

# RULE MAKING ACTIVITIES

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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.

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## Education Department

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

#### Extension in Gifted Education of a Teaching Certificate

I.D. No. EDU-21-05-00007-P

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

**Proposed action:** Amendment of sections 52.21(b)(4)(v), 80-4.1(a)(2), and 80-4.3(d) of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 (not subdivided); 210 (not subdivided); 305(1), (2) and (7); 3001(2); 3004(1); 3006(1)(b); 3009(1); and 3010 (not subdivided)

**Subject:** Extension in gifted education of a teaching certificate.

**Purpose:** To clarify and strengthen the education requirements for the extension of a teaching certificate in gifted education to better align with the competencies tested in the teacher certification examination for this extension as articulated in the examination's framework, and defer the implementation of the requirement for the extension.

**Text of proposed rule:** Pursuant to sections 207, 210, 305, 3001, 3004, 3006, 3009, and 3010 of the Education Law.

1. Subparagraph (v) of paragraph (4) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education is amended, effective August 11, 2005, as follows:

(v) Programs leading to extensions for gifted education for classroom teaching certificates shall require:

(a) study that will permit the candidate to obtain the following knowledge, understanding and skills:

(1) knowledge of the characteristics of *gifted* students who learn at a pace and level that is significantly different from [that of] their classmates[, including but not limited to gifted students and other high ability learners];

(2) knowledge of *various* tools and methods for identifying and assessing *gifted* students [who learn at a pace and level that is significantly different from that of their classmates], and skill in using [the] *such* tools and methods;

(3) *knowledge and understanding of appropriate curriculum design for gifted students;*

[(3)] (4) knowledge and skills for planning, providing, coordinating, and evaluating differentiated teaching and learning environments to challenge and assist [all] *gifted* students in learning to their highest levels of achievement; and

[(4)] (5) skill in collaborating with other school staff, *families and the community* to provide *appropriate* individualized instruction for [all] *gifted* students; and

(b) college-supervised field experiences of at least 50 clock hours teaching *gifted* students [who learn at a pace and level that is significantly different from that of their classmates, including but not limited to gifted students and other high ability learners].

2. Paragraph (2) of subdivision (a) of section 80-4.1 of the Regulations of the Commissioner of Education is amended, effective August 11, 2005, as follows:

(2) On or after September 1, [2005] *2006*, the extension in gifted education shall be required to authorize a candidate to provide education for gifted pupils, as such term is defined in section 4452 of the Education Law, within a gifted and talented program which is funded pursuant to the Education Law and in accordance with Part 142 of this Title.

3. Subdivision (d) of section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective August 11, 2005, as follows:

(d) Requirements for the extension for gifted education.

(1) Effective September 1, [2005] *2006*, this extension shall authorize the candidate to provide education for gifted pupils, as such term is defined in section 4452 of the Education Law, within a gifted and talented program which is funded pursuant to the Education Law and in accordance with Part 142 of this Title.

(2) The candidate shall meet the requirements in each of the following subparagraphs:

(i) . . .

(ii) The candidate shall complete a program registered pursuant to section 52.21(b)(4)(v) of this Title, or its equivalent consisting of a total of [six] *12* semester hours of coursework that includes study in each of the following subjects: *knowledge of the characteristics of gifted students who learn at a pace and level that is significantly different from their classmates; knowledge of various tools and methods for identifying and assessing gifted students [who learn at a pace and level that is significantly different from that of their classmates, including but not limited to gifted students; methods for providing differentiated teaching and learning environments for such students] , and skill in using such tools and methods; knowledge and understanding of appropriate curriculum design for gifted students; knowledge and skills for planning, providing, coordinating, and evaluating differentiated teaching and learning environments to challenge and assist gifted students in learning to their highest level; and skills for*

collaborating with other school staff, *families, and the community* to provide *appropriate* individualized instruction for *gifted students*. For such equivalent coursework, the candidate must have achieved at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course in order for the semester hours associated with that course to be credited toward meeting this semester hour requirement.

(iii) . . .

(3) Statement of continued eligibility.

(i) A person employed in a position in New York State as a teacher within a gifted and talented program which is funded pursuant to the Education Law and in accordance with Part 142 of this Title for three years in the period between September 1, 1998 and August 31, [2005] 2006, may be issued a statement of continued eligibility pursuant to which such person may continue to teach in such a program without the extension prescribed in this subdivision, provided such person holds a permanent or professional certificate in the classroom teaching service.

(ii) . . .

(iii) . . .

**Text of proposed rule and any required statements and analyses may be obtained from:** Anne Marie Koschnick, 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:** Joseph B. Porter, Executive Director, State Education Department, Office of Teaching Initiatives, Rm. 5N, Education Bldg., 89 Washington Ave., Albany, NY 12234, (518) 474-6440, e-mail: hedepcom@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 grants general rule making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 210 of the Education Law grants to the Board of Regents the authority to register domestic and foreign institutions in terms of New York standards.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (7) of the section 305 of the Education Law authorizes the Commissioner of Education to annul upon cause shown to his satisfaction any certificate of qualification granted to a teacher.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or any part thereof, be collected by a district tax except as provided in the Education Law.

Section 3010 of the Education Law provides that any trustee or member of a board of education who applies, or directs, or consents to the application of any district money to the payment of an unqualified teacher's salary, thereby commits a misdemeanor.

2. LEGISLATIVE OBJECTIVES:

The proposed rule carries out the legislative objectives of the aforementioned statutes by clarifying and strengthening the education requirements for a gifted education extension of a teaching certificate and delaying the effective date for requiring the extension.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to clarify and strengthen the education requirements for the extension of a teaching certificate in gifted education to better align with the competencies tested in the teacher certification examination for this extension as articulated in the examination's framework, and defer the implementation of the requirement for the extension.

The proposed amendment would defer until September 1, 2006 the implementation of the requirement that a teacher must hold a gifted education extension of a teaching certificate, or have obtained from the Department a statement of continued eligibility based upon employment in this field, in order to provide instruction for gifted pupils in State funded gifted and talented programs. Although the Department has been working with institutions of higher education to expand the number of programs for the preparation of teachers to provide instruction to gifted pupils, at the present time, there are insufficient options available for candidates to take the coursework necessary to qualify for the extension. The deferral in implementation will provide necessary additional time to colleges to develop programs.

The existing regulation requires a candidate for the gifted education extension of a teaching certificate to meet an education requirement and also pass the New York State Teacher Certification Examination (NYSTCE) content specialty test in gifted education. The amendment is needed to strengthen and clarify education requirement for the extension. At the present time to meet the education requirement, a candidate must complete a registered program leading to the gifted education extension or six semester hours of equivalent coursework in specified subjects. Eight institutions of higher education in New York State have registered programs leading to the gifted education extension. These programs require completion of between nine and 18 semester hours of coursework. Based upon review of these programs and similar programs offered by institutions in other states, and the competencies articulated in the framework for the certification examination required for this extension, the Department has determined that candidates who seek to meet the education requirement through completion of coursework equivalent to a registered program leading to this extension need additional coursework to adequately prepare them to pass the certification examination and provide instruction to gifted students. The amendment requires these candidates to complete 12 semester hours of coursework in specified subjects, rather than six.

The amendment is also needed to clarify the content requirements for meeting the education requirement, either through a registered program or through equivalent course completion. The amendment clarifies that the coursework must be specifically focused on training teachers for providing instruction and support to gifted students. These changes are consistent with current practice in the registered programs, and will not require them to make any changes. It will require candidates who meet the education requirement through completing equivalent coursework to focus such coursework on the provision of instruction and support to gifted students. The changes better align with the competencies articulated in the framework for the certification examination in this field. The aim is to better prepare candidates for the certification examination and teaching gifted students.

4. COSTS:

(a) Costs to State government: The amendment will not impose any additional costs on State government.

(b) Costs to local government: The amendment will not impose any additional costs on local government, including school districts.

(c) Costs to private regulated parties: The amendment increases the number of semester hours that candidates who complete the education requirement for the extension by coursework that is equivalent to a registered program. These candidates must complete 12 semester hours in specified course work, rather than six semester hours. The increase of six semester hours is expected to cost candidates between \$3,050 and \$3750, based upon an average tuition rate of about \$508 per semester hour charged by colleges and universities over the internet for teacher preparation in gifted education and an average tuition rate of about \$625 per semester hour charged by the eight independent colleges and universities in New York State that offer this preparation.

(d) Costs to regulating agency for implementing and continued administration of the rule: As stated above in "Costs to state government," the amendment will not impose any additional costs on State government, including the State Education Department.

5. PAPERWORK:

The proposed amendment does not impose any reporting or other paperwork requirements.

6. LOCAL GOVERNMENT MANDATES:

The amendment will affect school districts that have gifted and talented programs funded pursuant to Education Law and in accordance with Part 142 of the Commissioner's Regulations. The amendment delays, until September 1, 2006, the requirement that teachers in the funded gifted education programs must hold a gifted education extension of their teaching certificate, or obtain from the Department a statement of continued eligibility based upon employment in this field. The amendment does not impose any other program, service, duty or responsibility on local governments, including school districts.

#### 7. DUPLICATION:

The proposed amendment does not duplicate other existing State or Federal requirements. There are no relevant State or Federal requirements that deal with the subject of the proposed amendment.

#### 8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered because of the nature of the amendment, which clarifies and strengthens education requirements for an extension in gifted education of a teaching certificate and delays the effective date for the requirement for the extension.

#### 9. FEDERAL STANDARDS:

There are no Federal standards regarding the subject matter of the proposed amendment.

#### 10. COMPLIANCE SCHEDULE:

The amendment would be effective on its stated effective date. However, it prescribes in its terms a delay, until September 1, 2006, in the requirement that a teacher providing instruction in a State funded gifted and talented program must hold an extension in gifted education, or obtain from the Department a statement of continued eligibility based upon employment in this field.

#### **Regulatory Flexibility Analysis**

##### (a) Small Businesses:

The proposed amendment concerns requirements that a candidate must meet to teach in the public schools of New York State and that college teacher preparation programs must meet. Specifically, it clarifies and strengthens the education requirements for the extension of a teaching certificate in gifted education and defers the implementation of the requirement for this extension. The amendment does not impose any reporting, recordkeeping, or compliance requirements and will not have an economic impact on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken.

##### (b) Local Governments:

###### 1. Effect of the rule:

The proposed amendment affects all school districts in the State that wish to employ a teacher to provide education for gifted pupils within a gifted and talented program which is funded pursuant to Education Law and in accordance with Part 142 of the Commissioner's Regulations.

###### 2. Compliance requirements:

The regulation change that affects school districts defers until September 1, 2006 the requirement that a teacher must hold a gifted education extension of a teaching certificate, or obtain from the Department a statement of continued eligibility based upon employment in this field, in order to provide instruction to gifted pupils within a gifted and talented program that is funded pursuant to Education Law and in accordance with Part 142 of the Commissioner's Regulations.

###### 3. Professional services:

The proposed amendment does not mandate school districts to contract for additional professional services to comply.

###### 4. Compliance costs:

There is no cost for school districts to comply with the regulatory change that affects school districts, which simply defers a requirement, until September 1, 2006, that teachers employed to provide education in a State funded gifted and talented program must hold an extension in gifted education of their teaching certificate, or obtain from the State Education Department a statement of continued eligibility based on employment in this field.

###### 5. Economic and technological feasibility:

Meeting the requirements of the proposed amendment is economically and technologically feasible. As stated above in compliance costs, the amendment imposes no costs on school districts.

###### 6. Minimizing adverse impact:

The amendment only applies to those school districts that wish to employ teachers in State funded gifted and talented programs. The change will not adversely affect school districts because it simply constitutes a delay in the implementation of an existing requirement.

###### 7. Local government participation:

The State Education Department provided a draft of the proposed rule to the State Professional Standards and Practices Board for Teaching and asked for comment. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES. In addition, the Department sent a draft of the proposed regulation to the State's District's Superintendents, representing BOCES and school districts across the State, and asked for comment.

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

##### 1. Types and estimate of number of rural areas:

The proposed amendment will affect school districts in all parts of the State that offer State funded gifted and talented programs and teachers in those programs, and colleges that offer registered teacher preparation programs leading to the extension of a teaching certificate in gifted education, including those located 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 per square mile or less.

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

The amendment would clarify and strengthen the education requirements for the extension of a teaching certificate in gifted education to better align with the competencies tested in the teacher certification examination for this extension as articulated in the examination's framework, and defer the implementation of the requirement for a gifted education extension of a teaching certificate.

The proposed amendment would defer until September 1, 2006 the implementation of the requirement that a teacher must hold a gifted education extension of a teaching certificate, or have obtained from the Department a statement of continued eligibility based upon employment in this field, in order to provide instruction for gifted pupils in State funded gifted and talented programs.

The existing regulation requires a candidate for the gifted education extension of a teaching certificate to meet an education requirement and also pass the New York State Teacher Certification Examination (NYSTCE) content specialty test in gifted education. The amendment would strengthen and clarify the education requirement for the extension. At the present time to meet the education requirement, a candidate must complete a registered program leading to the gifted education extension or six semester hours of equivalent coursework in specified subjects. The amendment would require candidates who seek to meet the education requirement through completion of equivalent coursework to complete 12 semester hours of coursework in specified subjects, rather than six.

The amendment would also clarify the content requirements for meeting the education requirement, either through a registered program or through equivalent course completion. The amendment clarifies that the coursework must be specifically focused on training teachers for providing instruction and support to gifted students. These changes are consistent with current practice in the registered programs, and would not require them to make any changes. However, it would require candidates who meet the education requirement through equivalent coursework to focus such coursework specifically on the provision of instruction and support to gifted students.

The proposed amendment would not establish additional reporting or recordkeeping requirements. The amendment would not require regulated parties, including those located in rural areas, to hire professional services in order to comply.

##### 3. Costs:

The amendment increases the number of semester hour requirement for candidates who complete the education requirement for the extension by coursework that is equivalent to that obtained in a registered program leading to the extension. These candidates must complete 12 semester hours in specified coursework, rather than six semester hours. The increase of six semester hours is expected to cost candidates between \$3,050 and \$3750, based upon an average tuition rate of about \$508 per semester hour charged by colleges and universities over the internet for teacher preparation in gifted education and an average tuition rate of about \$625 per semester hour charged by the eight independent colleges and universities in New York State that offer this preparation.

The amendment is not expected to have any cost impact upon school districts that offer State funded gifted and talented programs or colleges that offer teacher preparation programs leading to the extension of a teaching certificate in gifted education, including those located in rural areas of the State.

##### 4. Minimizing adverse impact:

At the present time to meet the education requirement for the extension of a teaching certificate in gifted education, a candidate must complete a registered program leading to the extension or six semester hours of equivalent coursework in specified subjects. The amendment would require candidates who seek to meet the education requirement through completion of coursework equivalent to a registered program leading to this extension to complete 12 semester hours of coursework in specified subjects, rather than six. The change is necessary to adequately prepare candidates for the New York State teacher certification examination and teaching gifted students in the public schools. Because of the nature of the proposed amendment, the Department does not believe that establishing different requirements for teachers of the gifted who live or work in rural areas is warranted. The Department believes that uniform teacher certification standards are necessary to help ensure teacher competency in all parts of the State.

#### 5. Rural area participation:

The State Education Department provided a draft of the proposed rule to the State Professional Standards and Practices Board for Teaching and asked for comment. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and work in rural areas, including individuals who are employed as educators in rural school districts and BOCES. In addition, the Department sent a draft of the proposed regulation to the State's District Superintendents, representing BOCES and school districts across the State, including rural areas. Also, during the development of the proposed rule, the Department consulted with the eight New York colleges that offer teacher preparation programs leading to the extension in gifted education, one of which is located in a rural area of the State.

#### Job Impact Statement

The proposed amendment would clarify and strengthen the education requirements for the extension of a teaching certificate in gifted education to better align with the competencies tested in the teacher certification examination for this extension. It also defers until September 1, 2006 the implementation of the requirement that a teacher must hold a gifted education extension of a teaching certificate, or have obtained from the Department a statement of continued eligibility based upon employment in this field, in order to provide instruction in a State funded gifted and talented programs.

Strengthening certification requirements for this extension and deferring implementation of the requirement for this extension will have no effect on the number of teaching positions in gifted and talented programs in the State's public schools or employment opportunities in this field. This amendment, which concerns education requirements for an extension of a teaching certificate, will have no effect on demand for teachers of the gifted. Because it is evident from the nature of the rule that it will have no impact on the number of jobs and employment opportunities in teaching or any other field, 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.

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## Department of Environmental Conservation

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### ERRATUM

A Notice of Proposed Rule Making, I.D. No. ENV-20-05-00018-P, pertaining to Emission Standards for Motor Vehicles and Motor Vehicle Engines published in the May 18, 2005 issue of the *State Register* contained a typographical error, made by Department of State staff during the composition process, concerning a public comment period.

The notice should have indicated that public comment will be received until **five days after the last scheduled public hearing required by statute. The dates of the scheduled public hearings are listed in the above referenced notice.** Documents posted on the Department of Environmental Conservation website contain the correct information.

The Department of State apologizes for any inconvenience this may have caused.

The corrected notice follows:

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

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

**I.D. No.** ENV-20-05-00018-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 and 218 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103, 71-2105; and Federal Clean Air Act, section 177

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

**Purpose:** To incorporate revisions California has made to its vehicle emission control program regarding the reduction of green house gas (GHG) emissions from motor vehicles, and otherwise update various incorporation by reference citations included in the LEV program.

**Public hearing(s) will be held at:** 1:00 p.m., July 5, 2005 at Department of Environmental Conservation, Region 8, Conference Rm., 6274 E. Avon-Lima Rd., Avon, NY; 9:00 a.m., July 6, 2005 at Department of Environmental Conservation Annex, Region 2, 11-15 47th Ave., Hearing Rm. 106, Long Island City, NY; 9:00 a.m., July 7, 2005 at Department of Environmental Conservation, Region 5, Conference Rm., 1115 Route 86, Ray Brook, NY; and 9:00 a.m., July 8, 2005 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129B, Albany, NY.

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

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

**Substance of proposed rule (Full text is posted at the following State website: [www.dec.state.ny.us](http://www.dec.state.ny.us)):** The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Part 218 and Section 200.9. Section 200.9 is a list that cites Federal and California codes and regulations that have been referenced by the Department in the course of amending this Part. The purpose of the amendment is to revise the existing low emission vehicle (LEV) program to incorporate modifications California has made to its vehicle emission control program to reduce greenhouse gas (GHG) emissions. The Department is proposing to amend sections 218-1.2 Definitions, 218-2.1(b) Prohibitions, 218-8 GHG Exhaust Emission Standards, and 218-9 Severability. The remaining sections are unchanged.

Section 218-1.2 was amended to include revisions to definitions that govern the provisions of this Part. Section 218-2.1(b) was also amended to change Subpart to Part to clarify applicability.

Section 218-8.1 lists the definitions that govern the GHG provisions of this Part. Section 218-8.2 establishes the prohibitions that pertain to the GHG provisions. Specifically, these provisions apply to all 2009 and subsequent model year new vehicles delivered or sold in New York.

Section 218-8.3 has been revised to incorporate the proposed fleet average GHG exhaust emission standards established by California, as well as credit and debit trading provisions. The standards are in CO<sub>2</sub> equivalent grams per mile for passenger cars/light duty truck1 (PC/LDT1) and light duty truck2 (LDT2) vehicle categories. PC/LDT1 consists of vehicles up to 3,750 pounds loaded vehicle weight (LVW), and LDT2 consists of vehicles between 3,751 pounds LVW and 8,500 pounds gross vehicle weight (GVW). Medium duty passenger vehicles (MDPV) up to 10,000 pounds GVW are also included in LDT2.

CO<sub>2</sub> equivalent grams per mile standards are obtained by multiplying the emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), and hydrofluorocarbons (HFC) by their global warming potentials and adding them together. Global warming potential (GWP) is an estimate of the climate changing ability of 1 kilogram of any GHG relative to the climate changing ability of 1 kilogram of CO<sub>2</sub>. Over a 100 year period, CO<sub>2</sub> has a GWP of 1, CH<sub>4</sub> is 23, N<sub>2</sub>O is 296, and HFC-134a is 1300. The Department will incorporate California standards identically, which includes a declining fleet average standard for model years 2009 through

2016. This is done similar to the existing LEV program. The standards are shown below.

Tier	Year	CO <sub>2</sub> Equivalent Emission Standard by Vehicle Category	
		PC/LDT1	LDT2
Near-Term	2009	323	439
	2010	301	420
	2011	267	390
	2012	233	361
Mid-term	2013	227	355
	2014	222	350
	2015	213	341
	2016	205	332

An alternative compliance option is also proposed in section 218-8.4, as in California. This proposal would provide vehicle manufacturers flexibility in meeting the GHG reduction requirements by allowing them to earn credits by utilizing 2009 and subsequent model year vehicles that operate on alternative fuel vehicles. The manufacturers would be required to demonstrate that the vehicles achieve equal or greater GHG reductions as compared to the regulations and meet strict eligibility criteria. The criteria include real or additional GHG emission reductions, reductions must be regulatory surplus, permanent, and enforceable. The Department proposes to adopt California criteria and crediting for determining acceptable alternative compliance programs.

The Department also proposes to include New York specific GHG exhaust emissions reporting requirements in section 218-8.5. Starting with the 2009 model year, each manufacturer must report the average GHG emissions of its fleet sold in New York to the Department. These reports will contain the same information and format as those submitted to California.

Existing section 218-8 was renumbered to create section 218-9. This section contains severability provisions.

**Text of proposed rule and any required statements and analyses may be obtained from:** Jeff Marshall, Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233-3255, (518) 402-8292, e-mail: jtmars@dec.state.ny.us

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

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

**Additional matter required by statute:** Pursuant to art. 8 of the (State Environmental Quality Review Act), a short environmental assessment form, a negative declaration and a coastal assessment form have been prepared and are on file. This rule must be approved by the environmental board.

**Summary of Regulatory Impact Statement**

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Part 218 and Part 200.9. This will be accomplished by revising the existing Part 218 to reflect changes to California’s low emission vehicle (LEV) program that incorporated greenhouse gas (GHG) standards for light and medium duty vehicles, and to maintain identical standards with California for all vehicle weight classes as required under section 177 of the Clean Air Act. Subpart 200.9 will also be revised in order to reflect updates to the reference material incorporated in the Part 218 revisions.

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 regulation is to address the adverse climate change impacts that GHG such as carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), and hydrofluorocarbons (HFC) will cause in New York State, and globally, if left uncontrolled. The global warming effects of GHG can adversely affect human health and the environment.

Heat related illnesses and mortality can increase as a result of intensified and prolonged heat waves resulting from global warming induced temperature increases. Increased temperatures could also exacerbate respiratory illnesses by contributing to conditions favorable to the formation of ground-level ozone. Vector-borne illnesses such as West Nile Virus, Equine Encephalitis, and Lyme Disease could also increase as a result of increased temperature and precipitation resulting from global warming.

New York’s shoreline could be adversely affected by sea level rise due to thermal expansion of the oceans caused by global warming. New York has approximately 2,625 miles of coastline including barrier islands, coastal wetlands, and bays. As sea level rises, erosion and flooding due to storm surge can increase. This can lead to loss of beaches, damage to coastal ecosystems, and flood damage to infrastructure.

New York’s water supply may also be stressed by changes in temperature and precipitation caused by global warming. The majority of New York’s population is served by surface water flow, which can be highly variable. Extended periods of drought could be expected to place additional stress on the water supply. Global warming is also likely to lower the water levels of the Great Lakes, which would impact drinking water supplies, hydroelectric power production, commercial shipping, and recreational activities.

Agriculture and forests may be adversely affected by global warming. Crop mix and growing seasons for cold weather crops could be shortened or lost due to changes in temperature and precipitation. Tree species such as sugar maples could be displaced from New York due to climate change. This would impact maple syrup production and regional tourism related to fall foliage. The existence of hardwood ecosystems such as the Adirondack Park would be threatened. Wildlife distribution and diversity are also likely to be affected by climate change. Species such as trout and migratory birds could be displaced by loss or changes in habitat resulting from increased temperatures or precipitation.

The GHG emission reduction regulation mandates lower new vehicle certification levels for all 2009-2016 model year passenger cars, light duty trucks, and medium duty passenger vehicles. The vehicle classes are combined into 2 vehicle classes: PC/LDT1 and LDT2. The PC/LDT1 category consists of all passenger cars, as well as minivans, sport utility vehicles (SUVs) and light trucks up to 3,750 pounds loaded vehicle weight (LVW). The LDT2 category consists of light duty trucks and SUVs between 3,751 pounds LVW and 8,500 pounds gross vehicle weight (GVW), as well as medium duty passenger vehicles (MDPV) between 8,500 and 10,000 pounds GVW.

Vehicle climate change emissions comprise four main elements: 1) CO<sub>2</sub>, CH<sub>4</sub> and N<sub>2</sub>O emissions resulting directly from the operation of the vehicle; 2) CO<sub>2</sub> emissions resulting from the operation of the air conditioning (AC) system (indirect AC emissions); 3) refrigerant emissions from the AC system due to either leakage, losses during recharging, or release from scrapping of the vehicle at the end of life (direct AC emissions); and 4) upstream emissions associated with the production of the fuel used by the vehicle. All of these elements are incorporated into the GHG emissions reduction standard.

The California Air Resources Board (CARB) estimated the emissions from light duty vehicles for the years 2020 and 2030 in CO<sub>2</sub> equivalent tons per day. These estimates represent the light duty vehicle emissions that would be expected without the proposed regulation and serve as a baseline to estimate the benefits of the program. CO<sub>2</sub> equivalent tons per day are obtained by multiplying the emissions of each GHG (CO<sub>2</sub>, CH<sub>4</sub>, N<sub>2</sub>O, HFC) by its global warming potential (GWP). The GWP is an estimate of the climate changing ability of 1 kilogram of any GHG relative to the climate changing ability of 1 kilogram of CO<sub>2</sub>. Over a 100 year period, CO<sub>2</sub> has a GWP of 1, CH<sub>4</sub> is 23, N<sub>2</sub>O is 296, and HFC-134a, the current vehicle air conditioner refrigerant, is 1300.

New York proposes to incorporate California’s GHG emissions standards as a declining fleet average requirement similar to the LEV program. Vehicle manufacturers would be required to comply with the emissions standards in New York for each year starting in 2009. The proposed standards, expressed in terms of CO<sub>2</sub> equivalent grams/ mile are as follows:

Tier	Year	CO <sub>2</sub> Equivalent Emission Standard by Vehicle Category	
		PC/LDT1	LDT2
Near-Term	2009	323	439
	2010	301	420
	2011	267	390
	2012	233	361
Mid-term	2013	227	355
	2014	222	350
	2015	213	341
	2016	205	332

New York estimates that adoption of the regulation will reduce New York’s GHG emissions by an estimated 40,700 CO<sub>2</sub> equivalent tons per day in 2020 and by 72,000 CO<sub>2</sub> equivalent tons per day in 2030. New York

estimated the reductions by comparing 2002 new vehicle registrations in California and New York. California had approximately 1,500,000 new vehicles registered compared to approximately 696,000 new vehicles registered in New York. This ratio was used as the basis for estimating the baseline emissions and emissions reductions in New York due to the regulation. New York's baseline emissions, emissions due to the regulation, and total emissions reductions are shown below.

New York Light Duty Fleet CO <sub>2</sub> Equivalent Emissions and Reductions		
	2020 CO <sub>2</sub> Equivalent (tpd)	2030 CO <sub>2</sub> Equivalent (tpd)
Baseline Emissions (Total Light Duty)	230,800	267,000
Emissions with Regulation (Total Light Duty)	191,100	195,000
Emissions Reductions (Total Light Duty)	40,700	72,000

New York proposes to incorporate early reduction credit provisions that are identical to California's provisions. The credit trading provision in this rule offers flexibility for each manufacturer to over comply with one vehicle category's standard and trade those credits to compensate for a deficit, or undercompliance, within another category. Credit trading is also allowed among manufacturers. CARB shall utilize the 2000 model year as a baseline for calculating emission reduction credits. Under CARB's proposal, manufacturer fleet average emissions for model year 2000 through model year 2008 for PC/LDT1 will be compared with the 2012 fully phased-in near-term standard of 233 g/mile CO<sub>2</sub> equivalent. For LDT2, the baseline is 361 g/mile CO<sub>2</sub> equivalent. If a manufacturer has certified fleet average emissions in a specific model year lower than these standards, the manufacturer will earn early compliance credits. Any emission reduction early credits earned could be used during model year 2009 through 2015, or traded with another manufacturer. To ensure that the regulation ultimately achieves the greatest possible climate change emission reductions, CARB staff proposes that the credits generated by early compliance retain full value through the 2013 model year. These credits will then be worth 50 percent of their initial value in model year 2014, 25 percent of their initial value in model year 2015 and have no value thereafter.

New York proposes to incorporate an alternative compliance strategy that employs criteria identical to those put forth by California. The criteria are: real or additional emissions reductions; emissions reductions that can be reasonably measured; emissions reductions must be surplus of any reductions required by separate entities; reductions must be independently verified and legally binding; projects should be irreversible and permanent. CARB Staff will explore ways to evaluate that alternative compliance strategies do not increase GHG emissions outside the alternative compliance project. The exception would be that the proposed projects would be required to be in the state of New York to be eligible for consideration. These projects would also be required to be made available to inspection by New York State representatives upon request.

CARB estimates that the near-term standards will result in an average incremental cost in 2012 of \$367 for PC/LDT1, and \$277 for LDT2 compared to the 2009 baseline vehicle fleet. The fully phased-in mid-term standards will result in an incremental cost in 2016 of \$1,064 for Passenger cars and LDT1, and \$1,029 for LDT2. The CARB analysis concludes, however, that these increased costs will be more than offset by operating cost savings over the lifetime of the vehicle.

Operating cost savings are the basis for determining the cost effectiveness of the regulation. As gasoline prices increase, the operating cost savings will also increase. New York performed a benefit-cost analysis using VMT obtained from Mobile6 and gasoline price to estimate the cost effectiveness. The break-even year is the first year in which the overall return from gasoline savings exceeds the initial cost and interest payments of purchasing the new vehicle. New York also performed a sensitivity analysis utilizing different gasoline prices per gallon, ranging from \$1.50 to \$2.00, to estimate the cost effectiveness of the regulation. The Department's analysis indicates that the regulation is cost effective for even the low estimate of \$1.50 per gallon of gasoline.

Currently, there is no automobile manufacturing in New York. However, when "automotive facilities" are taken into account, such as parts manufacturing and distribution, corporate offices, research and development, automobile dealerships, financial centers, and engineering and design facilities, the employment share of the automotive industry in the state is 3.2 percent, according to the Alliance of Automobile Manufacturers. These affiliated businesses in addition to gasoline service stations are local businesses. They compete within the state and generally are not subject to competition from out-of-state businesses. New York dealerships will be able to sell California certified vehicles to states bordering New York.

New York residents will not be able to buy noncomplying vehicles out of state since vehicles must be California certified in order to be registered in New York. Therefore, the proposed regulation is not expected to impose a competitive disadvantage on affiliated businesses.

State and local governments who own or operate vehicles in New York State are subject to the same requirements as privately owned vehicles. In other words, they must purchase California certified vehicles. There should not be any additional costs for State and local governments to comply with this regulation.

The climate change emission regulations will not result in any significant paperwork requirements for New York vehicle suppliers, dealers or government. New York relies on materials submitted to California for certification while manufacturers must submit to New York annual sales, and corporate fleet average reports to show compliance with the fleet average requirements. This is the current arrangement in the LEV program. Also, the climate change emission regulations will not result in an increased amount of paperwork for dealers. While dealers must ensure that the vehicles they sell are California certified, most manufacturers will include provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. This has been the case since New York first adopted the California LEV program in 1992. The implementation of the climate change regulatory proposal is not expected to be burdensome in terms of paperwork to owners/ operators of vehicles.

California's GHG standards are the most stringent and most protective of public health and the environment in the absence of federal GHG emission standards. There are no equivalent federal vehicle GHG standards available as a regulatory alternative. The only regulatory alternative to the proposed climate change amendments to the LEV regulation is to revert back to less stringent federal new motor vehicle emission standards. This is because the Clean Air Act requires states adopting the California programs under section 177 to maintain identical standards and consistent programs for a given weight class. Since the GHG provisions affect light and medium duty vehicles, New York must adopt such standards in order to remain identical.

Another alternative available would be to require reductions of GHG emissions from stationary sources. New York has already begun to address stationary source GHG reductions through its RGGI and RPS initiatives discussed previously. These are being developed in conjunction with the vehicle GHG regulation in an attempt to establish a comprehensive program to reduce GHG emissions from both mobile and stationary sources in New York.

In addition, in the absence of the climate change emissions regulation New York would forfeit other emission benefits, NO<sub>x</sub>, VOC and CO reductions for example, that are an important part of its state implementation plans (SIP) for ozone and CO. For example, New York estimates that the LEV program achieves VOC reductions in the year 2020 that are approximately 7.5 percent greater than corresponding reductions that would result from the federal standards. NO<sub>x</sub> reductions were approximately equal when comparing LEV to the federal standards for the year 2020. It would be difficult, if not impossible, for New York to find additional reductions from other sources to offset the loss of mobile source reductions that would occur if the State were forced to revert back to federal standards. For the light-duty fleet, New York would be losing emission benefits by not requiring the climate change emission reductions adopted by California as part of the LEV program. The climate change regulation is also expected to result in additional reductions of criteria pollutants in addition to GHG as discussed previously.

This regulatory proposal will take effect for the 2009 model year for light-duty and medium duty passenger vehicles up to 10,000 pounds GVWR.

#### **Regulatory Flexibility Analysis**

##### **1. Effect of rule:**

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9, and 6 NYCRR Part 218 low emission vehicle (LEV) program. The changes to the regulations incorporate New York State's adoption of the motor vehicle greenhouse gas (GHG) emission reduction standards adopted by the California Air Resources Board (CARB). These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York. The proposed changes to the regulations may impact businesses involved in manufacturing, selling, purchasing or repairing passenger cars or trucks.

There are about 202,233 state and local agency owned vehicles in New York State, or 2.0 percent of the total state fleet of about 10.2 million vehicles, according to data provided by the US Department of Energy, and

the Alliance of Automobile Manufacturers. The Department operated a fleet consisting of a combined 1,850 PC/LDT1 and LDT2 vehicles during the State fiscal year from April 1, 2003 to March 31, 2004. PC/LDT1 consists of vehicles up to 3,750 pounds loaded vehicle weight (LVW), and LDT2 consists of vehicles between 3,751 pounds LVW and 8,500 pounds gross vehicle weight (GVW). Medium duty passenger vehicles (MDPV) up to 10,000 pounds GVW are also included in LDT2.

State and local governments are also consumers of vehicles that will be regulated under the proposed GHG 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 an addition to the current LEV standards. The new motor vehicle emissions program has been in effect in New York State since model year 1993 for passenger cars and light-duty trucks, with the exception of the 1995 model year, and the Department is unaware of any adverse impact to small businesses or local governments as a result.

There are no equivalent federal vehicle GHG standards available as a regulatory alternative. The only regulatory alternative to the proposed climate change amendments to the LEV regulation is to revert back to less stringent federal new motor vehicle emission standards. This is because the Clean Air Act requires states adopting the California programs under section 177 to maintain identical standards and consistent programs. Since the GHG provisions affect light and medium duty vehicles, New York must adopt such standards in order to remain identical.

Another alternative available would be to require reductions of GHG emissions from stationary sources. New York has already begun to address stationary source GHG reductions through its regional greenhouse gas (RGGI) and renewable portfolio standards (RPS) initiatives. These are being developed in conjunction with the vehicle GHG regulation in an attempt to establish a comprehensive program to reduce GHG emissions from both mobile and stationary sources in New York.

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. These proposed amendments will not result in any additional reporting requirements to dealerships other than the current requirements to maintain records demonstrating that vehicles are California certified. This documentation is the same documentation already required by the New York State Department of Motor Vehicles for vehicle registration. If local governments are buying new fleet vehicles they should make sure that the vehicles are California certified.

3. Professional services:

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

4. Compliance costs:

California has estimated that in the year 2012 the incremental per vehicle cost for passenger cars/light duty truck1 (PC/LDT1) will be approximately \$367, and light duty truck2/medium duty passenger vehicles (LDT2) will be approximately \$277. In the year 2016 the incremental per vehicle cost for PC/LDT1 vehicles is estimated to be \$1,064, and the incremental cost for LDT2 vehicles is expected to be \$1,029. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced. PC/LDT1 consists of vehicles up to 3,750 pounds loaded vehicle weight (LVW), and LDT2 consists of vehicles between 3,751 pounds LVW and 8,500 pounds gross vehicle weight (GVW). Medium duty passenger vehicles (MDPV) up to 10,000 pounds GVW are also included in LDT2.

New York performed a benefit-cost analysis using gasoline price and vehicle miles traveled (VMT) obtained from Mobile6 to estimate the cost effectiveness. The break-even year is the first year in which the overall return from gasoline savings exceeds the initial cost and interest payments of purchasing the new vehicle. The table shown below assumes an average gasoline price of \$1.74 per gallon, which is identical to CARB's analysis.

New York State Break-Even Years for Pavley Vehicles Using \$1.74 Per Gallon Gasoline

Model Year	Vehicle Group	Break-Even Year	Control Cost (\$)	Fuel Savings (%)	Gallons Saved in 10 years	\$ Saved in 10 Years
2009	PC/LDT1	2	17	1.3	67	85
2010	PC/LDT1	2	58	4.4	222	277
2011	PC/LDT1	3	230	14.0	646	718
2012	PC/LDT1	2	367	24.9	1048	1174

2013	PC/LDT1	3	504	26.7	1108	1073
2014	PC/LDT1	4	609	28.5	1166	1015
2015	PC/LDT1	5	836	31.2	1250	822
2016	PC/LDT1	6	1064	33.9	1331	622
2009	LDT2	1	36	2.1	192	266
2010	LDT2	1	85	5.5	487	685
2011	LDT2	1	176	11.8	986	1380
2012	LDT2	1	277	18.3	1445	1995
2013	LDT2	2	434	19.6	1531	1909
2014	LDT2	2	581	20.9	1615	1835
2015	LDT2	3	804	22.9	1741	1720
2016	LDT2	4	1029	24.8	1857	1585

Note: Assumes: 1) 5 percent interest and discount rates, compounded annually

2) California control costs, baseline fuel economy, and percent fuel savings

3) Gasoline cost \$1.74 per gallon

Uses: 1) New York State miles driven in each year of vehicle life

2) Baseline fuel economy calculated from CARB 2009 model year EMFAC data

3) Control costs from revised Table 6.2-8, Addendum to CARB ISOR, Sep. 2004

4) Percent CO<sub>2</sub> reduction from Table 6.2-2, CARB ISOR, Aug. 2004

The Department also performed a sensitivity analysis using gasoline prices of \$2.00 and \$1.50 per gallon to estimate cost effectiveness. An increase in the cost of gasoline would serve to increase the cost effectiveness due to reduced vehicle operating costs. The Department's analysis indicates that the regulation would be cost effective even if the average price of gasoline fell to \$1.50, which would result in a slightly longer period to break-even as well as a corresponding reduction in overall savings.

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:

The climate change regulation may impact several sectors of the economy. The steps that manufacturers need to take to comply with the new regulation are expected to lead to increases in the price of new vehicles. It is expected that the manufacturers will recoup these costs by passing them on to consumers in the form of increased vehicle prices, which occurred with the implementation of the LEV program. For example, it is expected that manufacturers may selectively increase vehicle prices on popular or high-end models to subsidize lower price increases on economy models. Manufacturers also have other options which include changing "standard" equipment packages, increasing prices across their entire product line, incentives, and financing. It is also possible that consumers could regard vehicles equipped with the new technology to be desirable, leading to increased sales despite higher prices.

The technological options that manufacturers choose to comply with the new regulation are also expected to reduce operating costs. These two responses have combined negative and positive impacts on businesses and consumers. The vehicle price increase may negatively affect businesses by possibly reducing demand for their vehicles, while the reduction in operating costs will have a positive impact on consumers and local businesses due to increased disposable income. This increased disposable income would allow consumers to make additional purchases of goods and services, including new vehicles, resulting in an expansion of businesses and employment.

The flexibility of the GHG mandate allows manufacturers to earn early reduction credits, phase-in advanced technology, and utilize a vast array of existing and emerging advanced emission reduction technology. The proposed regulation also provides mechanisms for implementation flexibility 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 general long term air quality benefits, as well as a long term GHG program compliance benefit.

Currently, there is no automobile manufacturing in New York. However, when "automotive facilities" are taken into account, such as parts manufacturing and distribution, corporate offices, research and development, automobile dealerships, financial centers, and engineering and design facilities, the employment share of the automotive industry in the state is 3.2 percent, according to the Alliance of Automobile Manufacturers.<sup>1</sup> These affiliated businesses in addition to gasoline service stations are local

businesses. They compete within the state and generally are not subject to competition from out-of-state businesses. New York dealerships will be able to sell California certified vehicles to states bordering New York. New York residents will not be able to buy noncomplying vehicles out of state since vehicles must be California certified in order to be registered in New York. Therefore, the proposed regulation is not expected to impose a competitive disadvantage on affiliated businesses, and there would be no change from the current relationship with out-of-state businesses.

The GHG 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 vehicles equipped with advanced GHG reduction technology. This is expected due to the fact that in some cases these are technologies that a dealership has not previously handled, and would thus be required to train service personnel to service these vehicles.

The proposed amendments may have a positive impact on New York employment since the new technologies associated with sale and service of vehicles equipped with advanced GHG technology 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. It is also anticipated that the money saved due to reduced operating expenses will trickle into other sectors of the economy, thereby stimulating economic growth.

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. In other words, state and local governments will be required to purchase California certified vehicles. Individual consumers, businesses, and governments are likely to experience net savings since the initial cost is more than offset by decreased operating expenses over the life of the vehicle as a result of the regulation.

This regulation contains exemptions for emergency vehicles, and military tactical vehicles and equipment.

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:

The proposed regulations are feasible for all vehicle manufacturers. California used 2002 vehicle emissions to establish the baseline emissions for the GHG regulation. The manufacturer with the heaviest average fleet was selected to set the GHG emissions standards. This manufacturer would require the most extensive use of advanced existing and emerging technology to meet the proposed standards. The remaining manufacturers would utilize these technologies to varying degrees to achieve compliance with the proposed standards.

Given the climate change emission program, manufacturers of 2009-2016 model year vehicles can choose the vehicle models to which they wish to apply technology packages, as long as the emissions of the entire product line meet the fleet average requirement. This average requirement declines from 2009 through 2016 model year. It is important to note that in the case of CO<sub>2</sub> tailpipe emissions, there are generally no aftertreatment devices that can be applied to reduce engine out CO<sub>2</sub> emissions. Therefore, there is greater reliance on engine modifications to achieve these reductions.

The proposed amendments may have a positive impact on New York employment since the new technologies associated with sale and service of vehicles equipped with advanced GHG technology 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. It is also anticipated that the money saved due to reduced operating expenses will trickle into other sectors of the economy, thereby stimulating economic growth.

<sup>1</sup> Alliance of Automobile Manufacturers: The Auto Industry in New York.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9, and 6 NYCRR Part 218 low emission vehicle (LEV) program. The changes to the regulations incorporate New York State's adoption of the motor vehicle greenhouse gas (GHG) emission reduction standards adopted by the California Air Resources Board (CARB). There are no requirements in the regulation which apply only to rural areas. These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York. The changes to these regulations may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks, as well as businesses that distribute gasoline.

The changes are additions to the current LEV standards. The new motor vehicle emission program has been in effect in New York State since model year 1993 for passenger cars as well as light-duty trucks, with the exception of model year 1995, and the Department is unaware of any adverse impact to rural areas as a result. The beneficial GHG emission reductions from the program accrue to all areas of the state.

There are no equivalent federal vehicle GHG standards available as a regulatory alternative. The only regulatory alternative to the proposed climate change amendments to the LEV regulation is to revert back to less stringent federal new motor vehicle emission standards. This is because the Clean Air Act requires states adopting the California programs under section 177 to maintain identical standards and consistent programs. Since the GHG provisions affect light and medium duty vehicles, New York must adopt such standards in order to remain identical.

Another alternative available would be to require reductions of GHG emissions from stationary sources. New York has already begun to address stationary source GHG reductions through its regional greenhouse gas (RGGI) and renewable portfolio standards (RPS) initiatives. These are being developed in conjunction with the vehicle GHG regulation in an attempt to establish a comprehensive program to reduce GHG emissions from both mobile and stationary sources in New York.

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

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

3. Costs:

California has estimated that in the year 2012 the incremental per vehicle cost for passenger cars/light duty truck1 (PC/LDT1) will be approximately \$367, and light duty truck2/medium duty passenger vehicles (LDT2) will be approximately \$277. In the year 2016 the incremental per vehicle cost for PC/LDT1 vehicles is estimated to be \$1,064, and the incremental cost for LDT2 vehicles is expected to be \$1,029. As manufacturing economies of scale and further technological developments are achieved, it is expected that the incremental costs will be reduced. PC/LDT1 consists of vehicles up to 3,750 pounds loaded vehicle weight (LVW), and LDT2 consists of vehicles between 3,751 pounds LVW and 8,500 pounds gross vehicle weight (GVW). Medium duty passenger vehicles (MDPV) up to 10,000 pounds GVW are also included in LDT2.

New York performed a benefit-cost analysis using gasoline price and vehicle miles traveled (VMT) obtained from Mobile6 to estimate the cost effectiveness. The break-even year is the first year in which the overall return from gasoline savings exceeds the initial cost and interest payments of purchasing the new vehicle. The table shown below assumes an average gasoline price of \$1.74 per gallon, which is identical to CARB's analysis.

New York State Break-Even Years for Pavley Vehicles Using \$1.74 Per Gallon Gasoline

Model Year	Vehicle Group	Break-Even Year	Control Cost (\$)	Fuel Savings (%)	Gallons Saved in 10 years	\$ Saved in 10 Years
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2016	PC/LDT1	6	1064	33.9	1331	622
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Note: Assumes: 1) 5 percent interest and discount rates, compounded annually

2) California control costs, baseline fuel economy, and percent fuel savings

3) Gasoline cost \$1.74 per gallon

Uses: 1) New York State miles driven in each year of vehicle life

2) Baseline fuel economy calculated from CARB 2009 model year EMFAC data

3) Control costs from revised Table 6.2-8, Addendum to CARB ISOR, Sept. 2004

4) Percent CO<sub>2</sub> reduction from Table 6.2-2, CARB ISOR, Aug. 2004

The Department also performed a sensitivity analysis using gasoline prices of \$2.00 and \$1.50 per gallon to estimate cost effectiveness. An increase in the cost of gasoline would serve to increase the cost effectiveness due to reduced vehicle operating costs. The Department's analysis indicates that the regulation would be cost effective even if the average price of gasoline fell to \$1.50, which would result in a slightly longer period to break-even as well as a corresponding reduction in overall savings.

4. Minimizing adverse impact:

The changes will not adversely impact rural areas. As a result of the adoption of the GHG emission reduction requirements, rural areas may benefit by seeing an improvement in the air quality. Individual consumers, businesses, and governments are likely to experience net savings since the initial cost is more than offset by decreased operating expenses over the life of the vehicle as a result of the regulation.

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 proposing to amend 6 NYCRR Section 200.9, and 6 NYCRR Part 218 low emission vehicle (LEV) program. Part 218 is being amended to incorporate vehicle greenhouse gas (GHG) emission reduction standards that are being adopted by the California Air Resources Board (CARB). 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 new motor vehicle emission standards program in effect since model year 1993 for passenger cars and light-duty trucks, with the exception of model year 1995, and the Department is unaware of any adverse impact to jobs and employment opportunities as a result.

There are no equivalent federal vehicle GHG standards available as a regulatory alternative. The only regulatory alternative to the proposed climate change amendments to the LEV regulation is to revert back to less stringent federal new motor vehicle emission standards. This is because the Clean Air Act requires states adopting the California programs under section 177 to maintain identical standards and consistent programs. Since the GHG provisions affect light and medium duty vehicles, New York must adopt such standards in order to remain identical.

Another alternative available would be to require reductions of GHG emissions from stationary sources. New York has already begun to address stationary source GHG reductions through its regional greenhouse gas (RGGI) and renewable portfolio standards (RPS) initiatives. These are being developed in conjunction with the vehicle GHG regulation in an attempt to establish a comprehensive program to reduce GHG emissions from both mobile and stationary sources in New York.

2. Categories and numbers affected:

The changes to this regulation may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. Automobile manufacturers are likely to incur significant costs in order to comply with the regulation. These increased compliance costs are expected to be passed

on to consumers in the form of higher vehicle prices. Dealerships may see decreased sales as a result of new vehicle prices. 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. These businesses compete within the state and generally are not subject to competition from out-of-state businesses. Therefore, the proposed regulation is not expected to impose a competitive disadvantage on affiliated businesses, and there would be no change from the current relationship with out-of-state businesses.

3. Regions of adverse impact:

None.

4. Minimizing adverse impact:

The climate change regulation may impact several sectors of the economy. The steps that manufacturers need to take to comply with the new regulation are expected to lead to increases in the cost of new vehicles. It is expected that the manufacturers will recoup these costs by passing them on to consumers in the form of increased vehicle prices, which occurred with the implementation of other regulatory programs. For example, it is expected that manufacturers may selectively increase vehicle prices on popular or high-end models to subsidize lower price increases on economy models. Manufacturers also have other options which include changing "standard" equipment packages, incentives, and financing. It is also possible that consumers could regard vehicles equipped with the new technology to be desirable, leading to increased sales despite higher prices.

The technological options that manufacturers choose to comply with the new regulation are also expected to reduce operating costs. These two responses have combined negative and positive impacts on businesses and consumers. The vehicle price increase may negatively affect businesses by possibly reducing demand for their vehicles, while the reduction in operating costs will have a positive impact on consumers and local businesses due to increased disposable income. This increased disposable income would allow consumers to make additional purchases of goods and services, including new vehicles, resulting in an expansion of businesses and employment.

The flexibility of the GHG mandate allows manufacturers to earn early reduction credits, phase-in advanced technology, and utilize a vast array of existing and emerging advanced emission reduction technology. The proposed regulation also provides mechanisms for implementation flexibility 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 general long term air quality benefit, as well as a long term GHG program compliance benefit.

Currently, there is no automobile manufacturing in New York. However, when "automotive facilities" are taken into account, such as parts manufacturing and distribution, corporate offices, research and development, automobile dealerships, financial centers, and engineering and design facilities, the employment share of the automotive industry in the state is 3.2 percent, according to the Alliance of Automobile Manufacturers.<sup>1</sup> These affiliated businesses in addition to gasoline service stations are local businesses. They compete within the state and generally are not subject to competition from out-of-state businesses. New York dealerships will be able to sell California certified vehicles to states bordering New York. New York residents will not be able to buy noncomplying vehicles out of state since vehicles must be California certified in order to be registered in New York. Therefore, the proposed regulation is not expected to impose a competitive disadvantage on affiliated businesses. As stated previously, there would be no change in the competitive relationship with out-of-state businesses.

The GHG 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 vehicles equipped with advanced GHG reduction technology. This is expected due to the fact that in some cases these are technologies that a dealership has not previously handled, and would thus be required to train service personnel to service these vehicles.

The proposed amendments may have a positive impact on New York employment since the new technologies associated with sale and service of vehicles equipped with advanced GHG technology 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. It

is also anticipated that the money saved due to reduced operating expenses will trickle into other sectors of the economy, thereby stimulating economic growth.

- 5. Self-employment opportunities:  
None that the Department is aware of at this time.

<sup>1</sup> Alliance of Automobile Manufacturers: The Auto Industry in New York.

## Department of Health

### NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

**Syracuse Watershed Rules and Regulations**

**I.D. No.** HLT-48-04-00012-C

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

**The notice of proposed rule making**, I.D. No. HLT-48-04-00012-P was published in the *State Register* on December 1, 2004.

**Subject:** Minor amendments to the Syracuse Watershed Rules and Regulations.

**Purpose:** To correct clerical and typographic errors.

**Substance of rule:** The proposed amendments to Section 131.1 of Part 131 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York merely correct clerical and typographic errors in the regulation. Because these amendments do not impose any burden on any party that exceeds or expands statutory requirements, a consensus regulatory adoption has been proposed.

**Changes to rule:** No substantive changes.

**Expiration date:** December 1, 2005.

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

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

## Office of Homeland Security

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

**List of Hazardous and Toxic Chemicals**

**I.D. No.** HLS-21-05-00005-P

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

**Proposed action:** Addition of Part 10000 to Title 9 NYCRR.

**Statutory authority:** Executive Law, section 714

**Subject:** List of hazardous and toxic chemicals.

**Purpose:** To comply with requirement of Executive Law, section 714.

**Text of proposed rule:** Part 10000

*Protection of Critical Infrastructure*

The New York State Office of Homeland Security (Office) is creating a new Part 10000, subpart 10000-1 and 10000-2 to satisfy provisions of Executive Law, Section 714.

Subpart 10000-1

*Storage Facilities for Hazardous Substances*

Consistent with provisions of Executive Law, Section 714, the Office has developed a list of toxic or hazardous substances based upon the severity of the threat posed to the public by the unauthorized release of

such substances. For the purposes of this rule, unauthorized release means theft, release to the air or release to a potable water source.

Subpart 10000-2

*List of Toxic or Hazardous Substances*

The following list of toxic or hazardous substances has been developed as required under provisions of Executive Law, Section 714. The list, in and of itself, does not place a requirement on any facility in New York State that stores such chemicals to undertake any specific action.

CAS RN	Chemical Name
	*Ammonium nitrate explosive mixtures (non-cap sensitive)
	*ANFO
	*Blasting agents, nitro-carbo-nitrates, including non-cap sensitive slurry and water gel explosives
540-73-8	1,2 Dimethyl hydrazine
75-07-0	Acetaldehyde
75-86-5	Acetone cyanohydrin
74-86-2	Acetylene
	Acetylides of heavy metals
107-02-8	Acrolein
80-63-7	Acrylic acid, 2-chloro-, methyl ester
107-13-1	Acrylonitrile
814-68-6	Acrylyl chloride
578-94-9	Adamsite
111-69-3	Adiponitrile
329-99-7	Agent GF
309-00-2	Aldrin
107-18-6	Allyl alcohol
107-11-9	Allylamine
	Aluminum containing polymeric propellant
	Aluminum ophorite explosive
	Amatex
8006-19-7	Amatol
78-53-5	Amiton
3734-97-2	Amiton oxalate
	Ammonal
7664-41-7	Ammonia
7803-55-6	Ammonium metavanadate
6484-52-2	Ammonium Nitrate
	Ammonium nitrate explosive mixtures (cap sensitive)
	Ammonium perchlorate composite propellant
	Ammonium perchlorate explosive mixtures
	Ammonium perchlorate having particle size less than 15 microns
131-74-8	Ammonium Picrate
	Ammonium salt lattice with isomorphously substituted inorganic salts
86-88-4	Antu
	Aromatic nitro-compound explosive mixtures
7778-39-4	Arsenic acid
1303-28-2	Arsenic pentoxide
1327-53-3	Arsenic trioxide
7784-34-1	Arsenous trichloride
7784-42-1	Arsine
	Azide explosives
2642-71-9	Azinphos-ethyl
86-50-0	Azinphos-methyl
	Baranol
	Baratol
18810-58-7	Barium Azide
112-56-1	b-Butoxy-b'-thiocyano diethyl ether
	BEAF
98-16-8	Benzenamine, 3-(trifluoromethyl)
98-09-9	Benzenesulfonyl chloride
100-44-7	Benzyl chloride
140-29-4	Benzyl cyanide
15271-41-7	Bicyclo[2.2.1]heptane-2-carbonitrile, 5 chloro...
1464-53-5	Bioxirane, 2,2'-
4301-50-2	Biphenylacetic acid, 2-fluoroethyl ester, 4-
142868-93-7	Bis(2-chloroethylthio)-n-butane, 1,4-
142868-94-8	Bis(2-chloroethylthio)-n-pentane, 1,5-
63905-10-2	Bis(2-chloroethylthio)-n-propane, 1,3-
63918-90-1	Bis(2-chloroethylthiomethyl)ether
542-88-1	Bis(chloromethyl) ether
4044-65-9	Bitoscanate

	<i>Black powder</i>	1445-76-7	<i>Chlorosarin</i>
	<i>Black powder based explosive mixtures</i>	7040-57-5	<i>Chlorosoman</i>
	<i>Blasting caps</i>	21923-23-9	<i>Chlorthiophos</i>
	<i>Blasting gelatin</i>	67-97-0	<i>Cholecalciferol</i>
	<i>Blasting powder</i>	156-60-5	<i>cis &amp; trans 1,2 dichloroethylene</i>
122-10-1	<i>Bomyl</i>	156-59-2	<i>cis-1,2 dichloroethylene</i>
10294-34-5	<i>Boron trichloride</i>	62207-76-5	<i>Cobalt</i>
7637-07-2	<i>Boron trifluoride</i>		<i>Composition A and variations</i>
353-42-4	<i>Boron trifluoride compound with methyl ether (1:1)</i>		<i>Composition B and variations</i>
7726-95-6	<i>Bromine</i>		<i>Composition C and variations</i>
598-73-2	<i>Bromotrifluoroethylene</i>		<i>compound explosive</i>
357-57-3	<i>Brucine</i>	12540-13-5	<i>Copper acetylide</i>
	<i>BTNEC</i>	12002-03-8	<i>Copper, bis (acetato)hexametaarsenitotetra-</i>
	<i>BTNEN</i>	56-72-4	<i>Coumaphos</i>
6659-60-5	<i>BTTN</i>	5836-29-3	<i>Coumarin, 4-hydroxy - 3 (1,2,3,4-tetrahydro-1-naphthyl)-</i>
	<i>Bulk salutes</i>		<i>Cresol, 6,6'-thiobis(4-chloro-o-</i>
106-99-0	<i>Butadiene, 1,3-</i>	4418-66-0	<i>Crimidine</i>
78-79-5	<i>Butadiene, 2-methyl-, 1,3-</i>	535-89-7	<i>Crotonaldehyde</i>
106-97-8	<i>Butane</i>	4170-30-3	<i>Cupric sulfate, ammoniated</i>
78-78-4	<i>Butane, 2-methyl-</i>	10380-29-7	<i>Cyanogen</i>
1338-23-4	<i>Butanone peroxide, 2-</i>	460-19-5	<i>Cyanogen chloride</i>
689-97-4	<i>Buten-3-yne, 1-</i>	506-77-4	<i>Cyanophos</i>
123-73-9	<i>Butenal, (e)-2-</i>	2636-26-2	<i>Cyanuric fluoride</i>
25167-67-3	<i>Butene</i>	675-14-9	<i>Cyanuric triazine</i>
624-64-6	<i>Butene, (E)-2-</i>		<i>Cyclohexanamine</i>
106-98-9	<i>Butene, 1-</i>	108-91-8	<i>Cycloheximide</i>
110-57-6	<i>Butene, 1,4-dichloro-, (e)-2-</i>	66-81-9	<i>Cyclohexane</i>
107-01-7	<i>Butene, 2-</i>	75-19-4	<i>Cyclopropane</i>
590-18-1	<i>Butene-cis,2-</i>	2691-41-0	<i>Cyclotetramethylenetetranitramine</i>
	<i>Butyl tetryl</i>		<i>Cyclotol</i>
3037-72-7	<i>Butylamine, 4-(diethoxymethylsilyl)-</i>		<i>DATB</i>
107-00-6	<i>Butyne, 1-</i>	17702-41-9	<i>Decaborane</i>
6581-06-2	<i>BZ</i>		<i>DEGDN</i>
1306-19-0	<i>Cadmium oxide</i>	8065-48-3	<i>Demeton</i>
2223-93-0	<i>Cadmium stearate</i>	919-86-8	<i>Demeton-s-methyl</i>
7778-44-1	<i>Calcium arsenate</i>		<i>Detonating cord</i>
52740-16-6	<i>Calcium arsenite</i>		<i>Detonators</i>
592-01-8	<i>Calcium cyanide</i>	676-99-3	<i>DF</i>
	<i>Calcium nitrate explosive mixture</i>	10311-84-9	<i>Dialifos</i>
8001-35-2	<i>Camphene, octachloro-</i>	302-01-2	<i>Diamine</i>
51-83-2	<i>Carbachol chloride</i>	87-31-0	<i>Diazodinitrophenol</i>
26419-73-8	<i>Carbamic acid</i>	334-88-3	<i>Diazomethane</i>
644-64-4	<i>Carbamic acid, dimethyl-, 1-((dimethylamino) carbonyl)-5-methyl-1h-pyrazol-3-yl ester</i>	19287-45-7	<i>Diborane</i>
119-38-0	<i>Carbamic acid, dimethyl-, 1-isopropyl-3-methylpyrazol-5-yl ester</i>	96-12-8	<i>Dibromo-3-chloropropane, 1,2-</i>
23422-53-9	<i>Carbamic acid, methyl-ester with n'-(m-hydroxyphenyl)- n,n-dimethylformamidine, hydrochloride</i>	79-36-7	<i>Dichloroacetyl chloride</i>
17702-57-7	<i>Carbamic acid, methyl-,4-(((dimethylamino) methylene)amino)-m-tolyl ester</i>	27137-85-5	<i>Dichlorophenyl trichlorosilane</i>
1563-66-2	<i>Carbofuran</i>	4109-96-0	<i>Dichlorosilane</i>
75-15-0	<i>Carbon disulfide</i>	62-73-7	<i>Dichlorvos</i>
353-50-4	<i>Carbon oxyfluoride</i>	141-66-2	<i>Dicrotophos</i>
108-23-6	<i>Carbonochloridic acid, 1-methylethyl ester</i>	60-57-1	<i>Dieldrin</i>
109-61-5	<i>Carbonochloridic acid, propylester</i>	814-49-3	<i>Diethyl chlorophosphate</i>
786-19-6	<i>Carbonphenothion</i>	762-04-9	<i>Diethyl phosphite</i>
463-58-1	<i>Carbonyl sulfide</i>	1642-54-2	<i>Diethylcarbamazine citrate</i>
	<i>Cellulose hexanitrate explosive mixture</i>		<i>Diethyleneglycol dinitrate, desensitized</i>
470-90-6	<i>Chlorate explosive mixtures</i>	75-37-6	<i>Difluoroethane</i>
7782-50-5	<i>Chlorfenvinfos</i>	115-26-4	<i>Dimefox</i>
10049-04-4	<i>Chlorine</i>	756-79-6	<i>Dimethyl methylphosphonate</i>
7791-21-1	<i>Chlorine dioxide</i>	868-85-9	<i>Dimethyl phosphite</i>
24934-91-6	<i>Chlorine monoxide</i>	124-40-3	<i>Dimethylamine</i>
107-20-0	<i>Chlormephos</i>	75-78-5	<i>Dimethyldichlorosilane</i>
75-00-3	<i>Chloroacetaldehyde</i>	57-14-7	<i>Dimethylhydrazine, 1,1-</i>
107-07-3	<i>Chloroethane</i>	62-75-9	<i>Dimethylnitrosamine</i>
67-66-3	<i>Chloroethanol</i>	463-82-1	<i>Dimethylol dimethyl methane dinitrate composition</i>
74-87-3	<i>Chloroform</i>		<i>Dimethylpropane, 2,2-</i>
107-30-2	<i>Chloromethane</i>		<i>Dinitroethyleneurea</i>
3691-35-8	<i>Chloromethyl methyl ether</i>	534-52-1	<i>Dinitroglycerine</i>
76-06-2	<i>Chlorophacinone</i>	25550-58-7	<i>Dinitroethyluril</i>
590-21-6	<i>Chloropicrin</i>		<i>Dinitro-o-cresol, 4,6-</i>
557-98-2	<i>Chloropropylene, 1-</i>		<i>Dinitrophenol</i>
	<i>Chloropropylene, 2-</i>	35860-51-6	<i>Dinitrophenolates</i>
		25550-55-4	<i>Dinitrophenyl hydrazine</i>
			<i>Dinitroresorcinol</i>
		4097-36-3	<i>Dinitrosobenzene</i>
			<i>Dinitrotoluene-sodium nitrate explosive mixtures</i>
			<i>Dinoseb</i>

78-34-2	<i>Dioxathion</i>	50-00-0	<i>Formaldehyde</i>
1746-01-6	<i>Dioxin</i>	107-16-4	<i>Formaldehyde cyanohydrin</i>
	<i>DIPAM</i>	64-18-6	<i>Formic acid</i>
82-66-6	<i>Diphacinone</i>	107-31-3	<i>Formic acid, methyl ester</i>
712-48-1	<i>Diphenyl dichloroarsine</i>	21548-32-3	<i>Fosthietan</i>
76-93-7	<i>Diphenyl-2-hydroxyacetic acid, 2,2-</i>		<i>Fulminate of mercury</i>
2217-06-3	<i>Dipicryl sulfide</i>		<i>Fulminate of silver</i>
	<i>Dipicryl sulfone</i>		<i>Fulminating gold</i>
	<i>Display fireworks</i>		<i>Fulminating mercury</i>
298-04-4	<i>Disulfoton</i>		<i>Fulminating platinum</i>
950-10-7	<i>Dithiolane, 2-(diethoxy-phosphinylimino)-4-methyl-, 1,3-</i>	110-00-9	<i>Fulminating silver</i>
	<i>DNPA</i>		<i>Furan</i>
	<i>DNPD</i>		<i>Gelatinized nitrocellulose</i>
88-85-7	<i>Dynamite</i>		<i>Gem-dinitro aliphatic explosive mixtures</i>
	<i>EDDN</i>		<i>Guanyl nitrosamino guanyl tetrazene</i>
	<i>EDNA</i>		<i>Guanyl nitrosamino guanylidene</i>
	<i>Ednatol</i>	14097-21-3	<i>Guanyl nitrosaminoguanilyltetrazene</i>
	<i>EDNP</i>		<i>Heavy metal azides</i>
115-29-7	<i>Endosulfan (all isomers)</i>	76-44-8	<i>Heptachlor</i>
2778-04-3	<i>Endothion</i>	465-73-6	<i>Hexachlorohexahydro-endo, endo-di methanonaphthalene</i>
72-20-8	<i>Endrin</i>		<i>Hexaethyl tetraphosphate</i>
106-89-8	<i>Epichlorohydrin</i>	757-58-4	<i>Hexamethylenediamine</i>
2104-64-5	<i>EPN</i>	4835-11-4	<i>Hexanite</i>
	<i>Erythritol tetranitrate explosives</i>		<i>Hexanitrodiphenylamine</i>
	<i>Esters of nitro-substituted alcohols</i>	131-73-7	<i>Hexanitrostilbene</i>
75-04-7	<i>Ethanamine</i>	20062-22-0	<i>Hexogene or octogene and a nitrated Nmethylaniline</i>
74-84-0	<i>Ethane</i>		<i>Hexolite</i>
60-29-7	<i>Ethane, 1,1'-oxybis-</i>	121-82-4	<i>Hexotonal</i>
107-15-3	<i>Ethanediamine, 1,2-</i>		<i>HMTD</i>
75-08-1	<i>Ethanethiol</i>		<i>Hydrazinium nitrate/aluminum explosive system</i>
75-38-7	<i>Ethene, 1,1-difluoro-</i>		<i>Hydrazoic acid</i>
79-38-9	<i>Ethene, chlorotrifluoro-</i>	7782-79-8	<i>Hydrochloric acid</i>
109-92-2	<i>Ethene, ethoxy-</i>	7647-01-0	<i>Hydrogen</i>
75-02-5	<i>Ethene, fluoro-</i>	1333-74-0	<i>Hydrogen bromide</i>
107-25-5	<i>Ethene, methoxy-</i>	10035-10-6	<i>Hydrogen cyanide</i>
116-14-3	<i>Ethene, tetrafluoro-</i>	74-90-8	<i>Hydrogen fluoride</i>
563-12-2	<i>Ethion</i>	7664-96-9	<i>Hydrogen Iodide</i>
13194-48-4	<i>Ethoprophos</i>	10034-85-2	<i>Hydrogen peroxide (Conc. &gt; 52%)</i>
109-95-5	<i>Ethyl nitrite</i>	7722-84-1	<i>Hydrogen selenide</i>
598-14-1	<i>Ethylchloroarsine</i>	7783-07-5	<i>Hydrogen sulfide</i>
139-87-7	<i>Ethylthiolanamine</i>	7783-06-4	<i>Igniter cord</i>
74-85-1	<i>Ethylene</i>		<i>Igniters</i>
371-62-0	<i>Ethylene fluorohydrin</i>		<i>Imidocarbonic acid phosphonodithio-cyclic ethylene p, p-diethyl ester</i>
75-21-8	<i>Ethylene oxide</i>	947-02-4	<i>Initiating tube systems</i>
151-56-4	<i>Ethyleneimine</i>		<i>Iron, carbonyl-</i>
	<i>Ethyl-tetryl</i>		<i>Isobenzan</i>
	<i>Explosive conitrates</i>	13463-40-6	<i>Isobutane</i>
	<i>Explosive gelatins</i>	297-78-9	<i>Isobutyronitrile</i>
	<i>explosive gels</i>	75-28-5	<i>Isocyanic acid, methylene (3,5,5-trimethyl-3,1-cyclohexylene) ester</i>
	<i>Explosive liquids</i>	78-82-0	<i>Isopropyl chloride</i>
	<i>Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons</i>	4098-71-9	<i>Isopropylamine</i>
	<i>Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies</i>	75-29-6	<i>Isoxazolone, 5-(aminomethyl)-, 3(2h)-</i>
	<i>Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels</i>	75-31-0	<i>Jet fuels (JP-5 &amp; JP-8)</i>
	<i>Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels</i>	2763-96-4	<i>KDNBF</i>
	<i>Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels</i>	70892-10-3	<i>Lead azide, wetted</i>
	<i>Explosive mixtures containing sensitized nitromethane</i>		<i>Lead mannite</i>
	<i>Explosive mixtures containing tetranitromethane (nitroform)</i>		<i>Lead mononitrosorcinic acid</i>
	<i>Explosive nitro compounds of aromatic hydrocarbons</i>		<i>Lead picrate</i>
	<i>Explosive organic nitrate mixtures</i>	15245-44-0	<i>Lead salts, explosive</i>
	<i>Explosive powders</i>	21609-90-5	<i>Lead styphnate, wetted</i>
22224-92-6	<i>Fenamiphos</i>	40334-69-8	<i>Leptophos</i>
122-14-5	<i>Fenitrothion</i>	40334-70-1	<i>Lewisite</i>
115-90-2	<i>Fensulfothion</i>	541-25-3	<i>Lewisite</i>
	<i>Flash powder</i>	58-89-9	<i>Lewisite</i>
144-49-0	<i>Fluoroacetic acid</i>		<i>Lindane</i>
7664-39-3	<i>Fluoric acid</i>		<i>Liquid nitrated polyol and trimethylolethane</i>
7782-41-4	<i>Fluorine</i>	68476-85-7	<i>Liquid oxygen explosives</i>
640-19-7	<i>Fluoroacetamide</i>		<i>LPG</i>
62-74-8	<i>Fluoroacetic acid, sodium salt</i>	2757-18-8	<i>Magnesium ophorite explosives</i>
944-22-9	<i>Fonofos</i>	12108-13-3	<i>Malonic acid, thallium salt (1:2)</i>
			<i>Manganese, tricarbonyl methylcyclopentadienyl</i>

130-39-2	Mannitol hexanitrate, wetted MDNP MEAN	10025-85-1	Nitrogen trichloride
2032-65-7	Mercptodimethur	55-63-0	Nitrogen tri-iodide
7487-94-7	Mercuric chloride Mercuric fulminate	628-96-6	Nitroglycerin
21908-53-2	Mercuric oxide	556-88-7	Nitroglycide
628-86-4	Mercury fulminate, wetted Mercury oxalate Mercury tartrate		Nitroglycol
502-39-6	Mercury, (3-cyanoguanidino)methyl-		Nitroguanidine
151-38-2	Mercury, (actato)(2-methoxyethyl)-	100-16-3	Nitroguanidine explosives
10476-95-6	Methacrolein diacetate	4549-40-0	Nitronium perchlorate propellant mixtures
920-46-7	Methacryloyl chloride		Nitroparaffin
30674-80-7	Methacryloyloxyethyl isocyanate		Nitroparaffins Explosive Grade and ammonium nitrate mixtures
10265-92-6	Methamidophos		Nitrophenylhydrazine, 4-
74-89-5	Methanamine		Nitrosomethylvinylamine, n-
75-50-3	Methanamine, N,N-dimethyl-		Nitrostarch
74-82-8	Methane	991-42-4	Nitro-substituted carboxylic acids
115-10-6	Methane, oxybis-	152-16-9	Nitrotriazolone
950-37-8	Methidathion		Norbormide
16752-77-5	Methomyl	8014-95-7	Octamethylphosphoramidate
79-22-1	Methyl chlorocarbonate		Octol
60-34-4	Methyl hydrazine		Octonal
624-83-9	Methyl isocyanate	20816-12-0	Oleum
556-61-6	Methyl isothiocyante	106602-80-6	Organic amine nitrates
74-93-1	Methyl mercaptan	145-73-3	Organic nitramines
298-00-0	Methyl parathion	23135-22-0	Osmium tetroxide
556-64-9	Methyl thiocyanate		Otto Fuel (Propylene Glycol Dinitrate)
78-94-4	Methyl vinyl ketone	2497-07-6	Oxabicyclo[2.2.1]heptane-2,3-di carboxylic acid, 7-
563-46-2	Methyl-1-butene, 2-	7782-44-7	Oxamidic acid, n',n'-dimethyl-n-
563-45-1	Methyl-1-butene, 3-	10028-15-6	((methylcarbamoyl)oxy)-1-methylthio-
126-98-7	Methylacrylonitrile	72-55-9	Oxydisulfoton
593-89-5	Methylchloroarsine	56-38-2	Oxygen (Bulk)
105-59-9	Methyldiethanoamine		Ozone
676-97-1	Methylphosphonyl dichloride		p,p'-DDE
115-11-7	Methylpropene, 2-	19624-22-7	Parathion
75-79-6	Methyltrichlorosilane	2570-26-5	PBX
	Metriol trinitrate	504-60-9	Pellet powder
7786-34-7	Mevinphos	78-11-5	Pentaborane
315-18-4	Mexacarbate	109-66-0	Pentadecylamine
	Minol-2	646-04-8	Pentadiene, 1,3-
50-07-7	Mitomycin C	627-20-3	Pentaerythrite tetranitrate
	MMAN	109-67-1	Pentane
6923-22-4	Monocrotophos		Pentene, (E)-2-
	Mononitrotoluene-nitroglycerin mixture	8066-33-9	Pentene, (Z)-2-
	Monopropellants	79-21-0	Pentene, 1-
505-60-2	Mustard gas		Penthrinite composition
63918-89-8	Mustard, O-NIBTN	594-42-3	Pentolite
13463-39-3	Nickel carbonyl	382-21-8	Peracetic acid
54-11-5	Nicotine and salts	696-28-6	Perchlorate explosive mixtures
	Nitrate explosive mixtures	108-98-5	Perchloromethyl mercaptan
	Nitrate sensitized with gelled	4104-14-7	Peroxide based explosive mixtures
	Nitrated carbohydrate explosive	75-44-5	PFIB
	Nitrated glucoside explosive	732-11-6	Phenyl dichloroarsine
	Nitrated polyhydric alcohol explosives	13171-21-6	Phenylmercaptan
7697-37-2	Nitric acid	7803-51-2	Phosacetim
	Nitric acid and a nitro aromatic	1031-47-6	Phosgene
	Nitric acid and carboxylic fuel explosive		Phosmet
	Nitric acid explosive mixtures		Phosphamidon
10102-43-9	Nitric oxide		Phosphine
	Nitro aromatic explosive mixtures	2665-30-7	Phosphonic diamide, p-(5-amino-3-phenyl-1h-1,2,4-triazol-1-yl)- n,n,n',n'-tetramet hyl-
	Nitro compounds of furane explosive mixtures		Phosphonothioic acid, ethyl-, o-ethyl o-(2,4,5-trichlorophenyl)ester
556-89-8	Nitro urea	311-45-5	Phosphonothioic acid, methyl-, o-(p-nitrophenyl) o-phenyl ester
2338-12-7	Nitrobenzotriazol, 5-	3254-63-5	Phosphoric acid, diethyl p-nitrophenyl ester
9004-70-0	Nitrocellulose	1314-56-3	Phosphoric acid, dimethyl p-(methylthio)phenyl ester
	Nitrocellulose explosive	2275-18-5	Phosphoric anhydride
1122-60-7	Nitrocyclohexane		Phosphorodithioic acid, o,o-diethyl ester, s-ester with n-isopropyl-2-mercaptoacetamide
	Nitroderivative of urea explosive mixture	13071-79-9	Phosphorodithioic acid, o,o-diethyl- s-(((1,1-dimethylethyl)thio)methyl)-ester
	Nitrogelatin explosive		Phosphorodithioic acid, o,o-diethyl- s-(((1,1-dimethylethyl)thio)methyl)-ester
10102-44-0	Nitrogen dioxide	55-91-4	Phosphorofluoric acid, bis(1-methylethyl) ester
51-75-2	Nitrogen Mustard	297-97-2	Phosphorothioic acid, o,o-diethyl o-pyrazinyl ester
538-07-8	Nitrogen Mustard	52-85-7	Phosphorothioic acid, o,o-dimethyl o-[p-[(dimethylamino)-sulfonyl]phenyl] ester
555-77-1	Nitrogen Mustard	7723-14-0	Phosphorus

10025-87-3	Phosphorus oxychloride		Squibs
10026-13-8	Phosphorus pentachloride	597-64-8	Stannane, tetraethyl-
7719-12-2	Phosphorus trichloride	57-24-9	Strychnine and salts
489-98-5	Picramic acid and its salts	60-41-3	Strychnine, sulfate
	Picramide		Styphnic acid explosives
	Picrate explosives		sulfocyanate explosive
	Picrate of potassium explosive mixtures	3569-57-1	Sulfoxide, 3-chloropropyl octyl
	Picratol	10545-99-0	Sulfur dichloride
88-88-0	picryl chloride	7446-09-5	Sulfur dioxide
	Picryl fluoride	7783-60-0	Sulfur fluoride (SF <sub>4</sub> ), (T-4)-
464-07-3	Pinacolyl alcohol	10025-67-9	Sulfur monochloride
110-89-4	Piperidine	2625-76-5	Sulfur Mustard
	PLX	63869-13-6	Sulfur Mustard
	Polynitro aliphatic compounds	7446-11-9	Sulfur trioxide
	Polyolpolynitrate-nitrocellulose	7664-93-9	Sulfuric acid
10124-50-2	Potassium arsenite	77-81-6	Tabun
	Potassium chlorate and lead		Tacot
151-50-8	Potassium cyanide	3058-38-6	TATB
	Potassium nitrate explosive mixtures		TATP
	Potassium nitroaminotetrazole	3689-24-5	TEDP
506-61-6	Potassium silver cyanide		TEGDN
463-49-0	Propadiene, 1,2-	778-80-4	Tellurium hexafluoride
74-98-6	Propane	107-49-3	TEPP
824-11-3	Propanediol, 2-ethyl-2-(hydroxymethyl)-, cyclic phosphite (1:1), 1,3-	127-18-4	Tetrachloroethylene
	Propanenitrile	78-00-2	Tetraethyl lead
107-12-0	Propargyl alcohol	75-74-1	Tetramethyllead
107-19-7	Propargyl bromide	3698-54-2	Tetranitroaniline
106-96-7	Propylene		Tetranitrocarbazole
115-07-1	Propylene imine	509-14-8	Tetranitromethane
75-55-8	Propylene oxide		Tetrazole explosives
75-56-9	Propyne, 1-	288-94-8	Tetrazole, 1H-
74-99-7	Pyridinamine, 4-		Tetrytol
504-24-5	Pyriminil	1314-32-5	Thallic oxide
53558-25-1	Pyrotechnic compositions	7446-18-6	Thallium (I) sulfate
	PYX	10031-59-1	Thallium(I) sulfate
	QL		Thickened inorganic oxidizer salt slurried explosive mixture
57856-11-8	Quinuclidin-3-ol	111-48-8	Thiodiglycol
1619-34-7	Ricin	39196-18-4	Thiofanox
9009-86-3	Safety fuse	541-53-7	Thioimidodicarbonic diamide
	Salts of organic amino sulfonic acid explosive mixture	7719-09-7	Thionyl chloride
	Salutes (bulk)	79-19-6	Thiosemicarbazide
107-44-8	Sarin	5344-82-1	Thiourea, (2-chlorophenyl)-
35523-89-8	Saxitoxin	103-85-5	Thiourea, phenyl-
3563-36-8	Sesquimustard	7550-45-0	Titanium tetrachloride
7803-62-5	Silane	3032-55-1	TMETN
75-77-4	Silane, chlorotrimethyl-		TNEF
75-76-3	Silane, tetramethyl-		TNEOC
10025-78-2	Silane, trichloro-		TNEOF
	Silver acetylide	584-84-9	Toluene-2,4-diisocyanate
13863-88-2	Silver azide	91-08-7	Toluene-2,6-diisocyanate
5610-59-3	Silver fulminate	26471-62-5	Toluenediisocyanate (mixed isomers)
	Silver oxalate explosive mixtures		Torpex
146-84-9	Silver picrate	1558-25-4	Trichloro(chloromethyl)silane
	Silver styphnate		Tridite
	Silver tartrate explosive mixtures	102-71-6	Triethanolamine
	Silver tetrazene	122-52-1	Triethyl phosphite
	Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive)	121-45-9	Trimethyl phosphite
	Smokeless powder		Trimethylol ethyl methane trinitrate composition
	Sodatol	26952-42-1	Trimethylolthane trinitratennitrocellulose
	Sodium amatol	28653-16-9	Trimonite
7784-46-5	Sodium arsenite	99-35-4	Trinitroaniline
26628-22-8	Sodium azide	2508-19-2	Trinitroanisole
	Sodium azide explosive mixture	129-66-8	Trinitrobenzene
143-33-9	Sodium cyanide	28260-61-9	Trinitrobenzenesulfonic acid
2312-76-7	Sodium dinitro-o-cresolate	28905-71-7	Trinitrobenzoic acid
	Sodium nitrate explosive mixtures	129-79-3	Trinitrochlorobenzene
	Sodium nitrate-potassium nitrate explosive mixture	602-99-3	Trinitrocresol
831-52-7	Sodium picramate		Trinitrofluorenone
13410-01-0	Sodium selenate		Trinitro-meta-cresol
10102-18-8	Sodium selenite		Trinitronaphthalene
96-64-0	Soman	88-89-1	Trinitrophenetol
	Special fireworks	479-45-8	Trinitrophenol
			Trinitrophenylmethylnitramine

82-71-3	<i>Trinitrophenol</i>
118-96-7	<i>Trinitroresorcinol</i>
76-20-0	<i>Trinitrotoluene</i>
66-75-1	<i>Tritonal</i>
7783-81-5	<i>Uracil, 5-(Bis(2-chloroethyl) (amino)</i>
124-47-0	<i>Uranium hexafluoride</i>
1314-62-1	<i>Urea nitrate</i>
108-05-4	<i>Vanadium pentoxide</i>
75-01-4	<i>Vinyl acetate</i>
75-35-4	<i>Vinyl chloride</i>
50782-69-9	<i>Vinylidene chloride</i>
129-06-6	<i>VX</i>
	<i>Warfarin sodium</i>
	<i>Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive)</i>
	<i>Water-in-oil emulsion explosive compositions</i>
	<i>Xanthomonas hydrophilic colloid explosive mixture</i>
28347-13-9	<i>Xylene dichloride</i>
1314-84-7	<i>Zinc phosphide</i>
58270-08-9	<i>Zinc, dichloro(4,4-dimethyl- 5(((methylamino) carbonyl)oxy)imino)pentanenitrile)-(,-(1-4)-</i>
63868-82-6	<i>Zirconium picramate</i>

**Text of proposed rule and any required statements and analyses may be obtained from:** George Estel, Office of Homeland Security, Suite 2170, Corning Tower, Albany, NY 12203, (518) 402-2227, e-mail: George.Estel@security.state.ny.us

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

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

**Additional matter required by statute:** A negative declaration is on file with the Office of Homeland Security.

#### **Regulatory Impact Statement**

##### **Statutory Authority:**

The Office of Homeland Security has the authority under Executive Law 709-2(n) and Executive Law 714-2(a) as amended by Chapter 1, part C of the Laws of 2004 to promulgate a list of substances that are toxic or hazardous to public health, safety or the environment as part of a broader effort of Chapter 1, part C to identify risks to the public and protect the security of critical infrastructure.

##### **Legislative Objectives:**

In authorizing promulgation of a list of substances that are toxic or hazardous, the legislative objective is to protect the public's health and safety. This legislative objective is furthered when the list is utilized in a deliberative process, in part, to identify facilities that store such substances and that are also at risk to release such substances in an unauthorized manner.

The Office of Homeland Security sought the input of the private sector in the development of the chemical substance list. The Business Council of New York State and the American Chemistry Council actively participated in the development of the completed list of toxic or hazardous chemicals.

##### **Needs and Benefits:**

Facilities that store hazardous or toxic substances in certain quantities are subject to federal and state regulations as a means of assuring that safeguards are in place to deter or detect accidental or unintentional releases to the environment and that both on-site and off-site emergency response plans exist to mitigate accidental or unintentional releases. Federal and state regulations however do not address security related measures that would be relevant when intentional releases are attempted. Promulgating a list of substances recognized as hazardous or toxic to human and environmental health will provide one criteria in defining which chemical facilities in New York State need to have an assessment of their current security measures.

##### **Costs:**

###### **Costs to State Government:**

There are no additional costs to the state other than costs associated with printing and distribution of the list.

###### **Costs to Local Government:**

There are no costs to local government.

###### **Cost to Regulated Parties:**

Promulgation of the list of substances does not pose a cost to the regulated parties, as the list carries no burden of compliance.

###### **Local Government Mandates:**

The proposed regulation does not impose a new program duty or responsibility to any county, city, town, village, school district, fire district or special district.

##### **Paperwork:**

No new paperwork requirements are created by this amendment.

##### **Duplication:**

This regulation does not duplicate any existing local, state or federal regulation. State and federal lists of hazardous or toxic substances do exist but they address only accidental or unintentional releases.

##### **Alternatives Considered:**

No alternative approaches were considered as Chapter 1, part C of the Laws of 2004 required the list to be promulgated.

##### **Federal Standards:**

Currently, neither federal law nor regulation governs security measures implemented at chemical facilities.

##### **Compliance Schedule:**

This regulation will be effective upon publication of a notice of adoption in the *State Register*.

##### **Access to Studies and Data Abstract**

The proposed list of chemicals is the result definitional requirements found in Chapter 1, part C of the Laws of 2004 and collaboration with the New York State Department of Environmental Conservation, the New York State Department of Health and representatives of the chemical industry as represented by the Business Council of New York State, the Chemical Alliance and the Chemistry Council. No studies or separate data were utilized in the formation of the proposed chemical list.

#### **Regulatory Flexibility Analysis**

##### **Effect on Small Businesses and Local Government:**

An estimated 1,100 chemical facilities exist in New York State of which approximately 163 employ less than 100 employees and are categorized as small businesses. These small businesses are primarily in manufacturing or sale of chemical products. These small businesses will not be affected by the proposed list of toxic or hazardous substances.

##### **Compliance Requirements:**

The proposed list does not impose compliance requirements on chemical facilities in New York State.

##### **Professional Services:**

No additional professional services are required by chemical facilities.

##### **Costs:**

The proposed list of substances does not pose a cost to the regulated parties, as the list carries no burden of compliance.

##### **Economic and Technological Feasibility:**

There is no economic cost associated with the proposed list and technological feasibility is not a factor in promulgating the proposed list.

##### **Minimizing Adverse Economic Impact:**

The proposed list does not impose compliance mandates on chemical facilities in New York State.

##### **Small Business Participation:**

The proposed list is based upon the definition established in Chapter 1, part C of the Laws of 2004. Two meetings were held with representatives of the chemical industry, including the Business Council of New York State, the Chemistry Council and the Chemical Alliance, to address concerns and issues raised in connection to the legislative mandate.

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

##### **Effect on Rural Areas:**

There are approximately 170 chemical facilities in New York State that are located in all rural areas throughout the state.

##### **Reporting and Recordkeeping:**

The proposed list does not impose any additional reporting or record-keeping requirements.

##### **Compliance Requirements:**

The proposed list does not impose compliance requirements on chemical facilities in New York State.

##### **Costs:**

The proposed list of substances does not pose a cost to the regulated parties in rural areas, as the list carries no burden of compliance.

##### **Minimizing Adverse Economic Impact on Rural Areas:**

There is no economic cost associated with the proposed list and technological feasibility is not a factor in promulgating the list.

##### **Rural Area Participation:**

The proposed list is based upon the definition established in Chapter 1, part C of the Laws of 2004. Two meetings were held with representatives of the chemical industry, including the Business Council of New York State, the Chemistry Council and the Chemical Alliance, to address concerns and issues they had with the legislative definition.

**Job Impact Statement**

The Office of Homeland Security has determined that this rule will not have a substantial adverse impact on jobs and employment opportunities. The overall intent of this rule making is to satisfy the legislative mandate as described in Chapter 1, part C of the Laws of 2004.

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## Department of Labor

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**NOTICE OF ADOPTION****Minimum Wage Allowances****I.D. No.** LAB-09-05-00005-A**Filing No.** 516**Filing date:** May 4, 2005**Effective date:** May 25, 2005

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

**Action taken:** Amendment of Parts 137, 138, 141, 142, 143 and 190 of Title 12 NYCRR.

**Statutory authority:** Labor Law, art. 19, section 652 and art. 2, section 21

**Subject:** Minimum wage allowances.

**Purpose:** To conform the wage orders with statutory amendments.

**Substance of final rule:** 12 NYCRR Parts 137 and 138, the minimum wage and minimum wage allowances for the restaurant and hotel industries, are amended to incorporate the increase in the minimum wage enacted pursuant to Chapter 747 of the Laws of 2004 and the statutorily required amendments to the minimum wage allowances (i.e., tips, uniforms, meals and lodging).

12 NYCRR Part 141 (building service industry), Part 142 (miscellaneous industries and occupations), Part 143 (non-profitmaking institutions), are amended to incorporate the increase in the minimum wage enacted pursuant to Chapter 747 of the Laws of 2004 and the statutorily required amendments to the minimum wage allowances.

12 NYCRR Part 190 (farm workers) is amended to incorporate the increase in the minimum wage enacted pursuant to Chapter 747 of the Laws of 2004.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 142-2.5(a)(1)(ii).

**Text of rule and any required statements and analyses may be obtained from:** Diane Wallace Wehner, Legal Assistant, Department of Labor, State Office Campus, Bldg. 12, Albany, NY 12240, (518) 457-4380, e-mail: diane.wehner@labor.state.ny.us

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

**Assessment of Public Comment**

We received comments on our proposed rule from C. Michael Higgins, Assistant Attorney General at the Office of the New York State Attorney General. Mr. Higgins pointed out an error in Section 142-2.5(a)(1)(ii). The amounts for lodging stated "per meal" and they should have stated "per day". We revised the rule to correct this error.

Mr. Higgins also made a comment regarding a footnote that Lexis put on their version of the proposed rule. He stated that Lexis stated "NB Effective until March 20, 2005" and he felt the date should be January 5, 2005. This does not apply to our rule because it is not in the actual text of the amendments to the rule, it is merely a footnote that Lexis supplied.

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## Department of Motor Vehicles

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**NOTICE OF ADOPTION****Windshield Stickers****I.D. No.** MTV-10-05-00008-A**Filing No.** 514**Filing date:** May 4, 2005**Effective date:** May 25, 2005

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

**Action taken:** Amendment of Part 174 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 375(1)

**Subject:** Windshield stickers.

**Purpose:** To allow for-hire vehicles licensed by the New York City Taxi and Limousine Commission to display a New York State inspection reminder sticker.

**Text or summary was published** in the notice of proposed rule making, I.D. No. MTV-10-05-00008-P, Issue of March 9, 2005.

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

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

**Assessment of Public Comment**

The agency received no public comment.

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## Office of Parks, Recreation and Historic Preservation

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**PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED****Fishing at Allegany State Park****I.D. No.** PKR-21-05-00003-P

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

**Proposed action:** This is a consensus rule making amending section 398.2(c) of Title 9 NYCRR.

**Statutory authority:** Parks, Recreation and Historic Preservation Law, section 3.09(8)

**Subject:** Fishing at Allegany State Park.

**Purpose:** To address the time of year the taking of fish is to be permitted in specific waters in Allegany State Park.

**Text of proposed rule:** Subdivision (c) of section 398.2 of Title 9 NYCRR is AMENDED to read as follows.

In the waters of Quaker Run Creek from Cain Hollow Bridge easterly to the Coon Run Road, fishing shall be permitted using artificial lures only. The possession or use of any natural bait shall be prohibited. *Additionally, such waters will be regulated by a delayed harvest management program requiring that any trout caught from April 1 through May 20 must be released unharmed. Possession of trout on this section is prohibited between April 1 and May 20.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Jeffrey A. Meyers, Senior Attorney, Office of Parks, Recreation and Historic Preservation, Agency Bldg. 1, 19th Fl., Albany, NY 12238, (518) 486-2921, e-mail: Jeffrey.Meyers@oprhp.state.ny.us.

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

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

**Consensus Rule Making Determination**

The Office of Parks, Recreation and Historic Preservation (OPRHP) has determined that these amendments to Title 9 NYCRR meet the qualifications for a consensus rule making, as no person is likely to object to their adoption. The rules set forth when fish may be taken from Quaker Run Creek between Cain Hollow Bridge and east to the Coon Run Road in Allegany State Park. The modification of Section 398.2(c) would address the concerns raised by the Department of Environmental Conservation ("DEC") fisheries biologists. Specifically, the fisheries biologists believe that the stream is low in productivity, low in food for the fish, and in the summer, very low in water. By requiring that fish be released unharmed between April 1 and May 20, this will insure that there are sufficient stock for the rest of the fishing season, and that these fish will be caught before they die during the poor summer conditions. Because the regulation amendments would result in greater fishing opportunities for the majority of the fishing season, no person is likely to object to their adoption.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this notice because the Office of Parks, Recreation and Historic Preservation has determined that the change to the regulation will not have a substantial adverse impact on jobs and employment opportunities. The rules set forth when fish may be taken from Quaker Run Creek between Cain Hollow Bridge and east to the Coon Run Road in Allegany State Park. The modification of Section 398.2(c) would address the concerns raised by the Department of Environmental Conservation ("DEC") fisheries biologists. Specifically, the fisheries biologists believe that the stream is low in productivity, low in food for the fish, and in the summer, very low in water. By requiring that fish be released unharmed between April 1 and May 20, this will insure that there are sufficient stock for the rest of the fishing season, and that these fish will be caught before they die during the poor summer conditions. Because fishing in Allegany State Park is a recreational activity and there is no commercial fishing, there will be no effect on employment in the area. Thus, the change to the regulation will have no effect on jobs or employment opportunities.

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## Public Service Commission

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### NOTICE OF ADOPTION

#### **Petition for Rehearing by Glenn Gardens Tenants Association**

**I.D. No.** PSC-42-04-00011-A

**Filing date:** May 5, 2005

**Effective date:** May 5, 2005

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

**Action taken:** The commission on April 13, 2005, adopted an order in Case 03-E-1425 granting in part the petition for rehearing by Glenn Gardens Tenants Association (GGTA) regarding the commission's Feb. 18, 2004 order.

**Statutory authority:** Public Service Law, sections 2, 4(1), 5, 22, 43, 53, 65 and 66

**Subject:** Petition for rehearing.

**Purpose:** To grant in part GGTA's request for rehearing of the commission's order issued Feb. 18, 2004.

**Substance of final rule:** The Commission granted in part Glenn Gardens Tenants Association's request for rehearing of the Commission's Order issued February 18, 2004 allowing the submetering of electricity at 175 West 87th Street, Manhattan, New York and directed Glenn Gardens Associates, L.P. to refund tenants all charges for submetered electric service charged prior to the Commission's Order approving the submetering plan for Glenn Gardens, subject to the terms and conditions set forth in the Order.

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

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

#### **Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (03-E-1425SA3)

### NOTICE OF ADOPTION

#### **Transfer of Certain Cable System Facilities in the City of New York by Time Warner Entertainment Company, L.P.**

**I.D. No.** PSC-43-04-00020-A

**Filing date:** May 5, 2005

**Effective date:** May 5, 2005

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

**Action taken:** The commission, on January 12, 2005, adopted an order in Case 04-V-0858 granting Time Warner Entertainment Company, L.P. (TWE) permission to transfer its franchise title and ownership interests from Staten Island Cable, LLC to TWE.

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

**Subject:** Transfer of cable system facilities.

**Purpose:** To allow TWE to acquire certain cable system facilities from its subsidiary Staten Island Cable, LLC.

**Substance of final rule:** The Commission approved a petition from Time Warner Entertainment Company, L.P. (TWE) for authorization to transfer cable television franchise and partnership interests in its subsidiary Staten Island Cable, LLC to TWE, subject to the terms and conditions set forth in the October.

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

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

#### **Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (04-V-0858SA2)

### NOTICE OF ADOPTION

#### **Transfer of Certain Cable System Facilities in the City of New York by Time Warner Entertainment Company, L.P.**

**I.D. No.** PSC-43-04-00021-A

**Filing date:** May 5, 2005

**Effective date:** May 5, 2005

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

**Action taken:** The commission, on Jan. 12, 2005, adopted an order in Case 04-V-0859 granting Time Warner Entertainment Company, L.P. (TWE) permission to transfer its franchise title and ownership interests from Queens Inner Unity Cable System to TWE.

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

**Subject:** Transfer of cable system facilities.

**Purpose:** To allow TWE to acquire certain cable system facilities from its subsidiary Queens Inner Unity Cable System.

**Substance of final rule:** The Commission approved a request by Time Warner Entertainment Company, L.P. (TWE) for authorization to transfer cable television franchise and partnership interests from its subsidiary Queens Inner Unity Cable System to TWE, subject to the terms and conditions set forth in the Order.

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

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

#### **Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(04-V-0859SA2)

### NOTICE OF ADOPTION

#### Transfer of Certain Cable System Facilities in and Around Watertown, NY by Time Warner Entertainment Advance/Newhouse Partnership (TWEAN)

**I.D. No.** PSC-43-04-00022-A

**Filing date:** May 5, 2005

**Effective date:** May 5, 2005

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

**Action taken:** The commission, on Jan. 12, 2005, adopted an order in Case 04-V-0860 granting Time Warner Entertainment Advance/Newhouse Partnership (TWEAN) permission to transfer franchise title and ownership interests from its subsidiary CAT Holdings, LLC to TWEAN.

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

**Subject:** Transfer of cable system facilities.

**Purpose:** To allow TWEAN to acquire certain cable system facilities from CAT Holdings, LLC.

**Substance of final rule:** The Commission approved a request by Time Warner Entertainment Advance/Newhouse Partnership (TWEAN) for authorization to transfer cable television franchises and ownership interests from its subsidiary CAT Holdings, Inc. to TWEAN, subject to the terms and conditions set forth in the Order.

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

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

#### Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(04-V-0860SA2)

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

#### Open Market Plan Provisions by Frontier of Rochester, Inc.

**I.D. No.** PSC-21-05-00008-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, Frontier of Rochester, Inc.'s (FTR) petition to terminate the remaining provisions of the open market plan (OMP) relating to the holding company structure and other related provisions. All aspects of the remaining OMP provisions are subject to review. Among those provisions are dividend restrictions related to service quality, rules on affiliate transactions, cash management, capital structure, and related issues.

**Statutory authority:** Public Service Law, sections 91(1), 94(2) and 110

**Subject:** Open market plan provisions.

**Purpose:** To terminate all remaining provisions of the OMP.

**Substance of proposed rule:** The Commission is considering whether to approve or reject, in whole or in part, Frontier of Rochester, Inc.'s (FTR) petition to terminate the remaining provisions of the Open Market Plan (OMP) relating to the holding company structure and other related provisions. All aspects of the remaining OMP provisions are subject to review. Among those provisions are dividend restrictions related to service quality, rules on affiliate transactions, cash management, capital structure, and related issues.

**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. Brillig, 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.

(93-C-0033SA11)

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

#### Caller ID Information by Rockland County

**I.D. No.** PSC-21-05-00009-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition filed by Rockland County concerning unblocking caller ID information for calls to its 311 municipal call center.

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

**Subject:** Unblocking caller ID information for 311 calls to the Rockland County call center.

**Purpose:** To require telephone companies to unblock caller ID on calls placed to the 311 municipal call center in Rockland County.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve or reject, in whole or in part, the petition filed by Rockland County concerning unblocking Caller ID information for calls to its 311 municipal call center.

**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. Brillig, 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.

(05-C-0472SA1)

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

#### Accounting Changes and Over Earnings by State Telephone Company

**I.D. No.** PSC-21-05-00010-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by State Telephone Company to implement certain accounting changes and reduce annual revenues to address over earnings and benefits from the Tax Reform Act of 1986 and other related actions. The company also seeks a waiver from the commission's policy statement on pensions and postretirement benefits other than pensions (OPEB) for 1995 through 2003.

**Statutory authority:** Public Service Law, sections 91, 94(2) and 95(2)

**Subject:** Accounting changes and over earnings.

**Purpose:** To reduce revenue and implement accounting changes to address over earnings.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition filed by State Telephone Company to implement certain accounting changes and reduce annual revenues to address over earnings and benefits from the Tax Reform Act of 1986 and other related actions. The company also seeks a

waiver from the Commission's Policy Statement on Pensions and Postretirement Benefits other than Pensions (OPEB) for 1995 through 2003.

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

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, 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.

(05-C-0509SA1)

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

**Capacity Release Surcharges/Credits by The Brooklyn Union Gas Company**

**I.D. No.** PSC-21-05-00011-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by The Brooklyn Union Gas Company to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 12.

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

**Subject:** Capacity release surcharges/credits.

**Purpose:** To incorporate ESCO/direct customer capacity release surcharges/credits in the company's gas tariff.

**Substance of proposed rule:** The Commission is considering The Brooklyn Union Gas Company's request to incorporate ESCO/Direct Customer capacity release surcharges/credits in the company's tariff.

**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, 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.

(05-G-0532SA1)

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

**Capacity Release Surcharges/Credits by KeySpan Gas East Corporation d/b/a Brooklyn Union of L.I.**

**I.D. No.** PSC-21-05-00012-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by KeySpan Gas East Corporation d/b/a Brooklyn Union of L.I. to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 1.

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

**Subject:** Capacity release surcharges/credits.

**Purpose:** To incorporate ESCO/direct customer capacity release surcharges/credits in the company's gas tariff.

**Substance of proposed rule:** The Commission is considering KeySpan Gas East Corporation d/b/a Brooklyn Union of L.I.'s request to incorporate ESCO/Direct Customer capacity release surcharges/credits in the company's tariff.

**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, 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.

(05-G-0533SA1)

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

**Transfer of Water Plan Assets by the Hamlet of Groveland Station Water Corp. and the Livingston County Water and Sewer Authority**

**I.D. No.** PSC-21-05-00013-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a joint petition filed by the Hamlet of Groveland Station Water Corp. and the Livingston County Water and Sewer Authority for approval of the transfer of the water plant assets of Hamlet of Groveland Station Water Corp. to the Livingston County Water and Sewer Authority.

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

**Subject:** Transfer of water plant assets.

**Purpose:** To approve the transfer.

**Substance of proposed rule:** On May 5, 2005, the Hamlet of Groveland Station Water Corp. (Groveland Station) and the Livingston County Water and Sewer Authority (LCWSA) filed a joint petition for approval of the transfer of the water plant assets of Groveland Station to LCWSA. Groveland Station currently provides water service to 130 customer and is located in the Town of Groveland, Livingston County. The Commission may approve or reject, in whole or in part, or modify the company's request.

**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, 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.

(05-W-0531SA1)

## Racing and Wagering Board

### EMERGENCY RULE MAKING

#### Drug Testing of Horses

**I.D. No.** RWB-21-05-00001-E

**Filing No.** 515

**Filing date:** May 4, 2005

**Effective date:** May 4, 2005

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

**Action taken:** Amendment of sections 4043.6, 4043.7, 4038.18, 4120.10, 4120.11, 4109.7 and 4113.3 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 301 and 902

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

**Specific reasons underlying the finding of necessity:** These rule amendments will provide an effective mechanism to deter the use in the racing horse of the potent tranquilizers reserpine and fluphenazine. Both drugs are being abused in an effort to gain an improper advantage in pari-mutuel racing; however the existing time-based structure of the equine drug rule does not provide effectively for the sanction of abusers and deterrence. These rule amendments will provide an effective mechanism to deter the use of erythropoietin and darbepoietin in the racing horse. These substances are being abused in an effort to gain an improper advantage in pari-mutuel racing; however the existing equine drug rule does not provide an effective means for the sanction of abusers and deterrence. The continued abuse of these drugs and substances, which have no legitimate use in pari-mutuel racing, undermines public confidence in the integrity of racing with resultant loss of willing participants and bettors. This would result in the loss of significant revenues to the State, municipalities, breeders and the industry. In addition, the continued undeterred use of these drugs and substances poses a threat to the safety of both the equine and human racing participants. An emergency rule making is necessary because the Board has determined that emergency adoption is necessary for the preservation of the general welfare and public safety and that standard rule making procedures would be contrary to the public interest.

**Subject:** Testing of horses for the drugs reserpine and fluphenazine and for the antibodies of erythropoietin and darbepoietin, as well as the consequences of positive tests.

**Purpose:** To provide for effective testing for the drugs reserpine and fluphenazine and for the antibodies of erythropoietin and darbepoietin and the consequences of positive tests, in order to deter their use in horses that compete in pari-mutuel racing.

#### **Text of emergency rule:** THOROUGHBRED

AMEND Part 4043 (Drugs Prohibited and Other Prohibitions) to add a new Rule 4043.6:

##### *4043.6 Erythropoietin and Darbepoietin*

(a) A finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from a horse shall establish that the horse is unfit to race in any subsequent race, subject to the provisions of paragraph b.

(b) Any horse that has been the subject of a finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse shall not be entered or allowed to race in any subsequent race until the horse has tested negative for the antibodies of erythropoietin or darbepoietin in a test conducted by the laboratory.

(c) Notwithstanding any inconsistent provision of this Part, a horse shall not be subject to disqualification from the race and from any share of the purse in the race, and the trainer of the horse shall not be subject to application of trainer's responsibility based upon the finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse.

AMEND Rule 4038.18 (Certain Voidable Claims) to add new paragraphs b and c and reletter existing paragraphs b and c to be d and e respectively:

(a) Post-race positive. Should the analysis of a post-race blood or urine sample taken from a claimed horse result in a post-race positive test, the

claimant's trainer shall be promptly notified in writing by the stewards and the claimant shall have the option to void said claim within five days of receipt of such notice by his trainer. An election to void a claim shall be submitted in writing to the stewards by the claimant or his trainer.

(b) Erythropoietin and darbepoietin. Should the analysis of a post-race blood or urine sample taken from a claimed horse result in a finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse, the claimant's trainer shall be promptly notified in writing by the stewards and the claimant shall have the option to void said claim within five days of receipt of such notice by his trainer. An election to void a claim shall be submitted in writing to the stewards by the claimant or his trainer.

(c) Reserpine and fluphenazine. Notwithstanding any inconsistent provision of Part 4043, should the analysis of a post-race blood or urine sample taken from a claimed horse result in a finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample taken from that horse, the claimant's trainer shall be promptly notified in writing by the stewards and the claimant shall have the option to void said claim within five days of receipt of such notice by his trainer. An election to void a claim shall be submitted in writing to the stewards by the claimant or his trainer.

(b)] (d) Upper neurectomy or unreported lower neurectomy. Where an upper neurectomy as defined in subdivision (a) of section 4025.31 of this Subchapter or a lower neurectomy which has not been reported as required in subdivision (b) of section 4025.31 has been performed on a horse prior to the race in which it is claimed, the claimant shall have the option to void said claim upon written notice to the stewards from the claimant or his trainer given within 10 days following the date of the claim.

[(c)] (e) Undeclared pregnant mare. Where a pregnant mare has been claimed which pregnancy has not been disclosed as required in section 4038.17 of this Part, the claimant shall have the option to void the claim upon written notice to the stewards from the claimant or his trainer within 10 days following the date of the claim.

#### HARNESS

AMEND Part 4120 (Drugs Prohibited and Other Prohibitions) by adding a new Rule 4120.10:

##### *4120.10 Erythropoietin and Darbepoietin*

(a) A finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from a horse shall establish that the horse is unfit to race in any subsequent race, subject to the provisions of paragraph b. Such horse shall be placed on the stewards' list.

(b) Any horse that has been the subject of a finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse shall not be entered or allowed to race in any subsequent race until the horse has tested negative for the antibodies of erythropoietin or darbepoietin in a test conducted by the laboratory.

(c) Notwithstanding any inconsistent provision of this Part, a horse shall not be subject to disqualification from the race and from any share of the purse in the race and the trainer of the horse shall not be subject to application of trainer's responsibility based upon the finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse.

AMEND Rule 4109.7 (Certain Voidable Claims) to add new paragraphs b and c and reletter paragraphs b and c to be d and e respectively:

(a) Post-race positive. Should the analysis of a post-race blood or urine sample taken from a claimed horse result in a post-race positive test, the claimant's trainer shall be promptly notified in writing by the judges and the claimant shall have the option to void said claim within five days of receipt of such notice by his trainer. An election to void a claim shall be submitted in writing to the judges by the claimant or his trainer.

(b) Erythropoietin and darbepoietin. Should the analysis of a post-race blood or urine sample taken from a claimed horse result in a finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from that horse, the claimant's trainer shall be promptly notified in writing by the judges and the claimant shall have the option to void said claim within five days of receipt of such notice by his trainer. An election to void a claim shall be submitted in writing to the judges by the claimant or his trainer.

(c) Reserpine and fluphenazine. Notwithstanding any inconsistent provision of Part 4120, should the analysis of a post-race blood or urine sample taken from a claimed horse result in a finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample taken from that horse, the claimant's trainer shall be promptly notified in

writing by the judges and the claimant shall have the option to void said claim within five days of receipt of such notice by his trainer. An election to void a claim shall be submitted in writing to the judges by the claimant or his trainer.

[(b)] (d) Upper neurectomy or unreported lower neurectomy. Where an upper neurectomy as defined in subdivision (a) of section 4025.31 of this Subchapter or a lower neurectomy which has not been reported as required in subdivision (b) of section 4025.31 has been performed on a horse prior to the race in which it is claimed, the claimant shall have the option to void said claim upon written notice to the judges from the claimant or his trainer given within 10 days following the date of the claim.

[(c)] (e) Undeclared pregnant mare. Where a pregnant mare has been claimed which pregnancy has not been disclosed as required in section 4038.17 of this Part, the claimant shall have the option to void the claim upon written notice to the judges from the claimant or his trainer within 10 days following the date of the claim.

AMEND Rule 4113.3 to add a new paragraph i:

4113.3. Reasons for placing a horse on the steward's list.

A horse shall be placed on the steward's list at each track for the following reasons:

- (a) it has a tube in its throat;
- (b) it is dangerous or unmanageable. Such horse must work out before the judges on the main track, secure permission of the judges to qualify and then qualify in two consecutive qualifying races before release from the steward's list;
- (c) it is sick, lame or unfit to race. Such horse must perform before the State veterinarian and be certified fit to race by the State veterinarian before release from the steward's list;
- (d) it is unable to start satisfactorily behind the starting gate. Such horse must work out behind the starting gate, be approved by the starter and then qualify once before release from the steward's list;
- (e) it has been high nerved;
- (f) it has performed poorly. Such horse shall qualify once before release from the steward's list.
- (g) it has tested positively for a drug. Such horse shall qualify in a workout and thereafter test negative for drugs before release from the steward's list.
- (i) it has been the subject of a finding by the laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from the horse. Such horse shall test negative for the antibodies of erythropoietin or darbepoietin in a test conducted by the laboratory before release from the steward's list.

**THOROUGHBRED:**

**4043.7 Reserpine and Fluphenazine**

(a) Notwithstanding any inconsistent provision of this Part, a finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample taken from a horse shall result in the disqualification of the horse from the race and from any share of the purse in the race.

(b) The trainer of a horse which has been the subject of a finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample taken from that horse shall not be subject to application of trainer's responsibility based solely upon the finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample.

**HARNESS:**

**4120.11 Reserpine and Fluphenazine**

(a) Notwithstanding any inconsistent provision of this Part, a finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample taken from a horse shall result in the disqualification of the horse from the race and from any share of the purse in the race.

(b) The trainer of a horse which has been the subject of a finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample taken from that horse shall not be subject to application of trainer's responsibility based solely upon the finding by the laboratory that the drug reserpine or the drug fluphenazine was present in the sample.

**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 May 31, 2005.

**Text of emergency rule and any required statements and analyses may be obtained from:** Jennifer A. Whalen, Assistant Counsel, Racing and Wagering Board, One Watervliet Ave. Ext., Suite 2, Albany, NY 12206-1668, (518) 453-8460, e-mail: info@racing.state.ny.us

**Regulatory Impact Statement**

Statutory authority:

The Board is authorized to promulgate these rules pursuant to Racing, Pari-Mutuel Wagering and Breeding Law Section 101, 301, and 902. The Board has general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State. The Board is authorized to promulgate rules necessary to prevent the administration of drugs or other improper acts to racehorses prior to a race. The Legislature has directed that the Board promulgate any rules necessary to implement equine drug testing so that the public's confidence and the high degree of integrity in racing are assured.

**Legislative objectives:**

To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing.

**Needs and benefits:**

These rule amendments are necessary to provide an effective mechanism to address and deter the use in the racing horse of the tranquilizers reserpine and fluphenazine, as well as the substances erythropoietin and darbepoietin. All drugs are being abused in an effort to gain an improper advantage in pari-mutuel racing.

The substance erythropoietin and darbepoietin, which stimulate red cell production, are similarly being abused. Erythropoietin (EPO) and darbepoietin (D-EPO) are proteins produced by the kidneys to stimulate red blood cell production. These proteins have been produced as drugs through chemical engineering and are used to treat anemia in humans associated with kidney disease and cancer treatment. These two drugs are also used in sports to improve performance due to increased oxygen carrying capacity in both humans and horses. The abuse of EPO/D-EPO is undisputed fact throughout the world.

EPO abuse became so prevalent because there was not a drug test available capable of detecting its use. Dr. George Maylin, Director of the Board's equine drug testing and research program at Cornell University discovered that horses given repeated injections of EPO/D-EPO produced antibodies that could be detected in an ELISA test that he developed. The test is highly specific and is suitable for forensic purposes. This information is derived from tests on samples from horses in competition and research conducted by Dr. Maylin at the Board's Equine Drug Testing and Research Program at Cornell University.

In 2003-2004, Dr. Maylin conducted a field survey on blood samples collected from racehorses in New York State to verify the extent of the abuse problem reported by Board's investigators.

From 9-12-02 to 10-23-03, 403 samples of 37,000 blood samples tested positive for EPO/D-EPO. This was an alarming incidence of abuse. It was ten times the rate of normal drug positives. The results of this study were provided to the Board and in turn, was the basis for promulgation of the rules to regulate the abuse of the drug.

The incidence of EPO/D-EPO positive tests has been reduced from about 400 per year to only several since the rules were put in effect.

Reserpine and Fluphenazine are tranquilizer drugs that are commonly used to treat schizophrenia in humans. There is no therapeutic use of these drugs in a race horse. They are used strictly to affect the performance of a race horse.

In 2003, investigative reports were made to Dr. George Maylin indicating these drugs were being used on racehorses at the racetrack. As a consequence of these findings, Dr. George Maylin developed tests for these drugs, using experimental horses in his own barns, to develop standards and protocols for testing. Through immunoassay screening and confirmation by liquid chromatography and mass spectrometry, and mass spectrometry again, Dr. Maylin found the horse samples could test positive for reserpine and fluphenazine after 21 days of administration to a horse. In view of this fact, it could not be proven that the drug was given in violation of any current board rules, the highest being prohibited administration within seven days of post time. Once the test protocol was formalized, Dr. Maylin conducted testing on race track samples. Samples were confirmed as positive. Thus, in view of the fact that it is being used at the track, the automatic disqualification of the horse in which it is detected and the option of voiding a claim on a claimed horse with the drug present in its system is also necessary.

The Board's existing time-based equine drug rules do not provide effectively for the determination of use or sanctions. The continued and undeterred use of these drugs and substances undermines public confidence in the integrity of racing with corresponding loss of wagering handle. Wagering handle generates significant revenues for the State, municipalities, breeders and tracks. In addition, the continued abuse of the regulated drugs and substances poses a threat to the health of the horse and the safety of both the equine and human participants.

Costs:

These rules will impose no new costs for state or local governments. The rule will not impose any new costs on the Racing and Wagering Board for the implementation and continued administration of the rule. The costs of manpower, testing and incidental expenses will be accomplished within existing budget limitations.

These rules will impose no costs upon regulated parties in order to comply with limitations concerning the use of the regulated drugs and substances. The only costs are those associated with the sanctions in the event of non-compliance.

**Paperwork:**

There is no additional paperwork required by or associated with these rule amendments.

**Local government mandates:**

This rule would impose no local government mandates.

**Duplication:**

There are no other state or federal requirements similar to the provisions contained in the rule amendment.

**Alternative approaches:**

There are no other significant alternatives to this rule, which was drafted to accomplish the stated benefits with the least negative impact upon the pari-mutuel racing industry. No action would fail to address the existing problems associated with continued abuse of the drugs and substances that are the subject of these rules.

**Federal standards:**

The rule does not exceed any minimum standards of the federal government because there are no applicable federal rules.

**Compliance schedule:**

Compliance can be accomplished immediately.

**Regulatory Flexibility Analysis**

**1. Effect of rule:**

The rules do not apply to and thus will not adversely affect local government. The rules will impact all licensed owners and trainers of racehorses that seek to compete in pari-mutuel racing. There are thousands of such licensed owners and/or trainers. The number of horses owned or trained by such licensees may range from one to hundreds. These individuals operate businesses that generally employ less than one hundred persons.

**2. Compliance requirements:**

There are no required reporting or recordkeeping requirements for small businesses. There are no professional services that are likely to be needed to comply with these rules. The rules do not impose any technological requirements on the industry. The compliance component of the rules, i.e. the exclusion of a horse from pari-mutuel racing competition, is a consequence of the report of a positive test. In that situation, the horse may not participate again until the horse has been retested without a positive result.

**3. Professional services:**

There are no professional services required to comply with the proposed rules.

**4. Compliance costs:**

There are few anticipated compliance costs. The licensees should already be monitoring use of drugs and other substances to assure conformity with Board rules. There will be a potential loss of purse monies associated with the exclusion of horses until a clearance test. This cost cannot be estimated due to the competitive nature of horse racing. During this time there might be lower costs associated with the care of the horse if the horse is not maintained in active training status. The cost of the necessary retest will be borne by the Board.

**5. Economic and technological feasibility:**

There are no technological requirements associated with compliance. There should be no costs associated with compliance. Erythropoietin and darbepoietin have no legitimate use in the racing horse and therefore no affirmative compliance requirement exists. The drugs reserpine and fluphenazine are tranquilizers for which alternatives exist. Horsemen may comply with the prohibitions of the rule by use of alternative drugs at an equal or lesser cost.

**6. Minimizing adverse impact:**

The Board attempted to minimize adverse impact, consistent with the need to assure public safety and general welfare, by excluding a horse from competition only for the limited period necessary for a negative retest and by providing for limitation of disciplinary sanctions from the otherwise general application of the trainer's responsibility rule.

**7. Small business and local government participation:**

The Board provided notice of the concepts and general requirements of these rules to various segments of the regulated racing industry. Among

those segments were the representative horsemen's associations. These associations (one per track) include most if not all of the small business industry participants (owners and trainers) as members.

**Rural Area Flexibility Analysis**

**1. Types and estimated numbers of rural areas:**

The rules will impact all licensed owners and trainers of racehorses that seek to compete in pari-mutuel racing. Many of the licensees affected by these rules are located within "rural areas" as that term is defined in New York State Executive Law Section 481(7). The impact of compliance of those entities located in rural areas should be substantially the same as, if not identical to that in other than rural areas.

**2. Reporting, recordkeeping and other compliance requirements:**

There are no required reporting or recordkeeping requirements for small businesses. There are no professional services that are likely to be needed to comply with these rules. The rules do not impose any technological requirements. The compliance component of the rules, i.e. the exclusion of a horse from pari-mutuel racing competition, is a consequence of the report of a positive test. In that situation, the horse may not participate again until the horse has been retested without a positive result.

**3. Costs:**

There are few anticipated compliance costs. The licensees should already be monitoring use of drugs and other substances to assure conformity with Board rules. There will be a potential loss of purse monies associated with the exclusion of horses until a clearance test. This cost cannot be estimated due to the competitive nature of horse racing. During this time there might be lower costs associated with the care of the horse if the horse is not maintained in active training status. The cost of the necessary retest will be borne by the Board.

**4. Minimizing adverse impact:**

As a consequence of the location of horsemen in rural areas, these rules have similar impact on rural areas as on non-rural areas of the State. The geographic location of the horses and horsemen is incidental to the substance of the rule. Consequently, there is no way to design the rule to minimize impact on rural areas.

**5. Rural area participation:**

The Board provided notice of the concepts and general requirements of these rules to various segments of the regulated racing industry. Among those segments were the representative horsemen's associations. These associations (one per track) include most if not all of the rural area small business industry participants (owners and trainers) as members.

**Job Impact Statement**

A job impact statement is not submitted with this notice because the New York State Racing & Wagering Board has determined that these rules will not have a substantial adverse impact on jobs and employment opportunities. The area of potential impact is that which will result from the exclusion of a horse from pari-mutuel competition until such time as the horse tests negative for the drug or substance that resulted in the ineligibility to participate. For the drugs reserpine and fluphenazine, it is estimated that the period of exclusion following the reported result of a positive test would be very short. Based upon the facts that these drugs may not be lawfully administered to the horse within one week before the start of the racing program and the typical ten-day period between the collection of a sample and report of a positive test, there should be a relatively short period of exclusion provided the horse is subject to a prompt retest. Although reserpine and fluphenazine are detectable beyond the one-week period, this situation differs little from the existing situations involving other drugs. Based upon experience, there will be relatively few positive tests and no substantial adverse impact on jobs for industry participants such as trainers and grooms. For the substances erythropoietin and darbepoietin, it is estimated that the period of exclusion following the reported result of a positive test would range from several weeks to a period in excess of 120 days. However, based upon the results of preliminary testing, which involved approximately 37,000 horses, it is estimated that less than one percent of horses actually tested will test positive. All horses are not subject to post-race testing. Although a single horse may be excluded potentially for a period of several months, most owners and trainers do not race only one horse. Thus there should be no likelihood of substantial adverse impact on jobs due to the temporary exclusion of these horses from racing. Furthermore, these horses will still require care even if not actively training or racing.

The New York State Racing and Wagering Board has made this determination based upon the above information and its knowledge and familiarity with the conduct of pari-mutuel wagering throughout New York State.

## EMERGENCY RULE MAKING

### Detection of Elevated TCO<sub>2</sub> in Race Horses

**I.D. No.** RWB-21-05-00004-E

**Filing No.** 518

**Filing date:** May 6, 2005

**Effective date:** May 6, 2005

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

**Action taken:** Amendment of Parts 4043 and 4120 and section 4109.7 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 207, 227, 301, 305, 401, 405, 902; Unconsolidated Laws, section 8162(1)

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

**Specific reasons underlying the finding of necessity:** In January 2005, the U.S. Justice Department arrested a New York-licensed thoroughbred trainer and a prominent New York-licensed harness driver and charged the two with milkshaking a thoroughbred at Aqueduct Raceway in December 2003 to increase the odds that the horse, A One Rocket, would win. According to the Justice Department, this was not an isolated incident and such violations occurred regularly. This case has brought national attention to the issue of milkshaking and the need to adopt testing programs and penalties for such "milkshaking" practices. Clearly, the practice of milkshaking race horses is detrimental to the integrity of the sport of horse racing, erodes public confidence in pari-mutuel wagering events, and invites criminal abuse and exploitation.

**Subject:** Detection of elevated levels of TCO<sub>2</sub> in race horses.

**Purpose:** To detect and deter the prohibited practice known as "milkshaking."

**Substance of emergency rule:** 4043.8(a) Establishes method of testing thoroughbred racehorses to detect excess levels of total carbon dioxide (TCO<sub>2</sub>) using a Clinical Auto Analyzer, establishes the threshold for excess TCO<sub>2</sub> at 37 millimoles per liter.

4043.8(b) Establishes penalties for excess TCO<sub>2</sub> violations in a thoroughbred race horse ranging from a 60-day license suspension and \$1,000 fine to a maximum 60-day license suspension with a \$5,000 fine with a possible one-year Board-imposed license suspension. Includes provision for purse redistribution in case of a positive excess TCO<sub>2</sub> test.

4043.8(c) Establishes procedures for stewards to grant relief in cases where excess TCO<sub>2</sub> levels are found, to allow a thoroughbred horse owner or trainer to place the horse in guarded quarantine to support a claim of naturally occurring excess TCO<sub>2</sub> levels in a horse.

4043.8(d) Establishes that any person participating in the thoroughbred racehorse blood gas testing or thoroughbred racehorse guarded quarantine program shall act at the direction of the Racing and Wagering Board.

4043.8(e) Establishes minimum standards for guarded quarantine of a thoroughbred race horse at a race track operated by a track association.

4043.9(a) Establishes a post-race blood gas-testing program for thoroughbred race horses, and pre-race guarded quarantine procedures and requirements for thoroughbred horses that have been tested and found to have excess TCO<sub>2</sub> levels.

4043.9(b) Establishes pre-race guarded quarantine for horses under the care of a trainer who has been found to have had a horse under his care and custody that was tested and found to have excess TCO<sub>2</sub> levels in the previous 12 months.

4043.9(c) Establishes pre-race guarded quarantine requirements for a thoroughbred horse that has been tested and found to have excess TCO<sub>2</sub> levels.

4043.10 Establishes punishment for failure to cooperate in the thoroughbred post race gas-testing program.

4038.18 Allows claimants in a claiming race to void a claim on a thoroughbred horse that is subsequently found to have excess TCO<sub>2</sub> levels.

4120.13(a) Establishes method of testing harness racehorses to detect excess levels of total carbon dioxide (TCO<sub>2</sub>) using a Clinical Auto Analyzer, establishes the threshold for excess TCO<sub>2</sub> at 37 millimoles per liter.

4120.13(b) Establishes penalties for excess TCO<sub>2</sub> violations in a harness racehorse ranging from a 60-day license suspension and \$1,000 fine to a maximum one-year license suspension with a \$5,000 fine with a possible one-year Board-imposed suspension. Includes provision for purse redistribution in case of a positive excess TCO<sub>2</sub> test.

4120.13(c) Establishes procedures for judges to grant relief in cases where excess TCO<sub>2</sub> levels are found, to allow a harness racehorse owner or trainer to place the horse in guarded quarantine to support a claim of naturally occurring excess TCO<sub>2</sub> levels in a horse.

4120.13(d) Establishes that any person participating in the harness racehorse blood gas testing or thoroughbred guarded quarantine program shall act at the direction of the Racing and Wagering Board.

4120.13(e) Establishes minimum standards for guarded quarantine of a harness racehorse at a race track operated by a track association.

4120.14(a) Establishes a post-race blood gas-testing program for harness racehorses, and pre-race guarded quarantine procedures and requirements for harness racehorses that have been tested and found to have excess TCO<sub>2</sub> levels.

4120.14(b) Establishes pre-race guarded quarantine for harness racehorses under the care of a trainer who has been found to have had a harness racehorse under his care and custody that was tested and found to have excess TCO<sub>2</sub> levels in the previous 12 months.

4120.14(c) Establishes pre-race guarded quarantine requirements for a harness racehorse that has been tested and found to have excess TCO<sub>2</sub> levels.

4120.15 Establishes punishment for failure to cooperate in the harness post race gas testing program.

4109.7(f) Allows claimants in a claiming race to void a claim on a harness racehorse that is subsequently found to have excess TCO<sub>2</sub> levels.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire August 3, 2005.

**Text of emergency rule and any required statements and analyses may be obtained from:** Mark A. Stuart, Racing and Wagering Board, One Watervliet Ave. Ext., Suite 2, Albany, NY 12206, (518) 453-8460, e-mail: mstuart@racing.state.ny.us

#### Regulatory Impact Statement

(a) Statutory authority:

Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 207, 227, 301, 305, 401, 405, 902; Unconsolidated Laws, section 8162(1).

(b) Legislative objectives:

This amendment advances the legislative objective of regulating the conduct of pari-mutuel wagering in a manner designed to maintain the integrity of racing while generating a reasonable revenue for the support of government.

(c) Needs and benefits:

This rule making is necessary to assure the public's confidence and continue the high degree of integrity in racing at the pari-mutuel betting tracks. This rule making will detect and deter the administration of alkali agents to thoroughbred racehorses and harness racehorses for the purpose of affecting the performance of such horse during a pari-mutuel wagering race.

The administration of alkali agents into a racehorse is commonly known as "milkshaking," where a person administers a mixture of sodium bicarbonate, sugar and water to a horse prior to a race mitigate the effects of lactic acid on the horse's muscles during the race, thereby gaining an advantage. Lactic acid is a naturally occurring byproduct of intense muscular exercise in mammals, and the accumulation of lactic acid in such muscles causes fatigue. Some people associated with racehorses believe that the administration of an alkaline substance, such as bicarbonate of soda, can neutralize the effect of lactic acid in a horse's muscles. This has resulted in the use of alkalizing agents, or "milkshakes" which are administered to a racehorse in an attempt to alter the performance of the horse. Based on this belief, people have administered milkshakes to racehorses on the day of a race with the intent to gain a racing advantage.

This rule making is necessary to establish empirical standards and testing procedures for the enforcement of Board Rule 4043.3(d) and Board Rule 4120.3(d), which apply to thoroughbred and harness racehorses respectively and state "No person shall, attempt to, or cause, solicit, request, or conspire with another or others to. . . administer a mixture of bicarbonate of soda and sugar in any of their forms in any manner to a horse within 24 hours of a racing program at which such horse is programmed to race. It shall be the trainer's responsibility to prevent such administration."

Horses that have received an alkalizing agent will exhibit elevated levels of TCO<sub>2</sub> over and above normal levels. This rule making will establish the ion selective electrode method with a clinical auto analyzer as a standard means of detecting elevated TCO<sub>2</sub> in horses, and 37 millimoles per liter as the threshold level for TCO<sub>2</sub>.

In January 2005, the U.S. Justice Department arrested a New York licensed thoroughbred trainer and a prominent New York harness driver and charged the two with milkshaking a thoroughbred at Aqueduct Raceway in December 2003 to increase the odds that the horse, A One Rocket, would win. According to the Justice Department, this was not an isolated incident and such violations occurred regularly. This case has brought national attention to the issue of milkshaking and the need to adopt testing programs and penalties for such "milkshaking" practices. Clearly, the practice of milkshaking race horses is detrimental to the integrity of the sport of horse racing, erodes public confidence in pari-mutuel wagering events, and invites criminal abuse and exploitation.

This rule making will benefit thoroughbred and harness racing by ensuring the betting public that horses that compete in pari-mutuel races have not been tampered with through the administration of alkali agents, thereby ensuring that no extraordinary advantage has been given to the horse through prohibited substances.

(d) Costs:

(i) Thoroughbred horse owners may be subject to the cost of a pre-race guarded quarantine imposed upon any single horse found to have excess TCO2 levels that has not been determined to be physiologically normal for such horse. The track association sponsoring the race is responsible for making available a pre-race quarantine stall, and for maintaining an access log system in either paper or electronic form. The length of time for such quarantine shall be determined by the stewards, and will have an impact on the cost of guarded quarantine. The cost of a paper log is approximately \$10 retail for a ring binder and 500 pages of paper. The cost of an electronic record, such as a personal computer or laptop computer, starts at \$400 in ordinary retail stores.

(ii) There are no costs imposed upon the Racing & Wagering Board, the state or local government because the TCO2 testing program will be implemented utilizing the Board's existing medication testing program, personnel and facilities.

(iii) The Board cannot fully provide a statement of costs the trainers for pre-race guarded quarantine because the actual cost of establishing a pre-race guarded quarantine varies greatly from location to location in New York State, and the physical characteristics of the buildings within which a horse of quarantine. All horses that race at a New York State thoroughbred or harness racetrack are currently afforded stable space for free, so the only added cost that can be expected will be the cost of a guard. A pre-race guarded quarantine may require one guard per horse, or one guard for many horses, depending upon the access points that need to be controlled for an effective guarded quarantine. The Board's rule making requires that the subject horse is kept in an area where access to the subject horse is restricted to authorized licensed trainers, owners and veterinarians as submitted by the owner, that guards maintain a record of all licensed persons who have had access to the horse while in guarded quarantine, along with the time and purpose of the visit. In addition to the distinctive limitations that the guarded quarantine barn will have upon the cost, the wages of a guard varies depending upon the racetrack itself. According to track representatives, the hourly cost of guard may range from \$7 per hour up to \$20 per hour, depending on the individual racetrack, experience required for the specific duties (e.g. a stable guard who is responsible for surveillance only compared to a quarantine supervisor who is responsible for also identifying illegal paraphernalia, treatments or procedures) and local pay scale. The minimum time that a horse is to be quarantined is six hours, and the maximum time for quarantine is 72 hours.

(e) Paperwork:

Owners of any horse that has been found to have an excess levels of TCO2 will be required to submit a letter to the steward or judge of the track where the subject horse is to race, stating that the subject horse has a normally elevated level of TCO2. Such a letter is necessary for a horse to continue racing while under a guarded quarantine. Track associations will be required to maintain access logs, either paper or electronic, for a period of 90 days after the guarded quarantine period.

(f) Local government mandates:

This rule making will not impose any program, service, duty, or responsibility upon any county, city, town, village, school district fire district or other special district.

(g) Duplication:

Since the New York State Racing & Wagering Board is the exclusively responsible for the regulation of pari-mutuel wagering activities in New York State, there are no other relevant rules or other legal requirements of the state or federal government regarding total carbon dioxide testing of thoroughbred racehorses and harness racehorses in New York State.

(h) Alternative approaches:

The Board did not consider any other significant alternatives because no other significant alternates are available. The rule making is based upon an established TCO2 testing program already adopted and in use by the New Jersey Racing Commission. To date, New Jersey is the only state that conducts TCO2 testing and there are no other TCO2 testing methods adopted in any other state. The testing procedure included in this rule making is the only TCO2 test that has been reviewed and declared reliable by a state court, in this case, the New Jersey Supreme Court recognized the reliability of the Beckman test generally and as applied by the New Jersey Racing Commission (Campbell v. New Jersey Racing Commission, New Jersey Supreme Court, 169 N.J. 579, 781 A.2d 1035, October 11, 2001.)

(i) Federal standards:

There are no federal standards applicable to the subject area of state-regulated pari-mutuel wagering activity.

(j) Compliance schedule:

The practice known as "milkshaking" of horses in already prohibited by rule under 9E NYCRR 4043.3 for thoroughbred racehorses and 9E NYCRR 4120.3 for harness racehorses. All of the provisions of this rule making shall be effective immediately upon filing with the Department of State.

**Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis for small businesses and governments is not attached because it is apparent from the nature of the rule making that the rule making will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small business or local governments. The TCO2 test mirrors existing medication testing programs, and while some horse owners may be required to bear the cost of a guarded quarantine, the costs are elective based upon the licensed owner's or trainer's decision to determine the horse's excess TCO2 levels prior to entering the horse in a race.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not attached because it is apparent from the nature of the rule making that the rule making will not impose any adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

**Job Impact Statement**

This rule making will not have an adverse impact on jobs and employment opportunities as apparent from its nature and purpose. This rule making utilizes existing testing personnel and facilities. This rule making may create jobs for guards who are experienced and trained in detention barn security procedures insofar as such skills are necessary in securing a guarded quarantine.

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## State University of New York

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

**Traffic Control Changes at the State University of New York at Stony Brook**

**I.D. No.** SUN-21-05-00006-P

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

**Proposed action:** Amendment of section 584.5 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 360(1)

**Subject:** Traffic control changes on the campus of the State University of New York at Stony Brook.

**Purpose:** To more clearly designate traffic flow, fire zones and lanes.

**Text of proposed rule:** § 584.5 is Amended to read as follows:

§ 584.5 Traffic Control.

(b) Intersectional control—stop intersections.

(1) The intersection of South Drive with the following roads and parking lot access roads:

(i) All exits of South P lot—entrance from the south[.] *except at the entrance to Stony Brook Child Care Center.*

(3)

(ii) Lake [Drive] lots.

(10)

- (ii) All exits from West Drive
- (12) The intersection of Lake [Drive] lots.
- (18) The intersection of Kelly Drive with the following roads:
  - (i) West Drive
  - (ii) Schomberg Apartment Parking Lot access road
- (f) Fire Zones, Fire Lanes,
  - (i) Kelly [Quad access road] Drive from [ North Loop] Circle Road to Roosevelt Quad for traffic proceeding in a counterclockwise direction only.
  - (ii) Main Entrance of University Hospital.
  - (iii) Emergency Room Entrance of University Hospital.
  - (iv) Roadway, east of Student Union
  - (v) Fine Arts Loop, inner curb
  - (vi) Chemistry Building roadway
  - (vii) Humanities Building roadway
  - (viii) Life Sciences Building roadway
  - (ix) Chapin Apartment Roadway
- (g) Traffic Control Signals Traffic control signals
  - (i) South Drive and entrance to Child Care Center
  - (ii) [Forest] Marburger Drive and South Drive
  - (iii) [East Loop Road] Health Sciences Drive and the intersection of Ambulatory Surgery Center/L.I. Veterans' Home.
  - (iv) [East Loop Road] Health Sciences Drive and the intersection of the Main Entrance to University Hospital
  - (v) [East Loop Road] Health Sciences Drive and Health Sciences Service Road.
  - (vi) Flashing Cautionary device immediately north of intersection of [Forest] Marburger Drive and [South Loop] Circle Road.

**Text of proposed rule and any required statements and analyses may be obtained from:** Lynette M. Phillips, SUNY Stony Brook, Office of the University Counsel, 328 Administration Bldg., Stony Brook, NY 11794-1212, (631) 632-6110, e-mail: Lynette.Phillips@sunysb.edu

**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: Education Law § 360(1)
2. Legislative Objectives: To provide for safety and convenience of students, faculty, employees and visitors within and upon the property, roads, streets and highways under the supervision and control of the State University through the regulation of vehicular and pedestrian traffic, parking and signage.
3. Needs and Benefits: Changes in traffic control designations on the State University campus are designed to enable the campus community, visitors and emergency vehicles to traverse the campus more safely and more efficiently.
4. Costs: None.
5. Local Government Mandates: None.
6. Paperwork: None.
7. Duplication: None.
8. Alternatives: None.
9. Federal Standards: There are no related Federal standards.
10. Compliance Schedule: The campus will notify those affected as soon as the rule is effective.

**Regulatory Flexibility Analysis**

No regulatory flexibility analysis is submitted with this notice because this proposal does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments. The proposal addresses traffic control on the campus of the State University of New York at Stony Brook.

**Rural Area Flexibility Analysis**

No rural area flexibility analysis is submitted with this notice because this proposal will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural area. The proposal addresses traffic

control changes on the campus of the State University of New York at Stony Brook.

**Job Impact Statement**

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses traffic control changes on the campus of the State University of New York at Stony Brook.

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## Office of Temporary and Disability Assistance

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

**Section 8 Housing Vouchers**

**I.D. No.** TDA-21-05-00002-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 352.3(d)(2), 352.5(b), (f)(2) and (5)(i); and addition of section 352.3(d)(2)(ii) to Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d), 34(3)(f), 131(1) and 355(3)

**Subject:** Section 8 housing vouchers.

**Purpose:** To establish a reasonable shelter schedule for persons and families receiving temporary assistance and rent subsidies under the Section 8 Voucher Program.

**Text of proposed rule:** Section 352.3(d)(2)(i) is amended to read as follows:

(i) [Section 236 rental assistance program.] *Subsidized housing other than section 8 housing vouchers*[, section 8 housing program (noncertificate)]. The rent allowance for tenants of housing subsidized under [the section 236 rental assistance program or the section 8] a housing assistance payments program, *except as provided in subparagraph (ii) of this paragraph*, is the amount of rent actually paid (exclusive of the subsidy) but not more than the amount in the applicable schedule in subdivisions (a) and (b) of this section.

Section 352.3(d)(2)(ii) is added to read as follows:

(ii) *Section 8 voucher program.*

(a) *The rent for recipients whose rental housing payments are subsidized under the section 8 voucher program (not including a recipient participating in the program of special allowances for owners of manufactured homes) shall be the amount actually paid, but not in excess of the amount (rounded to the nearest whole dollar) equal to 30 percent of the applicable standard of need by family size and district of residence, considering only the SA-2a, SA-2b, SA-2c schedules contained in section 352.2(d) of this Part, and the local agency monthly shelter allowance schedule with children, exclusive of any supplement. For the purpose of this subparagraph, the allowance amounts are those in Office regulation and in effect on the filing date of this subparagraph.*

(b) *Subparagraph (a) of this subdivision shall not apply to recipients whose section 8 vouchers are provided by public housing authorities or other local section 8 voucher issuing agencies that routinely determined the tenants' share of the rent due and payable for months commencing on or before October 1, 2004 to be the local agency shelter maximums under subdivision (a) of this section.*

(c) *The Office shall develop an administrative process to certify whether subparagraph (a) or (b) shall apply to each individual public housing authority or other local section 8 voucher issuing agency.*

The introductory language of section 352.5(b) and sections 352.5(f)(2) and 352.5(f)(5)(i) are amended to read as follows:

(b) Fuel for heating allowances.

Each social services district must grant an allowance for fuel for heating to a public assistance applicant/recipient or self-maintaining grantee in receipt of public assistance for a dependent child or children when it is documented that the applicant/recipient/grantee is the tenant of record, as defined in subdivision (a) of this section, with primary responsibility for payment of the residential heating costs. A fuel for heating allowance must

also be granted to a public assistance applicant/recipient/grantee whose utility heating bill may include costs for service for the applicant/recipient/grantee's own residential unit and for space outside that unit or whose non-utility heating bill includes costs for the applicant/recipient/grantee's own residential unit and for other residential units when it is documented that the applicant/recipient/grantee is the tenant and customer of record as defined in subdivision (a) of this section. When a fuel for heating allowance is granted to an applicant/recipient/grantee who is the customer of record for a utility bill which may include costs for service for the applicant/recipient/grantee's own residential unit and for space outside that unit, the social services district must determine whether a referral for a shared meter investigation, in accordance with the provisions of section 52 of the Public Service Law, is appropriate. [A fuel for heating allowance is not granted to an applicant/recipient/grantee budgeted in accordance with the Section 8 certificate housing provisions outlined in section 352.3(d)(2)(ii) of this Part.] To have primary responsibility for the payment of residential heating costs, the applicant/recipient/grantee must be the customer of record, as defined in subdivision (a) of this section, for the residential heating bill with a home energy vendor. Fuel for heating allowances must be provided on a 12-month heating season (October 1st September 30th) in accordance with the following schedules and must be based upon the applicant/recipient/grantee's primary residential heating source:

(2) Payment must be provided as a nonrecoupable grant when it is documented that during the period specified in paragraph (1) of this subdivision the recipient has fully applied the public assistance grant to purposes intended to be included in such grant. Such documentation for recipients [not budgeted in accordance with the Section 8 certificate housing provisions outlined in section 352.3(d)(2)(ii) of this Part] must include proof of payment of: an amount at least equal to the combined Home Energy Allowance and Supplemental Home Energy Allowance (HEA and SHEA) budgeted in the public assistance grant to domestic (lights, cooking, hot water) energy costs; the monthly fuel for heating allowance budgeted in the public assistance grant to incurred heating costs; and the monthly shelter allowance budgeted in the public assistance grant to shelter costs. In addition, there must be no other evidence of mismanagement. [Documentation for recipients budgeted in accordance with the provisions outlined in section 352.3(d)(2)(ii) of this Part must include proof of payment of: an amount at least equal to the combined Home Energy Allowance and Supplemental Home Energy Allowance (HEA and SHEA) budgeted in the public assistance grant to domestic energy costs (lights, cooking, hot water); an amount at least equal to the shelter allowance budgeted in the public assistance grant towards shelter, heating, water, and other shelter-related items covered by the federal Department of Housing and Urban Development utility allowance. In addition, there must be no other evidence of mismanagement.]

(i) if the recipient's utility bill represents "heat only," [and the recipient does not reside in or is not budgeted in accordance with the Section 8 certificate housing provisions outlined in section 352.3(d)(2)(ii) of this Part.] the recipient's monthly fuel for heating allowance is removed from the recipient's monthly grant. [If the recipient's utility bill represents "heat only" and the recipient does reside in Section 8 certificate housing or is budgeted in accordance with section 352.3(d)(2)(ii) of this Part, the balance of the shelter allowance minus the actual rent obligation, up to an amount equal to the appropriate fuel allowance schedule set forth in subdivision (b) of this section for the appropriate heating type and public assistance household size, is removed from the grant.] Heating costs paid by the district which exceed the amount removed from the recipient's grant are considered to be overpayments subject to recoupment in accordance with section 352.31(d) of this Part;

**Text of proposed rule and any required statements and analyses may be obtained from:** Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573

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

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

#### **Regulatory Impact Statement**

##### 1. Statutory Authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to promulgate regulations to carry out its powers and duties. Section 122 of Part B of Chapter 436 of the Laws of 1997 reorganized the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). The functions of the former Department of Social Services

concerning financial support services were transferred by Chapter 436 to OTDA.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance and care within the State. Section 122 of Part B of Chapter 436 provides that the commissioner of the Department of Social Services will serve as the Commissioner of OTDA.

Section 131(1) of the SSL requires social services officials, insofar as funds are available therefor, to provide adequately for those unable to maintain themselves.

Section 355(3) of the SSL authorizes OTDA to promulgate regulations for the Family Assistance (FA) program.

##### 2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that the Office establish rules, regulations and policies so that adequate provision could be made for those persons unable to provide for themselves and that, whenever possible, such persons can be restored to a condition of self-support and self-care.

##### 3. Needs and Benefits:

The regulations of the Housing and Urban Development (HUD) Section 8 voucher program provide that the tenant's share of the rent is the highest of three calculated amounts: (1) 10% of the family's total income; (2) 30% of the family's gross income adjusted to reflect certain deductions; or (3) in states (such as New York) that pay separate, identifiable shelter allowances for rent up to the amount of the actual charges, the maximum allowable shelter allowance. In New York, the third of these amounts, the applicable maximum shelter and fuel allowances, are almost invariably the highest of the three and are the amount that HUD requires to be charged.

This Office has recently become aware that housing authorities throughout the State have varied greatly in their implementation of HUD requirements, with many charging 30% of income and applying HUD adjustments instead of using New York's maximum shelter and fuel allowances, resulting in vastly differing amounts paid by social services districts for shelter allowances. This disparity caused by the failure to charge tenants the highest of the three calculated amounts affects the amount of the federal Section 8 subsidy, the amount of the recipient's income when calculating food stamp benefits and the amount of assistance owed by the recipient to the social services district and State for past assistance under various provisions of State law providing for recovery or recoupment.

HUD had previously directed housing authorities to recalculate the rent payable by public assistance recipients to conform to its regulations by January 1, 2005. The increases in rent would have strained the budgets of the affected social services districts, which have not had sufficient time to prepare for this cost, impairing their ability to meet administrative obligations and to provide services and supports to recipients, while simultaneously reducing federal subsidies and the food stamp allotments of Section 8 tenants.

These changes to the State's regulations governing the shelter allowance of applicants and recipients of public assistance who participate in the Section 8 voucher program provide that New York will pay a rent allowance of up to 30% of the total of the maximum allowances otherwise available for basic needs, shelter, fuel and energy. This will provide a measure of uniformity and insure that participants in the voucher program will not receive a lower subsidy than other families based only on the fact that they also receive public assistance. The reduced Section 8 voucher subsidy that would otherwise be paid on January 1, 2005, would increase public assistance benefits without increasing spending power. Since food stamp benefits are generally reduced by any increase in income, the change would produce a reduction in food stamps. Public assistance families who participate in the Section 8 voucher program are therefore likely to be disadvantaged in a way that non-public assistance families with the same level of income are not. The Office has taken into consideration the effect of this change on the income of public housing authorities. For public housing authorities that were not charging the applicable New York State maximum shelter and fuel allowances, these changes will produce a moderate increase in rental income, although not so large as would have been generated by using the State's maximum allowances. The Office recognizes that some public housing authorities have already been calculating the tenant's share using the local district shelter maximums. If this rule were applied to those public housing authorities, the resulting substantial reduction in shelter allowances would be highly disruptive. In order to mitigate any negative financial impact of this change on those authorities, and since their tenants have already absorbed any negative impact on the food stamps benefit, this change includes a grandfathering provision. The

Office will develop an administrative process for determining whether or not a public housing authority or other local Section 8 voucher issuing agency will qualify under the grandfathering provision.

#### 4. Costs:

The regulatory change will result in cost avoidance to the State and local governments. If the change is not made and housing authorities are allowed to increase rents to the maximums allowed for each social services district, it is projected that there will be additional costs of approximately \$52 million gross annually, with a State and local share of \$19 million each and a federal share of \$14 million.

Adoption of the proposed amendments would potentially result in a slight increase in costs due to the need to revise the budgeting methodology for determining the amount of assistance to be provided to public assistance recipients. Based on an extensive analysis of current average shelter allowances, case sizes and the current resident rent calculation worksheet, it is anticipated that the regulatory change will result in an average shelter increase of \$12 per month per recipient. Gross annual costs as a result of this increase are projected to be \$5.25 million with a State and local share of approximately \$1.9 million each and a federal share of \$1.45 million.

Taking into account the cost avoidance plus the anticipated cost associated with the amendments, the net result of the regulatory change is a cost avoidance of \$47 million gross with the State and local shares estimated to be \$17 million each and the federal share estimated to be \$13 million.

#### 5. Local Government Mandates:

This change will result in local social services districts having to rebudget the benefits for individuals and families receiving Section 8 voucher subsidies. Although local social services districts already must communicate with the public housing authorities or other local Section 8 voucher issuing agencies in their districts, a greater level of communication will be required at the initial implementation stage of this change.

#### 6. Paperwork:

Local social services districts will have to rebudget affected cases and provide timely and adequate notice to those households. The change is likely to result in increased requests for administrative fair hearings, at least initially.

Those public housing authorities or other local Section 8 voucher issuing agencies which claim to qualify under the grandfathering provision of the proposed regulations must verify that they qualify and will have to provide this Office and/or the local social services office with documentation necessary to validate that claim.

#### 7. Duplication:

This regulation does not duplicate any other requirements. Rather, it establishes a separate budgeting methodology that applies only to certain public assistance households with Section 8 voucher program subsidies.

#### 8. Alternatives:

The alternative is to leave the budgeting unchanged. This is not a desirable alternative since it results in public assistance households with Section 8 voucher program subsidies being treated less favorably than Section 8 voucher families who do not receive public assistance.

#### 9. Federal Standards:

There are no federal standards that impact OTDA's decisions about how to determine a family's shelter allowance.

#### 10. Compliance Schedule:

The changes will be effective when the regulations become effective and local social services districts will be required to implement the changes no later than the next contact with the family.

### **Regulatory Flexibility Analysis**

#### 1. Effect of Rule:

The proposed amendments will have no impact on small businesses but will have an impact on the 58 local social services districts in the State. The proposed amendments also will have an impact on the federal offices of the Department of Housing and Urban Development located in this State that issue section 8 housing vouchers.

#### 2. Compliance Requirements:

The proposed amendments will require social services districts to rebudget the public assistance benefits for individuals and families receiving section 8 housing vouchers unless the issuing agency is exempt under the grandfathering provision of the proposed regulations.

#### 3. Professional Services:

The proposed amendments will not require local governments to incur costs for additional professional services.

#### 4. Compliance Costs:

The proposed amendments will not require additional compliance costs for small businesses. Local social services districts will experience an

additional workload during the implementation stage of this change. The costs associated with this additional workload will not be extensive but cannot be projected at this time.

#### 5. Economic and Technological Feasibility:

Local governments have the electronic and technological ability to comply with these regulations when they become effective.

#### 6. Minimizing Adverse Impact:

There will be no adverse impact on small businesses. Local social services districts will have an initial increased workload but the workload will stabilize after the proposed amendments become operational.

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

Social services districts were not made aware of the proposed amendments prior to the regulations being adopted on an emergency basis. Upon filing the emergency regulations, the social services districts will be made aware of the proposed amendments and it is anticipated that they will support the amendments.

### **Rural Area Flexibility Analysis**

#### 1. Type and estimated numbers of rural areas:

The proposed regulations will affect the 44 rural social services districts in the State.

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

The proposed regulations will require social services districts to rebudget the public assistance benefits for individuals and families receiving section 8 housing vouchers unless the issuing agency is exempt under the grandfathering provision of the proposed regulations. No new professional services will be imposed on the social services districts in rural areas in order for those districts to comply with the proposed regulations.

#### 3. Costs:

Local social services districts in rural areas will experience an additional workload during the implementation stage of the change. The costs associated with this additional workload will not be extensive but cannot be projected at this time.

#### 4. Minimizing adverse impact:

The proposed regulations will not have an adverse economic impact on social services districts in rural areas.

#### 5. Rural area participation:

Social services districts in rural areas were not made aware of the proposed amendments prior to the regulations being adopted on an emergency basis. Upon filing the emergency regulations, the social services districts in rural areas will be made aware of the proposed amendments and it is anticipated that they will support the amendments.

### **Job Impact Statement**

A job impact statement has not been prepared for the proposed regulatory amendments. It is evident from the subject matter of the amendments that the job of the worker making the decisions required by the proposed amendments will not be affected in any real way. Thus, the changes will not have any impact on jobs and employment opportunities in the State.