delivery Rates Disincentives

I.D. No. PSC-28-06-00013-A
Filing date: April 20, 2007
Effective date: April 20, 2007

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

Action taken: The commission, on April 18, 2007, adopted an order approving the collaborative process to resolve the mechanical design details and components of the revenue decoupling mechanisms.

Statutory authority: Public Service Law, sections 5(2), 65(1), 66(1) and (12)

Subject: Potential gas delivery rates disincentives.

Purpose: To assess if there are potential gas delivery rate disincentives against the promotion of energy efficiency, renewable technologies and distribution generation.

Substance of final rule: The Public Service Commission approved an order directing The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Corning Natural Gas Corporation, KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and St. Lawrence Gas Company, Inc. to develop proposals for ture-up based delivery service revenue decoupling mechanisms for consideration in individual utility rate cases, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(06-G-0746SA1)

NOTICE OF ADOPTION

Utility Hedging Practices and Commodity Portfolio Management Strategies and Reporting

I.D. No. PSC-38-06-00012-A
Filing date: April 19, 2007
Effective date: April 19, 2007

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

Action taken: The commission, on April 18, 2007, adopted an order requiring utilities to develop standards for measuring, and goals for limiting price volatility; reporting to staff the strategies for structuring electric supply portfolios to limit volatility and the result of those strategies; recover volatility hedging and other commodity costs through commodity charges; and continue the existing gas utility hedging practices.

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

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

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

Substance of final rule: The Commission adopted an order requiring utilities to develop standards for measuring, and goals for limiting price volatility; time period for reporting to Staff the strategies for structuring electric supply portfolios to limit volatility and the result of those strategies; to recover volatility hedging and other commodity costs through commodity charges; and to continue the existing gas utility hedging practices. The Commission will institute additional proceedings to address long-term contract and integrated resource planning, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(06-M-1017SA1)

NOTICE OF ADOPTION

Deferral of Expenses by St. Lawrence Gas Company, Inc.

I.D. No. PSC-01-07-00029-A
Filing date: April 18, 2007
Effective date: April 18, 2007

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

Action taken: The commission, on April 18, 2007, approved the petition of St. Lawrence Gas Company, Inc. (St. Lawrence) to defer incremental expenses related to the carrying cost of gas in storage, uncollected expense, regulatory commission expense and property taxes for year three of Case 02-G-1275.

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

Subject: Request by St. Lawrence to defer various incremental expenses until rates are set in the next rate case.

Purpose: To approve a request by St. Lawrence to defer various incremental expenses until rates are set in the next rate case.

Substance of final rule: The Commission adopted an order approving the petition of St. Lawrence Gas Company, Inc. to defer $750,300 of incremental expenses ($451,100 net of taxes) for the third rate year of Case 02-G-1275 associated with the carrying costs of gas stored underground, uncollected expense, regulatory commission expense and property taxes.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(06-G-1471SA1)

NOTICE OF ADOPTION

Customer Charge by Central Hudson Gas & Electric Corporation

I.D. No. PSC-07-07-00012-A
Filing date: April 23, 2007
Effective date: April 23, 2007

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

Action taken: The commission, on April 18, 2007, adopted an order approving Central Hudson Gas & Electric Corporation (Central Hudson) request to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service P.S.C. No. 15.

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

Subject: Customer charge—advanced metering.

Purpose: To cancel proposed tariff filings to increase customer charge for those customers with access to Central Hudson's Energy Manager advanced metering software.

Substance of final rule: The Public Service Commission adopted an order allowing Central Hudson Gas & Electric Corporation (Central Hudson) to cancel proposed tariff filings to recover the costs of the Energy Manager Advanced Metering Software and directed Central Hudson to recover the costs for its electric service customers from its Competitive Metering Fund, subject to the terms and conditions of the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(07-E-0135SA1)

NOTICE OF ADOPTION

Customer Charge by Central Hudson Gas & Electric Corporation

I.D. No. PSC-07-07-00015-A
Filing date: April 23, 2007
Effective date: April 23, 2007

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

Action taken: The commission, on April 18, 2007, adopted an order allowing Central Hudson Gas & Electric Corporation (Central Hudson) request to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service P.S.C. No. 12.

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

Subject: Customer charge—advanced metering.

Purpose: To cancel proposed tariff filings to increase customer charge for those customers with access to Central Hudson's energy manager advanced metering software.

Substance of final rule: The Public Service Commission adopted an order allowing Central Hudson Gas & Electric Corporation to cancel proposed tariff filings to recover the costs of the Energy Manager Advanced Metering Software.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(07-G-0133SA1)

NOTICE OF ADOPTION

Transfer of Hydroelectric Facility by Central Hudson Gas and Electric Corporation

I.D. No. PSC-09-07-00007-A
Filing date: April 23, 2007
Effective date: April 23, 2007

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

Action taken: The commission, on April 18, 2007, adopted an order approving the petition of Central Hudson Gas and Electric Corporation (the utility) for the transfer of the Groveville Mills Hydroelectric Facility to Lower Saranac Corporation and approve the accounting treatment of the net-of-tax gain.

Statutory authority: Public Service Law, section 70

Subject: Transfer of the utility's hydroelectric facility.

Purpose: To approve the transfer of the utility's hydroelectric facility.

Substance of final rule: The Public Service Commission adopted an order approving the petition of Central Hudson Gas and Electric Corporation for the transfer of the Groveville Mills Hydroelectric Facility to Lower Saranac Corporation and approval of the accounting treatment of the net-of-tax gain, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(07-E-0136SA1)

NOTICE OF ADOPTION

Transfer of Ownership Interests by Mirant NY-Gen LLC and Alliance Energy Renewables LLC

I.D. No. PSC-09-07-00010-A
Filing date: April 23, 2007
Effective date: April 23, 2007

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

Action taken: The commission, on April 18, 2007, adopted an order approving the petition of Mirant New York, Inc. and Alliance Energy Renewables LLC for the transfer of ownership interests in approximately 93 MW of natural gas fired electric generation and approximately 25 MW of hydroelectric generation, located in Hillburn, Middletown, Forestburgh and Glen Spey, NY

Statutory authority: Public Service Law, section 70

Subject: Transfer of ownership of approximately 93 MW of gas fired electric generation and 25 MW of hydroelectric generation.

Purpose: To approve the transfer of ownership of approximately 93 MW of gas fired electric generation and 25 MW of hydroelectric generation.

Substance of final rule: The Public Service Commission adopted an order approving the petition of Mirant New York, Inc. and Alliance Energy Renewables LLC for the transfer of ownership interests in approximately 93 MW of natural gas fired electric generation and approximately 25 MW of hydroelectric generation, located in Hillburn, Middletown, Forestburgh and Glen Spey, New York, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(07-E-0170SA1)

NOTICE OF ADOPTION

Transfer of Franchises by United Waterworks Inc., *et al.*

I.D. No. PSC-09-07-00013-A
Filing date: April 19, 2007
Effective date: April 19, 2007

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

Action taken: The commission, on April 18, 2007, adopted an order approving with conditions the joint petition of Aquarion Water Company New York, Inc., Kelda Group, Inc. and United Waterworks Inc. for the acquisition by United Waterworks Inc. of Aquarion Water Company of New York, Inc.

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

Subject: Transfer of franchises or stock and water rules, rates and charges.

Purpose: To allow United Waterworks Inc. to acquire the stock of Aquarion Water Company of New York, Inc. from Kelda Group, Inc. and all other related matters.

Substance of final rule: The Commission adopted an order approving with conditions the Joint Petition of Aquarion Water Company New York, Inc., Kelda Group, Inc. and United Waterworks Inc. for the acquisition by United Waterworks Inc. of Aquarion Water Company of New York, Inc., subject to the terms and conditions set forth in order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(07-W-0176SA1)

NOTICE OF ADOPTION

Transfer of Franchises by Aqua New York, Inc. and Aquarion Water Company of Sea Cliff, Inc.

I.D. No. PSC-09-07-00014-A
Filing date: April 19, 2007
Effective date: April 19, 2007

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

Action taken: The commission, on April 18, 2007, adopted an order approving with conditions the joint petition of Aqua New York, Inc. and Aquarion Water Company of Sea Cliff, Inc. for the acquisition by Aqua New York Inc. of the stock of Aquarion Water Company of Sea Cliff, Inc.

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

Subject: Transfer of franchises or stock and water rules, rates and charges.

Purpose: To allow Aqua New York, Inc. to acquire the stock of Aquarion Water Company of Sea Cliff, Inc. and continue Aquarion Water Company of Sea Cliff, Inc.'s existing rate plan and all other related matters.

Substance of final rule: The Commission adopted an order approving with conditions the Joint Petition of Aqua New York, Inc. and Aquarion Water Company of Sea Cliff, Inc. for the acquisition by Aqua New York Inc. of the stock of Aquarion Water Company of Sea Cliff, Inc., subject to the terms and conditions set forth in order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(07-W-0177SA1)

NOTICE OF ADOPTION

Corporate Restructuring by Aquarion Water Company of New York, Inc.*, et al.*

I.D. No. PSC-09-07-00015-A
Filing date: April 19, 2007
Effective date: April 19, 2007

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

Action taken: The commission, on April 18, 2007, adopted an order approving the joint petition of Kelda Group, Inc., Aquarion Water Company, Aquarion Water Company of Sea Cliff, Inc. and Aquarion Water Company of New York, Inc. (the companies) for an internal corporate restructuring.

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

Subject: Corporate restructuring.

Purpose: To allow the corporate restructuring of the companies.

Substance of final rule: The Commission adopted an order approving the Joint Petition of Kelda Group, Inc., Aquarion Water Company, Aquarion Water Company of Sea Cliff, Inc. and Aquarion Water Company of New York, Inc. for an internal corporate restructuring, subject to the terms and conditions set forth in order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

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

(07-W-0178SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Incumbent Local Exchange Carriers

I.D. No. PSC-19-07-00006-P

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

Proposed action: The commission is considering whether to approve a framework proposed by staff of the Department of Public Service for measuring the competitive pressure on New York's incumbent local exchange carriers.

Statutory authority: Public Service Law, sections 94(2), 97

Subject: Granting incumbent local exchange carriers rate flexibility and other possible relief.

Purpose: To consider Department of Public Service white paper on commission's own motion.

Substance of proposed rule: The Commission is considering whether to approve a framework proposed by staff of the Department of Public Service for measuring the competitive pressure on New York's Incumbent Local Exchange Carriers.

The White Paper is available on the Department of Public Service's website (www.dps.state.ny.us).

The framework measures the competitiveness of the environment in which the Incumbent Local Exchange Carriers operate. The framework provides the Commission with data on the presence of competitors in the Carrier's territory, the Carrier's financial performance, the Carrier's investments in its own network, and the Carrier's operating efficiency. The Commission can then balance the data to measure the competitive pressure on the carrier to determine if rate flexibility and/or other regulatory relief might be warranted. The Commission may approve or reject, in whole or in part, or modify the framework proposed by Department staff.

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

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

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

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

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

(07-C-0349SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Service Quality Assurance Program by Niagara Mohawk Power Corporation d/b/a National Grid

I.D. No. PSC-19-07-00007-P

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

Proposed action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a March 30, 2007 proposal of Niagara Mohawk Power Corporation d/b/a National Grid, to maintain the current performance standards in its Service Quality Assurance Program. Attachment 9 of the joint proposal that was approved by the commission in Opinion No. 01-6, issued Dec. 3, 2001, requires the review of the service quality measures during this time period of rate year six.

Statutory authority: Public Service Law, section 66

Subject: Review of Niagara Mohawk Power Corporation's Service Quality Assurance Program.

Purpose: To review and potentially modify certain performance indicators and targets of the Service Quality Assurance Program.

Substance of proposed rule: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a March 30, 2007 proposal of Niagara Mohawk Power Corporation d/b/a National Grid, to maintain the current performance standards in its Service Quality Assurance Program. Attachment 9 of the Joint Proposal that was approved by the Commission in Opinion No. 01-6, issued December 3, 2001, requires the review of the service quality measures during this time period of rate year six.

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

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

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

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

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

(01-M-0075SA33)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Integrated Resource Planning for Electric Supply and Long-Term Contracts

I.D. No. PSC-19-07-00008-P

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

Proposed action: As discussed in an order requiring development of utility-specific guidelines for electric commodity supply portfolios and instituting a phase II to address longer-term issues, issued April 19, 2007 in Case 06-M-1017, the Public Service Commission is considering the adoption of policies, practices and requirements on integrated resource planning for electric supply and the entry into long-term contracts for electric resource procurement.

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

Subject: Integrated resource planning for electric supply and long-term contracts for electric resource procurement.

Purpose: To consider requirements for integrated resource planning for electric supply and long-term contracts for electric resource procurement.

Substance of proposed rule: As discussed in an Order Requiring Development Of Utility-Specific Guidelines for Electric Commodity Supply Portfolios And Instituting A Phase II To Address Longer-Term Issues, issued April 19, 2007 in Case 06-M-1017, the Public Service Commission is considering the adoption of policies, practices and requirements on integrated resource planning for electric supply and the entry into long-term contracts for electric resource procurement. The Commission may adopt, reject or modify, in whole or in part, the relief and remedies proposed.

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

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

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

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

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

(06-M-1017SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Competitive Retail Energy Markets and Mechanisms

I.D. No. PSC-19-07-00009-P

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

Proposed action: As discussed in an order on review of retail access policies and notice soliciting comments issued April 24, 2007 in Case 07-M-0458, the Public Service Commission is considering revisions to programs and practices for promoting retail access to competitive retail energy markets and mechanisms for utility recovery of revenues lost due to retail access.

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

Subject: Promoting retail access to competitive retail energy markets and mechanisms for utility recovery of lost revenues.

Purpose: To revise requirements for promoting retail access to competitive retail energy markets and mechanisms for utility recovery of lost revenues.

Substance of proposed rule: As discussed in an Order on Review of Retail Access Policies and Notice Soliciting Comments issued April 24, 2007 in Case 07-M-0458, the Public Service Commission is considering revisions to programs and practices for promoting retail access to competitive retail energy markets and mechanisms for utility recovery of revenues lost due to retail access. The Commission may adopt, reject or modify, in whole or in part, the relief and remedies proposed.

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

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

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

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

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

(07-M-0458SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges by Westbrook Water Corp.

I.D. No. PSC-19-07-00010-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, or modify, a tariff revision filed by Westbrook Water Corp. to increase its flat rate in its tariff schedule, P.S.C. No. 3—Water to become effective Sept. 1, 2007.

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

Subject: Water rates and charges.

Purpose: To increase Westbrook Water Corp.'s annual revenues by about $13,527 or 34.1 percent.

Substance of proposed rule: On April 17, 2007, Westbrook Water Corp. (Westbrook or the company) electronically filed, to become effective September 1, 2007, P.S.C. No. 3—Water, 3rd Revised Leaf No. 12 to increase its annual revenues by and about $13,527 or 34.1%. The annual flat rate service charge for residential service would increase from $351.40 to $471 and would be billed quarterly in advance at $117.75. Westbrook's proposed tariff is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) - located under Commission Documents - Tariffs. The company provides flat rate water service to approximately 113 customers in the Town of Deerpark, Orange County. The Commission may approve or reject, in whole or in part, or modify, the company's proposed tariff revision.

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

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

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

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

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

(07-W-0460SA1)

Racing and Wagering Board

EMERGENCY RULE MAKING

Internet and Telephone Account Wagering on Horseracing

I.D. No. RWB-19-07-00003-E
Filing No. 426
Filing date: April 23, 2007
Effective date: April 23, 2007

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

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

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

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

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

Subject: Internet and telephone account wagering on horseracing.

Purpose: To ensure the integrity of pari-mutuel wagering by adopting licensing and regulatory standards for internet and telephone account wagering. This rule would establish reporting, recordkeeping operational and application requirements for race track operators and off-track betting corporation within New York State that offer internet and telephone account wagering.

Text of emergency rule: Subchapter C titled "Internet and Telephone Account Wagering" is added to Subtitle T of Title 9 NYCRR.

Part 5300 is added to new Subchapter C to read as follows:

5300.1 Definitions and general provisions.

The following words and terms, when used in this sub-chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(a) Account shall mean a formal record of all transactions (debits, wagers, deposits, withdrawals and credits) initiated by an account holder in a wagering account with an authorized pari-mutuel wagering entity.

(b) Account holder shall mean a person authorized by an authorized pari-mutuel wagering entity to place wagers via account wagering.

(c) Account wager shall mean a wager placed by means of account wagering. An account wager may be made by the account holder in person, via telephonic device or by the internet or by communication through other electronic means.

(d) Account wagering shall mean pari-mutuel wagering in which an individual deposits money in an account with an authorized pari-mutuel wagering entity to be used for pari-mutuel wagering authorized by law to be conducted by the authorized pari-mutuel wagering entity.

(e) Account wagering center shall mean the facility or facilities which have the capability of accepting telephonic wagers utilizing wired or wireless communications devices, including but not limited to wireline telephones, wireless telephones, and the internet, to transmit the placement of wagers on races and special events.

(f) Account activity shall mean any deposit, withdrawal, wager or other transaction made by the account holder.

(g) Authorized pari-mutuel wagering entity shall mean a corporation or association that is duly licensed by the board or holds a franchise to conduct pari-mutuel wagering and simulcasting activity.

(h) Board shall mean The New York State Racing and Wagering Board.

(i) Internet shall mean a computer network consisting of a worldwide network of computer networks that use the TCP/IP network protocols to facilitate data transmission and exchange.

(j) Official shall mean a representative(s) of the board.

(k) Racing law means title 47A of the consolidated laws of the State of New York, the New York State Racing, Pari-Mutuel Wagering and Breeding Law.

(l) Regional off-track-betting corporation shall mean a corporation created pursuant to Section 502 or Section 603 of the New York State Racing, Pari-Mutuel Wagering and Breeding Law.

(m) Report shall mean a summary of wagering activity or other written record prepared pursuant to this sub-chapter.

(n) Stored value instrument shall mean Funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

(o) Totalisator system shall mean a computer system that registers and computes the wagering and payoffs in pari-mutuel wagering.

(p) Wagering device shall mean a device enabling the placing of wagers.

5300.2 Account wagering, general.

An authorized pari-mutuel wagering entity may offer a system of account wagering whereby wagers and withdrawals are debited and winning payoffs and deposits are credited to an account held by an authorized pari-mutuel wagering entity on behalf of an account holder provided:

(1) Prior board approval is granted for the account wagering system.

(2) Accounts are restricted for wagering purposes only.

(3) Account wagers are deemed to be on-track wagers for those wagering entities licensed or franchised pursuant to Articles II, III or IV and Section 1007 of the Racing, Pari-Mutuel Wagering and Breeding Law, and are deemed to be simulcast wagers for those entities licensed pursuant to Sections 1008 or 1009 of the Racing, Pari-Mutuel Wagering and Breeding Law.

5300.3 Approval of account wagering.

Authorized pari-mutuel wagering entities are authorized to conduct account wagering pursuant to the written plan of operation approved by the Board. The plan of operation shall include, at a minimum;

(1) Systems of processing wagers.

(2) Internal controls for account wagering.

(3) System security which shall include but not be limited to the use of access encryption and firewalls.

(4) Account wagering rules.

(5) Provide for a recording for each transaction on a system separate from the totalisator system.

5300.4 Establishment of an account.

(a) Accounts shall be used for wagering purposes only. Authorized pari-mutuel wagering entities may establish/open accounts for individuals provided the following minimum requirements are met:

(1) An account holder shall be a natural person (18) eighteen years of age or older.

(2) Accounts may be opened in-person with cash or check, or by mail with check.

(3) Account holders shall provide their age, address, mailing address (if different), phone, social security number and date of birth.

(4) Application shall be signed attesting to its accuracy.

(5) The name of each new account holder will be confirmed in accordance with the Federal Government's standards for evaluating and confirming government issued identification and credentials (U.S. Department of Justice Employment Verification Form I9, which can be obtained online at http://www.usdoj.gov/usao/nh/pdfreleases/Forms/i9.pdf .) A copy of each properly validated credential will be maintained with the appropriate account application.

(6) Account is non-transferable.

(7) The authorized pari-mutuel wagering entity shall issue a card or other document representative of the account.

(8) The authorized pari-mutuel wagering entity shall provide to the account holder rules governing the conduct of account wagering.

(9) The authorized pari-mutuel wagering entity shall notify the account holder whenever rules have changed and provide a copy of such changes.

(10) The authorized pari-mutuel wagering entity may require a minimum balance consistent with their internal controls.

(11) Bank account number and other necessary information if the account holder desires to make electronic fund transfers.

(b) Bearer Accounts

(1) Notwithstanding the provisions of part (a) of this section, an authorized pari-mutuel wagering entity may establish an account for a customer without collecting the information found in part (a)(1) – (5) of this section provided that:

(a) The account can only be used in person through a teller or self service machine and,

(b) The account is only used in the location or branch at which it was opened.

(2) The authorized pari-mutuel entity shall issue a card or other document representative of such account.

(3) The authorized pari-mutuel entity may establish guidelines for the expiration of such accounts consistent with its approved plan of operation.

(4) A wager placed through a bearer account cannot be cancelled once the account holder has accepted it and it has been processed by the authorized pari-mutuel wagering entity.

(5) all other provisions of this sub-chapter apply except:

(a) Withdrawals shall be made in person and may be paid in cash to the person bearing the card or other document issued in (2) and after verification of the PIN.

(b) Account Statements pursuant to section 5300.13 are not required to be mailed but must be made available to the person possessing the card issued in (2).

(c) the provisions of 5300.5 and 5300.6 do not apply.

(d) accounts shall only be closed in person for the person bearing the card issued in (b) and after verification of the PIN or pursuant to other applicable provisions of the law.

5300.5 Official address.

The address listed on the account wagering application is deemed the account holder's official address for purposes of this section. The authorized pari-mutuel wagering entity shall use the official address for all mailings, including notices, checks, withdrawal slips, account statements and other correspondence.

5300.6 Changes to account information.

The authorized pari-mutuel wagering entity shall provide a method for the account wagering holder to make official changes to his/her account information. The method shall include the name, date, address, and social security number, account wagering identification number, PIN and signature.

5300.7 Right to refuse an account.

(a) The authorized pari-mutuel wagering entity may exclude anyone from opening an account based on business judgment.

(b) The authorized pari-mutuel wagering entity shall refuse an account to known bookmakers, touts, minors and persons on the entity's self-exclusion list.

5300.8 Segregation of funds.

The authorized pari-mutuel wagering entity shall, upon receipt of money from account holders and related winning wagers, deposit such money within 72 hours in a segregated account, kept and maintained by the authorized pari-mutuel wagering entity until appropriately distributed.

5300.9 Conduct of wagering.

(a) Account wagers shall only be transacted through an account wagering center.

(b) The authorized pari-mutuel wagering entity may accept account wagers via any wired or wireless communications device, including but not limited to wireline telephones, wireless telephones, and the internet subject to applicable laws, rules and the approved plan of operation.

(c) The authorized pari-mutuel wagering entity shall:

(1) require the account holder to provide the account wagering identification number and PIN before an account wager is accepted.

(2) verify all account wagering transactions before acceptance of an account wager.

(3) verify that the account has sufficient funds to pay for the wager. No wager or portion of wager shall be accepted if the account fails to have sufficient funds to cover the wager.

(4) debit the total amount of the wager from the account immediately after verifying wager.

(5) not accept any account wager if the recording devices are inoperable.

5300.10 Record of wager; pari-mutuel tickets.

For purposes of this section, all wagers placed through the account wagering system are deemed pari-mutuel tickets and are subject to all rules and laws governing pari-mutuel tickets.

5300.11 Withdrawals and other debits to accounts.

(a) Excepting bearer accounts, withdrawals may be made in person or by mail by completing a request for withdrawal. The request for withdrawal shall include, at a minimum;

(1) the account holder's name,

(2) account identification number,

(3) account holders signature, (except for electronic fund transfers) and

(4) date the request for withdrawal was made.

(b) Fund transfers may be made via electronic means pursuant to an approved plan of operation.

(c) Withdrawals can be for all or any portion of the account holder's balance.

(d) The authorized pari-mutuel wagering entity shall process all requests for withdrawals made via mail within five business days of receiving the request. All other requests for withdrawals shall be processed immediately. If the request is incomplete or required information is missing, the authorized pari-mutuel wagering entity must notify the account holder of the required information as soon as possible.

(e) If the account does not contain sufficient funds to cover the requested withdrawal, the authorized pari-mutuel wagering entity shall release the remaining funds and notify the account holder.

5300.12 Credits to accounts.

(a) Deposits to existing accounts may be made by an account holder in the form of cash, cash equivalent, check, or other method as specified in the plan of operation.

(b) Deposits shall be credited to the account promptly after receipt and verification of funds.

(c) Funds from winning wagers shall be credited to the account immediately after a race is declared official. However, funds from winning wagers subject to Internal Revenue Service reporting requirements shall be held and not available for use until such time the account holder has completed all necessary paperwork.

(d) Credits for other transactions are only permitted to the extent of the approved plan of operation.

5300.13 Account statements.

(a) The authorized pari-mutuel wagering entity shall no less than once per calendar month provide a statement to each account holder detailing the month's beginning and ending balances and each debit and credit by date.

(b) Upon written demand, the authorized pari-mutuel wagering entity shall make available to the account holder any monthly statement from the current or the previous calendar year.

(c) Upon written demand, the authorized pari-mutuel wagering entity shall make available to the account holder a statement beginning on the last day of the prior period through the date of written demand.

5300.14 Record keeping.

(a) The authorized pari-mutuel wagering entity shall maintain records of every deposit, withdrawal, wager, winning payoff and other credit and debits to an account for a period of three years.

(b) The authorized pari-mutuel wagering entity shall ensure that wagers are accepted only at designated telephone numbers and account wagering centers.

(c) The authorized pari-mutuel wagering entity shall record accou79nt wagering accounts as a separate liability on its books and records.

5300.15 Confidentiality of accounts.

The authorized pari-mutuel wagering entity, its employees and agents may not divulge any account information without the express written permission of the account holder, except to the board, by board order, or as may otherwise be prescribed by law.

5300.16 Closing of accounts.

Excepting bearer accounts, accounts may be closed at the request of an account holder made in-person or by mail or other method consistent with the plan of operation. For those requests made by mail, authorized pari-mutuel wagering entities shall mail to the account holder's official address or send via electronic funds transfer to the account specified in the account wagering application all funds within five business days of receiving such request. All other requests shall be processed immediately.

5300.17 Dormant accounts.

The authorized pari-mutuel wagering entity shall deactivate all accounts if there is no account wagering activity during a period of 36 consecutive months. All monies in such dormant accounts shall be distributed in accordance with Section 1012 of the racing law.

5300.18 Surcharge.

Any regional off-track-betting corporation may suspend surcharge of accounts pursuant to Section 1012 of the racing law and consistent with its plan of operation.

5300.19 Vouchers.

Vouchers are a document or card produced by a pari-mutuel system device, with a value printed on its face, that is recorded in and redeemed through the pari-mutuel system.

(a) Vouchers are not accounts or account wagers for purposes of this section.

(b) Vouchers may only be used to place wagers in-person and only pursuant to an approved plan of operation.

(c) Vouchers are not permissible in account wagering pursuant to this sub-chapter.

5300.20 Reports to board.

No later than March 15th, the authorized pari-mutuel wagering entity shall file with the Board a report detailing the following for the previous calendar year in which account wagering was offered:

(1) Total handle bet through the account wagering system;

(2) Total handle segregated by telephone, internet and other means;

(3) Total handle segregated by track;

(4) The beginning number of accounts, total accounts opened and closed and the ending number of accounts;

(5) Any other report as may be prescribed by the board.

5300.21 Yearly audit.

Authorized pari-mutuel wagering entities shall audit or caused to have audited the account wagering system data input and account updates not less than once during each calendar year. Such reports shall be provided to the board upon request.

5300.22 Disputes/complaints/adjustments.

(a) Subject to applicable laws, customer disputes concerning account transactions shall be addressed by the mutuel department supervisor, or such other pari-mutuel supervisor as may be designated by the authorized pari-mutuel wagering entity's management. Such designation must be in writing. The mutuel department supervisor or appropriate designee shall approve all final resolutions of account disputes. Documentation of all disputes and final resolutions shall be maintained by the authorized pari-mutuel wagering entity for a period of three (3) years from the end of the year the dispute was resolved.

(b) Disputed transactions that lead to an adjustment shall be audited by internal audit within 30 days of the adjustment.

5300.23 Cooperation with officials.

If the board determines that a certain computer printout, mutuel report, or other totalisator or mutuel record is needed to perform the official's regulatory duties, the official shall request the item from the mutuel manager or his designee and/or totalisator company representative. On receipt of a request under this section, the mutuel manager and/or totalisator company representative shall make the information available to the official no later than the deadline established by the official or provisions of this sub-chapter.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire July 21, 2007.

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

Regulatory Impact Statement

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

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

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

(d) Costs:

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

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

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

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

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

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

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

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

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

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

(h) Alternatives Approaches: Several alternatives were considered. Board staff considered the Advance Deposit Wagering Rules of the Association of Racing Commissioners International and the telephone account

wagering practices currently used in New York State. Board staff also reviewed and considered the account wagering rules of other jurisdictions, including Maryland, Louisiana, Massachusetts, Idaho, South Dakota, Washington, California and New Jersey. All of these similar rules and practices are relatively uniform.

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

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

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

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

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. RWB-19-07-00004-P

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

Proposed action: Addition of sections 4043.8, 4043.9, 4043.10, 4038.19(g), 4120.13, 4120.14, 4120.15 and 4109.7(f) to Title 9 NYCRR.

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

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

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

Text of proposed rule: A new section 4043.8 is added to read as follows:

4043.8 TCO2 blood gas testing program

(a) The board may obtain pre-race blood samples from horses for subsequent testing for total carbon dioxide level (TCO2). The board may also obtain post-race blood samples from horses for subsequent testing for TCO2, after a minimum one-hour standing at rest period after its race. It shall be a violation of this rule where the horse's TCO2 level equals or exceeds thirty-seven (37) millimoles per liter or, for horses administered furosemide pursuant to Rule 4043.2(b)(6), thirty-nine (39) millimoles per liter.

(b) It shall be an affirmative defense that the horse's physiologically normal TCO2 level was not exceeded. To demonstrate a horse's physiologically normal TCO2, its owner or trainer must comply with the following procedure. The owner or trainer must, in writing to the stewards within three calendar days of receiving notice of the horse's TCO2 test result, contend that the horse's reported TCO2 level is physiologically normal and request that the horse be held in guarded quarantine. If so, the racetrack operator shall make available a guarded quarantine for a time determined by the state steward, not to exceed 72 hours, at the sole expense of the requesting licensee. During the quarantine, the horse shall be retested periodically, and although the horse shall not race, it may be exercised and trained at times prescribed by the racetrack operator provided this does not interfere with monitoring, sampling, and testing the horse. The state steward shall then determine whether the horse's pre-race TCO2 level was physiologically normal for it. The state steward may also require, at least 45 days later, that the horse re-establish its normal TCO2 level with another guarded quarantine to be made available at the sole expense of the racetrack operator.

(c) Any guarded quarantine provided by the racetrack operator shall ensure that, at a minimum:

(1) Such horse shall be under direct surveillance by at least one guard at all times;

(2) Access to the horse shall be restricted to licensed persons who are directly affiliated with such horse, track stewards, or employees of the New York State Racing and Wagering Board, all of whom shall provide their respective track identification badge or Board-issued photo identification card prior to entry;

(3) A written or electronic log of all persons who have had access to the horse shall be maintained by the guard, indicating the name and license number or track identification badge number of the person, the date and time of the visit (including time in and out of the restricted area), the nature and purpose of the visit, a description of any and all equipment, paraphernalia, tack, medications, or feed brought to the horse, and all activity observed by the guard during the visit; and

(4) The racetrack operator shall maintain such written or electronic logs of guarded quarantine activity for a minimum period of 90 days after the conclusion of the applicable guarded quarantine period.

(d) The penalty for violations of this rule shall be not less than (i) for a first violation, a 60-day license suspension and one-thousand dollar ($1000) fine; (ii) for a second violation, a 75-day license suspension and two-thousand five-hundred dollar ($2500) fine; and (iii) for additional violations, a one-year suspension and five-thousand dollar ($5000) fine together with a referral to the board for further action including a possible license revocation. Where independent evidence shows that the horse was treated within 24 hours of its race by means not permitted by section 4043.2 of this subtitle, however, every license suspension shall be for at least two years. Every suspension shall include denial of the privileges of the grounds.

(e) For a violation of this rule, a horse shall be disqualified, any purse monies shall be forfeited and redistributed pursuant to Rule 4043.5, and pre-race detention shall be imposed.

A new section 4043.9 is added to read as follows:

4043.9 Pre-race detention

(a) A horse that tests in violation of Rule 4043.8 shall be placed under pre-race detention, without regard to whether the horse is transferred to a new trainer, for a period of six (6) months from the date of violation. If during the detention period a horse again tests in violation of Rule 4043.8, then the detention period shall be extended as the stewards shall deem appropriate. The racetrack operator sponsoring the race shall make such pre-race detention available, at the sole expense of the trainer, for at least six (6) hours before the start of the race program and as required by the stewards. Where a claimed horse is found to have excess TCO2, the costs of a pre-race detention shall be the responsibility of the party requesting detention.

(b) All horses of a trainer who has violated Rule 4043.8 more than once in the preceding 12 months shall be placed under pre-race detention, without regard to whether the horses are transferred to a new trainer, for a period of eight (8) months from the date of the most recent violation. The racetrack operator sponsoring the race shall make such pre-race detention available, at the sole expense of the trainer, for at least six (6) hours before the start of the race program and as required by the stewards. If during a

detention period a trainer violates Rule 4043.8, then the detention period shall be extended for such time as the stewards deem appropriate.

A new section 4043.10 is added to read as follows:

4043.10 TCO2 testing: punishment for failure to cooperate

It shall be a violation of Rule 4042.1(f) for any person subject to the jurisdiction of the Board to fail to cooperate with the blood gas testing program.

A new subdivision (f) of section 4038.18 is added to read as follows:

(f) Excess TCO2 levels. In the event that a claimed horse tests in violation of Rule 4043.8, and it is not determined that such TCO2 level is physiologically normal for that particular horse, the claimant or his trainer shall have the option to void the claim upon written notice to the stewards within five (5) days of receiving notice of the violation.

A new section 4120.13 is added to read as follows:

4120.13 TCO2 blood gas testing program

(a) The board may obtain pre-race blood samples from horses for subsequent testing for total carbon dioxide level (TCO2). The board may also obtain post-race blood samples from horses for subsequent testing for TCO2, after a minimum one-hour standing at rest period for the horse after its race. It shall be a violation of this rule where the horse's TCO2 level equals or exceeds thirty-seven (37) millimoles per liter or, for horses administered furosemide pursuant to Rule 4120.2(b)(6), thirty-nine (39) millimoles per liter.

(b) It shall be an affirmative defense that the horse's physiologically normal TCO2 level was not exceeded. To demonstrate a horse's physiologically normal TCO2, its owner or trainer must comply with the following procedure. The owner or trainer must, in writing to the judges within three calendar days of receiving notice of the horse's TCO2 test result, contend that the horse's reported TCO2 level is physiologically normal and request that the horse be held in guarded quarantine. If so, the racetrack operator shall make available a guarded quarantine for a time determined by the presiding judge, not to exceed 72 hours, at the sole expense of the requesting licensee. During the quarantine, the horse shall be retested periodically, and although the horse shall not race, it may be exercised and trained at times prescribed by the racetrack operator provided this does not interfere with monitoring, sampling, and testing the horse. The presiding judge shall then determine whether the horse's pre-race TCO2 level was physiologically normal for it. The presiding judge may also require, at least 45 days later, that the horse re-establish its normal TCO2 level with another guarded quarantine to be made available at the sole expense of the racetrack operator.

(c) Any guarded quarantine provided by the racetrack operator shall ensure that, at a minimum:

(1) Such horse shall be under direct surveillance by at least one guard at all times;

(2) Access to the horse shall be restricted to licensed persons who are directly affiliated with such horse, judges, or employees of the New York State Racing and Wagering Board, all of whom shall provide their respective track identification badge or Board-issued photo identification card prior to entry;

(3) A written or electronic log of all persons who have had access to the horse shall be maintained by the guard, indicating the name and license number or track identification badge number of the person, the date and time of the visit (including time in and out of the restricted area), the nature and purpose of the visit, a description of any and all equipment, paraphernalia, tack, medications, or feed brought to the horse, and all activity observed by the guard during the visit; and

(4) The racetrack operator shall maintain such written or electronic logs of guarded quarantine activity for a minimum period of 90 days after the conclusion of the applicable guarded quarantine period.

(d) The penalty for violations of this rule shall be not less than (i) for a first violation, a 60-day license suspension and one-thousand dollar ($1000) fine; (ii) for a second violation, a 75-day license suspension and two-thousand five-hundred dollar ($2500) fine; and (iii) for additional violations, a one-year suspension and five-thousand dollar ($5000) fine together with a referral to the board for further action including a possible license revocation. Where independent evidence shows that the horse was treated within 24 hours of its race by means not permitted by section 4120.2 of this subtitle, however, every license suspension shall be for at least two years. Every suspension shall include denial of the privileges of the grounds.

(e) For a violation of this rule, a horse shall be disqualified, any purse monies shall be forfeited and redistributed pursuant to Rule 4120.5, and pre-race detention shall be imposed.

A new section 4120.14 is added to read as follows:

4120.14 Pre-race detention

(a) A horse that tests in violation of Rule 4120.13 shall be placed under pre-race detention, without regard to whether the horse is transferred to a new trainer, for a period of six (6) months from the date of violation. If during the detention period a horse again tests in violation of Rule 4120.13, then the detention period shall be extended as the judges shall deem appropriate. The racetrack operator sponsoring the race shall make such pre-race detention available, at the sole expense of the trainer, for at least six (6) hours before the start of the race program and as required by the judges. Where a claimed horse is found to have excess TCO2, the costs of a pre-race detention shall be the responsibility of the party requesting detention.

(b) All horses of a trainer who has violated Rule 4120.13 more than once in the preceding 12 months shall be placed under pre-race detention, without regard to whether the horses are transferred to a new trainer, for a period of eight (8) months from the date of the most recent violation. The racetrack operator sponsoring the race shall make such pre-race detention available, at the sole expense of the trainer, for at least six (6) hours before the start of the race program and as required by the judges. If during a detention period a trainer violates Rule 4120.13, then the detention period shall be extended for such time as the judges deem appropriate.

A new section 4120.15 is added to read as follows:

4120.15 TCO2 testing: punishment for failure to cooperate

It shall be a violation of Rule 4119.7 for any person subject to the jurisdiction of the Board to fail to cooperate with the blood gas testing program.

A new subdivision (f) of section 4109.7 is added to read as follows:

(f) Excess TCO2 levels. In the event that a claimed horse tests in violation of Rule 4120.13, and it is not determined that such TCO2 level is physiologically normal for that particular horse, the claimant or his trainer shall have the option to void the claim upon written notice to the stewards within five (5) days of receiving notice of the violation.

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

(a) Statutory authority. Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 207, 227, 301, 305 and 902.

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

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

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

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

Horses that have received an alkalizing agent will exhibit elevated levels of TCO2 over and above normal levels. This rulemaking will estab-

lish the ion selective electrode method with a clinical auto analyzer as a standard means of detecting elevated TCO2 in horses. The rule will establish a TCO2 threshhold of 37 millimoles per liter for horses who have not been administered furosemide (Lasix) prior to a race, and 39 millimoles for horses that have been administered furosemide prior to a race.

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

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

(d) Costs.

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

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

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

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

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

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

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

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

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

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment would expand the existing medication testing rules to include a test for alkalizing agents in thoroughbred and harness race horses. This testing will utilize the current framework for post-race testing. The pre-race testing component will merely require that a veterinarian take a few minutes to obtain a blood sample from a horse, which is a routine procedure and imposes no new burden upon regulated parties. These amendments do not impact upon State Administrative Procedure Act section 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above, because the Board rules has exisiting rules for post-race testing for the presence of performance altering drugs and other substances.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Treasure Chest Raffle and Search for the Queen of Hearts

I.D. No. RWB-19-07-00005-P

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

Proposed action: Addition of sections 5620.23 and 5620.24 to Title 9 NYCRR.

Statutory authority: General Municipal Law, art. 9-a, sections 186(c) and 188-a

Subject: Two new games of chance known as the Treasure Chest Raffle and Search for the Queen of Hearts.

Purpose: To authorize two new games of chance: Treasure Chest Raffle and Search for the Queen of Hearts.

Text of proposed rule: New section 5620.24 of 9E NYCRR is added to read:

5620.24 Treasure Chest Raffle

a) Equipment. Two different-colored series of two-part, sequentially numbered raffle tickets; two raffle ticket drums or receptacles; a game board; a chest; a lock to secure the chest; and a number of keys predetermined by the licensee and listed in its house rules and on its raffle license application (if applicable). Only two of the keys shall be capable of opening the lock. One of those keys must be marked by the locksmith as a master key, and secured at all times by a member-in-charge; the other key, and all of the remaining (losing) keys, shall be unmarked and maintained in accordance with this section. The game board shall have a number of nails protruding from the board at an angle that permits the keys to be

hung on one nail at a time. The number of nails shall be equal to the total number of keys in play at the start of the Treasure Chest Raffle.

b) The Play

1) The licensee shall sell one series of two-part, sequentially numbered raffle tickets designated as Prize Winning Tickets, depositing one part of each ticket sold into the Prize Winning Raffle Ticket Drum or Receptacle and presenting the other part of that ticket to the purchaser to retain as a receipt for verification purposes.

2) The member-in-charge shall remove the licensee's designated percentage of the sales of raffle tickets sold during that occasion as raffle profit, and shall secure those funds for deposit into the special games of chance raffle checking account, if applicable, or other bank account.

3) The member-in-charge shall remove ten percent of the remaining funds, and shall divide that amount into five equal parts that shall be designated as the primary prize pool.

4) The member-in-charge shall insert the remaining prize money (the secondary prize) into the treasure chest and lock it.

5) After a single key is hung on each of the nails, one-half of a different colored series of two-part, serial-numbered tickets designated as Key Tickets shall be affixed to each of the nails, and the other halves of the those tickets shall be deposited into a raffle ticket receptacle designated the Key Ticket Receptacle.

6) All Prize Winning Ticket stubs shall be randomly commingled and thoroughly intermixed in the Prize Winning Ticket Raffle Ticket Drum or Receptacle; five tickets shall be drawn by a licensed member-in-charge from that drum or receptacle; and the five players holding the corresponding ticket stubs shall each be awarded one-fifth of the primary prize pool.

7) The member-in-charge shall draw a Key Ticket from the Key Ticket Receptacle for each of those five players, and each of the keys hanging on the game board under the raffle ticket stubs corresponding with each of the player's stubs is presented to the five winning players. Each player shall attempt to open the lock on the treasure chest using his or her key.

8) If none of the keys opens the lock, the raffle is closed for that occasion; the five Key Tickets are destroyed; and the member in charge removes the keys that did not open the locks from play.

9) At the conclusion of that occasion, the member-in-charge shall remove the cash from the treasure chest using a master key; the losing keys shall be locked in the treasure chest; the Key Ticket receptacle, the Key Tickets therein, and the game board with its remaining keys and Key Tickets shall be securely stored by the member-in-charge; and the remaining cash prize shall be deposited into the games of chance (raffle) checking account (if applicable), where it will remain until that amount is added to the treasure chest immediately prior to the start of the next occasion the Treasure Chest Raffle will be conducted.

10) During the next occasion, 60% of the proceeds from the sale of tickets for that occasion shall be added to the dollar amount reserved from the previous occasion, and the procedures outlined above shall be repeated for a new raffle.

11) The procedures described above shall he repeated during each subsequent occasion until the lock is opened and the winner is awarded the secondary prize.

12) If the secondary prize has not been awarded during an occasion on or about 170 days after the start of ticket sales for a Treasure Chest Raffle, an announcement shall be made during that occasion that the remaining tickets will be drawn during the next bingo occasion until a winner of the secondary prize is awarded.

13) After the secondary prize is awarded, all of the Key Tickets on the game board and in the Key Ticket Receptacle shall be discarded; and all of the keys secured by the member-in-charge.

New section 5620.23 of 9E NYCRR is added to read as follows:

5620.23 Search For The Queen Of Hearts

a) Equipment. A series of two-part, sequentially numbered raffle tickets; two raffle ticket drums or receptacles; a standard deck of fifty-two playing cards plus two Jokers; and a game board onto which fifty-four playing cards can be placed facedown, side-by-side, and held securely by a locking, transparent cover.

b) The Play

1) The licensed authorized organization shall offer a series of two-part, sequentially numbered raffle tickets for sale at a price determined by the licensee. Each player shall write his or her name and telephone number on the licensee's part of the ticket, which shall be deposited into a raffle ticket drum or receptacle. The purchasing player shall retain the other part of the ticket as a receipt for verification purposes. All monies collected from the sale of Raffle Winners' Tickets shall be designated the Grand Prize Pool.

2) The deck of facedown playing cards shall be thoroughly shuffled by a licensed member in charge or assistant to the member in charge and, without revealing any of the faces, placed facedown, side-by-side, onto the game board. The transparent game board cover shall be closed and locked to secure the cards in place.

3) One raffle ticket shall be drawn each week from among all of the tickets sold for each drawing, except for the first week and the twenty-sixth week (if necessary), when three drawings shall be held.

4) The participant(s) holding the winning ticket stub(s) shall be declared the winner(s) of each drawing and shall be entitled to "Search For The Queen of Hearts."

5) All remaining tickets in the raffle drum or receptacle shall be defaced and discarded.

6) The transparent, locking cover securing the cards shall be opened by a licensed member in charge or assistant to the member in charge at the time of each drawing.

7) Each winner shall select one of the facedown playing cards, which shall be turned face up by a licensed member in charge or assistant to the member in charge. If that playing card is the Queen of Hearts the holder of the winning raffle ticket selecting that card shall be awarded 60% of the Grand Prize Pool.

8) If the card selected is not the Queen of Hearts, that card shall be defaced by drawing a diagonal line across its face in ink; the card shall be returned to the game board face-up; the transparent, locking cover securing the cards shall be locked by a licensed member in charge or assistant to the member in charge; and that player shall be immediately awarded a cash prize valued according to the following schedule:

Card Drawn	*Payout Odds*
Any 2, 3, 4, or 5	*At least 4 - 1*
Any 6, 7, 8, or 9	*At least 6 - 1*
Any 10, Jack, or King	*At least 8 - 1*
Any Ace	*At least 10 - 1*
Any Joker	*At least 15 - 1*
Any Queen other than Hearts	*At least 20 - 1*

9) The weekly raffle drawings shall continue until a winner selects the Queen of Hearts.

10) When the Queen of Hearts is selected, the winning player shall be awarded the Grand Prize consisting of 60% of the Grand Prize Pool.

11) The licensee shall retain the remaining 40% of the Grand Prize Pool as raffle profit and shall secure those funds for deposit into the special games of chance or raffle checking account (if applicable), or other bank account.

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

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

(a) Statutory authority. Sections 186(c) and 188-a of Article 9-a of the General Municipal Law. Section 186(c) states that "games of chance" shall mean and include specific games as may be authorized by the New York State Racing and Wagering Board. Through this rulemaking, the Board would authorize two new games of chance known as "treasure chest" and "queen of hearts" where prizes may be awarded on the basis of a designated winning number or number and symbol or symbol determined by chance. The selection of the two-part ticket in both games constitutes the awarding of a prize based upon a winning number or number, whereby the player's ticket number matches the ticket number that is drawn from among all of the entrants' tickets. The awarding of a prize in queen of hearts also involves the player randomly selecting a playing card that is mounted on a board and pre-designated as a winning symbol for which a prize is awarded. The awarding of a second prize in treasure chest is also based upon the player randomly selecting a key that represents a symbol that will open the treasure chest and for which a prize will be awarded if the pre-designated winning key is selected by the player and verified by opening the treasure chest.

Subdivision 1 of section 188-a of the General Municipal Law grants general rulemaking power to the Board to adopt, amend and repeal rules and regulations governing the issuance and amendment of licenses thereunder and the conduct of games of chance under such licenses, and that such games shall be fairly and properly conducted. This rulemaking is

necessary to ensure that queen of hearts and treasure chest shall be fairly and properly conducted. This rulemaking establishes a standard set of rules for the house and player to ensure that the game is conducted fairly and uniformly throughout New York State.

(b) Legislative objectives: Pursuant to the objectives stated in Section 185 of the General Municipal Law, this rule is necessary to ensure that all phases of the supervision, licensing and regulation of games of chance and the conduct of games of chance, should be closely controlled and to foster and support worthy causes by ensuring a maximum availability of net proceeds from the conduct of games of chance.

(c) Needs and benefits. This rule will benefit charitable organizations by authorizing two unique variations on the game of chance known as a raffle. Treasure Chest will create an added dimension to the traditional game of raffle, and is intended to make the game more interesting. Treasure Chest or its variations is a raffle that has been conducted in bingo halls in states like Virginia and in bingo halls operated by federally-recognized Indian nations in New York State. Treasure Chest has become popular and charitable organizations have asked that the Board authorize it as an approved game of chance. This rule is necessary to ensure that the Board's approved games of chance keep pace with popular games of chance, and establish rules and guidelines for the proper conduct of the game. This rule will also ensure that charitable organizations will be able to enjoy increased charitable proceeds derived from lawful games of chance.

Search for the Queen of Hearts will create a added dimension to the traditional game of raffle, and is intended to make the game more interesting. The Search for the Queen of Hearts is played in fraternal clubs in other states, namely the Benevolent and Protective Order of Elks in Massachusetts and Maryland. The drawing for the Queen of Hearts is usually featured between games on bingo nights. This rule is necessary to ensure that the Board's approved games of chance keep pace with popular games of chance, and establish rules and guidelines for the proper conduct of the game. This rule will also ensure that charitable organizations will be able to enjoy increased charitable proceeds derived from lawful games of chance.

(d) Costs.

(i) There are no costs imposed upon regulated persons for the implementation of, and continuing compliance with the rule. This rule merely states the rules for the proper conduct of Search for the Queen of Hearts and Treasure Chest raffle. This rule can be conducted using existing reporting and licensing rules.

(ii) There are no costs imposed upon the Racing and Wagering Board, the State of New York or local governments. This rules creates a variation of the game of chance known as raffle, which was approved as a game of chance by the Legislature in 1996. This game will be regulated in the same manner as any other authorized raffle game.

(iii) This information was derived through practical analyses by the staff of the New York Racing and Wagering Board based upon the nature of the game and current regulatory requirements.

(e) Paperwork. This rule will require licensed authorized organization to file a VS-1 and VS-2 with the local municipal licensing clerk if the Search for the Queen of Hearts of Treasure Chest raffle results in more than $5,000 in net proceeds for a single raffle or more than $20,000 over the course of a calendar years. Such licensed authorized organizations will also be required to submit a GC-1A From to register with the New York State Racing and Wagering Board. If the licensed authorized organization earns $30,000 or more in net proceeds, it must obtain a Games of Chance License and file a GC-7 with the local municipal clerk.

(f) Local government mandates. This rule will not impose any program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district. Municipalities that have previously approved the conduct of raffles through local law or ordinance will be responsible for the supervision of the conduct of Treasure Chest in the same manner that they are responsible for the supervision of other raffles. This is not a mandate insofar as the municipality has agreed to license games of chance through local law or ordinance.

(g) Duplication. There is no duplication. The New York State Racing and Wagering Board is the only state agency responsible for the regulation of games of chance in New York State, and the games of chance rules that it adopts have the force and effect of law upon municipalities that have adopted local games of chance laws. There are no federal rules regarding the conduct of games of chance.

(h) Alternative approaches. This rule is a permissive rule intended to authorize the specific conduct of two unique games. No alternative approches were considered. The only other alternative was to do nothing, which was considered but it would have been detrimental to the various charities that have requested this rulemaking if these specific games were not authorized.

(i) Federal standards. The regulation of charitable games of chance in New York State is specifically reserved and granted to the New York State Racing and Wagering Board and the local governments that license such activities. There are no applicable federal standards.

(j) Compliance schedule. The Board intends to authorize this game as soon as it is published in the State Register under a Notice of Adoption.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as authorizes a new type of game of chance known as a Search for the Queen of Hearts raffle, which are variations on the current raffle authorized under Section 5620.22 of 9 NYCRR. The Board intends to authorize Search for the Queen of Hearts and Treasure Chest raffle to offer new types of raffle games and maximize net proceeds for authorized organizations that conduct charitable gaming. These games can be conducted using the existing regulatory and reporting requirements. This proposed amendment does not impact upon a small business as defined by State Administrative Procedure Act section 102(8), nor does it affect employment. It will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. Charitable gaming can only be conducted by not-for-profit organizations and volunteer members. The New York State Constitution and the New York State Games of Chance Law prohibits commercialized games of chance or paying persons for conducting games of chance.

Department of State

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Shared Municipal Services Incentive Awards Grant Program

I.D. No. DOS-19-07-00012-P

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

Proposed action: Amendment of Part 814 of Title 19 NYCRR.

Statutory authority: State Finance Law, section 54(10)

Subject: Shared Municipal Services Incentive Awards Grant Program.

Purpose: To establish eligibility requirements and criteria for Shared Municipal Services Incentive Awards Program.

Text of proposed rule:

19 NYCRR Part 814

Part 814 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

Section 814.1 Purpose.

The purpose of this regulation is to implement the requirements of State Finance Law Section 54(10)[(H)] which established a competitive grant program for [“]two or more municipalities to cover costs associated with mergers, consolidations, cooperative agreements, dissolutions and shared services.[”] It directed the Secretary of State to adopt rules and regulations to implement the program.

Section 814.2 Definitions.

As used in this Part, the following words and terms shall have the stated meaning:

(a) Consolidation means two or more adjoining towns in the same county consolidate as one town pursuant to Article 5-B of the Town Law; two or more adjoining villages consolidate as one village pursuant to Article 18 of the Village Law, or; *for the purpose of applications submitted prior to April 1, 2007* two or more school districts consolidate as one district pursuant to Article 31 of the Education Law. *For the purpose of grant applications submitted after April 1, 2007, pursuant to State Finance Law § 54(10) as amended by Chapter 56 of the Laws of 2007, consolidation shall also include consolidation of two or more special improvement districts or fire districts.*

(b) Cooperative agreement means an agreement entered into by two or more municipalities pursuant to Article 5-G of the General Municipal Law or other authorizing statutes for the performance among themselves or one for the other of their respective functions, powers and duties on a contract or cooperative basis.

(c) Dissolution means the dissolution of a town pursuant to Article 5-A of the Town Law or the dissolution of a village pursuant to Article 19 of the Village Law.

(d) Merger means the transfer of functions, powers or duties of a city, town or village within the same county, to each other or to the county, pursuant to the Alternate County Government Law, or; pursuant to any other legislative authority which may be enacted after the effective date hereof for such transfers of functions, powers or duties or for the merger of a county, city, town or village with any of such other units of local government.

(e) Municipality means a county, city, town, village and school district[.] *; for the purpose of grant applications submitted after April 1, 2007, pursuant to State Finance Law § 54(H) as amended by Chapter 56 of the Laws of 2007, municipality shall also include special improvement districts and fire districts, and provided that for the purpose of such applications a school district shall be considered a municipality only in instances where a school district advances an application for a grant to cover costs associated with cooperative agreements or shared services, and further provided that for the purpose of such applications, a board of cooperative educational services shall be considered a municipality only in instances where such board of cooperative educational services advances a joint shared service application on behalf of school districts and other municipalities within the board of cooperative educational services region; provided, however, that any shared services agreements with a board of cooperative educational services:*

(i) Shall not generate additional state aid;

(ii) Shall be deemed not to be a part of the program, capital and administrative budgets of the board of cooperative educational services for the purposes of computing charges upon component school districts pursuant to subparagraph seven of paragraph b of subdivision four of section nineteen hundred fifty of the education law;

(iii) Shall be deemed to be a cooperative municipal service for purposes of subparagraph two of paragraph d of subdivision four of section nineteen hundred fifty of the education law.

(f) Secretary means the New York State Secretary of State.

(g) Shared services means the joint provision, performance or delivery of a service, facility, activity, project or undertaking by two or more municipalities which each may lawfully undertake separately.

Section 814.3 Eligibility.

(a) Applications for assistance under this Part may be made only by two or more municipalities which jointly submit requests on forms established by the Secretary.

(b) Grants may be used to cover legal and consultant services, feasibility studies, capital improvements and other necessary expenses related to costs associated with mergers, consolidations, cooperative agreements, dissolutions and shared services by municipalities.

Section 814.4 Grant awards

(a) Subject to annual appropriations by the Legislature, grants will be made to successful applicants pursuant to the review and approval criteria set forth herein, in an amount not to exceed one hundred thousand dollars ($100,000.00) per municipality[.] *, provided, however, for the purpose of grant applications submitted after April 1, 2007 pursuant to State Finance Law § 54(H) as amended by Chapter 56 of the Laws of 2007, the maximum grant award shall not exceed two hundred thousand dollars ($200,000.00) per municipality.*

(b) Applicants will be required to provide matching funds, equal to ten percent of the total approved cost.

(c) State assistance shall be available on a reimbursement basis. Grantees shall submit periodic invoices and requests for payment as work is performed and costs incurred.

(d) For the purpose of applications submitted prior to April 1, 2007,[G]grantees may request an advance payment in an amount not to exceed 25 percent of the total amount of State assistance for the project.

(e) No part of a grant shall be used by the grantee for recurring expenses such as salaries, utilities and fuel.

(f) Prior to the final reimbursement payment, grant recipients shall submit to the Secretary copies of studies, agreements and other products resulting from the grant award.

Section 814.5 Review and approval criteria

(a) All applications will be rated in accordance with the rating system established by the Secretary. Criteria used to rate applications will generally include the following:

(1) Demonstrated need for the project.

(2) The likelihood of timely completion of the project.

(3) The potential for municipal cost savings, productivity enhancement or streamlined administration.

(4) The number of municipalities involved or the size of the service area.

(5) The likelihood of instituting permanent changes to municipal structure or service delivery resulting in cost savings, enhanced productivity or streamlined administration over the long term.

(6) The ability of the project to serve as a demonstration program for other municipalities to reduce costs, enhance productivity or streamline administration.

(7) Whether the project would advance other State or municipal programs for municipal efficiency and cost savings.

(8) The geographic distribution of other fundable projects in any given application cycle.

(b) In the selection of grant awards for applications submitted on or after April 1, 2007, priority shall be given to applications that:

(1) Include a municipality that meets any of the following fiscal distress criteria;

(i) Full valuation per capita less than fifty percent (50%) of the average full valuation per capita for municipalities in New York state.

(ii) A population at least ten percent (10%) less than the population as reported in the nineteen hundred seventy (1970) federal decennial census.

(iii) Greater than sixty percent (60%) real property tax limit exhausted in the most recent local fiscal year as reported to the Division of the Budget by the State Comptroller.

(iv) A percentage of individuals living below the poverty level, as reported for a municipality in the most recent federal decennial census, in excess of one hundred fifty percent (150%) of the average percentage of individuals living below the poverty level as reported for municipalities in the most recent federal decennial census.

(2) Plan or implement the consolidation, merger or dissolution of municipalities.

(3) Share services between school districts and other municipalities, including applications submitted by boards of cooperative educational services.

(4) Share highway services, including joint highway equipment purchases, capital improvements that benefit two or more municipal highway departments, contractual services between two or more municipal highway departments or for the consolidation of two or more municipal highway departments.

(5) Consolidate health benefit plans offered by two or more municipalities.

(6) Encourage countywide shared services, where a county develops a countywide shared services plan under which municipalities in such county agree to participate in shared services, including, but not limited to, public safety, purchasing, payroll, and real property tax assessment.

(c) Awards shall be granted only for services that would otherwise be individually provided by each grantee and for which demonstrable financial savings result from such sharing, unless awards are for feasibility studies.

Section 814.6 Contents of application and procedures.

(a) Application for assistance shall be on forms prescribed by the Secretary. Applications shall contain the following:

(1) The names and contact information for each municipality applying for assistance.

(2) Designation of contact person or grant administrator.

(3) Identification of key personnel who will work on the project for the municipalities.

(4) A resolution of each municipality's governing body requesting such assistance.

(5) A detailed description of the proposed activity to be funded.

(6) A work program including time periods for achieving stated objectives.

(7) A budget including identification of all funding sources and local matching funds.

(8) Any inter-municipal agreements entered into or proposed to be entered into to carry out the activity.

(9) A description of how the proposal responds to each of the rating and approval criteria described in this Part.

(b) Application information and procedures.

(1) The Department of State will provide outreach services to inform municipalities of the availability of funding and provide information to applicants concerning application preparation and submission.

(2) Project time periods and work programs may be adjusted by the Department of State as a condition of entering in to a contract for State assistance, to ensure the timely and successful completion of a project for which funds are awarded. The Department of State may, in its discretion, choose not to enter into contracts and cancel grant awards which do not contain mutually established time periods and work programs.

(3) All projects must be undertaken pursuant to a contract with the Department of State which shall require, in addition to the requirements of the Department of State, Attorney General and State Comptroller, that all contracts not to be performed by the officials and employees of the grantee be entered into in accordance with General Municipal Law sections 103 and 104-b.

Text of proposed rule and any required statements and analyses may be obtained from: Richard L. Hoffman, Department of State, 41 State St., Counsel's Office 8th Floor, Albany, NY 12231, (518) 474-6740, e-mail: Rhoffman@dos.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.

Regulatory Impact Statement

1. Statutory Authority:

Section 54 (10) of the State Finance Law, enacted by the Legislature in 2005 as part of the Article VII budget bill (L. 2005, c. 63) established the "shared municipal services incentives award" grant program for two or more municipalities administered by the Secretary of State. It directed the Secretary to adopt regulations implementing the program prior to accepting applications from eligible municipalities and school districts. In 2007 the Legislature continued the program with some modifications, and again directed the Secretary to adopt regulations prior to accepting applications (L.2007, c. 56).

2. Legislative Objectives:

By enacting Section 54 (10) of the State Finance Law, the Legislature sought to establish incentives for two or more municipalities to share services, undertake consolidations, enter into cooperative agreements and study dissolutions. It enacted a voluntary program to cover the costs associated with such actions, including but not limited to legal and consultant services, feasibility studies, capital improvements and other necessary expenses. The legislature established a maximum grant award of $200,000 per municipality and required a 10% local match. For Fiscal year 2007-08 the legislature appropriated $25 million.

3. Needs and Benefits:

There are over 1600 general purpose local governments in New York and 677 school districts. Together they account for a significant portion of State aid ($15.9 billion school district aid in 2005-06 alone) and local property taxes. The Shared Municipal Incentives Award program encourages local cost cutting efforts by providing State funds for shared services, mergers and consolidations.

4. Costs:

a. Costs to regulated parties.

This is a voluntary program. Municipalities that are awarded a grant will receive up to $200,000 per municipality. A 10% local match is required. Municipalities are expected to realize cost savings from the program.

b. Costs to the agency.

The Legislature has appropriated $1,300,000 for administration of the program.

c. Cost information.

The Department of State consulted with municipal associations representing, counties, cities, towns and villages, in 2005 when the regulation was initially promulgated. As noted, this is a grant program which should result in cost savings to municipalities.

5. Local Government Mandates:

There are no mandates involved in this voluntary grant program.

6. Paperwork:

There are no paperwork or reporting requirements imposed except for standard documentation of expenses incurred in order to receive reimbursement, and documentation of results obtained by grant recipients.

7. Duplication:

The regulation does not duplicate, overlap or conflict with any other federal, state or local rule or statute.

8. Alternatives:

State Finance Law § 54 (10) requires the Secretary to adopt rules and regulations to establish eligibility requirements, application requirements and grant criteria.

9. Federal Standards:

There are no federal standards relevant to this matter.

10. Compliance Schedule:

This is a voluntary program which does not involve compliance requirements.

Regulatory Flexibility Analysis

Small Businesses:

The proposed rule establishes criteria pertaining to a municipal grant program and does not affect small businesses. Accordingly, a regulatory flexibility analysis for small businesses is inapplicable and was not prepared.

Local Governments:

The proposed rule does not impose an adverse economic impact on local governments nor does it impose reporting, recordkeeping, or other compliance requirements on local governments. Therefore, pursuant to 202-b (3)(a) of the State Administrative Procedure Act, the Department finds that a Regulatory Flexibility Analysis does not need to be prepared, for the following reasons:

1. Effect of rule:

The rule would establish a voluntary grant program under which municipalities and school districts may receive funds for shared services and other intermunicipal cost-saving measures.

2. Compliance requirements:

There are no compliance requirements except for documentation of work performed by any grantee.

3. Professional services:

Professional services are not required to comply with the grant program. Costs for professional services engaged by a municipality pursuant to a grant would be reimbursed through the grant program.

4. Compliance costs:

No compliance costs are imposed. This is a voluntary grant program.

5. Economic and technological feasibility:

In as much as no compliance is required, there are no economic or technological feasibility issues.

6. Minimizing adverse impact:

There will be no adverse impact on local governments because this is a voluntary grant program designed to result in cost savings for municipalities and school districts.

7. Small business and local government participation:

Notwithstanding that there will be no adverse impact upon local governments, the Department previously consulted with municipal associations when the regulation was initially promulgated in 2005 who had no objections to the regulation. They would not be expected to object to this amendment which simply tracks the new provisions of the statute.

Rural Area Flexibility Analysis

Pursuant to § 202-bb (4) (a), the Department has determined that the proposed rule would not have an adverse impact on rural areas and would not impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, and a Rural Area Flexibility Analysis need not be prepared for the following reasons:

1. Types and estimated numbers of rural areas:

The proposed rule would apply uniformly throughout the State.

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

The proposed rule does not impose any recordkeeping or other affirmative acts on municipalities and school districts. Municipalities and school districts that choose to submit grant applications will be required to provide documentation of work performed if they are the recipient of a grant award.

3. Costs:

This is a voluntary grant program which does not involve costs to grant recipients, who can be expected to realize cost savings as a result of the program.

4. Minimizing adverse impact:

Because the proposed rule would establish a voluntary grant program designed to assist municipalities and school districts with shared intermunicipal cost savings, there will be no adverse impact on public or private entities in rural areas.

5. Rural area participation:

The Department previously consulted with municipal associations representing counties, cities, towns and villages in all areas of the State, including rural areas in 2005 when the regulation was initially promulgated. It is unlikely these groups would have any objection to the amended rule, which tracks the new provisions of the statute.

Job Impact Statement

Pursuant to § 201-a (2) (a) of the State Administrative Procedures Act, the Department has determined that the proposed rule will not have a substantial adverse impact on jobs and employment opportunities, and that a Job Impact Statement need not be prepared, for the following reasons:

The proposed rule would implement a voluntary grant program whereby municipalities and school districts would be eligible for awards for intermunicipal cost-saving measures. Eligible grant activities include costs associated with mergers, consolidations, cooperative agreements, dissolutions and shared services. Covered costs include legal and consultant services, feasibility studies, capital improvements and other necessary expenses. In some cases this could result in municipalities performing functions jointly or sharing employees which could see a long-term stabilization of the municipal workforce, or a slight decrease through attrition. Any such losses, however, should result in cost savings to municipalities to allow them to continue to provide a sustainable level of services for residents and taxpayers, which will in turn prevent job and employment opportunity losses through annual budget reductions.

The Legislature enacted State Finance Law § 54 (10) to provide municipalities and school districts with incentives to find ways to counter rising municipal budgets and property tax increases. Increasing taxes or reducing services are the two options municipalities have to continue their role to provide public services. The proposed rule would implement the legislation by providing a third option - incentives to seek cost savings on an intermunicipal basis - which could prevent or minimize a reduction in services, thereby positively affecting municipal and school district employment.

Triborough Bridge and Tunnel Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Ready-Mix Concrete Vehicles

I.D. No. TBA-19-07-00002-P

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

Proposed action: Amendment of section 1022.1(n) of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 553(5)

Subject: Use of bridges and tunnels by ready-mix concrete vehicles.

Purpose: To allow for the expedited and efficient reconstruction of the World Trade Center site.

Text of proposed rule: Subdivision (n) of section 1022.1 of Title 21 NYCRR is amended to read as follows:

(n) ready-mix concrete vehicles with a load in excess 8½ cubic yards of regular weight concrete or 11 cubic yards of lightweight concrete, *except that four axle trucks carrying loads up to 12 cubic yards shall be permitted to utilize the Queens Midtown and Brooklyn Battery Tunnels.*

Text of proposed rule and any required statements and analyses may be obtained from: Robert O'Brien, Triborough Bridge and Tunnel Authority, Two Broadway, New York, NY 10004, (646) 252-7617, e-mail: robrien@mtabt.org

Data, views or arguments may be submitted to: Judie Glaves, Triborough Bridge and Tunnel Authority, Two Broadway, New York, NY 10004, (646) 252-7276, e-mail: jglaves@mtabt.org

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

Regulatory Impact Statement

1. Statutory authority: Section 553(5) of the Public Authorities Law authorizes the Triborough Bridge and Tunnel Authority to establish rules and regulations for the regulation of the use of the bridges and tunnels subject to its jurisdiction.

2. Legislative objectives: The objective of the statute is to empower the Authority to regulate the use of its bridge and tunnel facilities, which is the subject of this emergency adoption and proposed rulemaking.

3. Needs and benefits: The rule amendment is necessary to allow for the expedited and efficient reconstruction of Lower Manhattan, including the World Trade Center site. The existing rule prohibits ready-mix concrete vehicles over a certain volume from traveling in or upon TBTA bridges and tunnels. Timely access for construction traffic, particularly concrete trucks, across TBTA's East River crossings is critical for the reconstruction of Lower Manhattan. The amended rule would create an exception allowing four axle trucks carrying loads up to 12 cubic yards of concrete to utilize the Queens Midtown and Brooklyn Battery Tunnels.

The principal benefit of the rule is that it will facilitate the prompt reconstruction of Lower Manhattan and, in particular, the World Trade Center site, which is critical to the preservation and promotion of the general welfare.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: None.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since no additional responsibilities are imposed on any of these entities as a result of the rule change and funds originally appropriated for the expenses of operating the TBTA facilities are expected to be sufficient to support the implementation and enforcement of the new rule.

The increased volume limitation for cement trucks utilizing the Queens Midtown and Brooklyn Battery tunnels will not result in any damage to those TBTA facilities. The volume restrictions, such as those imposed by the existing regulations, were intended to protect the TBTA's facilities from damage caused by overweight vehicles. That purpose is already served by the imposition of maximum weight restrictions on all vehicles using TBTA facilities. Federal and state highway regulations limit the passage of most vehicles to 80,000 lbs. TBTA's own regulations limit the passage to that weight unless special handling is arranged. Such weight restrictions are currently in place and will not be affected by the proposed rule.

c. Source of cost information: The foregoing cost information is based on TBTA's long-term experience in operating its facilities.

5. Local government mandates: There is no imposition of any mandates upon local governments by the rule amendment.

6. Paperwork: There are no additional reporting or paperwork requirements as a result of the rule change.

7. Duplication: There are no duplicative, overlapping or conflicting rules or legal requirements, either under federal or state law.

8. Alternatives: There are no significant alternatives available to the proposal.

9. Federal standards: There are no applicable federal government standards implicated as a result of the rule change.

10. Compliance schedule: No significant time will be required to achieve compliance with the rule.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act. A Regulatory Flexibility Analysis is not submitted because it is apparent that the rule amendment will not result in any adverse economic impacts or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The rule amendment only affects two tunnels in the City of New York that are under the jurisdiction of the TBTA. The amendment lifts a volume restriction imposed on certain cement-carrying vehicles utilizing TBTA facilities, which is hindering reconstruction efforts at the World Trade Center site and other locations in Lower Manhattan.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act. A Rural Area Flexibility Analysis is not submitted because the rule amendment will not impose any adverse economic impact, reporting requirements, recordkeeping or other compliance requirements on public or private entities in rural areas. The rule amendment affects only the use restrictions applicable to certain cement trucks in connection with the use of two tunnels in the City of New York that are subject to the jurisdiction of the TBTA.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act. A Job Impact Statement

is not submitted because it is apparent from the nature and limited scope of the rule that it will not have any adverse impact on jobs or employment opportunities.