

RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-47-04-00004-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from the exempt class in the Department of State.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State, by deleting therefrom the position of Administrative Assistant.

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-47-04-00005-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Department of Audit and Control.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Audit and Control, by adding thereto the position of Chief Investigations and by increasing the number of positions of Secretary from 14 to 16.

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-47-04-00006-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the non-competitive class in the Department of Mental Hygiene.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by adding thereto the position of Support Services Assistant (1).

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

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

Jurisdictional Classification

I.D. No. CVS-47-04-00007-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete a position from and classify a position in the non-competitive class in the Department of Taxation and Finance.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Taxation and Finance, by deleting therefrom the position of φDirector of Tax Policy Analysis (1) and by increasing the number of positions of φPrincipal Fiscal Policy Analyst from 2 to 3.

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-47-04-00008-P

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

Proposed action: Amendment of Appendix(es) 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To delete positions from and classify positions in the non-competitive class in the Executive Department and the State Department Service.

Text of proposed rule: Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office for Technology," by deleting therefrom the position of Radio Engineer (2) and, in the State Department Service under the subheading "All State Departments and Agencies," by adding thereto the title of Radio Engineer.

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

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

Jurisdictional Classification

I.D. No. CVS-47-04-00009-P

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

Proposed action: Amendment of Appendix(es) 1 and 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class and delete a position from the non-competitive class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class in the Executive Department under the subheading "State Emergency Management Office," by adding thereto the position of Director State Emergency Management Office; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "State Emergency Management Office," by deleting therefrom the position of φDirector State Emergency Management Office (1).

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

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of February 18, 2004 under the notice of proposed rule making I.D. No. CVS-07-04-00005-P.

Education Department

NOTICE OF ADOPTION

Residency Option Pathway for Dental Licensure

I.D. No. EDU-33-04-00008-A

Filing No. 1247

Filing date: Nov. 9, 2004

Effective date: Nov. 25, 2004

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

Action taken: Amendment of section 61.18(b)(1) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6506(1), 6507(2)(a) and 6604(3) and (4)

Subject: Residency option pathway for dental licensure.

Purpose: To adjust the requirements for the residency option pathway for dental licensure by deleting the provision that requires the dental residency to be completed within a time frame of two years prior to application for licensure.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-33-04-00008-P, Issue of August 18, 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 proposed rule was published in the State Register on August 18, 2004. Below is a summary of written comments received by the State Education Department concerning the proposed rule making and the State Education Department's assessment of the issues raised by the comments.

COMMENT: I support the proposed change that deletes the requirement that the residency program must be completed within two years prior to application for licensure. The change may facilitate the process for some applicants to become licensed through the residency option pathway.

COMMENT: I heartily endorse the removal of the two-year deadline. New York State needs experienced clinicians as dental health care providers. This action will greatly facilitate that end.

COMMENT: The proposed change can be expected to enhance the New York State dental workforce by easing career transitions for dentists (e.g., military retirement to a career in the private sector, entry or transfer to a career as a dental faculty member.)

RESPONSE: No response is necessary to these comments, which support the proposed amendment.

COMMENT: I wish to record my strong objection to the proposed change. By deleting the time restriction for the completion of dental residency programs, the amendment would allow individuals who have not performed dental procedures in many years to be licensed. There has to be a point where a person should not be licensed unless they can demonstrate their knowledge is current and their skills are sharp. Protection of the public mandates opposition to this change.

RESPONSE: The residency option will permit an applicant for licensure in dentistry to substitute successful completion of an acceptable residency program in dentistry for the licensure examination in clinical dentistry. The amendment deletes the requirement that the residency program must be successfully completed within two years prior to application for licensure. The Department believes that it is unnecessary to prescribe a time frame for completion of the residency program. Other licensed professions, such as medicine, do not have time frames for completing residency programs required for licensure. In addition, the existing regulation contains requirements that adequately verify that the applicant has completed the residency program and is competent to practice dentistry. Among other requirements, the regulation requires the program to have a formal written outcome assessment that includes a notarized written statement by the residency program director that the applicant has completed the residency program and is in the director's judgment competent to practice dentistry. It should also be noted that there is no time frame associated with completing the clinical examination, which is the alternative requirement for licensure.

COMMENT: If there is a concern regarding the competency of dentists who completed their residency program many years ago, the regulation might be changed to give a ten-year time frame, instead of deleting the two-year limit entirely. Some applicants who completed a residency program more than two years before applying for licensure may not have been in continuous practice in another jurisdiction. This might be added as a requirement.

RESPONSE: As stated above, other licensed professions do not have similar time frames for completing residency programs. In addition, the existing regulation contains requirements that adequately verify that the applicant has completed the residency program and is competent to practice dentistry. Therefore, the Department believes that it is unnecessary to prescribe a time frame for completing the residency program in dentistry or to impose a requirement of continuous practice.

COMMENT: Because evaluations by faculty of residency programs can be biased, especially in the smaller residency programs, the residency option does not ensure the competency of the applicant for dental licensure.

RESPONSE: This comment does not address the amendment at issue, which deletes a provision that requires the dental residency program to be completed within two years prior to application for licensure. However, in response, the existing regulation implements a statute enacted by the New York State Legislature, which established the residency option pathway to dental licensure. This option will permit an applicant for licensure in dentistry to substitute successful completion of an acceptable residency program in dentistry for the licensure examination in clinical dentistry. All other requirements for licensure in dentistry must be met, including satisfactory completion of the written national examination in dentistry and the

education requirement. As mandated by statute, the regulation requires the residency program to include a formal written outcome assessment of the resident's competency to practice dentistry in order to ensure adequate preparation to support licensure.

COMMENT: The regulation should permit the residency option to be available to a candidate that has completed a residency program in any American Dental Association accepted specialty or any other accredited dental specialty.

RESPONSE: This comment does not address the amendment at issue, which deletes a provision that requires the dental residency program to be completed within two years prior to application for licensure. However, in response, New York State licenses individuals in general dentistry, not in a specialty of dentistry. Therefore, the residency option pathway provides a route to licensure in general dentistry. The existing regulation specifies the acceptable residency programs that may be used in the residency option pathway. These programs may be in general dentistry or in prescribed specialties or other specialties that contain specified training. This is to ensure that the applicant has obtained adequate clinical training and assessments in support of licensure in general dentistry.

COMMENT: The regulation is unclear as to the required duration of the specialty residency programs. The regulation should clearly state that it is two years.

RESPONSE: The comment is mistaken. The existing regulation clearly states that the residency programs in either general dentistry or a prescribed specialty of dentistry must be at least one year in duration.

NOTICE OF ADOPTION

Executive Director of the Office of Teaching Initiatives

I.D. No. EDU-33-04-00009-A

Filing No. 1248

Filing date: Nov. 9, 2004

Effective date: Nov. 25, 2004

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

Action taken: Amendment of sections 80-3.6, 80-4.1, 80-4.3, 83.1, 83.3, 83.5, 87.5 and 87.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), (2) and (7), 3001(2), 3004(1), 3004-c, 3006(1)(b), 3009(1), 3010 (not subdivided) and 3035(3)

Subject: Executive Director of the Office of Teaching Initiatives and the extension in gifted education of a teaching certificate.

Purpose: To update the title of the head of the State Education Department's Office of Teaching Initiatives in various provisions of the regulations of the Commissioner of Education and defer implementation of the effective date of the requirement for a gifted education extension of a teaching certificate.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-33-04-00009-P, Issue of August 18, 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

Local High School Equivalency Diploma

I.D. No. EDU-33-04-00010-A

Filing No. 1249

Filing date: Nov. 9, 2004

Effective date: Nov. 25, 2004

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

Action taken: Amendment of section 100.8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 305(1) and (2), 309 (not subdivided) and 3204(3)

Subject: Local high school equivalency diploma.

Purpose: To extend for three years the provision allowing boards of education specified by the commissioner to award a local high school

equivalency diploma based upon experimental programs approved by the commissioner.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-33-04-00010-P, Issue of August 18, 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

Adult Literacy Education Aid

I.D. No. EDU-33-04-00011-A

Filing No. 1250

Filing date: Nov. 9, 2004

Effective date: Nov. 25, 2004

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

Action taken: Amendment of section 164.2 of Title 8 NYCRR.

Statutory authority: Education Law, section 207 (not subdivided); and L. 2003, ch. 53, section 1

Subject: Adult literacy education aid.

Purpose: To amend certain requirements for not-for-profit organizations applying for adult literacy education grants and to delete references to obsolete provisions.

Text or summary was published in the notice of proposed rule making, I.D. No. EDU-33-04-00011-P, Issue of August 18, 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Authorization of Degrees

I.D. No. EDU-47-04-00010-P

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

Proposed action: Amendment of sections 3.47(d)(2) and 3.50(b)(17) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 210 (not subdivided), 218(1) and 224(4)

Subject: Authorization of degrees.

Purpose: To authorize the conferral in New York State of the degree, Doctor of Nursing Practice (D.N.P.), for completion of a practice oriented doctoral program in nursing.

Text of proposed rule: 1. Paragraph (2) of subdivision (d) of section 3.47 of the Rules of the Board of Regents is amended, effective March 3, 2005, as follows:

(2) Professional degrees. Graduate professional degree programs must be comprised of advanced studies in professional or vocational fields. While they may have strong theoretical underpinnings, they must have as their primary purpose knowledge for application in professional practice. Master's degree programs of this type are primarily terminal in nature. They may serve as preparation for advanced studies at the doctoral level, but they shall not be designed primarily for this purpose. The doctorate in such studies is likewise practical, insofar as it prepares the student to train or supervise others in the field, to discover new knowledge that has practical application in the field, or to prepare the student for a life of practice in the student's particular profession. Only the following degrees may be conferred upon completion of a professional oriented graduate program:

Bachelor of Divinity (B.D.)

Bachelor of Laws (LL.B.)

---Engineer (--E.)

Master of Architecture (M.Arch.)

Master of Arts in Teaching (M.A.T.)

Master of Business Administration (M.B.A.)

Master of Comparative Jurisprudence (M.C.J.)

Master of Comparative Law (M.C.L.)

Master of Divinity (M.Div.)

Master of Education (Ed.M. or M.Ed.)

Master of Engineering (M.E.)

Master of Fine Arts (M.F.A.)

Master of Food Science (M.F.S.)

Master of Forestry (M.F.)

Master of Health Administration (M.H.A.)

Master of Hebrew Literature (M.H.L.)

Master of Industrial and Labor Relations (M.I.L.R.)

Master of Industrial Design (M.I.D.)

Master of International Affairs (M.I.A.)

Master of Landscape Architecture (M.L.A.)

Master of Laws (LL.M.)

Master of Library Science (M.L.S.)

Master of Management in Hospitality (M.M.H.)

Master of Music (Mus.M.)

Master of Nutritional Science (M.N.S.)

Master of Physical Therapy (M.P.T.)

Master of Professional Studies (M.P.S.)

Master of Public Administration (M.P.A.)

Master of Public Health (M.P.H.)

Master of Regional Planning (M.R.P.)

Master of Religious Education (M.R.E.)

Master of Sacred Music (S.M.M.)

Master of Sacred Theology (S.T.M.)

Master of Science for Teachers (M.S.T.)

Master of Science in Education (M.S. in Ed.)

Master of Science in Pharmacy (M.S. in Pharm.)

Master of Social Science (M.S.Sc.)

Master of Social Work (M.S.W.)

Master of Theology (Th.M.)

Master of Urban Planning (M.U.P.)

Doctor of Arts (D.A.)

Doctor of Audiology (Au.D.)

Doctor of Chiropractic (D.C.)

Doctor of Dental Surgery (D.D.S.)

Doctor of Education (Ed.D.)

Doctor of Engineering (D.Eng.)

Doctor of Engineering Science (Eng.Sc.D.)

Doctor of Hebrew Literature (D.H.L.)

Doctor of Juridical Science (S.J.D.)

Doctor of Law (J.D.)

Doctor of Library Science (L.S.D.)

Doctor of Medical Science (Med.Sc.D.)

Doctor of Medicine (M.D.)

Doctor of Ministry (D. Min.)

Doctor of Musical Arts (D.M.A.)

Doctor of Nursing Practice (D.N.P.)

Doctor of Nursing Science (D.N.S.)

Doctor of Optometry (O.D.)

Doctor of Osteopathic Medicine (D.O.)

Doctor of Pharmacy (Pharm.D.)

Doctor of Podiatric Medicine (D.P.M.)

Doctor of Physical Therapy (D.P.T.)

Doctor of Professional Studies (D.P.S.)

Doctor of Psychology (Psy.D.)

Doctor of Public Administration (D.P.A.)

Doctor of Public Health (D.P.H.)

Doctor of Religious Education (D.R.E.)

Doctor of Sacred Music (S.M.D.)

Doctor of Science in Veterinary Medicine (D.Sc. in V.M.)

Doctor of Social Science (D.S.Sc.)

Doctor of Social Welfare (D.S.W.)

Doctor of the Science of Law (J.S.D.)

Doctor of Theology (Th.D.)

Doctor of Veterinary Medicine (D.V.M.)

2. Paragraph (17) of subdivision (b) of section 3.50 of the Rules of the Board of Regents is amended, effective March 3, 2005, as follows:

(17) Nursing:

Bachelor of Science in Nursing (B.S. in Nursing)

Doctor of Nursing Practice (D.N.P.)

Doctor of Nursing Science (D.N.S.)

Text of proposed 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

Data, views or arguments may be submitted to: Johanna Duncan-Poitier, Deputy Commissioner, Office of the Professions, Education Department, 2M West Wing Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-3862, e-mail: opdepcom@mail.nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law authorizes the Board of Regents to establish rules for carrying into effect the laws and policies of the State relating to education.

Section 210 of the Education Law authorizes the Regents to register institutions in terms of New York standards.

Subdivision (1) of section 218 of the Education Law provides that no institution shall be given power to confer any degree not specifically authorized by its charter.

Subdivision (4) of section 224 of the Education Law provides that no diploma or degree shall be conferred in the State except by a regularly organized institution meeting all requirements of the law and The University of the State of New York, and prohibits an individual from appending to his or her name any letters in the same form registered by the Regents as signifying a degree unless that person has received such degree.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative intent of the aforementioned statutes that the Regents establish rules for carrying into effect the educational policies of the State by establishing a new degree title that may be conferred by colleges and universities in New York State that are authorized by the Board of Regents to do so and whose D.N.P. programs are registered by the State Education Department.

3. NEEDS AND BENEFITS:

It is the purpose of the proposed amendment to authorize the conferral of a new degree, Doctor of Nursing Practice (D.N.P.), for completion of a practice oriented doctoral program in nursing. The proposed amendment arose from a request by Columbia University to offer a program in nursing leading to the Doctor of Nursing Practice degree.

This degree provides an alternative to the existing doctoral programs in nursing (Ph.D. and D.N.S. degree programs) that are research oriented. The new degree would benefit nurses who are interested in achieving a terminal degree that focuses on expert clinical practice. The Department expects the degree to be used primarily by, but not limited to, those programs that educate nurse practitioners and nurse-midwives.

The American Association of Colleges of Nursing (AACN), a national organization representing four-year college and university nursing programs, supports the use of the proposed degree title. On October 25, 2004, the AACN member institutions voted to move the current level of preparation for advanced nursing practice to the doctoral level by 2015. While few nursing programs in the United States lead to the D.N.P. degree, many D.N.P. programs are currently being developed across the country. The Commission on Collegiate Nursing Education, a national accrediting body for higher education programs in nursing, has agreed to initiate an accrediting process specifically for the practice doctorate. The State Board for Nursing supports the authorization of this new degree title.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local governments: None.

(c) Costs to private regulated parties: None.

(d) Costs to the regulating agency for implementation and continued administration of the rule: None.

The amendment simply adds a new degree option and imposes no costs on any parties.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment will not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

There are no new forms, reporting requirements, or additional record-keeping associated with the proposed amendment.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or Federal requirements.

8. ALTERNATIVES:

The amendment arose from the request of a New York college to confer the Doctor of Nursing Practice degree. The amendment is permissive in nature and only applies to colleges and universities that want to confer the degree, are authorized to do so by the Board of Regents, and whose D.N.P. programs are registered by the State Education Department. Because of the nature of the proposed amendment, there are no viable alternatives to consider.

9. FEDERAL STANDARDS:

No Federal standards apply to the subject matter of this rule making. The Federal government does not regulate the titles of degrees which may be conferred by postsecondary institutions in New York State.

10. COMPLIANCE SCHEDULE:

The proposed amendment provides an option to postsecondary institutions to confer the D.N.P. degree. Such institutions would be able to confer the new degree, if they are authorized by the Board of Regents to do so and have a D.N.P. program that is registered by the State Education Department. Because of the permissive nature of the proposed amendment, it is unnecessary to delay the effective date of the regulation to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment relates to the authorization of a new degree title that may be conferred by colleges and universities in New York State that are authorized by the Board of Regents to confer the degree and have programs registered by the State Education Department as leading to that degree. None of the institutions in New York State that offer nursing programs are small businesses.

The amendment will not affect small businesses or local governments in New York State. The measure will not impose any adverse economic impact, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

The rule will apply to the 44 counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The amendment would authorize a new doctoral degree in nursing, the Doctor of Nursing Practice (D.N.P.). The amendment is expected to have minimal affect on rural areas of New York State because there are no New York State postsecondary institutions offering graduate level nursing programs in rural counties of the State. The amendment arose from a request from Columbia University, Manhattan, to confer this degree.

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

The proposed amendment authorizes a new degree title, the Doctor of Nursing Practice (D.N.P.), to be conferred by New York postsecondary institutions. The proposed amendment is permissive in nature and would affect only those institutions that wish to confer the degree, are authorized by the Board of Regents to confer the degree, and whose D.N.P. programs are registered by the State Education Department. The proposed amendment will not impose any new reporting, recordkeeping, or other compliance requirements on colleges and universities, including those that are located in rural areas. In addition, the amendment will not require regulated parties to hire professional services to comply.

3. Costs:

The proposed amendment will not impose initial capital costs or annual costs on public and private entities located in rural areas of the State.

4. Minimizing adverse impact:

The proposed amendment authorizes colleges and universities in New York State the option of conferring a new degree title, provided that they obtain Regents authorization to do so and have registered programs leading to the new degree. The proposed amendment relates solely to degree titles and abbreviations. Because of the permissive nature of the proposed amendment, different standards or an exemption for institutions located in rural areas of the State were not necessary. The proposed amendment will have no adverse impact on public or private parties in rural areas.

5. Rural area participation:

The State Board for Nursing, which includes, among others, representatives from rural areas of the State, supports the proposed amendment.

Comments on the proposed amendment were solicited from the New York State Nurses Association, which represents nurses statewide, including those located in rural areas of the State. In addition, all New York colleges and universities that offer registered programs in nursing leading to a baccalaureate or higher degree, including those offering baccalaureate education and located in rural areas of the State, were asked to comment on the proposed amendment.

Job Impact Statement

The proposed amendment would authorize the conferral in New York State of a new college degree, the Doctor of Nursing Practice (D.N.P.) degree, which is a practice-oriented doctoral degree in nursing. Colleges and universities in New York State that are authorized by the Board of Regents to confer the D.N.P. and have programs registered by the State Education Department leading to that degree will be authorized to confer the new degree. The measure will not have a substantial adverse impact on jobs and employment opportunities in New York State because it simply permits properly authorized colleges and universities the option of conferring a new degree. Because it is evident from the nature of the proposed amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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 in New York. This would result in health and welfare effects on New Yorkers as a result of increased emissions from automobiles, and 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 Procedure 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)	** ***
218-1.2(j)	California Vehicle Code, Section 165 (2000)	** ***
218-1.2(k)	California Code of Regulations, Title 13, Section 1900(b)(3) (12-22-99)	** ***
218-1.2(v)	California Code of Regulations, Title 13, Section 1961 (5-30-01)	** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	** ***+ ++
	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	** ***+ ++
218-1.2(w)	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	** ***+ ++
	California Code of Regulations, Title 13, Section 1961 (5-30-01)	** ***
	California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02)	** ***+ ++
	California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02)	** ***+ ++
	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (12-19-03)	** ***+ ++
218-1.2(x)	California Code of Regulations, Title 13, Section 1905 (7-3-96)	** ***
218-1.2(ad)	California Code of Regulations, Title 13, Section 1960.5 (9-30-91)	** ***
218-1.2(ai)	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02) (12-07-01) and (5-24-02)	** ***+ ++
218-1.2(al)	40 CFR Section 86.1827-01 (July 1, 2000)	*
218-1.2(aq)	California Code of Regulations, Title 13, Section 2112 (11-27-99)	** ***
218-1.2(at)	California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (12-19-03)	** ***+ ++
218-1.2(au)	California Code of Regulations, Title 13, Section 1900(b)(21) (12-07-01) and (5-24-02)	** ***+ ++
218-2.1(a)	California Code of Regulations, Title 13, Section 1956.8 (7-25-01)	** ***
	California Code of Regulations, Title 13, Section 1956.9 (3-6-96)	** ***
	California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02)	** ***+ ++

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. 1245

Filing date: Nov. 9, 2004

Effective date: Nov. 9, 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.

California Code of Regulations, Title 13, Section 1960.1.5 (9-30-91) **
 California Code of Regulations, Title 13, Section 1960.5 (9-30-91) ***
 California Code of Regulations, Title 13, Section 1961 (5-30-01) **
 California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02) ***+
 California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02) ++
 California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (12-19-03) ***+
 California Code of Regulations, Title 13, Section 1964 (2-23-90) **
 California Code of Regulations, Title 13, Section 1965 (12-22-99) ***
 California Code of Regulations, Title 13, Section 1968.1 (11-27-99) **
 California Code of Regulations, Title 13, Section 1976 (11-27-99) **
 California Code of Regulations, Title 13, Section 1978 (11-27-99) **
 California Code of Regulations, Title 13, Section 2030 (9-25-97) **
 California Code of Regulations, Title 13, Section 2031 (9-25-97) **
 California Code of Regulations, Title 13, Section 2047 (5-31-88) **
 California Code of Regulations, Title 13, Section 2065 (7-25-01) **
 California Code of Regulations, Title 13, Section 2235 (9-17-91) **
 California Code of Regulations, Title 13, Article 1.5 (7-25-01) **
 218-2.1(a) Clean Air Act 42 U.S.C. Section 7521 (1988) as amended by Public Law 101-549 (1990) **
 218-2.1(b)(5) Clean Air Act 42 U.S.C. Section 7401 et seq. (1988) as amended by Public Law 101-549 (1990) **
 218-2.1(b)(8) California Health and Safety Code, Section 43656 (2000) ***
 218-2.1(d) Clean Air Act 42 U.S.C. Section 7507 (1988) as amended by Public Law 101-549 (1990) **
 218-3.1 California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02) **
 California Code of Regulations, Title 13, Section 1961 (5-30-01) ***+
 California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02) ++
 California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02) ***+
 218-3.1(a) California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02) ++
 218-3.1(b) California Code of Regulations, Title 13, Section 1960.1 (12-07-01) and (5-24-02) **
 California Code of Regulations, Title 13, Section 1961 (5-30-01) ***+
 California Code of Regulations, Title 13, Section 1961(a)(8)(B) (12-07-01) and (5-24-02) ++
 California Code of Regulations, Title 13, Section 1961(d) (12-07-01) and (5-24-02) ***+
 218-4.1 California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (12-19-03) ++
 218-4.2 California Code of Regulations, Title 13, Section 1962 [(12-07-01) and (5-24-02)] (12-19-03) **
 218-5.1(a) California Code of Regulations, Title 13, Section 2061 (10-23-96) **
 California Code of Regulations, Title 13, Section 2062 (11-27-99) ***
 California Code of Regulations, Title 13, Section 2065 (7-25-01) **
 California Code of Regulations, Title 13, Section 2106 (11-27-99) **
 California Code of Regulations, Title 13, Section 2107 (11-27-99) **

California Code of Regulations, Title 13, Article 1.5 (7-25-01) **
 California Code of Regulations, Title 13, Section 2061 (10-23-96) ***
 California Code of Regulations, Title 13, Section 2062 (11-27-99) **
 California Code of Regulations, Title 13, Section 2065 (7-25-01) ***
 California Code of Regulations, Title 13, Article 1.5 (7-25-01) **
 California Code of Regulations, Title 13, Section 2065 (7-25-01) ***
 California Code of Regulations, Title 13, Section 2109 (11-30-83) **
 California Code of Regulations, Title 13, Section 2110 (11-27-99) ***
 California Code of Regulations, Title 13, Article 1.5 (7-25-01) **
 California Code of Regulations, Title 13, Section 2106 (11-27-99) **
 California Code of Regulations, Title 13, Section 2101 (11-27-99) **
 Clean Air Act 42 U.S.C. Section 7401 et seq. (1988) as amended by Public Law 101-549 (1990) **
 California Code of Regulations, Title 13, Section 2221 (11-30-83) ***
 California Code of Regulations, Title 13, Section 2224 (8-16-90) **
 California Code of Regulations, Title 13, Section 2224(a) (8-16-90) ***
 California Code of Regulations, Title 13, Section 2222 (8-16-90) **
 California Code of Regulations, Title 13, Section 2222 (8-16-90) **
 California Code of Regulations, Title 13, Section 2222 (8-16-90) **
 California Code of Regulations, Title 13, Section 2222 (8-16-90) **

§ 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]	1.5	2.25	3
	Voluntary Early Introduction			
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 intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule

making, I.D. No. ENV-14-04-00003-P, Issue of April 7, 2004. The emergency rule will expire January 7, 2005.

Revised rule making(s) were previously published in the State Register on July 21, 2004.

Text of emergency rule and any required statements and analyses may be obtained from: Steven E. Flint, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3255, (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 Environmen-

tal 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.

Assessment of Public Comment

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

NOTICE OF ADOPTION

Bear Hunting in the Southern Zone

I.D. No. ENV-37-04-00003-A

Filing No. 1243

Filing date: Nov. 9, 2004

Effective date: Nov. 24, 2004

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

Action taken: Amendment of section 1.31 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 11-0903

Subject: Bear hunting in the Southern Zone.

Purpose: To expand the areas open for black bear hunting in an effort to better manage New York's black bear population; and provide additional opportunities for hunters to harvest black bears.

Text or summary was published in the notice of proposed rule making, I.D. No. ENV-37-04-00003-P, Issue of September 15, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Gordon R. Batcheller, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8885, e-mail: grbatche@gw.dec.state.ny.us

Additional matter required by statute:

State Environmental Quality Review Act (SEQR; ECL art. 8). Establishment of regulations for hunting of game species is covered by a final programmatic impact statement (FPIS) on wildlife game species management (DEC 1980) and supplemental findings (DEC 1994). The proposed action does not involve any significant departure from established and accepted practices as described in the FPIS and is therefore classified as a "type II" action pursuant to the Department's SEQR regulations (6 NYCRR § 618.2[d][5]).

Assessment of Public Comment

A proposed rulemaking notice concerning an amendment to Title 6 NYCRR Section 1.31, Bear Hunting in the Southern Zone, was published in the New York State Register on September 15, 2004, I.D. No. ENV-37-04-00003-P. The proposed amendment allows for the expansion of areas open to black bear hunting in the Catskill and Allegany range of the Southern Zone.

New York's black bear populations occur in three distinct geographic areas. The largest population occurs in the Adirondack range. Smaller populations occur in the Catskill and Allegany ranges in the southern zone of New York State. The Catskill and Allegany ranges represent the northern edge of larger interstate bear populations shared with Pennsylvania and New Jersey.

In areas outside of the core ranges, bear numbers and instances of bear related nuisance and damage have increased substantially in recent years, along with an increased level of bear sightings and non-hunting bear mortalities. These developments led the Department of Environmental Conservation (Department) to propose an expansion of the areas open to black bear hunting in the Catskill and Allegany ranges. The comments submitted to the Department concerning the proposal are set forth below, followed by the Department's response:

Comment: Comments were received in support of the proposal, noting that the expanded hunting area will reduce negative bear-human interactions and reduce levels of bear nuisance activity and property damage, especially for the agricultural communities within the Wildlife Management Units proposed for bear hunting.

Response: The Department concurs. Various agricultural interests have requested supplemental damage relief in addition to Department issued nuisance permits.

Comment: Comments were received suggesting that: the Department should educate the public in black bear management and nuisance prevention/control practices; an expansion of the hunting range will not, by itself, resolve problems created by just a few bears; and the Department should implement a long-term non-lethal management program (*e.g.*, preventing bear access to attractants, using fencing and repellents, and aversive conditioning by Department staff).

Response: The Department has long-standing and ongoing programs to educate and prevent bear damage. The Department recognizes that effective bear management involves education, non-lethal intervention, and population management. Information concerning these three categories is accessible through the Department's website (www.dec.state.ny.us). The Department has initiated new and expansive educational programs in the Catskills and Adirondacks.

The Department firmly believes that hunting is an important component of a comprehensive management program, which includes efforts to mitigate the negative black bear impacts over large areas. The additional harvest anticipated in the areas proposed, in combination with education and preventative measures, is expected to bring the number and magnitude of negative impacts in better balance with human interests. The Department strongly supports hunting for bear as a recreational activity and as an important component of the Department's efforts to manage bear populations.

Comment: Some comments urged that the Department be given deference and allowed to apply its knowledge and expertise in its efforts to manage bear populations.

Response: The Department recognizes and embraces its stewardship responsibility to manage wildlife populations in a scientifically sound manner for the benefit of current and future generations of citizens. The current proposal was developed by professional wildlife staff after due consideration of the available biological data and human dimensions (a discipline which studies human attitudes and values as they relate to natural resources) information.

Comment: There were several comments that supported the proposed changes because they will provide more hunting opportunity, thereby contributing to effective management of black bears and increased hunter satisfaction.

Response: The Department concurs. The proposed expansion of the areas open to bear hunting will afford hunters some additional recreational opportunity.

Comment: Several comments were received indicating support for the Department to open additional Wildlife Management Units to bear hunting beyond those proposed.

Response: The Department continually monitors and re-evaluates the status of bear populations and human interests and interactions with these populations. The Department is aware of interest in options for bear management changes in areas beyond those covered by this proposal. Department staff will continue to conduct information gathering and analysis on this issue, and if appropriate, propose additional amendments to the Department's bear hunting regulations.

Comment: Some comments contended that the proposal was made to increase the sale of hunting licenses.

Response: All resident big game licensees currently receive a bear tag. Therefore, since the number of bear tags issued to residents will not be affected by this proposal, Department staff do not anticipate an increase in license sales as a result of this rulemaking. Fewer than 2,000 non-resident bear tags are sold annually. No significant increase in these sales is expected as a result of this amendment.

Comment: Some comments suggested that the Department place an emphasis on the harvest of male bears as a management strategy.

Response: The Department has already addressed this issue by regulating the timing of the opening of specific seasons. Firearm seasons for bear hunting are set to open at a time when many female bears have already denned.

Comment: A few comments queried the Department on the size of the current bear population, what numbers the land can support, and if there is a population large enough to sustain a hunting season in the area proposed to be opened for hunting.

Response: The Department monitors several indices of the bear population (annual bear harvest, nuisance complaints, non-hunting mortality, citizen observations) to determine population trends. The Department is also aware that a significant number of bears annually disperse into New York from adjacent southern states. The Department has managed bears based upon positive and negative impacts caused by bears and the acceptability of these impacts to people. The Department concluded that the population of bears in the proposed area is large enough to support hunting and that opening these areas to hunting will not be detrimental to the viability of the Allegany and Catskill bear populations.

Comment: One comment received indicated that the 2004 harvest of 1,864 bears exceeded the allowable recommendation by the Department to sustain a viable bear population.

Response: The harvest observed in the core hunting areas of the Catskill and Allegany regions was 399 and 95, respectively. Long term trends of increasing harvest and nuisance activity suggest that bears populations in the Allegany and Catskill regions are increasing rapidly. Studies in New York, Pennsylvania and New Jersey have documented the dispersal of young male bears into the Allegany and Catskill regions of New York. This is substantiated by long term harvest data of which the majority is male. The population in both the Catskill and Allegany regions are an extension of core bear populations in Pennsylvania and New Jersey which provide substantial recruitment to New York's portions of these interstate bear populations. Moreover, population estimates and harvests recorded to date do not include bears located in the area proposed to be added to the legal bear hunting area.

Comment: Some comments expressed the desire to observe bears, especially in western New York.

Response: Over sixty percent of the nuisance complaints and bear-vehicle collisions occurring in the western part of the state have been outside the core of the bear area, indicating that these units are sustaining a viable black bear population. The Department manages bear populations throughout New York State in a manner which seeks to balance the

positive and negative impacts associated with black bears. Based upon current bear population indicators, the Department believes that the regulated harvest of bears in these areas is essential to achieve a reasonable balance between competing interests, including the continued availability of opportunities for people to observe bears and signs of their presence in the proposed units.

Comment: Some comments stated that archery and gun hunting are cruel and inhumane methods of bear population control.

Response: Archery and gun hunting have been practiced in New York and other states as a legal and established method of controlling wildlife populations through regulated harvest. Moreover, changing the manner of take is beyond the scope of this regulatory proposal.

The opening of the proposed area is intended to stabilize or decrease the number of bears, and thereby reduce negative interactions between bear and people, while concurrently providing additional hunting opportunity for bears. The Department believes that this proposal will achieve these goals, and therefore the Department is adopting the proposed rulemaking as originally published.

Insurance Department

EMERGENCY RULE MAKING

Rules Governing Individual and Group Accident and Health Insurance Reserves

I.D. No. INS-47-04-00003-E

Filing No. 1242

Filing date: Nov. 4, 2004

Effective date: Nov. 4, 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 December 31, 2004 annual statement is March 1, 2005. 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 February 1, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Michael Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@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 June 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.

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

Proposed action: Amendment of sections 1035.2, 1040.2, 1040.5, 1040.8, 1050.2, 1050.4, 1050.5, 1050.6, 1050.7, 1050.9 and 1050.11 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 1203-a, 1204 and 1266

Subject: Conduct and safety of the public in the use of transit facilities and paratransit eligibility criteria.

Purpose: To improve police officer enforcement capability, enhance customer safety and security, clarify the meaning and/or intent of certain provisions, conform the language of certain provisions to the American with Disabilities Act, and make technical revisions and corrections.

Substance of proposed rule (Full text is posted at the following State website: www.mta.info/nycr/rules/proposed.htm): AMENDMENT OF PART 1035 OF TITLE 21 NYCRR - Paratransit Eligibility Criteria

Section 1035.2

A technical revision to correct a typographical error occurring when this provision was last amended is made to Section 1035.2(a) of rules relating to eligibility for paratransit services.

AMENDMENT OF PART 1040 OF TITLE 21 NYCRR - Staten Island Rapid Transit Operating Authority (SIRTOA) Rules of Conduct

Section 1040.2

A new definition of "fare media" is added. "Fare media" means the various instruments accepted for payment of fare. [Section 1040.2(g)]

A new definition of "service animal" is added, patterned after the definition used by the Federal Transit Administration (FTA) to describe animals trained to perform certain tasks for persons with disabilities. [Section 1040.2(l)]

A new definition of "sound production devices" is added. [Section 1040.2(m)]

Section 1040.4

In order to further enhance passenger security and safety, photography and videorecording is prohibited except for members of the press holding valid identification cards issued by the New York City Police Department or where written authorization has been provided by SIRTOA. [Section 1040.4(f)]

Section 1040.5

Currently, placing one's feet on a seat in a train or on a platform bench is not specifically prohibited. A specific prohibition is therefore added to address this issue. At the time same, placing a package or other item on an empty seat would be a summonsable offense only when it tended to interfere with transit operations or the comfort of other passengers such as the ability of another passenger to obtain a seat. [Section 1040.5(a)]

Straddling a bicycle in motion, wearing in-line skates (or roller skates) or standing on a skateboard constitute conduct that is potentially harmful to others but, currently, is not adequately addressed. This revision enhances enforcement by including a prohibition against straddling a bicycle that is in motion, wearing skates or standing on a skateboard. [Section 1040.5(j)]

Smoking is not permitted anywhere within the SIRTOA system. Section 1040.5(o) is amended so as to delete the language which currently allows smoking in specifically designated locations.

Currently, there appears to be uncertainty as to whether the provisions of section 1040.5(u) which prohibit riding on the platform between cars of a train also prohibit utilizing the platform for purposes of moving between cars. More important, the use of end doors to move between cars carries with it inherent safety hazards whether or not the train is in motion. Accordingly, it is proposed that the use of end doors be prohibited except when passengers are directed to use them by SIRTOA personnel or a police officer. [Section 1040.5(v)]

A specific prohibition against "turnstile jumping", entering through an exit gate, etc. is added [section 1040.5(x)]. Situations arise where passengers "jump" a turnstile or enter through an exit gate when their time-based card is swiped improperly or malfunctions. In other instances, some passengers "jump" a turnstile when their improperly swiped or malfunctioning pay-per-ride MetroCard does not grant access, only to discover, after the fact, that a fare had been deducted from their card. These situations may not give rise to a sustainable charge of theft of services, however, "turnstile jumping" and related conduct, whatever the stated rationale, creates an environment of disorder including the perception among other passengers that the fare was evaded.

Section 1040.8

The provisions regarding service animals are revised so as to conform to the FTA interpretation of requirements under the Americans with Disabilities Act (ADA). Most important is a provision which supercedes any

Office of Mental Retardation and Developmental Disabilities

NOTICE OF ADOPTION

Definition of Developmental Disability

I.D. No. MRD-34-04-00008-A

Filing No. 1241

Filing date: Nov. 4, 2004

Effective date: Nov. 24, 2004

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

Action taken: Amendment of sections 624.20, 633.99, 635-99.1, 671.99, 676.12, 679.99, 680.13, 681.99, 686.99, 687.99 and 690.99 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 1.03(22), 13.07, 13.09 and 16.00

Subject: Definition of developmental disability.

Purpose: To change the definition of developmental disability.

Text or summary was published in the notice of proposed rule making, I.D. No. MRD-34-04-00008-P, Issue of August 25, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Assessment of Public Comment

The agency received no public comment.

New York City Transit Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Use of Transit Facilities

I.D. No. NTA-47-04-00002-P

requirement of licensure or written documentation for the animal, if the individual bringing the animal into the system can credibly explain how the animal is needed to perform a task that the person is unable to perform due to his or her disability. As bulletins have been issued previously incorporating the FTA standards, this amendment serves simply to formally codify current practice.

AMENDMENT OF PART 1050 OF TITLE 21 NYCRR - New York City Transit Authority (NYCTA) Rules of Conduct

Section 1050.2

A new definition of "service animal" is added, patterned after the definition used by the Federal Transit Administration (FTA) to describe animals trained to perform certain tasks for persons with disabilities. [Section 1050.2(c)]

A technical revision is made to the definition of "person". [Section 1050.2(g)]

The definition of "fare media" is amended to delete the reference to the term "token" inasmuch as tokens are no longer sold or accepted in the subways or on buses. [Section 1050.2(l)]

A new definition of "farecards" is added to differentiate specifically between value-based and time-based MetroCards. [Section 1050.2(j)]

A new definition of "payment of fare" is added which specifically references the use of time-based farecards. [Section 1050.2(k)]

Section 1050.4

A prohibition against "turnstile jumping", entering through an exit gate, etc. is added to section 1050.4(a) which deals with payment of fare and access to NYCTA facilities. Situations arise currently where passengers "jump" the turnstiles or enter through an exit gate when their time-based card is swiped improperly or malfunctions. They then seek to have a charge of fare evasion dismissed on the theory that since they had already prepaid for unlimited transportation for a specified period (e.g., 7 days), they therefore cannot be guilty of fare evasion. In other instances, some passengers "jump" the turnstile when their improperly swiped or malfunctioning pay-per-ride MetroCard does not grant access, only to discover, after the fact, that a fare had been deducted from their card. However, "turnstile jumping" and related conduct, whatever the stated rationale, create an environment of disorder, including the perception among other passengers that the fare was evaded.

A technical revision is made to Section 1050.4(c) to provide specifically provide that authorized agents of NYCTA may sell MetroCards.

Section 1050.5

Prohibitions against vandalizing or otherwise damaging New York City Transit property are currently found in two separate provisions of the Rules, Section 1050.5(a) and Section 1050.6(a). Both sections are amended so that the prohibition is contained solely within section 1050.5(a). This simplifies enforcement and allows for more informative statistical analysis. In addition, several technical revisions are made to section 1050.5(a) in order to clarify language including language to make clear that attempts to damage property are prohibited.

Section 1050.6

As noted above, section 1050.6(a) is amended to consolidate prohibitions against damaging New York City Transit property exclusively in section 1050.5(a). It is also amended to specifically provide that acts which tend to interfere with the provision of service, to obstruct traffic and to interfere with safe operation are not permitted.

Voter registration activities are specifically included as a permissible non-transit use or activity. NYCTA currently permits this type of activity, provided that general safety oriented restrictions are observed. [Section 1050.6(c)]

Other revisions to section 1050.6(c) dealing with non-transit uses of the system do not effect substantive change but merely restructure some of its language so that the restrictions are expressed more clearly.

A provision is added to Section 1050.6(d)(3) to provide specifically that persons with farecards issued based on specified individual eligibility criteria which allow entry into the system either for no charge or at a reduced fare are obligated to produce the card for physical inspection when requested to do so by a police officer or NYCTA personnel. In addition, a specific requirement is added that the name of the eligible holder of such farecard be clearly visible on the card.

The restrictions in section 1050.6(f) aimed at preventing the consumption of liquids on a bus or subway are clarified.

Section 1050.7

Smoking is not permitted anywhere within the transit system. Section 1050.7(b) is amended so as to delete the language which currently allows smoking in specifically designated locations.

Currently, placing one's feet on a seat of a subway or bus or platform bench is not specifically prohibited. A specific prohibition is therefore added to address this issue. At the same time, placing a package or other item on an empty seat would be prohibited only when it tended to interfere with transit operations or the comfort of other passengers such as the ability of another passenger to obtain a seat. [Section 1050.7(j)]

Straddling a bicycle in motion, wearing in-line skates (or roller skates) or standing on a skateboard constitute conduct that is potentially harmful to others but, currently, is not adequately addressed. In particular, with respect to skates and skateboards, it is often difficult to sustain a charge of a violation where offending individuals are stationary at the time they are observed by a police officer. This revision would enhance enforcement by including a prohibition against straddling a bicycle that is in motion, wearing skates or standing on a skateboard. Additionally, scooters are added to the list of vehicles which may not be ridden in the system. [Section 1050.7(k)]

Section 1050.9

Catwalks and emergency stairs are added to the list of areas specifically identified in the prohibition against entering areas not open to the public. [Section 1050.9(a)]

In order to further enhance passenger security and safety, photography and videorecording would be prohibited except for members of the press holding valid identification cards issued by the New York City Police Department or where written authorization has been provided by NYCTA. [Section 1050.9(c)]

Currently, there appears to be uncertainty as to whether the provisions of section 1050.9(d) which prohibit riding between subway cars also prohibit the act of moving between cars. The use of end doors to move between cars carries with it inherent safety hazards whether or not the train is in motion. Accordingly, the use of end doors is prohibited except when passengers are directed to use them by NYCTA personnel or a police officer.

The provisions regarding use of service animals are revised so as to conform the language of the rules to current practice which incorporates the FTA interpretation of requirements under the ADA. Most important is a provision which would supercede any requirement of licensure or written documentation for the animal, if the individual bringing the animal into the system can credibly explain how the animal is needed to perform a task that the person is unable to perform due to his or her disability. Both NYCTA and the New York City Police Department have previously issued bulletins incorporating the FTA standards and this amendment serves simply to formally codify current practices. [Section 1050.9(h)]

General Revisions

All references to Transit Police and Transit Police Officers contained within Part 1050 are deleted and replaced by references to the New York City Police Department and New York City Police Officers, reflecting the merger of the Transit Police into the New York City Police Department. In addition, The term "token booth" is replaced with the term "station booth".

Text of proposed rule and any required statements and analyses may be obtained from: David Goldenberg, New York City Transit Authority, 130 Livingston St., Rm. 1207, Brooklyn, NY 11201, (718) 694-5454, e-mail: e-mails may be sent by accessing www.mta.info/nyct/rules/proposed.htm

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

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

Regulatory Impact Statement

1. Statutory authority: Public Authorities Law sections 1203-a, 1204 and 1266 authorize the New York City Transit Authority (NYCTA), the Manhattan and Bronx Surface Transit Operating Authority (MaBSTOA) and the Staten Island Rapid Transit System Operating Authority (SIRTOA) to promulgate rules pertaining to the conduct and safety of persons using transit facilities and the implementation of eligibility criteria for individuals desiring paratransit services.

2. Legislative objectives: NYCTA and MaBSTOA have been given statutory authority to adopt rules as deemed necessary, convenient or desirable for the use and operation of its transit system, including rules relating to the protection and maintenance of transit facilities under its jurisdiction, the conduct and safety of the public, the payment of fares for the use of such facilities, the presentation or display of documentation permitting free passage, reduced fare passage or full fare passage and the protection of revenues. SIRTOA has been granted comparable statutory powers. Consistent enforcement of the NYCTA and SIRTOA Rules of Conduct to increase our customers sense of safety and security in the transit system is an ongoing high priority. NYCTA and SIRTOA have

recently taken a fresh look at their Rules of Conduct (codified respectively at 21 NYCRR 1050 *et seq.* and 21 NYCRR 1040 *et seq.*) last revised in 1994 in the context of intervening operational and legal events, and are revising them to enhance security and safety, and to strengthen and clarify existing rules and facilitate enforcement.

3. Needs and benefits:

Included in the changes to the NYCTA Rules of Conduct are:

a. an express prohibition against turnstile jumping or other improper entry into the transit system because such conduct creates a sense of disorder;

b. in light recent national and international events that have underscored the need for heightened security measures throughout the transit system, a reinstatement of a prohibition that existed until the early 1990's against photography, filming and video recording in transit facilities and on transit conveyances without prior authorization except for members of the press;

c. a provision making clear that passing between subway cars is prohibited, regardless of whether the train is in motion, because such conduct is inherently dangerous;

d. a provision which specifically prohibits placing one's foot on a seat, to promote system cleanliness;

e. a provision which permits more than one seat to be occupied so long as to do so does not interfere with other passengers to promote customer comfort; and

f. a provision specifically authorizing New York City police officers or NYCTA personnel to request individuals who utilize special farecards allowing for free or reduced rate transportation to produce such farecards for inspection to enhance enforcement against improper use of such cards.

Also, a series of technical clarifications are made as well as a modification to current language relating to the use of service animals to assure that the text of the rule is in full compliance with requirements of the Americans with Disabilities Act which are currently reflected in agency practices.

Comparable modifications are made to SIRTOA's Rules of Conduct. (It is to be noted that, with regard to the SIRTOA Rules of Conduct, certain changes, *e.g.*, those which relate to fare evasion, are not applicable to SIRTOA's regulatory framework.)

In addition, a technical revision is made to 21 NYCRR 1035.2 pertaining to paratransit eligibility criteria to correct a typographical error.

4. Costs: The rule has no projected costs inasmuch as its focus is the conduct of members of the public in their use of the transit system.

5. Local government mandates: No program, service duty or responsibility is imposed by the rule upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The rule imposes no reporting requirements.

7. Duplication: The rule creates no conflict or overlap with or duplication of any other legal mandate.

8. Alternatives: Consideration was given to restricting photography, etc. of sensitive areas only. However, it was felt that a less restrictive approach would not yield the necessary security enhancements and given the nature of the activities in question enforcement of a rule which required law enforcement personnel to make a judgment as to the precise subject matter being photographed would be highly problematic. Consideration was given to prohibiting use of end doors of subway and train cars only when they were in motion, however, it was felt that such an approach did not adequately protect the safety of the riding public.

9. Federal standards: The rule does not exceed any minimum standards of the federal government.

10. Compliance schedule: The dissemination of information to the public concerning modification to NYCTA and SIRTOA rules is always widespread rendering a compliance schedule unnecessary. Moreover, police officers traditionally participate in efforts to educate the riding public when a new rule takes effect in lieu of formal enforcement.

Regulatory Flexibility Analysis

Inasmuch as this rule addresses only the conduct of members of the public in their use of transit facilities (and makes a technical revision to paratransit eligibility criteria) it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

Inasmuch as this rule extends only to transit facilities and paratransit operations within the five counties of the City of New York it does not affect rural areas as such term is defined in SAPA section 102(10) and Executive Law section 481.

Job Impact Statement

Inasmuch as this rule addresses only the conduct of members of the public in their use of transit facilities (and makes a technical revision to paratransit eligibility criteria) it will not impact on jobs or employment opportunities.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-42-04-00012-P	October 20, 2004
PSC-42-04-00013-P	October 20, 2004
PSC-42-04-00014-P	October 20, 2004
PSC-42-04-00016-P	October 20, 2004
PSC-42-04-00017-P	October 20, 2004

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Hourly Pricing by Central Hudson Gas & Electric Corporation

I.D. No. PSC-47-04-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve, modify, or reject, in whole or in part, a proposal filed by Central Hudson Gas & Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its tariff schedule, P.S.C. No. 15—Electricity to become effective April 1, 2005.

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

Subject: Hourly pricing.

Purpose: To modify its hourly pricing provision applicable to Service Classification Nos. 2, 3 and 13.

Substance of proposed rule: On November 1, 2004, Central Hudson Gas & Electric Corporation (Central Hudson or the Company) filed proposed tariff revisions to modify its Hourly Pricing Provision (HPP) applicable to Service Classifications (S.C.) Nos. 2, 3 and 13 to become effective April 1, 2005. Central Hudson proposes to: (1) eliminate the Market Price Charge and the Market Price Adjustment pricing option for S.C. Nos. 3 and 13 customers who continue to purchase their electricity requirements from Central Hudson. As a result, these customers would be required to purchase their electricity requirements from the Company under the HPP or choose an alternative supplier under the company's Retail Access Program; and (2) rename the HPP ICAP Charge to UCAP Charge (unforced capacity) and revise the method for determining this charge as follows: (a) allocate UCAP Charges from the Market Price Charge based on the sum of HPP customers' UCAP requirements multiplied by the company's monthly average UCAP rate per kW as included in the Market Price Charge; (b) add an energy balancing component to the UCAP charge to reflect company purchases and sales in the Real-Time Market which are required to balance load. This component will be calculated, using current month data, by subtracting the Day-Ahead Locational Based Market Price from the Real-Time Locational Based Market Price as set forth by the NYISO for Zone G for each hour and multiplying the difference by any purchases or sales that occurred in the respective hour. The net total will be divided by total estimated full service sales, including HPP sales, consistent with the calculation set forth for the Market Price Charge, to arrive at an energy balancing component per kWh; and (c) the HPP UCAP charge per kWh will then be comprised of the UCAP Charges as set forth in (a) above, the energy balancing component proposed in (b) above, and allowances for working capital carrying charges and bad debts equal to the amounts for these charges included in the Market Price Charge. The Company also proposed to delete from its tariff references to the Customer Refund for S.C. Nos. 3 and 13 since these customers are no longer eligible for this item. The Commission may approve, modify, or reject, in whole or in part, the company's filing.

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. Brillling, 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.

(00-E-1273SA8)

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

Transfer of Certain Cable System Franchises by J. Feeney Associates, Inc.

I.D. No. PSC-47-04-00012-P

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

Proposed action: The commission is considering a petition by J. Feeney Associates, Inc. for approval to transfer certain cable system franchises in the Towns of Burlington, Exeter and New Lisbon (Otsego County) Towns of Cincinnatus, Cuyler, Taylor, Truxton and Willet (Cortland County), Towns of DeRuyter, Georgetown, Smithfield and the Village of DeRuyter (Madison County), Towns of Fabius, Tully and Village of Fabius (Onondaga County), Towns of Otselic, Pharsalia and Pitcher (Chenango County) to Time Warner Entertainment-Advance/Newhouse Partnership.

Statutory authority: Public Service Law, section 222

Subject: Transfer of certain cable system franchises.

Purpose: To allow Time Warner Entertainment-Advance/Newhouse Partnership to acquire certain cable system franchises.

Substance of proposed rule: The Public Service Commission is considering a petition submitted by J. Feeney Associates, Inc. for approval to transfer certain cable system franchises in the Towns of Burlington, Exeter and New Lisbon (Otsego County), Towns of Cincinnatus, Cuyler, Taylor, Truxton and Willet (Cortland County), Towns of DeRuyter, Georgetown, Smithfield and the Village of DeRuyter (Madison County), Towns of Fabius, Tully and Village of Fabius (Onondaga County), Towns of Otselic, Pharsalia and Pitcher (Chenango County) to Time Warner Entertainment-Advance/Newhouse Partnership.

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. Brillling, 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-1340SA1)

**Office of Real Property
Services**

NOTICE OF ADOPTION

State Assistance for Annual Assessment Programs

I.D. No. RPS-36-04-00002-A

Filing No. 1246

Filing date: Nov. 9, 2004

Effective date: Nov. 24, 2004

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

Action taken: Addition of section 201-2.3(f) to Title 9 NYCRR.

Statutory authority: Real Property Tax Law, sections 202(1)(l) and 1573(1)(a)

Subject: State financial assistance for annual assessment programs.

Purpose: To set forth filing requirements for six-year plans.

Text or summary was published in the notice of proposed rule making, I.D. No. RPS-36-04-00002-P, Issue of September 8, 2004.

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

Text of rule and any required statements and analyses may be obtained from: James J. O'Keefe, General Counsel, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: internet.legal@orps.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Transportation

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

Revisions to the Manual of Uniform Traffic Control Devices

I.D. No. TRN-47-04-00001-P

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

Proposed action: Amendment of Parts 200, 201, 211-217, 219-222, 231-240, 251-255, 260-263, 271-275, 277, 279, 291-294, 301 and 302 of Title 17 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 1680(a); and Transportation Law, section 14(18)

Subject: Revisions to the New York State Manual of Uniform Traffic Control Devices (MUTCD).

Purpose: To reflect changes in Federal and State traffic statutes, regulations and standards, and technology governing highway signs, pavement markings and other traffic control devices.

Substance of proposed rule (Full text is not posted on a State website): This rulemaking makes 171 changes to sections of 17 NYCRR Chapter V ("Uniform Traffic Control Devices"), hereafter referred to as the "Manual." These changes are being made in response to: Federal statutory and regulatory mandates (e.g., Federal changes to various warning sign layouts); State statutory changes (e.g., changes in law regarding the rights of pedestrians in crosswalks, the length and locations of school zones, and the application of higher fines to certain types of moving violations); and Department improvements and innovations in managing the transportation system (e.g., the use of fluorescent colors for certain warning signs, and the use of countdown timers and audible pedestrian devices at pedestrian crossings).

The amended Manual includes provisions for larger lettering on certain signs, and the incorporation of new technologies, like audible pedestrian signals and countdown pedestrian timers. The Manual also adds new

warning signs that address a broader range of highway conditions about which motorists may need to be warned.

Because of the detail and quantity of changes, the changes are grouped by their main purpose as follows:

—81 changes correct or clarify references, charts or illustrations in the Manual.

—28 changes incorporate authorizations of traffic control devices which have been issued between 1984 and the present.

—11 changes increase the operational flexibility of State and local transportation agencies.

—44 changes were made primarily to make the Manual consistent with guidance in the Federal "Manual on Uniform Traffic Control Devices."

—1 change improves safety at railroad grade crossings.

—5 changes improve safety in highway work zones.

—1 change will enable State and local transportation agencies to support State and local economic development efforts.

Text of proposed rule and any required statements and analyses may be obtained from: David Woodin, Operations Bureau, Traffic Engineering and Highway Safety Division, Department of Transportation, State Campus, Albany, NY 12232, (518) 457-7436, e-mail: dwoodin@dot.state.ny.us

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

Public comment will be received until: 60 days after publication of this notice.

Summary of Regulatory Impact Statement

Overview

This summary explains the Department of Transportation's proposed rulemaking for an update of 17 NYCRR Chapter V (hereafter referred to as the "Manual"). The term "traffic control device" is defined to mean signs, signals, markings and other devices to regulate, warn or guide traffic.

The changes to the Manual respond to recent: Federal statutory and regulatory mandates (e.g., Federal changes to various warning sign layouts); State statutory changes (e.g., changes in law regarding the rights of pedestrians in crosswalks, the length and locations of school zones, and the application of higher fines to certain types of moving violations); and Department improvements and innovations in managing the transportation system (e.g., the use of fluorescent colors for certain warning signs, and the use of countdown timers and audible pedestrian devices at pedestrian crossings).

The wide-ranging changes in this Manual provide and clarify guidance on everything from the most modern variable message signs in highway work zones to traditional signs and devices such as those at railroad grade crossings.

Consistent with the Governor's commitment to making the state's highways safer for all motorists and pedestrians, as well as addressing the challenges faced by older drivers, the amended Manual includes provisions for larger lettering on certain signs, and the incorporation of new technologies, like audible pedestrian signals and countdown pedestrian timers. The Manual also adds new warning signs that address a broader range of highway conditions about which motorists may need to be warned.

1. Statutory Authority

These changes are consistent with Section 1680(a) of the Vehicle and Traffic Law, which requires the Department to "adopt a manual and specifications for a uniform system of traffic control-devices."

Section 1680(a) further states that this manual must be consistent with the Vehicle and Traffic Law, and shall conform, "so far as practicable," to nationally accepted standards. These standards are promulgated by the Manual on Uniform Traffic Control Devices (hereafter referred to as the "National MUTCD"), which was most recently revised on July 21, 2004.

Several of the proposed changes have been necessitated by changes to the Vehicle and Traffic Law, such as Section 1151(a) (pedestrian rights in crosswalks), Sections 1620, 1643, and 1662(a) (change in the length and location of school zones), and Sections 1180(d)(2) and 1180(h) (application of higher fines for certain types of moving violations).

2. Legislative Objectives

These revisions support legislative intent on this matter by ensuring that highway users continue to experience a uniform system of traffic control and sign posting throughout the State, regardless of location or the level of government maintaining the road.

Consistency of the state regulations for traffic control devices with the National MUTCD promotes the uniformity of highway signing and other traffic control devices throughout the nation.

Further, the revisions include appropriate departures from nationally accepted standards in a manner that economically addresses local needs, without compromising safety.

3. Needs and Benefits

The major benefit of this rulemaking is that it updates and clarifies the Manual so that it continues to play its crucial role in New York of guiding public officials in improving highway safety and operational efficiency to motorists, pedestrians, bicyclists, and other highway users. These officials include town highway superintendents, village and city street managers, county highway superintendents, state operations officers of the Department of Transportation and state authorities, including the New York State Thruway Authority, the New York State Bridge Authority, and other state agencies that operate highways, such as the New York State Office of Parks, Recreation and Historic Preservation, the New York State Department of Environmental Conservation, and the New York State Department of Agriculture and Markets.

Public officials use the Manual to select and place traffic control devices that promote safe, orderly, and convenient movement of traffic, motorized and nonmotorized. The traffic control devices described in the Manual direct and assist vehicle operators in safely traveling any highway open to the public.

The Manual and the changes proposed in this rulemaking are guided by the concept of uniformity, treating similar situations in the same way. Uniform traffic control devices simplify the task of the highway user by reducing the time needed to recognize and interpret signs and other devices, and reacting correctly to them, thereby enhancing highway safety and efficiency.

This rulemaking also benefits State and local governments by increasing flexibility in the installation and maintenance of traffic control devices. These instances are explained in Section 4.

All states, whether they use the National MUTCD or their own Manual/ Supplement are required to adopt the mandates promulgated by the National MUTCD.

4. Costs

A. Regulatory Benefits and Costs - Overview

The effect of the proposed rulemaking on costs is varied. Some changes will result in added costs, while the majority of changes will have no fiscal effect. The added costs will impact the Department, other State agencies, and local governments, with the impacts dependent upon the specific conditions of their highways.

This rulemaking will also affect highway users, and businesses that make or supply traffic control devices.

Based on the Department's analysis of individual changes, the changes in this proposed rulemaking will have the following effect: 153 changes will have no financial impact; and 18 changes will cost money to implement.

The calculation of the costs of this rulemaking is complicated by the following:

Section 1680(c) gives State and local agencies 10 years to bring their traffic control devices into conformance with the Manual. The Department does not know when, during the 10-year period, its employees or those of local governments will add, change or remove traffic control devices.

Schedules for adding, changing or removing traffic control devices are also affected by a device's useful life, and unexpected events, like traffic accidents.

Some changes in this rulemaking are already in place. Section 200.10 of the Manual allows the Department to authorize a "singular device or an unusual application of a device." Such "authorizations" are permissive, rather than mandatory.

Since the Manual was revised in 2001, 30 of the changes in this rulemaking were addressed as official authorizations. In some cases, such as the proposal to use the sign NOTICE INCREASED TRAIN TRAFFIC, some jurisdictions may have installed this sign for safety reasons after it was introduced by Authorization 00-4. The Department does not keep an inventory of traffic control devices in place throughout the state. Future changes to the highway system could result in further costs and savings that cannot be calculated given the characteristics of existing traffic control devices.

Although the Manual requires generally "uniform treatment of similar situations," certain intersections or stretches of road may require different combinations of traffic control devices.

Rather than provide aggregate benefits and costs, this summary explains the nature of the financial impact of the major proposed changes. The information is based on information provided to the Department by manufacturers and suppliers of traffic control devices, and agency staff

experience with the installation, removal, and maintenance of traffic control devices.

B. Significant possible added costs

1. Establishing a maximum length for a school speed zone may require the relocation of existing school speed limit signs in order to conform to the new requirements. Additionally, some existing sign assemblies may need to be replaced or modified to meet one of the new signing options. At the very least, school speed zones will need to be resurveyed to ensure compliance.

The extra costs incurred by municipalities, however, will be offset to some degree by the additional flexibility gained with the new school speed limit rules. The new rules allow municipalities to make school speed limits effective during any hours they choose, thereby allowing them to maximize the safety benefits for their particular situations. This creates a safety benefit for the school children crossing highways within the school speed limit zone, and also better informs motorists of the regulations in effect.

It is noted that the proposed school speed zone changes are necessary in order for the Manual to comply with recent changes to school speed zone laws in the New York State Vehicle and Traffic Law.

C. Marginal possible added costs

1. Eliminating the ability to conform to the lateral sign placement standards of the 1983 edition of the Manual may require the relocation of existing signs, but we believe that the number of affected signs is relatively small.

2. The reduction in the border width of size "C" and "D" R6-1 signs is a very minor change in sign design, but may require the replacement of existing signs. We believe the overall effect of this change will be minimal.

3. Changing the STOP AHEAD (W2-15) and YIELD AHEAD (W2-16) sign designs to graphical versions will require both the Department and local municipalities to replace existing signs. However, because devices rendered obsolete by standards revisions can be used for up to 10 more years (as long as they remain serviceable), actual sign replacements will, in most cases, be done as part of routine maintenance activities. The true costs of these revisions, therefore, will probably be quite small.

4. Changing the design of warning signs at crossings for pedestrians (W5-1), the handicapped (W5-3), bicycles (W5-6), and schools (W6-1) will require both the Department and local municipalities to replace existing signs. While these replacements will likely occur during normal maintenance activities, the costs of the replacement assemblies will be slightly higher due to the requirement to use the new diagonal down arrow below the crossing sign.

5. Changing the design of advance warning signs for pedestrian (W5-2), handicapped (W5-4), bicycle (W5-7), and school crossings (W6-2) will require both the Department and local municipalities to replace existing signs. While these replacements will likely occur during normal maintenance activities, the costs of the replacement assemblies for advance school crossings will be slightly higher due to the requirement to use a new supplemental plaque below the crossing sign.

6. Changing the design of the supplemental bicycle sign to SHARE THE ROAD will require the replacement of existing signs. These replacements, however, will most likely affect the Department more than local municipalities, as the current signs appear more frequently on state highways.

7. Requiring the use of the fire truck warning sign and the EMERGENCY SIGNAL AHEAD sign in advance of all emergency signals will necessitate the placement of new sign assemblies by both the Department and local municipalities.

8. Requiring the use of larger letter sizes for certain text on grade-separated highway entrance signs may result in increases in the overall sizes of the signs. We expect the number of such instances to be very small, and the cost of any size increases to be negligible.

9. Requiring the use of larger letter sizes on street name signs will result in increases in the overall sizes of the signs. We expect the cost of these increases to be negligible, and to be offset by the safety benefit of street names being easier to read.

After the FHWA change to larger lettering on street name signs, the Department received numerous inquiries from the public and the press regarding this issue. All of these inquiries demonstrated intense support for the change. We expect, therefore, that this particular change will be very popular among the public. Some municipalities have already implemented the change in response to this public support.

10. Recommending the use of the "shark's teeth" yield line may lead to higher application costs than those associated with the use of stop lines due to the higher level of complexity involved with the shark's teeth marking. At this point, it's unclear what the cost of this new marking will be, but we

expect that the cost will continue to decrease as the marking becomes more commonly used.

11. Requiring that a yellow left arrow be displayed in addition to a green ball when the green arrow is transitioning to a green ball may require the replacement of signal heads that don't currently meet this requirement. The Department already designs its signals in this manner, however, and we believe most municipalities do, too.

12. Requiring that pedestrian signal heads display symbols instead of text may require the replacement of pedestrian signal heads. The Department already employs symbols in its pedestrian signal heads, and most, if not all, new municipal installations contain the symbols. The signal heads containing text can be gradually phased out over their routine maintenance life, thereby minimizing the cost impact of this change.

13. Requiring that white delineators be installed on the right side of expressways and freeways is unlikely to have a significant financial impact on either the Department or local municipalities. The Department and the Thruway Authority already install these delineators as a matter of policy, and most expressways and freeways in the state are under the jurisdiction of these two entities.

5. Local Government Mandates

The Vehicle and Traffic Law exempts New York City from mandatory compliance with the proposed changes in this rulemaking.

Elsewhere in the State, these proposed changes to the Manual will affect the local government function of maintaining and operating streets and highways, a function performed by city, town, village and county highway departments. These governments have 10 years to conform with the proposed changes. The extent of costs and benefits depend on specific street and highway conditions in each governmental jurisdiction.

School and fire districts will ultimately benefit from the positive safety effects engendered by the proposed changes. However, State statute requires State and local governments to fund most of the costs associated with the changes.

6. Paperwork

These revisions will require updating the existing Manual. This document is a State regulation, and the changes will be added to it as part of the existing update process.

7. Duplication

Highways and traffic control devices in the State are governed by State and Federal statutes and regulations.

The major Federal guidance in this area comes from the Federal Highway Administration's Manual on Uniform Traffic Control Devices. The major State guidance in this area comes from statutes enacted by the Legislature.

This proposed rulemaking is entirely consistent with Federal and State statutes and Federal regulations. It does not duplicate any Federal or State rules or legal requirements.

8. Alternatives

The Department did not consider alternatives to amending the Manual. Section 1680 of the Vehicle and Traffic Law requires the Department to adopt "a manual and specifications...for use upon highways within this state" that "shall correlate with and so far as practicable conform to nationally accepted standards."

If the State fails to revise the Manual for consistency with the National MUTCD, the Manual could be found to be federally noncompliant by the Federal Highway Administration. In this case, the National MUTCD could become the de facto standard for traffic control devices in New York. The sudden applicability of the National MUTCD would create significant confusion and unfunded fiscal burdens for state and local officials responsible for highway traffic control devices.

If the Manual were to remain unaltered, the quality of guidance offered to governments would diminish. The traffic control devices presented to highway users would not reflect the latest technological or safety advances.

9. Federal Standards

The Federal standard for this proposed rulemaking is the Manual on Uniform Traffic Control Devices, as approved by the Federal Highway Administrator as the National Standard in accordance with Title 23 U.S. Code, Sections 109(d), 114(a), 217, 315, and 402(a), 23 CFR 655, and 49 CFR 1.48(b)(8), 1.48(b)(33), and 1.48(c)(2). The proposed rulemaking does not exceed Federal standards.

10. Compliance Schedule

State statute gives jurisdictions with traffic control devices up to 10 years to replace or improve devices to comply with the Manual.

Regulatory Flexibility Analysis

1. Effect of rule:

The revisions to this rule will affect small businesses that produce and install traffic control devices.

It will directly affect every local government in New York State that installs and maintains traffic control devices.

The revisions will also affect police agencies. It will indirectly affect local government agencies whose facilities are identified or regulated with traffic control devices, such as schools, libraries, fire houses and parks.

Section 1680 of the Vehicle and Traffic Law requires New York City to comply with the Manual "insofar as the City, in its discretion, deems practicable."

2. Compliance requirements:

The revised Manual will require businesses that work with traffic control devices to remove some such devices from their inventory and, in some cases, to add other devices.

3. Professional services:

Businesses and local governments may need to hire traffic engineers or traffic technicians to help properly install some of devices involved in these changes.

4. Compliance costs:

Because the State does not have an inventory of local traffic control devices, an estimate of the initial and ongoing costs of this rulemaking cannot be calculated. The overwhelming number of changes (158 of 176) will have no financial impact, while 18 changes will add costs. The added costs will impact local governments depending on the specific conditions of their highways.

For specific examples of the costs of this rulemaking, see Section 4 in the "Regulatory Impact Statement."

5. Economic and technological feasibility:

The changes in this rulemaking have different cost consequences (see Item 4, "Compliance Costs," above). Although the circumstances of each government or small business may vary, the Department expects the changes to be economically feasible. This expectation is based on the 10-year implementation time allowed by statute, and the larger number of changes having no cost or savings, compared to those changes having costs.

The changes are technically feasible. Most use materials and installation methods which are well known to small businesses and governments. While some changes include state of the art traffic control devices, such devices have been extensively tested, and will not pose problems in operation.

6. Minimizing adverse impact:

Section 1680(c) of the Vehicle and Traffic Law gives State and local governments 10 years to bring their devices into compliance with changes in the Manual.

Further, some localities have already been installing traffic control devices in accordance with the changes in this proposed rule. Section 200.10 of the Manual allows the Department to "authorize" a "singular device or an unusual application of a device." These authorizations are recommended rather than mandatory, but governments tend to use the recommendations.

Since the Manual was last revised in 2001, 37 of the changes in this rulemaking were shared with local governments and businesses via authorizations.

7. Small business and local government participation:

The Department receives small business inquiries and feedback on present and proposed traffic control devices through direct contacts, attendance at State and national conferences, and participation in various groups that develop traffic control device standards.

Small businesses indirectly participate in the State's Manual through input to the Federal Highway Administration during that agency's revision of the National Manual on Uniform Traffic Control Devices.

Some of the changes to traffic control devices originated from the Local Roads and Research Coordination Council, created by Article 16-B of the Executive Law. This Council included local government representatives.

To solicit local government comment on the proposed changes to the Manual, during January 2004, the Department sent an information packet to the following groups representing local governments:

New York State Association of Counties

New York State County Highway Superintendents Association

New York State Association of Town Superintendents of Highways, Inc.

New York State Conference of Mayors and Municipal Officials

American Public Works Association - New York Chapter

These organizations notified their members of the proposed changes, but the Department received no subsequent inquiries.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The changes in this proposed rulemaking affecting pavement markings, signs and other traffic control devices will have statewide applicability. They will apply to highways on the State system and local systems, some of which are located in rural areas.

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

This revision will continue to require that, for some types of traffic control devices, rural governments acquire traffic engineers or technicians to design or install devices.

3. Costs:

The costs of this regulation will vary based on highway location. Given the varied number of changes and highway situations, specific costs cannot be estimated.

Given that most rural roads have low traffic volumes, this rulemaking is likely to cause traffic control device costs to remain the same, or decrease slightly.

4. Minimizing adverse impact:

Any adverse impacts of this rulemaking are minimized by a provision in the Vehicle and Traffic Law that gives local governments up to 10 years to replace traffic control devices with new ones added by regulation.

5. Rural area participation:

A. Some of the new signs in this rulemaking (*e.g.*, "Crosswinds" warning sign, "Moose" warning sign) were developed by the Department in consultation with, and at the request of, representatives of rural areas.

B. Some of the traffic control devices in this rulemaking originated from recommendations of the State's Local Roads and Research Coordination Council, created by Article 16-B of the Executive Law. Some of the Council's members were from rural areas, and the Director of the State Office of Rural Affairs was a Council member.

Job Impact Statement

1. Nature of impact:

These revisions to the Manual will generally maintain the same or a greater level of employment related to the manufacture, distribution, installation and upkeep of traffic control devices, but, taken together, these revisions maintain or slightly increase the number and variety of traffic control devices in the State.

In some cases, the revisions will improve jobs and employment opportunities by making it easier for truckers, travelers or tourists to more easily find businesses or other destinations.

2. Categories and numbers affected:

This revision will affect all governments that install traffic control devices, all highway users, all businesses that depend on transportation, and all businesses that make, distribute or install traffic control devices.

3. Regions of adverse impact:

These regulations will not have a disproportionate adverse impact on jobs or employment in any regions of the state.

4. Minimizing adverse impact:

The Department has minimized the adverse impact of this rulemaking by providing advance notice to businesses and local governments of changes to traffic control devices through the use of authorizations to recommend, rather than mandate, changes.

5. Self-employment opportunities:

This rulemaking offers significant self-employment opportunities. Many vendors of traffic control devices are small businesses. Also, some professional services, such as traffic engineering, will be required by the proposed rulemaking.