

# RULE MAKING ACTIVITIES

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

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

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## Department of Civil Service

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

#### Special Enrollee Positions Designated for Inclusion in the Income Protection Plan (IPP)

**I.D. No.** CVS-21-08-00001-P

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

**Proposed action:** This is a consensus rule making to amend section 78.9 and repeal Appendix 5 of Title 4 of NYCRR.

**Statutory authority:** Civil Service Law, section 158

**Subject:** Special enrollee positions designated for inclusion in the income protection plan (IPP).

**Purpose:** To update and regulate the list of special enrollee positions designated for inclusion in the income protection plan.

**Text of proposed rule:** RESOLVED, FIRST, Section 78.9 of the Regulations of the Department of Civil Service (President's Regulations) of Title 4 of the New York State Code, Rules and Regulations is amended to read as follows:

§ 78.9 Special enrollees

(a) *The department shall compile and maintain a list of all positions eligible for participation as "special enrollees," as set forth in subdivision (b) of this section.*

(b) Persons in positions set forth in [Appendix 5 of this Title] *the list of special enrollees* who are designated Managerial or Confidential but who are not subject to Attendance Rules for Employees in New York State Departments and Institutions or the Attendance Rules promulgated by the Commissioner of Education, who are employed on an annual salaried basis, who are scheduled to work at least half-time and who are members of a public retirement system of this State or its political subdivisions or an optional retirement program *shall be designated as special enrollees for purposes of this Part and upon such designation shall be eligible to receive the long-term disability benefits set forth in this Part.*

And, SECOND, Appendix 5 of Title 4 of the New York State Code, Rules and Regulations is hereby repealed.

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

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: judith.ratner@cs.state.ny.us

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

#### Consensus Rule Making Determination

Section 78.9 of Title 4 of NYCRR requires a list of all Special Enrollees designated for inclusion in the Income Protection Plan (IPP) in Appendix 5 to Title 4 of NYCRR. Appendix 5 was promulgated following adoption of the IPP for managerial or confidential (m/c) classified service employees.

Special Enrollee positions include certain elected officials, commissioners and agency heads, which have been designated managerial or confidential (m/c), and which are not subject to the Attendance Rules for Employees in New York State Departments or Agencies (or the Attendance Rules promulgated by the Commissioner of Education). Special Enrollees must be employed on an annual salaried basis, scheduled to work at least half-time and members of a public retirement system of this State or its political subdivisions or an optional retirement program. Employees cannot participate in the IPP long-term disability program described in Part 78 of the President's Regulations unless their job title is listed in Appendix 5.

Appendix 5 of Title 4 NYCRR was first adopted by the President of the Civil Service Commission on October 3, 1989 and became effective November 1, 1989. Due to frequent subsequent additions, deletions and revisions of eligible job titles, Appendix 5 is no longer accurate and each revision to the Appendix requires a formal rule making. The proposed amendment to section 78.9 of Title 4 NYCRR deletes all references to Appendix 5 and authorizes the New York State Department of Civil Service to maintain the list of Special Enrollee positions. The Department has already compiled such a list which differs from the list of titles contained in Appendix 5. The Department of Civil Service shall share this updated list and any future updates thereto with State appointing authorities and the IPP insurance carrier. This simplified recordkeeping system shall ensure that all eligible individuals are timely offered IPP Special Enrollee coverage and that no Special Enrollee premiums are paid for ineligible persons or positions. The eligibility requirements for Special Enrollee positions will remain unchanged. As no person is likely to object to the rule as written, this rule shall be advanced as a consensus rule.

#### Job Impact Statement

By amending section 78.9 and repealing Appendix 5 of Title 4 of the NYCRR to update the list of Special Enrollees designated for inclusion in the Income Protection Plan (IPP), this rule will positively impact jobs or

employment opportunities for eligible employees as set forth in section 201-a(2)(a) of the State Administrative Procedure Act (SAPA) by apprising them of eligibility for certain long-term disability insurance benefits associated with their positions. Therefore, a Job Impact Statement (JIS) is not required by section 201-a of such Act.

## Department of Environmental Conservation

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

#### Recreational Harvest and Possession of Summer Flounder and Scup

**I.D. No.** ENV-21-08-00003-EP  
**Filing No.** 375  
**Filing date:** May 5, 2008  
**Effective date:** May 5, 2008

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, 13-0340-b and 13-0340-e

**Finding of necessity for emergency rule:** 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, and Scup as adopted by the Atlantic States Marine Fisheries Commission (ASMFC), and avoid a closure of our recreational and commercial fisheries for summer flounder and scup.

Pursuant to section 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, 13-0340-b and 13-0340-e, which authorize the adoption of regulations for the management of summer flounder and scup, 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 and scup, 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-compli-

ance 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 summer flounder recreational harvest limit for 2008 is 361,000 fish. Under current regulations, New York's projected recreational harvest of summer flounder in 2008 would exceed the state's assigned quota by 46 percent. 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 64 percent for summer flounder and to therefore achieve compliance with the FMP.

For scup, New York manages its recreational scup limit jointly with Connecticut, Rhode Island and Massachusetts as a single region, so that each state's limit is pooled and managed as a unit, with very similar regulations in each state. The region's projected recreational harvest of scup in 2008 would exceed the region's assigned limit by 53 percent. The promulgation of this regulation on an emergency basis is necessary in order for the department to maintain compliance with the FMP for scup and to avoid closure of the scup 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 the required harvest reduction of 53 percent for scup and to therefore achieve compliance with the FMP.

**Subject:** Recreational harvest and possession of summer flounder and scup.

**Purpose:** To ensure that the recreational harvest of summer flounder and scup remain in compliance with existing FMPs.

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

(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	2
		28" TL	
		All other anglers	1
		28" to 40" TL	
		>40" TL	1
		(Total Length) *	
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	Jan. 17-April 30 and Oct. 1-Dec. 17	14" TL	4
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	[None (closed as of September 17, 2007)] May 15-Sept. 1	20.5" 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	All year	17" TL	No limit
(Goosefish)		11" tail length #	
Weakfish	All year	16" TL	6
		10" Fillet length+ 12" Dressed length**	
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)	June [1] 12-Aug. 31	[10.5"] 11" TL	[25] 10
licensed Party/ Charter Boat anglers	Sept. 1-Oct. [31] 15	[10.5"] 11" TL	[60] 45
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Scup (porgy)	[June 1 - Oct. 31]	10.5" 11" TL	[ 25] 10
All other anglers			

	<i>May 24-Sept. 26</i>		
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 August 2, 2008.

**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 11733-3400, (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, 13-0340-b and 13-0340-e 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 and scup.

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 Fishery Management Plans.

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, and Scup as adopted by the Atlantic States Marine Fisheries Commission (ASMFC).

Pursuant to section 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 implemen-

tation 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, 13-0340-b and 13-0340-e, which authorize the adoption of regulations for the management of summer flounder and scup, 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 Atlantic Coast 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 2008 is 360,000 fish. Under current regulations, New York's projected recreational harvest of summer flounder in 2008 would exceed the state's assigned quota by 46 percent. 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 64 percent for summer flounder and to therefore achieve compliance with the FMP.

For the past three years, the states from New York to Massachusetts, which collectively take 97 percent of the recreational scup harvest on the coast, have agreed to a regional management approach whereby the four states adopt identical minimum length, possession limits and open seasons of the same duration (dates vary by state). In 2008, the region is required to achieve a 53 percent reduction in harvest in order to meet the requirements of the FMP for scup. Anglers and representatives from the marine fisheries agencies of each of the four states met in January and agreed to adopt regulations designed to achieve the required reductions.

Specific major changes to the regulations include the following:

1. Summer Flounder (Fluke):

a) Implement an open season for the summer flounder recreational fishery of May 15 through September 1. (The current fishing season for summer flounder is closed.)

b) Implement a minimum size limit 20.5 inches Total Length.

c) Implement a possession limit of four fish.

2. Scup (porgy):

a) Change the open season for the scup recreational fishery from June 1 through October 31 to May 24 through September 26;

b) Change the open season for the scup party/charter boat sector from June 1 through October 31 to June 12 through October 15;

c) Raise the size limit for anglers fishing aboard party and charter vessels from 10.5 inches Total Length to 11 inches Total Length;

d) Lower the possession limit from 25 fish per angler to 10 fish per angler, except that anglers fishing aboard party and charter vessels during the 45-day "bonus season," which runs from September 1 through October 15, may possess up to 45 fish per angler.

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 increased size-limit restrictions on summer flounder and smaller bag limit for scup.

(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:

Summer Flounder.

1. One alternative considered was to keep the summer flounder size limit at 19.5 inches TL with a 2 or 3 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 proposed 109 days to approximately 30 days. 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 summer flounder size limit to 20 inches total length with a 2 fish possession limit and a two-month fishing season. 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 summer flounder regulations).

The "no action" alternative would leave current summer flounder regulations in place (closure) and forfeit any socio-economic benefits to the fishery. This option would, however, be a significant step toward achieving our management objectives for the stock. Because of the much more severe economic impact from leaving the fishery closed as opposed to opening it under tighter restrictions, therefore, this option was rejected.

Scup.

1. An alternative considered and rejected was for New York to separate from the four-state region that has been in place for the last three years and manage its own harvest limit with measures specific only to New York. This strategy was rejected because it is the one currently used for summer flounder management, which is statistically flawed, and would potentially engender more severe restrictions than those under the regional approach. New York benefits from managing its scup fishery as part of a region, and would benefit if the same approach were applied to the summer flounder recreational fishery.

2. No Action (no amendment to scup regulations).

The "no action" alternative would leave current scup regulations in place and defer short-term adverse socio-economic impacts to the fishery. This option would, however, impede the Department's ability to achieve its management objectives for the stock and likely result in a Federal non-compliance determination, which would bring about a closure of all fishing for scup 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 section 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 and scup. The Department has chosen to amend its summer flounder and scup 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 536 licensed party/charter vessels operating in New York during 2007. In 2007, 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 precise number. The Department consulted with the Marine Resources Advisory Council. In addition, many individuals chose to provide their views on summer flounder recreational management measures to the Department via email. The response indicates that there is a belief that a long season, despite the higher size limit for summer flounder and lower possession limit for scup, will provide economic benefits to businesses because their customers will take advantage of the additional opportunities to go fishing for fluke. The responses received by the Department suggest that a long season will result in more charter bookings, more party boat trips and more bait and tackle sales related to fluke fishing. In addition, private individuals (mostly boating anglers) indicated their preference for as long a season as possible, even if it meant raising a size limit and lowering a possession limit, to enable them the opportunity to fish for these species.

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 FMPs for summer flounder and scup and to avoid closure of the summer flounder and scup 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 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 and scup fisheries directly affected by the emergency rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the state. Further, the emergency rule does not impose any reporting, record-keeping, 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. 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 Fishery Management Plan for Summer Flounder and Scup and to avoid closure of the summer flounder and scup fisheries and the economic hardship that would be associated with such closure.

There were 536 licensed party/charter vessels operating in New York during 2007. In 2007, 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 precise 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 an increase in the season length for scup. A longer season will increase the opportunity to fish for scup 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 summer flounder size limit and reduction in the scup possession limit, which will affect the availability of legal-sized fish and may, therefore, negatively affect angler incentive for fishing.

The Department consulted with the Marine Resources Advisory Council. In addition, many individuals chose to provide their views on summer flounder recreational management measures to the Department via email. The response indicates that there is a belief that a long season, despite the higher size limit for summer flounder and lower possession limit for scup, will provide economic benefits to businesses because their customers will take advantage of the additional opportunities to go fishing as long as these seasons are open. In addition, private individuals (mostly boating anglers) indicated their preference for as long a season as possible, even if it meant raising a size limit and lowering a possession limit, to enable them the opportunity to fish for these species. The input received by the Department suggest that the season lengths proposed may offset any economic harm resulting from the other measures.

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 and scup resources is essential to the

survival of the party and charter boat operations and bait and tackle businesses that support 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 rulemaking. Therefore, a job impact statement is not required.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Use of State Lands

**I.D. No.** ENV-21-08-00002-P

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

**Proposed action:** Amendment of sections 190.0 and 190.8 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101(3)(b), (d), 3-0301(1)(b), (d), (i), (2)(m), (v), 9-0105(1), (3), 9-1105(1), 11-2101 and 49-0303(1); and Executive Law, section 816(3)

**Subject:** Use of State lands.

**Purpose:** To protect public safety, manage public use and protect natural resources on State lands.

**Text of proposed rule:** Repeal subdivision (a) of 6 NYCRR section 190.0 and add a new subdivision (a) of section 190.0 to read as follows:

(a) *Except as otherwise provided, the provisions of this Part shall apply to all persons entering upon or using State land under the department's jurisdiction that is administered by the Division of Lands and Forests and the Division of Operations pursuant to but not limited to articles 9, 45, 49, 51 and 52 of the Environmental Conservation Law, including such lands as "unique areas," "State forests," "reforestation areas," "multiple use areas," "forest preserve," "environmentally sensitive lands" or those rights owned and managed by the State as "conservation easements" as defined in section 190.12 of this title.*

Paragraphs (13) and (14) of subdivision 190.0(b) are renumbered paragraphs (14) and (15) and a new paragraph (13) is added to read as follows:

(13) *Structure shall mean any object or improvement constructed, installed or placed on State land to facilitate land use, including but not limited to trails, roads, bridges, ramps, buildings, sheds, lean-tos, picnic tables, permanent tree stands or permanent hunting blinds, posts, rails, fences, pipelines, oil, gas and other well structures, septic systems, fuel tanks, telephone and electric lines, mobile homes, campers, trailers, signs, docks and dams, except that tents, campers, temporary blinds and other objects related to camping, hunting and wildlife viewing shall not be considered structures for the purposes of this definition, provided that such objects are in compliance with rules and regulations governing camping and hunting on State land.*

Subdivision (a) of section 190.8 is repealed and a new subdivision (a) is added to read as follows:

(a) *The use of State land, other than conservation easements under the jurisdiction of the department, or any structures or improvements thereon for private revenue or commercial purposes is prohibited, except as authorized by section 190.7 of this title and Environmental Conservation Law sections 9-0505, 9-0507 and 11-0533.*

Subdivision (g) of section 190.8 is amended to read as follows:

(g) *No person shall deface, remove, destroy or otherwise injure in any manner whatsoever any tree, flower, shrub, fern, fungi or other plant like organisms, moss or other plant, rock, soil, fossil or mineral or object of archaeological or paleontological interest found or growing on State land, except[ing] under permit from the Commissioner of Environmental Conservation and the [Assistant Commissioner for State Museum and Science Service,] Commissioner of Education, pursuant to section 233 of the Education Law as amended by chapter 121 of the Laws of 1958, nor shall songbirds and their nests and other wildlife be molested or disturbed at any time, except during the open season [therefor] for them, if any.*

New subdivisions (r) through (gg) of section 190.8 are added to read as follows:

(r) *No person shall operate or possess a snowmobile on State land outside of the forest preserve except:*

(1) on trails designated and marked by the department as a "Snowmobile Trail" and only when the trail is completely covered with snow and/or ice; and

(2) on frozen lakes and ponds on State land when access to same may be gained by public highways lawfully designated for snowmobile use, or by trails designated and marked by the department as a "Snowmobile Trail."

(s) No person shall operate or possess a bicycle on truck trails, roads, trails or other areas on State land outside of the forest preserve which is posted by the department as closed to bicycle use.

(t) No person shall operate or possess a mechanically propelled vessel other than an electric powered vessel on State land outside the forest preserve on the following bodies of water:

County	State Land	Water Body	UTM East	Coordinate North	USGS Quad
Region 3					
Dutchess	West Mountain State Forest (SF)	Blackberry Pond	614671	4608789	Pawling, Dover Plains, Verbank & Poughquag
Orange	Stewart SF	Beaver Pond	567672	4591920	Maybrook
Orange	Stewart SF	Restoration Pond	567041	4592043	Maybrook
Orange	Stewart SF	Rowe's Pond	566109	4591959	Maybrook
Orange	Stewart SF	Stick Pond	567133	4594384	Maybrook
Orange	Stewart SF	Pittman-Robertson Pond	569356	4594408	Maybrook
Orange	Stewart SF	Wilkins Pond	567762	4594473	Maybrook
Putnam	White Pond	White Pond	606593	4592021	Poughquag & Lake Carmel
Putnam	Multiple Use Area (MUA)				
Putnam	California Hill SF	Waywayanda Lake	601402	4588380	Oscawana Lake
Sullivan	Hickok Brook SF	Hickok Brook Pond	510497	4594568	Highland Lake & Eldred
Region 4					
Columbia	Beebe Hill SF	Barrett Pond	625746	4688111	State Line
Region 6					
Lewis	BonaParte's Cave SF	Green Pond	470119	4890100	Lake BonaParte & Harrisville
Lewis	BonaParte's Cave SF	Duck Pond	470316	4889752	Harrisville
Lewis	BonaParte's Cave SF	Mud Pond	470711	4889576	Harrisville
Oneida	Big Brook SF	Johnny Smith Pond	442498	4808902	Florence
Oneida	Albert J. Woodford SF	Chitting Pond	474260	4751058	Cassville
Region 7					
Broome	Nanticoke Lake MUA	Nanticoke Lake	410712	4687400	Lisle
Cayuga	Bear Swamp SF	Bear Swamp	393547	4733740	Sempronius
Cayuga	Frozen Ocean SF	Frozen Ocean Pond West	383367	4738897	Owasco
Chenango	Genegantslet SF	Balt Pond	436172	4696053	Smithville Flats
Chenango	Long Pond SF	Long Pond	430390	4696715	Smithville Flats
Chenango	Long Pond SF	Round Pond	430942	4694538	Smithville Flats
Chenango	McDonough SF	Kopak's Pond	442482	4707412	East Pharsalia
Chenango	McDonough SF	Whaley Pond	442452	4708923	East Pharsalia
Chenango	Whaupanaucaw SF	Jeffrey's Pond	461480	4717604	Holmesville
Cortland	Gee Brook SF	Calico Pond	422675	4708894	Cincinnati
Madison	Charles E. Baker SF	Woodland Pond	469210	4734506	Hubbardsville
Onondaga	Morgan Hill SF	Shackham Pond	417573	4738216	Tully
Onondaga	Morgan Hill SF	Spruce Road Pond	416026	4739101	Tully
Tioga	Oakley Corners SF	Oakley Corners Pond	404195	4669050	Newark Valley
Tioga	Oakley Corners SF	Oakley Corners Pond South	404158	4668437	Newark Valley
Tompkins & Robinson	Hollow SF	Tri-County Road	396864	4695960	Dryden
Region 8					
Livingston	Ossian SF	Evergreen Pond	268500	4708247	Canaseraga
Steuben	Birdseye Hollow SF	Birdseye Hollow Pond	322949	4693357	Savona
Steuben	Birdseye Hollow SF	Sanford Lake	320620	4688847	Savona
Steuben	Cameron SF	Cameron Pond	301934	4679191	Cameron
Steuben	Cameron Pond	Unnamed	301240	4680940	Towlesville

(u) No person shall enter or remain upon or use any road, trail, facility or any other area on State land that is posted by the department as closed to public use.

(v) No person shall set, light, use or maintain a fire or campfire of any kind on State land which is posted by the department to prohibit campfires. Under no circumstances are campfires allowed on any truck trail, road, trail or parking area on State land.

(w) No person shall store or temporarily deposit any property on State land except pursuant to a department license or permit authorizing such

activity. No person shall discard or abandon any property on State land. However, geocaches, legally placed traps during trapping season, temporary tree stands during big game season, temporary duck hunting blinds during migratory game bird season, and temporary ground blinds during bow hunting season, may be stored on State land provided the geocaches, tree stands and hunting blinds do not injure a tree and they are properly marked or tagged with the owner's name and address.

(x) No person shall erect, construct, occupy or maintain any structure on State land that is affixed to a tree by nails, screws or other means that injure or damage the tree.

(y) No person shall erect, construct, maintain, occupy or use any tree stand that is used, operated, accessed or reached by methods or means which injure or damage a tree on State land, and no person shall gain access to any structure in a tree on State land by means that injure or damage the tree.

(z) No person shall launch a vessel from a trailer directly into a body of water or retrieve a vessel directly from a body of water onto a trailer on State land, which the department has posted as closed to trailer launching of boats.

(aa) The Commissioner may prohibit campfires on State land during periods of high fire danger. No person shall set or maintain a campfire in violation of such Commissioner order, except this prohibition will not apply to liquid or gaseous fuel camping stoves or lamps.

(bb) No person shall possess breakable targets, including but not limited to clay pigeons and bottles, on State land and no person shall target shoot at breakable targets, including but not limited to clay pigeons and bottles, on State land. No person shall discharge firearms on State land posted as closed to target shooting except at legal game during hunting seasons.

(cc) No person shall erect, construct, install, use, maintain or abandon any structure on State land except as authorized by the department.

(dd) On State land, no person shall sponsor, conduct or participate in any organized event of twenty or more people, except under permit from the department. Examples of organized events include, but are not limited to: sponsored hikes; archery and fishing tournaments; snowmobile; bicycle, horse and orienteering races, runs, rides or competitions (including biathlons and triathlons); encampments; and re-enactments.

(ee) On State land, no person shall sponsor, conduct or participate in any research project except under permit from the department. Examples of research include, but are not limited to, population studies, collection of scientific samples, placement of scientific instruments, seismic exploration and archeological studies.

(ff) On State land, no person shall sponsor, conduct or participate in advertising, weddings or film making and other such events, except under permit from the department.

(gg) No person shall possess paint balls or paint ball guns on State land, and no person shall sponsor, conduct or participate in any activities associated with the discharging of paint balls on State land.

**Text of proposed rule and any required statements and analyses may be obtained from:** David M. Forness, Department of Environmental Conservation, Bureau of State Land Management, 625 Broadway, Albany, NY 12233-4255, (518) 402-9428, e-mail: lf190reg@gw.dec.state.ny.us

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

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

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

**Regulatory Impact Statement**

1. Statutory authority

The Environmental Conservation Law (ECL) provides statutory authority for guaranteeing beneficial use of the environment without risk to health and safety (ECL Section 1-0101(3)(b)), preserving the unique qualities of special resources such as the Adirondack and Catskill Forest Preserve (ECL Section 1-0101(3)(d)), promoting and coordinating management of land resources to assure their protection, taking into account the cumulative impact upon all such resources in promulgating any rule or regulation (ECL Section 3-0301(1)(b)), providing for the care, custody, and control of the Forest Preserve and non-Forest Preserve land (ECL Section 3-0301(1)(d) and 9-0105(1)), providing for prevention and abatement of water, land and air pollution (ECL Section 3-0301(1)(i)), managing the real property under the jurisdiction of the Department for the purpose of preserving, protecting and enhancing the natural resource value for which the property was acquired or dedicated (ECL Section 3-0301(2)(v)), adopting rules and regulations to effectuate the purposes and

to secure proper enforcement of the Environmental Conservation Law, and more particularly, adopting rules and regulations prohibiting any person from entering upon State-owned land, or restricting the activities of the public on such land, whenever it determines that a serious fire hazard exists thereon (ECL Section 3-0301(2)(m), Section 9-0105(3) and 9-1105(1)). Furthermore, Executive Law Section 816(3) authorizes the Department to adopt rules and regulations necessary, convenient or desirable to effectuate management planning responsibilities for State land in the Adirondack Park. Finally, the New York State Constitution, Article XIV, Section 1 mandates that the Forest Preserve be "forever kept as wild forest lands."

### 2. Legislative objectives

The Department's purpose in proposing these Part 190 amendments is to improve its stewardship of Forest Preserve and other lands under its jurisdiction. As more fully described below, this proposed rulemaking will meet the legislative objectives of providing for the beneficial use of the environment by the public and preserving and enhancing natural resources. In addition, the proposed rulemaking will protect the public health and safety, as more fully discussed below, by reducing the potential for such dangerous situations as forest fires and snowmobiling accidents. Specifically, this rulemaking proposes regulations for the following public uses of State land:

1. Snowmobiles;
2. Bicycles;
3. Mechanically propelled vessels and trailered boats;
4. Campfires;
5. Tree stands and other structures attached to trees;
6. The storage of personal property;
7. Organized events;
8. Target shooting;
9. Private revenue or commercial purposes;
10. Permanent tree stands; and
11. Gathering fungi or other plant like organisms.

While it is the Department's goal, in keeping with the legislative objectives, to provide for a spontaneous recreational experience on State land, regulatory restrictions must sometimes be imposed to prevent unacceptable impacts resulting from public use, particularly in high use areas where the carrying capacity is exceeded. These proposed amendments will enable the Department to protect natural resources while appropriately managing public use to ensure that the public benefits from a safe and satisfying recreating experience.

For example, the proposed regulations will add clarity with respect to where persons are allowed to operate snowmobiles, bicycles and mechanically propelled vessels will ensure safe enjoyment of State land by directing these uses to areas that have the capacity to withstand such use and avoiding hazardous areas and user group conflicts. The amendments also will enable the Department to direct these uses away from environmentally sensitive areas which cannot withstand such uses.

Adding clarity and precision to the regulations will better educate the public about appropriate uses of State land. In many instances, such education will result in self-regulation by the public, thereby facilitating natural resource protection.

### 3. Needs and benefits

Article XIV, Section 1 of the New York State Constitution mandates that the Forest Preserve be "forever kept as wild forest lands," and Articles 3 and 9 of the ECL mandate the preservation and protection of all state lands under the Department's jurisdiction by empowering the Department to exercise "care, custody and control" over this land. The purpose of this rulemaking is to clarify and strengthen regulations governing public use of both Forest Preserve and non-Forest Preserve lands.

The applicability provisions of Part 190 need to be revised to clarify that the provisions apply to public use on all forest land. Currently, it is unclear whether Part 190 applies to all classifications of forest land, such as unique and multiple use areas. This clarification is needed to allow for the consistent management and effective stewardship of all Department land. Overall public use of State land has increased markedly since the initial adoption of 6 NYCRR Part 190 in 1972. In many areas of the State, private land postings, subdivision development, and increased demands for access to open space have increased public uses of State land. Also, the nature of public recreation has changed since 6 NYCRR Part 190 was adopted in 1972, as recreation has been shifting away from more traditional passive uses such as hunting, fishing and hiking to more high impact activities such as snowmobiling and bicycling. The increased and changing recreational use of State land has resulted in increased conflicts between different user groups, such as hiker and mountain bikers. The proposed restrictions are necessary to address the environmental damage

and public safety issues resulting from unrestrained snowmobile and mountain bicycle use, uncontrolled campfires, permanent tree stands, unauthorized boat launching, significant increases in litter, increased user conflicts, and the unregulated storage of boats, camping equipment, motor vehicles and other personal property on State land. As more people utilize State land, certain roads, trails, campsites, and hunting areas have experienced substantial environmental damage. This increased environmental damage also increases risks to public health and safety. For instance, damage to root systems can kill trees, creating hazards to the public who are recreating beneath them. Unrestrained public recreational activities can cause erosion on fragile mountain slopes, increasing avalanche danger. Further, uncontrolled campfires can lead to the destruction of the understory, cutting of limbs and live trees, and increased danger of forest fires.

Current regulations for control of the public use and operation of snowmobiles, mountain bicycles and mechanically propelled vessels on non-Forest Preserve lands are inadequate. On non-Forest Preserve lands, the absence of regulations for the control of the public use of snowmobiles, bicycles and mechanically propelled vessels hinders the Department's ability to provide the public with a safe and enjoyable recreational experience. These proposed regulations will enable the Department to direct snowmobile, bicycle and mechanically propelled vessel use on non-Forest Preserve lands to areas that have the capacity to withstand such use. Restrictions on snowmobile use also are necessary to avoid hazardous conditions, such as open water. These regulations also give the Department the ability to address user group conflicts which sometimes occur between snowmobilers and cross country skiers, as well as bicyclists and hikers, and canoeists and motorboat operators.

Additionally, the proposed regulations are needed to prohibit public use of State owned land or facilities and assets that the Department closes or imposes restrictions on for public health, safety and environmental reasons.

Consistent with the Department's constitutional and statutory mandate, the proposed regulations are needed to prohibit public use of non-Forest Preserve land or facilities and assets situated thereon for private revenue and commercial purposes. With the exception of the sale of articles by permit on campgrounds, the sale of certain forest products, and the leasing of oil and gas rights and licensed guide services, the use of State land for private revenue and commercial purposes is not authorized by legislation and is inconsistent with the purposes for which these lands were acquired.

The proposed regulation prohibiting fires on truck trails, roads, trails or parking areas, and in other areas where posted by the Department, is necessary to protect public health and safety, particularly during high fire danger conditions.

The proposed regulations are also needed to allow the Department to prohibit, restrict or regulate large organized group events, such as competitive races, tournaments, group hikes biathlons, conventions and similar large gatherings, and to allow the Department to prohibit, restrict or regulate weddings, advertising or film making. Research projects also need to be controlled. The attraction and concentration of large numbers of persons to a particular location on State land has the potential to conflict with the enjoyment of other recreational users and can result in damage to natural resources. Large events, if not carefully planned and controlled, have the potential to degrade the environment and create user group conflicts. Regulation of organized events and research projects, through a permit process, is necessary in order to protect the public health and safety as well as the environment. Many of these impacts can be avoided through the imposition of mitigating conditions as part of the permit process, which might include limiting group size, regulating the location and timing of the event, and imposing conditions for addressing human waste.

The proposed regulatory restrictions on target shooting are necessary to protect the safety of the non-shooting and shooting public. The prohibition on the use of breakable targets will also avoid deposition of debris such as glass and clay targets that can be both unsightly and damaging to the environment and human health.

The addition of fungi and other plant like organisms to the list of items found on State land that no person shall deface, remove, destroy or otherwise injure, is necessary for their protection. Fungi and other plant-like organisms provide ecological benefits, including the decay and decomposition of dead trees, and are an important food source for many animals. Many species of fungi are vulnerable to commercial exploitation. Little or no scientific information exists about the habitat needs and reproductive requirements of these organisms. It is prudent to protect these organisms from human exploitation in the absence of the fundamental scientific knowledge needed to ensure their continued sustainability.

The proposal to prohibit paint ball possession and use will address aesthetic and natural resource impacts. Paint is unsightly, degrades the scenic beauty of State lands, is inconsistent with the purposes for which State land has been acquired by the Department, and requires time-consuming and expensive clean up.

The proposal to prohibit permanent tree stands is needed because their installation harms trees and, on non-Forest Preserve lands, can cause significant decrease in the lumber quality of trees resulting in an economic loss to the State. Permanent tree stands are also extremely dangerous as they are unstable and prone to collapse when occupied by people.

Except for campsites (see 6 NYCRR 190.4), there are currently no regulatory prohibitions on the storage of personal property on State land under the Department's jurisdiction, nor are there any regulatory prohibitions on the erection or construction of structures on State land. Without such regulations, the Department's ability to effectively enforce against such abuses is hindered. The construction of private buildings and structures and the storage of personal property on State land constitutes a trespass on State lands, causes the Department to incur solid waste disposal costs, and creates other management, environmental, and land use problems. Without the proposed regulations, it is difficult to deter many types of inappropriate behavior on State land. For example, numerous boats are routinely stored along the shoreline of lakes and ponds managed by the Department. Many of these boats are ultimately abandoned, vandalized or sunk.

The proposed rulemaking will enhance the Department's ability to protect State land for use by future generations. Protection of open space for public use promotes well being not only for those who recreate on these lands, but also for those who are comforted by the knowledge that the land will be there for future generations who desire to escape the noise and stress of everyday life.

Members of the Department's Forest Preserve Advisory Committee, Accessibility Advisory Committee and the New York State Trails Council and the presidents of Parks and Trails New York, New York State Trappers Association, New York Mountain Bike Coalition, New York Geocachers, New York State Conservation Council, New York Bowhunters, the Conservation Fund Advisory Board, the Conservation Alliance of New York and the New York State Snowmobile Association received notice of the Department's intent to promulgate these regulations along with a copy of the proposed regulations. All parties were invited to submit preliminary comments. The responses that were received were supportive in nature.

#### 4. Costs

No costs to the regulated community or the Department are anticipated to result from the adoption of these regulations except for the insignificant fees and administrative costs associated with applying for and processing Temporary Revocable Permits (TRPs) for the specified recreational activities. There may also be some increased costs to those who are ticketed for violating the new regulations, although typically the Department enforcement personnel initially seek to educate the public about new regulations before enforcing against them. The proposed regulations requiring TRPs merely formalize in regulation the current policy that a TRP be obtained prior to undertaking these specified activities; thus, there are no new TRP application costs that will be incurred by the public.

The Department will have minor costs associated with sign installation. Costs incurred by rescue squads and EMTs should be reduced by the rulemaking because snowmobilers will be more likely to stay on Department approved trails, thereby minimizing the potential for accidents. Further, there will be fewer forest fires if the regulations are adopted, and the costs to the State for fighting fires will therefore be reduced. Also, costs to the Department for disposing of personal property and trash should decrease as a result of the new regulations.

Environmental, social and programmatic costs associated with the abuses discussed above, which are currently internalized, should decrease significantly. For example, the implementation and enforcement of the proposed regulations will reduce the use of certain trails during wet weather, thereby avoiding and mitigating soil erosion, tree decline and death, and stream siltation. The decrease in such hazardous conditions will also enhance public safety. The implementation of the proposed regulations will avoid and mitigate shoreline degradation resulting from irresponsible boat launching, protect timber values or tree health by prohibiting the improper installation of structures or tree stands, protect water quality and habitat of small ponds by banning gas powered motors on designated waterbodies, and decrease the potential risk for forest fires caused by careless human conduct. Currently, the Department has identified more than \$28 million in maintenance, repair and capital improvement needs for its State land under its jurisdiction. The proposed regulations will

lessen environmental degradation and should therefore help to reduce the enormous cost of State land maintenance needs.

#### 5. Local government mandates

This proposal will not impose any program, service, duty or responsibility upon any county, city, town, village, school district or fire district and may lessen the burden for local governments with respect to fire fighting, search and rescue costs.

#### 6. Paperwork

The regulations will not impose any reporting requirements or other paperwork on any private or public entity, with the possible exception of TRPs as explained above in Section 4.

#### 7. Duplication

The proposed regulations will not duplicate, overlap or conflict with other rules and legal requirements of State and Federal governments. The proposed regulations will help to implement current statutory provisions which protect the natural resource values of State lands.

#### 8. Alternative approaches

The "no action" option is not an acceptable alternative because these regulatory changes are essential to public safety and natural resource protection. The absence of these regulations diminishes the Department's ability to be a good steward of the lands entrusted to its "care, custody and control," and diminishes the ability of the Department to provide the public with a safe and rewarding recreational experience.

One possible alternative to restricting snowmobiles to designated trails would be to enforce a speed limit of 25mph on any snowmobile using State land. This action would alleviate some of the current public safety issues. However, environmental degradation caused by snowmobile use in environmentally sensitive areas, use of snowmobiles in unsafe areas, and user conflicts would not be resolved by speed limits. Also, speed limits are extremely difficult to enforce.

It is important to note that the proposed regulation for controlling bicycle use on State land is an "affirmative" regulation which would allow bicycle use on non-Forest Preserve lands except on roads, trails and areas posted as closed. This regulatory approach serves as an efficient land management tool to close only those specific roads, trails or areas that are experiencing environmental damage due to bicycle use or are unsafe for use. The vast majority of State roads, trails and areas will continue to remain open to bicycle use. The alternative of allowing bicycle use only on roads and trails signed as open would be inefficient and would be an ineffective use of staff resources.

The Department believes that allowing the use of electric powered vessels on the bodies of water that are proposed to be closed to mechanically propelled vessels provides a clean alternative to the use of mechanically propelled vessels.

The proposed regulatory prohibition on the use of permanent tree stands on State land (sections 190.8(x) and (y)) is necessary to protect public safety and prevent forest health and economic loss resulting from degradation in timber value. Proposed section 190.8(w) allows for the use of portable tree stands on State land, thus providing an alternative for people who wish to use tree stands as hunting aids.

It is not possible for the Department to propose an alternative to the proposed prohibition relating to the use of State land for private revenue or commercial purposes given the Department's lack of statutory authority for allowing these activities (except as otherwise noted).

An alternative to prohibiting the removal of fungi and other plant-like organisms from State land would be to authorize the commercial collection of these organisms by permit. This alternative is not acceptable, given the absence of scientific knowledge on these organisms.

The proposed restrictions on the storage of personal property on State land provide an exception in the form of a Department permit authorizing such activity. Although such permits would likely be rarely issued, this exception provides an alternative to an absolute prohibition on the storage of personal property on State land.

An alternative to requiring a permit for organized events would be to designate specific areas for these events on State land. This alternative would eliminate, for these activities, the need for permits but could result in overuse and consequent environmental degradation of the designated group activity areas. Additionally, the lack of permitting requirement would not allow the Department to establish conditions in the permit designed to avoid and mitigate potential impacts resulting from an organized event and to require liability protection for the State.

The "no action" alternative with respect to clarifying the applicability section of Part 190 is not acceptable, because the State Legislature mandated that the Department provide for the "care, custody and control" of Forest Preserve and non-Forest Preserve land. Thus, the regulations should

be clear as to the applicability of all classifications of Department Forest land. The lack of clarity and consistent application of public recreation restrictions has the potential to confuse the public with respect to what restrictions apply to a particular classification of land. Also, the lack of clarity has the potential to diminish the Department's ability to achieve the legislative objectives of resource preservation.

9. Federal standard

These regulations do not exceed any minimum standards of the Federal government. There are no relevant federal standards related to these regulations.

10. Compliance schedule

This proposed rulemaking does not impose any compliance requirements or mandates, therefore, there is no compliance schedule. The rulemaking will become effective on the date the notice of adoption is published in the *State Register*.

**Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis for small businesses and local government is not submitted with these regulations because the proposal will impose no adverse economic impact or reporting, record keeping or other compliance requirements on small businesses or local government.

Since there are no identified cost impacts for compliance with the proposed regulations on the part of small businesses and local government, they will bear no economic impact as a result of this proposal. The proposed rule solely relates to the control of public use on state lands.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, record keeping or other compliance requirements on rural areas. The proposed rule solely relates to controlling public use on state lands, thereby ensuring public safety and protection of natural resources.

**Job Impact Statement**

A Job Impact Statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed rule solely relates to controlling public use on state lands, thereby ensuring public safety and protection of natural resources.

Demand Charge, per kW	\$5.00
Energy Charge, per kWh	\$.0329

<sup>1</sup> Purchased Power Adjustment reflected in proposed rates.  
VILLAGE OF SOLVAY  
Proposed Monthly Rates

	Proposed Rates <sup>1</sup>
Security Lighting S.C.5 (Charge per Lamp, per month)	
175 Mercury Vapor	\$6.91
150 High Pressure Sodium	\$4.23
250 High Pressure Sodium	\$6.70
400 High Pressure Sodium	\$8.43
1000 Quartz Floodlights	\$16.85
Street Lighting S.C.5A (Charge per Lamp, per month)	
175 Mercury Vapor	\$6.21
150 High Pressure Sodium	\$3.81
250 High Pressure Sodium	\$6.03
400 High Pressure Sodium	\$7.58

<sup>1</sup> Purchased Power Adjustment reflected in proposed rates.

**Text of proposed rule and any required statements and analyses may be obtained from:** Anne B. Cahill, Corporate Secretary, Power Authority of the State of New York, 123 Main St., 15-M, White Plains, NY 10601, (914) 390-8036, e-mail: secretarys.office@nypa.gov

**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, 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.

## Power Authority of the State of New York

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

**Rates for the Sale of Power and Energy**

**I.D. No.** PAS-21-08-00006-P

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

**Proposed action:** Revision in rates for Village of Solvay.

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

**Subject:** Rates for the sale of power and energy.

**Purpose:** To maintain system's fiscal integrity; this increase in rates does not result from Power Authority rate increase to village.

**Text of proposed rule:**

VILLAGE OF SOLVAY Proposed Monthly Rates	Proposed Rates <sup>1</sup>
Residential S.C.1 Customer Charge	\$1.75
Energy Charge, per kWh	\$.0511
Small Commercial S.C.2 Customer Charge	\$2.50
Energy Charge, per kWh	\$.0480
Small Industrial & School S.C.3	
Demand Charge, per kW	\$4.00
Energy Charge, per kWh	\$.0320
Large Industrial S.C.4	

## Public Service Commission

### ERRATUM

A Notice of Proposed Rule Making, I.D. No. PSC-19-08-00010-P pertaining to Major Rate Filing by Orange and Rockland Utilities, Inc., published in the May 7, 2008 issue of the *State Register* contained an incorrect SAPA no. The correct SAPA no. is 07-E-0949SA1.

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

**Waiver of and/or Extension of Time to Comply with Certain Requirements of Sections of the Commission's Rules**

**I.D. No.** PSC-21-08-00004-P

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

**Proposed action:** The commission is considering a petition from Verizon New York Inc. for waivers of and/or extensions of time to comply with certain requirements of the sections of the commission's rules for proposed cable television franchise agreement.

**Statutory authority:** Public Service Law, section 216(1) and (5)

**Subject:** Waiver of and/or extension of time to comply with certain requirements of sections of the commission's rules.

**Purpose:** To waive/grant extensions of time for commission rule requirements to allow Verizon and the city to implement the agreement.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition from Verizon New York Inc. ("Verizon"), filed May 2, 2008, for waivers of and/or extensions of time to comply with certain requirements of the following sections of the Commission's rules in connection with a proposed cable television franchise agreement between Verizon and the City of New York

(New York, Queens, Kings, Bronx, and Richmond Counties) (the "City"): 16 NYCRR §§ 895.5(b)(1) and 895.5(c) (relating to provision of cable television service throughout the primary service area within five years and line extensions), 895.1(b) (relating to system description and anticipated stages of completion of construction), 895.5(b)(3) and 890.91(b)(1) (relating to installation within seven days of request), and 895.1(f) and 895.4 (Public, Educational, and Governmental access).

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

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

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

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

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

(08-V-0497SA1)

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

**Amended Petition for the Submetering of Electricity**

**I.D. No.** PSC-21-08-00005-P

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

**Proposed action:** The commission is considering a petition dated April 9, 2008 by Herbert E. Hirschfeld, on behalf of West Village Houses, for an amendment to its original petition to submeter of electricity at West Village Houses, New York, NY.

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

**Subject:** Amended petition for the submetering of electricity.

**Purpose:** To consider the request of Herbert E. Hirschfeld, on behalf of West Village Houses, to amend its original petition.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Herbert E. Hirschfeld, on behalf of West Village Houses, for an amendment to its original petition for the submetering of electricity at West Village Houses, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(00-E-1918SA2)

## Racing and Wagering Board

### EMERGENCY RULE MAKING

#### Internet and Telephone Account Wagering on Horseracing

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

**Filing No.** 367

**Filing date:** May 5, 2008

**Effective date:** May 5, 2008

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, Pari-Mutuel Wagering and Breeding Law, sections 101, 222, 301, 401, 518, 520, 1002 and 1012

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

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

**Subject:** Internet and telephone account wagering on horseracing.

**Purpose:** To ensure the integrity of pari-mutuel wagering by adopting licensing and regulatory standards for internet and telephone account wagering.

**Substance of emergency rule:** 5300.1 Definitions and general provisions.

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

5300.2 Account wagering, general.

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

5300.3 Approval of account wagering.

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

5300.4 Establishment of an account.

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

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

5300.5 Official address.

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

5300.6 Changes to account information.

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

5300.7 Right to refuse an account.

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

5300.8 Segregation of funds.

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

5300.9 Conduct of wagering.

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

5300.10 Record of wager; pari-mutuel tickets.

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

5300.11 Withdrawals and other debits to accounts.

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

5300.12 Credits to accounts.

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

5300.13 Account statements.

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

5300.14 Recordkeeping.

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

5300.15 Confidentiality of accounts.

Requirement for keeping accounts confidential, states exceptions.

5300.16 Closing of accounts.

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

5300.17 Dormant accounts.

States rule for distribution of dormant accounts.

5300.18 Surcharge.

States rule for suspension of surcharge on accounts.

5300.19 Vouchers.

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

5300.20 Reports to board.

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

5300.21 Yearly Audit.

Contains minimum frequency requirements for audits.

5300.22 Disputes/Complaints.

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

5300.23 Cooperation with officials.

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

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. RWB-33-07-00005-P, Issue of February 13, 2008. The emergency rule will expire May 14, 2008.

**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, 104, 222, 301, 401, 518, 520, 1002 and 1012. Subdivision 1 of section 101 of the Racing, Pari-Mutuel Wagering and Breeding Law (RPWBL) vests the Racing and Wagering Board (the Board) with general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State. Section 222 authorizes the conduct of pari-mutuel betting on horse races for the purpose of deriving a reasonable revenue for the support of government and to promote agriculture and breeding of horses in New York State. Subdivision 1 of section 301 grants the Board the authority to supervise generally all harness race meetings in New York State at which pari-mutuel betting is conducted and the authority to adopt rules accordingly. Subdivision 1 of section 401 grants the Board the power to supervise generally all quarterhorse race meetings in the state at which pari-mutuel betting is conducted. Section 518 authorizes

off-track pari-mutuel betting so long as it is conducted under the administration of the Board. Subdivision 1 of section 520 grants general jurisdiction to the Board over the operation of all off-track pari-mutuel betting facilities within the state, and directs the Board to issue rules and regulations regarding off-track pari-mutuel betting activity. Subdivision 1 of section 1002 grants the Board general jurisdiction and rulemaking power over the simulcasting of horse races within the state. Subdivision 4 of section 1012 requires that the maintenance and operation of telephone accounts for wagers placed on licensed pari-mutuel racing shall be subject to rules and regulations of the New York State Racing and Wagering Board. Subdivision 4-a of section 1012 was added by Chapter 314 of the Laws of 2006 to expand authorized telephone account wagering to include wired or wireless communications, including the internet.

(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) NEEDS AND BENEFITS: The New York State and the Racing and Wagering Board needs to ensure that the hundreds of millions of dollars that may potentially be wagered by telephone and the Internet in any given year can be accounted for using uniform and reliable methods. These regulatory amendments are necessary to implement the statutory provisions of Chapter 314 of the Laws of 2006, which became effective January 22, 2007 and amended 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) **ALTERNATIVE APPROACHES:** Several alternatives were considered. Board staff considered the Advance Deposit Wagering Rules of the Association of Racing Commissioners International and the telephone account wagering practices currently used in New York State. Board staff also reviewed and considered the account wagering rules of other jurisdictions, including Maryland, Louisiana, Massachusetts, Idaho, South Dakota, Washington, California and New Jersey. All of these similar rules and practices are relatively uniform.

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

Board staff considered the need for general age proof requirements in the rule and determined that none were necessary. Paragraph 1 of subdivision (a) of section 5300.4 requires that an account holder "shall be a natural person eighteen (18) years of age or older." This requirement is consistent with section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law, which states that "No association or corporation which is licensed or franchised by the board shall permit any person who is actually and apparently under eighteen years of age to bet on a horse race conducted by it nor shall such person be permitted to bet at an establishment of a regional corporation conducting off-track betting." The association, corporation or off-track regional corporation is responsible for ensuring that no person - including persons who hold bearer accounts or wish to wager under a bearer account - is under the age of eighteen if they wish to place a bet. Section 5300(a)(1) simply reiterates the section 104 restriction so as to provide clear language and guidance to regulated parties. No additional rules were included in regard to general age proof requirements because Board staff has determined that Section 104 is self-executing and does not require additional rules in order to effectively enforce its provisions. The Board expects regulated entities to apply the same age proof requirements for section 5300.4(a)(1) as it does for section 104 of RPWBL.

(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:** This emergency rule is effective as of the date of submission to the Department of State (May 5, 2008.) This emergency rule making will be effective only through May 14, 2008, on which date the permanent rules will become effective.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment addresses the limited issue of operational and administrative aspects of Internet and telephone account wagering. This rule would affect race track operators and off-track betting corporations throughout New York State, all of who currently offer telephone account wagering. This rule is consistent with current practices employed by such entities, as well as certain disclosure and operational plan requirements of the Racing and Wagering Board. This rule is intended to modify the Board's rules to properly regulate the expansion of pari-mutuel wagering into the realm of the Internet and telephone wagering as authorized by the Legislature in 2006. It does not limit job opportunities. In fact, the increased revenue from pari-

mutuel wagering over the Internet may help preserve and expand economic opportunities in the New York State horse racing industry by capturing revenue that is wagered over the Internet on horseracing in other states and countries. Establishing Internet and telephone account wagering standards does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8) because race track operators and off-track betting corporations are not small businesses. Nor does this rule affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry because the race track operators and off-track betting corporations are able to use the current telephone account wagering and Internet server technology that they currently possess.

**Assessment of Public Comment**

The agency received no public comment since publication of the last assessment of public comment.