

9. Project Sponsor and Facility: J-W Operating Company (Abandoned Mine Pool - Unnamed Tributary to Finley Run), Shippen Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.090 mgd.

10. Project Sponsor and Facility: LHP Management, LLC (Fishing Creek - Clinton Country Club), Bald Eagle Township, Clinton County, Pa. Application for surface water withdrawal of up to 5.000 mgd.

11. Project Sponsor and Facility: Mansfield Borough Municipal Authority, Richmond Township, Tioga County, Pa. Application for groundwater withdrawal of up to 0.079 mgd from Well 3.

12. Project Sponsor and Facility: Seneca Resources Corporation (Arnot No. 5), Bloss Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

13. Project Sponsor and Facility: Southwestern Energy Company (Cold Creek - Giroux), Herrick Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

14. Project Sponsor and Facility: Southwestern Energy Company (Mill Creek - Kennedy), Stevens Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

15. Project Sponsor and Facility: Southwestern Energy Company (Ross Creek - Billings), Stevens Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

16. Project Sponsor and Facility: Southwestern Energy Company (Sutton Big Pond), Herrick Township, Bradford County, Pa. Application for surface water withdrawal of up to 5.000 mgd.

17. Project Sponsor and Facility: Southwestern Energy Company (Tunkhannock Creek - Price), Gibson Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.380 mgd.

18. Project Sponsor and Facility: Southwestern Energy Company (Wyalusing Creek - Ferguson), Wyalusing Township, Bradford County, Pa. Application for surface water withdrawal of up to 1.500 mgd.

19. Project Sponsor and Facility: Southwestern Energy Company (Wyalusing Creek - Campbell), Stevens Township, Bradford County, Pa. Application for surface water withdrawal of up to 1.500 mgd.

20. Project Sponsor: UGI Development Company. Project Facility: Hunlock Power Station, Hunlock Township, Luzerne County, Pa. Application for surface water withdrawal from the Susquehanna River of up to 55.050 mgd.

21. Project Sponsor: UGI Development Company. Project Facility: Hunlock Power Station, Hunlock Township, Luzerne County, Pa. Application for consumptive water use of up to 0.870 mgd.

22. Project Sponsor and Facility: Ultra Resources, Inc. (Elk Run), Gaines Township, Tioga County, Pa. Corrective modification to passby flow condition (Docket No. 20090631).

23. Project Sponsor: United Water Resources. Project Facility: United Water PA-Harrisburg Operation, Newberry Township, York County, Pa. Application for groundwater withdrawal of up to 0.172 mgd from Paddletown Well.

Public Hearing - Projects Scheduled for Rescission Action:

1. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080903), Town of Tioga, Tioga County, N.Y.

2. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080906), Athens Township, Bradford County, Pa.

3. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River) (Docket No. 20080907), Oakland Township, Susquehanna County, Pa.

4. Project Sponsor and Facility: East Resources, Inc. (Tioga River) (Docket No. 20080609), Mansfield, Richmond Township, Tioga County, Pa.

5. Project Sponsor and Facility: Montrose Country Club (Docket No. 20020603), Bridgewater Township, Susquehanna County, Pa.

Public Hearing - Request for Administrative Hearing:

1. Petitioner Delta Borough, York County, Pennsylvania; RE: Delta Borough Public Water Supply Well No. DR-2; Docket No. 20090315, approved March 12, 2009.

Opportunity to Appear and Comment:

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102-2391, or submitted electronically to Richard A. Cairo, General

Counsel, e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, e-mail: srichardson@srbc.net. Comments mailed or electronically submitted must be received prior to September 4, 2009, to be considered.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808

Dated: August 11, 2009

Thomas W. Beauduy

Deputy Director

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## Department of Transportation

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

#### Regulation of the Use of Highways by Large Trucks, Reasonable Access Highways

I.D. No. TRN-34-09-00021-P

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

**Proposed Action:** Amendment of Part 8000 of Title 17 NYCRR

**Statutory authority:** Vehicle and Traffic Law, section 1621(a)(9); Transportation Law, section 14(16) and (18)

**Subject:** Regulation of the use of highways by large trucks, Reasonable Access Highways.

**Purpose:** To reduce large truck traffic and improve safety in local communities and to reduce pavement maintenance costs.

**Text of proposed rule:** Part 8000 of Title 17 of the Codes, Rules and Regulations of the State of New York is hereby amended to add new Sections 8000.8, 8000.9, 8000.10, 8000.11, 8000.12, 8000.13, 8000.14, and 8000.15 as follows:

*Section 8000 Regulatory Intent*

*As the movement of goods by truck continues to play a critical role in New York and across the nation due to evolving transportation patterns in the global economy and the public's rising demand for goods and services, responsible transportation management must balance the impacts of large trucks with the travel needs and quality of life of local communities. Truck transportation should exist in harmony with local economic development, environmental sustainability, and public safety and truck route choice should consider these factors.*

*Federal law precludes the States from enacting or enforcing any law or regulation that denies access to most large trucks between the National Network of highways (primarily the Interstate highways) and terminals and facilities for food, fuel, repairs and rest -- except "on the basis of safety and engineering analysis of the access route." (23 CFR 658.19[i][2][ii][A]) Subject to the criteria prescribed by federal law, the Department of Transportation has evaluated sixty four (64) State highways statewide known to the Department through expressed public concerns, and identified seven (7) State highways on which access to large through trucks can be restricted on the basis of safety and engineering analysis. These highways are set forth in Section 8000.13 of this regulation. The Department of Transportation remains mindful of the need to balance the efficient movement of goods by truck with the need to preserve and to improve the quality of life for people throughout New York State and promulgates Sections 8000.8 through 8000.15 of this regulation to address this need. It is the Department's intent to continue to monitor large truck traffic in the Finger Lakes region, where the seven identified highways are located. If the restrictions prescribed by this statewide regulation cause an unanticipated impact on other highways in the region (such as US Route 20, State Route 34, and others), or if federal law is changed to allow the Department to restrict large truck access to state highways for reasons other than safety and engineering, the Department of Transportation will conduct further analysis of such highways and will take such actions as are appropriate and allowed by federal law.*

*Section 8000.8 Truck*

*A "truck" as used in Sections 8000.9, 8000.10, 8000.11, 8000.12, 8000.13 and 8000.14 of this Part shall mean any combination of vehicles consisting of a tractor-trailer or truck-trailer combination with a trailer length of 45 feet or more, and vehicles authorized by the Federal Surface Transportation Assistance Act of 1982 (as amended), which include, but are not limited to: tractor-semi-trailer combinations with either a semitrailer of 48 feet or twin 28 (or 28 1/2) feet semitrailers, and Special-*

ized Equipment vehicles, as described in Title 23 of the Code of Federal Regulations (CFR), Part 658.13(e).

#### Section 8000.9 Freight Terminal

A "freight terminal" as used in Sections 8000.11, 8000.12, and 8000.13 of this Part shall mean any location where freight either originates or terminates, or is handled in the transportation process, or any location where a commercial motor carrier maintains operating facilities.

#### Section 8000.10 Facility

A "facility" as used in Sections 8000.11, 8000.12, and 8000.13 of this Part shall mean any location that is actually used to provide fuel or service for a truck or food or rest for a truck driver.

#### Section 8000.11 Reasonable Alternative Route

As used in Sections 8000.12 and 8000.13 of this Part, a "reasonable alternative route" is a route that (a) uses State highways that are not Qualifying highways and (b) is at least 25 miles shorter than the shortest alternative route over Qualifying highways. To compare alternative routes, the length of each route shall be measured from the beginning location to the ending location of the route.

#### Section 8000.12 Truck Highway Usage

In furtherance of the intent of this regulation, the Commissioner of Transportation recommends that trucks use the following hierarchy when planning routes:

(a) As a first choice, use the Qualifying highways, as such network is designated by the Commissioner of Transportation and the Federal Highway Administration, as the primary means for reaching freight terminals, facilities and sites for the delivery or pickup of merchandise or other property.

(b) As a second choice, use the State access highways, as such highways are designated by the Commissioner of Transportation, to reach freight terminals, facilities and sites for the delivery or pickup of merchandise or other property if the truck may lawfully use such highway in accordance with the length, width and weight restrictions of the Vehicle and Traffic Law and:

(1) such State access highway is the exclusive highway providing access to the specific freight terminal, facility or site for the pickup or delivery of merchandise or other property; or

(2) such State access highway provides a reasonable alternative route to access the specific freight terminal, facility or sites for the pickup or delivery of merchandise or other property, or to return to the network of Qualifying highways.

(c) Finally, as a third choice, use a State highway that is neither a Qualifying Highway nor a State access highway only if the truck may lawfully use such highway in accordance with the length, width and weight restrictions of the Vehicle and Traffic Law and:

(1) such highway is the exclusive highway providing access to the specific freight terminal, facility or site for the pickup or delivery of merchandise or other property; or

(2) such highway provides a reasonable alternative route to access the specific freight terminal, facility or sites for the pickup or delivery of merchandise or other property or to return to the network of Qualifying highways.

#### Section 8000.13 Reasonable Access Highways

(a) Trucks are excluded from following highways:

(1) NY Route 41 between U.S. Route 11 and US Route 20 in Cortland and Onondaga Counties;

(2) NY Route 41A between NY Route 41 and US Route 20 in Cortland, Cayuga, and Onondaga Counties;

(3) NY Route 90 between U.S. Route 11 and US Route 20 in Cortland and Cayuga Counties;

(4) NY Route 38 between NY Route 90 and the southern Auburn City line in Cayuga County;

(5) NY Route 79 between U.S. Route 11 and the eastern Ithaca City line in Broome, Tioga and Tompkins Counties;

(6) NY Route 89 between the western Ithaca City line and US Route 20 in Tompkins and Seneca Counties;

(7) NY Route 96 between the western Ithaca City line and NY Route 414 and between NY Route 414 and US Route 20 in Tompkins and Seneca Counties.

(b) As an exemption from Section 8000.13 (a), trucks may utilize the excluded highways:

(1) if these highways constitute a reasonable alternative route as defined in Section 8000.11, or

(2) if use of one of these highways is necessary because it provides exclusive access to a specific freight terminal, facility for food, fuel, service or rest, or site for the pickup or delivery of merchandise or other property; or

(3) if, from a freight terminal described in paragraph (b)(2) of this Section, the excluded highways provide the shortest trip to the truck's next freight terminal destination or the shortest trip to the network of Qualifying highways; or

(4) if use of the highway is necessary because highway closures, weather conditions, or other factors render alternative routes inaccessible or unavailable for truck travel.

#### Section 8000.14 Reasonable Access Highway Signs

Routes specified as reasonable access highways pursuant to Section 8000.13 will be identified by signs. Operation of a truck in violation of such exclusion shall be subject to penalties as provided in Section 1110 of the New York State Vehicle and Traffic Law.

#### Section 8000.15

The provisions of Sections 8000.8, 8000.9, 8000.10, 8000.11, 8000.12, 8000.13, and 8000.14 shall be construed in accordance with the applicable provisions of 23 C.F.R. Part 658 and any other provisions of federal law or regulation relating to the use of State highways by trucks and shall not apply to the extent inconsistent with federal laws, regulations or requirements. The Commissioner of Transportation is hereby authorized to suspend sections 8000.8, 8000.9, 8000.10, 8000.11, 8000.12, 8000.13, and 8000.14, in whole or in part, to the extent that the Commissioner of Transportation deems necessary, if the Commissioner determines that any of the provisions of sections 8000.8, 8000.9, 8000.10, 8000.11, 8000.12, 8000.13, and 8000.14 are not consistent with applicable federal laws, regulations, or requirements or that the application of such provisions would jeopardize the State of New York's receipt of federal aid.

**Text of proposed rule and any required statements and analyses may be obtained from:** Yomika Bennett, Director of State and Local Relations, New York State Department of Transportation, 50 Wolf Road, Albany, NY 12232, (518) 457-2345, email: truckregcomment@dot.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.

#### Summary of Regulatory Impact Statement

The Regulatory Impact Statement (SAPA Section 202-a) submitted by NYSDOT provides details on the Statutory Authority, Legislative Objectives, Needs and Benefits, Costs, Local Government Mandates, Paperwork, Duplication, Alternatives, Federal Standards, and Compliance Schedule for the proposed Reasonable Access Highway Regulation. The proposed rule would reduce large truck traffic in local communities, improve community quality of life, safety and mobility for pedestrians and bicyclists, improve overall vehicle safety, reduce large truck related accidents, and reduce overall pavement maintenance costs of these highways.

NYSDOT analyzed existing truck traffic, alternate routes, stakeholder interest, facility type and characteristics, economic impacts, adjacent community impacts, and engineering considerations on 64 state highways statewide. The analysis identified seven such highways on which access to large through trucks can be restricted on the basis of safety and engineering (criteria prescribed by federal law). These highways are identified in Section 8000.13 of the proposed rule text.

There is a demonstrable public health, safety and welfare benefit to be accomplished by the proposed rule, as detailed in the full Regulatory Impact Statement, in Section 3 - Needs and Benefits. An annual estimated 71,000 large truck trips will remain on Interstate routes, which are safer and better equipped for this type of traffic, instead of using highways through identified community settings.

The proposed rule will not prevent delivery or pickup of property. The rule applies only to "through" trucks and will not affect local trips to businesses and consumers. The proposed rule recognizes that highways serve multiple purposes, to best serve public welfare, they must accommodate the economic, historical, natural and unique characteristics of communities, in addition to traffic. The goal is to advance balanced use of these highways and Interstates by large trucks consistent with the Commissioner's function (Subdivision 1 of Section 14 of Transportation Law) to develop a balanced transportation policy.

This regulation balances needs of local communities with the need to deliver goods and will result in large through trucks utilizing more appropriate and available routes. The benefits and costs are presented in NYSDOT's Final Environmental Assessment - Reducing Large Truck Traffic in Local Communities in New York State, November 2008 (<https://www.nysdot.gov/programs/truckpolicy/final-draft-env-assess>) in Chapter 1 Executive Summary. This Assessment was produced by the NYSDOT's Engineering Division. Several alternatives were considered before deciding on the final proposal, as stated in Section 8 Alternatives of the Regulatory Impact Statement.

The rule does not exceed any minimum standards of the federal government for the same or similar subject areas. Federal Law requires that trucks be given reasonable access to terminals and facilities for food, fuel, repair and rest. A "terminal" is defined by Federal regulations as any location where: 1) "Freight either originates, or is handled in the transportation process;" or 2) "Commercial motor carriers maintain operating facilities." (23 CFR 658.5) as described in Section 9, Federal Standards of the Regulatory Impact Statement. The compliance schedule is outlined in

Section 10, large trucks will have 90 days after the regulation is promulgated to achieve compliance.

#### **Regulatory Flexibility Analysis**

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

An unknown number of small businesses, as defined by Section 102(8) of SAPA, having less than 100 employees, would be affected by the rule. These businesses primarily include trucking companies and companies that rely on large trucks.

Freight shippers that rely on trucks as a shipping mechanism would be impacted by increased costs associated with using longer routes. Independent truck drivers and small trucking firms that operate on tighter profit margins would also be impacted by increased costs associated with using longer routes. Some of these companies would incur additional fuel, toll and operating costs for large trucks to use longer routes, which may adversely impact their profit margin. Small businesses receiving truck deliveries may also be adversely impacted by higher rates resulting from the higher costs incurred by trucking companies as a result of the rule.

Larger shipping companies may be more able to pass an increase in cost on to their customers than independent operators. Consumers will not likely see a significant effect on the price of goods where transportation costs are not a significant percentage of overall production costs.

Consumers may experience an increase in the price of goods where transportation costs constitute a higher percentage of overall production, as is the case with agricultural products.

The proposed rule will benefit businesses associated with outdoor recreation, tourism, shopping, dining, and lodging along specified Reasonable Access Highways. The Finger Lakes area is one of New York State's premier tourism areas and there are approximately 36 Bed and Breakfasts and 119 restaurants located along specified Reasonable Access Highways. A reduction in large truck traffic will contribute to an environment conducive to these activities.

Impacts to local governments will be positive. With fewer large trucks on local roads, fewer resources will be needed for pavement repair and addressing quality of life complaints from citizens. Local governments expected to be positively impacted include Cortland, Auburn, Moravia, Aurora, Union Springs, Cayuga, Lisle, Ithaca, Canoga, Trumansburg, Interlaken, Ovid, Waterloo, Seneca Falls, and Skaneateles.

##### **2. Compliance Requirements**

No reporting, recordkeeping or other affirmative acts will be required by local governments to comply with the rule. Small trucking companies may need to conduct additional route planning to comply with the rule. Route planning can be accomplished using any readily available mapping tool such as Microsoft's Streets and Trips, Google Maps, or Mapquest.

##### **3. Professional Services**

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

##### **4. Compliance Costs**

Comments submitted by New York State Motor Truck Association (NYSMTA), on July 14, 2008 to NYSDOT indicate that trucking companies that qualify as small businesses will incur continuing compliance costs as a result of increased fuel usage, increased toll expenses and increased operational expenses. The annual cost for a company will vary, depending upon the actual mileage covered by the company's carriers, the extent of their toll road usage, and the extent to which they have previously used restricted highways as through routes. As determined in NYSDOT's Final Environmental Assessment - Reducing Large Truck Traffic in Local Communities in New York State - November 2008, the estimated expected annual increase in fuel, toll, and operating costs for large through trucks to remain on the Interstate is \$4.2M (2008\$) annually. Not all of the affected companies qualify as small businesses, but in the above-reference memo, NYSMTA states that there are "...nearly 37,000 trucking companies based in New York, most of them are small businesses...". The actual portion of the increase that small business trucking companies would sustain is not known.

Refer to Appendix F of the NYSDOT's Final Environmental Assessment - Reducing Large Truck Traffic in Local Communities in New York State - November 2008 for detailed estimates of fuel and toll costs associated with restricting large through truck traffic on specified highways.

Local governments would not incur any initial or continuing compliance costs.

##### **5. Economic and Technological Feasibility**

Compliance with the rule by small businesses is economically feasible. Some carriers will experience higher costs due to increased fuel consumption, and higher toll expenditures. Travel times will be reduced due to higher speeds and no at grade intersections associated with Interstate routes. NYSMTA predicted in its memo to NYSDOT that carriers will raise the price of their service to cover the costs.

Compliance with the rule by small businesses is technologically feasible. No additional technology is necessary to comply, and safer, alternate routes along the Interstate are well known and available for speci-

fied restricted highways. Global Positioning Navigation systems (GPS) may facilitate compliance for some carriers, but it is not essential to achieve compliance.

##### **6. Minimizing Adverse Impact**

To minimize any unnecessary adverse economic impacts on small businesses, NYSDOT has proposed no unwarranted measures or regulation. The proposed rule is limited to only those trucks greater than 45 feet in length, and those meeting Federal STAA size requirements that use specific state highways with documented quality of life, safety and highway maintenance issues associated with heavy truck traffic. The rule applies only to through truck traffic and trucks using highways as shortcuts. All truck traffic will be provided reasonable access. Local deliveries will still be permitted on these highways to maintain shipping services to and from local businesses.

The proposed rule was redrafted as a result of comments received during the June 10 through October 10, 2008 comment period, to minimize industry impacts. In the original preliminary draft proposal, the burden of determining reasonable usage was on individual carriers and enforcement officials, and the original proposal included all highways in New York State. The proposed rule removes the burden from the carrier/individual driver/enforcement official, for each unique trip, to determine if a route is 'reasonable'. The proposed rule lists highways that have been carefully selected through detailed engineering evaluation as Reasonable Access Highways. The proposed rule uses a clear definition of a reasonable alternative route: "a 'reasonable alternative route' is a route that (a) uses State highways that are not Qualifying highways and (b) is at least 25 miles shorter than the shortest alternative route over Qualifying highways. To compare alternative routes, the length of each route shall be measured from the beginning location to the ending location of the route" For example, if the desired route along a specified Reasonable Access Highway saves 30 miles on a single one way trip, then it is reasonable to use, but if the desired route along a specified Reasonable Access Highway saves only 10 miles, then it would not be reasonable to use as a short cut. Using this "25 mile" definition enables an average person to determine if a route choice is reasonable, clarifies the context of the regulation, and minimizes the potential economic and logistic impacts to the trucking industry by removing longer routes from consideration.

The proposed rule, Section 8000.12, provides a recommendation on how the highway system should be used in New York State by large trucks when considering route selection, large trucks should first use the National Network (Interstate), next designated truck access highways, and then all other highways. Section 8000.12 is advisory in nature, and is consistent with NYSDOT's existing large truck policy.

The rule will have a positive impact on local governments, by minimizing the resources they devote to addressing citizen complaints and highway maintenance issues that originate from heavy truck traffic.

##### **7. Small Business and Local Government Participation**

Small businesses and local governments have been involved in multiple meetings with NYSDOT, including:

Stakeholder Meeting - August 12, 2008

Attendance included representatives from:

- o City of Ithaca
- o Village of Skaneateles
- o Town of Owasco
- o Village of Interlaken
- o City of Auburn
- o Cortland Chamber of Commerce
- o Cayuga County Chamber of Commerce
- o Tompkins County Chamber of Commerce
- o West Shore Home Owners Association, Ithaca
- o Upstate Safety Task Force
- o New York State Motor Truck Association
- o New York State Construction Materials Association
- o Seneca Meadows Inc.

o New York State Department of Agriculture  
Focus Group Meetings- July and August 2008

Meetings with Town Representatives - June and July 2008

Agricultural interest stakeholders - September 23, 2008

o These groups expressed concerns about the need for access to markets and the impacts that the proposed regulation would have on their businesses.

Public Informational Meeting - September 24, 2008

o The meeting was attended by about 150 people, including four elected officials (Senator Nozzolio, Assemblywoman Lifton, Assemblyman Bacalles, and Assemblyman Finch.) Executive Deputy Commissioner Stan Gee provided an overview of the effort, NYSDOT's findings to date, and proposed actions and schedule. The presentation was followed by a public comment period, where about 25 speakers provided comments to the Department. NYSDOT also provided about a dozen informational displays that were staffed with Department experts who were available to answer questions.

Meeting with NYS Motor Truck Association and other Industry Representatives - October 10, 2008

- o Staff answered questions and provided an overview of the engineering justification for the restrictions on the seven Reasonable Access Highways.

Meeting with New York Farm Bureau and the NYS Department of Agriculture and Markets Representatives - November 26, 2008

- o The Farm Bureau has 30,000 members statewide. Their representative indicated there was concern over the proposed rule and how it would affect farm related truck traffic. The Farm Bureau representative provided several example origins and destinations and asked NYSDOT to identify how these would be affected by the proposed rule. NYSDOT staff answered questions and most examples were considered local traffic not impacted by the proposed rule.

In June 2008, NYSDOT also launched a public web site to provide information and an e-mail address to collect feedback on the draft regulation (TruckRegComment@dot.state.ny.us).

NYSDOT has received 22 Letters from local government officials in support of regulating large truck traffic. NYSDOT has also received 75 emails from small businesses opposed to or concerned about any regulations. However a review of this correspondence revealed that large truck traffic for many of these businesses (including agricultural businesses) would be considered local traffic and not effected by the proposed rule.

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

##### **1. Types and Estimated Numbers of Rural Areas**

The highways subject to this proposed regulation for reasonable access for large trucks, and the Interstate routes that large trucks will remain on instead of using these short cuts, are located in seven counties. According to U.S. Census Bureau Data from the 2002 Census, five of these counties qualify as rural areas (with a county population of less than 200,000 people): Cortland County, Cayuga County, Tioga County, Tompkins County, and Seneca County. Within the remaining two counties, Onondaga County and Broome County, there are eight towns, along specified Reasonable Access Highways or the alternative routes along the Interstate that qualify as rural areas (with a population density of 150 people per square mile or less): Spafford, LaFayette, Tully, Lisle, Triangle, Nanticoke, Barker and Colesville.

These highways travel through the following rural area communities, Cortland, Auburn, Moravia, Aurora, Union Springs, Cayuga, Lisle, Ithaca, Canoga, Trumansburg, Interlaken, Ovid, Waterloo, and Seneca Falls. Populations most directly affected include residents of communities on specified Reasonable Access Highways, owners of properties adjacent to these highways, truck operators and drivers, businesses and individuals depending on large truck services, and local and state highway users sharing the right-of-way with large trucks.

Residents along specified Reasonable Access Highways have asserted that large truck traffic negatively impacts their quality of life. Negative impacts include noise and visual disruptions, emissions, and concerns of safety in village and community settings, state tourism areas, school areas, environmentally and historically unique areas, scenic byways (NY Route 89 and NY Route 90) and designated bike routes. There is also concern for increased wear on pavement surfaces in some communities that are responsible for maintenance jurisdiction.

The proposed regulation would improve quality of life for these rural area communities. Neighborhood and community cohesion would be enhanced by reducing the number of large trucks utilizing these highways and minimizing negative impacts attributed to large truck traffic.

##### **2. Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services**

No reporting, recordkeeping or other compliance requirements, or professional services are needed in a rural area to comply with the rule. Since large truck use of the specified highways is allowed for accessing locations for pick up and delivery and for other exceptions, truck operators may need to keep and monitor records concerning their origins and destinations. However, it is expected that such records are kept in the ordinary course of operating trucks or truck fleets.

##### **3. Costs**

No initial capital cost or annual costs will be required to comply with the rule for public entities in rural areas. Some businesses in the trucking industry, and businesses which rely on shipping goods by trucks, which are utilizing these specific highways would be affected by increased fuel costs associated with longer routes. Increased fuel consumption costs would likely be passed on by truck operators to customers. There is no data to as to how many of these businesses are located in rural areas. Economic impacts to businesses located in the rural areas listed in Section 1 (Types and Estimated Number of Rural Areas) have been minimized by specifying only predetermined, signed highways as Reasonable Access Highways, where through trucks are present and where the difference in length resulting from utilizing the National Network (Interstate) route in

less than 25 miles. This approach provides predictability of truck access, which is more likely to be absorbed into the shipping process.

##### **4. Minimizing Adverse Impact**

To minimize any unnecessary adverse economic impacts on rural areas, NYSDOT has proposed no unwarranted measures or regulation. The proposed rule is limited to only those trucks greater than 45 feet in length, and meeting Federal STAA size requirements, that use specific state highways as short cuts, where documented quality of life, safety and highway maintenance issues originate from large truck traffic. The rule applies only to through truck traffic. Local deliveries and reasonable access will still be permitted on these highways, to maintain shipping services to and from local businesses. The proposed rule minimizes adverse economic impacts by specifying only predetermined, signed highways as Reasonable Access Highways, where through trucks are present, and where the difference in length from the utilizing the National Network (Interstate) route is less than 25 miles. This approach provides predictability of truck access, which is more likely to be absorbed into the shipping process.

The rule will have a positive impact on rural areas. It will minimize the resources that local governments devote to addressing citizen complaints and highway maintenance issues originating from large truck traffic. It will enhance safety and quality of life for motorists, residents and visitors in these areas.

##### **5. Rural Area Participation**

Rural areas and local governments have been involved in multiple meetings, including:

###### **a. Stakeholder Meeting - August 12, 2008**

Attendance included representatives from:

- o City of Ithaca
- o Village of Skaneateles
- o Town of Owasco
- o Village of Interlaken
- o City of Auburn
- o Cortland Chamber of Commerce
- o Cayuga County Chamber of Commerce
- o Tompkins County Chamber of Commerce
- o West Shore Home Owners Association, Ithaca
- o Upstate Safety Task Force
- o New York State Motor Truck Association
- o New York State Construction Materials Association
- o Seneca Meadows Inc.
- o New York State Department of Agriculture

###### **b. Focus Group Meetings- July and August 2008**

###### **c. Meetings with Town Representatives - June and July 2008**

###### **d. Agricultural interest stakeholders - September 23, 2008**

- o These groups expressed concerns about the need for access to markets and the impacts that the proposed regulation would have on their businesses.

###### **e. Public Informational Meeting - September 24, 2008**

- o The meeting was attended by about 150 people, including four elected officials (Senator Nozzolio, Assemblywoman Lifton, Assemblyman Bacalles, and Assemblyman Finch.) Executive Deputy Commissioner Stan Gee provided an overview of the effort, NYSDOT's findings to date, and proposed actions and schedule. The presentation was followed by a public comment period, where about 25 speakers provided comments to the Department. NYSDOT also provided about a dozen informational displays that were staffed with Department experts who were available to answer questions.

###### **f. Meeting with NYS Motor Truck Association and other Industry Representatives - October 10, 2008**

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- o The Farm Bureau has 30,000 members statewide. Their representative indicated there was concern over the proposed rule and how it would affect farm related truck traffic. The Farm Bureau representative provided several example origins and destinations and asked NYSDOT to identify how these would be affected by the proposed rule. NYSDOT staff answered questions and most examples were considered local traffic not impacted by the proposed rule.

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#### **Job Impact Statement**

##### **1. Nature of Impact**

The impact that the proposed rule will have on full-time annual jobs and employment opportunities within the next 2 years is unknown.

NYSDOT is requesting the assistance of other state agencies and the public in obtaining information concerning the potential impact on jobs and employment opportunities of the Reasonable Access Highway Regulation.

2. Categories and Numbers Affected

The New York State Motor Truck Association (NYSMTA) stated in a memorandum to NYSDOT, dated July 14, 2008, that 500,000 people in New York are employed by the trucking industry. This figure included executives, office managers, dispatchers, diesel technicians, human resource professionals, safety directors, maintenance directors and drivers. The rule will affect an indeterminate but minimal subset of these jobs and employees, due to the limited number of specified Reasonable Access Highways, and the limited number of large trucks which utilize these highways as through routes.

NYSDOT met with the New York Farm Bureau and the NYS Department of Agriculture and Markets Representatives on November 26, 2008. The Farm Bureau has 30,000 members statewide. Their representative indicated there was concern over the proposed rule and how it would affect farm related truck traffic. The Farm Bureau representative provided several example origins and destinations and asked NYSDOT to identify how these would be affected by the proposed rule. NYSDOT staff answered questions and most examples were considered local traffic and not impacted by the proposed rule.

Another large truck traffic generator in proximity to the proposed Reasonable Access Highways is the Cargill Salt Mine in Lansing, NY. While rail car and smaller trucks carry a majority of the salt, some of the large trucks returning empty from the municipal solid waste landfills transport salt. This salt mine generates approximately 40 large truck trips per day. Most of the trips are estimated to travel from area landfills and use NY Routes 414, 318, 20, 90 and 34B to reach the salt mine and depart using NY Route 13 to I-81. These trucks would not be allowed to use Route 90, and would have to reach the salt mine traveling along either NY 34 or 34b. This would add an additional 3.5 miles to the trip.

The proposed rule benefits businesses associated with outdoor recreation, tourism, shopping, dining, and lodging along specified Reasonable Access Highways, by contributing to an environment conducive to activities such as tourism, shopping, outdoor dining, and lodging. The Reasonable Access highways are located in a frequently visited tourism area, which includes 36 area Bed and Breakfasts and 119 restaurants. Parks and recreational areas are important resources in these communities and residents and tourists select these locations, in part, for their safety, tranquility, aesthetics, recreational opportunities and clean air.

3. Regions of Adverse Impact

The Reasonable Access Highways are located in the Finger Lakes region of the state, and trucking companies operating in this area could potentially use these highways more frequently than other companies. However, there are no data to indicate that this action will have a disproportionate adverse impact on jobs or employment opportunities in any specific geographical region.

4. Minimizing Adverse Impact

To minimize any unnecessary adverse impacts on existing jobs, NYSDOT has proposed no unwarranted measures or regulation. The proposed rule is limited to only those trucks greater than 45 feet in length and those meeting Federal STAA size requirements that use specific state routes with documented quality of life, safety and highway maintenance issues originating with large truck traffic. The rule applies only to through truck traffic, and reasonable access for trucks is still provided. Local deliveries will still be permitted on these routes to maintain shipping services to and from local businesses.

The proposed rule was redrafted as a result of comments received during the June 10 through October 10, 2008 comment period, to minimize industry impacts. In the original proposal, the burden of determining reasonable usage was on individual carriers/enforcement officials, and the original proposal included all highways in New York State. The redrafted proposed rule removes the burden from the carrier/individual driver/enforcement official for each unique trip to determine if a route is 'reasonably necessary.' The redrafted proposed rule lists highways that have been carefully selected through detailed engineering evaluation as Reasonable Access Highways. These specified Reasonable Access Highways would be signed.

The proposed rule uses a clear definition of a reasonable alternative route: "a 'reasonable alternative route' is a route that (a) uses State highways that are not Qualifying highways and (b) is at least 25 miles shorter than the shortest alternative route over Qualifying highways. To compare alternative routes, the length of each route shall be measured from the beginning location to the ending location of the route." For example, if the desired route along a specified Reasonable Access Highway saves 30 miles on a single trip, than it is reasonable to use, but if the desired route along a specified Reasonable Access Highway will save only 10 miles, then it would not be reasonable to use as a short cut. This "25 mile" definition enables an average person to determine if a route

choice is reasonable, clarifies the context of the regulation, and minimizes the potential economic and logistic impacts to the trucking industry by removing longer routes from consideration. It provides predictability of truck access, and is more likely to be incorporated into the shipping process.

This rule does not contain any measures to promote the development of new employment opportunities.

5. (IF APPLICABLE) Self-employment Opportunities

The rule will have no measurable impact on opportunities for self-employment.

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## Triborough Bridge and Tunnel Authority

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### NOTICE OF ADOPTION

**To Establish a New Crossing Charge Schedule for Use of Bridges and Tunnels Adopted by Triborough Bridge and Tunnel Authority**

**I.D. No.** TBA-24-09-00004-A

**Filing No.** 932

**Filing Date:** 2009-08-11

**Effective Date:** 2009-08-11

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

**Action taken:** Repeal of section 1021.1; and addition of new section 1021.1 to Title 21 NYCRR.

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

**Subject:** To establish a new crossing charge schedule for use of bridges and tunnels adopted by Triborough Bridge and Tunnel Authority.

**Purpose:** To increase crossing charges in amounts smaller than those enacted in prior Part 1021.1, effective March 27, 2009.

**Text or summary was published** in the June 17, 2009 issue of the Register, I.D. No. TBA-24-09-00004-EP.

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

**Text of rule and any required statements and analyses may be obtained from:** Joyce Mulvaney, Director of Public Affairs, Triborough Bridge and Tunnel Authority, 2 Broadway, 22nd Floor, New York, NY 10004, (646) 252-7416, email: jmulvaney@mtabt.org

**Assessment of Public Comment**

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

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## Urban Development Corporation

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### EMERGENCY RULE MAKING

**Investment Opportunity Fund Program**

**I.D. No.** UDC-34-09-00010-E

**Filing No.** 926

**Filing Date:** 2009-08-07

**Effective Date:** 2009-08-07

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

**Action taken:** Addition of Part 4246 to Title 21 NYCRR.

**Statutory authority:** Urban Development Corporation Act, section 5(4); L. 2008; ch. 57; part QQ, section 16p; L. 1968, ch. 174

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