# 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.

## Deferred Compensation Board

### NOTICE OF EXPIRATION

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

**Establishment of Plan by a Local Employer**

| I.D. No. | Proposed | Expiration Date |
|---|---|---|
| DCB-20-03-00004-P | May 21, 2003 | May 20, 2004 |

## Education Department

### NOTICE OF ADOPTION

**Inspection and Copying of Department Records**

**I.D. No.** EDU-09-04-00008-A
**Filing No.** 609
**Filing date:** May 21, 2004
**Effective date:** June 10, 2004

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
***Action taken:*** Amendment of sections 187.1, 187.2 and 187.4 of Title 8 NYCRR.
***Statutory authority:*** Education Law, sections 207 (not subdivided) and 305(6); and Public Officers Law, sections 87(1)(b) and 89(3)
***Subject:*** Inspection and copying of department records.
***Purpose:*** To conform the commissioner's regulations regarding Freedom of Information Law (FOIL) procedures to court decision interpreting Public Officers Law sections 89(3); and update address of department's records access officer and addresses of several regional offices designated to receive requests for inspection and copies of department records.
***Text or summary was published*** in the notice of proposed rule making, I.D. No. EDU-09-04-00008-P, Issue of March 3, 2004.
***Final rule as compared with last published rule:*** No changes.
***Text of rule and any required statements and analyses may be obtained from:*** Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov
***Assessment of Public Comment***
The agency received no public comment.

### NOTICE OF ADOPTION

**Judicial Review of the Determination of the State Review Officer**

**I.D. No.** EDU-09-04-00009-A
**Filing No.** 610
**Filing date:** May 21, 2004
**Effective date:** June 10, 2004

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
***Action taken:*** Amendment of sections 200.5(j)(3), 200.6(i)(5)(iii) and 200.7(d)(4) of Title 8 NYCRR.
***Statutory authority:*** Education Law, sections 101 (not subdivided), 207 (not subdivided), 4403(3) and 4404(3); and L. 2003, ch. 492
***Subject:*** Judicial review of the determination of the State review officer.
***Purpose:*** To ensure that a judicial appeal of a decision of the State review officer is by means of a proceeding in State Supreme Court pursuant to art. 4 of the Civil Practice Law and Rules.
***Text of final rule:*** 1. Paragraph 3 of subdivision (j) of section 200.5 is amended, effective June 10, 2004, as follows:

(3) The written decision of the State review officer shall be final, provided that either party may seek judicial review by means of a proceed-

ing pursuant to article [78] *4* of the Civil Practice Law and Rules or 20 U.S.C. section 1415.

2. Subparagraph (iii) of paragraph (5) of subdivision (i) of section 200.6 is amended, effective June 10, 2004, as follows:

(iii) Where the department requires, as corrective action, that a board of education obtain prior approval for private day and residential school placements, the department's determination to approve or deny any such application shall be made within 10 business days of a request by the board of education for such approval. Where the department disapproves such a placement recommendation for an individual student, the parent may file with the department a written request for a hearing before an impartial hearing officer who will be designated by the department. The procedures relating to notice and review of the disapproval of the recommended private or residential school placement shall be comparable to those set forth in section 200.5 of this Part, and shall be provided by the department. Review of the determination of the hearing officer shall be available by means of a proceeding pursuant to article [78] *4* of the Civil Practice Law and Rules or 20 USC 1415, and may be instituted by any party to the hearing.

3. Paragraph (4) of subdivision (d) of section 200.7 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, as follows:

(4) If the commissioner declines to make a State appointment of a student who has been recommended for appointment by a State-operated or State-supported school, or if the Commissioner seeks to change a student's classification or placement against the recommendation of the State-operated or State-supported school which such student attends, the parent may request mediation or file with the department a written request for a hearing before an impartial hearing officer who will be designated by the department. Such a hearing officer shall not be an employee of the department. The procedures relating to notice and review of a refusal of State appointment or of a change of classification or placement by the commissioner shall be comparable to those set forth in section 200.5(a) through (f) of this Part, and shall be provided by the Education Department. Review of the determination of the hearing officer shall be available by means of a proceeding pursuant to article [78] *4* of the Civil Practice Law and Rules or 20 USC 1415, and may be instituted by any party to the hearing.

***Final rule as compared with last published rule:*** Nonsubstantive changes were made in the introductory language to the amendment of section 200.6(i)(5)(iii).

***Text of rule and any required statements and analyses may be obtained from:*** Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

***Regulatory Impact Statement***

Since publication of a Notice of Proposed Rule Making in the *State Register* on March 3, 2004, the following nonsubstantial revision was made to the proposed rule:

An incorrect citation in the introductory language to the amendment of section 200.6(i)(5)(iii) was corrected by replacing the term "clause" with "subparagraph" to read as follows: "Subparagraph (iii) of paragraph (5) of subdivision (i) of section 200.6 of the Regulations of the Commissioner of Education is amended, effective June 10, 2004, to read as follows . . ."

The above revisions to the proposed rule does not require any changes to the previously published Regulatory Impact Statement.

***Regulatory Flexibility Analysis and Rural Area Flexibility Analysis***

Since publication of a Notice of Proposed Rule Making in the *State Register* on March 3, 2004, a nonsubstantial revision to the proposed rule was made as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The above revision to the proposed rule does not require any revisions to the previously published Regulatory Flexibility Analysis or Rural Area Flexibility Analysis.

***Job Impact Statement***

Since publication of the Notice of Proposed Rule Making in the *State Register* on March 3, 2004, a nonsubstantial revision to the proposed rule was made as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith.

The proposed rule, as so revised, relates to judicial review of impartial hearings relating to the educational placement and services provided to students with disabilities. The revised rule will not have a substantial adverse impact on job or employment opportunities. Because it is evident from the nature of the revised rule that it will have no impact on jobs or employment opportunities, no further measures were taken. Accordingly, a job impact statement is not required and one has not been prepared.

***Assessment of Public Comment***

Since publication of a Notice of Revised Rulemaking on March 3, 2004, the Department received the following public comment:

COMMENT:

The Buffalo City School District submitted a comment that proposed amendment appears to be technical in nature and therefore the district has no concerns regarding these changes.

DEPARTMENT RESPONSE:

The proposed amendment aligns the Commissioner's Regulations with section 4404(3) of the Education Law, as amended by Chapter 492 of the Laws of 2003, and is technical in nature.

COMMENT:

The Department of Correctional Services submitted a comment that the new language in the proposed rules provides clarity.

DEPARTMENT RESPONSE:

The Department concurs with the comment.

## NOTICE OF ADOPTION

### Leaves of Absence

**I.D. No.** EDU-09-04-00010-A
**Filing No.** 611
**Filing date:** May 21, 2004
**Effective date:** June 10, 2004

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

***Action taken:*** Repeal of Part 221 of Title 8 NYCRR.

***Statutory authority:*** Education Law, sections 101 (not subdivided), 207 (not subdivided) and 305(1) and (6)

***Subject:*** Leaves of absence for State Education Department employees.

***Purpose:*** To repeal obsolete provisions.

***Text or summary was published*** in the notice of proposed rule making, I.D. No. EDU-09-04-00010-P, Issue of March 3, 2004.

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

***Text of rule and any required statements and analyses may be obtained from:*** Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

***Assessment of Public Comment***

The agency received no public comment.

## NOTICE OF ADOPTION

### Certification in the Classroom Teaching Service

**I.D. No.** EDU-12-04-00013-A
**Filing No.** 607
**Filing date:** May 21, 2004
**Effective date:** June 10, 2004

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

***Action taken:*** Amendment of sections 8-1.2, 80-2.12, 80-2.13, 80-3.1, 80-3.5, 80-4.3, 80-5.6 and 80-5.13 of Title 8 NYCRR.

***Statutory authority:*** Education Law, sections 207 (not subdivided), 305(1), (2) and (7); 3001(2); 3004(1); 3006(1)(b); 3009(1); and 3010 (not subdivided)

***Subject:*** Technical changes in requirements for certification in the classroom teaching service.

***Purpose:*** To clarify and correct omissions in the new requirements for the certification of teachers in the classroom teaching service that became effective on Feb. 2, 2004.

***Text or summary was published*** in the notice of proposed rule making, I.D. No. EDU-12-04-00013-P, Issue of March 24, 2004.

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

***Text of rule and any required statements and analyses may be obtained from:*** Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

***Assessment of Public Comment***

The agency received no public comment.

## NOTICE OF ADOPTION

### Pathways to Certification in the Classroom Teaching Service

**I.D. No.** EDU-12-04-00014-A
**Filing No.** 608
**Filing date:** May 21, 2004
**Effective date:** June 10, 2004

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

***Action taken:*** Amendment of sections 8-1.3, 80-2.1, 80-3.8, 80-3.9 and 80-5.17 of Title 8 NYCRR.

***Statutory authority:*** Education Law, sections 207 (not subdivided), 305(1), (2) and (7); 3001(2) and (3); 3004(1); 3006(1)(b); 3009(1); and 3010 (not subdivided)

***Subject:*** Pathways to certification in the classroom teaching service.

***Purpose:*** To clarify and supplement the new requirements for the certification of classroom teachers that became effective on Feb. 2, 2004.

***Text or summary was published*** in the notice of proposed rule making, I.D. No. EDU-12-04-00014-P, Issue of March 24, 2004.

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

***Text of rule and any required statements and analyses may be obtained from:*** Mary Gammon, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

***Assessment of Public Comment***
The agency received no public comment.

# Department of Environmental Conservation

## EMERGENCY RULE MAKING

### Emission Standards for Motor Vehicles and Motor Vehicle Engines

**I.D. No.** ENV-14-04-00003-E
**Filing No.** 612
**Filing date:** May 21, 2004
**Effective date:** May 21, 2004

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

***Action taken:*** Amendment of Parts 200 and 218 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

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

***Specific reasons underlying the finding of necessity:*** New York first adopted the California Low Emission Vehicle (LEV) program in 1990 pursuant to the provisions of section 177 of the Clean Air Act (42 USC 7507) (CAA), and has maintained the program since that time. The LEV program results in significant emission reduction benefits as compared to its Federal counterpart, and those reductions are an integral part of New York's State Implementation Plan (SIP). Failure to maintain the program would result in a need to find and implement additional emission control programs which would produce similar or greater levels of emissions reductions. New York has already implemented controls on a broad array of emissions sources, and further reductions of a magnitude similar to that available from the LEV program would be difficult and costly to implement.

New York is in nonattainment of Federal health based air quality standards for ozone. Consequently the State has implemented a wide range of emissions control programs to reduce emissions of ozone precursors to provide healthy air for our citizens. In addition, the US Environmental Protection Agency (EPA) oversees and enforces the provisions of the State's SIP. Failure to implement a program included in the State's approved SIP can result in Federal enforcement actions that can include implementation of onerous offset provisions for new stationary sources, and withholding of Federal highway funds. The potential impact of such sanctions could be as much as $3 billion per year, over the next five years.

The CAA specifies that states adopting the California motor vehicle emissions control program must, among other requirements, maintain the program as identical to California's so as not to create a "third car," and must provide two years of lead time to manufacturers. Since California has modified the zero emission vehicle sales mandate, it is incumbent upon New York to also adopt those changes before the commencement of the next model year or be at risk of violating the CAA provisions for identicality and lead time. Such a condition could seriously impair implementation of the ZEV sales mandate New York. This would result in health and welfare effects on New Yorkers as a result of increased emissions from automobiles, and from the potential sanctions for failure to implement the approved SIP provisions.

It is necessary for the preservation of the health and general welfare that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedures Act, effective immediately upon filing with the Department of State.

***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.

***Text of emergency rule:*** (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) | **<br>*** |
| 218-1.2(j) | California Vehicle Code, Section 165 (2000) | **<br>*** |
| 218-1.2(k) | California Code of Regulations, Title 13, Section 1900(b)(3) (12-22-99) | **<br>*** |
| 218-1.2(v) | California Code of Regulations, Title 13, Section 1961 (5-30-01) | **<br>*** |
| | California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02) | **<br>***+<br>++ |
| | California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02) | **<br>***+<br>++ |
| 218-1.2(w) | California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02) | **<br>***+<br>++ |
| | California Code of Regulations, Title 13, Section 1961 (5-30-01) | **<br>*** |
| | California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02) | **<br>***+<br>++ |
| | California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02) | **<br>***+<br>++ |
| | California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] *(12-19-03)* | **<br>***+<br>++ |
| 218-1.2(x) | California Code of Regulations, Title 13, Section 1905 (7-3-96) | **<br>*** |
| 218-1.2(ad) | California Code of Regulations, Title 13, Section 1960.5 (9-30-91) | **<br>*** |
| 218-1.2(ai) | California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02) | **<br>***+<br>++ |
| 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) | **<br>*** |
| 218-1.2(at) | California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] *(12-19-03)* | **<br>***+<br>++ |
| 218-1.2(au) | California Code of Regulations, Title 13, Section 1900(b)(21) (12-07-01) and (5-24-02) | **<br>***+<br>++ |
| 218-2.1(a) | California Code of Regulations, Title 13, Section 1956.8 (7-25-01) | **<br>*** |

| | | |
|---|---|---|
| | California Code of Regulations, Title 13, Section 1956.9 (3-6-96) | **<br>*** |
| | California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02) | **<br>***+<br>++ |
| | California Code of Regulations, Title 13, Section 1960.1.5 (9-30-91) | **<br>*** |
| | California Code of Regulations, Title 13, Section 1960.5 (9-30-91) | **<br>*** |
| | California Code of Regulations, Title 13, Section 1961 (5-30-01) | **<br>*** |
| | California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02) | **<br>***+<br>++ |
| | California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02) | **<br>***+<br>++ |
| | California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] *(12-19-03)* | **<br>***+<br>++ |
| | California Code of Regulations, Title 13, Section 1964 (2-23-90) | **<br>*** |
| | California Code of Regulations, Title 13, Section 1965 (12-22-99) | **<br>*** |
| | California Code of Regulations, Title 13, Section 1968.1 (11-27-99) | **<br>*** |
| | California Code of Regulations, Title 13, Section 1976 (11-27-99) | **<br>*** |
| | California Code of Regulations, Title 13, Section 1978 (11-27-99) | **<br>*** |
| | California Code of Regulations, Title 13, Section 2030 (9-25-97) | **<br>*** |
| | California Code of Regulations, Title 13, Section 2031 (9-25-97) | **<br>*** |
| | California Code of Regulations, Title 13, Section 2047 (5-31-88) | **<br>*** |
| | California Code of Regulations, Title 13, Section 2065 (7-25-01) | **<br>*** |
| | California Code of Regulations, Title 13, Section 2235 (9-17-91) | **<br>*** |
| | California Code of Regulations, Title 13, Article 1.5 (7-25-01) | **<br>*** |
| 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) | **<br>***+<br>++ |
| | California Code of Regulations, Title 13, Section 1961 (5-30-01) | **<br>*** |
| | California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02) | **<br>***+<br>++ |
| | California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02) | **<br>***+<br>++ |
| 218-3.1(a) | California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02) | **<br>***+<br>++ |
| 218-3.1(b) | California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02) | **<br>***<br>++ |
| | California Code of Regulations, Title 13, Section 1961 (5-30-01) | **<br>*** |
| | California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02) | **<br>***+<br>++ |
| | California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02) | **<br>***+<br>++ |
| 218-4.1 | California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] *(12-19-03)* | **<br>***+<br>[++] |
| 218-4.2 | California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] *(12-19-03)* | **<br>***+<br>[++] |
| 218-5.1(a) | California Code of Regulations, Title 13, Section 2061 (10-23-96) | **<br>*** |
| | California Code of Regulations, Title 13, Section 2062 (11-27-99) | **<br>*** |
| | California Code of Regulations, Title 13, Section 2065 (7-25-01) | **<br>*** |
| | California Code of Regulations, Title 13, Section 2106 (11-27-99) | **<br>*** |
| | California Code of Regulations, Title 13, Section 2107 (11-27-99) | **<br>*** |
| | California Code of Regulations, Title 13, Article 1.5 (7-25-01) | **<br>*** |
| 218-5.1(b) | California Code of Regulations, Title 13, Section 2061 (10-23-96) | **<br>*** |
| | California Code of Regulations, Title 13, Section 2062 (11-27-99) | **<br>*** |
| | California Code of Regulations, Title 13, Section 2065 (7-25-01) | **<br>*** |
| | California Code of Regulations, Title 13, Article 1.5 (7-25-01) | **<br>*** |
| 218-5.2(a) | California Code of Regulations, Title 13, Section 2065 (7-25-01) | **<br>*** |
| | California Code of Regulations, Title 13, Section 2109 (11-30-83) | **<br>*** |
| | California Code of Regulations, Title 13, Section 2110 (11-27-99) | **<br>*** |
| | California Code of Regulations, Title 13, Article 1.5 (7-25-01) | **<br>*** |
| 218-5.2(b)(1) | California Code of Regulations, Title 13, Section 2106 (11-27-99) | **<br>*** |
| 218-5.3(b) | California Code of Regulations, Title 13, Section 2101 (11-27-99) | **<br>*** |
| 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) | **<br>*** |
| | California Code of Regulations, Title 13, Section 2224 (8-16-90) | **<br>*** |
| 218-7.3(a)(2) | California Code of Regulations, Title 13, Section 2224(a) (8-16-90) | **<br>*** |
| 218-7.4(b)(3)(i) | California Code of Regulations, Title 13, Section 2222 (8-16-90) | **<br>*** |
| 218-7.4(b)(3)(ii) | California Code of Regulations, Title 13, Section 2222 (8-16-90) | **<br>*** |
| 218-7.5(b) | California Code of Regulations, Title 13, Section 2222 (8-16-90) | **<br>*** |

6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines

Subpart 4 ZERO EMISSION VEHICLE SALES MANDATE

§ 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 requirement 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.

§ 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 Phase In Multiplier

| Model Year | Requirement | PZEV Credit Multiplier | *ATPZEV Credit Multiplier* | ZEV Credit Multiplier |
|---|---|---|---|---|
| 2002 | Voluntary Early Introduction | 1.5 | | 3 |
| 2003 | Voluntary Early Introduction | 1.5 | | 3 |
| 2004 | [Mandatory Compliance] *Voluntary Early Introduction* | 1.5 | *2.25* | 3 |
| 2005 | Mandatory Compliance | 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:

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] *0* | [1] *0* | [9] *10* |
| 2006* | [1] *Combined* | [2] *1* | [7] *9* |
| 2007 | [2] *1* | 2 | [6] *7* |
| *2008* | *1* | *2* | *7* |

** In MY 2006, 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 project that advance infrastructure to encourage full development of alternative vehicle program. 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. Credits 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] *2005* or earlier PZEVs as required for model-year [2004] *2005* has through model-year [2007] *2008* to comply with the model-year [2005] *2006* AT PZEV/ZEV requirement. A manufacturer who qualifies for the [2004] *2005* AT PZEV/ZEV carryforward and generates twice as many PZEV credits as necessary for model-year [2005] *2006* has through model-year [2008] *2009* to comply with the model-year [2006] *2007* AT PZEV/ZEV requirement.

(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.

***This notice is intended*** to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire July 19, 2004.

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

***Summary of Regulatory Impact Statement***

The New York State Department of Environmental Conservation (Department) is amending 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 will also 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 has also been 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. The ACP includes specific reporting requirements, both in terms of forecasting as well as progress reports. The ACP commences with model year 2005, 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 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.

This regulatory amendment will take effect immediately and the ZEV mandate is effective in model year 2007. The New York ACP is a voluntary element of this regulation, and includes required actions in model year 2005.

***Regulatory Flexibility Analysis***

1. Effect of rule:

The New York State Department of Environmental Conservation (Department) is amending 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 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, recordkeeping 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 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 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.

***Rural Area Flexibility Analysis***

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is amending 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 amended 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.

***Job Impact Statement***

1. Nature of impact:

The New York State Department of Environmental Conservation (Department) is amending 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 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.

***Summary of Assessment of Public Comment***

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 will also amend the Alternative Compliance Plan (ACP) 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.

The entire rulemaking proposal was published in the April 7, 2004 edition of the New York *State Register*. Public hearings were held in Rochester on May 12, 2004, in Albany on May 13, 2004, and in Long Island City on May 14, 2004. The public comment period officially closes on May 21, 2004. This summary is limited to comments received from April 7, 2004 through 12:00 p.m., May 21, 2004. Comments received between 12:00 p.m. and 5:00 p.m. on May 21, 2004 will be addressed in subsequent actions on this rulemaking.

A total of 7 sets of substantive comments were received by the Department regarding Part 218 for this rulemaking.

Comments were received supporting the ZEV standards, and comments were received from several commenters supporting the flexibility afforded manufacturers by the Alternative Compliance Plan (ACP).

Several comments were received regarding the commencement of the voluntary (ACP) portion of the ZEV regulation. Commenters indicated that the program should start with model year 2006, as a result of program delays in California. The Department has carefully evaluated this issue and determined that a delay until model year 2006 is appropriate. A revised notice will be prepared and published. Several commenters indicated that the mechanism for crediting early introduction of Partial Zero Emission Vehicle (PZEV) technology should be adjusted to reflect the delay in the program start up, to provide manufacturer benefits similar to those available in CA. The Department's response is that the commenters interpretation is consistent with the intent of the ACP, and that early introduction PZEV credits may be used as AT PZEV credits in model years 2007 and 2008. The response to these comments is that the ACP is an option available to manufacturers to allow them an alternative to ramp up to full ZEV implementation while meeting the requirements of the Part 218 regulations, potentially generating credits for future use and provides the manufacturers with the ability to make their own economic choices for compliance with the ZEV requirement. Commenters also requested clarification on use of ZEV credits to meet AT PZEV obligations. The use of ZEV credits to meet AT PZEV (or PZEV) obligations is acceptable. One commenter indicated that the requirement that a demonstration of emissions reduction equivalency for an ACP should be borne by the Department. The Department believes that such a demonstration must be done by a manufacturer based on the specifics of the manufacturer's proposal including that manufacturer's particular fleet and technology mix . The Department will work with manufacturers on development of these analyses.

Several commenters indicated a desire that New York coordinate with other Northeast States who have adopted the ZEV program to ensure consistency throughout the region. The response is that the State will continue to work with other states to consistently implement the ACP program.

One commenter requested the ability to apply warranty provisions to model year 2002 and 2003 vehicles to generate AT PZEV credits. This potentially constitutes a change in certification, and does not meet the requirements for crediting. Commenters requested an increase in the credit multipliers for AT PZEVs sold in 2002 and 2003. While the state is appreciative of this early introduction, changing the credit multiplier retroactively is inappropriate. A commenter suggested that fuel cell vehicles placed in New York (outside of the California fuel cell option) be granted a credit multiplier. The Department believes that the regulation as drafted accomplished this request. A manufacturer commented that the requirement that vehicles sold or leased in California must be available in New York should not be applied to fuel cell vehicles. The Department believes that if fuel cell vehicles are sold or leased in California, then they should be similarly available in New York.

Numerous comments were received regarding the legal requirements of the Clean Air Act (Act). Commenters suggested that the Department had not met the Act's requirements for leadtime and waiver and that we were in violation of the sales limitation restriction. Commenters also mentioned that as the ACP is not a part of California's ZEV regulations it violates the identicality requirements of the Act. The Department believes that it has met all legal requirements for adoption of California standards. The ACP is an exercise of the Department's enforcement discretion which allows the manufacturers an alternative to "ramp up" to full ZEV implementation while meeting the requirements of the Part 218 regulations, potentially generating credits for future use and provides the manufacturers with the ability to make their own economic choices for compliance with the ZEV requirement. Accordingly, the ACP as an exercise of enforcement discretion is not a standard that needs to be identical to the California program. In addition the United States Court of Appeals for the Second Circuit has opined on several of these issues in past litigation brought by manufacturers including the questions of leadtime, sales limitation and waiver. Please see *MVMA* v. *DEC*, 17 F. 3d, 521 (Feb. 9, 1994) for a more complete discussion of these issues.

# Insurance Department

## EMERGENCY RULE MAKING

### Rules Governing Individual and Group Accident and Health Insurance Reserves

**I.D. No.** INS-23-04-00001-E
**Filing No.** 606
**Filing date:** May 19, 2004
**Effective date:** May 19, 2004

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

***Action taken:*** Repeal of Part 94 and addition of new Part 94 (Regulation 56) to Title 11 NYCRR.

***Statutory authority:*** Insurance Law, sections 201, 301, 1304, 1308, 4217 and 4517

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

***Specific reasons underlying the finding of necessity:*** Regulation No. 56 was originally effective August 18, 1971 in its present form and has not been substantively amended since that time. In the intervening 31 years, the National Association of Insurance Commissioners has adopted new reserving tables for individual and group disability income insurance policies, popularly referred to as the Commissioners' Disability Tables ("CDT"). The current CDT was adopted in 1986 and is used widely across the country as the standard for holding reserves for individual and group disability insurance policies. It reflects both modern morbidity and claims experience and the judgement of actuaries and regulators who are knowledgeable about the current state of the disability insurance market.

However, New York authorized insurers are required to use the 1964 CDT because it was required by Regulation No. 56 (see, *e.g.*, 11 NYCRR Part 94.1(a)(4)(iii)(*a*)). Also, Regulation No. 56 did not apply to group insurance, providing little or no guidance to New York insurers that write this important form of protection. The effect of the application of this outdated regulation is that New York authorized insurers are required to hold reserves far in excess of the national standard for disability insurance active lives reserves, but below the prevailing standard for claims reserves. Most New York authorized insurers hold reserves in excess of the amount needed to pay claims due to the required use of the outdated tables. For these insurers, the adoption of the more recent tables will significantly reduce the cost of doing business and allow them to compete more effectively with insurers that are not subject to New York standards and to pass the cost savings on to consumers. For some insurers, this regulation may require an increase in reserves especially for coverages such as group health insurance for which there had been no standards previously. The adoption of these standards will help to ensure that such insurers remain financially capable of paying claims as they come due.

New York authorized insurers must file quarterly financial statements based upon minimum reserve standards in effect on December 31, 2003. The filing date for the June 30, 2004 quarterly statement is August 15, 2004. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner.

For all of the reasons stated above, an emergency adoption of this new Regulation No. 56 is necessary for the general welfare.

***Subject:*** Rules governing individual and group accident and health insurance reserves.

***Purpose:*** To prescribe rules and regulations for valuation of minimum individual and group accident and health insurance reserves including standards for valuing certain accident and health benefits in life insurance policies and annuity contracts.

***Substance of emergency rule:*** The following is a summary of the substance of the rule:

Section 94.1 lists the main purposes of the regulation including implementation of sections 4217(d), 4517(d) and 4517(f) of the Insurance Law and prescribing rules for valuing certain accident and health benefits in the life insurance policies.

Section 94.2 is the applicability section. This section applies to both individual policies and group certificates. The regulation applies to all life insurers, fraternal benefit societies, and accredited reinsurers doing business in the State of New York. It applies to all statutory financial statements filed after its effective date.

Section 94.3 is the definitions section.

Section 94.4 sets forth the general requirements and minimum standards for claim reserves, including claim expense reserves and the testing of prior year reserves for adequacy and reasonableness using claim runoff schedules and residual unpaid liability.

Section 94.5 sets forth the general requirements and minimum standards for unearned premium reserves.

Section 94.6 sets forth the general requirements and minimum standards for contract reserves.

Section 94.7 concerns increases to, or credits against reserves carried, arising from reinsurance agreements.

Section 94.8 prescribes the methodology of adequately calculating the reserves for waiver of premium benefit on accident and health policies.

Section 94.9 provides that a company shall maintain adequate reserves for all individual and group accident and health insurance policies that reflect a sound value being placed on its liabilities under those policies.

Section 94.10 provides the specific standards for morbidity, interest and mortality.

Section 94.11 allows for a four-year period for grading into the higher reserves beginning with year-end 2003 for insurers for which higher reserves are required because of this Part.

Section 94.12 establishes the severability provision of the regulation.

***This notice is intended*** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 16, 2004.

***Text of emergency rule and any required statements and analyses may be obtained from:*** Eric Mangan, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5257, e-mail: emangan@ins.state.ny.us

***Regulatory Impact Statement***

1. Statutory authority:

The superintendent's authority for the adoption of Regulation No. 56 (11 NYCRR 94) is derived from sections 201, 301, 1304, 1308, 4217, and 4517 of the Insurance Law.

These sections establish the superintendent's authority to promulgate regulations governing reserve requirements for life insurers. Sections 201 and 301 of the Insurance Law authorize the superintendent to prescribe regulations accomplishing, among other concerns, interpretation of the provisions of the Insurance Law, as well as effectuating any power given to him under the provisions of the Insurance Law to prescribe forms or otherwise to make regulations.

Section 1304 of the Insurance Law enables the superintendent to require any additional reserves as necessary on account of life insurers' policies, certificates and contracts.

Section 1308 of the Insurance Law describes when reinsurance is permitted and the effect that reinsurance will have on reserves.

Section 4217(d) provides that reserves for all individual and group accident and health policies shall reflect a sound value placed on the liabilities of such policies and permits the superintendent to issue, by regulation, guidelines for the application of reserve valuation provisions for these types of policies.

For fraternal benefit societies, section 4517(d) provides that reserves for all individual accident and health certificates shall reflect a sound value placed on the liabilities of such certificates and permits the superintendent to issue, by regulation, standards for minimum reserve requirements on these types of certificates. Additionally, section 4517(f) provides that reserves for unearned premiums and disabled lives be held in accordance with standards prescribed by the superintendent for certificates or other obligations which provide for benefits in case of death or disability resulting solely from accident, or temporary disability resulting from sickness, or hospital expense or surgical and medical expense benefits.

2. Legislative objectives:

One major area of focus of the Insurance Law is solvency of insurers doing business in New York. One way the Insurance Law seeks to ensure solvency is through requiring all insurers licensed to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders.

3. Needs and benefits:

The regulation is necessary to help ensure the solvency of life insurers doing business in New York. The Insurance Law does not specify mortality, morbidity, and interest standards used to value individual and group accident and health insurance policies and relies on the superintendent to specify the method. Without this regulation, there would be no standard method for valuing such products and, in fact, the current regulation, absent the emergency regulation, provides no guidance related to certain coverages such as group accident and health policies. This could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds.

Additionally, the current regulation, absent the emergency regulation, requires higher reserves than necessary for certain individual accident and health insurance policies. This emergency regulation, by lowering such reserves for individual policies, will result in a lower cost of doing business in New York.

4. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which calculate reserves for accident and health insurance due to several changes in the underlying reserve methodology and new morbidity tables. Companies that are domiciled in New York and are not licensed to do business in other states will be impacted the most by this adoption. Most insurers that are domiciled in New York and licensed to do business in other states already have in place identical or similar procedures for reserve requirements and morbidity tables due to adoption by many states of the Health Insurance Reserves Model Regulation of the National Association of Insurance Commissioners (NAIC). The adoption of this regulation by New York State improves reserve uniformity throughout the insurance industry. Therefore, minimal additional costs will be incurred in most cases. For some insurers doing business only in New York or in other states that have not adopted the NAIC model regulation, the adoption for the first time of standards for certain coverages such as group health insurance may require an increase in reserves and would therefore increase the insurer's cost of capital. In addition, an insurer that needs to modify its current systems could produce modifications internally or purchase software from a consultant, who would typically charge $5,000 to $10,000. Once the program has been developed, no additional systems costs should be incurred due to those requirements.

Costs to the Insurance Department will be minimal. There are no costs to other government agencies or local governments.

5. Local government mandates:

The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

The regulation imposes no new reporting requirements.

7. Duplication:

The regulation does not duplicate any existing law or regulation.

8. Alternatives:

The only significant alternative to be considered was to keep the current version of Regulation No. 56, without adopting this emergency regulation, which would result in different reserve requirements for those life insurers licensed in New York.

9. Federal standards:

There are no federal standards in the subject area.

10. Compliance schedule:

Beginning with year-end 2003, where the requirements of this regulation produce reserves higher than those calculated at year-end 2002, the insurer may linearly interpolate, over a four year period, between the higher reserves and those calculated based on the year-end 2002 standards. Insurers must be in full compliance with this Part by year-end 2006. This allows insurers subject to the regulation ample time to achieve full compliance, since this regulation has been adopted on an emergency basis since December 31, 2002.

***Regulatory Flexibility Analysis***

1. Small businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all life insurance companies licensed to do business in New York State, none of

which fall within the definition of "small business" as found in Section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and believes that none of them fall within the definition of "small business", because there are none which are both independently owned and have under one hundred employees.

2. Local governments:

The regulation does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

***Rural Area Flexibility Analysis***

1. Types and estimated number of rural areas:

Insurance companies covered by the regulation do business in every county in this state, including rural areas as defined under SAPA 102(10).

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

The regulation establishes reserve requirements for individual and group accident and health policies and establishes standards for valuing certain accident and health benefits in life insurance policies and annuity contracts.

3. Costs:

Costs to most insurers licensed to do business in New York State will be minimal, including the cost to develop computer programs which calculate reserves for accident and health insurance due to several changes in the underlying reserve methodology and new morbidity tables. Companies that are domiciled in New York and are not licensed to do business in other states will be impacted the most by this adoption. Most insurers that are domiciled in New York and licensed to do business in other states already have in place identical or similar procedures for reserve requirements and morbidity tables due to adoption by many states of the Health Insurance Reserves Model Regulation of the National Association of Insurance Commissioners (NAIC). The adoption of this regulation by New York State improves reserve uniformity throughout the insurance industry. Therefore, minimal additional costs will be incurred in most cases. For some insurers doing business only in New York or in other states that have not adopted the NAIC model regulation, the adoption for the first time of standards for certain coverages such as group health insurance may require an increase in reserves and would therefore increase the insurer's cost of capital. In addition, an insurer that needs to modify its current systems could produce modifications internally or purchase software from a consultant, who would typically charge $5,000 to $10,000. Once the program has been developed, no additional systems costs should be incurred due to those requirements.

4. Minimizing adverse impact:

The regulation does not impose any adverse impact on rural areas.

5. Rural area participation:

The regulation was drafted after consultation with member companies of the Life Insurance Council of New York (LICONY). A copy of the draft was distributed to LICONY in November, 2002. Additional changes were made to the text of the regulation based on changes made to the NAIC's Health Insurance Reserves Model Regulation in December 2003 and a revised draft of the regulation was distributed to LICONY in January 2004. In addition, a discussion of the proposed rule making was included in the Insurance Department's regulatory agenda which was published in the January 2004 issue of the *State Register*.

***Job Impact Statement***

Nature of impact:

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This regulation sets standards for setting reserves for insurers. Most insurers will be able to reduce reserves and a few may need to increase reserves but this is unlikely to impact jobs and employment opportunities.

Categories and number affected:

No categories of jobs or number of jobs will be affected.

Regions of adverse impact:

This rule applies to all insurers licensed to do business in New York State. There would be no region in New York which would experience an adverse impact on jobs and employment opportunities.

Minimizing adverse impact:

No measures would need to be taken by the Department to minimize adverse impacts.

Self-employment opportunities:

This rule would not have a measurable impact on self-employment opportunities.

# Public Service Commission

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

### Major Rate Plan by Rochester Gas and Electric Corporation

**I.D. No.** PSC-23-04-00002-EP
**Filing date:** May 20, 2004
**Effective date:** May 20, 2004

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

***Action taken:*** The commission, on May 19, 2004, adopted an order in Case 03-E-0765 approving on an emergency basis, joint proposals for Rochester Gas and Electric Corporation's (RG&E) five-year rate plans for electric and gas service.

***Statutory authority:*** Public Service Law, sections 5, 64, 65, 66, 66-e, 66-i, 106, 113, 119-a and 119-b

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

***Specific reasons underlying the finding of necessity:*** To establish the accounting and ratemaking treatment associated with the proceeds of the sale of the Ginna Nuclear Station (Ginna), which is necessary to assure the completion of the Ginna Nuclear Power Plant transaction. The sale of Ginna will benefit RG&E's ratepayers and advance the State's competitive agenda, with the objective of promoting lower energy prices and encouraging economic development and job growth. The general welfare will be preserved if these benefits (among other things) are realized immediately.

***Subject:*** Major rate plan.

***Purpose:*** To provide long-term electric and gas rate stability and incentives for cost savings that would benefit RG&E and its customers.

***Substance of emergency/proposed rule:*** The Commission approved on an emergency basis the provisions of the Joint Proposals for Rochester Gas and Electric Corporation's 5-year rate plan for electric and gas service, subject to the terms and conditions set forth in the order.

***This notice is intended*** to serve as both a notice of emergency adoption and a notice of proposed rule making. The rule will expire August 17, 2004.

***Text of rule may be obtained from:*** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (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.

(02-E-0198SA6)

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

### Major Rate Plan by Rochester Gas and Electric Corporation

**I.D. No.** PSC-23-04-00003-EP
**Filing date:** May 20, 2004
**Effective date:** May 20, 2004

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

***Action taken:*** The commission, on May 19, 2004, adopted an order in Case 03-E-0765 approving on an emergency basis, joint proposals for Rochester Gas and Electric Corporation's (RG&E) five-year rate plans for electric and gas service.

***Statutory authority:*** Public Service Law, sections 5, 64, 65, 66, 66-e, 66-i, 106, 113, 119-a and 119-b

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

***Specific reasons underlying the finding of necessity:*** To establish the accounting and ratemaking treatment associated with the proceeds of the sale of the Ginna Nuclear Station (Ginna), which is necessary to assure the completion of the Ginna Nuclear Power Plant transaction. The sale of Ginna will benefit RG&E's ratepayers and advance the State's competitive agenda, with the objective of promoting lower energy prices and encouraging economic development and job growth. The general welfare will be preserved if these benefits (among other things) are realized immediately.

***Subject:*** Major rate plan.

***Purpose:*** To provide long-term electric and gas rate stability and incentives for cost savings that would benefit RG&E and its customers.

***Substance of emergency/proposed rule:*** The Commission approved on an emergency basis the provisions of the Joint Proposals for Rochester Gas and Electric Corporation's 5-year rate plan for electric and gas service, subject to the terms and conditions set forth in the order.

***This notice is intended*** to serve as both a notice of emergency adoption and a notice of proposed rule making. The rule will expire August 17, 2004.

***Text of rule may be obtained from:*** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (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.

(03-E-0765SA1)

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

### Major Rate Plan by Rochester Gas and Electric Corporation

**I.D. No.** PSC-23-04-00004-EP
**Filing date:** May 20, 2004
**Effective date:** May 20, 2004

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

***Action taken:*** The commission, on May 19, 2004, adopted an order in Case 03-G-0766 approving on an emergency basis, joint proposals for Rochester Gas and Electric Corporation's (RG&E) five-year rate plans for electric and gas service.

***Statutory authority:*** Public Service Law, sections 5, 64, 65, 66, 66-e, 66-i, 106, 113, 119-a and 119-b

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

***Specific reasons underlying the finding of necessity:*** To establish the accounting and ratemaking treatment associated with the proceeds of the sale of the Ginna Nuclear Station (Ginna), which is necessary to assure the completion of the Ginna Nuclear Power Plant transaction. The sale of Ginna will benefit RG&E's ratepayers and advance the State's competitive agenda, with the objective of promoting lower energy prices and encouraging economic development and job growth. The general welfare will be preserved if these benefits (among other things) are realized immediately.

***Subject:*** Major rate plan.

***Purpose:*** To provide long-term electric and gas rate stability and incentives for cost savings that would benefit RG&E and its customers.

***Substance of emergency/proposed rule:*** The Commission approved on an emergency basis the provisions of the Joint Proposals for Rochester Gas and Electric Corporation's 5-year rate plan for electric and gas service, subject to the terms and conditions set forth in the order.

***This notice is intended*** to serve as both a notice of emergency adoption and a notice of proposed rule making. The rule will expire August 17, 2004.

***Text of rule may be obtained from:*** Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (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.

(03-G-0766SA1)

## NOTICE OF ADOPTION

### Transfer of Property by Consolidated Edison Company of New York, Inc.

**I.D. No.** PSC-16-01-00007-A
**Filing date:** May 20, 2004
**Effective date:** May 20, 2004

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

***Action taken:*** The commission, on May 19, 2004, adopted an order in Case 01-E-0377 approving with conditions the transfer of real property from Consolidated Edison Company of New York, Inc. to East River Realty Company, LLC (ERRC) formerly known as FSM East River Associates, LLC.

***Statutory authority:*** Public Service Law, sections 5(b), (c), 65(1), 66(1), (2), (5), (8)-(12), 70, 79(1), 80(1), (2), (4), (7), (9), (10) and 83

***Subject:*** Transfer of four parcels of property owned by Con Edison to ERRC.

***Purpose:*** To maintain the reliability of Con Edison's steam system while stabilizing steam rates.

***Substance of final rule:*** The Commission approved a request by Consolidated Edison Company of New York, Inc. (Con Edison) and East River Realty Company, LLC (ERRC) formerly known as FSM East River Associates, LLC for the sale of property located in Manhattan at 616 First Avenue, 685 First Avenue, 700 First Avenue and 708 First Avenue. Furthermore, Con Edison is directed to file with the Commission a statement of the amount of proceeds it received, the costs it incurred and a proposed accounting and ratemaking treatment for the net proceeds, subject to the terms and conditions set forth in the Order.

***Final rule compared with proposed rule:*** No changes.

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

***Assessment of Public Comment***

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

(01-E-0377SA1)

## NOTICE OF ADOPTION

### Stock Purchase by United Waterworks Inc. and South County Services Company, Inc.

**I.D. No.** PSC-34-02-00018-A
**Filing date:** May 21, 2004
**Effective date:** May 21, 2004

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

***Action taken:*** The commission, on May 5, 2004, adopted an order in Case 02-W-0949 authorizing the transfer of South County Water Corporation's stock to United Waterworks Inc.

***Statutory authority:*** Public Service Law, section 89-h

***Subject:*** Acquisition of stock.

***Purpose:*** To allow United Waterworks Inc. to acquire all the stock of South County Water Corporation.

***Substance of final rule:*** The Commission approved a joint petition of United Waterworks Inc. and South County Services Company, Inc. for the transfer of ownership of stock from South County Water Corporation to United Waterworks Inc., subject to the terms and conditions set forth in the Order.

***Final rule compared with proposed rule:*** No changes.

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

***Assessment of Public Comment***

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

(02-W-0949SA1)

## NOTICE OF ADOPTION

### Water Rates and Charges by Reagans Mill Water Company

**I.D. No.** PSC-28-03-00023-A
**Filing date:** May 21, 2004
**Effective date:** May 21, 2004

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

***Action taken:*** The commission, on May 5, 2004, adopted an order in Case 03-W-0952 approving revisions to Reagans Mill Water Company's (Reagans) tariff schedule, P.S.C. No. 1—Water, effective May 22, 2004.

***Statutory authority:*** Public Service Law, section 89-c(10)

***Subject:*** Tariff filing.

***Purpose:*** To increase annual revenues.

***Substance of final rule:*** The Commission authorized an increase in Reagans Mill Water Company's annual water revenues by $73,333 or 56.1%, phased in over three years, commencing May 22, 2004, subject to the terms and conditions set forth in the order.

***Final rule compared with proposed rule:*** No changes.

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

***Assessment of Public Comment***

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

(03-W-0952SA1)

## NOTICE OF ADOPTION

### Complaint Performance Objective of the Verizon Incentive Plan

**I.D. No.** PSC-04-04-00013-A
**Filing date:** May 24, 2004
**Effective date:** May 24, 2004

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

***Action taken:*** The commission, on May 19, 2004, adopted an order in Case 00-C-1945 revising the Verizon Incentive Plan consumer complaint performance objective.

***Statutory authority:*** Public Service Law, sections 91(1), 94(2), 97(1) and (2)

***Subject:*** Complaint performance objective of the Verizon incentive plan.

***Purpose:*** To adjust the objective.

***Substance of final rule:*** The Commission adjusted the Verizon Incentive Plan Consumer Complaint Performance Objective (or Complaint Target) from an annual rate of less than 5.50 complaints per 10,000 lines to an annual rate of less than 0.94 complaints per 10,000 lines, subject to the terms and conditions set forth in the order.

***Final rule compared with proposed rule:*** No changes.

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

***Assessment of Public Comment***

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

(00-C-1945SA5)

## NOTICE OF ADOPTION

### Net Metering for Residential Solar Generating Systems by Rochester Gas and Electric Corporation

**I.D. No.** PSC-04-04-00016-A
**Filing date:** May 19, 2004
**Effective date:** May 19, 2004

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

***Action taken:*** The commission, on May 5, 2004, adopted an order in Case 03-E-1787 granting Rochester Gas and Electric Corporation (RG&E) a waiver of its tariff provisions governing net metering for residential solar generating systems.

***Statutory authority:*** Public Service Law, section 66-j

***Subject:*** Waiver of RG&E's tariff provisions.

***Purpose:*** To interconnect net metered photovoltaic systems for a group of non-residential customers who are ineligible for net metering under the law and the utility's tariffs.

***Substance of final rule:*** The Commission authorized Rochester Gas and Electric Corporation (RG&E) to waive certain tariff provisions governing net metering for residential solar generating systems so that RG&E may interconnect net metered photovoltaic systems for a discreet group of non-residential customers who currently are ineligible for net metering under the law and the utility's tariffs.

***Final rule compared with proposed rule:*** No changes.

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

***Assessment of Public Comment***

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

(03-E-1787SA1)

## NOTICE OF ADOPTION

### Net Metering for Residential Solar Generating Systems by New York State Electric and Gas Corporation

**I.D. No.** PSC-04-04-00017-A
**Filing date:** May 19, 2004
**Effective date:** May 19, 2004

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

***Action taken:*** The commission, on May 5, 2004, adopted an order in Case 03-E-1788 granting New York State Electric and Gas Corporation (NYSEG) a waiver of its tariff provisions governing net metering for residential solar generating systems.

***Statutory authority:*** Public Service Law, section 66-j

***Subject:*** Waiver of NYSEG's tariff provisions.

***Purpose:*** To interconnect net metered photovoltaic systems for a group of non-residential customers who are ineligible for net metering under the law and the utility's tariffs.

***Substance of final rule:*** The Commission authorized New York State Electric and Gas Corporation (NYSEG) to waive certain tariff provisions

governing net metering for residential solar generating systems so that NYSEG may interconnect net metered photovoltaic systems for a discreet group of non-residential customers who currently are ineligible for net metering under the law and the utility's tariffs.

***Final rule compared with proposed rule:*** No changes.

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

***Assessment of Public Comment***

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

(03-E-1788SA1)

## NOTICE OF ADOPTION

### Transfer of a Nuclear Generating Facility by Rochester Gas and Electric Corporation

**I.D. No.** PSC-07-04-00019-A
**Filing date:** May 20, 2004
**Effective date:** May 20, 2004

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

***Action taken:*** The commission, on May 19, 2004, adopted an order in Case 03-E-1231 approving the sale of the Robert E. Ginna Nuclear Generating Station and related assets to Constellation Generation Group, LLC and R.E. Ginna Nuclear Power Plant, LLC.

***Statutory authority:*** Public Service Law, sections 5(b), 65(1), 66(1), (2), (5), (8)-(12) and 70

***Subject:*** Transfer of RG&E's nuclear generating facility and related assets.

***Purpose:*** To authorize the transfer.

***Substance of final rule:*** The Commission approved with a modification the request of Rochester Gas and Electric Corporation, Constellation Generation Group, LLC and R.E. Ginna Nuclear Power Plant, LLC to transfer ownership of the Robert E. Ginna Nuclear Power Plant and related assets to Constellation Generation Group, LLC and R.E. Ginna Nuclear Power Plant, LLC, subject to the terms and conditions set forth in the Order.

***Final rule compared with proposed rule:*** No changes.

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

***Assessment of Public Comment***

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

(03-E-1231SA1)

## NOTICE OF ADOPTION

### Request for Lightened Regulation by R.E. Ginna Nuclear Power Plant, LLC

**I.D. No.** PSC-09-04-00012-A
**Filing date:** May 20, 2004
**Effective date:** May 20, 2004

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

***Action taken:*** The commission, on May 19, 2004, adopted an order in Case 04-E-0030 approving a request by R.E. Ginna Nuclear Power Plant, LLC (GNPP) for lightened regulation as an electric corporation.

***Statutory authority:*** Public Service Law, sections 41(1), 66(1), 69, 70, 110(1), (2), 119 and 119-b

***Subject:*** Request for lightened regulation of a nuclear generation facility.

***Purpose:*** To operate in a competitive wholesale market as a lightly regulated nuclear generating facility.

***Substance of final rule:*** The Commission granted R.E. Ginna Nuclear Power Plant, LLC lightened regulation as an electric corporation, subject to the terms and conditions set forth in the order.

***Final rule compared with proposed rule:*** No changes.

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

***Assessment of Public Comment***

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

(04-E-0030SA1)

## NOTICE OF ADOPTION

### Transfer of Ownership Interests by Black River Power LLC, *et al.*

**I.D. No.** PSC-13-04-00008-A
**Filing date:** May 21, 2004
**Effective date:** May 21, 2004

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

***Action taken:*** The commission, on May 21, 2004, adopted an order in Case 04-E-0302 approving the transfer of ownership interests in a 50 MW coal-fired generation facility.

***Statutory authority:*** Public Service Law, section 70

***Subject:*** Transfer of ownership interests.

***Purpose:*** To approve the transfer of ownership interests in a 50 MW coal-fired generation facility.

***Substance of final rule:*** The Commission approved a request from Black River Power LLC, Black River Generation LLC, EIF Hamakua LLC and United States Power Fund LLC for authorization to transfer ownership interests in a 50 MW coal-fired generation facility located near Watertown, New York, subject to the terms and conditions set forth in the order.

***Final rule compared with proposed rule:*** No changes.

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

***Assessment of Public Comment***

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

(04-E-0302SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Transmission and Distribution of Gas by Empire State Pipeline

**I.D. No.** PSC-23-04-00005-P

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

***Proposed action:*** Empire State Pipeline has petitioned for a waiver of certain requirements of the commission's rules and regulations, 16 NYCRR Part 255—Transmission and Distribution of Gas. The commission may approve, deny or modify the waiver with or without public hearing.

***Statutory authority:*** Public Service Law, section 66(2)

***Subject:*** Transmission and distribution of gas.

***Purpose:*** To grant a waiver which requires pipeline operators to revise the maximum allowable operating pressure (MAOP) to correspond with the hoop stress commensurate with the present class location. The waiver would allow the operator to follow alternate risk control activities that will provide a margin of safety comparable to pipe replacement or lowering of the MAOP.

***Substance of proposed rule:*** Empire State Pipeline seeks a waiver of the requirements of 16 NYCRR 255.611(b), which prescribes the requirements for operating natural gas pipeline segments that have undergone an

increase in class location due to development of properties in proximity to the pipeline. The regulation requires the pipeline operator to either replace the section of pipe or reduce the maximum allowable operating pressure so the hoop stress is commensurate with the present class location.

The intent of the waiver is to allow three affected segments of the Empire State Pipeline to continue to operate at current stress levels thereby avoiding pressure reduction which would reduce delivery volumes of natural gas to downsteam customers. It would also allow avoidance of pipe replacement costs. The operator proposes alternative risk management measures, as a condition of the waiver, to evaluate and demonstrate the integrity of the pipeline. The proposed alternative inspection and testing methods include the internal inspection of the entire 158 miles of pipeline using both geometry and metal loss inspection tools and close internal pipe to soil surveys on the three waiver segments.

The internal inspections will provide the operator with accurate pipe condition data for the entire pipeline. The internal geometry tool will identify segments of pipe that are out-of-round, contain buckles and flat spots. The metal loss internal inspection tool is designed to detect defects such as internal corrosion, mid-pipe wall defects, mechanical damage and external corrosion (including coating damage). The close interval survey, in the three affected areas, will provide detailed information regarding the effectiveness of the cathodic protection system, which prevents corrosion, in those areas.

Empire State Pipeline claims that the information compiled from those inspections will allow the operator to make informed decisions regarding risk reduction over the entire length of the pipeline and will provide a margin of safety that is equal to or greater than complying with the current rules.

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

***Data, views or 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-0610SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### State Tax Refund by Central Hudson Gas & Electric Corporation

**I.D. No.** PSC-23-04-00006-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 this petition of Central Hudson Gas & Electric Corporation, pursuant to Public Service Law, section 113(2), of a proposed allocation of an approximately $6,513,984 refund from the Department of Taxation and Finance.

***Statutory authority:*** Public Service Law, section 113(2)

***Subject:*** State tax refund.

***Purpose:*** To determine whether or not such State tax refund should be passed on, in whole or in part, to customers.

***Substance of proposed rule:*** The Commission is considering the petition of Central Hudson Gas & Electric Corporation of a proposed allocation of an approximately $6,513,984 refund from the New York State Department of Taxation and Finance. The company is requesting the retain twenty-five percent of the refund for the benefit of shareholders with the remaining balance being deferred for customer use. The Commission may approve, modify, or reject, in whole or in part the request of the Central Hudson Gas & Electric Corporation.

***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-M-0612SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Transfer of Certain Cable Franchises by KEP, LLC d/b/a Alfred Cable Systems

**I.D. No.** PSC-23-04-00007-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 reviewing a petition from KEP, LLC d/b/a Alfred Cable Systems (Alfred Cable) requesting the transfer of certain franchises to Time Warner Entertainment-Advance/Newhouse Partnership (TWEAN).

***Statutory authority:*** Public Service Law, section 222

***Subject:*** Transfer of certain cable franchises, facilities and State certificates of confirmation of KEP, LLC d/b/a Alfred Cable Systems (Alfred Cable) to Time Warner Entertainment-Advance/Newhouse Partnership (TWEAN).

***Purpose:*** To transfer assets from Alfred Cable to TWEAN.

***Substance of proposed rule:*** The Public Service Commission is considering the transfer of a cable system, franchises, facilities and State certificates of confirmation of KEP, LLC d/b/a Alfred Cable Systems ("Alfred Cable") to Time Warner Entertainment-Advance/Newhouse Partnership ("TWEAN").

***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-V-0614SA1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Transfer of Hard Copies of Accounts, Books and Records by Long Island Water Corporation

**I.D. No.** PSC-23-04-00008-P

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

***Proposed action:*** The Public Service Commission is considering the petition of Long Island Water Corporation to transfer the hard copies of its accounts, books and records from its principle office in Lynbrook, NY to Mt. Laurel, NJ.

***Statutory authority:*** 16 NYCRR Part 543 and section 561.2

***Subject:*** No accounts, books, contracts, records, documents and papers shall be transferred from the principle office of any corporation under the jurisdiction of the commission until notice of such transfer has been submitted to the commission and approval thereof granted.

***Purpose:*** To transfer hard copies of accounts, books and records from the principle office in Lynbrook, NY to Mt. Laurel, NJ.

***Substance of proposed rule:*** The Commission is considering the petition of Long Island Water Corporation for approval to transfer the hard copies of its accounts, books and records from its principle office in Lynbrook, New York to Mt. Laurel, New Jersey. The company states that all such accounts, books and records will be accessible to authorized representa-

tives of the Department of Public Service at a location within the State of New York at all times. The Commission may approve, modify, or reject, in whole or in part the request of the Long Island Water Corporation.

***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-W-0595SA1)

# Office of Temporary and Disability Assistance

## NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Office of Temporary and Disability Assistance publishes a new notice of proposed rule making in the NYS *Register*.

### Eligibility for Food Stamps

| I.D. No. | Proposed | Expiration Date |
|---|---|---|
| TDA-20-03-00002-P | May 21, 2003 | May 20, 2004 |