

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Special Enrollees Designated for Inclusion in the Income Protection Plan

I.D. No. CVS-27-03-00003-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 Appendix 5 of Title 4 NYCRR.

Statutory authority: Civil Service Law, art. 10

Subject: Special enrollees designated for inclusion in the income protection plan.

Purpose: To add a title to and delete a title from the list.

Text of proposed rule: RESOLVED, That Appendix 5 of the Regulations of the Department of Civil Service (President's Regulations), Special Enrollees Designated for Inclusion in the Income Protection Plan, be and hereby is amended as follows:

1. by deleting therefrom the following subheading and title:
Business Permits and Regulatory Assistance, Office of
Director
2. by adding thereto the following subheading and title:
Governor's Office of Regulatory Reform
Director of Regulatory Reform

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6210, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: Daniel E. Wall, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: dew@cs.state.ny.us

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

Consensus Rule Making Determination

The Governor's Office of Regulatory Reform (GORR) was established in 1995 as a result of Executive Order #20. Among other things, GORR assumed the functions of the Office of Business Permits and Regulatory Assistance (OBPRA) which had been abolished. However, Appendix 5 was never amended to substitute the Director of Regulatory Reform, for the Director, OBPRA, on the List of Special Enrollees Designated for Inclusion in the Income Protection Plan in Appendix 5. Since the proposal constitutes a technical correction to Appendix 5, we have determined that no person is likely to object to the proposed change as written. Therefore, the proposed rule is advanced as a consensus rule pursuant to section 202(1)(b)(i) of the State Administrative Procedure Act (SAPA).

Job Impact Statement

Since the proposal simply substitutes the Director of Regulatory Reform, in the Governor's Office of Regulatory Reform, for the Director, Office of Business Permits and Regulatory Assistance, on the list of persons authorized to participate in the Income Protection Plan, the rule will not have a "substantial adverse impact on jobs and employment opportunities" as set forth in section 201-a(2)(a) of the State Administrative Procedure Act. Therefore, a Job Impact Statement (JIS) is not required by section 201-a of such Act.

Department of Environmental Conservation

NOTICE OF ADOPTION

Surface Coating Processes

I.D. No. ENV-04-03-00016-A

Filing No. 633

Filing date: June 23, 2003

Effective date: 30 days after filing

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

Action taken: Amendment of sections 200.1, 200.9 and Part 228 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303 and 19-0305

Subject: Surface coating processes.

Purpose: To reduce emissions of volatile organic compounds from surface coating processes to the atmosphere that lead to the formation of ozone.

Substance of final rule: The 6 NYCRR Part 228 (Part 228) and 6 NYCRR Part 200 (Part 200) amendments mark the latest in a sustained series of actions undertaken by New York State in concert with the U.S. Environmental Protection Agency and other states to control emissions of ozone precursors, nitrogen oxides and volatile organic compounds (VOCs), so that New York State may attain the one-hour ozone National Ambient Air Quality Standard by the year 2007.

The Part 228 amendments include requirements taken from the Ozone Transport Commission's Mobile Equipment Repair and Refinishing (MERR) model rule, corrections identified by EPA in order to address deficiencies identified in New York's State Implementation Plan, and factual and topographical corrections in order to enhance the rule's readability. The MERR application equipment and compliant coating requirements are the most significant changes in this rulemaking. The MERR application equipment options have a higher transfer efficiency, compared to conventional spray guns, which will provide the majority of the VOC emissions reductions realized by the Part 228 amendments. Compliant coatings are readily available because these coatings are already regulated by 40 CFR Part 59, National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings. Part 200.1 is amended to add methyl acetate, HCFC-225ca, and HCFC-225cb to the list of compounds that are determined not to be VOCs. This will make the Part 200 exemption listing consistent with the counterpart federal VOC exemption list found at 40 CFR Part 51.100. Part 200.9 is amended to incorporate by reference various federal regulatory materials that are newly cited in Part 228.

The effective date of the MERR requirements included in Part 228 is January 1, 2005. This date provides affected facilities sufficient time to make the necessary equipment upgrades.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 228.1(a), (e)(13), (14), (16), (17), 228.2(b)(1), (15), (23), (47), 228.3(b), (c), (d)(3), (e)(1), 228.5(a), (e)(2), 228.7, 228.8, 228.10 and 228.10(g).

Text of rule and any required statements and analyses may be obtained from: Bradford Shaw, Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233-3258, (518) 402-8401, e-mail: bdshaw@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to art. 8 of the State Environmental Quality Review Act, a short environmental assessment form, a negative declaration and a coastal assessment form have been prepared and are on file. Pursuant to art. 5 of the Environmental Conservation Law, this rule has been approved by the State Environmental Board prior to adoption.

Summary of Revised Regulatory Impact Statement

The promulgation of revised 6 NYCRR Part 228 (Part 228) and 6 NYCRR Part 200 (Part 200) are authorized by Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303 and 19-0305 of the Environmental Conservation Law.

The changes to Part 228 and Part 200 mark the latest in a sustained series of actions undertaken by New York State in concert with the U.S. Environmental Protection Agency (EPA) and other states to control emissions of nitrogen oxides (NO_x) and volatile organic compounds (VOCs), which are precursors to the formation of ozone, so that New York State may attain the one-hour ozone National Ambient Air Quality Standard (NAAQS). Promulgating the revisions to Part 228 and Part 200 will, together with counterpart programs established by other states, lower levels of ozone in New York State and decrease the adverse public health and welfare effects caused by this air pollutant.

Ozone in the stratosphere is naturally occurring and desirable because it shields the earth from harmful ultraviolet rays from the sun which can cause skin cancer. Ozone at ground level, however, causes throat irritation, congestion, chest pains, nausea and labored breathing. It aggravates respiratory conditions such as chronic lung and heart diseases, allergies, and asthma. Ozone also damages the lungs and may contribute to lung disease. Unlike other pollutants, ozone is a secondary pollutant - not emitted directly, but formed in the atmosphere by a variety of photochemical reactions involving VOCs and NO_x in the presence of sunlight. NO_x is a by-product of fossil fuel combustion and is emitted primarily by utilities, motor vehicles and major industrial facilities.

On December 16, 1999, EPA issued a proposed rule in which it proposed to conditionally approve the November 1998 One-Hour Ozone Attainment Demonstration for the NYMA/LOCMA (64 FR 70364). This conditional approval required the State to adopt sufficient measures to achieve the level of reductions identified by EPA as necessary for the State to reach attainment by the attainment date in 2007. On April 18, 2000, the Department submitted a proposed SIP revision to EPA which described the

State's strategy aimed at achieving the necessary additional VOC emissions reductions. On February 4, 2002, this enforceable commitment was approved by EPA as part of the State's SIP (67 FR 5170). The revisions to Part 228 and Part 200 will, along with other regulatory actions, enable the State to meet the VOC emissions reduction target identified by EPA.

To assist in the development of the SIP revisions needed to meet the emission reduction shortfall identified by EPA in the December 16, 1999 proposed rule, the Department entered into the "Memorandum of Understanding Among the States of the Ozone Transport Commission Regarding the Development of Specific Control Measures to Support Attainment and Maintenance of the Ozone National Ambient Air Quality Standards" on June 1, 2000. The MOU recognized EPA-identified emission reduction shortfalls in some OTC states' attainment demonstrations, and that regional control measures could best help to address these shortfalls.

The Part 228 changes include requirements drawn from OTC's Mobile Equipment Repair and Refinishing (MERR) model rule, corrections identified by EPA in order to address deficiencies identified in New York's State Implementation Plan, revisions based on comments received from affected industries, and factual and topographical corrections that enhance the rule's readability. The MERR application equipment and compliant coating requirements are the most significant changes in this proposal. The MERR application equipment options have a higher transfer efficiency, compared to conventional spray guns, which will provide the majority of the VOC emission reductions realized by the Part 228 amendments. Compliant coatings are readily available because these coatings are already regulated by 40 CFR Part 59, National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings. The changes to Part 200 include adding methyl acetate, HCFC-225ca, and HCFC-225cb to the list of VOC exemptions listed in 6 NYCRR Part 200.1 and incorporating references, used in the Part 228 amendments, into Part 200.9. The Part 200 VOC exemption list is being revised in order to make it consistent with EPA's VOC exemption list in 40 CFR Part 51.100. The effective date of the MERR requirements included in Part 228 is January 1, 2005. This provides affected facilities sufficient time to make the necessary upgrades.

The Regulatory Impact Statement provides more details on the statutory authority, legislative objectives, needs and benefits, costs, local government mandates, duplication, alternatives, federal standards, compliance schedule, and reference document summaries elements as they pertain to this rulemaking.

Revised Regulatory Flexibility Analysis

1. Effects on Small Businesses and Local Governments.

The New York State Department of Environmental Conservation (Department) has revised 6 NYCRR Part 200 (Part 200), General Provisions, and 6 NYCRR Part 228 (Part 228), Surface Coating Processes. The Part 228 changes include requirements drawn from OTC's Mobile Equipment Repair and Refinishing (MERR) model rule, corrections identified by EPA in order to address deficiencies identified in New York's State Implementation Plan, revisions based on comments received from affected industries, and factual and topographical corrections that enhance the rule's readability. The changes to Part 200 include adding methyl acetate, HCFC-225ca, and HCFC-225cb to the list of VOC exemptions listed in 6 NYCRR Part 200.1 and incorporating references, used in the Part 228 amendments, into Part 200.9. The Part 200 VOC exemption list is being revised in order to make it consistent with EPA's VOC exemption list in 40 CFR Part 51.100.

The majority of the costs associated with the rule revisions will come from the MERR application equipment requirement. The MERR application equipment options have a higher transfer efficiency, compared to conventional spray guns, which will provide the majority of the VOC emission reductions realized by the Part 228 amendments. Also, most of the autobody shops will use High Volume Low Pressure (HVLP) spray guns to comply with this requirement. The Part 228 amendments will specify the same VOC limits for eight refinishing/coating categories as are required by 40 CFR Part 59, National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings. These VOC limits are based on complying products that are currently available on the market.

The Department conducted outreach to some of the industries that would be affected by the Part 228 amendments. Draft copies of the Part 228 and Part 200 amendments and supporting documents were made available to the New York State Environmental Facilities Corporation's Small Business Assistance Program, Empire State Development's Environmental Services Unit, Eastman Kodak Company, Capital District Autobody Association, Executive Director of the NYS Auto Collision Technician Association, and many state and local agencies.

The majority of affected businesses will be MERR facilities. MERR facilities mainly consist of autobody shops and some state and local government agencies. The Executive Director of the NYS Auto Collision Technician Association told the Department that approximately 4,000 autobody facilities are located in New York, 50 percent of these facilities already own HVLP spray guns, and compliant coatings are readily available to these facilities. State and local government agencies will incur the same costs as other MERR businesses located in New York. However, none of the state and local government agencies contacted provided an estimate of the costs associated with complying with the MERR requirements nor the number of state and local government facilities that will be affected by the rule.

2. Compliance Requirements.

The MERR application equipment and compliant coating requirements are the most significant changes in this proposal. According to local autobody shops in the Albany area, the Executive Director of the New York State Auto Collision Technician Association, and the Director of Marketing and Sales for Upstate Auto Body Warehouse, Inc. the HVLP spray equipment is readily available and it pays for itself within a few months of purchase based solely on paint savings. Compliant coatings are readily available because these coatings are already regulated by 40 CFR Part 59, National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings.

3. Professional Services.

The Department does not foresee the need for facilities to contract professional services in order to comply with the Part 228 amendments. This determination is based on feedback from local autobody shops in the Albany area and the Executive Director of the New York State Auto Collision Technician Association.

4. Compliance Costs.

The majority of the costs associated with the rule revisions will come from the MERR application equipment requirement. The MERR application equipment options have a higher transfer efficiency, compared to conventional spray guns, which will provide the majority of the VOC emission reductions realized by the Part 228 and Part 200 amendments. Also, most of the autobody shops will use High Volume Low Pressure (HVLP) spray guns to comply with this requirement. The Part 228 amendments will specify the same VOC limits for eight refinishing/coating categories as are required by 40 CFR Part 59, National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings. These VOC limits are based on complying products that are currently available on the market.

A cost range is provided for MERR equipment upgrades and was based on 50 percent of the 4,000 autobody shop facilities in NY purchasing the economical HVLP package (i.e., \$400) and 50 percent of the facilities purchasing the more expensive HVLP package (i.e., \$600). A cost savings for a reduction in coating used based on the higher transfer efficiency of this equipment, the option of buying conversion kits instead of buying the entire HVLP spray gun, and the possible equipment costs associated with compressor and piping upgrades were not factored into this calculation. Also, some of these facilities will upgrade their spray equipment prior to January 1, 2005 regardless of whether or not the Part 228 amendments include this requirement. Furthermore, the Executive Director of the New York State Auto Collision Technician Association and the Director of Marketing and Sales for Upstate Auto Body Warehouse, Inc. have stated that HVLP spray equipment pays for itself within a few months of purchase based solely on paint savings but that these savings will only be realized by the purchaser of the coatings. Therefore, with an assumed staff of three technicians per facility applying coatings, a conservative cost estimate for complying with this rule statewide would be \$2,400,000 to \$3,600,000.

State and local government agencies will incur the same costs as other MERR businesses located in New York. However, the state and local government agencies contacted did not provide an estimate of the costs associated with complying with the MERR requirements nor the number of state and local government facilities that will be affected by the rule.

The effective date of the MERR requirements included in Part 228 is January 1, 2005. This provides affected facilities plenty of time to make the necessary upgrades.

5. Minimizing Adverse Impacts.

The Department minimized adverse impacts by conducting industry outreach and used the feedback from these parties to make the following revisions to the original Part 228 proposal:

- The Department decided not to include a MERR training and certification requirement because the federal rule doesn't include this requirement, compliant coatings must be used, HVLP spray guns will insure a high transfer efficiency if the maximum air pressure at the gun cap is 10 psig, and the proper use of the equipment and coatings is business driven.
- MERR application equipment definitions were provided for clarity.
- A definition for certification was included which allows facilities to use formulation data to verify the VOC content of coatings. However, Method 24, of 40 CFR 60 Appendix A must be used to determine the actual VOC content of an as applied coating during a compliance demonstration.
- The Part 228 amendments allow facilities to choose the maximum value of 85 percent for the overall removal efficiency instead of having to calculate this efficiency value on a solids-as-applied basis.
- A facility does not have to submit a RACT variance with a permit application if the RACT demonstration has already been approved by the NYSDEC and EPA and a re-evaluation frequency for the RACT determination is included in an issued Title V facility permit or a State facility permit.
- Additional EPA-approved capture efficiency test methods have been referenced in the Part 228 express terms.
- The Part 228 amendments will require facilities to submit capture efficiency test protocols and test methods for approval by the Department and not by EPA.
- The low-use specialty coatings exemption has been revised to only exempt facilities with a total annual surface coating(s) usage of 55 gallons or less. Mobile equipment repair and refinishing facilities will not qualify for this exemption beginning January 1, 2005 because this source category must use the high transfer efficiency application equipment in order to reduce VOC emissions by 10 tons per day.
- NYSDEC received a formal request from the Division for Small Business within the Empire State Development Corporation to allow small sources applying coatings manually, or by handheld spray guns, to demonstrate compliance with VOC emission standards by averaging the VOC content of all the coatings within the system, or by another acceptable method. The previously drafted Part 228 amendments included a provision in 228.3(d) which allowed manually handheld spray guns to be used as a coating system if the application equipment was used to repair or refinish coatings which were originally applied by a coating system. However, the emission differential equation, set forth in paragraph 228.3(d)(3), is complex and most MERR facilities would not be capable of demonstrating compliance on an instantaneous basis. Therefore, the current rulemaking includes Equation 9, as set forth in paragraph 228.3(f)(4), which must be used by MERR facilities to determine the VOC content of a multi-coat. Equation 9 is a straightforward averaging method which assumes a 2 to 1 ratio of clearcoat to basecoat. Also, this equation can be found in the federal rule and in OTC's MERR model rule.

The final Part 228 express terms and supporting documents were revised in order to address comments received during the public comment period. The significant changes made to the Part 228 express terms include:

- Motor vehicle refinishing coating lines will be eligible for the Part 228 exemption set forth in paragraph 228.1(e)(13) until January 1, 2005. Beginning January 1, 2005, mobile equipment repair and refinishing or color matched coating lines will not qualify for this exemption.
- Prior to January 1, 2005, motor vehicle refinishing is exempt from Part 228 if the new criteria in paragraph 228.1(e)(16) are satisfied. Paragraph 228.1(e)(17) provides the same exemption for mobile equipment repair and refinishing or color-matched coatings beginning on January 1, 2005.
- Subjective criteria in subdivision 228.3(b) (e.g., "energy efficient", "minimum auxiliary fuel", "maximum heat recovery") have been removed from this citation.
- Subdivision 228.5(a) requires a facility owner or operator to maintain a record that identifies each air cleaning device that has an overall removal efficiency of at least 85 percent.

- Section 228.10 has been revised to clearly state that the requirements in this section apply only to areas associated with a coating line. Also, subdivision 228.10(g) was revised in order to clarify that spray gun cleaning requirements do not become effective until January 1, 2005.

6. Small Business and Local Government Participation.

The Department conducted outreach to some of the industries that would be affected by the Part 228 amendments. Draft copies of the Part 228 and Part 200 amendments and supporting documents were made available to the New York State Environmental Facilities Corporation's Small Business Assistance Program, Empire State Development's Environmental Services Unit, Eastman Kodak Company, Capital District Autobody Association, Executive Director of the NYS Auto Collision Technician Association, and many state and local agencies. All of the parties contacted provided the Department with feedback except for the state and local government agencies. The feedback was used to make revisions to the original proposal in order to minimize adverse impacts to affected businesses without reducing the effectiveness of the rule.

7. Economic and Technological Feasibility.

The majority of the costs associated with the rule revisions will come from the MERR application equipment requirement. The MERR application equipment options have a higher transfer efficiency, compared to conventional spray guns, which will provide the majority of the VOC emission reductions realized by the Part 228 amendments. Also, most of the autobody shops will use High Volume Low Pressure (HVLP) spray guns to comply with this requirement. The Part 228 amendments will specify the same VOC limits for eight refinishing/coating categories as are required by 40 CFR Part 59, National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings. These VOC limits are based on complying products that are currently available on the market.

A cost range is provided for MERR equipment upgrades and was based on 50 percent of the 4,000 autobody shop facilities in NY purchasing the economical HVLP package (i.e., \$400) and 50 percent of the facilities purchasing the more expensive HVLP package (i.e., \$600). A cost savings for a reduction in coating used based on the higher transfer efficiency of this equipment, the option of buying conversion kits instead of buying the entire HVLP spray gun, and the possible equipment costs associated with compressor and piping upgrades were not factored into this calculation. Also, some of these facilities will upgrade their spray equipment prior to January 1, 2005 regardless of whether or not the Part 228 amendments include this requirement. Furthermore, the Executive Director of the New York State Auto Collision Technician Association and the Director of Marketing and Sales for Upstate Auto Body Warehouse, Inc. have stated that HVLP spray equipment pays for itself within a few months of purchase based solely on paint savings but that these savings will only be realized by the purchaser of the coatings. Therefore, with an assumed staff of three technicians per facility applying coatings, a conservative cost estimate for complying with this rule statewide would be \$2,400,000 to \$3,600,000.

The effective date of the MERR requirements included in Part 228 is January 1, 2005. This gives affected facilities sufficient time to make the necessary upgrades.

Revised Rural Area Flexibility Analysis

The New York State Department of Environmental Conservation (NYSDEC) has revised 6 NYCRR Part 200 (Part 200), General Provisions, and 6 NYCRR Part 228 (Part 228), Surface Coating Processes. To meet an EPA-identified emission reduction shortfall for volatile organic compounds and oxides of nitrogen, NYSDEC is revising Part 228 as well as undertaking several other regulatory initiatives. On July 18, 1997, the U.S. Environmental Protection Agency (EPA) promulgated the eight-hour ozone National Ambient Air Quality Standard (NAAQS). This NAAQS was challenged, and the federal courts remanded, but did not vacate, the standard. EPA subsequently set a schedule for designating areas that would be affected by the eight-hour ozone NAAQS. Although the schedule has been delayed by federal legislation and the Supreme Court vacated EPA's implementation guidance, air quality data shows violations of the eight-hour ozone NAAQS in the New York Metropolitan and Lower Orange County Metropolitan Areas and other areas in upstate New York (Niagara Frontier, Chautauqua and Jefferson counties and the Hudson River Valley).

The Part 228 changes include requirements drawn from OTC's Mobile Equipment Repair and Refinishing (MERR) model rule, corrections identified by EPA in order to address deficiencies identified in New York's State Implementation Plan, revisions based on comments received from affected industries, and factual and typographical corrections that enhance the

rule's readability. The MERR application equipment and compliant coating requirements are the most significant changes in this proposal. The mobile equipment repair and refinishing (MERR) application equipment options have a higher transfer efficiency, compared to conventional spray guns, which will provide the majority of the VOC emission reductions realized by the Part 228 amendments. Compliant coatings are readily available because these coatings are already regulated by 40 CFR Part 59, National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings. The changes to Part 200 include adding methyl acetate, HCFC-225ca, and HCFC-225cb to the list of VOC exemptions listed in 6 NYCRR Part 200.1 and incorporating references, used in the Part 228 amendments, into Part 200.9.

1. Types and estimated number of rural areas:

The MERR requirements in the Part 228 amendments apply statewide, but permitting exemptions are available for facilities located in upstate New York that use less than 25 gallons of VOC and cleaning solvents per month. The Executive Director of the New York State Auto Collision Technician Association has provided NYSDEC with an estimate of the number of affected MERR facilities to be 4000 shops statewide, with 35 percent of these facilities located in upstate New York. Also, the Department has determined that mobile vehicle refinishing coating lines, and mobile equipment repair and refinishing or color-matched coating lines that satisfy the criteria in paragraphs 228.1(e)(16) and 228.1(e)(17), independent of location, are considered insignificant sources of VOC emissions and are exempt from Part 228. Motor vehicle refinishing coating lines will be eligible for the Part 228 exemption set forth in paragraph 228.1(e)(13) until January 1, 2005.

2. Reporting, recordkeeping and other compliance requirements:

The MERR requirements in Part 228 will apply statewide. The compliance requirements are applicable to manufacturers, wholesalers, retailers and professional applicators of MERR coatings, e.g., auto body shops. Manufacturers of MERR coatings need to comply with the VOC content limits. Wholesalers and retailers of mobile equipment repair and refinishing coatings must sell compliant coatings and professional applicators, e.g., auto body shops, must use compliant coatings.

3. Costs:

NYSDEC initiated outreach to autobody facilities that would be affected by the Part 228 amendments in order to assess the possible economic impacts that this rule may have on businesses located in New York State. The costs associated with this rule include the purchase of compliant coatings and upgrading application equipment (i.e., HVLP spray guns), air hoses, and compressors. According to local autobody shops in the Albany area and the Executive Director of the New York State Auto Collision Technician Association, the coatings currently used already meet the MERR VOC limits because Part 228 will require the same VOC content limits as specified in the federal rule (National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings, 40 CFR Part 59). The Executive Director of the New York State Auto Collision Technician Association has provided NYSDEC with cost estimates for equipment upgrades which may be incurred by a facility or by the employees individually. This organization represents autobody shops statewide, and has estimated that 50 percent of the autobody shops in New York currently use HVLP spray guns that comply with the amendments to Part 228. Furthermore, the range in cost per HVLP configuration is \$400 to \$600 (which includes the HVLP spray gun and special hosing) per technician applying coatings. The compressors currently used by a facility should be sufficient for supplying the necessary air pressure to the HVLP spray gun. If not, there may be an additional cost associated with upgrading the compressor and the piping used to deliver the compressed air.

A cost range is provided for equipment upgrades and was based on 50 percent of the 4,000 facilities in NY purchasing the economical HVLP package (i.e., \$400) and 50 percent of the facilities purchasing the more expensive HVLP package (i.e., \$600). A cost savings for a reduction in coating used based on the higher transfer efficiency of this equipment, the option of buying conversion kits instead of buying the entire HVLP spray gun, and the possible equipment costs associated with compressor and piping upgrades were not factored into this calculation. Also, some of these facilities will upgrade their spray equipment prior to January 1, 2005 regardless of whether or not the Part 228 amendments include this requirement. Furthermore, the Executive Director of the New York State Auto Collision Technician Association and the Director of Marketing and Sales for Upstate Auto Body Warehouse, Inc. have stated that HVLP spray equipment pays for itself within a few months of purchase based solely on paint savings but that these savings will only be realized by the purchaser of the coatings. Therefore, with an assumed staff of three technicians per

facility applying coatings, a conservative cost estimate for complying with this rule statewide would be \$2,400,000 to \$3,600,000.

Adoption of changes necessary to gain SIP approval by EPA:

Changes to subdivision 228.3(e)

This requirement has been clarified to state that reasonably available control technology (RACT) variance requests must be submitted to EPA for review and approval, and incorporated into New York's SIP, prior to NYSDEC's approval to use an emission control strategy that will provide a lesser degree of control than that required by the rule. This is the current procedure and requirement for processing RACT variances, even though these requirements are not clearly defined, so there are no additional costs associated with this revision.

Changes to subdivision 228.5(a), (b), and (c)

This change was made in order to satisfy EPA's mandate, which must be fulfilled before EPA will grant complete approval of New York's SIP. Also, the current Part 228 requires Method 24 testing of all surface coatings.

Eastman Kodak Company (Kodak) indicated that absent EPA approval to use formulation data as an alternative method, Kodak would still be required to conduct Method 24 testing for approximately 2500 active coatings manufactured and used in-house. At \$200 for each Method 24 test, it would potentially cost \$500,000 to test all of these active coatings. In addition, new coatings are added as others are dropped throughout the calendar year, thus resulting in on-going costs related to the use of Method 24.

The NYSDEC worked with EPA in order to resolve Kodak's concerns. The Part 228 amendments will allow formulation data to be used to verify the parameters needed to determine the actual VOC content of an as-applied coating. However, Method 24 must be used to determine the actual VOC content of an as applied coating during a compliance demonstration. Also, alternate analytical methods can be used to determine the actual VOC content of an-as applied coating during a compliance demonstration, but require prior approval by NYSDEC and EPA.

There are approximately 21 surface coating processes at Kodak that are subject to Method 24 sampling and analysis requirements. Although each of these processes may include numerous coatings which could be subject to sampling, it is not likely that NYSDEC would sample every coating on a regular basis. Most often a sample would be required as part of an inspection. Since the coating needs to be sampled "as applied", whichever coating is in use at the time of the inspection would be sampled. This means that even in the case of a complete facility-wide inspection, which might occur on an annual basis, where a sample was required at each of the applicable surface coating processes, the maximum number of samples is not likely to exceed 21. Therefore, there is a potential annual cost of \$4,200 for Kodak if a compliant demonstration is requested by NYSDEC.

Addition of a table to section 228.5, along with the associated definitions

This change was made in order to satisfy EPA's mandate which must be fulfilled before EPA will grant complete approval of New York's SIP. Also, the current Part 228 requires capture efficiency tests to be conducted when requested by the NYSDEC. This revision will not require additional capture efficiency tests to be conducted. Instead, it provides the EPA-approved methods that can be used to determine the overall removal efficiency of air pollution control equipment. Therefore, there will not be a cost burden associated with this revision.

Revisions based on feedback from industries affected by the Part 228 and Part 200 amendments:

The revisions will not impose any adverse economic impacts on surface coating businesses. These revisions will not impose any new controls or testing requirements on either existing or new facilities.

Correct factual and typographical errors in the express terms, and enhance readability:

The revisions will not impose any adverse economic impacts on surface coating businesses. This proposal will not impose any new controls or testing requirements for either existing or new facilities.

Costs to State and Local Governments:

State and local governments will incur the same costs as other businesses located in New York. A draft version of the Part 228 amendments were sent to many state and local agencies. NYSDEC wanted to give these agencies the opportunity to comment on the revisions and to determine if there were any major concerns. No concerns were raised by these agencies.

Costs to the Regulating Agency:

There will be no increase in administrative costs to NYSDEC because most of the revisions to these rules are for clarification and do not require expenditure of additional resources to regulate affected businesses.

4. Minimizing adverse impact:

NYSDEC conducted outreach to some of the industries that would be affected by the Part 228 and Part 200 amendments. Draft copies of the Part 228 and Part 200 amendments and supporting documents were made available to the New York State Environmental Facilities Corporation's Small Business Assistance Program, Empire State Development's Environmental Services Unit, Kodak, Capital District Autobody Association, Executive Director of the NYS Auto Collision Technician Association, and many state and local agencies. Some of the Part 228 requirements were revised based on feedback from these entities in order to minimize adverse impacts to the regulated facilities.

5. Rural area participation:

NYSDEC conducted outreach to some of the industries that would be affected by the Part 228 and Part 200 amendments. Draft copies of the Part 228 and Part 200 amendments and supporting documents were made available to the New York State Environmental Facilities Corporation's Small Business Assistance Program, Empire State Development's Environmental Services Unit, Kodak, Capital District Autobody Association, Executive Director of the NYS Auto Collision Technician Association, and many state and local agencies. Also, NYSDEC presented the Part 228 requirements at the Capital District Autobody Association meeting on May 15, 2002. This gave owners, managers, and technicians of autobody shops the opportunity to ask questions and provide suggestions about the Part 228 amendments.

Revised Job Impact Statement

1. Nature of impact:

The New York State Department of Environmental Conservation (Department) has revised 6 NYCRR Part 200 (Part 200), General Provisions, and 6 NYCRR Part 228 (Part 228), Surface Coating Processes. The Part 228 changes include requirements drawn from OTC's Mobile Equipment Repair and Refinishing (MERR) model rule, corrections identified by EPA in order to address deficiencies identified in New York's State Implementation Plan, revisions based on comments received from affected industries, and factual and typographical corrections that enhance the rule's readability. The changes to Part 200 include adding methyl acetate, HCFC-225ca, and HCFC-225cb to the list of volatile organic compound (VOC) exemptions listed in 6 NYCRR Part 200.1 and incorporating references, used in the Part 228 amendments, into Part 200.9. The Part 200 VOC exemption list is being revised in order to make it consistent with EPA's VOC exemption list in 40 CFR Part 51.100.

The majority of the costs associated with the Part 228 amendments will come from the MERR application equipment requirement. The MERR application equipment options have a higher transfer efficiency, compared to conventional spray guns, which will provide the majority of the VOC emission reductions realized by the Part 228 amendments. Also, most of the autobody shops will use high volume low pressure (HVLP) spray guns to comply with this requirement. The Part 228 amendments will specify the same MERR VOC limits for eight refinishing/coating categories as are required by 40 CFR Part 59, National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings. These VOC limits are based on complying products that are currently available on the market.

A cost range is provided for MERR equipment upgrades and was based on 50 percent of the 4,000 autobody shop facilities in New York purchasing the economical HVLP package (i.e., \$400) and 50 percent of the facilities purchasing the more expensive HVLP package (i.e., \$600). A cost savings for a reduction in coating used based on the higher transfer efficiency of this equipment, the option of buying conversion kits instead of buying the entire HVLP spray gun, and the possible equipment costs associated with compressor and piping upgrades were not factored into this calculation. Also, some of these facilities will upgrade their spray equipment prior to January 1, 2005 regardless of whether or not the Part 228 amendments include this requirement. Furthermore, the Executive Director of the New York State Auto Collision Technician Association and the Director of Marketing and Sales for Upstate Auto Body Warehouse, Inc. have stated that HVLP spray equipment pays for itself within a few months of purchase based solely on paint savings but that these savings will only be realized by the purchaser of the coatings. Therefore, with an assumed staff of three technicians per facility applying coatings, a conservative cost estimate for complying with this rule statewide would be \$2,400,000 to \$3,600,000.

The effective date of the MERR requirements included in Part 228 is January 1, 2005. This provides affected facilities adequate time to make the necessary upgrades.

2. Categories and numbers affected:

The Department conducted outreach to some of the industries that would be affected by the Part 228 amendments. Draft copies of the Part 228 amendments and supporting documents were made available to the New York State Environmental Facilities Corporation's Small Business Assistance Program, Empire State Development's Environmental Services Unit, Eastman Kodak Company, Capital District Autobody Association, Executive Director of the NYS Auto Collision Technician Association, and many state and local agencies.

The majority of affected businesses will be MERR facilities. MERR facilities mainly consist of autobody shops and some state and local government agencies. The Executive Director of the NYS Auto Collision Technician Association told the Department that approximately 4,000 autobody facilities are located in New York. 50 percent of these facilities already own HVLP spray guns, and compliant coatings are readily available to these facilities. State and local government agencies will incur the same costs as other MERR businesses located in New York. However, the state and local government agencies contacted did not provide an estimate of the costs associated with complying with the MERR requirements nor the number of state and local government facilities that will be affected by the rule.

3. Regions of adverse impact:

The Department has determined that there will be no impact on jobs and employment opportunities in New York as a result of the Part 228 amendments. This determination is based on feedback from local autobody shops in the Albany area and the Executive Director of the New York State Auto Collision Technician Association. However, some MERR facilities will incur a cost associated with upgrading their coating application equipment.

4. Minimizing adverse impact:

The Department minimized adverse impacts by conducting industry outreach and used the feedback from these parties to make the following revisions to the original Part 228 proposal:

- The Department decided not to include a MERR training and certification requirement because the federal rule doesn't include this requirement, compliant coatings must be used, HVLP spray guns will insure a high transfer efficiency if the maximum air pressure at the gun cap is 10 psig, and the proper use of the equipment and coatings is business driven.
- MERR application equipment definitions were provided for clarity.
- A definition for certification was included which allows facilities to use formulation data to verify the VOC content of coatings. However, Method 24, of 40 CFR 60 Appendix A must be used to determine the actual VOC content of an as applied coating during a compliance demonstration.
- The Part 228 amendments allow facilities to choose the maximum value of 85 percent for the overall removal efficiency instead of having to calculate this efficiency value on a solids-as-applied basis.
- A facility does not have to submit a reasonably available control technology (RACT) variance with a permit application if the RACT demonstration has already been approved by the Department and EPA and a reevaluation frequency for the RACT determination is included in an issued Title V facility permit or a state facility permit.
- Additional EPA-approved capture efficiency test methods have been referenced in the Part 228 express terms.
- The Part 228 amendments will require facilities to submit capture efficiency test protocols and test methods for approval by the Department and not by EPA.
- The low-use specialty coatings exemption has been revised to only exempt facilities with a total annual surface coating(s) usage of 55 gallons or less. Mobile equipment repair and refinishing facilities will not qualify for this exemption beginning January 1, 2005 because this source category must use the high transfer efficiency application equipment in order to reduce VOC emissions by 10 tons per day.

- The Department received a formal request from the Division for Small Business within the Empire State Development Corporation to allow small sources applying coatings manually, or by handheld spray guns, to demonstrate compliance with VOC emission standards by averaging the VOC content of all the coatings within the system, or by another acceptable method. The previously drafted Part 228 amendments included a provision in 228.3(d) which allowed manually handheld spray guns to be used as a coating system if the application equipment was used to repair or refinish coatings which were originally applied by a coating system. However, the emission differential equation, set forth in paragraph 228.3(d)(3), is complex and most MERR facilities would not be capable of demonstrating compliance on an instantaneous basis. Therefore, the current rulemaking includes Equation 9, as set forth in paragraph 228.3(f)(4), which must be used by MERR facilities to determine the VOC content of a multi-coat. Equation 9 is a straightforward averaging method which assumes a 2-to-1 ratio of clearcoat to basecoat. Also, this equation can be found in the federal rule and in OTC's MERR model rule.

The final Part 228 express terms and supporting documents were revised in order to address comments received during the public comment period. The significant changes made to the Part 228 express terms include:

- Motor vehicle refinishing coating lines will be eligible for the Part 228 exemption set forth in paragraph 228.1(e)(13) until January 1, 2005. Beginning January 1, 2005, mobile equipment repair and refinishing or color matched coating lines will not qualify for this exemption.
- Prior to January 1, 2005, motor vehicle refinishing is exempt from Part 228 if the new criteria in paragraph 228.1(e)(16) are satisfied. Paragraph 228.1(e)(17) provides the same exemption for mobile equipment repair and refinishing or color-matched coatings beginning on January 1, 2005.
- Subjective criteria in subdivision 228.3(b) (e.g., "energy efficient", "minimum auxiliary fuel", "maximum heat recovery") have been removed from this citation.
- Subdivision 228.5(a) requires a facility owner or operator to maintain a record that identifies each air cleaning device that has an overall removal efficiency of at least 85 percent.
- Section 228.10 has been revised to clearly state that the requirements in this section apply only to areas associated with a coating line. Also, subdivision 228.10(g) was revised in order to clarify that spray gun cleaning requirements do not become effective until January 1, 2005.

5. Self-employment opportunities:

None of the affected facilities that were contacted, during the Department's outreach efforts, raised any concerns regarding adverse impacts on self-employment opportunities.

Assessment of Public Comment

The Department of Environmental Conservation (Department) held public hearings on the proposed revisions to 6 NYCRR Part 228, Surface Coating Processes, and 6 NYCRR Part 200, General Provisions, on March 3, 5, and 7, 2003 in Long Island City, Albany, and Buffalo, respectively. The Department accepted written comments until close of business March 13, 2003. A summary of the significant comments received and the Department's responses are provided below.

One commenter raised issues regarding whether autobody refinishing businesses that are mobile (use trucks to bring the service to the customer) are required to get a permit or registration for Part 228 regulated emissions. The Department concluded that the person who owns the real property where the emissions are released (the facility) is the person obligated to obtain a permit or registration. The Department provided an exemption from the rule for these activities if specific criteria in paragraphs 228.1(e)(16) or 228.1(e)(17) are satisfied.

One commenter requested that the permit exemption for motor vehicle refinishing activities, provided within the low-use surface coatings exemption set forth in paragraph 228.1(e)(13), should be available until January 1, 2005. The Department made the suggested change.

One commenter stated that the Department should remove references of the EPA guidance document entitled "Guidelines for Determining Capture Efficiency" from paragraph 228.5(e)(2) and section 200.9. The Department retained these references in order to obtain EPA's full approval of New York's State Implementation Plan.

One commenter stated that the recordkeeping requirements in subdivision 228.5(a) should not apply to coating lines that maintain greater than

85 percent overall removal efficiency. The Department decided not to remove the subdivision 228.5(a) recordkeeping requirements.

One commenter noticed that the emission differential calculation in Equation 7 becomes invalid when a coating solution contains no VOC. The Department determined that a VOC density of 7.36 lb VOC/gal VOC must be used under this circumstance.

One commenter requested that the subjective criteria in subdivision 228.3(b) (e.g., "energy efficient", "minimum auxiliary fuel", "maximum heat recovery") be removed from this citation. The Department agreed, and these criteria were removed from this citation.

One commenter asked the Department to revise section 228.10 in order to clearly state that the requirements in this section apply only to areas associated with a coating line. The Department made the suggested revision.

One commenter stated that the Department should remove the phrase "non-leaking" from the requirements in subdivisions 228.10(a) and (b). The Department did not revise these requirements because they are intended to require the use of non-leaking containers. Containers such as cardboard boxes, used to store rags soaked with solvent, would not satisfy this requirement. Also, this requirement should not be interpreted to mean that non-leaking covers must be used in order to contain all VOC vapors within a container.

Department of Health

EMERGENCY RULE MAKING

Adult Day Health Care Regulations

I.D. No. HLT-27-03-00002-E

Filing No. 632

Filing date: June 19, 2003

Effective date: June 19, 2003

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

Action taken: Repeal of Parts 425-427 and addition of new Part 425 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)

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

Specific reasons underlying the finding of necessity: The agency finds that immediate adoption of this rule is necessary to preserve the public health and general welfare. These regulations establish additional standards for operation of adult day health care programs. Recent allegations of large scale Medicaid fraud by an adult day health care provider evidence the need for tighter regulations to assure that quality and necessary services are provided for a dependent and at-risk population and to protect the program from fiscal abuse. The proposed regulations require that registrants of adult day health care programs receive needed care which is based upon an interdisciplinary assessment and an individualized plan of care. This will ensure not only that the individuals are assessed to identify their health needs, but also that their needs are being met with appropriate services and that providers are accountable for a meaningful assessment of the individuals' needs and are accountable and responsible for providing services in accordance with those needs. Compliance with the requirements of the State Administrative Procedure Act for filing of a regulation on a non-emergency basis including the requirements for a period of time for public comment cannot be met because to do so would be detrimental to the health and general welfare of functionally impaired individuals who are registrants of adult day health care programs and also would permit public funds to be expended for health services that are not really needed by the registrants. Interested parties have had an opportunity for comment on the proposed regulations through public meetings as well as meetings with Department staff. The duration of this emergency will extend until permanent regulations are promulgated.

Subject: Adult day health care regulations.

Purpose: To ensure that individuals receive adult day health care when appropriate and that providers are accountable for providing necessary and appropriate care.

Substance of emergency rule: The proposed regulations repeal Parts 425, 426 and 427 of 10 NYCRR and add a new Part 425 to Title 10 NYCRR to replace existing requirements in a more comprehensive framework that provides a systematic approach to care.

The definitions have been expanded to include additional salient terms that better explain the adult day health care program to registrants, providers and other interested parties. The definitions specify that each adult day health care session must operate for a minimum of five hours duration, not including time spent in transportation, but further allow a registrant's individual visit to be for fewer than five hours depending on the assessed needs of the registrant. Unless otherwise permitted by the Department, each approved session will consist of the majority of registrants in attendance for at least five hours. A section on application requirements is explicitly included for ease of reference, and is complimented by a section that identifies the process to be used in applying to make changes in a program, and specifies that a program operator may apply for approval to run a session where the majority of registrants are or will be attending for fewer than five hours.

The proposed regulations provide for general requirements for operation, as well as specified minimum program and service components that must be available. At a minimum, services provided to each registrant must include nutrition services in the form of at least one meal and necessary supplemental nourishment, planned activities and ongoing assessment of each registrant's health status in order to provide coordinated care planning and case management. Additional services may be provided in accordance with the care plan. At least the following program components must be available: case management, interdisciplinary care planning, nursing services, nutrition, social services, assistance with activities of daily living, planned individualized therapeutic or recreational activities, pharmaceutical services, and referrals for dental services. Additionally, specialized services for registrants with AIDS or HIV and religious services and pastoral counseling may be provided.

The regulations contain requirements for the assessment of individuals for admission and for retention in the program, the development of an individualized care plan for each registrant, and prescribe that the provision of needed care be based on the interdisciplinary registrant assessment and individualized care plan.

A section of the regulations provides standards for programs designated as Acquired Immune Deficiency Syndrome (AIDS) adult day health care programs.

The regulations also include standards relating to general records and clinical records, and for confidentiality of records. Provisions are also included for a quality improvement process that provides for at least an annual review of the operator's program evaluation.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 16, 2003.

Text of emergency rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

Section 2803(2) of the Public Health Law authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, to effectuate the provisions of such laws, and to establish minimum standards for health care facilities, including hospitals and nursing homes. This provision of the Public Health Law is the authority by which the Department repeals Parts 425, 426 and 427 and promulgates the new Part 425.

Legislative Objectives:

Section 2803(2) of the Public Health Law is intended to protect the health of residents of the State by establishing minimum standards for the operation of regulated health care providers, including hospitals and nursing homes, and to ensure the delivery of quality health care services. These regulations further the legislative objectives by repealing existing disparate sections of regulations and replacing them with comprehensive regulations that address all pertinent aspects of the adult day health care program. The new regulations clarify the definition of what constitutes an adult day health care program, delineate the services the operator must provide, and define admission criteria. These regulations will strengthen the integrity and structure of the program, and more clearly provide explicit operating standards and responsibilities for providers.

Needs and Benefits:

A work group consisting of adult day health care providers, provider association representatives and Department staff has been working for several months on revision of the adult day health care regulations. These revisions are in part based on the recommendation of a legislatively mandated demonstration, which identified the need for a comprehensive set of regulations. Alleged Medicaid fraud in the adult day health care industry focused the workgroup's efforts and concerns. It became apparent that revision of the current regulations is needed to ensure that registrants of adult day health care programs receive needed care which is based upon an interdisciplinary assessment and an individualized plan of care. This will ensure not only that the individuals receive the care that they need, but also that providers are accountable for a meaningful assessment of the individual's needs and are accountable and responsible for providing services in accordance with those needs.

COSTS:

Costs to Regulated Parties for the Implementation of and Continuing Compliance with these Regulations:

The new regulations recast existing requirements in a comprehensive framework that represents a more systematic approach to care, and in general represent what quality providers have been doing. While any additional costs to providers should be minimal, some programs may need to employ one additional full-time equivalent registered professional nurse at an estimated total annual expense of \$60,000. The Department will permit additional costs, including the additional nurse, to be addressed through an appeal for those programs that are not at the statutory ceiling of 65% of the sponsoring nursing home's rate. The Department has convened a work group including representatives of the industry to develop a system for reimbursement of transportation costs.

Costs to State and Local Governments:

The State and local shares of Medicaid expenditures for the adult day health care program are 25% and 25%, respectively. The new program regulations are revising the admission criteria for adult day health care programs. If individuals are currently inappropriately receiving services in these programs, implementation of these regulations will decrease utilization, which will reduce the Medicaid expenditures associated with adult day health care.

Costs to the Department of Health:

There will be no additional costs to the Department of Health.

Local Government Mandates:

This regulation imposes no program, service, duty or other responsibility upon any city, town, village, school, fire district or other special district except those operating adult day health care programs. They will be subject to the same standards as non-government operators. The regulations will provide counties with alternative placements to help maintain functionally impaired individuals in the community.

Paperwork:

The proposed regulations impose minimal reporting requirements, forms or other paperwork. These requirements are needed to insure care rendered is necessary and is based on an interdisciplinary assessment and an individualized care plan.

Duplication:

There is no duplication of federal or State requirements.

Alternative Approaches:

Questions regarding the fiscal integrity of the adult day health care program necessitate the establishment of standards that protect the program against abuse, while still providing for necessary services for a dependent and at-risk population. One alternative that the Department considered was to include amendments to 10 NYCRR Part 86 governing reimbursement for adult day health care programs. As the result of discussions with regulated parties, the Department determined not to include amendments to 10 NYCRR Part 86, but rather to convene a work group including representatives of the industry to develop a system for reimbursement of transportation costs.

The proposed definition of "operating hours" for an adult day health care program includes a requirement that each approved adult day health care session must operate for a minimum of five hours duration, not including transportation. In order to accommodate concerns raised by providers that some registrants are unable to attend a five hour session because of poor health, frailty or other factors, the Department has modified this requirement so that unless otherwise permitted by the Department, each approved session will consist of the majority of registrants in attendance for at least five hours. The proposed regulations further provide at section 425.3(d) that an operator of an approved adult day health care program may apply to the Department for approval to run a session where

the majority of the registrants are or will be attending fewer than five hours. The Department had considered as an alternative allowing a program to request a waiver from the five hour minimum if it had a registrant or registrants who would attend the adult day health care program for fewer than five hours, but determined that the additional paperwork involved in establishing a waiver process was unnecessary in all such cases and that Department approval would be required only if the majority of the registrants would be attending for fewer than five hours.

Federal Standards:

The rule does not exceed any minimal standards of the federal government for the same or similar subject areas.

Compliance Schedule:

These regulations will be effective upon filing with the Secretary of State. Similar regulations were previously filed by the Department of Health on an emergency basis.

Contact Person:

William Johnson
NYS Department of Health
Office of Regulatory Reform
Empire State Plaza
2415 Corning Tower
Albany, NY 12237
(518) 473-7488
(518) 486-4834 FAX
REGSQNA@health.state.ny.us

Comments submitted to Department personnel other than the contact person may not be included in any assessment of public comment issued for this regulation.

Regulatory Flexibility Analysis**Effect on Small Business and Local Governments:**

For purposes of the Regulatory Flexibility Analysis, small businesses were considered to be nursing facilities with 100 or fewer full-time equivalents. Based on recent financial and statistical data extracted from the RHCF-4 cost reports, 180 nursing facilities were identified as employing fewer than 100 employees. Adult day health care programs are sponsored by nursing facilities. The regulations will apply to any adult day health care operator that may be considered a small business or that is a local government. There are seven (7) adult day health care programs operated by local governments.

Compliance Requirements:

The regulations clarify the reporting and recordkeeping requirements to the extent of specifying the information that must be contained in registrant and program assessment forms, but remove unnecessary yearly reviews, outside committee reviews of program and unnecessary agreements between operators and registrants.

Professional Services:

For most programs, no additional professional services will be necessary to comply with the proposed rule. Some programs may need to employ one additional full-time equivalent registered professional nurse at an estimated total annual expense of \$60,000.

Compliance Costs:

There will be no initial capital costs as a result of compliance with this rule. Adult day health care providers may incur nominal costs for providing additional information relative to registrant assessments and coordination of services.

Minimizing Adverse Impact:

The Department of Health considered the approaches in section 202-b(1) of the State Administrative Procedure Act and found them inapplicable. Exemption of small businesses or local governments from the proposed rule would not serve the purposes of assuring quality and necessary services to all program registrants and protecting the program from inappropriate admission and fiscal abuse. All adult day health care programs must comply with these requirements.

Economic and Technical Feasibility Assessment:

The proposed rule would impose no compliance requirements which would raise technological or feasibility issues.

Small Business and Local Government Input:

Numerous meetings were held with representatives from the industry and their provider associations since the regulation was first filed as an emergency. These meetings, plus the public comment period during the joint meeting of the Codes and Regulations Committee and the Fiscal Policy Committee of the State Hospital Review and Planning Council, have provided the Department an opportunity to address their major concerns and change the proposed regulations accordingly. Representatives of adult day health care providers and provider associations, including those

that may be considered small businesses, were consulted during the development of the proposed rule through direct meetings.

Local governments and small businesses were originally given notice of this proposal by its inclusion on the agenda of the State Hospital Review and Planning Council for its February 3, 2000 meeting and subsequently in a joint meeting of the Codes and Regulations Committee and Fiscal Policy Committee of the State Hospital Review and Planning Council on March 23, 2000, and its inclusion on the agenda of the State Hospital Review and Planning Council for its April 6, 2000 meeting, as well as by its inclusion on the agenda of the May 18, 2000 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, and its inclusion on the agenda of the State Hospital Review and Planning Council for its June 1, 2000 meeting, its inclusion on the agenda of the September 21, 2000 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its subsequent inclusion on the agenda of the State Hospital Review and Planning Council for its October 5, 2000 meeting, its inclusion on the agenda of the November 16, 2000 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, and its inclusion on the agenda of the State Hospital Review and Planning Council for its December 7, 2000 meeting, its inclusion on the agenda for the January 18, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its February 1, 2001 meeting, its inclusion on the agenda for the May 24, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its June 7, 2001 meeting, its inclusion on the agenda for the July 15, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council which was subsequently canceled with the decision being made to place renewal of the emergency filing on the agenda of the State Hospital Review and Planning Council of its August 2, 2001 meeting, and by its inclusion on the agenda for the November 15, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its December 6, 2001 meeting, its inclusion on the agenda for the January 24, 2002 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its February 7, 2002 meeting, its inclusion on the agenda of the May 23, 2002 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, its inclusion on the agenda of the State Hospital Review and Planning Council for its June 6, 2002 meeting, its inclusion on the agenda of the State Hospital Review and Planning Council for its August 7, 2002 meeting and its inclusion on the agenda of the State Hospital Review and Planning Council for its December 5, 2002 meeting, its inclusion on the agenda of the January 23, 2003 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, its inclusion on the agenda of the State Hospital Review and Planning Council for its February 6, 2003 meeting, its inclusion on the agenda of the May 22, 2003 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council, its inclusion on the agenda of the State Hospital Review and Planning Council for its June 5, 2003 meeting.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming

Genesee Greene	St. Lawrence Saratoga	Yates
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The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

The proposed regulations do not impose any new reporting requirements, forms or other paperwork, although they do specify information that is required for reports and forms to be maintained by providers. The regulations clarify the reporting and recordkeeping requirements to the extent of specifying the information that must be contained in registrant and program assessment forms, but remove unnecessary yearly reviews and outside committee reviews of program and unnecessary agreements between operators and registrants.

Professional Services:

For most programs, no additional professional services will be necessary to comply with the proposed rule. Some programs may need to employ one additional full-time equivalent registered professional nurse at an estimated total annual expense of \$60,000.

Compliance Costs:

There will be no initial capital costs as a result of compliance with this rule. Adult day health care providers may incur nominal costs for providing additional information relative to registrant assessments and coordination of services.

Minimizing Adverse Impact:

In general, the regulations attempt to minimize the adverse economic impact on all providers, including those operating in rural areas. The Department of Health considered the approaches in section 202-bb(2) of the State Administrative Procedure Act and found them inapplicable. Exemption of rural providers from the proposed rule would not serve the purposes of provision of assuring quality and necessary services to all program registrants and protecting the program from inappropriate admission and fiscal abuse. All adult day health care programs must comply with these requirements.

Opportunity for Rural Area Participation:

Representatives of adult day health care providers and associations, including those that operate in rural areas, were consulted during the development of the proposed rule through direct meetings. In addition, the Department held numerous meetings with the regulated entities to hear their concerns. Those concerns and those heard at the public joint meeting of the Code and Regulations Committee and the Fiscal Policy Committee of the State Hospital Review and Planning Council were addressed by changes in these regulations. Rural areas were originally given notice of this proposal by its inclusion in the agenda of the State Hospital Review and Planning Council for its February 3, 2000 meeting, and subsequently in a joint meeting of the Code and Regulations Committee Fiscal Policy Committee of the State Hospital Review and Planning Council on March 23, 2000, and its inclusion in the agenda of the State Hospital Review and Planning Council for its April 6, 2000 meeting, a meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council on May 18, 2000, and its inclusion in the agenda of the State Hospital Review and Planning Council for its June 1, 2000 meeting, its inclusion on the agenda of the September 21, 2000 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and by its subsequent inclusion on the agenda for the October 5, 2000 meeting of the State Hospital Review and Planning Council, its inclusion on the agenda for the November 16, 2000 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and on the agenda of the State Hospital Review and Planning Council for its December 7, 2000 meeting, its inclusion on the agenda for the January 18, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its February 1, 2001 meeting, its inclusion on the agenda for the May 24, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council and its inclusion on the agenda of the State Hospital Review and Planning Council of its June 7, 2001 meeting, its inclusion on the agenda for the July 15, 2001 meeting of the Codes and Regulations Committee of the State Hospital Review and Planning Council which was subsequently canceled with the decision being made to place renewal of the emergency filing on the agenda of the State Hospital Review and Planning Council of its August 2, 2001 meeting, and by its inclusion on the agenda for the November 15, 2001 meeting of the Codes and Regulations Committee of

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Exemption of adult day health care providers in rural areas from the proposed rule would not serve the purposes of assuring quality and necessary services to all program registrants and protecting the program from fiscal abuse. An adult day health care program must comply with these requirements.

Job Impact Statement

A Job Impact Statement is not necessary because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. These regulations establish additional standards for operation of adult day health care programs and are not expected to result in reductions of staff providing necessary care.

Hudson River Park Trust

NOTICE OF ADOPTION

Regulations of Payments

I.D. No. HPT-04-03-00003-A

Filing No. 630

Filing date: June 19, 2003

Effective date: July 9, 2003

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

Action taken: Addition of Part 753 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 2880; Hudson River Park Act, L. 1998, ch 592, section 10.4

Subject: Regulations governing the making of prompt payments to those who contract with the Hudson River Park Trust.

Purpose: To set forth a prompt payment schedule and procedure.

Text or summary was published in the notice of proposed rule making, I.D. No. HPT-04-03-00003-P, Issue of January 29, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Laurie Silberfeld, Hudson River Park Trust, Pier 40, West St. at W. Houston St., New York, NY 10014, (917) 661-8740, e-mail: Lsilberfeld@hrpt.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Leases, Licenses and Other Agreements

I.D. No. HPT-04-03-00004-A

Filing No. 631

Filing date: June 19, 2003

Effective date: July 9, 2003

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

Action taken: Addition of Part 752 to Title 21 NYCRR.

Statutory authority: Hudson River Park Act, L. 1998, ch 592, sections 7.1(d)(ii) and 7.11

Subject: Regulations governing leases, licenses, concession agreements and other agreements for facilities or properties under the jurisdiction of the Hudson River Park Trust.

Purpose: To establish criteria.

Text or summary was published in the notice of proposed rule making, I.D. No. HPT-04-03-00004-P, Issue of January 29, 2003.

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

Text of rule and any required statements and analyses may be obtained from: Laurie Silberfeld, Hudson River Park Trust, Pier 40, West St. at W. Houston St., New York, NY 10014, (917) 661-8740, e-mail: Lsilberfeld@hrpt.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Insurance Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Uniform Classification and Reporting of Real Estate Operations of Domestic Insurers

I.D. No. INS-27-03-00001-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 repeal Part 76 (Regulation 28) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301

Subject: Uniform classification and reporting of real estate operations of domestic insurers.

Purpose: To repeal an obsolete regulation whose subject matter is now treated in Regulation 172 (Part 83).

Text of proposed rule: Text of Repeal of Insurance Department Regulation No. 28 (11 NYCRR 76)

11 NYCRR 76 (Regulation No. 28) is hereby repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Joanna Rose, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: jrose@ins.state.ny.us

Data, views or arguments may be submitted to: John Gemma, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5276, e-mail: jgemma@ins.state.ny.us

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

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

Consensus Rule Making Determination

The agency has determined that no person is likely to object to the rule as written since the only change being made is the repeal of an obsolete regulation (Part 76), originally promulgated in 1947, relating to uniform classification and reporting of real estate operations by domestic insurers.

The subject matter of this regulation is now covered in Regulation No. 172 (Part 83), entitled "Financial Statement Filings and Accounting Practices and Procedures", and in Statement of Statutory Accounting Principle (SSAP) No. 40, entitled "Real Estate Investments", as explained in Section

83.3(c) and Section 83.4(l) of Part 83. The subject is also treated in the more modern and specific language in the instructions for Schedule A of the annual statement, involving real estate transactions.

Job Impact Statement

The proposed rule changes will have no impact on jobs and employment opportunities in New York State. The change repeals Regulation No. 28 (Part 76), which is obsolete. The repeal merely reflects the fact that the statement of accounting principles regarding real estate investments and operations, as set forth in Part 76, is no longer utilized and has been superseded by the provisions of Regulation No. 172 (Part 83) and Statement of Statutory Accounting Principle (SSAP) No. 40, entitled "Real Estate Investments", as explained in Section 83.3(c) and Section 83.4(l) of Part 83. The subject matter of Part 76 is also covered by the more modern and specific language in the instructions for Schedule A of the annual statement, involving real estate transactions.

Department of Motor Vehicles

NOTICE OF ADOPTION

Wyoming County Motor Vehicle Use Tax

I.D. No. MTV-17-03-00005-A

Filing No. 634

Filing date: June 24, 2003

Effective date: July 9, 2003

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

Action taken: Addition of section 29.12(q) to Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

Subject: Wyoming County motor vehicle use tax.

Purpose: To impose the tax.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-17-03-00005-P, Issue of April 30, 2003.

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

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

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Vision Testing

I.D. No. MTV-27-03-00004-P

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

Proposed action: Amendment of section 5.4 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 502(6)(a)

Subject: Vision testing.

Purpose: To modify vision testing requirements.

Text of proposed rule: Subdivision (a) of section 5.4 is amended to read as follows:

(a) The vision test may be administered by the Department of Motor Vehicles or another state's department of motor vehicles or by a licensed physician, physician assistant, optometrist, ophthalmologist, optician or registered nurse. However, the Department of Motor Vehicles or another state's department of motor vehicles shall only test for a minimum visual acuity of 20/40 (Snellen) in either or both eyes. In order for a statement from a licensed physician, physician assistant, optometrist, ophthalmologist, optician or registered nurse to be acceptable, it must be on a letterhead or prescription blank imprinted with the name, address and title of the authorized person making the certification, or on a form furnished by the

Commissioner of Motor Vehicles, and such statement must contain the patient's full name, signature, address, date of birth, sex, whether test results were obtained with or without corrective lenses, date of test, signature and license number of person authorized to certify the statement and also affirmation that the individual has met the minimum visual acuity of 20/40 (Snellen) in either or both eyes. No statement will be acceptable if the date of the examination is more than [six months] *one year* prior to the date of submission of the statement to the commissioner.

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

Data, views or arguments may be submitted to: Ida L. Traschen, Associate Counsel, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

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

Regulatory Impact Statement

1. Statutory authority: Section 215(a) of the Vehicle and Traffic Law authorizes the Commissioner of Motor Vehicles to enact, amend and repeal rules and regulations which shall regulate and control the exercise of the powers of the Department and the performance of the duties of the officers, agents and other employees thereof. Section 502(6)(a) of such Law requires the passage of a vision test upon renewal of a license.

2. Legislative objectives: The Legislature enacted Article 19 of the Vehicle and Traffic Law to establish standards for applicants for driver's license. By establishing such standards, the Legislature helped insure that New York State licensees meet minimum safety standards. Applicants for both original and renewal licenses must pass, or submit evidence of passage of, a vision test. This insures that operators on our highways meet basic vision requirements, so as not to pose a safety risk to themselves or other motorists.

The Legislature granted the Commissioner broad authority to establish the parameters of the vision test. Currently, the Commissioner's Regulations permit the applicant for a renewal license to submit a statement from a licensed physician, physician assistant, optometrist, ophthalmologist, optician, or registered nurse stating that the applicant passed a vision test within the previous six months. This proposal merely extends the time frame to one year. This will afford benefits to both the Department and the applicant without diminishing the Legislature's or the Department's high-way safety goals.

3. Needs and benefits: The current regulation provides that a licensed applicant for a renewal license may submit evidence of passage of a vision test administered by a licensed physician, physician assistant, optometrist, ophthalmologist, optician, or registered nurse within the previous six months. This proposal merely extends the time period for an additional six months. This will afford several benefits to both the Department of Motor Vehicles and to the motoring public.

Currently, a motorist may renew his or her license at a Motor Vehicle Office or by mail. If the motorist goes to a Motor Vehicle Office, he or she must submit a renewal application form and pass a vision test. If the motorist renews by mail, he or she submits the renewal application and the MV-619 form, the eye test report form. In the near future, DMV plans to permit renewals on-line. The procedures for such a process are currently being developed.

The Department is implementing a system that would enable customers to renew their driver's licenses via the Internet. This will reduce traffic and waiting times in DMV offices, benefiting not only the customer who can transact business more conveniently, but also those customers who must or choose to do transactions in person at a DMV office will assist both customers and Department staff. As part of the on-line application, the applicant for a license renewal would have to supply specific information from the physician's or other medical professional's vision statement (known as the Eye Test Report) in order for DMV to verify the validity of such statement. Without a completed Eye Test Report, a person seeking to renew a driver's license must personally come to DMV to take the eye test.

Extending the validity of the Eye Test Report to one year not only makes it more likely that a customer will be able to renew by mail, but is also consistent with normal cycle of customer visits to medical professionals for eye exams, which is often on an annual basis.

In these difficult fiscal times, permitting on-line renewals of licenses will reduce the need for counter staff to issue licenses and administer eye exams, as well as provide a significant convenience to customers who will not have to wait in line at a DMV Office.

4. Cost: a. regulated parties: There shall be no additional costs to customers who renew their licenses. In fact, customers will save time renewing on line using the Eye Test Report. This will reduce the number of hours they must take off from work or school to visit a DMV to renew their license.

b. the agency: There will be no additional cost to DMV. In fact, the proposed rule will lower Department costs in terms of reducing the number of hours DMV employees spend giving vision tests to license renewal applicants. The Department does not have an estimate of savings in staff time since there is no basis on which to make an estimate as to how many customers will choose to renew on-line.

c. source: DMV Program Analysis.

5. Local government mandates: None.

6. Paperwork: There shall be no additional paperwork requirements. However, the Eye Test Report form, the MV-619, must be revised to reflect that an eye examination given within one year of renewal is acceptable. The current form indicates six months. This revision will be done at minimal cost to the agency.

7. Duplication: This rule does not conflict with or duplicate any State or Federal rule.

8. Alternatives: The Department did not consider other alternatives. A no action alternative was not considered.

9. Federal standards: The rule does not exceed Federal standards.

10. Compliance schedule: Immediately upon adoption of the rule.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this proposed rule because it will have no impact on Small Businesses or Local Governments. The rule concerns vision testing procedures for licensees renewing their driver's licenses.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposed rule because it will have no adverse or disproportionate impact on rural areas of the State. This rule concerns vision testing procedures for license renewal applicants.

Job Impact Statement

A Job Impact Statement is not submitted with this proposed rule because it will have no impact on job creation or development within the State. The rule concerns vision testing procedures for license renewal applicants.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (98-M-0667SA37)

NOTICE OF ADOPTION

Uniform Business Practices

I.D. No. PSC-06-03-00025-A

Filing date: June 20, 2003

Effective date: June 20, 2003

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

Action taken: The commission, on June 18, 2003, adopted an order in Case 99-M-0631 amending the uniform business practices.

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

Subject: Revisions to the uniform business practices.

Purpose: To require pro-ration of partial payments of consolidated bills.

Substance of final rule: The Commission amended the Uniform Business Practices concerning the pro-ration of partial payments under consolidated billing between energy service companies (ESCOs) and the distribution utility, and also order ESCOs and other providers to comply with the requirements of the Home Energy Fair Practices Act (HEFPA) applicable to residential service deposits, late payment and other charges and complaint handling and resolution procedures and budget or levelized payment plans and quarterly billing, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (99-M-0631SA5)

NOTICE OF ADOPTION

General Policy Guidelines

I.D. No. PSC-06-03-00026-A

Filing date: June 20, 2003

Effective date: June 20, 2003

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

Action taken: The commission, on June 18, 2003, adopted an order in Case 03-M-01117 establishing guidelines for the implementation of L. 2002, ch. 686.

Statutory authority: Public Service Law, sections 30-52, 65 and 66(12)

Subject: Implementation of L. 2002, ch. 686.

Purpose: To amend certain sections of the Public Service Law.

Substance of final rule: The Commission established guidelines for the implementation of Chapter 686 of the Laws of 2002 which amends certain sections of the Public Service Law such as the Uniform Business Practices, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-M-0117SA1)

Public Service Commission

NOTICE OF ADOPTION

Contract Management Standard for Rate Ready Utility Consolidated Billing

I.D. No. PSC-05-03-00013-A

Filing date: June 20, 2003

Effective date: June 20, 2003

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

Action taken: The commission, on June 18, 2003, adopted an order in Case 98-M-0667 approving the test plans for the TS568 contract management standard for rate ready utility consolidated billing.

Statutory authority: Public Service Law, section 5(2)

Subject: Testing protocols for the TS568 contract management standard.

Purpose: To ensure statewide uniformity in implementation of EDI data standards.

Substance of final rule: The Commission approved the adoption of EDI test plans for the TS568 Contract Management Standard used in the Utility Rate Ready billing model, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

NOTICE OF ADOPTION

Gas Retail Choice Development by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-13-03-00006-A
Filing date: June 24, 2003
Effective date: June 24, 2003

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

Action taken: The commission, on June 18, 2003, adopted an order in Case 00-G-1456, approving the use of ratepayer funds to support Consolidated Edison Company of New York, Inc.'s (Con Edison) Retail Access Program.

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

Subject: Expenditure of funds.

Purpose: To spend ratepayer monies for the promotion of the Retail Access Program.

Substance of final rule: The Commission authorized the expenditure of \$2,680 million of ratepayer funds for the promotion of Consolidated Edison Company of New York, Inc.'s retail access program, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
 (00-G-1456SA3)

NOTICE OF ADOPTION

Emergency Demand Response Curtailment Program by Niagara Mohawk Power Corporation

I.D. No. PSC-16-03-00034-A
Filing date: June 18, 2003
Effective date: June 18, 2003

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

Action taken: The commission, on June 18, 2003, adopted an order in Case 03-E-0525, approving modifications to Niagara Mohawk Power Corporation's (Niagara Mohawk) tariff schedule P.S.C. No. 207—Electricity.

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

Subject: Tariff filing.

Purpose: To allow the extension of termination dates to Niagara Mohawk's Emergency Demand Response Curtailment Program and Day Ahead Demand Response Program.

Substance of final rule: The Commission authorized Niagara Mohawk Power Corporation to extend the termination dates to its Emergency Demand Response Curtailment Program through October 31, 2005 and Day Ahead Demand Response Program through October 31, 2004.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
 (03-E-0525SA1)

NOTICE OF ADOPTION

Firm or Limited Negotiated Transportation Service by Corning Natural Gas Corporation

I.D. No. PSC-16-03-00036-A
Filing date: June 18, 2003
Effective date: June 18, 2003

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

Action taken: The commission, on June 18, 2003, adopted an order in Case 03-G-0543, approving the amendments to Corning Natural Gas Corporation's (Corning) schedule for gas service—P.S.C. No. 1.

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

Subject: Tariff filing.

Purpose: To remove the annual minimum volumetric requirement of 750,000 Mcf for service under S.C. No. 11.

Substance of final rule: The Commission authorized the revisions to Corning Natural Gas Corporation's S.C. No. 11—Firm or Limited Negotiated Transportation Service to eliminate the annual minimum volumetric requirement of 750,000 Mcf.

Final rule compared with proposed rule: No changes.

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
 (03-G-0543SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**Adjustment to Charges by Niagara Mohawk Power Corporation**

I.D. No. PSC-27-03-00005-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 207—Electric, effective Sept. 2, 2003.

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

Subject: Rule No. 40—adjustment to charges pursuant to the New York Power Authority (NYPA) hydropower benefit reconciliation mechanism.

Purpose: To implement NYPA hydropower benefit reconciliation mechanism statement No. 7.

Substance of proposed rule: Niagara Mohawk Power Corporation (Niagara Mohawk or the company) filed proposed tariff modifications to P.S.C. No. 207—Electricity to become effective September 2, 2003. The company proposes to make modifications to the New York Power Authority reconciliation and Commodity Adjustments Charge.

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

Data, views or argument may be submitted to: Janet H. Deixler, 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.
 (03-E-0905SA1)

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

Overhead Electric Lines, Underground Distribution and Extension by Niagara Mohawk Power Corporation

I.D. No. PSC-27-03-00006-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 207—Electric, effective Sept. 22, 2003.

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

Subject: Rule No. 15—extension of overhead electric lines; No. 16—underground distribution; and No. 17—underground extension to office buildings and other non-residential developments.

Purpose: To revise rules in regards to the pricing and reconciliation of certain costs to customers.

Substance of proposed rule: Niagara Mohawk Power Corporation (Niagara Mohawk or the company) filed proposed tariff revisions to Schedule P.S.C. No. 207 – Electricity to become effective September 22, 2003. Niagara Mohawk proposes to revise Rule No. 15 – Extension of Overhead Electric Lines, No. 16 – Underground Distribution, and No. 17 Underground Extension to Office Buildings and Other Non-Residential Developments. The revisions to the filing include: 1) to specify in the tariff per foot prices for service laterals and extension of secondary and primary services, 2) modify the reconciliation aspect of the current process for the extension of secondary and primary services – to reconcile to actual span footage variance; and 3) adopt a new basis relative to past URD filings for determining the per foot flat rates. The company is also making conforming revisions to Rule No. 21 – Service Laterals – Below 15,000 Volts to reference the amendments to the above rules.

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

Data, views or argument may be submitted to: Janet H. Deixler, 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.

(03-E-0906SA1)

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

Gas Pricing Method by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-27-03-00007-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) to: (1) change the method of pricing gas used by Con Edison's steam and steam-electric generating stations; (2) reconsider and modify commission orders issued in 1996 that govern the methodology used by Con Edison to price such gas; (3) make changes to the rates, charges, rules and regulations contained in the company's schedule for gas service—P.S.C. No. 9; and (4) related relief.

Statutory authority: Public Service Law, sections 5(b), (c), 65(1) and 66(1), (2), (5), (7), (9), (10), (11) and (12)

Subject: Gas pricing method used in steam and steam-electric generating facilities, modifications to the commission orders governing such matters, corresponding tariff changes, and related matters.

Purpose: To consider revising the methodology and modifying the commission orders.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) to change the manner in which it prices gas supplied to the company's steam and steam-electric generating stations. To do so, Con Edison is seeking modifications to two Commission Orders issued in 1996 that approve the current pricing methodology. The Commission will also consider changes to Con Edison's Schedule P.S.C. No. 9 - Gas Tariff that would implement the proposed changes in the pricing methodology, and other matters related to Con Edison's proposal

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

Data, views or argument may be submitted to: Janet H. Deixler, 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.

(03-G-0759SA2)

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

Uniform System of Accounts by Corning Natural Gas Corporation

I.D. No. PSC-27-03-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition by Corning Natural Gas Corporation for rehearing of the commission's order issued April 28, 2003.

Statutory authority: Public Service Law, sections 66-9 and 22

Subject: Uniform system of accounts—request for accounting authorization c.9218 and petition for rehearing.

Purpose: To defer an item of expense beyond the end of the year in which it was incurred.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition by Corning Natural Gas Corporation for rehearing of the Commission's Order issued April 28, 2003.

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

Data, views or argument may be submitted to: Janet H. Deixler, 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.

(02-G-0768SA2)

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

Petitions for Rehearing and Clarification by KeySpan Energy Delivery New York, et al.

I.D. No. PSC-27-03-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, petitions for rehearing and clarification received from KeySpan Energy Delivery New York, KeySpan Energy Delivery Long Island, Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities, Inc.

Statutory authority: Public Service Law, sections 66, 67 and 72

Subject: Petitions for rehearing.

Purpose: To determine whether or not clarification of the commission's earlier order in this case should be granted.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, petitions for rehearing and clarification received from KeySpan Energy Delivery New York, KeySpan Energy Delivery Long Island, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. These petitions deal with aspects of the Commission's Order Providing for Distributed Generation Service Classifications, issued April 24, 2003, in Case 02-M-0515.

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

Data, views or argument may be submitted to: Janet H. Deixler, 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. (02-M-0515SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Gas Pricing Revisions by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-27-03-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) to: (1) change the method of pricing gas used by Con Edison's steam and steam-electric generating stations; (2) reconsider and modify commission orders issued in 1996 that govern the methodology used by Con Edison to price such gas; (3) make changes to the rates, charges, rules and regulations contained in the company's schedule for steam service—P.S.C. No. 3; and (4) related relief.

Statutory authority: Public Service Law, sections 5(b), (c), 65(1), 66(1), (2), (5), (7), (9), (10), (11), (12), 79(1) and 80

Subject: Gas pricing methods used in steam and steam-electric generating facilities, modifications to the commission orders governing such matters, corresponding tariff changes, and related matters.

Purpose: To consider revising the methodology used for pricing gas and modify the commission orders.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) to change the manner in which it prices gas supplied to the company's steam and steam-electric generating stations. To do so, Con Edison is seeking modifications to two Commission Orders issued in 1996 that approve the current pricing methodology. The Commission will also consider changes to Con Edison's Schedule P.S.C. No. 3 - Steam Tariff that would implement the proposed changes in the pricing methodology, and other matters related to Con Edison's proposal.

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

Data, views or argument may be submitted to: Janet H. Deixler, 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. (03-S-0760SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Assets by HHD Development Corp. to Copake Lake South Shore Service, Inc.

I.D. No. PSC-27-03-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify a joint petition filed by Copake Lake South Shore Service, Inc. and HHD Development Corp. for approval of the transfer of all assets associated with the fresh water supply system, from HHD Development Corp. to Copake Lake South Shore Service, Inc. As part of the filing Copake Lake South Shore Service, Inc. is also requesting waiver of the commission's rate setting authority.

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

Subject: Transfer of the assets.

Purpose: To approve the transfer.

Substance of proposed rule: On June 16, 2003, a joint petition was filed by Copake Lake South Shore Service, Inc. (Copake Lake) and HHD Development Corp. (HHD) for approval of the transfer of all assets including the surcharge escrow of \$41,317.20, associated with the fresh water supply system, from HHD to Copake Lake. In addition, Copake Lake as a homeowners association is also requesting waiver of the Commission's rates setting authority. HHD provides water service to 39 residential customers, in the area of the south shore of Copake Lake, Town of Copake, Columbia County, State of New York. The Commission may approve or reject, in whole or in part, or modify the petition.

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

Data, views or argument may be submitted to: Janet H. Deixler, 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. (03-W-0885SA1)