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 Audit and Control

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reporting and Payment of Abandoned Property by Reporting Organizations

I.D. No. AAC-29-04-00001-P

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

Proposed action: Amendment of sections 123.1, 123.6, 123.7 and 123.9 of Title 2 NYCRR.

Statutory authority: Abandoned Property Law, section 1414

Subject: Reporting and payment of abandoned property by reporting organizations.

Purpose: To make various technical changes to reporting requirements in general.

Text of proposed rule: Title 2 of the Official Compliance of Codes, Rules and Regulations of the State of New York is amended to read as follows:

Section 1.

Section 123.1 is repealed and a new section 123.1 is adopted to read as follows:

Section 123.1 Filing of abandoned property reports.

(a) All holders of abandoned property required to report such property pursuant to the Abandoned Property Law must submit their reports of abandoned property using an electronic format if reporting more than 25 items.

(b) Holders of abandoned property filing 25 or fewer items can submit their report using either an electronic format or on form AC 2686, Report of Abandoned Property (Appendices 16 and 16-A of this Title, infra).

(c) All reports of abandoned property, whether on form AC 2686, or on an electronic format, must be accompanied by a completed and notarized form AC 2709, Verification and Checklist for Unclaimed Property (Appendices 17 and 17-A of this Title, infra), signed by an authorized officer certifying that said report is true and complete to the best of said authorized officer's knowledge.

Section 2.

Section 123.6 is amended to read as follows:

Section 123.6 Magnetic [tape] *cartridge* reporting instructions.

(a) Magnetic [tape] *cartridge* specifications. All types of reportable abandoned property may be reported [in] *on* one [tape] *cartridge* file. The [tape] *cartridge* itself must be [nine-track] *3490 or 3490 compatible, either 18K compressed or 36K noncompressed, 18 track,* 1600 or 6250 BPI density; data format must be EBCDIC or ASCII to be IBM compatible. Internal labels are desirable, however, only standard IBM internal labels are acceptable. All [tape] *cartridges* must have appropriate external labels which identify the sending organization's name and location to aid in returning [tapes] *cartridges.* If reports for more than one organization are on a cartridge, they should also be listed on the external label. A report will consist of one header record for each organization reporting, its associated detail records and its trailer record. The record length of the data is 384 characters, record format is fixed length, blocked 20 records to a block for a block length of 7,680 characters. A signed, notarized verification and checklist must accompany each organization's report on the [tape] *cartridge.* [Please note that tape cartridges are also acceptable and in fact preferred for handling/shipping purposes. Tape cartridges must be 18 track and be 3480 or 3480 compatible. Data compression is optional (18K compressed, 36K noncompressed).]

Section 3.

Section 123.7 is amended to read as follows:

Section 123.7 Delivery of securities.

All reported positions must be delivered at the time the abandoned property reports are filed. It is recommended that, where possible, the delivery of the abandoned securities to the State Comptroller be made by means of book entries via the Depository Trust Company (DTC). The following instructions relate to the reporting of securities whether the report is [on computer tape, diskette] *in an electronic format* or on paper form AC 2686, Report of Abandoned Property, for securities physically delivered to the Office of Unclaimed Funds, transmitted via DTC to the Office of Unclaimed Funds' broker, or transferred to an account registered to the State Comptroller.

(a) DTC wire transfer.

(1) All regular securities information must be completed.

(2) Place the letter "D" in the method of transfer field.

(3) In addition to the regular security information all DTC wire transfers must contain additional delivery instructions. For the additional delivery instructions please call the Office of Unclaimed Funds at [(518) 473-7002] *(800) 221-9311 in New York State, outside New York (518) 270-2200*.

Section 4.

Section 123.9 is amended to read as follows:

Section 123.9 Information, written requests and filing of reports and remittances.

Reports, remittances and request for extensions, waivers, additional information and forms should be referred to New York State Comptroller, Office of Unclaimed Funds, 110 State Street, Albany, NY 12236-0001, [(518) 473-7002] *(800) 221-9311 in New York State, outside New York (518) 270-2200.*

Text of proposed rule and any required statements and analyses may be obtained from: Robert G. Harder, Department of Audit and Control, Division of Legal Services, 110 State St., 14th Fl., Albany, NY 12236, (518) 474-4021, e-mail: rharder@osc.state.ny.us

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

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

Regulatory Impact Statement

1. Statutory Authority:

Section 1414 of the Abandoned Property Law authorizes the Comptroller to adopt the necessary rules and regulations to enforce the provisions of the Abandoned Property Law.

2. Legislative Objectives:

To amend the current rules and regulations in Part 123 of Title 2 of the New York Code of Rules and Regulations regarding the mechanisms and procedures for reporting abandoned property by holders of abandoned property as required by the Abandoned Property Law. This multiple change will also update contact information and telephone numbers.

3. Needs and Benefits:

In the administration of the Abandoned Property Law both government and holders of abandoned property need to remain somewhat current in electronic advancements and the equipment use to create abandoned property reports. An antiquated electronic media type is being changed for a more current version. Implementation of this regulation benefits all involved by simplifying and updating the reporting process.

4. Costs:

At first, there may be a minimal cost to the regulated parties to update their systems. But the initial cost will quickly be recouped because of lesser maintenance costs maintaining a more current system. There is no cost to the agency because we have already updated our magnetic tape copying equipment.

5. Local Government Mandates:

Although a county, city, town, village, school district, fire district, or other special district may be affected by this amendment, there is not an imposition of a new service or duty; simply, a more update way of completing what they may have been required to do pursuant to the Abandoned Property Law, namely reporting abandoned property. There are also many methods of transferring the detail records to our office, most of which have no monetary cost to the holders.

6. Paperwork:

Since this change is from one electronic format to another, no additional paperwork is required based upon the regulatory change.

7. Duplication:

The proposed amendment does not duplicate, overlap, or conflict with other rules and requirements of the State or Federal governments.

8. Alternatives:

There were no significant alternatives to be considered.

9. Federal Standards:

There are no federal standards that apply to this subject.

10. Compliance Schedule:

These rules do not require an estimated compliance time period. The actual changes in the work processes have already taken place and all reporters have been previously notified. These rules are being changed to reflect what is already happening in the office.

Regulatory Flexibility Analysis

1. Effect of Rule:

This ruling may affect any businesses and local governments who are subject to the provisions of the New York State Abandoned Property Law. Based upon data obtained from previous reporting cycles, there are approximately 3,500 organizations using magnetic tape reporting that may be affected by this rule. However this number does not include any businesses or governments which have not previously filed a Report of Abandoned Property.

2. Compliance Requirements:

There are no additional reporting, recordkeeping or other affirmative acts that a business or local government will have to undertake to comply with this proposed rule. The current standard, as prescribed by the statute, will remain in effect. The proposed amendment affects only the method of reporting which would be delivered via a different electronic media.

3. Professional Services:

No additional professional services are needed to comply with this rule.

4. Compliance Costs:

There may be an initial capital cost incurred by the participants that change their electronic tape copy machines. A study was completed by Audit and Control's IT section and the conclusion was that the initial cost of implementing a new tape copy procedure would be offset by the cost savings of maintaining a new system. The old machines were no longer being supported or maintained by the manufacturer. Therefore, this should be a value added change over the course of a few years.

5. Economic and Technological Feasibility:

In the long term, this would be economically feasible to all parties that made this change. Only the larger, or more technologically advanced, organizations or governments would comply with this ruling because an elaborate mainframe system is required in order to generate magnetic tape cartridges. In the absence of this equipment, there are other alternatives for reporting that require far less electronic equipment, to no electronic equipment at all.

6. Minimizing Adverse Impact:

Implementation of this ruling, as cited in previous statements, may have an initial cost, but should be recouped within a few years. If any user is unable to comply with this ruling, alternative reporting methods are available. We currently accept detailed reports on this magnetic cartridge mentioned, on compact disk, on diskette, through electronic transfer and on paper reporting forms.

7. Small Business and Local Government Participation:

All reporters that previously submitted magnetic media were contacted and told of the change in acceptable formats well in advance. A large majority of the organizations contacted indicated they were addressing the same issue before being contacted. Most of the smaller organizations indicated they would not be affected by this change since they already submit reports in one of the alternate formats available to them.

Rural Area Flexibility Analysis

1. Types and Estimated Number of Rural Areas:

The proposed regulatory change will impact all reporters of abandoned property regardless of their location. However, the nature of the business tend to center more around the financial and business centers, which are generally located in cities rather than in rural areas.

2. Reporting, Recordkeeping and Compliance Requirements:

There are no additional reporting, recordkeeping or compliance requirements imposed by this amendment. Those facets will remain as they currently are, as stipulated in the Abandoned Property Law.

3. Costs:

There is an initial capital cost to the regulated parties that elect to report using this type of electronic media. This cost should be offset by the lower support/maintenance cost of running the newer tape drives within the first few years. Most businesses in the rural areas do not use this type of delivery, instead opting for other, less sophisticated methods.

4. Minimizing Adverse Impact:

Implementation of this rule will have little, if any, adverse impact on rural areas subject to its provisions. As indicated above, most rural area businesses have, and use, other methods of completing abandoned property reports. As it is felt that there will be not adverse affect on rural or other areas, consideration of the language in SAPA 202-bb(2) is not applicable. However, as mentioned in SAPA 202-bb(2)(b)(iii) there are exemptions from compliance with this ruling should the regulated party not be able to comply.

5. Rural Area Participation:

All reporters that previously submitted magnetic media were contacted and told of the change in acceptable formats well in advance. A large majority of the organizations contacted indicated they were addressing the same issue before being contacted. Most of the smaller organizations indicated they would not be affected by this change since they already submit reports in one of the alternate formats available to them.

Banking Department

REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS AND/OR JOB IMPACT STATEMENT

Supervision of Article XII Investment Company Holding Companies and their Subsidiaries

I.D. No. BNK-25-04-00004-E

This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement pertain(s) to a notice of emergency rule making, I.D. No. BNK-25-04-00004-E, printed in the *State Register* on June 23, 2004.

Regulatory Impact Statement

1. Statutory authority:

Section 14(1) of the Banking Law empowers the Banking Board to make, alter and amend rules and regulations not inconsistent with law. In addition, Section 14(1)(k) permits the Banking Board to prescribe the methods and standards to be used in examinations and valuations of assets of banking organizations. Article XII sets forth the powers as well as the duties and responsibilities of Article XII investment companies.

2. Legislative objective:

The rule promotes the legislative objective of maintaining the safety and soundness of banking organizations through effective examination and supervision. Banking Law Section 10 declares it to be the policy of New York that all banking organizations shall be supervised and regulated by the Banking Department in such manner as to ensure the safe and sound conduct of such business and to protect the public interest. Article XII sets forth the powers as well as the duties and responsibilities of Article XII companies. Such duties include recordkeeping and the provision of reports to the Superintendent. As banking organizations, Article XII companies are subject to examination by the Superintendent (B.L. Section 36) as well as to enforcement actions by the Superintendent (*e.g.,* enforcement actions under B.L. 39; monetary penalties under B.L. 44).

The new rule clarifies the Superintendent's ability to carry out this supervision in those cases where equivalent supervision is required under the European Union Financial Conglomerates Directive (2002/87/EC) (the "Financial Conglomerates Directive" or "Directive") recently passed by the European Parliament.

3. Needs and benefits:

The purpose of the new rule is to clarify the Superintendent's examination, supervision, regulation and enforcement authority over Article XII investment companies (*i.e.,* banking organizations formed pursuant to Article XII of the Banking Law) and their affiliates in situations where the Banking Department is responsible for providing "equivalent supervision" (as defined in the rule) for such banking organizations and their affiliates, under the Financial Conglomerates Directive.

The Directive will require supervisors in non-European countries to provide so-called "equivalent supervision" over a financial conglomerate to that which would be required in Europe. Under the Directive, groups or conglomerates that have activities in one or more financial business areas, including banking, insurance and securities, will be required to demonstrate that a financial regulator in their home country provides adequate supervision for the conglomerate on a consolidated basis.

The Banking Department currently has several conglomerates or financial groups with operations in Europe that will become subject to the supervision requirements of the Financial Conglomerates Directive in January 2005. These are large organizations which own Article XII banking corporations in New York and, as a result thereof, it is possible that the Banking Department would be required or requested to provide the required equivalent supervision for these organizations.

The ability of a U.S. supervisor fulfilling the role of equivalent supervisor to effectively examine and supervise a financial conglomerate must be clear. The requirements of the so-called "equivalent supervision" are broader than the supervision currently exercised by the Superintendent over Article XII investment companies owned by such entities, in that the Directive requires that the U.S. regulators effectively supervise the broader organization (*i.e.,* from the parent level down) on a consolidated basis.

While this does not necessarily require that one supervisor functionally supervise and regulate each entity within a conglomerate, one supervisor will be relied upon to provide a coordinating role, and that supervisor must have a demonstrable ability to supervise, examine and regulate and take enforcement action against, if necessary, the organization as a whole. The Directive recognizes that many countries, including the U.S., regulate diverse financial conglomerates on a "functional" basis (*i.e.,* insurance regulators regulate the insurance entities, securities regulators regulate the securities entities, etc.).

The Department has significant experience in providing consolidated supervision to large banking organizations, both in its role as supervisor of banks within a holding company structure and in its role as a consolidated supervisor for several Article XII companies owned by large financial institutions that have operations in Europe and abroad. The Department is also very accustomed to coordinating supervision among various regulators, including the banking, insurance and securities regulators in the U.S., as well as banking and other financial regulators in Europe and in other countries abroad.

The new rule is necessary to demonstrate and set forth unambiguously the Superintendent's powers and duties vis-á-vis the larger conglomerate organization in a situation where comprehensive equivalent supervision is required to be provided by the Superintendent. The regulation therefore serves the purpose of making it clear to both the European Union regulators and to the conglomerate organization the authority of the Superintendent in this regard. Specifically, the regulation makes explicit that the parent company of an Article XII organization within a financial conglomerate is an Article XII holding company and that, to carry out the required equivalent supervision, the Superintendent has the authority to exercise examination, supervision, regulation and enforcement authority over the Article XII holding company and any of its subsidiaries in the same manner as over any banking organization. In this way, the Superintendent can exercise the supervisory tools necessary to provide effective consolidated supervision. The regulation makes clear that this authority to supervise and regulate the Article XII holding company and its subsidiaries in the same manner as a banking organization only is necessary and therefore only will be employed when the Superintendent is required to provide equivalent supervision under the Financial Conglomerates Directive. Thus, the applicability of the rule is limited to such situations involving these financial conglomerates.

The Superintendent's authority to examine and exercise certain control over affiliates (*e.g.,* parent, sister companies) of any banking organization is already quite broad (see *e.g.,* Banking Law Section 36). However, in order for a U.S. supervisor to be deemed capable of equivalent supervision, the authority to both regulate and take enforcement action against the affiliates of a banking organization must be apparent. The new rule provides that clarification. The financial conglomerate organizations themselves favor such clarification since they wish to demonstrate that their home country supervisors can provide the required equivalent supervision.

If the European Union determines that the supervision in the organization's home country is not "equivalent" to that provided to an entity headquartered in the European Economic Community, the organization will be forced to restructure its European operations so that equivalent supervision may be provided by a European regulator from a top tier entity located in Europe. For most U.S. organizations, this is a highly undesirable result that would involve costly restructuring in Europe and added layers of regulatory oversight.

Accordingly, the new rule demonstrating the Superintendent's authority and ability to carry out supervision in a manner deemed acceptable under the Directive serves the public need for U.S. financial conglomerate organizations to demonstrate consolidated supervision by a home country regulator.

4. Costs:

No significant new costs are imposed as a result of this rule. Banking organizations are already subject to monitoring and reporting requirements. This reporting would now be required at a consolidated level within the organization, which in many cases, is already being done. Any additional reporting or compliance requirements are a direct result of European Union Financial Conglomerates Directive itself. As noted in Section 3, "Needs and Benefits" above, U.S. organizations that are deemed to be financial conglomerates are in favor of the Superintendent's regulatory authority since, without such clarification, heavy costs of restructuring operations or duplicative regulation might be required to satisfy the European Union Directive.

5. Local government mandates:

The regulation imposes no burdens on local governments.

6. Paperwork:

Banking organizations, including Article XII companies, are currently subject to monitoring and reporting requirements. These requirements will continue and may need to be supplemented by reporting at the consolidated organizational level, which, in many cases is already done. Any such additional paperwork requirements, however, are a direct result, not of the new rule, but of new requirements imposed on the organizations under the European Union Directive which imposes new requirements on these organizations as a result of their European operations. These organizations favor reporting to a U.S. supervisor as a less costly alternative to direct reporting to European supervisors.

7. Duplication:

None. Various other U.S. supervisors, such as the Federal Reserve, the U.S. Securities and Exchange Commission, the Office of the Comptroller of the Currency and the Office of Thrift Supervision may be required to provide equivalent supervision to institutions under their jurisdiction that have European operations. However, supervision by federal regulators and the Banking Department would not be conflicting or duplicative, as an organization would only have one designated "equivalent supervisor" for purposes of the European Union Directive.

8. Alternatives:

a. Rely on Existing Authority

Consideration was given to relying on the Superintendent's existing authority to examine banking organizations and their affiliates, including the authority of the Superintendent to enter into quasi-contractual Supervision Agreements with an organization, such as a financial conglomerate. Although it was thought that it might be possible to demonstrate to the European Union that the Superintendent could carry out equivalent supervision based on existing authority, it was ultimately determined, in part based upon outreach to the European Commission ("Commission") and one organization that will be required to have consolidated equivalent supervision (see Section 11, "Outreach" below), that a regulation was necessary to clarify the extent of the Superintendent's examination, supervision, regulation and enforcement authority.

Banking Law Section 36 clearly grants the Superintendent the authority to examine banking organizations (which includes Article XII investment companies) as well as affiliates of banking organizations when necessary to determine the financial condition of a banking organization. The Superintendent can also issue enforcement orders against banking organizations under B.L. Section 39, and it is possible that certain activities of affiliates (*e.g.,* ordering cease and desist, etc.) might be reachable through such orders. However, based on discussions with the Commission and European supervisors, it was clear to Department staff that the Commission, in order to make a determination that a supervisor could effectively provide equivalent supervision, strongly preferred, and would likely require, demonstrable express statutory or regulatory authority of the supervisor to carry out examination, supervision, regulation and enforcement over the conglomerate.

In the absence of the proposed rule, the Superintendent's authority to supervise the conglomerate in the manner required would be less clear. While the Superintendent has clear examination authority over affiliates when necessary to determine the financial condition of a banking organization, it is not clear that the Superintendent's authority to issue regulations applicable to, or enforcement orders or monetary penalties against, the financial conglomerate, extends to the banking organization's affiliates or parent company directly. The European Union as well as the financial conglomerate organizations for which the Banking Department may serve as equivalent supervisor both desire clarification to this effect. The proposed rule therefore would clarify that, for those organizations for which the Department is equivalent supervisor, the Superintendent's examination, supervision, regulation and enforcement authority extends to the Article XII company's top tier parent organization and other affiliates to the same extent as to any other banking organization.

A second approach utilizing the Department's existing authority would be to rely on the Superintendent's authority to enter into formal "Supervision Agreements" which set forth the Superintendent's plan of supervision, as well as the Superintendent's authority over the organization, and the organization's responsibilities as a supervised entity. Such agreements have been used in the past where consolidated supervision is required, and the uniqueness of each organization requires a tailored agreement. In fact, the new rule still calls for the use of such agreements with individualized supervision plans as part of the equivalent supervision framework. While in the past such comprehensive Supervision Agreements alone would be sufficient to demonstrate to European regulators that the U.S. regulator has a comprehensive plan of supervision for the organization, the new European Directive appears to require a firm statutory or regulatory expression of a U.S. supervisor's authority.

b. Promulgate a Regulation to Further Define Superintendent's Examination Authority Under Banking Law Section 36.

Another alternative that was considered was to adopt a general regulation of the Banking Board which would further define the scope of the Superintendent's examination authority under Banking Law Section 36. Such a regulation would also have been limited in nature and would have sought to define what is meant by "examination" of a banking organization in a situation where the banking organization is part of a group or conglomerate that requires equivalent supervision in the U.S. under the European Union Financial Conglomerates Directive.

This alternative was rejected by Department staff as less clear and less effective than the approach decided upon. For example, to accomplish the required end, the regulation would have needed to very broadly define the term "examination" to encompass the ability of the Superintendent to issue regulations and enforcement actions against both the banking organization and its affiliates.

Rather than demonstrate the Superintendent's authority as based solely on the examination authority described in B.L. Section 36, Department staff believes it is more appropriate to demonstrate the Superintendent's authority as arising out of her overall ability to supervise and regulate Article XII banking organizations and their affiliates.

The new rule is therefore a general Banking Board regulation based on Banking Law Section 14(1), 14(1)(k) and Article XII defining the Superintendent's specific expanded supervisory powers over the entities in a conglomerate whose top tier company is defined as an Article XII holding company in those cases in which the Banking Department needs to provide equivalent supervision as required under the Financial Conglomerates Directive.

9. Federal standards:

Not applicable. As noted above, various federal financial supervisors may also demonstrate their authority to provide consolidated equivalent supervision, but there are no specific standards which can be compared to those the Banking Department would apply to organizations under its supervision. While the supervisory regimes would likely be similar in order to accommodate the requirements of the European Union Directive, the specific requirements applicable to any given organization are individualized and part of a unique supervision plan.

10. Compliance schedule:

Not applicable. Organizations under the Department's supervision do not need to take affirmative steps to comply with the rule. Based upon the decision of European regulators whether the Banking Department will be required to provide equivalent supervision, the rule will either be applicable to such organizations or it will not. An individualized Supervision Agreement will then be worked out between the Banking Department and the organization, in consultation with European regulators. The Banking Department expects to know whether it will be required to provide equivalent supervision in July 2004. The requirements of the European Directive are applicable to financial conglomerates starting in January 2005.

11. Outreach:

In March 2004, a delegation of the Banking Department traveled to Brussels, Belgium and London, England to meet with staff of the Commission and the U.K.'s Financial Services Authority ("FSA"), respectively. The Commission is responsible for providing guidance to the various European financial supervisors on the supervisory regimes in other countries, including the U.S. Therefore, this body (including its technical committees) has the responsibility and the authority to determine whether the supervisory regimes in other countries are sufficiently "equivalent" to European regimes as required by the Directive. The Commission is therefore analyzing other supervisors' laws and regulations and practical approaches to supervision.

The FSA is one of the European financial supervisors with a major role in carrying out the Directive, particularly with respect to several of the U.S.-based financial conglomerates. This is because significant decision-making about which U.S. supervisor is best qualified to provide equivalent supervision to a particular organization rests with the European financial supervisor where the majority of the conglomerate organization's operations reside.

The Banking Department delegation explained to both the Commission and the FSA how the Banking Department conducts supervision of banking organizations, the authority of the Superintendent, and the legal and regulatory framework for supervision. The FSA has worked extensively with the Department over the years and was already quite familiar with the

Department as a supervisor. In addition, in March, the delegation shared with both these entities a draft of the new rule and explained how it would clarify the Superintendent's authority over conglomerates for purposes of the Financial Conglomerates Directive. The Commission staff indicated that it would provide comments as this body has the primary responsibility for evaluating equivalence. In May 2004, the Commission staff commented favorably on the proposed rule and indicated its belief that the rule would be found sufficient for the purposes of the Directive. The staff suggested only a few minor wording changes to more closely conform certain terminology to that of the Directive.

The draft regulation was also shared with one of the organizations under the Department's supervision that will require equivalent supervision and for which it is most likely that the Department might be required to be the supervisor to provide such supervision.

The organization in general found the draft rule to be helpful and acceptable in form. After consideration of the organization's comments the Department determined to adopt the rule on an emergency basis in its present form.

The organization also questioned whether the language in the rule stating that the Superintendent has authority over an Article XII holding company and its subsidiaries "to the same extent" as over banking organizations implied that all such affiliates of an Article XII must therefore be regulated as if they were banking organizations. The Banking Department advised that is that this is clearly not the intent of the rule or of the European Union Directive. Rather, this language reflects the Department's understanding that the European Commission wishes to see the equivalent authority available to the Superintendent for the supervision of the conglomerate as it would have over banking organizations.

The organization also had some inquiries about the technical terminology employed in the rule vis-á-vis the European Union Directive. These questions were cleared up to the organization's satisfaction based upon further discussions between the Department and the Commission staff to clarify this terminology.

Regulatory Flexibility Analysis A Regulatory Flexibility Analysis is not submitted because the proposed rule will not impose any adverse economic impact, or reporting, or recordkeeping or other compliance requirements on small businesses or local governments. The proposed rule relates to supervision of the parents and affiliates of Article XII investment companies having financial business operations within the European Union. These entities are large financial conglomerates, which do not qualify as small businesses in New York State and are not local governments.

Rural Area Flexibility Analysis A Rural Area Flexibility Analysis is not submitted because the rule does not result in any hardship to a rural area based on the character and nature of a rural area. The rule relates to supervision of large financial conglomerates. It is apparent from the nature and purpose of the rule that it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement A Job Impact Statement is not submitted because the proposed rule has no effect on the creation or elimination of jobs. The rule clarifies the Superintendent's examination, supervision, regulation and enforcement authority over Article XII companies and their affiliates in situations where the Banking Department needs to provide equivalent supervision for purposes of the European Union Financial Conglomerates Directive. Accordingly, it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

Education Department

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Education Department publishes a new notice of proposed rule making in the NYS *Register*.

Licensed Private Schools and Registered Business Schools/Computer Training Facilities

I.D. No.	Proposed	Expiration Date
EDU-01-04-00004-P	January 7, 2004	July 5, 2004

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Consumer Products

I.D. No. ENV-29-04-00008-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 sections 235-2.1(er), 235-2.1(fa), 235-4.1(h) and 235-6.1(a) of Title 6 NYCRR.

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

Subject: Consumer products.

Purpose: To correct a typographical error.

Public hearing(s) will be held at: 2:00 p.m. on August 25, 2004 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A, Albany, NY 12233.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Text of proposed rule: Section 235-1.1 remains unchanged.

SUBPART 235-2, DEFINITIONS

Section 235-2.1 through subdivision 235-2.1(eq) remains unchanged.

Subdivision 235-2.1(er) is revised to read as follows:

(er) 'Table B compound' means any carbon-containing compound listed as an exception to the definition of VOC as defined in [Subdivision 200.1(cf)] *Part 200* of this Title.

Subdivision 235-2.1(es) through subdivision 235-2.1(ez) remains unchanged.

Subdivision 235-2.1(fa) is revised to read as follows:

(fa) 'VOC content' means, except for charcoal lighter products, the total weight of VOC in a product expressed as a percentage of the product weight (exclusive of the container or packaging), as determined pursuant to subdivision 235-9.1(a) and 235-9.1(b) of this Part, and calculated according to the following equations:

For all products except for charcoal lighter material products:

$$\text{'VOC Content'} = \frac{(\text{'B'} - \text{'C'}) \times 100}{\text{'A'}}$$

Where,

'A' = net weight of unit (excluding container and packaging)

'B' = total weight of all VOC per unit, as defined in [Subdivision 200.1(cf)] *Part 200* of this Title

'C' = total weight of all exempted VOCs per unit, as specified in Subpart 235-4 of this Part

For charcoal lighter material products only:

$$\text{'VOC Content'} = \frac{(\text{'Certified Emissions'} \times 100)}{\text{' Certified Use Rate'}}$$

Where,

'Certified Emissions' = the emissions level for products approved by director, Division of Air Resources, Department of Environmental Conservation under subdivision 235-3.1(e) of this Part, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991) (see Table 1, section 200.9 of this Title), expressed to the nearest 0.001 pound CH_2 per start.

'Certified Use Rate' = the usage level for products approved by the director, Division of Air Resources, Department of Environmental Conservation under subdivision 235-3.1(e) of this Part, as determined pursuant to South Coast Air Quality Management District Rule 1174 Ignition Method Compliance Certification Protocol (Feb. 27, 1991), expressed to the nearest 0.001 pound certified product used per start.

Subdivision 235-2.1(fb) through subdivision 235-2.1(fg) remains unchanged.

SUBPART 235-3, STANDARDS

Section 235-3.1 remains unchanged.

SUBPART 235-4, EXEMPTIONS

Section 235-4.1 through subdivision 235-4.1(g) remains unchanged.

Subdivision 235-4.1(h) is revised to read as follows:

(h) The VOC content limits specified in subdivision 235-3.1(a) of this Part shall not apply to air fresheners that are comprised entirely of fragrance, less compounds not defined as VOCs under [Part 200.1(cf)] *Part 200* of this Title or exempted under subdivision 235-4.1(f) of this Subpart.

Subdivision 235-4.1(i) through subdivision 235-4.1(k) remain unchanged.

SUBPART 235-5, INNOVATIVE PRODUCTS

Section 235-5.1 remains unchanged.

SUBPART 235-6, ADMINISTRATIVE REQUIREMENTS

Subdivision 235-6.1(a) is revised to read as follows:

(a) 'Code-dating'. Each manufacturer of a consumer product subject to Subpart 235-3 of this Part shall clearly display on each consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating such date. The date or date-code information shall be located on the container or inside the cover/cap so that it is readily observable or obtainable (by simply removing the cap/cover) without disassembling any part of the container or packaging. This date or code shall be displayed on each consumer product container or package no later than twelve months prior to the effective date of the applicable standard specified in subdivision 235-3.1(a) of this Part. No person shall erase, alter, deface or otherwise remove or make illegible any date or code-date from any regulated product container without the express authorization of the manufacturer. The requirements of this provision shall not apply to products containing no VOCs (as defined in [subdivision 200.1(cf)] *Part 200* of this Title), or containing VOCs at 0.10 percent by weight or less.

Subdivision 235-6.1(b) through subdivision 235-6.1(d) remains unchanged.

SUBPART 235-7, REPORTING REQUIREMENTS

Section 235-7.1 remains unchanged.

SUBPART 235-8, VARIANCES

Section 235-8.1 remains unchanged.

SUBPART 235-9, TEST METHODS

Section 235-9.1 remains unchanged.

SUBPART 235-10, SEVERABILITY

Section 235-10.1 remains unchanged.

SUBPART 235-11, ALTERNATIVE CONTROL PLAN (ACP) FOR CONSUMER PRODUCTS

Section 235-11.1 remains unchanged.

Text of proposed rule and any required statements and analyses may be obtained from: Daniel S. Brinsko, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8396, e-mail: dsbrinsk@gw.dec.state.ny.us

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

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

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

Consensus Statement

This rulemaking is a consensus rule because it corrects errors that resulted from a previous rulemaking. The previous rulemaking involves definition renumbering in 6 NYCRR Part 200 for which 6 NYCRR Part 235 references. As a result, some of the definitions referenced in Part 235 to no longer reside at the location in Part 200 first cited. This rulemaking simply corrects this from happening again in the future.

Job Impact Statement

A Job Impact Statement has not been prepared for this rule as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York State. The amendments merely correct a typographical error resulting from changes made to a referenced definition in 6 NYCRR Part 200. The amendments to 6 NYCRR Part 235 will eliminate any future consensus rulemakings that would result because of Part 200's dynamic nature.

The proposed amendments will not result in a decrease of full-time annual jobs and employment opportunities in the State.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Permits and Certificates

I.D. No. ENV-29-04-00009-P

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

Proposed action: This is a consensus rule making to amend Part 201 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 19-0306, 19-0311, 70-0109; and United States Code, section 7661[b]

Subject: Permits and certificates.

Purpose: To correct a conflict within Part 201.

Public hearing(s) will be held at: 2:00 p.m. on August 25, 2004 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A, Albany, NY 12233.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Text of proposed rule: Paragraph 201-3.2(c)(39) is amended to read as follows:

(39) Solvent metal cleaning processes:

(i) cold cleaning degreasers with an open surface area of 11 square feet or less and an internal volume of 93 gallons or less or, having an organic solvent loss of 3 gallons per day or less.

(ii) cold cleaning degreasers that use a solvent with a VOC content of 5 percent or less by weight, *unless subject to the requirements in 40 CFR 63, Subpart T.*

(iii) conveyorized degreasers with an air/vapor interface smaller than 22 square feet (2.0 m_2), *unless subject to the requirements in 40 CFR 63, Subpart T.*

(iv) open-top vapor degreasers with an open-top area smaller than 11 square feet (1.0 m_2), *unless subject to the requirements in 40 CFR 63, Subpart T.*

[(v) conveyorized and open-top vapor degreasers subject to the requirements in 40 CFR 63, Subpart T.]

Text of proposed rule and any required statements and analyses may be obtained from: John Henkes, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8403, e-mail: jlhenkes@gw.dec.state.ny.us

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

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

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

Consensus Statement

This rulemaking is a consensus rule because it corrects errors made in a previous rulemaking. The previous rulemaking provided an exemption for certain conveyorized and open-top vapor degreasers under 201-3.2(c)(39). This newly promulgated permitting exemption conflicts with an existing permitting provision. According to paragraph 201-4.1(a)(3), a facility sub-

ject to 40 CFR 63, Subpart T cannot be exempt from permitting. Instead, these sources must get a registration until December 9, 2004, and then these facilities will need to submit a Title V permit application. Also, subparagraphs 201-3.2(c)(39)(ii) through (iv) must be revised to indicate that these exemptions do not apply when subject to 40 CFR 63, Subpart T. Adopting these changes is necessary to correct this error.

Job Impact Statement

1. Nature of impact

The New York State Department of Environmental Conservation proposes to revise 6 NYCRR Part 201, Permits and Registrations, in order to remove the Part 201 permit exemption for conveyorized and open-top vapor degreasers that are subject to 40 CFR 63, Subpart T. Also, subparagraphs 201-3.2(c)(39)(ii) through (iv) must be revised to indicate that these exemptions do not apply when subject to 40 CFR 63, Subpart T. This revision will not have an adverse impact on job and employment opportunities.

2. Categories and numbers affected

The subparagraph 201-3.2(c)(39)(v) permit exemption was included in 6 NYCRR Part 201 during the most recent 6 NYCRR Part 226 rule making. This newly promulgated permitting exemption conflicts with an existing permitting provision. According to paragraph 201-4.1(a)(3), a facility subject to 40 CFR 63, Subpart T cannot be exempt from permitting. Instead, these sources must get a registration until December 9, 2004, and then these facilities will need to submit a Title V permit application. Therefore, this exemption must be removed from subparagraph 201-3.2(c)(39)(v). Facilities will not be affected by this revision because the subparagraph 201-3.2(c)(39)(v) permit exemption is nullified by an existing permitting provision.

3. Regions of adverse impact

There is no adverse employment opportunity impact attributable to this rulemaking and, therefore, no regions of adverse impact.

4. Minimizing adverse impact

Not Applicable.

5. Self-employment opportunities

Not Applicable.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

State or Federal Implementation Plans of Transportation Plans Programs

I.D. No. ENV-29-04-00010-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 sections 200.9, 240.17(a) and (b), 240.23(a)(6), (b)(1) and (3), 240.6(c)(1)(i), 240.27 and 240.28 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 19-0301 and 19-0303

Subject: Conformity to State or Federal implementation plans of transportation plans programs, and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Laws.

Purpose: To correct typographical errors.

Public hearing(s) will be held at: 2:00 p.m. on August 25, 2004 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A, Albany, NY 12233.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Text of proposed rule: Sections 200.1 through 200.8 remain unchanged.

Section 200.9 Referenced material.

Table 1 is revised to read as follows:

Regulation	Referenced Material	Availability
240.1	40 CFR Part 51.390 (August 15, 1997)	*
	Title 23 U.S.C (1994, ed.)	*
	Federal Transit Laws (Title 49 U.S.C. Chapter 53) (1994, ed.)	*
	Clean Air Act 42 U.S.C. Section 110, as amended by Public Law 101-549 ([November 20, 1990] *November 15, 1990*)	**
	Clean Air Act 42 U.S.C. Part D as amended by Public Law 101-549 ([November 20, 1990] *November 15, 1990*)	**
240.2(b)	Clean Air Act 42 U.S.C. Section 302(q) as amended by Public Law 101-549 ([November 20, 1990] *November 15, 1990*)	**
	Clean Air Act 42 U.S.C. Sections 110, 110(c), and 301(d) as amended by Public Law 101-549 ([November 20, 1990]) *November 15, 1990*	**
240.2(d)	40 CFR Part 58 (July 1, 1997)	*
240.2(e)	Clean Air Act 42 U.S.C. Sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and Sections 192(a) and 192(b), for nitrogen dioxide as amended by Public Law 101-549 ([November 20, 1990] *November 15, 1990*)	**
240.2(n)	23 CFR Part 450 (April 1, 1997)	*
240.2(x)	Clean Air Act 42 U.S.C. Section 175A as amended by Public Law 101-549 ([November 20, 1990] *November 15, 1990*)	**
240.2(y)	Clean Air Act 42 U.S.C. Section 175A as amended by Public Law 101-549 ([November 20, 1990] *November 15, 1990*)	**
240.2(z)	Title 23 U.S.C.Section 134(1994, ed.)	*
	Title 49 U.S.C.Section 5303 (July 5, 1994)	*
240.2(aa)	Clean Air Act 42 U.S.C. Sections 182(g)(1) and 198(c), as amended by Public Law 101-549 ([November 20, 1990] *November 15, 1990*)	**
240.2(ac)	Clean Air Act 42 U.S.C. Section 109 as amended by Public Law 101-549 ([November 20, 1990] *November 15, 1990*)	**
240.2(aj)	Title 23 U.S.C. (1994, ed.)	*
	Federal Transit Laws (Title 49 U.S.C. Chapter 53) (1994, ed.)	*
240.2(ao)	Title 23 U.S.C. (1994, ed.)	*
240.2(ar)	Clean Air Act 42 U.S.C. Section 108 as amended by Public Law 101-549 ([November 20, 1990] *November 15, 1990*)	**
240.2(as)	23 CFR Part 450 (April 1, 1997)	*
240.2(at)	23 CFR Part 450 (April 1, 1997)	*
240.3(a)(1)(i)	23 CFR Part 450 (April 1, 1997)	*
	49 CFR Part 613 (Oct. 1, 1997)	*
240.3(a)(1)(ii)	23 CFR Part 450 (April 1 , 1997)	*
	49 CFR Part 613 (October 1, 1997)	*
240.3(b)(3)	Clean Air Act 42 U.S.C. Section 107(d) as amended by Public Law 101-549 ([November 20, 1990] *November 15, 1990*)	**
240.6(f)(2)(v)	23 CFR 450.212 (April 1, 1997)	*
240.6(j)(1)	23 CFR 450 (April 1, 1997)	*
240.6(j)(3)	23 CFR 450 (April 1, 1997)	*
240.9	23 CFR 450 (April 1, 1997)	*
240.13	23 CFR 450 (April 1, 1997)	*
240.14(b)(1)	Title 23 U.S.C. (1994, ed.)	*
	Federal Transit Laws (Title 49 U.S.C. Chapter 53) (1994, ed.)	*
240.14(c)(1)	Title 23 U.S.C. (1994, ed.)	*
	Federal Transit Laws (Title 49 U.S.C. Chapter 53) (1994, ed.)	*
240.20(b)	Clean Air Act 42 U.S.C. Section 182(b)(1), as amended by Public Law 101-549 ([November 20, 1990] *November 15, 1990*)	**
240.20(c)	Clean Air Act 42 U.S.C. Section 182(b)(1), as amended by Public Law 101-549 ([November 20, 1990] *November 15, 1990*)	**
240.21(a)(1)	Clean Air Act 42 U.S.C. Section 179(b)(1), as amended by Public Law 101-549 ([November 20, 1990] *November 15, 1990*)**	
240.21(b)	Clean Air Act 42 U.S.C. Sections 179, 110(m), 179(b)(2) as amended by Public Law 101-549 ([November 20, 1990] *November 15, 1990*)	**
240.22(a)	Title 23 U.S.C. (1994, ed.)	*
	Federal Transit Laws (Title 49 U.S.C. Chapter 53) (1994, ed.)	*
240.22(b)	Title 23 U.S.C. (1994, ed.)	*
	Federal Transit Laws (Title 49 U.S.C. Chapter 53) (1994, ed.)	*
240.24(a)(1)	40 CFR Part 51, Appendix W (Guideline on Air Quality Models) (July 1, 1997)	*
240.26(a)	Title 23 U.S.C. (1994, ed.)	*
	Federal Transit Laws (Title 49 U.S.C. Chapter 53) (1994, ed.)	*
240.27	23 CFR Part 771 (April 1, 1997)	*
	Title 49 U.S.C. (1994, ed.)	*
23 CFR	712.204(d) (April 1, 1997)	*

The footnotes associated with Table 1 remain unchanged.

Section 200.10 remains unchanged.

Sections 240.1 through 240.16 remain unchanged.

Section 240.17 is revised to read as follows:

Section 240.17 CRITERIA AND PROCEDURES: LOCALIZED CO AND PM_{10} VIOLATIONS (HOT SPOTS).

(a) This paragraph applies at all times. The FHWA/FTA or regionally significant project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration must be performed according to the consultation requirements of section [240.6(c)(1)(i)] *240.6* and the methodology requirements of section 240.24.

(b) This paragraph applies for CO nonattainment areas as described in section 240.10(d)(1). Each FHWA/FTA or regionally significant project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to the consultation requirements of section [240.6(c)(1)(i)] *240.6* and the methodology requirements of section 240.24.

Sections 240.18 through 240.22 remain unchanged.

Section 240.23 PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-RELATED EMISSIONS.

(a) General requirements.

Subdivisions 240.23(a)(1) through 240.23(a)(5) remain unchanged.

Subdivision 240.23(a)(6) is revised to read as follows:

(6) The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable SIP revision. All other factors, for example the fraction of travel in a hot stabilized engine mode, must be consistent with the applicable SIP revision, unless modified after interagency consultation according to section [240.6(c)(1)(i)] *240.6* to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable SIP revision.

Subdivision 240.23(a)(7) remains unchanged.

Subdivision 240.23(b)(1) is revised to read as follows:

(b) Regional emissions analysis in serious, severe, and extreme ozone nonattainment areas and serious CO nonattainment areas must meet the requirements of paragraphs (b)(1) through (3) of this section if their metropolitan planning area contains an urbanized area population over 200,000.

(1) By January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations must be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods, and practices are available from USDOT and will be updated periodically. Agencies must discuss these modeling procedures and practices through the interagency consultation process, as required [by subparagraph 240.6(c)(1)(i)] *in section 240.6*. Network-based travel models must at a minimum satisfy the following requirements:

Subdivisions 240.23(b)(1)(i) through 240.23(b)(1)(vi) and subdivision 240.23(b)(2) remain unchanged.

Subdivision 240.23(b)(3) is revised to read as follows:

(3) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration will be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures [of subparagraph 240.6(c)(1)(i)] *specified in section 240.6*.

Subdivisions 240.23(c) through 240.23(e) remain unchanged.

Sections 240.24 through 240.26 remain unchanged.

Section 240.27 is revised to read as follows:

Section 240.27 EXEMPT PROJECTS.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 of this section are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 of this section is not exempt if the MPO in consultation with other agencies (see section 240.6[(c)(1)(iii)]), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has significant emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation. Table 2 follows:

The remainder of Section 240.27, which consists of Table 2, remains unchanged.

Section 240.28 is revised to read as follows:

Section 240.28 PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 of this section are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM_{10} concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 of this section is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see subparagraph [240.6(c)(1)(iii)] *240.6(h)(3)*), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason. Table 3 follows:

Table 3. - Projects Exempt From Regional Emissions Analyses

Intersection channelization projects.

Intersection signalization projects at individual intersections.

Interchange reconfiguration projects.

Changes in vertical and horizontal alignment.

Truck size and weight inspection stations.

Bus terminals and transfer points.

Section 240.29 remains unchanged.

Text of proposed rule and any required statements and analyses may be obtained from: John Kent, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8396, e-mail: jwkent@gw.dec.state.ny.us

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

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

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

Consensus Statement

This rulemaking is a consensus rule because it corrects errors made in a previous rulemaking. Part 240 currently contains references to a subdivision of Part 240 that does not exist, and in Part 200 references to a Federal law incorrectly state the date of that Federal law. Adopting this change is necessary to correct these errors.

Job Impact Statement

A Job Impact Statement has not been prepared for this rule as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York State. The rulemaking merely corrects an error from the original rulemaking.

The proposed rule is not expected to result in a decrease of more than one hundred full-time jobs and employment opportunities which would otherwise be available to the residents of the State in the next two years.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Control of Emissions of Non-Methane Organic Compounds (NMOC) from Municipal Solid Waste (MSW) Landfills

I.D. No. ENV-29-04-00011-P

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

Proposed action: This is a consensus rule making to amend section 208.6 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 19-0301, 19-0303 and 19-0305

Subject: Control of emissions of non-methane organic compounds (NMOC) from municipal solid waste (MSW) landfills.

Purpose: To correct an error made when Part 208 was promulgated.

Public hearing(s) will be held at: 2:00 p.m. on August 25, 2004 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A, Albany, NY 12233.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Text of proposed rule: Sections 208.1 to 208.6(d)(4) remain unchanged.

Paragraph 208.6(d)(5) is deleted.

Subdivision 208.6(e) is added, stating, *"The provisions of this section apply at all times, except during periods of start-up, shutdown or malfunction, provided that the duration of start-up, shutdown or malfunction shall not exceed 5 days for collections systems and shall not exceed 1 hour for treatment or control devices.*

Section 208.7 to the end of the regulation remains unchanged.

Text of proposed rule and any required statements and analyses may be obtained from: Thomas R. Christoffel, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8401, e-mail: trchrist@gw.dec.state.ny.us

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

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

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

Consensus Statement

This rulemaking is a consensus rule because it corrects errors made in a previous rulemaking. The previous rulemaking was based on a federal rulemaking and a paragraph in Part 208.6(d) should have been a separate subdivision. Adopting this change is necessary to correct this error.

Job Impact Statement

A Job Impact Statement has not been prepared for this rule as it is not expected to create a substantial adverse impact on jobs and employment opportunities in New York State. The rulemaking merely corrects an error from the original rulemaking.

The proposed rule is not expected to result in a decrease of more than one hundred full-time jobs and employment opportunities which would otherwise be available to the residents of the State in the next two years.

REVISED RULE MAKING HEARING(S) SCHEDULED

Emission Standards for Motor Vehicles and Motor Vehicle Engines

I.D. No. ENV-14-04-00003-RP

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

Revised action: Amendment of sections 200.9, 218-4.1 and 218-4.2 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105

Subject: Emission standards for motor vehicles and motor vehicle engines.

Purpose: To incorporate modifications that California has made to its Vehicle Emission Control Program relating to the ZEV mandate to reduce emissions in New York State and revise New York's ZEV alternative compliance plan provisions.

Public hearing(s) will be held at: 2:00 p.m. on August 25, 2004 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A, Albany, NY 12233.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Text of revised rule: 6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines

Subpart 4 ZERO EMISSION VEHICLE SALES MANDATE

Section 218-4.1 ZEV percentages.

Commencing in model-year [2005] *2007*, each manufacturer's sales fleet of passenger cars and light-duty trucks, produced and delivered for sale in New York, must, at minimum, contain at least [10 percent] *the same percentage of* ZEVs subject to the same requirements set forth in California Code of Regulations, title 13, section 1962 (see Table 1, section 200.9 of this Title) using New York specific vehicle numbers.

Section 218-4.2 Voluntary alternative compliance plan (ACP).

An automobile manufacturer may implement a voluntary alternative compliance plan (ACP) to section 218-4.1 of this Subpart, provided such plan complies with the following and has been approved by the commissioner.

(a) Core credit scheme. The core vehicle credit values for the ACP shall be the same as California Code of Regulations, title 13, section 1962 (See Table 1, section 200.9 of this Title).

(b) New York multiplier. After the core credit value for a vehicle is established by CARB pursuant to California Code of Regulations, title 13, section 1962 (see Table 1, section 200.9 of this Title), a New York specific multiplier will be applied to that vehicle in accordance with [the following:] *Table 1. The New York multiplier shall not be applied to type III ZEVs placed in service pursuant to the California Alternative Requirements for Large Volume Manufacturers as identified in the California Code of Regulations, title 13, section 1962(b)(2)(B).*

Table 1: [Northeast] *New York* Phase In Multiplier

Model Year	Requirement	PZEV Credit Multiplier	*ATPZEV Credit Multiplier*	ZEV Credit Multiplier
2002	Voluntary Early Introduction	1.5	*1.5*	3
2003	Voluntary Early Introduction	1.5	*1.5*	3
2004	[Mandatory Compliance] *Voluntary Early Introduction*	1.5	*2.25*	3
2005	[Mandatory Compliance] *Voluntary Early Introduction*	1.3	*1.7*	2
2006	Mandatory Compliance	1.15	*1.3*	1.5
2007	[Equivalency with California program] *Mandatory Compliance*	[1] *1.15*	*1.3*	[1] *1.5*
2008	*Mandatory Compliance*	*1.15*	*1.3*	*1.5*
2009	*Equivalency with California program*	*1*	*1*	*1*

(c) Percentage requirements. An automobile manufacturer's ACP must comply with the following percentage phase-in requirements *except that if such manufacturer opts into California's alternative requirements for large volume manufacturers as provided in California Code of Regulations, title 13, section 1962(b)(2)(B), model year 2007 and 2008 minimum ZEV percentage requirements may be met in the manner identified in California Code of Regulations, title 13, section 1962(b)(2)(B)(2):*

Table 2: Percentage Requirements for ZEVs, AT PZEVs, and PZEVs

Model Year	Minimum Percent ZEV Credit	Minimum Percent AT PZEV Credit	Maximum Percent PZEV Credit
[2004]	[0]	[0]	[10]
[2005]	[Combined]	[1]	[9]
2006	[1]	[2] *0*	[7] *10*
2007*	[2] *Combined*	[2]	[6] *9*
2008	*1*	*2*	*7*

*In MY 2007, 1 percent of a manufacturer's sales must be ZEV, AT PZEV or some combination thereof.

Intermediate volume manufacturers may meet the entire ZEV requirement with 100 percent PZEV credits. Small and independent low volume manufacturers are not required to meet the ZEV percentage requirements but are able to generate and trade credits.

(d) Infrastructure and transportation system projects. Automobile manufacturers may meet a total of 25 percent of their 10 percent ZEV requirement by implementing infrastructure and transportation demonstration projects in accordance with the following requirements. Manufacturers may seek credits for projects that advance infrastructure to encourage full development of alternative vehicle programs. Such projects may include alternative fuel refueling, fuel cells and home recharging for electric vehicles. Manufacturers may also seek credits for projects that result in the

placement of advanced technology vehicles in innovative transportation systems. The commissioner shall take into account associated project costs and the relationship to supporting increased usage of advanced technology vehicles.

(e) Generation and use of credits. *(1)* Credit life, banking and trading will be calculated as per California Code of Regulations, title 13, section 1962. A manufacturer who generates twice as many credits from model-year [2004] *2006* or earlier PZEVs as required for model-year [2004] *2006* has through model-year [2007] *2009* to comply with the model-year [2005] *2007* AT PZEV/ZEV requirement. A manufacturer who qualifies for the [2004] *2006* AT PZEV/ZEV carryforward and generates twice as many PZEV credits as necessary for model-year [2005] *2007* has through model-year [2008] *2010* to comply with the model-year [2006] *2008* AT PZEV/ZEV requirement.

(2) A manufacturer who produces and delivers for sale in New York model year 2003, 2004, 2005 or 2006 PZEVs that generate credits exceeding (prior to the application of any credit multipliers from Table 1) the number of credits equal to 6 percent (10 percent for model year 2006) of the average annual sales volume of 1997, 1998 and 1999 PC and LDT1 vehicles delivered for sale in New York by the manufacturer, the manufacturer may use such excess credits as AT PZEV credits in the 2007 and 2008 model years.

(f) Reporting. (1) Projected compliance reports will be due by the commencement of the model year. This report will include projected vehicle sales organized by engine family, marketing plans, dealerships targeted for advanced technology vehicle sales and support, plans for infrastructure and transportation system projects and credits proposed to be earned, and manufacturer projected compliance rates including potential credits or debits.

(2) Compliance reports will be required and due with annual sales reports by March 31st (with the potential to amend, based on late sales) following the completed model year. This report will include vehicle sales organized by engine family, descriptions of infrastructure and transportation system projects, manufacturer compliance rates including credits or debits earned and the way the manufacturer plans to erase any debits.

(g) Such ACP shall include, at a minimum:

(1) a demonstration that the emissions reductions from the alternative program equal or exceed those which would result from the compliance with section 218-4.1 of this Subpart;

(2) a demonstration that the alternative compliance program will lead to full compliance with all elements of section 218-4.1 of this Subpart starting no later than model year [2007] *2009*; and

(3) actions by the manufacturers that advance the sale and use of ZEV (including PZEV) and advanced technologies beyond that which would otherwise occur as a result of the fleet average requirements in Subpart 218-3 of this Part.

(h) Such ACP shall provide that advanced technology vehicle models, including ZEV's, sold or leased in California shall be available for purchase or lease in New York *except for type III ZEVs placed in service pursuant to section 1962(b)(2)(B) of the California Code of Regulations (see Table 1, section 200.9 of this Title).*

(i) Failure to meet the terms of the approved alternative compliance program will subject a manufacturer to all applicable penalties, and will require compliance with the ZEV mandate as prescribed in section 218-4.1 of this Subpart.

(j) A manufacturer shall notify the department of its intent to file an alternative compliance program within 60 days after the effective date of this regulation.

(Section 200.1 through 200.8 remains unchanged)

Section 200.9, Table 1 is amended to read as follows:

218-1.2(d)	Clean Air Act 42 U.S.C. Section 7543 (1988) as amended by Public Law 101-549 (1990)	**
	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Public Law 101-549 (1990)	**
218-1.2(e)	California Health and Safety Code, Section 39003 (2000)	** ***
218-1.2(j)	California Vehicle Code, Section 165 (2000)	** ***
218-1.2(k)	California Code of Regulations, Title 13, Section 1900(b)(3) (12-22-99)	** ***
218-1.2(v)	California Code of Regulations, Title 13, Section 1961 [(5-30-01)] *2-20-04 and 3-26-04*	** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
	California Code of Regulations, Title 13, Section 1961(d) [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
218-1.2(w)	California Code of Regulations, Title 13, Section 1960.1 [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
	California Code of Regulations, Title 13, Section 1961 [(5-30-01)] *(2-20-04) and (3-26-04)*	** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
	California Code of Regulations, Title 13, Section 1961(d) [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] *(12-19-03), (2-20-04) and (3-26-04)*	***+ ++
218-1.2(x)	California Code of Regulations, Title 13, Section 1905 (7-3-96)	** ***
218-1.2(ad)	California Code of Regulations, Title 13, Section 1960.5 (9-30-91)	** ***
218-1.2(ai)	California Code of Regulations, Title 13, Section 1960.1 [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
218.-1.2(al)	40 CFR Section 86.1827-01 (July 1, 2000)	*
218-1.2(aq)	California Code of Regulations, Title 13, Section 2112 (11-27-99)	** ***
218-1.2(at)	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] *(12-19-03), (2-20-04) and (3-26-04)*	** ***+ ++
218-1.2(au)	California Code of Regulations, Title 13, Section 1900(b)(21) [(12-07-01)] and [(5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
218-2.1(a)	California Code of Regulations, Title 13, Section 1956.8 (7-25-01)	** ***
	California Code of Regulations, Title 13, Section 1956.9 (3-6-96)	** ***
	California Code of Regulations, Title 13, Section 1960.1** [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
	California Code of Regulations, Title 13, Section 1960.1.5 (9-30-91)	** ***
	California Code of Regulations, Title 13, Section 1960.5 (9-30-91)	** ***
	California Code of Regulations, Title 13, Section 1961 [(5-30-01)] *(2-20-04) and (3-26-04)*	** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B)** [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
	California Code of Regulations, Title 13, Section (d) [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] *(12-19-03), (2-20-04) and (3-26-04)*	** ***+ ++
	California Code of Regulations, Title 13, Section 1964 (2-23-90)	** ***
	California Code of Regulations, Title 13, Section 1965 (12-22-99)	** ***
	California Code of Regulations, Title 13, Section 1968.1 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 1976 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 1978 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2030 (9-25-97)	** ***
	California Code of Regulations, Title 13, Section 2031 (9-25-97)	** ***
	California Code of Regulations, Title 13, Section 2047 (5-31-88)	** ***
	California Code of Regulations, Title 13, Section 2065 (7-25-01)	** ***
	California Code of Regulations, Title 13, Section 2235 (9-17-91)	** ***
	California Code of Regulations, Title 13, Article 1.5 (7-25-01)	** ***
218-2.1(a)	Clean Air Act 42 U.S.C. Section 7521 (1988) as amended by Public Law 101-549 (1990)	**
218-2.1(b)(5)	Clean Air Act 42 U.S.C. Section 7401 et seq. (1988) as amended by Public Law 101-549 (1990)	**
218-2.1(b)(8)	California Health and Safety Code, Section 43656 (2000)	***
218-2.1(d)	Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Public Law 101-549 (1990)	**

218-3.1	California Code of Regulations, Title 13, Section 1960.1 [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
	California Code of Regulations, Title 13, Section 1961 [(5-30-01)] *(2-20-04) and (3-26-04)*	** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
	California Code of Regulations, Title 13, Section 1961(d) [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
218-3.1(a)	California Code of Regulations, Title 13, Section 1960.1 [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
218-3.1(b)	California Code of Regulations, Title 13, Section 1960.1 [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** *** ++
	California Code of Regulations, Title 13, Section [(5-30-01)] *(2-20-04) and (3-26-04)*	** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
	California Code of Regulations, Title 13, Section 1961(d) [(12-07-01) and (5-24-02)] *(2-20-04) and (3-26-04)*	** ***+ ++
218-4.1	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] *(12-19-03), (2-20-04) and (3-26-04)*	** ***+ [++]
218-4.2	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] *(12-19-03), (2-20-04) and (3-26-04)*	** ***+ [++]
218-5.1(a)	California Code of Regulations, Title 13, Section 2061 (10-23-96)	** ***
	California Code of Regulations, Title 13, Section 2062 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2065 (7-25-01)	** ***
	California Code of Regulations, Title 13, Section 2106 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2107 (11-27-99)	** ***
	California Code of Regulations, Title 13, Article 1.5 (7-25-01)	** ***
218-5.1(b)	California Code of Regulations, Title 13, Section 2061 (10-23-96)	** ***
	California Code of Regulations, Title 13, Section 2062 (11-27-99)	** ***
	California Code of Regulations, Title 13, Section 2065 (7-25-01)	** ***
	California Code of Regulations, Title 13, Article 1.5 (7-25-01)	** ***
218-5.2(a)	California Code of Regulations, Title 13, Section 2065 (7-25-01)	** ***
	California Code of Regulations, Title 13, Section 2109 (11-30-83)	** ***
	California Code of Regulations, Title 13, Section 2110 (11-27-99)	** ***
	California Code of Regulations, Title 13, Article 1.5 (7-25-01)	** ***
218-5.2(b)(1)	California Code of Regulations, Title 13, Section 2106 (11-27-99)	** ***
218-5.3(b)	California Code of Regulations, Title 13, Section 2101 (11-27-99)	** ***
218-6.2	Clean Air Act 42 U.S.C. Section 7401 et seq. (1988) as amended by Public Law 101-549 (1990)	**
218-7.3(a)(1)	California Code of Regulations, Title 13, Section 2221 (11-30-83)	** ***
	California Code of Regulations, Title 13, Section 2224 (8-16-90)	** ***
218-7.3(a)(2)	California Code of Regulations, Title 13, Section 2224(a) (8-16-90)	** ***
218-7.4(b)(3)(i)	California Code of Regulations, Title 13, Section 2222 (8-16-90)	** ***
218-7.4(b)(3)(ii)	California Code of Regulations, Title 13, Section 2222 (8-16-90)	** ***
218-7.5(b)	California Code of Regulations, Title 13, Section 2222 (8-16-90)	** ***

Revised rule compared with proposed rule: Substantial revisions were made in section 218-4.2(b), (c) and (e).

Text of revised proposed rule and any required statements and analyses may be obtained from: Steven Flint, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8292, e-mail: seflint@gw.dec.state.ny.us

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

Public comment will be received until: 30 days after publication of this notice.

Summary of Revised Regulatory Impact Statement

The Regulatory Impact Statement (RIS) has been revised to reflect changes in the proposed Part 218 and Part 200.9 regulation which have resulted from Public Comment. Specifically, the proposed Part 218 has been revised to include a commencement date of the Alternative Compliance Plan option in model year 2006, as opposed to the originally proposed 2005. This change is proposed in order to provide a delay in program start for the ACP that is consistent with the delay in the base ZEV program in New York, as well as the ZEV program in California. The proposed regulations are also revised to clarify that "excess" Partial Zero Emission Vehicle (PZEV) credits from model years 2003, 2004, 2005, and 2006 may be used to meet Advanced Technology PZEV requirements for model years 2007 and 2008, and to incorporate nonsubstantial changes made to its regulation by California since New York proposed this regulation.

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The purpose of the rule amendment is to revise the existing Low Emission Vehicle (LEV) program to incorporate modifications that California has made to its vehicle emission control program relating to the Zero Emission Vehicle (ZEV) mandate. New York is also proposing to amend the Alternative Compliance Plan option in Part 218 to extend the expiration date of the option and to revise plan flexibilities. Adoption of these modifications is necessary to reduce emissions of air contaminants from new motor vehicles, and will also provide for continuing advancement of motor vehicle emissions control technology.

By statutory authority of, and pursuant to, Environmental Conservation Law (ECL), the Commissioner of Environmental Conservation is responsible for protecting the air resources of New York State. The Commissioner is authorized to adopt rules and regulations to enforce the ECL. The Legislature bestowed on the Department the power to formulate, adopt, promulgate, amend and repeal regulations for preventing, controlling or prohibiting air pollution.

The main purpose of enacting this program is to protect the health of New York State residents and its visitors. The revised emissions standards, developed to reduce air pollution from mobile sources, will have a positive impact by decreasing emissions of ozone precursor compounds. Exposure to motor vehicle emissions has caused or has been associated with eye, throat and bronchial irritation, headaches, nausea and lightheadedness. Deterioration in the health condition of those individuals with respiratory ailments may also occur. The primary compounds emitted from vehicle exhaust, and the secondary compounds that may form, can be detrimental to human health. Several studies have found evidence to support this.

The ZEV revisions: adopt regulations identical to California's; remove all references to fuel economy; modify the 15-year, 150,000-mile Partial ZEV (PZEV) warranty required for hybrid electric vehicles; modify the compliance requirements and options in response to the current state of ZEV technology; and define three fuel cell development stages which start in 2003.

The regulations are also modified to include revisions to the Zero Emission Vehicle (ZEV) mandate which would delay the ZEV percentage requirements until 2007, but allow full use of credits earned prior to that date. For the 2007-2011 transition period, the ZEV obligation is reduced to one-half of the current level, and the remaining half can be met with AT PZEVs or hydrogen infrastructure. In addition, five types of hybrid electric vehicles are defined qualifying for additional allowances or allowances that may be used in the AT PZEV category. The ZEV calculation method will also be amended and five ZEV types are created that are the basis for the ZEV credits. Type III ZEVs placed in any state that is administering the California ZEV program (for example, New York State) pursuant to section 177 of the federal Clean Air Act count towards California's ZEV requirement, with the effect that the ZEV requirements of any section 177 state allow the counting of Type III ZEVs placed in California or other section 177 states.

New York includes in the ZEV program an Alternative Compliance Plan (ACP). The ACP is a voluntary alternative by which the State seeks to ramp up to the full level of the ZEV mandate utilizing a broad range of extremely clean, durable, advanced technology vehicles. The warranty provisions associated with PZEVs will benefit consumers, and prevent emission control systems degradation. The flexibility of the ACP allows for manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. Under the ACP, manufacturers

notify the Department of their intent to be governed by the ACP. The ACP requires manufacturers to meet a 10 percent ZEV level, based on a credit mechanism specified in the ACP. In addition, the ACP includes early introduction and phase in credit multipliers, which decline until the program fully matches up with the California program. The ACP requires that vehicles sold or leased in California must be available for purchase or lease in New York, and that manufacturers must identify in their proposed ACP how such vehicles will be marketed. The ACP allows manufacturers to generate up to 25 percent of their credits from infrastructure and transportation projects provided such projects are identified in their approved ACP. Credits can be applied to the vehicle category (PZEV, AT PZEV, or ZEV) which the project affects. Excess PZEV credits from 2003, 2004, 2005 and 2006 may be used to meet AT PZEV requirements for model years 2007 and 2008. The ACP includes specific reporting requirements, both in terms of forecasting as well as progress reports. The ACP commences with model year 2006, and ends with the end of the 2008 model year.

California has projected that the incremental cost of PZEVs relative to SULEVs is likely to be less than $100 as vehicles are optimized in the next few years. The additional cost would cover some improvement in components should manufacturers design for less than a 150,000 mile life currently, and an additional $10 for zero evaporative emission control system upgrades. Similarly, California projects that the incremental cost for an AT PZEV is $1,500 in 2007-2008, $1,200 in 2009-2011 and $700 in 2012 and beyond. For Battery EVs, it is estimated that the incremental cost for full function EVs is $17,000 from 2007-2012, and City EVs have an incremental cost of $8,000 from 2007-2012. Regarding Fuel Cell EVs, the incremental costs are estimated to be $300,000 in 2007-2008, $120,000 in 2009-2011 and $9,300 in 2012 to 2020. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced.

Businesses involved in manufacturing, selling, or purchasing passenger cars or trucks could be affected by the regulations. However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state's requirements. The ZEV requirements are not expected to have a major cost impact on automobile dealers. Dealerships will experience some cost increases associated with sale and service of PZEVs and AT PZEVs, since in some cases these are a technology that a dealership has not previously handled, and is thus required to train service personnel to service these vehicles.

The proposed amendments may have a positive impact on New York employment since the new technologies associated with sale and service of PZEVs and AT PZEVs, may require hiring or training personnel who are familiar with the products and associated technologies. In some cases these are a technology that a dealership has not previously handled. New marketing strategies will also need to be developed to promote the advantages of driving these cleaner vehicles, including significant air quality benefits, and thus increase sales to consumers.

The changes to the LEV regulations also result in no significant changes in paperwork requirements for dealers. While dealers must assure that the vehicles they sell are California certified, most manufacturers include provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York State dealers.

The flexibility of the changes to the ZEV mandate such as allowing manufacturers to bank credits, allowing the production of AT PZEVs or hydrogen infrastructure to meet part of the ZEV obligation, allowing the development of fuel cell stages, and increasing the AT PZEV allowances for advanced componentry gaseous fuel or hydrogen fuel storage systems, zero emission range and low fuel-cycle emissions will allow manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. These options will provide a long term air quality benefit, as well as a long term ZEV program compliance benefit.

Many aspects of New York LEV regulations are more stringent than their federal counterpart. Examples include the zero-emission vehicle program. Because of this, adoption of all the Tier 2 standards would provide fewer emission benefits. The federal programs do not include a specific ZEV program. Thus, acceptance of the federal program could deprive New York of some or all of the advanced technology and air quality benefits associated with the ZEV program.

The New York ACP is a voluntary element of this regulation, and includes required actions in model year 2005.

Revised Regulatory Flexibility Analysis

The Regulatory Flexibility Analysis for Small Business and Local Governments has been revised to reflect changes in the proposed Part 218 and Part 200.9 regulation which have resulted from Public Comment. Specifically, the proposed Part 218 has been revised to include a commencement date of the Alternative Compliance Plan option in model year 2006, as opposed to the originally proposed 2005. This change is proposed in order to provide a delay in program start for the ACP that is consistent with the delay in the base ZEV program in New York, as well as the ZEV program in California. The proposed regulations are also revised to clarify that "excess" Partial Zero Emission Vehicle (PZEV) credits from model years 2003, 2004, 2005, and 2006 may be used to meet Advanced Technology PZEV requirements for model years 2007 and 2008. Since these revisions increase program flexibility, they are not expected to have any negative impact on small business or local governments.

1. Effect of rule:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The proposed changes to the regulations may impact businesses involved in manufacturing, selling, purchasing or repairing passenger cars or trucks. However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state's requirements (either Federal or California certification standards).

State and local governments are also consumers of vehicles that will be regulated under the proposed LEV amendments. Therefore, local governments who own or operate vehicles in New York State are subject to the same requirements as privately owned vehicles in New York State; i.e., they must purchase California certified vehicles.

The changes are a revision and extension of the current LEV standards. The LEV program has been in effect in New York State since model year 1993 for passenger cars and light-duty trucks, and the New York State Department of Environmental Conservation (Department) is unaware of any adverse impact to small businesses or local governments as a result.

2. Compliance requirements:

There are no specific requirements in the regulation which apply exclusively to small businesses or local governments. Reporting, record keeping and compliance requirements are effective statewide. Automobile dealers (some of which may be small businesses) selling new cars, are required to sell or offer for sale only California certified vehicles. Also, some automobile dealerships will be selling and servicing advanced technology vehicles (ATV). These proposed amendments will not result in any additional reporting requirements to dealerships other than the current requirements to maintain records demonstrating that vehicles are California certified. This documentation is the same documentation already required by the New York State Department of Motor Vehicles for vehicle registration. If local governments are buying new fleet vehicles, they should make sure that the vehicles are California certified.

3. Professional services:

There are no professional services needed by small business or local government to comply with the proposed rule.

4. Compliance costs:

California has estimated the incremental per vehicle cost of a city zero emission vehicle (ZEV) to be $8,000. A full function ZEV cost increment is projected at $17,000. A fuel cell ZEV cost increment is projected at $300,000 in 2007-2008, $120,000 in 2009-2011, and $9,300 in 2012 and beyond. The projected incremental cost for partial ZEVs (PZEVs) is projected to be $100. Advanced Technology PZEVs are projected to have a cost increment of $500 in 2007-2008 and $200 in 2009-2011. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced.

New York State currently maintains personnel and equipment to administer the LEV program. It is expected that these personnel will be retained to administer the revisions to this program. Therefore, no additional costs will be incurred by the State of New York for the administration of this program.

5. Minimizing adverse impact:

There will be no adverse impact on local governments who own or operate vehicles in the state because they are subject to the same requirements as those imposed upon privately owned vehicles.

This regulation contains exemptions for emergency vehicles, and military tactical vehicles and equipment. Furthermore, the LEV program is not applicable to vehicles with an odometer reading of 7,500 miles or more when sold.

The flexibility of the changes to the ZEV mandate such as allowing manufacturers to bank credits, allowing the production of AT PZEVs or

hydrogen infrastructure to meet part of the ZEV obligation, allowing the development of fuel cell stages, and increasing the AT PZEV allowances for advanced componentry gaseous fuel or hydrogen fuel storage systems, zero emission range and low fuel-cycle emissions will allow manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. These options will provide a long term air quality benefit, as well as a long term ZEV program compliance benefit.

6. Small business and local government participation:

The Department plans on holding public hearings at various locations throughout New York State after the amendments are proposed. Small businesses and local governments will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties who are unable to attend a public hearing can submit written comments.

7. Economic and technological feasibility:

New York includes in the ZEV program an Alternative Compliance Plan (ACP). The ACP is a voluntary alternative by which the State seeks to ramp up to the full level of the ZEV mandate utilizing a broad range of extremely clean, durable, advanced technology vehicles. The warranty provisions associated with PZEVs will benefit consumers, and prevent emission control systems degradation. The flexibility of the ACP allows for manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service.

The proposed amendments may have a positive impact on New York employment since the new technologies associated with sale and service of PZEVs and AT PZEVs, may require hiring or training personnel who are familiar with the products and associated technologies. In some cases these are a technology that a dealership has not previously handled. New marketing strategies will also need to be developed to promote the advantages of driving these cleaner vehicles, including significant air quality benefits, and thus increase sales to consumers.

Revised Rural Area Flexibility Analysis

The Rural Area Flexibility Analysis has been revised to reflect changes in the proposed Part 218 and Part 200.9 regulation which have resulted from Public Comment. Specifically, the proposed Part 218 has been revised to include a commencement date of the Alternative Compliance Plan option in model year 2006, as opposed to the originally proposed 2005. This change is proposed in order to provide a delay in program start for the ACP that is consistent with the delay in the base ZEV program in New York, as well as the ZEV program in California. The proposed regulations are also revised to clarify that "excess" Partial Zero Emission Vehicle (PZEV) credits from model years 2003, 2004, 2005, and 2006 may be used to meet Advanced Technology PZEV requirements for model years 2007 and 2008. Since these revisions increase program flexibility, they are not expected to have any negative impact on rural areas.

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The changes to the regulations modify New York State's current zero emission vehicle sales requirement. There are no requirements in the regulation which apply only to rural areas. The changes to these regulations may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state's requirements (either Federal or California certification standards).

The changes are revisions and extensions of the current LEV standards. The LEV program has been in effect in New York State since model year 1993 for passenger cars as well as light-duty trucks, and the New York State Department of Environmental Conservation (Department) is unaware of any adverse impact to rural areas as a result. The beneficial emissions impact of the program accrues to all areas of the state.

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

There are no specific requirements in the proposed regulations which apply exclusively to rural areas. Reporting, recordkeeping and compliance requirements apply primarily to vehicle manufacturers, and to a lesser degree to automobile dealerships. Manufacturers reporting requirements mirror the California requirements, and are thus not expected to be burdensome. Dealerships do not have reporting requirements, but must maintain records to demonstrate that vehicles and some engines are California certified. This documentation is the same as documentation already required by the New York State Department of Motor Vehicles for vehicle registration.

Professional services are not anticipated to be necessary to comply with the rules.

3. Costs:

California has estimated the incremental per vehicle cost of a city zero emission vehicle (ZEV) to be $8,000. A full function ZEV is projected to have an incremental cost of $17,000. A fuel cell ZEV incremental cost is projected at $300,000 in 2007-2008 and $120,000 in 2009-2011. The projected incremental cost for partial ZEVs (PZEVs) is projected to be $100. Advanced Technology PZEVs are projected to have an incremental cost of $500 in 2007-2008 and $200 in 2009-2011. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced.

4. Minimizing adverse impact:

The changes will not adversely impact rural areas. As a result of the changes to the current ZEV requirements, rural areas may benefit by seeing an improvement in the air quality.

5. Rural area participation:

The Department plans on holding public hearings at various locations throughout New York State once the regulation is proposed. Some of these locations will be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties who are unable to attend a public hearing can submit written comments.

Revised Job Impact Statement

The Job Impact Statement has been revised to reflect changes in the proposed Part 218 and Part 200.9 regulation which have resulted from Public Comment. Specifically, the proposed Part 218 has been revised to include a commencement date of the Alternative Compliance Plan option in model year 2006, as opposed to the originally proposed 2005. This change is proposed in order to provide a delay in program start for the ACP that is consistent with the delay in the base ZEV program in New York, as well as the ZEV program in California. The proposed regulations are also revised to clarify that "excess" Partial Zero Emission Vehicle (PZEV) credits from model years 2003, 2004, 2005, and 2006 may be used to meet Advanced Technology PZEV requirements for model years 2007 and 2008. Since these revisions increase program flexibility, they are not expected to have any negative impact on jobs or employment opportunities in New York State.

1. Nature of impact:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Subpart 200.9, and 6 NYCRR Part 218. The amendments to the regulations are not expected to negatively impact jobs and employment opportunities in New York State. New York State has had a LEV program in effect since model year 1993 for passenger cars and light-duty trucks, and the New York State Department of Environmental Conservation (DEC) is unaware of any adverse impact to jobs and employment opportunities as a result.

2. Categories and numbers affected:

The changes to this regulation may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. However, these are not expected to impact automobile manufacturers significantly since manufacturers are already required to certify vehicles to standards appropriate for each state's requirements (either Federal or California certification standards). Dealerships will be able to sell California certified vehicles to buyers from states bordering New York. Since vehicles must be California certified in order to be registered in New York, New York residents will not be able to buy non-complying vehicles out of state, but may be able to buy complying vehicles out of state.

3. Regions of adverse impact:

None.

4. Minimizing adverse impact:

The ZEV requirements are not expected to have a major cost impact on automobile dealers. A principal element of the revisions is that in order for a vehicle to qualify for any of a wide range of credit multipliers, the vehicle must actually be placed in service. Thus, while dealers have historically expressed concern that manufacturers would simply "dump" ZEVs on dealerships, there is now an incentive for manufacturers and dealers to work together to ensure that the vehicles are actually placed into service. Dealerships will experience some cost increases associated with sale and service of PZEVs and AT PZEVs, since in some cases these are a technology that a dealership has not previously handled, and is thus required to train service personnel to service these vehicles.

The flexibility of the changes to the ZEV mandate such as allowing manufacturers to bank credits, allowing the production of AT PZEVs or hydrogen infrastructure to meet part of the ZEV obligation, allowing the development of fuel cell stages, and increasing the AT PZEV allowances for advanced componentry gaseous fuel or hydrogen fuel storage systems, zero emission range and low fuel-cycle emissions will allow manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service. These options will provide a long term air quality benefit, as well as a long term ZEV program compliance benefit.

New York includes in the ZEV program an Alternative Compliance Plan (ACP). The ACP is a voluntary alternative by which the State seeks to ramp up to the full level of the ZEV mandate utilizing a broad range of extremely clean, durable, advanced technology vehicles. The warranty provisions associated with PZEVs will benefit consumers, and prevent emission control systems degradation. The flexibility of the ACP allows for manufacturers to design an alternative compliance plan which provides clean air benefits from the commercialization of advanced motor vehicle technology, while affording the manufacturer choices over what technology to develop and place into service.

The proposed amendments may have a positive impact on New York employment since the new technologies associated with sale and service of PZEVs and AT PZEVs, may require hiring or training personnel who are familiar with the products and associated technologies. In some cases these are a technology that a dealership has not previously handled. New marketing strategies will also need to be developed to promote the advantages of driving these cleaner vehicles, including significant air quality benefits, and thus increase sales to consumers.

5. Self-employment opportunities:

None.

Department of Health

EMERGENCY RULE MAKING

Treatment of Opiate Addiction

I.D. No. HLT-37-03-00001-E
Filing No. 774
Filing date: July 2, 2004
Effective date: July 2, 2004

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

Action taken: Amendment of section 80.86 and addition of new section 80.84 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 3308(2), 3351 and 3352

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

Specific reasons underlying the finding of necessity: We are proposing that these regulations be adopted on an emergency basis because immediate adoption of the regulations is necessary to protect the public health and safety. The regulations are based on the federal Drug Addiction Treatment Act of 2000 (DATA), which dramatically expands opioid dependent patients' access to treatment of addiction. The provisions in the DATA become effective immediately upon the FDA approval of a Schedule III-V controlled substance for the treatment of opiate addiction. A product containing buprenorphine has received FDA approval for such use and is the first such product to receive FDA approval for this indication.

Pre-existing Public Health Law requires the Commissioner to specifically designate in regulation any controlled substance approved for the treatment of opiate addiction.

The proposed amendments to Part 80 specifically state that buprenorphine may be utilized for the treatment of opiate addiction. Due to its significant potential for abuse and diversion, it is important that the department monitor the prescribing, administering and dispensing of buprenorphine by pharmacies and physicians. Such monitoring can be accomplished by the registration of physicians and pharmacies and by requiring dispensers to transmit such prescription data to the department.

These regulations are necessary to protect the public from the significant abuse potential of buprenorphine, while still allowing access to legitimate treatment. Greater access to addiction treatment will promote health for the opiate dependent patient, and protect society at large by reducing the violence associated with drug crimes. Public health will be protected by allowing opiate dependent patients a legal means of maintaining their disease, as an alternative to seeking drugs from illegal sources.

Subject: Treatment of opiate addiction.

Purpose: To allow the treatment of opiate addiction in an office-based setting while curtailing controlled substance diversion.

Text of emergency rule: Section 80.84 is added to read as follows:

80.84 Physicians and pharmacies; prescribing, administering and dispensing for the treatment of narcotic addiction.

Pursuant to the provisions of the federal Drug Addiction Treatment Act of 2000 (106 P.L. 310, Div. B, Title XXXV, Section 3502(a)), an authorized physician may prescribe, administer or dispense an approved controlled substance, and a licensed registered pharmacist may dispense an approved controlled substance, to a patient participating in an authorized controlled substance maintenance program approved pursuant to Article 32 of the Mental Hygiene Law for the treatment of narcotic addiction.

(a) An approved controlled substance shall mean the following controlled substance which has been approved by the Food and Drug Administration (FDA) and the New York State Department of Health for the treatment of narcotic addiction:

(1) buprenorphine

(b) An authorized physician is a physician registered with the department to prescribe, administer or dispense an approved controlled substance for the treatment of narcotic addiction pursuant to this section and specifically registered with the Drug Enforcement Administration to prescribe, administer or dispense an approved controlled substance for the treatment of narcotic addiction, and approved for such purpose pursuant to the provisions of Article 32 of the Mental Hygiene Law.

(1) The total number of such patients of an authorized physician or group practice at any one time shall not exceed 30.

(2) A physician must register with the department every two years to provide such treatment. Such registration will be provided at no cost.

(3) An authorized physician prescribing an approved controlled substance for the treatment of narcotic addiction, in addition to preparing and signing a prescription in accordance with Section 3335 of the Public Health Law, shall also write his/her unique DEA identification number on the prescription.

(c) An authorized pharmacy is a pharmacy registered with the department to dispense an approved controlled substance for the treatment of narcotic addiction.

(1) A pharmacy must register with the department every two years to provide such treatment. Such registration will be provided at no cost.

(2) A pharmacist may dispense an approved controlled substance for the treatment of narcotic addiction pursuant to a prescription issued by an authorized physician. Such dispensing shall be in accordance with Section 3336 of the Public Health Law.

(3) A pharmacist dispensing such a prescription shall file the prescription information with the department either electronically in accordance with Section 80.73(c)(2) of this Part, or manually on an approved departmental form. The pharmacist shall report the practitioner's narcotic addiction treatment registration number in lieu of the practitioner's Drug Enforcement Administration registration number.

(d) Each incident or alleged incident involving the theft, loss or possible diversion of controlled substances shall also be reported to the department immediately.

Section 80.86 is amended to read as follows:

80.86 Records and reports of treatment programs. (a) All persons approved pursuant to article [23] *32* of the Mental Hygiene Law to operate a [substance abuse] *chemical dependence* program*, other than authorized physicians and pharmacists as defined in Section 80.84 of this Part who are registered with the department to prescribe, administer or dispense approved controlled substances for the treatment of narcotic addiction,* and who possess a Federal registration by the Drug Enforcement Administration, United States Department of Justice to purchase, possess and use controlled substances shall keep the following records:

(1) records of controlled substances received by approved persons including date of receipt, name and address of distributor, type and quantity of such drugs received and the signature of the individual receiving the controlled substance. A duplicate invoice or separate itemized list fur-

nished by the distributor will be sufficient to satisfy this record requirement provided it includes all required information and is maintained in a separate file. In addition, duplicate copies of Federal order forms for schedule II controlled substances must be retained; and

(2) records of controlled substances administered or dispensed including date of administration or dispensing, name of patient, signature of person administering or dispensing, type and quantity of drug and such other information as may be required by this Part.

(b) By the 10th day of each month, a person *other than an authorized physician as defined in Section 80.84(b) of this Part*, approved to conduct a maintenance program pursuant to article [23] *32* of the Mental Hygiene Law, shall file with the department a report summarizing its controlled substances activity in the preceding month. Such a report shall be on forms provided by the department and shall include:

(1) an inventory of the quantity of controlled substances on hand at the commencement and at the conclusion of such month's activity;

(2) the date of the inventory;

(3) the signature of the persons performing the inventory;

(4) the total quantity of controlled substances received, the distributor from whom each order was received, and the form and dosage unit in which such substance was received;

(5) a separate listing of the total quantity of controlled substances prescribed, dispensed and administered during such month;

(6) total quantity of methadone surrendered to the department for destruction;

(7) total number of patients treated during the month; and

(8) each incident or alleged incident involving the theft, loss or possible diversion of controlled substances.

(c) Each incident or alleged incident involving the theft, loss or possible diversion of controlled substances shall also be reported to the department immediately.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-37-03-00001-P, Issue of September 17, 2003. The emergency rule will expire August 30, 2004.

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:

United States Public Law 106-310, the Children's Health Act of 2000 was enacted on October 17, 2000. Title XXXV of this law, Waiver Authority for Physicians Who Dispense or Prescribe Certain Narcotic Drugs for Maintenance Treatment or Detoxification Treatment, is better known by the short title Drug Addiction Treatment Act of 2000 (DATA).

DATA allows physicians to prescribe and dispense narcotics in Schedules III, IV, and V of the Controlled Substances Act (CSA) that have been specifically approved by the Food and Drug Administration (FDA) for the purpose of maintenance or detoxification of opiate addiction.

The drug buprenorphine was just approved by FDA for this purpose. The federal law supercedes any existing state law that prohibits such treatment.

New York State Public Health Law, Article 33, Section 3308 states that the Commissioner is authorized and empowered to make any regulations necessary to supplement the purpose of Article 33. Section 3351 states that the Commissioner shall designate in regulation the name of all controlled substances appropriate for use in the treatment of opiate addiction. Section 3352 states that persons certified to operate treatment programs should follow certain recordkeeping requirements, as the Commissioner shall require by regulation.

Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted to govern and control the possession, prescribing, manufacturing, dispensing, administering, and distribution of licit controlled substances within New York State. In the year 2000 a legislative purpose was added to the law to clarify that its purpose is to allow for the legitimate use of controlled substances, while curtailing their illicit use.

Needs and Benefits:

Prior to the adoption of DATA, the treatment of opiate addiction was limited to authorized methadone clinics and licensed substance abuse programs. According to the National Institute of Drug Abuse (NIDA), the regulatory burden involved in delivering methadone to opioid-dependent individuals has been so heavy that is has prevented expansion of the system.

The result has been a "treatment gap," which NIDA defines as the difference between the total number of opioid-dependent persons and those in treatment. In an effort to close the treatment gap, NIDA explored other strategies and studied the use of other drugs to treat opioid addiction. Restrictions were intended to decrease abuse and diversion while permitting legitimate treatment. However a treatment gap continues to exist.

There are approximately 125 MMTPs in New York State with a license capacity to treat 46,000, or 23%, of the estimated 200,000 opiate dependent patients in New York State. Also, over three-quarters of the MMTPs are located in the New York City area, therefore addicts living in rural areas may not have access to an MMTP. It is also believed that many middle and upper class addicts do not seek enrollment in MMTPs due to the stigma associated with MMTPs.

The DATA expands availability of treatment of opiate dependent patients allowing physicians to prescribe narcotic drugs for opiate addiction, requiring only self-certification, and moves the treatment of addiction from the clinic to the private physician's office and the patient's own pharmacy. The law allows qualified physicians to prescribe and dispense Schedule III, IV, and V narcotics that have been approved by FDA for use in maintenance or detoxification treatment. Currently the only such drug approved for such use is buprenorphine.

Buprenorphine is a partial opioid agonist with a significant potential for abuse. To meet the legislative purpose of Article 33 and the intent of the DATA, additional regulations are necessary to ensure buprenorphine is not diverted into illegal channels, while ensuring access to care.

These regulations require that the physician register with the Department of Health, as well as the Office of Alcohol and Substance Abuse Services (OASAS), to provide such treatment. This will ensure that the physician possesses the addiction treatment qualifications required by DATA and is in good standing with respect to adherence to controlled substance laws. Pharmacies that wish to dispense buprenorphine will also be required to register with the department. Registered pharmacies will be required to file buprenorphine prescription data with the department in the same manner they currently follow for Schedule II controlled substances and benzodiazepines. The department will have the capability of monitoring the utilization of buprenorphine by the analysis of this data in the same manner currently utilized for controlled substances with significant abuse potential.

DOH/OASAS Task Force:

In the fall of 2000, the Department of Health (DOH) partnered with the Office of Alcoholism and Substance Abuse Services (OASAS) to begin planning for the implementation of DATA. The agencies established a joint task force charged with establishing complementary regulations, as well as a joint application process by which New York State physicians could register to provide this new treatment modality.

The task force met routinely for over two years. The result was a streamlined application process by which physicians could register with New York State to provide such treatment, as well as streamlined regulations.

The agencies sent a joint mailing to physicians detailing the regulatory requirements and registration process. The agencies established a joint registration application by which qualified physicians simply complete the joint application and send it to OASAS. Once OASAS reviews and approves the application, the approved application is sent to DOH for their approval. Due to the joint application process, the agencies work closely together through the registration process.

Both agencies also adopted emergency regulations in the fall of 2002. The task force ensured the adoption of emergency regulations that meet the needs and responsibilities of both agencies, while ensuring accessibility of this new treatment to the citizens of New York State.

Outreach:

DOH met with the Pharmaceutical Society of the State of New York (PSSNY), as well as the Medical Society of the State of New York (MSSNY), during the drafting of this regulation. PSSNY did not have present any concerns with the regulations. MSSNY was opposed to the concept of a patient registry. The original regulations contained a requirement for physicians to maintain a registry of the patients whom they were treating, and to share such registry with the DOH. MSSNY stated that the registry requirement might deter patients from seeking such treatment. Due to such concerns, DOH decided to remove the patient registry requirement from the regulations.

Costs:

This proposal does not pose any cost to the physician, pharmacy, or the department. The registration of physicians and pharmacies will be provided free of charge. 93% of all pharmacies in the state are already set up to transmit data to the department electronically in the required format, therefore only minimal software modification will be necessary. The remaining 7% submit the data manually on a departmental form.

Local Government Mandates:

The proposed rule does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other specific district.

Paperwork:

The Department of Health anticipates a simple registration form for physicians and pharmacies that wish to register for this program. Participation in this program is entirely voluntary. The Department of Health has partnered with OASAS to streamline the registration process for physicians.

Ninety-three percent of all New York State pharmacies currently have the capacity to send the department prescription data electronically. The department can't predict how many pharmacies will participate in this program. Approximately 60% of the pharmacies in the State have registered thus far to participate in the Expanded Syringe Access Program (ESAP), and it is anticipated that participation in this new incentive will be similar. Those choosing manual submission may simply complete a manual submission form in the same manner they currently utilize for Schedule II controlled substances and benzodiazepines.

Physicians who prescribe buprenorphine will be required to keep the same records they currently maintain for all controlled substances. Physicians choosing to dispense buprenorphine will be required to submit a manual submission form or submit the data electronically, in the same manner as required for pharmacies.

Methadone clinics are currently required to submit dispensing reports to the department; therefore the collection of dispensing data for drugs that treat addiction is not a new concept.

Duplication:

The requirements of this proposed regulation do not duplicate any other state or federal requirement.

Alternatives:

The proposed regulation is designed to curtail the potential diversion and abuse of buprenorphine in this new treatment modality. Buprenorphine is a narcotic with significant abuse potential and will be utilized in a population of patients who have a prior history of controlled substance abuse. The federal law sets basic parameters for such treatment but leaves specific oversight up to the individual states. The department believes it is in the best interest of public health to monitor the prescribing and dispensing of this drug for this new treatment modality.

There are no alternatives that would ensure accessibility to treatment while curtailing the potential for abuse and diversion.

Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government. This amendment does not prohibit the provisions of the federal DATA, it simply achieves consistency with existing New York State standards aimed at curtailing the diversion of medication with a high potential for diversion.

Compliance Schedule:

Physicians and pharmacies may begin to register with the department immediately. Once a physician has registered with the department for this program, and has received his/her unique identification registration number from the Drug Enforcement Administration (DEA), he/she may begin to prescribe and/or dispense buprenorphine for the treatment of opiate addiction. Once a pharmacy has registered with the department for this program, they may begin to dispense buprenorphine for this treatment.

Regulatory Flexibility Analysis

Effect of Rule:

Physician and pharmacy participation in this program is voluntary. There are currently 72,920 physicians licensed to practice medicine in New York State. According to the New York State Board of Pharmacy, as of September 2002, there were a total of 4,434 pharmacies in New York State. Of these, 62 were sole proprietorship, 274 were partnerships, 72 are small chains (fewer than 3 pharmacies per chain) and the rest were large chains or other corporations (some of which may be small businesses) or located in public institutions.

Compliance Requirements:

Pharmacies that choose to register for this program will be required to submit the buprenorphine prescription information in the same manner that they currently utilize for CII and benzodiazepine prescriptions; either electronically or manually. Physicians who choose to dispense will also be required to submit buprenorphine prescription information either electronically or manually, in the same format they currently utilize when dispensing CII and benzodiazepines. The recordkeeping requirements for physicians and pharmacies will be consistent with existing requirements.

Professional Services:

Registered pharmacies that choose to submit the required prescription data electronically may need to make a minor change to their current software. Because almost all New York State pharmacies already have a program in place to submit this data, the department does not anticipate that they will be charged for adding buprenorphine data to the current data they submit to the department. The department does not expect a large number of physicians to dispense buprenorphine. Of those that do, the department does not expect them to submit the required data electronically; therefore there no professional services will be required.

Compliance Costs:

The department anticipates that there will be no compliance costs associated with this regulation.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. Small businesses may choose not to submit electronically, in which case no new, or additional, equipment would be required. Those businesses that do opt to submit data electronically will require only a standard personal computer and software already utilized by the pharmacy community.

Minimize Adverse Impact:

The proposed rule was designed to minimize the impact on small businesses by allowing the dispenser to have the choice of submitting specified data electronically or manually. The rule does not require non-computerized pharmacies or physicians to become computerized. The department has worked with the pharmacy societies and software vendors to adopt transmission standards already utilized by the pharmacy community. Also, at the request of the pharmacy societies, the department is allowing dispensers to submit electronic information in batch format, as opposed to a more costly point-of-sale transmission.

Small Business and Local Government Participation:

To ensure that small businesses were given the opportunity to participate in this rule making, the department met with the pharmacy societies representing independent pharmacies. Local governments are not affected.

Rural Area Flexibility Analysis

Finding:

Pursuant to 202-bb of the State Administrative Procedure Act, a Rural Area Flexibility Analysis is not required.

The proposed amendment does not impose any adverse impact on rural areas. The proposed amendment makes the treatment of addiction in rural settings more feasible, as addicts will no longer have to travel to a methadone clinic to obtain their medication. Many rural areas do not have a methadone clinic in close proximity.

Measures Taken to A Certain Finding:

Approximately 93% of the pharmacies in the State currently transmit controlled substance prescription data to the department in the format allowed by this proposal. The remaining 7%, many of which may be in rural areas, do not use computers and will not be forced to computerize. They, as well as physicians, will be allowed to transmit their data manually on a departmental form.

Job Impact Statement

Nature of Impact:

This proposal will not have a negative impact on jobs and employment opportunities. This proposal expands the treatment options for physicians and pharmacies and is not expected to have impact on increasing or decreasing jobs overall.

Categories and Numbers Affected:

This rule affects the 4,423 pharmacies in New York State. Approximately 93% of the pharmacies are currently submitting controlled substance prescription data to the department electronically.

It is anticipated that a small percentage of the 72,920 physicians in the State will register to participate in this program. Of that number, it is expected that most of the physicians will only perform the prescribing of buprenorphine. It is expected that a very small percentage of physicians will actually dispense buprenorphine. Most patients will be receiving their buprenorphine from a registered pharmacy.

Regions of Adverse Impact:

There are no regions of the State where this rule would have a disproportionate adverse impact on jobs or employment opportunities.

Minimizing Adverse Impact:

There are no unnecessary adverse impacts on existing jobs pursuant to this rule; therefore no measures to minimize such impacts were necessary. Promotions of the development of new employment opportunities are not affected by this rule.

Self-Employment Opportunities:

This proposal does not have any measurable impact on opportunities for self-employment.

NOTICE OF ADOPTION

Hematopoietic Progenitor Cell Banks

I.D. No. HLT-46-03-00001-A
Filing No. 773
Filing date: June 30, 2004
Effective date: July 21, 2004

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

Action taken: Amendment of Subpart 58-5 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3121(5)

Subject: Hematopoietic progenitor cell banks.

Purpose: To reflect changes in current operating procedures and update terminology and clarification on intent.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-46-03-00001-P, Issue of November 19, 2003.

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

Text of 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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Blood Banks

I.D. No. HLT-46-03-00002-A
Filing No. 772
Filing date: June 30, 2004
Effective date: July 21, 2004

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

Action taken: Amendment of Subpart 58-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3121(5)

Subject: Blood banks.

Purpose: To clarify terminology, address advances in technology and expand and protect the blood supply.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-46-03-00002-P, Issue of November 19, 2003.

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

Text of 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

Assessment of Public Comment
The agency received no public comment.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Return of Number Blocks to the Pooling Administrator by Global NAPs, Inc.

I.D. No. PSC-29-04-00002-P

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

Proposed action: The commission is considering whether to order Global NAPs, Inc. (Global NAPs) to return all but one block of numbers in each of the 540 and 550 central office codes to the pooling administrator.

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

Subject: Return of number blocks to the pooling administrator.

Purpose: To consider ordering Global NAPs to return numbers to the pooling administrator.

Substance of proposed rule: The Commission is considering whether to order Global NAPs, Inc. to return all but one block of numbers in each of the 540 and 550 central office codes to the Pooling Administrator.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(98-C-0689SA23)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New Types of Electricity Meters, Transformers and Ancillary Devices by Niagara Mohawk Power Corporation

I.D. No. PSC-29-04-00003-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a request filed by Niagara Mohawk Power Corporation for the approval of the NxtPhase instrument transformers models: NXCT, NXVT and NXVCT.

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

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

Purpose: To permit electric utilities in New York State to use the NxtPhase Company instrument transformers models - NXCT, NXVT, NXVCT.

Substance of proposed rule: The Commission will consider the request from Niagara Mohawk Power Corporation for the approval, and the use of the NxtPhase Instrument Transformers for revenue billing in New York State. Niagara Mohawk Power Corporation requests the approval and use of the NxtPhase Instrument Transformer Models, NXCT, NXVT, and NXVCT for revenue metering purposes. The transformer line is intended to be used in electric service applications of 69kV through 765kV. The instrument transformer line is capable of providing ANSI revenue metering class accuracy, and has been tested to exceed the compliance accuracy requirements as stated in ANSI C12.11 and IEEE C57.13 test specifications. The cost of these transformers will range from $19,500 to $110,000 depending on the voltage rating the the model selected.

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

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(04-E-0763SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Design of Gas Rates to Full Service and Transportation Customers by New York State Electric & Gas Corporation

I.D. No. PSC-29-04-00004-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 changes to the rate design for New York State Electric & Gas Corporation's gas business, as reflected in a joint proposal filed on June 30, 2004. The commission may adopt, reject or modify, in whole or in part, the changes proposed by the parties. The commission will also consider modifications to the company's economic development programs, continuation of the gas affordable energy program, and other matters described in the joint proposal.

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

Subject: Changes to the design of gas rates to full service and transportation customers.

Purpose: To consider a joint proposal filed by the parties that recommends changes in the design of gas rates, modifications to the company's economic development programs, continuation of the company's gas affordable energy program and related matters.

Substance of proposed rule: The Public Service Commission (Commission) is considering a Joint Proposal filed on June 30, 2004 that recommends changes in the design of the gas rates charged by New York State Electric & Gas Corporation (NYSEG) to its full service and transportation customers. The changes include reallocation of the company's revenue requirement among service classifications and geographic rate areas of the company's service territory, consolidation of rate areas, and elimination of certain service classifications. Measures to achieve these results would include a multi-year phase-in of new rates, to be completed by October 1, 2008. The overall revenue increases and decreases projected for each rate area upon completion of the phase-in are estimated as Owego, +1.4%; Goshen, +1.8%; Lockport, -0.6%; Elmira, +0.2%; Combined, -22.6%; Binghamton, +5.1%; and Champlain, -4.4%. On a company-wide basis, NYSEG's revenues would not change.

The Joint Proposal also recommends an economic development plan and changes to the company's economic development tariffs, including, but not limited to, modifications of the company's eligibility requirements and economic development-related delivery rate discounts. The Joint Proposal further recommends continuation of the company's gas affordable energy program at current funding levels.

The Commission may adopt, reject or modify, in whole or in part, the recommendations in the Joint Proposal, and it may also consider other related matters.

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

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

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

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

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

(01-G-1668SA5)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Design Delivery Service by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island

I.D. No. PSC-29-04-00005-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, a proposal filed by KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 1.

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

Subject: Design delivery service.

Purpose: To remove tariff provisions.

Substance of proposed rule: KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island proposes to remove tariff provisions regarding Design Delivery Service applicable under S.C. No. 5—Firm Transportation Service and S.C. No. 8—Seller Service. Design Delivery Service provides for the release of interstate capacity based on the customer's average daily requirements. The Design Delivery Service has been superseded by the company's annual winter program.

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

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

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

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

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

(04-G-0799SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

S.C. No. 16—Comprehensive Transportation and Balancing System by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY

I.D. No. PSC-29-04-00006-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, a proposal filed by The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery NY to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 12.

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

Subject: Comprehensive transportation and balancing service.

Purpose: To eliminate S.C. No. 16—comprehensive transportation and balancing service.

Substance of proposed rule: The Brooklyn Union Gas Company, d/b/a KeySpan Energy Delivery NY proposes to eliminate S.C. No. 16—Comprehensive Transportation and Balancing Service from its gas tariff. Under this service, the company would release to the customer interstate pipeline capacity equal to the customer's average daily requirements. The transportation and balancing service has been superseded by the company's annual winter program.

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

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

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

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

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

(04-G-0800SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Minor Rate Increase by Valley Energy, Inc.

I.D. No. PSC-29-04-00007-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 Valley Energy, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 1.

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

Subject: Minor rate increase.

Purpose: To increase its gas revenues by $109,698 or 13.5 percent excluding gas costs.

Substance of proposed rule: Valley Energy, Inc. proposes to increase its gas revenues by $109,698, or 13.5% excluding gas costs. The company's proposal would increase residential bills by 3.67% and commercial bills by 3.16%. The company also proposes to implement bi-monthly meter reading; incorporate Uniform Business Rules and incorporate rules for Distillate Fuel Interruptible Customers.

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

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

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

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

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

(04-G-0821SA1)