RULE MAKING ACTIVITIES

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

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

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

Office of Alcoholism and Substance Abuse Services

NOTICE OF ADOPTION

Problem Gambling Treatment and Recovery Services

I.D. No. ASA-12-18-00001-A
Filing No. 154
Filing Date: 2019-03-05
Effective Date: 2019-03-20

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

Action taken: Repeal of Part 857; addition of new Part 857 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07, 19.09, 32.01, 32.02 and 32.07

Subject: Problem Gambling Treatment and Recovery Services.

Purpose: Repeals existing gambling regulation; replaces with substantially updated provisions.

Text or summary was published in the March 21, 2018 issue of the Register, I.D. No. ASA-12-18-00001-P.

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

Revised rule making(s) were previously published in the State Register on October 17, 2018.

Text of rule and any required statements and analyses may be obtained from: Carmelita Cruz, Senior Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2312, email: Carmelita.Cruz@oasas.ny.gov

Initial Review of Rule
As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment
The agency received no public comment.

Department of Environmental Conservation

NOTICE OF ADOPTION

Northern Catskill Riparian Areas

I.D. No. ENV-49-18-00002-A
Filing No. 150
Filing Date: 2019-03-04
Effective Date: 2019-03-20

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

Action taken: Amendment of section 190.36 of Title 6 NYCRR.

Statutory authority: Environmental Consevation Law, sections 1-0101(3)(b), 3-0101(1)(d), 3-0301(1)(b), (2)(m), 9-0105(1) and (3)

Subject: Northern Catskill Riparian Areas.

Purpose: To correct a mistake in the description of Kaaterskill Falls Riparian Area.

Text or summary was published in the December 5, 2018 issue of the Register, I.D. No. ENV-49-18-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Peter Innes, Assistant Director of Lands and Forests, DEC, 625 Broadway, Albany, NY 12233, (518) 402-9405, email: peter.innes@dec.ny.gov

Additional matter required by statute: A Short EAF was completed for compliance with the State Environmental Quality Review Act.

Revised Job Impact Statement
Existing section 190.36 of 6 NYCRR will be amended to correct a mistake in the description of the Kaaterskill Falls Riparian Area which lists Kaaterskill Creek bed instead of Spruce Creek bed, the correct location identifier. A Job Impact Statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed regulation will correct a mistake in the description, which if left uncorrected could compromise enforcement efforts.

Assessment of Public Comment
The agency received no public comment.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Air Emissions Regulation of Cleaning Solutions Containing Volatile Organic Compounds

I.D. No. ENV-12-19-00002-P

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

Proposed Action: Amendment of Parts 201 and 226 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105

Subject: Air emissions regulation of cleaning solutions containing volatile organic compounds.

Purpose: Update existing regulation with latest emission control requirements and add requirements recently issued by EPA.

Public hearing(s) will be held at: 1:00 p.m., May 22, 2019 at Department of Environmental Conservation, 6274 Avon-Lima Rd. (Rtes. 5 and 20), Conference Rm., Avon, NY; and 1:00 p.m., May 24, 2019 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A/B, Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired 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.

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

Substance of proposed rule (Full text is posted at the following State website: http://www.dec.ny.gov/regulations/propregulations.html# public): The New York State Department of Environmental Conservation (Department) proposes to: amend the current Part 226 entitled "Solvent Metal Cleaning Processes" by re-designating it Subpart 226-1 and renaming it "Solvent Cleaning Processes"; add a new Subpart 226-2, entitled "Industrial Cleaning Solvents" and make attendant changes to Part 201, 'Permits and Registrations' of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (6 NYCRR). The proposed changes to Part 226 are intended to reflect changes to the Ozone Transport Commission's (OTC's) model rule for solvent degreasing and incorporate federal Control Techniques Guidelines (CTGs) establishing Reasonably Available Control Technology (RACT) for volatile organic compounds (VOCs) emitted by industrial cleaning solvents.

Consistent with the OTC's model rule, the proposed changes to Part 226 include expanding applicability to the cleaning of all materials, not just metal; and changing the current 'cold cleaning' requirement of using a solvent with a maximum vapor pressure of 1.0 mm Hg, or less, at 20 degrees Celsius, to using a cleaner with no more than twenty-five (25) grams of VOC per liter (25g/l) of cleaning solution. No changes are being proposed for the other Part 226 solvent cleaning processes (open top vapor or conveyorized degreasing).

Based on the US Environmental Protection Agency's 'Industrial Cleaning Solvents' CTG (2006), owners or operators subject to the proposed Subpart 226-2 'Industrial Cleaning Solvents' will have work practice, recordkeeping and storage requirements for their cleaners that contain VOCs. Cleaning solutions will also have a maximum VOC content limit of fifty (50) grams of VOC per liter (0.42 pounds of VOC per gallon) of cleaning material or, as an alternative to this maximum VOC content, an industrial cleaning solvent with a maximum composite vapor pressure of eight (8) millimeters of mercury (mmHg) at 20 degrees Celsius may also be used. Using an emission control system with an overall control efficiency of at least 85 percent or equivalent control is also an acceptable form of compliance.

Where it can be demonstrated by the owner or operator of a facility that the requirements of proposed Subparts 226-1 or 226-2 cannot be met, for reasons of technological and economic infeasibility, the Department may accept a lesser degree of control upon submission of a satisfactory process specific RACT demonstration.

Proposed revisions to Part 201 include removing an exemption for cold cleaning degreasers that use a solvent with a VOC content of five percent or less by weight. This will remove potential confusion with the revised VOC limit of 25 grams VOC/liter for cold cleaners in the proposed rule. Also, a caveat will be added to a trivial exemption for solvent cleaning by hand, as hand wiping is specifically subject to the industrial cleaning solvent regulation being proposed (Subpart 226-2).

Text of proposed rule and any required statements and analyses may be obtained from: John Henkes, NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, email: air.regs@dec.ny.gov

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

Public comment will be received until: May 29, 2019.

Additional matter required by statute: Pursuant to Article 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.

Summary of Regulatory Impact Statement (Full text is posted at the following State website:http://www.dec.ny.gov/regulations/propregulations.html#public):

STATUTORY AUTHORITY

The New York State (NYS) statutory authority for these regulations is found in the Environmental Conservation Law (ECL) Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105. Descriptions of these referenced ECL sections are contained in the Regulatory Impact Statement.

LEGISLATIVE OBJECTIVES

In enacting the Title I ozone control requirements of the 1990 Clean Air Act (CAA) amendments, Congress recognized the hazards of ground-level ozone pollution and mandated that States implement stringent regulatory programs in order to meet the National Ambient Air Quality Standard (NAAQS) for ozone. The Department is undertaking this rulemaking to satisfy New York's obligations under the CAA and in a manner consistent with ECL Article 19.

Articles 1 and 3 of the ECL establish the overall State policy goal of reducing air pollution and providing clean air for the citizens of New York and provide general authority to adopt and enforce measures to do so. In addition to the general powers and duties of the Department and the Commissioner to prevent and control air pollution found in Articles 1 and 3, Article 19 of the ECL was specifically adopted to safeguard the air quality of New York from pollution. Under Article 19, the Department is authorized to formulate, adopt, promulgate, amend and repeal regulations for preventing, controlling and prohibiting air pollution. This Department is also authorized to promulgate rules and regulations for preventing, controlling or prohibiting air pollution in such areas of the State as shall or may be affected by air pollution. In addition, this authority also includes the preparation of a general comprehensive plan for the control or abatement of existing air pollution and for the control or prevention of any new air pollution recognizing various requirements for different areas of the State.

In 1970, Congress amended the CAA "to provide for a more effective program to improve the quality of the Nation's air." The statute directed EPA to adopt National Ambient Air Quality Standards (NAAQS) and required states to develop implementation plans known as State Implementation Plans (SIPs) which prescribed the measures needed to attain the NAAQS. In 1977 the Act was amended to require states to identify areas that did not meet the NAAQS; these areas would then be designated as "nonattainment" areas. States with these "nonattainment" areas were then required to include specific requirements in their SIPs, including requirements relating to new source review, reasonably available control technology, emission inventories and projections, and contingency measures.

Congress again amended the Act in 1990 with the goal of setting more realistic deadlines while requiring reasonable progress towards attainment. The 1990 CAA amendments required states to implement stringent regulatory programs associated with one of the chemical precursors of ozone: Volatile Organic Compounds (VOCs). In particular, CAA section 172(c)(1) provides that, for certain nonattainment areas, states must revise their SIPs to include reasonably available control measures as expeditiously as possible, including emissions reductions achievable by requiring "reasonably available control technology" (RACT) for sources of VOC emissions. Under EPA's current RACT scheme, pollution controls are required for VOC emission sources listed in designated source categories under EPA's Control Techniques Guidelines (CTGs), including CTGs establishing RACT for industrial cleaning solvents. CAA section 182(b)(2)(A) requires that, for certain nonattainment areas, states must revise their SIPs to include RACT for sources of VOC emissions covered by any CTGs issued between November 15, 1990 and the area's date of attainment. Additionally, CAA section 184(b)(1)(B) requires implementation of RACT statewide in states that are located within an Ozone Transport Region (OTR). New York is one of the several states located in the OTR required under the CAA to revise its SIP to include RACT requirements statewide for each of the source categories identified in the federal CTGs, including RACT for industrial cleaning solvents.

NEEDS AND BENEFITS

Adoption of the proposed revisions to Part 226 will help fulfill state and federal legislative objectives by imposing RACT controls on solvent cleaning processes and industrial cleaning solvents in the source categories identified in the latest federal CTGs thereby further reducing New York's VOCs emissions from solvent cleaning processes and industrial cleaning solvents, reducing harmful ground-level ozone pollution, and allowing the State to attain the NAAQS for ozone.

There are two types of ozone, stratospheric and ground level ozone. Ozone in the stratosphere is naturally occurring and desirable because it shields the earth from carcinogenic ultraviolet radiation. In contrast, ground level ozone, or smog, results from the mixing of VOCs and NOx on hot, sunny, summer days, and can harm humans and plants. As a result, EPA established the primary ozone NAAQS to protect public health.

Ground-level ozone severely impacts human longevity and respiratory health. 'See generally' Senate Committee on Environment and Public Health, S. Rep. No. 101-228 (1990), 'reprinted in' 1990 U.S.C.C.A.N. 3385. Long term, chronic exposure to ozone may produce accelerated aging of the lung analogous to that produced by cigarette smoke exposure. 'Id.' In 1995, EPA recognized that "[m]uch of the ozone inhaled reacts with sensitive lung tissues, irritating and inflaming the lungs, and causing a host of short-term adverse health consequences including chest pains, shortness of breath, coughing, nausea, throat irritation, and increased susceptibility to respiratory infections." 60 Fed. Reg. 4712-13 (Jan. 24, 1995). Moreover, two recent studies have shown a definitive link between short-term exposure to ozone and human mortality. 'See' 292 'Journal of the American Medical Asssn.' 2372-78 (Nov. 17, 2004); 170 'Am. J. Respir. Crit. Care Med.' 1080-87 (July 28, 2004) (observing significant ozone-related deaths in the NYCMA).

Children and outdoor workers are especially at risk for damaging effects caused by ozone exposure. A child's developing respiratory system is more susceptible than an adult's. Additionally, ozone is a summertime phenomenon; Children are outside playing and exercising more often during the summer which results in greater exposure to ozone than many adults. Outdoor workers are also more susceptible to lung damage because of their increased exposure to ozone during the summer months.

In 2006, EPA recognized a number of epidemiological and controlled human exposure studies that: suggest that asthmatic individuals are at greater risk for a variety of ozone-related effects including increased respiratory symptoms, increased medication usage, increased doctor and emergency room visits, and hospital admissions; provide highly suggestive evidence that short-term ambient ozone exposure contributes to mortality; and report health effects at ozone concentrations lower than the level of the current standards, as low as 0.04 parts per million (ppm) for some highly sensitive individuals. See 'Fact Sheet: Review of National Ambient Air Quality Standards for Ozone Second Draft Staff Paper, Human Exposure and Risk Assessments and First Draft Environmental Report', U.S. Environmental Protection Agency, July 2006.

Ground level ozone also interferes with the ability of plants to produce and store food, which compromises growth, reproduction and overall plant health. By weakening sensitive vegetation, ozone makes plants more susceptible to disease, pests and environmental stresses. Ozone has been shown to reduce yields for many economically important crops (e.g., corn, kidney beans, soybeans). Also, ozone damage to long-lived species such as trees (by killing or damaging leaves) can significantly decrease the natural beauty of an area, such as the Adirondacks.

As discussed above, the proposed revisions to Part 226 will also allow the state to satisfy state and federal legislative objectives by imposing RACT to control VOC emissions from solvent cleaning processes and industrial cleaning solvents in New York, thus furthering the goal of attaining the federally-mandated ozone NAAQS. A discussion of CAA and regulatory needs and benefits are further detailed in the "Regulatory Impact Statement" (RIS) and other rulemaking documents.

COSTS

Costs to Regulated Parties and Consumers

The Ozone Transport Commission (OTC) estimates the costs associated with changes to solvent cleaning processes (proposed Part 226-1) to be on the order of $1,400 per ton of VOC reduced. The Department asserts that these costs are well within the framework of RACT programs.

The EPA, in its Industrial Cleaning Solvent CTG (proposed Part 226-2), concluded that facilities may incur minimal additional cost or realize a savings on a case by case basis. It estimated that replacing high VOC content cleaning materials with low VOC cleaning materials for large manufactured surfaces, tank cleaning and gun cleaning would result in a coast savings of $1,330 per ton of VOC used. For this calculation, only cleaning material and waste disposal costs were considered. Here too, the Department has determined that these costs align with RACT protocol.

Costs to State and Local Governments

As discussed above, this requirement flows from the State's obligations under the CAA. This is not a mandate on local governments. It applies equally to any entity that owns or operates a subject source; applying statewide to all solvent cleaning processes and industrial cleaning solvents located in the State. State and local entities are not expected to be affected by the proposed revisions/additions. There are no expected direct costs to State and local governments associated with this proposed regulation. No recordkeeping, reporting, or other requirements will be imposed on local governments. The authority and responsibility for implementing and administering Subpart 226-1 and Subpart 226-2 in New York resides solely with the Department. Added requirements for recordkeeping, reporting, etc. are applicable only to the person(s) who become subject to the industrial cleaning solvent regulation and persons who become subject to solvent cleaning processes because they were cleaning objects other than metal.

Costs to the Regulating Agency

Administrative costs to the regulating agency will not increase.

PAPERWORK

No additional paperwork will be imposed on the solvent cleaning process industry and industries subject to the industrial cleaning solvent regulation will have minimal recordkeeping requirements.

LOCAL GOVERNMENT MANDATES

This is not a mandate on local governments. It applies equally to any entity that owns or operates a subject source. Local entities are not expected to be affected by the proposed revisions.

DUPLICATION

No other regulations address the specific requirements to reduce VOC emissions from the affected industries.

ALTERNATIVES

The following alternatives have been evaluated to address the goals set forth above. These are:

1. Take no action. The "no action" alternative does not comply with the CAA. Failure to comply with the CAA could result in an EPA imposed Federal Implementation Plan (FIP) pursuant to CAA section 110(c), sanctions in the form of an increase in the new source review offsets ratio to 2 to 1, and the loss of Federal highway funding pursuant to CAA section 179.

2. The proposed revisions to Part 226 contain alternatives for compliance. Both solvent cleaning processes and industrial cleaning solvent regulations have compliant material requirements and a RACT variance provision; solvent cleaning processes also have the option of using add-on controls for compliance. These alternative compliance provisions are preferable because they are consistent with the federal CTGs and OTC model rule, will help New York State achieve necessary VOC emission reductions, and will satisfy the State's obligations under the CAA.

FEDERAL STANDARDS

The revisions are designed to comply with the requirements outlined in the CTG and OTC Model Rule.

COMPLIANCE SCHEDULE

In accordance with the CTGs and the CAA, States should submit SIP revisions within one year of the date of issuance of final CTGs. Based on the various dates of issuance of the CTGs, the Department should submit SIP revisions as soon as practicable.

Regulatory Flexibility Analysis

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 226 and 201. The proposed changes to Part 226, and attendant revisions to Part 201, will incorporate the Control Techniques Guidelines (CTG) Industrial Cleaning Solvents issued by the Environmental Protection Agency (EPA) in September 2006 and the Ozone Transport Commission's (OTC) Model Rule for Solvent Degreasing issued in 2012. Federal CTGs establish Reasonably Available Control Technology (RACT) for volatile organic compounds (VOCs) emitted by solvent cleaning processes. Pursuant to the Clean Air Act (CAA), the Department is required to submit the Part 226 revisions to EPA for state implementation plan (SIP) review and approval. The OTC provides guidance to member states on methods of reducing VOC emissions and has suggested changes to applicability and VOC content for solvent degreasing.

EFFECTS ON SMALL BUSINESS AND LOCAL GOVERNMENTS:

The proposed revisions to Part 226 apply statewide. As detailed in the RIS, this is a requirement flowing from the State's obligations under the Clean Air Act. This is not a mandate on local governments. The proposed revisions apply to any entity that owns or operates a subject source. Facilities that engage in solvent cleaning processes (Subpart 226-1) will have new VOC content limits. Facilities that use 3 tons or more of industrial cleaning solvents per year will be subject to new requirements in Subpart 226-2 as applicable.

COMPLIANCE REQUIREMENTS:

There are no specific requirements in the regulation which apply exclusively to small businesses or local governments. Local governments are not directly affected by the proposed revisions.

PROFESSIONAL SERVICES:

Small businesses and local governments are not expected to need professional services to comply with the revisions to Subpart 226-1. Local governments are not directly affected by the proposed revisions. Facilities which are currently permitted and that will become subject to Subpart 226-2 (estimated to be 13 facilities state wide) may need to seek minimal professional services in the form of guidance in altering their processes to come into compliance.

COMPLIANCE COSTS:

The Industrial Cleaning Solvent CTG (addition of Part 226-2) concluded that facilities may incur minimal additional cost or realize a savings on a case by case basis. It estimated that replacing high VOC content cleaning materials with low VOC water-based cleaning materials for large manufactured surfaces, tank cleaning and gun cleaning, would result in a coast savings of $1,330/ton of VOC used. For this calculation only cleaning material and waste disposal costs were considered. The Department considers these costs to be well within RACT guidelines.

The OTC estimates the costs associated with changes to solvent cleaning processes (changes to Part 226-1) to be on the order of $1,400 per ton of VOC reduced. The Department considers these costs to also be well within RACT guidelines.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

As noted earlier, this requirement flows from the State's obligations under the CAA. This is not a mandate on local governments. It applies equally to any entity that owns or operates a subject source. Compliant products are available for all solvent cleaning processes and industrial cleaning solvents and are affordable.

MINIMIZING ADVERSE IMPACT:

No adverse impacts to the environment or regulated industry are expected. The proposed revisions are intended to reduce VOC emissions to the environment. Local governments are not expected to be directly affected by the proposed revisions.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Since local governments are not expected to be directly affected by the proposed revisions, the Department did not contact local governments directly. The Department did provide advance notice of these rule revisions to the regulated community so that they would have sufficient time to take the necessary steps to come into compliance with the rule. Additionally, the Department plans on holding public hearings at various locations throughout New York State after the revisions are proposed. Small businesses will have the opportunity to attend these public hearings; and there will be a public comment period in which interested parties can submit written comments. Public participation and comment will also be available during EPA's SIP approval process.

CURE PERIOD:

In accordance with NYS State Administrative Procedures Act (SAPA) Section 202-b, this rulemaking does not include a cure period because the Department is undertaking this rulemaking to comply with federal Clean Air Act requirements, requiring the incorporation of federal CTGs to establish RACT for industrial cleaning solvents for inclusion into the state implementation plan.

Rural Area Flexibility Analysis

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 226, 200, and 201. The proposed changes to Part 226, and attendant revisions to Part 201, will incorporate the Control Techniques Guidelines (CTG) Industrial Cleaning Solvents issued by the Environmental Protection Agency (EPA) in September 2006 and the Ozone Transport Commission's (OTC) Model Rule for Solvent Degreasing issued in 2012. Federal CTGs establish Reasonably Available Control Technology (RACT) for volatile organic compounds (VOCs) emitted by solvent cleaning processes. Pursuant to the Clean Air Act (CAA), the Department is required to submit the Part 226 revisions to EPA for state implementation plan (SIP) review and approval. The OTC provides guidance to member states on methods of reducing VOC emissions; and has suggested changes to applicability and VOC content for solvent degreasing.

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed revisions to Part 226 and attendant revisions to Part 201 apply statewide. All rural areas of New York State will be affected.

REPORTING, RECORDKEEPING AND COMPLIANCE REQUIREMENTS; PROFESSIONAL SERVICES:

There are no specific compliance requirements in this proposed rulemaking which apply exclusively to rural areas of the State. Studies have shown that solvent cleaning processes and use of industrial cleaning solvents is distributed proportionately with population. Rural areas are not particularly affected by the revisions. All facilities conducting solvent cleaning processes will be required to comply with applicable recordkeeping, VOC content and handling requirements. Under current law, these requirements have been required at all such facilities and are essentially unchanged since Part 226 was last amended in 2003. Facilities that use 3 tons or more of industrial cleaning solvents per year will have new VOC content or vapor pressure limits, and recordkeeping and handling requirements. Only minimal professional services might be necessary to comply with these changes. It is estimated that 13 facilities state wide use 3 tons or more of industrial cleaning solvents per year, which will become newly subject to Part 226. This may require some minimal utilization of professional services for guidance in changing their cleaning solvents to comply with the new requirements.

COSTS:

There are no specific costs in this proposed rulemaking which apply exclusively to rural areas of the State. Facilities subject to the new industrial cleaning solvent requirements may incur minimal additional cost or realize a savings on a case by case basis. It is estimated that replacing high VOC content cleaning materials with low VOC water-based cleaning materials for large manufactured surfaces, tank cleaning and gun cleaning, would result in a coast savings of $1,330/ton of VOC used. For this calculation only cleaning material and waste disposal costs were considered. The Department considers these costs to be well within RACT guidelines.

Changes to cleaning solvent processes are expected to be on the order of $1,400 per ton of VOC reduced. The Department considers these costs to also be well within RACT guidelines.

MINIMIZING ADVERSE IMPACT:

The Department is providing advance notice of these rule revisions to the regulated community so that companies have sufficient time to take the necessary steps to come into compliance with Part 226. The proposed revision also includes time for subject sources to come into compliance. Changes to Part 226 are not anticipated to have an adverse effect on rural areas. To date, the Department is unaware of any particular adverse impacts experienced by rural areas as a result of the regulation. Rather, the rule is intended to create air quality benefits for the entire state, including rural areas, through the reduction of ozone forming pollutants.

RURAL AREA PARTICIPATION:

Since rural areas are not particularly affected by the revisions, the Department did not directly contact rural area facilities. However, the Department did provide advance notice of these rule revisions to the regulated community so that they would have sufficient time to take the necessary steps to come into compliance with the rule. Also, the Department plans on holding public hearings after the revisions are proposed. All facilities, including those located in rural areas of the state, will have the opportunity to attend these public hearings; and there will be a public comment period in which interested parties can submit written comments. Public participation and comment will also be available during EPA's SIP approval process.

Job Impact Statement

NATURE OF IMPACT:

The New York State Department of Environmental Conservation (Department) proposes to revise 6 NYCRR Parts 226, 200, and 201. The proposed changes to Part 226, and attendant revisions to Part 201, will incorporate the Control Techniques Guidelines (CTG) Industrial Cleaning Solvents issued by the Environmental Protection Agency (EPA) in September 2006 and the Ozone Transport Commissions (OTC) Model Rule for Solvent Degreasing issued in 2012. Federal CTGs establish Reasonably Available Control Technology (RACT) for volatile organic compounds (VOCs) emitted by solvent cleaning processes. Pursuant to the Clean Air Act (CAA), the Department is required to submit the Part 226 revisions to EPA for state implementation plan (SIP) review and approval. The OTC provides guidance to member states on methods of reducing VOC emissions; and has suggested changes to applicability and VOC content for solvent degreasing.

CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED:

The proposed revisions to Part 226 affect owners/operators of solvent cleaning processes, and those who use industrial cleaning solvents statewide. The revisions are not expected to adversely impact jobs and employment opportunities in New York State. The proposed revisions to Part 226 may affect existing facilities by requiring them to lower the VOC content and/or vapor pressure of the solvents used in their processes. This may require minimal consultation utilization to evaluate the necessity of process modifications. In such cases, jobs and employment opportunities may increase as a result.

REGIONS OF ADVERSE IMPACT:

There are no regions of the State where the proposed revisions to Part 226 would have a disproportionate adverse impact on jobs or employment opportunities.

MINIMIZING ADVERSE IMPACT:

The Department is providing advance notice of these rule revisions to the regulated community so that companies have sufficient time to take the necessary steps to come into compliance with Part 226. The proposed revision also includes time for subject sources to come into compliance.

SELF-EMPLOYMENT OPPORTUNITIES:

None that the Department is aware of.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Revised Part 208 Will Incorporate the New Federal Emission Guideline for MSW Landfills Pursuant to 40 CFR Part 60, Subpart Cf

I.D. No. ENV-12-19-00003-P

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

Proposed Action: Amendment of Part 200; repeal of Part 208; and addition of new Part 208 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105

Subject: Revised Part 208 will incorporate the new Federal emission guideline for MSW landfills pursuant to 40 CFR Part 60, Subpart Cf.

Purpose: Part 208 controls landfill gas emissions by requiring a gas collection and control system.

Public hearing(s) will be held at: 1:00 p.m., May 22, 2019 at Department of Environmental Conservation, 6274 Avon-Lima Rd. (Rtes. 5 and 20), Conference Rm., Avon, NY; and 1:00 p.m., May 24, 2019 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A/B, Albany, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired 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.

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

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

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

Table 1

Regulation	Referenced Material	Availability
[208.8(d)]	[40 CFR Part 60 (July 1, 1999)] [64 Federal Register 7463 (Feb. 12, 1999)]	[*]

Table 1

Regulation	Referenced Material	Availability
208.1(a)	*Federal Register, Vol 81, No 167, Page 59276 (August 29, 2016)*	+++
208.2(a)	*Federal Register, Vol 81, No 167, Page 59276 (August 29, 2016)*	+++

Existing Section 200.10, Table 2 is amended to read as follows:

Table 2

Delegated Federal New Source Performance Standards of 40 CFR 60

40 CFR 60 Subpart	Source Category	Page numbers in July 1, 2013 Edition of 40 CFR 60 *or Federal Register Citation*
[Cc]	[Municipal Solid Waste Landfills]	[122-124]
Cf	*Municipal Solid Waste Landfills*	*81 'Federal Register' 59276 (August 29, 2016)*

The existing Part 208 is repealed. New Part 208 will be adopted as follows:

Section 208.1 Applicability.

(a) The Federal requirements of 40 CFR Part 60, Subpart Cf, (see Table 1, section 200.9 of this Title), will apply to existing municipal solid waste (MSW) landfills that have accepted waste after November 8, 1987 and began construction, reconstruction or modification prior to July 17, 2014. Activities required by or conducted pursuant to a CERCLA, RCRA, or State remedial action are not considered construction, reconstruction, or modification for purposes of this section.

Section 208.2 Definitions.

(a) To the extent that they are not inconsistent with the specific definitions in subdivision (b) of this section, the general definitions of Parts 200 and 201 of this Title, and 40 CFR Part 60, Subpart Cf apply (see Table 1, section 200.9 of this Title).

(b) For the purposes of this Part, the following definitions apply:

(1) 'Closed landfill subcategory' means a closed landfill that has submitted a closure report as specified in § 60.38f(f) within one year of Part 208 becoming effective.

Section 208.3 Severability.

(a) Each provision of this Part shall be deemed severable, and in the event that any provision of this Part is held to be invalid, the remainder of this Part shall continue in full force and effect.

Text of proposed rule and any required statements and analyses may be obtained from: Dan Brinsko, P. E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, email: air.regs@dec.ny.gov

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

Public comment will be received until: May 29, 2019.

Additional matter required by statute: Pursuant to Article 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.

Summary of Regulatory Impact Statement (Full text is posted at the following State website:http://www.dec.ny.gov/regulations/propregulations.html#public):

1. INTRODUCTION

The New York State Department of Environmental Conservation (Department) regulates emissions from municipal solid waste (MSW) landfills pursuant to 6 NYCRR Part 208, "Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills" (Part 208). The Department promulgated Part 208 on September 24, 2001 pursuant to section 111 of the Clean Air Act (CAA) and the implementing regulations, which requires states to develop and implement a State Plan that incorporates the federal Emission Guideline (EG) set forth in 40 CFR Part 60, Subpart Cc, "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills" (Subpart Cc), as issued by the U.S. Environmental Protection Agency (EPA) on March 12, 1996.

On August 29, 2016, EPA updated the federal EG, codified at 40 CFR Part 60, Subpart Cf, "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills" (Subpart Cf). To continue complying with the CAA and newly adopted federal regulations, the Department proposes to repeal existing Part 208, replacing it with a new Part 208, and revising Part 200, "General Provisions" to incorporate by reference the newly updated federal EG for MSW landfills under Subpart Cf.

The revised EG is designed to reduce emissions of landfill gas containing non-methane organic compounds (NMOC) and methane by lowering the emission threshold at which a landfill must install and operate a landfill gas collection and control system (GCCS). Once this proposal is adopted, the Department is required to revise its State Plan to reflect the new EG and submit the State Plan to EPA for review and approval.

2. SUMMARY OF RULE

The Department proposes to repeal existing Part 208 and replace it with a new Part 208, as well as revise Part 200 to incorporate by reference new federal Subpart Cf. Key provisions of this rule include:

- Retaining the rule applicability design capacity threshold of 2.5 million megagrams (Mg) and 2.5 million cubic meters of waste
- Lowering the trigger threshold for installing a GCCS from 50 Mg/year to 34 Mg/year for active MSW landfills
- Maintaining the current 50 Mg/year trigger threshold for installing a GCCS for closed MSW landfills
- New alternative modeling procedure called "Tier 4" for determining when to install a GCCS
- New and updated definitions
- Removal of wellhead oxygen/nitrogen operational standards and corresponding corrective action for their exceedances
- New required electronic reporting using EPA's electronic reporting tool (ERT)
- New criteria for capping, removing or decommissioning a portion of the GCCS in low producing landfill gas areas
- New requirements for expanding landfill gas treatment
- New provisions for startup, shutdown and malfunction periods.

3. STATUTORY AUTHORITY

The statutory authority for the promulgation of 6 NYCRR Part 208 and the attendant revision to 6 NYCRR Part 200 is found in the New York

State Environmental Conservation Law (ECL), Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105.

4. LEGISLATIVE OBJECTIVES

Article 19 of the ECL was enacted to safeguard the air resources of New York from pollution and ensure protection of the public health and welfare, the natural resources of the state, and physical property by integrating industrial development with sound environmental practices.

5. NEEDS AND BENEFITS

EPA's action to revise the EG was initially part of President Obama's "Climate Action Plan: Strategy to Reduce Methane Emissions", directing federal agencies to look at reducing methane emissions. Methane is a potent greenhouse gas pollutant – one of six identified by EPA that endangers public health and welfare – and landfills are the second largest industrial sources of methane emissions in the United States. EPA concluded that it was appropriate to update the EG adopted in 1996 due to significant changes in the landfill industry, e.g., an improved understanding of landfill gas emissions, changes in both landfill size and their age and public comments received through an advance notice of proposed rulemaking. 81 Fed. Reg. 59275 (August 29, 2016).

In New York State, as part of Governor Cuomo's 2015 Opportunity Agenda, the Governor introduced Climate Smart NY with the commitment to lay the groundwork for the Community Risk & Resiliency Act (CRRA). Chapter 355 of the Laws of 2014. As a commitment to addressing climate change, the Governor tasked state agencies with developing methane capture standards and programs to reduce emissions and make New York's energy system more efficient and cost effective. In an effort to achieve cost-effective and quantifiable methane reductions, the agencies identified three of the largest methane emitting sectors in the state: agricultural livestock, the oil and gas sector and landfills. These three sectors are the center of the Governor's Methane Reduction Plan that was released in May 2017.

6. COSTS

An analysis revealed that every "existing" MSW landfill (i.e., landfills that have accepted waste after November 8, 1987 and began construction, reconstruction or modification prior to July 17, 2014) from across the state has already installed a GCCS. Since every affected MSW landfill has already incurred the costs for installing their GCCS, and for obtaining the required Title V permits, the costs under this proposal are negligible. These costs would include the sustained operating and maintenance of the GCCS equipment along with some additional regulatory monitoring and reporting requirements.

7. PAPERWORK

Existing MSW landfills in the new "closed landfill subcategory" will have to submit a closure report within one year of new Part 208 becoming effective in order to maintain the current 50 Mg/yr NMOC trigger threshold for installing and operating, or removing a GCCS. Closure criteria will include a requirement to prepare a written closure plan and to install a final cover system. Landfills in the closed landfill subcategory would also be exempt from any initial reporting requirements (i.e., initial design capacity, initial NMOC emission rate, GCCS design plan, initial annual report, equipment removal report, and initial performance test report), provided they already meet these requirements under existing Part 208 or Subpart WWW.

Qualified MSW landfills already actively operating a GCCS can use the optional Tier 4 methodology to remain exempt from the GCCS monitoring and reporting requirements. The initial Tier 4 monitoring procedure requires four quarters of surface emissions monitoring (SEM) of methane below 500 ppm, followed by quarterly SEM for active landfills and annual SEM for closed landfills. Landfills are allowed to operate the non-regulatory GCCS during the Tier 4 SEM demonstration provided they operated the prerequisite hours prior to the demonstration. This requires the landfills to keep records on the operating hours of the GCCS sending landfill gas to the destruction devices. The on-going Tier 4 procedure for both active and closed landfills requires a thirty-day notification of the SEM testing, readily accessible records (i.e., SEM monitoring information, instrument calibrations, digital photographs of the instrument setup) kept for at least 5 years, and annual reports of the SEM monitoring results.

New Subpart Cf removes the nitrogen/oxygen operational standards at the wellheads. This will eliminate any corrective action due to exceedances and the associated cost for reporting. The monthly wellhead monitoring and record keeping will remain so that landfills can continue to make the necessary adjustments to the GCCS; however, the records must be kept up-to-date for at least 5 years and made available to the Department upon request. The operational standard, corrective action and corresponding recordkeeping and reporting for temperature and negative pressure will continue to be required for landfill gas collection wells.

While there are no additional regulations for "wet" (i.e., those that accept liquid waste or recirculate leachate) landfills in Subpart Cf, there will be some new recordkeeping and annual reporting requirements. This will include historic reporting on the amount of leachate recirculated, and that this information be submitted to EPA electronically through the Electronic Reporting Tool (ERT).

The proposed revisions require new surface monitoring obligations, including the monitoring of all cover surface penetrations and openings during quarterly SEM events, in addition to the current required monitoring of locations (i.e., landfill perimeter path, traverse path across the landfill surface, and areas identified visually as leaks). In addition, the location in latitude/longitude marking each surface emission exceedance (500 ppm above background) must be recorded in decimal degrees with an instrument accuracy of at least +/- 4 meters. While landfills can still mark exceedances with the old technology (i.e., marker flags, handwritten exceedance locations in notebooks to be later transferred to an office computer), they may benefit from opting to use a hand-held global positioning system (GPS) device instead. GPS devices can provide an exceedance location (latitude/longitude coordinates) in the required decimal degrees with an accuracy down to at least five decimal places. The GPS locations are taken in real time, which will minimize the labor involved collecting and recording the exceedance data. In addition, GPS devices used in conjunction with landfill electronic data management systems will provide a more comprehensive record and understanding of the landfills GCCS performance.

The proposed revisions establish new federally-mandated electronic reporting requirements for certain required performance test reports, NMOC emissions rate reports, annual reports, Tier 4 emission rate reports, and wet landfill practices through EPA web portal the Central Data Exchange (CDX) using the Compliance and Emissions Data Reporting Interface (CEDRI), i.e., the ERT. Landfills will be required to maintain electronic copies of the records instead of hardcopies to satisfy the federal recordkeeping requirements. EPA stated that this will increase the usefulness of the data contained in the reports and lessen the drain on the regulated community. However, landfills will still be required to provide hard copies of any required reports to the Department.

Under the new requirements for landfill gas treatment, landfills will be required to develop a site-specific treatment system monitoring plan and keep records demonstrating effective monitoring of filtration, dewatering, and compression system performance. The treatment system monitoring plan is required to be submitted as part of a Title V permit application and include the operating parameters in the permit as applicable enforceable requirements. Since every affected MSW landfill in the state already has a Title V permit, these parameters will not be incorporated until their next permit modification or renewal.

GCCS design plans (Plan) are now required to be updated within ninety days of expansion of the GCCS into a new area not covered by the previously approved Plan, or prior to making any changes to the GCCS that are not consistent with the current Plan. GCCS design plans must continue to be prepared and approved by a professional engineer. Landfills must notify the Department when the Plan is completed and provide a copy of the Plan's signature page.

8. LOCAL GOVERNMENT MANDATES

The proposed revisions do not impose a local government mandate. Any additional paperwork or staffing requirements are expected to be minimal. The authority and responsibility for implementing and administering Part 208 resides with the Department. In addition, it is the Department's responsibility to submit the State Plan incorporating new Subpart Cf to EPA for approval.

9. DUPLICATION BETWEEN THIS REGULATION AND OTHER REGULATIONS AND LAWS

With the proposed revisions to Part 208 there will only be one air emission regulation for existing MSW landfills to comply with. Therefore, there will be no duplication between this regulation and any other regulations and laws.

10. FEDERAL STANDARDS

Because the Department is adopting a federal program in Subpart Cf, there will be no exceedance of any minimum standards of the federal government.

11. COMPLIANCE SCHEDULE

Landfills will have thirty days from adoption to comply with this regulation. Any applicable monitoring, record keeping and reporting requirements are specified in Subpart Cf.

Regulatory Flexibility Analysis

The New York State Department of Environmental Conservation (Department) regulates emissions from municipal solid waste (MSW) landfills pursuant to 6 NYCRR Part 208, "Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills" (Part 208). The Department promulgated Part 208 on September 24, 2001 pursuant to section 111 of the Clean Air Act (CAA) and the implementing regulations, which requires states to develop and implement a State Plan that incorporates the federal Emission Guideline (EG) set forth in 40 CFR Part 60, Subpart Cc, "Standards of Performance for New Stationary Sources and

Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills" (Subpart Cc), as issued by the U.S. Environmental Protection Agency (EPA) on March 12, 1996.

On August 29, 2016, EPA updated the federal EG, codified at 40 CFR Part 60, Subpart Cf, "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills" (Subpart Cf). To continue complying with the CAA and newly adopted federal regulations, the Department proposes to repeal existing Part 208, replacing it with a new Part 208, and revising Part 200, "General Provisions" to incorporate by reference the newly updated federal EG for MSW landfills under Subpart Cf.

The revised EG is designed to reduce emissions of landfill gas containing non-methane organic compounds (NMOC) and methane by lowering the emission threshold at which a landfill must install air pollution controls - consisting of the same basic controls currently utilized, i.e., a well-designed and operated landfill gas collection and control system (GCCS) - but on an accelerated basis.

EFFECT OF THE RULE

Local governments, other than those municipalities owning MSW landfills, are not expected to be directly affected by the proposed revisions to Part 208. For municipal-owned MSW landfills the proposed revisions will impact them in a similar manor by which they are currently regulated. Furthermore, since the majority of MSW landfills reside in rural areas the proposed revisions are not expected to directly affect small businesses.

COMPLIANCE REQUIREMENTS

Local governments and small businesses are not expected to be directly affected by the proposed revisions to Part 208. Municipal-owned MSW landfills will have thirty days from the effective date to comply with this regulation. Any applicable monitoring, record keeping and reporting requirements are specified in Subpart Cf.

PROFESSIONAL SERVICES

It is not anticipated that small businesses will need professional services to comply with the proposed revisions to Part 208.

COMPLIANCE COSTS

Local governments and small businesses are not expected to be directly affected by the proposed revisions to Part 208. For municipal-owned MSW landfills, an analysis performed revealed that every applicable MSW landfill from across the state has already installed a GCCS. Since every affected MSW landfill has already incurred the costs for installing their GCCS, and for obtaining the required Title V permits, the costs under this proposal are negligible. These costs would include the sustained operating and maintenance of the GCCS equipment along with some additional regulatory monitoring and reporting requirements.

MINIMIZING ADVERSE IMPACT

Local governments and small businesses are not expected to be directly affected by the proposed revisions to Part 208. However, in recognition of the potential for adverse impacts on municipal-owned MSW landfills, Department staff led a broad stakeholder process. Department staff in April 2017, met with stakeholders (i.e., Waste Management and GHD) at High Acres Landfill in Fairport, NY at the NYSDEC's Region 8 Avon sub office, and again in May and June at the Albany and Colonie landfills, respectively, to discuss the proposed rule. In addition, Department staff conducted a comprehensive stakeholder conference call that included: MSW landfills, environmental justice groups, environmental advocacy groups and environmental consultants working on landfill related issues.

SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

Local governments and small businesses are not expected to be directly affected by the proposed revisions to Part 208. As stated above, regarding potential adverse impacts on municipal-owned MSW landfills, Department staff conducted a comprehensive outreach effort with stakeholders. Additionally, the public, including those involved in small businesses and local governments, will have the opportunity to review and comment on the proposed rule in accordance with State rulemaking procedures and requirements.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Local governments and small businesses are not expected to be directly affected by the proposed revisions to Part 208. As stated previously, since every applicable MSW landfill state-wide has already installed a GCCS, thus effectively reducing landfill emissions, there should be no economic and technical feasibility concerns for local governments and small businesses.

Rural Area Flexibility Analysis

The New York State Department of Environmental Conservation (Department) regulates emissions from municipal solid waste (MSW) landfills pursuant to 6 NYCRR Part 208, "Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills" (Part 208). The Department promulgated Part 208 on September 24, 2001 pursuant to section 111 of the Clean Air Act (CAA) and the implementing regulations, which requires states to develop and implement a State Plan that incorporates the federal Emission Guideline (EG) set forth in 40 CFR Part 60, Subpart Cc, "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills" (Subpart Cc), as issued by the U.S. Environmental Protection Agency (EPA) on March 12, 1996.

On August 29, 2016, EPA updated the federal EG, codified at 40 CFR Part 60, Subpart Cf, "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills" (Subpart Cf). To continue complying with the CAA and newly adopted federal regulations, the Department proposes to repeal existing Part 208, replacing it with a new Part 208, and revising Part 200, "General Provisions" to incorporate by reference the newly updated federal EG for MSW landfills under Subpart Cf.

The revised EG is designed to reduce emissions of landfill gas containing non-methane organic compounds (NMOC) and methane by lowering the emission threshold at which a landfill must install air pollution controls - consisting of the same basic controls currently utilized, i.e., a well-designed and operated landfill gas collection and control system (GCCS) - but on an accelerated basis.

TYPES AND ESTIMATED NUMBERS OF RURAL AREAS AFFECTED

The majority of MSW landfills currently regulated by existing Part 208 reside in rural communities. As a result, the proposed revisions will have similar regulatory impacts where additional environmental benefits are realized from the reduction in landfill emissions. Furthermore, because every affected existing MSW landfill has already installed a GCCS, the Department expects no adverse impacts on rural communities attributed to this rulemaking.

COMPLIANCE REQUIREMENTS

Landfills will have thirty days from the effective date to comply with this regulation. Any applicable monitoring, record keeping and reporting requirements are specified in Subpart Cf.

COSTS

An analysis revealed that every affected existing MSW landfill has already installed a GCCS. Since every applicable MSW landfill has already incurred the costs for installing their GCCS, and for obtaining the required Title V permits, the costs under this proposal are negligible. These costs would include the sustained operating and maintenance of the GCCS equipment along with some additional regulatory monitoring and reporting requirements. The Department does not anticipate any additional costs associated with this rulemaking to be greater in rural areas where the majority of MSW landfills already reside.

MINIMIZING ADVERSE IMPACT

To minimize any adverse impacts, Department staff in April 2017, met with stakeholders (i.e., Waste Management and GHD) at High Acres Landfill in Fairport, NY at the NYSDEC's Region 8 Avon sub office, and again in May and June 2017 at the Albany and Colonie landfills, respectively, to discuss the proposed rule. In addition, Department staff conducted a comprehensive stakeholder conference call that included MSW landfills, environmental justice groups, environmental advocacy groups and environmental consultants working on landfill related issues.

RURAL AREA PARTICIPATION

As stated above, Department staff met with many stakeholders, including the MSW landfills which are located in rural areas of the state, thus providing stakeholders the opportunity to participate in the development of the proposed rule. Additionally, the public, including those located in rural areas of the state, will have the opportunity to review and comment on the proposed rule in accordance with State rulemaking procedures and requirements.

Job Impact Statement

The New York State Department of Environmental Conservation (Department) regulates emissions from municipal solid waste (MSW) landfills pursuant to 6 NYCRR Part 208, "Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills" (Part 208). The Department promulgated Part 208 on September 24, 2001 pursuant to section 111 of the Clean Air Act (CAA) and the implementing regulations, which requires states to develop and implement a State Plan that incorporates the federal Emission Guideline (EG) set forth in 40 CFR Part 60, Subpart Cc, "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills" (Subpart Cc), as issued by the U.S. Environmental Protection Agency (EPA) on March 12, 1996.

On August 29, 2016, EPA updated the federal EG, codified at 40 CFR Part 60, Subpart Cf, "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills" (Subpart Cf). To continue complying with the CAA and newly adopted federal regulations, the Department proposes to repeal existing Part 208, replacing it with a new Part 208, and revising Part 200, "General Provisions" to incorporate by reference the newly updated federal EG for MSW landfills under Subpart Cf.

The revised EG is designed to reduce emissions of landfill gas containing non-methane organic compounds (NMOC) and methane by lowering the emission threshold at which a landfill must install air pollution controls

- consisting of the same basic controls currently utilized, i.e., a well-designed and operated landfill gas collection and control system (GCCS) - but on an accelerated basis.

NATURE OF IMPACT

New Part 208 will not have an adverse impact on job and employment opportunities. An analysis revealed that every affected "existing" MSW landfill from across the state has already installed a GCCS. Since every affected MSW landfill has already incurred the resources (i.e., manpower, costs) for installing their GCCS, and for obtaining the required Title V permits, the impact is negligible. In addition, existing MSW landfills already employ the necessary staff to sustain the operating and maintenance of the GCCS equipment along with the regulatory monitoring and reporting requirements.

The impact on the Department consists of time for rulemaking development and outreach. Department enforcement staff will continue to conduct enforcement activities to ensure compliance with the current Part 208, and the revised rule is not expected to require additional staff time to implement the rule.

CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED

Because every affected existing MSW landfill has already installed a GCCS and is meeting the current regulatory requirements, which are very similar to the new ones, the Department expects no adverse employment opportunity impact attributed to this rulemaking.

REGIONS OF ADVERSE IMPACT

The MSW landfills affected by this proposal are distributed throughout the state. Because every affected existing MSW landfill has already installed a GCCS and is meeting the current regulatory requirements, which are very similar to the new ones, the Department expects no adverse employment opportunity impact attributed to this rulemaking.

MINIMIZING ADVERSE IMPACT

To minimize any adverse impacts, Department staff in April 2017 met with stakeholders (i.e., Waste Management and GHD) at High Acres Landfill in Fairport, NY at the NYSDEC's Region 8 Avon sub office, and again in May and June 2017 at the Albany and Colonie landfills, respectively, to discuss the proposed rule. In addition, in May, 2018 Department staff conducted a comprehensive stakeholder conference call that included MSW landfills, environmental justice groups, environmental advocacy groups and environmental consultants working on landfill related issues.

Additionally, this regulation contains flexibility that will facilitate compliance, including an optional Tier 4 methodology by which MSW landfills currently operating a GCCS can remain exempt for the GCCS monitoring and reporting requirements; the removal of the nitrogen/oxygen operational standards at the wellheads which will eliminate any corrective action due to exceedances and the associated cost for reporting; and new federal electronic reporting requirements which allows landfills to maintain electronic copies of certain records instead of hard copies.

SELF-EMPLOYMENT OPPORTUNITIES

The adoption of revised Part 208 is not expected to result in negative impacts to self-employment opportunities.

New York State Gaming Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Sports Wagering at Gaming Facilities

I.D. No. SGC-12-19-00007-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 5329 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1307(1), (2)(g), 1367(3)(a), (b) and (5)

Subject: Sports wagering at gaming facilities.

Purpose: To regulate and control sports wagering as directed by statute.

Substance of proposed rule (Full text is posted at the following State website: www.gaming.ny.gov/proposedrules): The addition of Part 5329 of Subtitle T of Title 9 NYCRR will allow the New York State Gaming Commission ("Commission") to prescribe the rules for sports wagering at gaming facilities.

Section 5329.1 sets forth definitions applicable to sports wagering.

Section 5329.2 sets forth the process by which a gaming facility may petition for a sports pool license.

Section 5329.3 sets forth the term of a sports pool license and describes the review process for continuing licensure.

Section 5329.4 allows for contracting with a sports pool vendor to operate or assist in the operation of sports pools on behalf of a gaming facility and sets forth licensing requirements.

Section 5329.5 establishes a continuing duty to report operator and sports pool vendor changes.

Section 5329.6 describes occupational licensing requirements of individuals.

Section 5329.7 authorizes action in the event of misconduct or improper associations.

Section 5329.8 requires internal controls and sets forth minimum requirements for internal controls.

Section 5329.9 sets forth requirements for the sports wagering lounge physical space.

Section 5329.10 sets forth sports pool system requirements.

Section 5329.11 sets forth regulations for automated ticket machines.

Section 5329.12 requires each operator to establish house rules for sports wagering and sets forth minimum requirements for house rules.

Section 5329.13 regulates wager types and sets forth that prior Commission approval of a wager type is required.

Section 5329.14 sets forth requirements for parlay card wagers.

Section 5329.15 allows layoff wagers as a risk management tool.

Section 5329.16 requires certain information to be available to patrons.

Section 5329.17 sets forth requirements for the manner in which wagers may be placed.

Section 5329.18 sets forth requirements for wagering tickets.

Section 5329.19 sets forth certain restrictions on wagering, including by minors, prohibited persons and proxies.

Section 5329.20 regulates ticket payout procedures and establishes certain reporting requirements.

Section 5329.21 regulates the circumstances under which wagers may be cancelled.

Section 5329.22 prohibits the structuring of wagers to avoid compliance with law or regulation.

Section 5329.23 requires diligent investigation of patron complaints.

Section 5329.24 sets forth operator reserve requirements.

Section 5329.25 prohibits dishonest actions in connection with sports wagering.

Section 5329.26 establishes duties to report dishonest or unlawful acts, bribes, suspicious activity and suspected money laundering.

Section 5329.27 requires the establishment of controls to identify unusual betting activity and requires the retention of an integrity monitoring provider to assist in the identification of suspicious betting activity and cooperation with others in protecting the integrity of underlying sports events.

Section 5329.28 sets forth regulations in regard to the payment and reporting of tax.

Section 5329.29 sets forth procedures to report and reconcile gross gaming revenue.

Section 5329.30 sets forth requirements for accounting and financial records.

Section 5329.31 establishes a duty to give evidence to the Commission when requested or ordered to do so.

Section 5329.32 requires compliance assessments.

Section 5329.33 empowers the Commission to review and examine records.

Section 5329.34 requires compliance with responsible gaming obligations.

Section 5329.35 sets forth that other casino regulations apply.

Section 5329.36 sets forth Commission power to suspend or revoke licenses or impose fines, when appropriate.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3332, email: gamingrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities.

Racing Law section 1307(1) authorizes the Commission to adopt regulations that it deems necessary to protect the public interest in carry-

ing out the provisions of Racing Law, Article 13, section 1367(3)(a), (b) and (5).

Racing Law section 1307(2)(g) authorizes the Commission to define and limit areas of operation, the rules of authorized games, the devices permitted and the method of operation if such games and devices.

Racing Law section 1367(3)(a) authorizes the Commission to promulgate regulations in regard to the operation of sports pools.

Racing Law section 1367(3)(b) authorizes the Commission to regulate the requirements of sports lounges.

Racing Law section 1367(5) authorizes the Commission to regulate the conduct of sports wagering.

2. LEGISLATIVE OBJECTIVES: The above referenced statutory provisions carry out the legislature's stated goal "to tightly and strictly" regulate casinos "to guarantee public confidence and trust in the credibility and integrity of all casino gambling in the state," as set forth in Racing Law section 1300(10).

3. NEEDS AND BENEFITS: The proposed rule is necessary because statutes direct the Gaming Commission to implement statutory requirements through rulemaking and develop regulations in regard to aspects of sports wagering at casinos. In particular, Racing Law section 1367(5) directs the Commission to promulgate regulations necessary to carry out the provisions of this section, including, but not limited to, regulations governing the:

(a) amount of cash reserves to be maintained by operators to cover winning wagers;

(b) acceptance of wagers on a series of sports events;

(c) maximum wagers which may be accepted by an operator from any one patron on any one sports event;

(d) type of wagering tickets which may be used;

(e) method of issuing tickets;

(f) method of accounting to be used by operators;

(g) types of records which shall be kept;

(h) use of credit and checks by patrons;

(i) type of system for wagering; and

(j) protections for a person placing a wager.

Adoption of the regulations would allow licensed gaming facilities to conduct sports wagering, thereby increasing appeal to patrons, gaming facility revenue and tax revenue to the State, within a regulatory environment designing to protect patrons, promote the integrity of wagering, enhance monitoring of the integrity of underlying sports events that are the subject of wagering and promote responsible gaming.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and/or continuing compliance with this rule: The anticipated cost of implementing and complying with the proposed regulations is not yet determined, but would entail an investment in systems, vendors and integrity monitoring providers, among other things.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The costs to the Commission for the implementation of and continued administration of the rule will be negligible given that all such costs are the responsibility of the gaming facility. These rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. LOCAL GOVERNMENT MANDATES: There are no local government mandates associated with these rules.

6. PAPERWORK: The rule is not expected to impose any significant paperwork or reporting requirements on the regulated entities.

7. DUPLICATION: The rule does not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission consulted stakeholders and reviewed other gambling jurisdiction best practices and regulations. Alternatives were discussed and considered with stakeholders and compared to other jurisdiction regulations, such as whether wager types should require Commission approval, whether auto0mated ticket machines would be permitted outside a sports wagering lounge, whether top reduce the require records retention period, whether to reduce the automated ticket machine replenishment requirements, what type of suspicious activity should be reported to the Commission and parlay card regulations. Racing Law section 1367(5) directs the Commission "to regulate sports pools and the conduct of sports wagering…to the same extent that the commission regulates other gaming." That Racing Law section also provides, "In developing rules and regulations applicable to sports wagering, the commission shall examine the regulations implemented in other states where sports wagering is conducted and shall, as far as practicable, adopt a similar regulatory framework."

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York; it is purely a matter of New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that the affected parties will be able to achieve compliance with these rules upon adoption.

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

The proposed rule will not have any adverse impact on small businesses, local governments, jobs or rural areas. This rule is intended to promote public confidence and trust in the credibility and integrity of sports wagering at casinos in New York State.

The proposed rule does not impact local governments or small businesses as no local government or small business is eligible to hold a sports pool license and no local government or small business is anticipated to be a sports pool vendor.

The proposed rule imposes no adverse impact on rural areas. The rule applies uniformly throughout the state.

The proposed rule will have no adverse impact on job opportunities.

This rule will not adversely impact small businesses, local governments, jobs, or rural areas. Accordingly, a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, and Job Impact Statement are not required and have not been prepared.

Department of Health

NOTICE OF ADOPTION

Stroke Services

I.D. No. HLT-42-18-00007-A

Filing No. 153

Filing Date: 2019-03-04

Effective Date: 2019-03-20

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

Action taken: Addition of section 405.34 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803

Subject: Stroke Services.

Purpose: NYS criteria for stroke center designation as part of an accrediting process for certification by nationally recognized accredit agencies.

Text or summary was published in the October 17, 2018 issue of the Register, I.D. No. HLT-42-18-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of Program Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Public comments were submitted to the New York State Department of Health (Department) in response to the proposed regulation. The public comment period for this regulation ended on December 17, 2018. The Department received comments from physicians, health care associations and legislators. The comments and the Department's responses are summarized below.

COMMENT: A commenter recommended that section 405.34(g)(2) be amended to clarify that a hospital will not be prohibited from becoming a designated stroke center if it does not seek to become certified in the two-year period following the adoption of the regulations. The commenter expressed concern that hospitals may be discouraged from applying for certification if they do not apply within the two-year transition period.

RESPONSE: The intent of the proposed regulation at section 405.34(g) is to offer a transition period for hospitals that are currently recognized as stroke centers in NYS. Section 405.34(g)(1) states that hospitals currently recognized as designated stroke centers by the Department prior to the effective date of this section shall have two years from the effective date of the regulation to initiate the stroke center certification process with a Department approved certifying organization. In the event that a hospital currently recognized as a stroke center does not initiate the process within

two years of the effective date of the regulation, the hospital will lose its designation but could be designated in the future as provided in this regulation. The Department will continue to work to make transition period details clear to all hospitals in NYS. No changes to the proposed regulations were made as a result of these comments.

COMMENT: A commenter noted that the Regulatory Impact Statement associated with the proposed regulations listed the Primary, Thrombectomy-Capable and Comprehensive Stroke programs as the levels hospitals may apply for in the proposed Stroke Services program in NYS, but the nationally-available Acute Stroke Ready (ASR) level was not included in the description.

RESPONSE: The Department spent considerable time engaging stakeholders prior to proposing regulations to understand whether there would be interest from hospitals in pursuing the ASR level. The Department will continue to engage hospitals to gauge the need for and interest in the ASR level and will make it available should need and interest be identified. No changes to the proposed regulations were made as a result of these comments.

COMMENT: A commenter recommended that the Department streamline the proposed application process, which requires a hospital to submit a request for designation to the Department after the hospital has been certified by a certifying organization. The commenter suggested that a hospital approved by the certifying organization should be recognized by the Department without a separate application process.

RESPONSE: Section 405.34(d)(2) requires hospitals seeking stroke center designation to apply to the Department with a copy of the certifying organization's certification and supporting documents. This section allows the Department to perform a final review to ensure that all standards have been satisfied by the hospital prior to designation and to review for, at a minimum, potential investigations by federal or State oversight agencies that may preclude the Department from designating the hospital. This step will also trigger internal Department processes which include notifying the NYS Bureau of Emergency Medical Services (EMS) of a new stroke designation and updates to internal and public systems acknowledging the new hospital designation as a destination for EMS providers transporting patients. No changes to the proposed regulations were made as a result of these comments.

COMMENT: A commenter urged the Department to streamline, align and focus on the performance measures that are the most meaningful for improving stroke care. The commenter stated that performance measures should be consistent with the Accrediting Organizations (AOs) approved to certify NYS hospitals for stroke services and that two measures currently collected by the Department are not required by the AOs: dysphagia screening and smoking cessation. The commenter also noted that at least one of the AOs leverages sampling for stroke measures which reduces the burden of reporting without losing data validity.

RESPONSE: The Department will continue its ongoing efforts to capture meaningful data to advance the goals of making high-quality stroke care available in a timely manner to patients suffering from a suspected stroke. To that end, the Department, in collaboration with the Stroke Advisory Committee, has been developing reporting requirements that allow robust evaluation of hospital and stroke system of care performance while minimizing the burden of excessive reporting. The Department will take these comments under advisement when finalizing reporting requirements for the program. No changes to the proposed regulations were made as a result of these comments.

COMMENT: Multiple commenters shared concern over the potential burden for hospitals of reporting data to the Department and the AO. One commenter stated that most hospitals submit stroke quality measures to the American Heart Association (AHA) Get With The Guidelines (GWTG) program and that, to fulfill the Department's requirements, hospitals that submit to GWTG but select an AO other than The Joint Commission/AHA may be forced to double-report the same measures to the AO they select, thereby causing an undue reporting burden on these hospitals. One commenter commended the Department for allowing hospitals to select from multiple AOs to become certified in the proposed program, but shared concern that the potential for double-reporting could undermine the Department's efforts to allow for multiple AOs. A separate commenter urged the Department to ensure that hospitals can report to both the AO and the Department through a single data submission to streamline data collection and submission to reduce burden and to enable hospitals to dedicate their limited resources to quality and patient safety.

RESPONSE: The Department engaged numerous stakeholders to assess potential issues surrounding data collection and the barriers associated with the available stroke registries. The Department has continuously emphasized the importance of data collection for the purposes of performance monitoring and quality improvement to foster a successful program that provides the highest quality care to suspected stroke patients. To that end, the Department has specifically not required any single data collection tool or stroke registry in the proposed regulations to avoid administrative burden or additional costs to hospitals. The Department will only require that hospitals submit performance measurement data to the Department; however, the Department is aware that AOs have varying data requirements, with some requiring no data submission and others requiring extensive data reporting. The Department will take these comments under advisement and will continue working with AOs that become certifying organizations and hospitals to minimize double-reporting of performance measurement data. No changes to the proposed regulations were made as a result of these comments.

COMMENT: A commenter noted that the proposed program will require regions to adopt new stroke patient triage protocols, processes and agreements across hospitals so that patients are appropriately transported to the closest stroke designated center based on an assessment of their stroke acuity. The commenter stated that regions will also need to ensure that their EMS services are adequately trained and EMTs are appropriately scoring and triaging patients. The commenter further stated that some regions, including New York City (NYC), have already approved ambulance triage and transport protocols and have begun implementation of these protocols. While the commenter offered support for the proposed three-year transition period, the commenter stated that questions have been raised about whether the transition period applies to NYC and other regions and whether hospitals need to move more quickly. The commenter urged the Department and the State Emergency Medical Advisory Committee (SEMAC) to monitor and ensure a level of uniformity, particularly with respect to allowing hospitals time to transition and train EMTs as the regulations are implemented. Another commenter stated that as NYS moves from a single-tiered stroke program to tiered certifications the Department should work closely with EMS to monitor potential disruptions to the healthcare system to ensure that patients continue to receive timely, expert stroke care in NYS.

RESPONSE: The Department has worked extensively over the last year to engage critical stakeholders, including the Regional Emergency Medical Advisory Committees (REMACs) and the SEMAC, on issues related to developing guidelines for regions that are developing and implementing stroke systems of care that include all levels of NYS stroke facility designation. The Department has also clarified in numerous live and virtual presentations that the proposed regulations will apply to all regions in NYS, including NYC, at the time of adoption. The Department is committed to continuing to work with the REMACs and the SEMAC to establish a framework and guidelines for the development and implementation of regional stroke systems of care. The proposed regulation does not require regions to adopt new triage protocols. Additional information and written guidance will be made available by the Department to address the change from a single tiered stroke program to a tiered certification system. No changes to the proposed regulations were made as a result of these comments.

COMMENT: Multiple commenters wrote in support of modifications to the proposed regulations to address EMS triage and transport plans, as well as hospital transfer plans, to address and support patients with a specific type of severe ischemic stroke called an emergent large vessel occlusion (ELVO), as patients with ELVO have a significantly higher rate of mortality and disability. Commenters stated that a newly developed procedure called mechanical thrombectomy has provided a vastly more successful treatment for ELVO patients. Commenters stated that EMS protocol and transport plans should ensure that patients are receiving proper treatment in a timely fashion and the proposed regulations should address the ELVO patient group to ensure that those within the regional systems of care (including hospitals, EMS providers, REMACs, the SEMAC) throughout NYS address this need by continuously updating their system based on data that supports direct transport of ELVO patients to hospitals capable of performing mechanical thrombectomy whenever necessary. Commenters noted that ensuring patients are sent to the most appropriate medical centers depending on the severity of their stroke, the Department will be doing what has already been done for patients suffering heart attacks or trauma.

RESPONSE: These comments are noted. The Department is developing guidance in consultation with the Stroke Advisory Committee to address the rapid triage and transport of suspected stroke patients to the most appropriate hospital setting based on hospital capability. The guidance will highlight requirements for transfer agreements between hospitals to address the need for transportation to appropriate settings depending on patient acuity and will be part of certification standards. In light of the comments, the Department will include guidance specific to the ELVO patient population to address the need for EMS protocol and stroke center transport plans for patients with ELVO. The Department is committed to continuing to work with the REMACs and the SEMAC to develop and implement guidelines and protocols to address the appropriate triage of patients. The changes proposed by the commenters are beyond the scope of the proposed regulations as the Department is not seeking to amend the regulations in section 405.19 as they relate to EMS providers. No changes to the proposed regulations were made as a result of these comments.

COMMENT: Several commenters wrote in support of the proposed regulations. One commenter noted that while stroke outcomes in New York State (NYS) are among the best in the country, the proposed regulations will enable NYS to improve and better coordinate stroke care across all providers regionally, based on a patient's needs and acuity. Another commenter thanked the Department for leading stroke experts around NYS with the common goal of improving patient care and outcomes. Several commenters noted the proposed updates to stroke services in NYS are encouraging and a move in the right direction.

RESPONSE: These comments in support are noted by the Department. No changes to the proposed regulations were made as a result of these comments.

NOTICE OF ADOPTION

Food Service Establishments

I.D. No. HLT-47-18-00002-A
Filing No. 149
Filing Date: 2019-03-01
Effective Date: 2019-03-20

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

Action taken: Amendment of Part 14 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201(1) and 225(4)

Subject: Food Service Establishments.

Purpose: To restrict the use of liquid Nitrogen and Dry Ice in food preparation.

Text or summary was published in the November 21, 2018 issue of the Register, I.D. No. HLT-47-18-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of Program Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.ny.gov

Initial Review of Rule
As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

In response to the November 21, 2018 notice in the New York State Register for amendments to Subparts 14-1, 14-2, 14-4 and 14-5 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, one written comment was received during the comment period.

The New York State Association of County Health Officials (NYSACHO) submitted a letter of support for the proposed amendments which restrict the use of liquid Nitrogen and Dry Ice added to foods at the point of service in food service establishments. Within its letter, NYSACHO referenced the potential dangers associated with consuming liquid Nitrogen and cited the US Food and Drug Administration's August 2018 Consumer Advisory, warning consumers to avoid such products, as confirmation of the need for public health protection measures. NYSACHO's letter concluded the following: "NYSACHO strongly believes that the proposed amendments to restrict the use of liquid nitrogen and dry ice at the point of service are necessary to protect the public's health from the risk of serious injury and death, and fully endorses the adoption of the proposed amendments put forth by the New York State Department of Health."

These comments in support are noted by the Department. No change was made to the regulation in response to these comments.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Postponement of the Levelization Surcharge Mechanism for Service Area 1 Customers

I.D. No. PSC-12-19-00001-EP
Filing Date: 2019-02-27
Effective Date: 2019-02-27

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

Proposed Action: The Commission adopted an order on February 27, 2019, approving New York American Water Company, Inc.'s (NYAW) petition to postpone the levelization surcharge mechanism set to become effective for Service Area 1 customers on April 1, 2019 to April 1, 2020.

Statutory authority: Public Service Law, sections 89-b and 89-c(10)

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

Specific reasons underlying the finding of necessity: New York American Water Company, Inc. (NYAW or the Company) petitioned the Public Service Commission on February 25, 2019 to postpone the levelization surcharge mechanism scheduled to become effective on April 1, 2019 (the beginning of Rate Year three of the current rate plan for NYAW) for Service Area 1 (SA1) customers, which includes the Lynbrook District, former Aqua NY (Cambridge, Dykeer, Kingsvale, Waccabuc and Wild Oaks), and the former Mt. Ebo, Lucas Estates, Mill Neck Estates, and Spring Glen Lake water systems. Collection of the levelization surcharge would be postponed to April 1, 2020. Since the otherwise applicable SA1 levelization surcharge can be postponed to mitigate the rate increases to SA1 customers that could cause them to suffer economic hardship and because NYAW must begin notifying customers on March 1, 2019 of the new rates to become effective on April 1, 2019, including the SA1 levelization surcharge that it seeks to postpone, emergency action is necessary to protect the general welfare.

Therefore, action was necessary to protect the general welfare of the Company's Service Area 1 customers. Approval of NYAW's petition to postpone collection of the levelization surcharge needs to be taken on an emergency basis because of the need to avoid potential SA1 customer confusion regarding their rates and to ensure that such customers receive the economic benefit of the Company's proposed postponement of the collection of the surcharge.

Subject: Postponement of the levelization surcharge mechanism for Service Area 1 customers.

Purpose: To reduce otherwise applicable charges in Rate Year 3 for Service Area 1 customers.

Substance of emergency/proposed rule: The Public Service Commission is considering a petition filed on February 25, 2019 by New York American Water Company, Inc. (NYAW or the Company) seeking approval to postpone the collection of the levelization surcharge mechanism scheduled to become effective for Service Area 1 (SA1) customers on April 1, 2019.

SA1 includes the Lynbrook District, former Aqua NY (Cambridge, Dykeer, Kingsvale, Waccabuc and Wild Oaks), and the former Mt. Ebo, Lucas Estates, Mill Neck Estates, and Spring Glen Lake water systems.

Under the proposal, NYAW would not collect from SA1 customers revenues of $4,494,866 in Rate Year 3, as provided for under the current rate plan. Rather, on April 1, 2020, NYAW would implement a levelization surcharge mechanism that would amortize the collection of this revenue over three years instead of two, thus further spreading out the collection of revenues over a longer time period.

The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire May 27, 2019.

Text of rule may be obtained from: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess,

Secretary, Department of Public Service, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(16-W-0259EP8)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Test Innovative Pricing Proposals on an Opt-Out Basis

I.D. No. PSC-12-19-00004-P

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

Proposed Action: The Public Service Commission is considering a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid to modify and extend the Clifton Park Demand Reduction REV Demonstration Project.

Statutory authority: Public Service Law, sections 65 and 66

Subject: To test innovative pricing proposals on an opt-out basis.

Purpose: To provide pricing structures that deliver benefits to customers and promote beneficial electrification technologies.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed on February 15, 2019 by Niagara Mohawk Power Corporation, d/b/a National Grid (National Grid) to amend its electric tariff schedule, P.S.C. No. 220. National Grid proposes to modify the Clifton Park Demand Reduction REV Demonstration Project (Clifton Park Demonstration) for purposes of testing innovative pricing proposals on an opt-out basis.

National Grid proposes two opt-out pricing structures: (1) a time-of-use and critical peak pricing supply rate and (2) a Beneficial Electrification Rate that combines the time-of-use and critical peak pricing supply component with a two-demand delivery charge. National Grid states an opt-out rate structure will provide greater overall benefits for customers than the peak-time rewards incentive mechanism currently in place. Therefore, National Grid is proposing to modify and extend the Clifton Park Demonstration to test such innovative pricing proposals. National Grid states these proposals are better aligned with the vision for ratemaking initially proposed in the Company's Advanced Metering Infrastructure Report in Case 17-E-0238, will deliver benefits to customers, and will advance the State's clean energy goals.

Additionally, National Grid proposes to align the effective dates of the Beneficial Electrification Rate proposed in Case 17-E-0238 with the reconfiguration of the Clifton Park Demonstration to reduce implementation time and expense. National Grid anticipates an increase cost of $6,048,216 for the Clifton Park Demonstration, which will exceed the $43.915 million REV demonstration project budget cap. Therefore, National Grid requests approval to defer the incremental requirement above the budget cap for purposes of managing the modified Clifton Park Demonstration.

The full text of the petition and the full record of the proceeding may be viewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 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.

(19-E-0111SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Request to Issue Long-Term Debt Securities

I.D. No. PSC-12-19-00005-P

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

Proposed Action: The Commission is considering a petition filed on February 4, 2019 by Greenidge Pipeline LLC, Greenidge Pipeline Properties Corporation, and Greenidge Generation, LLC seeking authorization to issue up to $50 million in new long-term debt securities.

Statutory authority: Public Service Law, sections 2(10), (11), (12), (13), 4(1), 5(2), 65(1), 66(1), (2), (4), (5) and 69

Subject: Request to issue long-term debt securities.

Purpose: To assume debt for general corporate purposes, including working capital and other financial requirements.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Greenidge Pipeline, LLC (Greenidge Pipeline), Greenidge Pipeline Properties Corporation (Greenidge Properties), and Greenidge Generation, LLC (Greenidge Generation) (collectively, the Petitioners) on February 4, 2019, seeking to issue up to $50 million in new long-term debt securities.

Greenidge Pipeline and Greenidge Properties own and operate an approximately 4.6-mile natural gas pipeline located in the Towns of Milo and Torrey, New York subject to incidental and lightened ratemaking regulation. Greenidge Generation owns and operates an approximately 106 MW electric generating facility currently located in the Town of Torrey, New York subject to lightened ratemaking regulation. Petitioners represent that the debt is needed for general corporate purposes, including working capital and other financial requirements.

The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, modify, or reject, in whole or in part, the action proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 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.

(19-M-0071SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Utility Property

I.D. No. PSC-12-19-00006-P

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

Proposed Action: The Commission is considering a petition filed by Consolidated Edison Company of New York, Inc. to transfer three adjacent vacant parcels located at West 1st St., 105 River St., and 87 River St., Brooklyn, NY to River Street Partners LLC.

Statutory authority: Public Service Law, sections 65, 66 and 70

Subject: Transfer of utility property.

Purpose: To determine whether to approve the transfer of utility property.

Substance of proposed rule: The Public Service Commission (Commission) is considering the petition filed by Consolidated Edison Company of New York, Inc. (Con Edison) on February 8, 2019, requesting the Commission's approval to transfer ownership of three adjacent vacant upland waterfront parcels located at West 1st Street, 105 River Street, and 87

River Street, City of New York, Kings County, New York, and associated underwater lands along River Street in the Williamsburg neighborhood of Brooklyn to River Street Partners LLC for the purchase price of $150 million.

The properties consist of lands totaling approximately 7.3 acres of waterfront property with roughly 385 feet of frontage along River Street in Brooklyn, New York. Con Edison states that the transfer will not have any adverse effects on its provision of electric service to customers and is consistent with prior Commission directives that utilities evaluate their land holdings and dispose of unneeded property.

The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 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.

(19-M-0085SP1)

Department of Transportation

EMERGENCY RULE MAKING

Regulation of Commercial Motor Carriers in New York State

I.D. No. TRN-03-19-00001-E

Filing No. 151

Filing Date: 2019-03-04

Effective Date: 2019-03-20

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

Action taken: Repeal of sections 154-1.1(f), 154-2.1(e), 720.12(a), 721.3(f), 721.6, 750.3, 820.13 and 855.2; addition of new sections 154-1.1(f), 154-2.1(e), 720.12(a), 721.3(f), 721.6, 750.3, 820.13 and 855.2 to Title 17 NYCRR.

Statutory authority: Transportation Law, sections 14(12), (18), 14-f(1)(a), 138(2), 140(2), art. 9-A, 49 USC, sections 30103, 31102, 31136 and 3114

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

Specific reasons underlying the finding of necessity: This emergency rulemaking extension is being promulgated on March 5, 2019 to assure the timely adoption and application of the current federal rules applicable to commercial motor vehicle safety; it will become applicable upon the publication of the Notice of Emergency Adoption in the State Register on March 20, 2019.

New York is required by 49 USC Section 31141 to adopt and enforce the minimum safety standards on commercial motor vehicles and is generally preempted from applying either more stringent standards or more lax standards to motor carriers engaged in interstate commerce. In addition to the legislative mandate, New York is a participant in the Motor Carrier Safety Assistance Program (MCSAP) pursuant to an agreement most recently approved on January 9, 2017. Pursuant to this agreement, New York assumes the role and obligation of performing motor carrier enforcement for FMCSA in return for federal funding that amounts to $14,775,210 for the current fiscal year. As a condition of this agreement, New York must annually certify that it has adopted and is enforcing the current version of the federal rules. New York, through its Department of Transportation (NYSDOT) has previously adopted the relevant federal regulations for the purpose of motor carrier operation, regulation and enforcement. The purpose of this update is to assure the application of the 2017 edition of the federal rules, rather than the application of the 2013 edition that was last adopted in 2015.

This emergency rule provides for the timely adoption of the 2017 edition of the federal rules and thus brings New York into compliance with the three-year MCSAP compatibility requirement prescribed by 49 CFR part 350.331(c).

Subject: Regulation of commercial motor carriers in New York State.

Purpose: The rule making updates Title 49 CFR provisions incorporated by reference pursuant to regulation of commercial motor carriers.

Text of emergency rule: 17 NYCRR sections 154-1.1(f), 154-2.1(e), 720.12(a), 721.3(f), 721.6, 750.3, 820.13, and 855.2 are REPEALED and REPLACED to read as follows:

Section 154-1.1.

(f) The provisions of the Code of Federal Regulations (CFR) that have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the books entitled: Title 49 CFR Parts 100 to 177, Parts 178 to 199, Parts 300 to 399, Parts 400-571 and Parts 572-999 revised as of October 1, 2017, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The incorporated regulations may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation and Office of Counsel, 50 Wolf Road, Albany, NY 12232. They may be purchased by mail from the US Government Printing Office, New Orders, P.O. Box 979050, St. Louis, MO 63197-9000. The full text of the Code of Federal Regulations is available in electronic format at www.ofr.gov. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

17 NYCRR section 154-2.1.

(e) Incorporation by reference. The provisions of the Code of Federal Regulations (CFR) that have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the books entitled: Title 49 CFR Parts 100 to 177, Parts 178 to 199, Parts 300 to 399, Parts 400-571 and Parts 572-999 revised as of October 1, 2017, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The incorporated regulations may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Motor Carrier Compliance Bureau, 50 Wolf Road, Albany, NY 12232. They may be purchased by mail from the US Government Printing Office, New Orders, P.O. Box 979050, St. Louis, MO 63197-9000. The full text of the Code of Federal Regulations is available in electronic format at www.ofr.gov. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

17 NYCRR 720.12 Incorporation by reference.

(a) Incorporation by reference. The provisions of the Code of Federal Regulations which have been incorporated in this Part have been filed in the Office of the Secretary of State of the State of New York, the publications so filed being the books entitled: Code of Federal Regulations, Title 49, Parts 100 to 177, Parts 178 to 199, Parts 300 to 399, Parts 400 to 571 and Parts 572 to 999 revised as of October 1, 2017, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the Libraries of the New York Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel, 50 Wolf Road, Albany, NY 12232. They may be purchased by mail from the US Government Printing Office, New Orders, P.O. Box 979050, St. Louis, MO 63197-9000. The full text of the Code of Federal Regulations is available in electronic format at www.ofr.gov. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

17 NYCRR 721.3

(f) FMCSR. Drivers of passenger carrying vehicles that carry more than 15 passengers, including the driver, or with a gross vehicle weight rating of more than 10,000 pounds shall comply with the applicable Federal Motor Carrier Safety Regulations (FMCSR) of the Federal Highway Administration, including: 49 CFR part 382 - Controlled Substances and Alcohol Use and Testing, part 383 - Commercial Driver's License Standards; Requirements and Penalties, part 390 - Federal Motor Carrier Safety Regulations; General, subdivisions 391.21, except for (b)(12), 391.23, except for (b) and (c), 391.25, 391.27, except for (c) and

(d), 391.41, 391.43 and 391.51, except for (b)(3), (b)(7) and (d)(4), of part 391 - Qualifications of Drivers, part 392 Driving of Commercial Motor Vehicles, part 393 - Parts and Accessories Necessary For Safe Operation, part 396 -Inspection, Repair, and Maintenance, except for subdivisions 396.3(a)(2) and (b)(4) and part 397 - Transportation of Hazardous Materials; Driving and Parking Rules. With respect to commercial drivers that are licensed with a passenger endorsement to operate a bus on an intrastate basis only, parts 390 to 397 shall not apply to commercial drivers when operating a school bus, and the adopted portions of part 391 shall only apply to those drivers that received their initial commercial driver's license after 5/19/1999, the first effective date of this regulation. With respect to hours of service of bus drivers the requirements of 17 NYCRR 820.6 apply.

Section 721.6. Incorporation by reference.

The provisions of the Code of Federal Regulations that have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the books entitled: Title 49 Code of Federal Regulations Parts 100 to 177, Parts 178 to 199, Parts 300 to 399, Parts 400-571 and Parts 572-999, revised as of October 1, 2017, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The incorporated regulations may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation and Office of Counsel, 50 Wolf Road, Albany, NY 12232. They may be purchased by mail from the US Government Printing Office, New Orders, P.O. Box 979050, St. Louis, MO 63197-9000. The full text of the Code of Federal Regulations is available in electronic format at www.ofr.gov. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

Section 750.3. Minimum levels of financial responsibility for for-hire motor carriers of passengers.

The Commissioner of Transportation adopts part 387 of title 49 of the Code of Federal Regulations with the same force and effect as though herein fully set forth at length for for-hire motor carriers of passengers operating motor vehicles in interstate and foreign commerce. The provisions of Title 49 of the Code of Federal Regulations that have been incorporated by reference in this Part, including Parts 100 to 177, Parts 178 to 199, Parts 300 to 399, Parts 400-571 and Parts 572-999, revised as of October 1, 2017, have been filed in the Office of the Secretary of State of the State of New York, the publications so filed being the books entitled: Title 49 Code of Federal Regulations Parts 100 to 177, Parts 178 to 199, and Parts 300 to 399, Parts 400-571, revised as of October 1, 2017, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The incorporated regulations may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation and Office of Counsel, 50 Wolf Road, Albany, NY 12232. They may be purchased by mail from the US Government Printing Office, New Orders, P.O. Box 979050, St. Louis, MO 63197-9000. The full text of the Code of Federal Regulations is available in electronic format at www.ofr.gov. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

Section 820.13. Incorporation by reference.

The provisions of the Code of Federal Regulations that have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publications so filed being the books entitled: Title 49 Code of Federal Regulations Parts 100 to 177, Parts 178 to 199, Parts 300 to 399, Parts 400-571 and Parts 572-999, revised as of October 1, 2017, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The provisions of Subpart B Part 395 of Title 49 the Code of Federal Regulations specifically include the Electronic Logging Device requirement and that is incorporated by reference into section 820.6 of this Part. The incorporated regulations may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation Office of Counsel, 50 Wolf Road, Albany, NY 12232. They may be purchased by mail from the US Government Printing Office, New Orders, P.O. Box 979050, St. Louis, MO 63197-9000. The full text of the Code of Federal Regulations is available in electronic format at www.ofr.gov. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

Section 855.2. Minimum levels of financial responsibility for interstate motor carriers of property.

The provisions of the Code of Federal Regulations that have been incorporated by reference in this Part have been filed in the Office of the Secretary of State of the State of New York, the publications so filed being the books entitled: Title 49 Code of Federal Regulations Parts 100 to 177, Parts 178 to 199, Parts 300 to 399, Parts 400-571 and Parts 572-999, revised as of October 1, 2017, published by the Office of the Federal Register, National Archives and Records Administration, as a special edition of the Federal Register. The regulations incorporated by reference may be examined at the Office of the Department of State, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001, at the law libraries of the New York State Supreme Court, the Legislative Library, the New York State Department of Transportation, Office of Counsel or Motor Carrier Compliance Bureau, 50 Wolf Road, Albany, NY 12232. They may be purchased by mail from the US Government Printing Office, New Orders, P.O. Box 979050, St. Louis, MO 63197-9000 with payment by check or with payment by credit card at 8066-512-1800. The full text of the Code of Federal Regulations is available in electronic format at www.ofr.gov. Copies of the Code of Federal Regulations are also available at many public libraries and bar association libraries.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. TRN-03-19-00001-EP, Issue of January 16, 2019. The emergency rule will expire May 2, 2019.

Text of rule and any required statements and analyses may be obtained from: David E. Winans, Associate Counsel, Department of Transportation, Division of Legal Affairs, 50 Wolf Rd., Albany, NY 12232, (518) 457-5793, email: david.winans@dot.ny.gov

Regulatory Impact Statement

1. Statutory authority:

Transportation Law section 14 (18), Transportation Law Section 140, and Transportation Law Section 211. This is an update to more current editions of federal motor carrier regulations that have been incorporated by reference into New York regulations. The commissioner of transportation is empowered to prescribe rules and regulations concerning the safety of motor carriers by Transportation Law section 14 (18). Transportation Law Section 140 empowers the commissioner to prescribe rules and regulations in relation to motor carrier safety. Transportation Law Section 211 authorizes the commissioner to promulgate rules and regulations governing the hours of service of drivers of trucks and motor buses.

2. Legislative objectives:

The legislative objective is to promote and enforce public safety and responsibility of motor carriers that are subject to regulation by the Federal Motor Carrier Safety Administration (FMCSA). FMCSA regulations are set forth in Title 49 of the Code of Federal Regulations (CFR). New York is required by 49 USC Section 31141 to adopt and enforce the minimum safety standards on commercial motor vehicles and is generally preempted from applying either more stringent standards or more lax standards to motor carriers engaged in interstate commerce. In addition to the legislative mandate, New York is a participant in the Motor Carrier Safety Assistance Program (MCSAP) pursuant to an agreement most recently approved on January 9, 2017. Pursuant to this agreement, New York assumes the role and obligation of performing motor carrier enforcement for FMCSA in return for federal funding that amounts to $14,775,210 for the current fiscal year. As a condition of this agreement, New York must annually certify that it has adopted and is enforcing the current version of the federal rules.

New York, through its Department of Transportation (NYSDOT) has previously adopted the relevant federal regulations for motor carrier operation, regulation and enforcement.

Most of the federal motor carrier vehicle safety standard regulations date back to their initial adoption in 1968. Over the last five decades there have been occasional changes, most of which have been minor. Hours of Service (HOS) rules for drivers of commercial motor vehicles date back to 1938 and the Interstate Commerce Commission. In 2005, the FMCSA issued the first of their changes to the HOS rules.

As concerns the adoption of 49 CFR Part 395 into 17 NYCRR Section 820.6 pertaining to the hours of service of drivers, the legislative objective has been and is "to promote safe driving of commercial motor vehicles (CMVs) by limiting on-duty driving time, thereby ensuring that drivers have adequate time to obtain rest. FMCSA conducts regular checks at the roadside and performs in-depth compliance reviews to ensure that drivers are operating within the HOS limits." There is no change in this objective related to this update to the current version of Part 395. What has changed between the 2013 version and the 2017 version of Part 395 are some changes related to roadside inspection, and most significantly, the addition of Subpart B to Part 395 that mandates the use of "Electronic Logging Devices" (ELDs) for certain classes of motor carriers under certain circumstances as spelled out in the newer version of the CFR.

ELDs are electronic devices that automatically record driving time and

facilitate electronic recording of other duty status categories, and provide the same information currently collected on paper records of duty status (RODS). The update to the current version of Part 395 by a consensus rule met with objections from the Owner-Operator Independent Drivers Association, Inc. ("OOIDA") making consensus adoption of the update impossible and triggering this rulemaking. Based upon the 29 pages of public comment objecting to the consensus update, OOIDA takes issue with truck inspections, in general, and takes specific exception with the ELD mandate in Part 395. None of the stated comments/objections by OOIDA would appear to pertain to the general updates to the newer version of the CFR outside of Part 395. However, because the CFR booklets contain multiple parts, it became impossible to proceed by consensus even for any other changes between the 2013 and 2017 versions of the regulations.

3. Needs and benefits:

The purpose of this rulemaking is to comply with federal requirements. These requirements include those imposed by law, as well as those assumed pursuant to the agreement by the State of New York to participate in the Motor Carrier Safety Assistance Program (MCSAP). MCSAP is a grant program under regulatory provisions in 49 CFR Part 350 that contributes half the cost of enforcing safety regulations on commercial motor carriers operating within or through the state. Concerning HOS enforcement, adoption of the ELD mandate will better assure compliance with HOS regulations that have long been recognized as the key to preventing accidents that occur because of fatigued driving.

NYSDOT is simply updating the version of the federal motor carrier regulations to the edition published in 2016. The regulations referencing the version of the CFR are 17 NYCRR Sections 154-1.1 (f), 154-2.1 €, 720.12 (a), 721.3 (f), 721.6, 750.3, 820.13, and 855.2. Pursuant to the MCSAP agreement, these updates to the references to the CFR must put New York into compliance with the CFR within three years of the most current edition. These periodic updates are normally effected by a consensus rule because New York has no choice but to adopt the federal regulations and because, until now, nobody had expressed any objections to the periodic update bringing New York into compliance with national standards for motor carriers as adopted by FMCSA.

The changes effected by updating the edition of the CFR are normally very minor, and nationally applicable. These regulations that are already enforced by NYSDOT and cooperating police agencies and are not changing. The update to the current edition of the federal rules does result in some limited situations where enforcement of the updated rule may impose additional requirements on the motor carriers that are subject to FMCSA regulation. The only known situation where the proposed update changes motor carrier requirements involves the ELD mandate and the manner that hours of service (HOS) inspections and enforcement will be undertaken using data that may now be required to come from an ELD as opposed to data from a log book that was previously allowed.

There were delays in the implementation of the final rule at FMCSA from 2010 through 2017 because of challenges at FMCSA, including a challenge by OOIDA that was resolved in the 7th Circuit Court of Appeals. Owner Operator Ind. Drivers Ass'n v. United States DOT, 840 F.3d 879 (7th Cir. 2016). The ELD final rule made changes to the technical requirements. Specifically, the final rule simplified the data transfer options and exempted vehicles with a pre-2000 model year from the ELD requirement.

4. Costs:

The FMCSA undertook extensive study over a period of many years at untold expense to formulate what they call a "Regulatory Evaluation of Electronic Logging Devices and Hours of Service" in support of the ELD rule in Part 395. This effort culminated in a document that is 170 pages in length. FMCSA published a synopsis of their findings in in 80 FR 78292 (publication date 12/16/2015. A copy of the 253-page document will posted on the Department's webpage at https://www.dot.ny.gov/divisions/operating/osss/bus/rules-regulations.

The ELD mandate requires that certain motor carriers equip their vehicles with ELDs and incur other expenses projected to total $1,836 per year. The ELD mandate also makes it more difficult for motor carriers to evade responsibility for HOS violations. The cost-benefit analysis utilized by FMCSA when the ELD mandate was adopted in Part 395 estimates that implementation of the rule results in significant savings on paperwork (including labor expenses) and crash reductions that are valued at $3,010 per year. The FMCSA regulatory impact statement thus estimates a net annual financial benefit to motor carriers of $1,174.

The Department initiates rulemaking of this nature as a nondiscretionary, ministerial undertaking pursuant to higher authority. The purpose of incorporating 49 CFR Part 395 into 17 NYCRR is to require motor carriers operating within and through this state to utilize the most accurate, tamperproof and error free-technology for recordation of records on hours of service of drivers of commercial motor vehicles. These electronic devices record automatically and the records they create will replace paper logbooks, that are frequently found to be incomplete, inaccurate or missing altogether. With the arguable exception for implementation of the ELD mandate, it is not expected that updating to the 2017 version of the CFR will have any significant cost impacts on motor carriers that are subject to NYSDOT/FMCSA regulation and enforcement. The necessary update makes no changes to the longstanding and current system of commercial motor vehicle enforcement. Most truck and/or driver inspections are performed roadside under the "pervasively regulated industry" exception to the Fourth Amendment of the U.S. Constitution.

5. Local government mandates:

The rule imposes no local government mandates.

6. Paperwork:

The paperwork requirements relating to motor carrier safety regulations are prescribed by the underlying regulations. No increase in the paperwork requirements will be occasioned by the update in the incorporated version of the federal regulations.

As concerns the adoption of the ELD mandate in Part 395 of the HOS regulations, utilization of the ELD is projected to result in a reduction of paperwork because the ELD automatically records driving time and facilitates electronic recording of other duty status categories, and provides the same information currently collected on paper records of duty status (RODS). In this way, the ELD replaces the log books that have been used in the past. FMCSA estimates that the paperwork savings connected to adoption of the ELD rule have an annual value of $2,438.60 per year per truck.

7. Duplication:

There are no duplications, overlaps or conflicts associated with the rule.

8. Alternatives:

There is no alternative to adoption of the update to the version of the federal rules. New York is required to apply the federal rules and has agreed to do so under the MCSAP agreement. Failure to timely adopt the update will put New York in violation of the federal law and constitute a breach of the MCSAP agreement and result in the loss of federal assistance estimated to be $14,775,210 for the current fiscal year.

9. Federal standards:

49 USC Section 31141 requires New York to adopt and enforce the minimum safety standards on commercial motor vehicles as adopted by FMCSA and New York is generally preempted from applying either more stringent standards or more lax standards to motor carriers engaged in interstate commerce.

10. Compliance schedule:

FMCSA allowed for a gradual roll-out of the ELD mandate with the federal rule taking effect in December of 2017, and enforcement delayed until April 1, 2018. Because of objections to the consensus update, New York has not begun to do any enforcement of the ELD mandate. Unless the ELD mandate is implemented in New York, the State will face the elimination of MCSAP funding. Adoption is therefore a matter of high priority and will be effected as soon as possible.

Regulatory Flexibility Analysis

1. Effect of rule. The rule serves to effect an update to the edition of the federal motor carrier safety regulations that apply to commercial motor carriers. This update will result in no changes to the requirements for commercial motor carriers to comply with regulations and submit to routine roadside vehicle/driver inspections and safety audits. Some of the requirements applicable to vehicle safety may involve minor changes as New York conforms to the current federal standards. As concerns the hours of service for drivers covered by 49 CFR Part 395, the updated version adds Subpart B that now requires certain drivers for motor carriers to equip vehicles with Electronic Logging Devices (ELDs). FMCSA has compiled national estimates on the number of businesses affected by this ELD rule. For hire general and specialized freight, private property carriers and for hire and private passenger together totaled 539,000, of which 533,970 were classified as small businesses. As such, the percentage of such operators constitute most of the target population, to wit: "… FMCSA estimates that 99.1 percent of regulated motor carriers are small businesses according to Small Business Administration (SBA) size standards." 80 FR 78292, *78376. There are no specific figures available for New York.

2. Compliance requirements. As concerns the ELD requirement in 49 CFR Part 395, FMCSA conducted extensive investigations into the issue of cost to small business nationwide, which are thoroughly documented in 80 FR 78292 on the Department's webpage at https://www.dot.ny.gov/divisions/operating/osss/bus/rules-regulations. One paragraph pertinent to this category is this: "ELDs can lead to significant paperwork savings that can offset the costs of the devices. The Agency, however, recognizes that these devices entail an up-front investment that can be burdensome for small carriers. At least one provider, however, provides free hardware and recoups the cost of the device over time in the form of higher monthly operating fees. The Agency is also aware of lease-to-own programs that allow carriers to spread the purchase costs over several years. Nevertheless, the typical carrier will likely be required to spend about $584 per

Commercial Motor Vehicle (CMV) to purchase and install ELDs. In addition to purchase costs, carriers will also likely spend about $20 per month per CMV for monthly service fees." 80 FR 78292, *78378. Costs were considered justified to achieve the benefits of the rule.

3. Professional services. As concerns the ELD requirement in 49 CFR Part 395, professional services are not broken out in the federal analysis as a standalone category. Device installation and maintenance are included in the cost of the devices and associated equipment installation. Driver training costs are $9.4 (in 2013 millions) nationwide. Both categories of expenditure are likely to be offset by time savings realized by discontinuance of hours of service recordation with paper logbooks and the clerical expense associated with that recordkeeping.

4. Compliance costs. As concerns the ELD requirement in 49 CFR Part 395, costs of improved hours of service compliance per ELD was computed nationwide at $286 per CMV for long haul operators and $193 per CMV for short haul operators (in 2013 dollars).

5. Economic and technological feasibility. FMCSA analysis did not determine economic or technological feasibility to be constraining factors in implementation of the ELD rule.

6. Minimizing adverse impact. Because small businesses comprise such a large portion of the motor carrier population subject to the Federal Motor Carrier Safety Regulations (FMCSRs), FMCSA stated in the 2011 NPRM that it is neither feasible nor consistent with the Agency's safety mandate to allow a motor carrier to be excepted from the requirement to use Automatic on Board Recording Devices (AOBRs) based only on its status as a small business entity. As the state is constrained from altering the federal regulation, there is no methodology to achieve a minimization of adverse impact. The updated version of 49 CFR Part 395 does include exceptions to the ELD mandate where a driver may use a log book as proof of compliance with Record of Duty Status requirements (normally a log book) under the following circumstances: (1) the vehicle is used no more than eight days in any 30-day period, (2) a driveaway-towaway operation in which the vehicle is driven is part of the shipment being delivered, (3) a driveaway-towaway operation in which the vehicle is driven is a motor home or a recreational vehicle trailer or (4) the vehicle was manufactured before model year 2000.

7. Small business and local government participation. Small business was afforded ample opportunity to participate in the federal rulemaking associated with the ELD rule. As that process has closed and the federal ELD rule is now in effect, there is no ability to reopen the public participation initiative at the state level.

8. Cure period or other opportunity for ameliorative action. Pursuant to SAPA 202-b(1-a)(b), no such cure period is included in the rule. The rule involves an update to the applicable federal regulations that apply to motor carriers. There was a gradual roll-out period leading to the adoption, implementation and enforcement of the ELD rule. The rule became effective at the federal level in December of 2017. No enforcement was to occur before April 1, 2018. Because this update has not been effected in New York, enforcement of the ELD rule will not occur until adoption. There is no additional cure period for the avoidance of penalties associated with the violation of the ELD rule as such would be counter to provisions of the Federal Motor Carrier Safety Assistance Program (MCSAP) agreement in force. Per 49 CFR 350.335: (a) FMCSA may initiate a proceeding to withdraw Plan approval or withhold MCSAP funds in accordance with 49 CFR 320.215 in the following situations: (1) When a State that currently has compatible CMV safety laws and regulations pertaining to interstate commerce (i.e., rules identical to the FMCSRs and Hazardous Material Regulations (HMRs) or have the same effect as the FMCSRs and identical to the HMRs) and intrastate commerce (i.e., rules identical to or within the tolerance guidelines for the FMCSRs and identical to the HMRs) enacts a law or regulation which results in an incompatible rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas. The proposed rulemaking involves an update to the edition of federal motor carrier regulations that have previously been incorporated by reference into state regulations. The only material change expected from this update is the addition of the mandate for Electronic Logging Devices (ELDs) for certain commercial motor vehicles for the purpose of enforcing 49 CFR Part 395 on the hours of service of drivers. This update is supported, in part, by the Regulatory Evaluation of Electronic Logging Devices supporting the adoption of the final rule at FMCSA dating from November 2015. This Regulatory Impact Analysis does not include an analysis of the rulemaking associated with ELD on commercial motor carriers situated or operating primarily within rural areas as defined by federal law. The purpose of the ELD rule, to reduce the incidence of commercial motor vehicle accidents due to driver fatigue is unaffected by external factors related to the area of operation being rural as opposed to urban; as such, analysis focused on rural areas would not have produced data disposed to produce consequences on the rulemaking. The rule applies across the state. Per SAPA section 102(10): ""Rural area" means those portions of the state so defined by subdivision seven of section four hundred eighty-one of the executive law," to wit: ""Rural areas" means counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of two hundred thousand or greater population, "rural areas" means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein." Federal law does not provide a definition of "rural area" strictly comparable to the state definition. Per 49 USC section 5302(16), "The term ''rural area'' means an area encompassing a population of less than 50,000 people that has not been designated in the most recent decennial census as an ''urbanized area'' by the Secretary of Commerce." It should be noted that under 17 NYCRR Section 820.6(b)(1), "the operation of a commercial motor vehicle owned by a farmer and operated by himself or an employee when used in the hauling of farm, dairy, or horticultural products and farm supplies for himself or his farm neighbors to market" is excepted, so that the applicability of the ELD mandate to farmers is limited. There is also an exemption for farm vehicles engaged in most interstate operations found at 49 CFR Section 390.39, including the requirements in Part 395.

2. Reporting, recordkeeping and other compliance requirements and professional services. Motor carrier regulation and enforcement is not expected to change significantly from that provided under the existing regulations. As concerns the new requirement for ELDs, recordkeeping is reduced in that ELD driver record of duty status is recorded automatically and retained electronically, rather than via manual recordation retained on paper. Compliance costs include purchase, installation and maintenance of the ELD. Professional services may include driver training in the use of the device all of which are discussed in costs below. Per the 2015 federal RIA, "Substantial paperwork and recordkeeping burdens are … associated with HOS rules, including time spent by drivers filling out and submitting paper RODS and time spent by motor carrier staff reviewing, filing, and maintaining these RODS. ELDs will eliminate clerical tasks associated with the RODS and significantly reduce the time drivers spend recording their HOS. These paperwork reductions offset most of the costs of the devices." The types and numbers of rural areas in which affected entities may be domiciled is undetermined but is considered irrelevant to the purpose of the rulemaking. Commercial motor carriers headquartered in rural areas are not expected to encounter disproportionate operational or regulatory compliance costs related to the incorporation of federal safety standards associated with ELD into Title 17 NYCRR.

3. Costs. As concerns the ELD requirement, the initial capital costs as are described in the RIA Part 3. 'Costs of Final Rule' on the Department's webpage at https://www.dot.ny.gov/divisions/operating/osss/bus/rules-regulations. The total annualized cost of ELD with Universal Serial Bus (USB) at 5 and 10-year replacement intervals at $166; the cost was compiled from vendor marketing material so it does not reflect actual expenditures, which may vary depending on the size of carrier fleets.

4. Minimizing adverse impact. As incorporation of 49 CFR Part 395 into Title 17 regulations is mandatory the Department has no discretion to alter the federal regulatory provisions to furnish relief to rural area carriers. However, the FMCSA received a comment in 2014 which made them aware of important wireless coverage issues: "A rural transit provider stated that connectivity is not available in many areas, so Internet and cellphone reception is not possible. ELDs that rely on such connectivity are not viable."

5. Rural area participation. 49 USC section 30103(b) provides that a state, "… may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter..."; as such, the agency provided no public or private interests in rural areas with the opportunity to participate in the rule making process for the purpose of determining how to modify the federal ELD regulations to minimize cost or complexity, as a less stringent regulation on the subject would be preempted.

Job Impact Statement

1. Nature of impact: The proposed rule changes are advanced periodically to retain consistency of Title 17 NYCRR with Title 49 CFR provisions related to safe operation of commercial motor vehicles; said CFR provisions are incorporated by reference. Since the Department last adopted such updates by incorporation of the 10/1/2013 edition of CFR safety provisions in January 2015, commercial motor carriers subject to hours of service (HOS) requirements have been required under new federal mandates to transition from paper logbooks to electronic logging devices (ELD) to document compliance with limitations on hours behind the wheel, termed "record of duty status" (RODS). Said federal regulations were adopted with a compliance date of December 18, 2017 in 80 FR 78292. The present rule update serves to capture that material by incorporation and is not expected to have a significant impact on jobs; the associ-

ated New York State Department of Transportation (NYSDOT) enforcement activity will be consistent with past practice.

2. Categories and numbers affected: Federal rules except limited numbers of commercial motor carriers from compliance with ELD requirement. Most motor carriers whose drivers currently maintain paper logbooks are required to transition to ELD and those excepted must continue to maintain paper logbooks if required to document RODS. Exclusion of small businesses was considered but ultimately rejected by FMCSA as inconsistent with the federal statutory framework under which rulemaking is undertaken (80 FR 78292, *78313).

3. Regions of adverse impact: Inspections and reviews are conducted pursuant to Department policy and there is no variance in the methodology across regions. No adverse impact on jobs in any particular region is anticipated.

4. Minimizing adverse impact: Cost estimates for compliance with the ELD mandate vary depending on the number of vehicles a carrier has in operation. Larger carriers are expected to enjoy significant cost savings, whereas smaller carriers and single operators may see modest cost increases of a few hundred dollars per vehicle, that are expected to evaporate over time as the ELD becomes standard equipment in newer model commercial vehicles and such vehicles replace older ones in the operator's fleets. FMCSA determined that time savings to drivers and carriers from filling out, submitting, and handling paper can exceed the annualized costs of equipping and maintaining ELD. The possible cost increases that may occur in certain cases were estimated to not likely exceed a few hundred dollars per year and were not considered to represent a significant impact. Business case studies performed by FMCSA following the implementation of electronic management systems consistently revealed the cost of compliance management, including truck mounted data terminal hardware, to be 30% lower than manual compliance management procedures used for paper logs (80 FR 78292, *78344).

Title 17 NYCRR regulations must remain consistent with the CFR, per 49 USCS section 31141. As such, NYSDOT reviews and inspections are performed using the standards that are found in the CFR regulations incorporated by reference in 17 NYCRR. Neither the frequency of inspections nor the basis for NYSDOT enforcement action is expected to change in any way post adoption of the instance rulemaking, so categories and numbers affected remain status quo. The purpose of performing motor carrier enforcement activities is the advancement of public safety through verification of compliance with state law and regulation pertaining to motor carrier safety; consequently, there are no adverse impacts.

Assessment of Public Comment

The agency received no public comment.

Triborough Bridge and Tunnel Authority

NOTICE OF ADOPTION

To Establish a New Crossing Charge Schedule for Use of Bridges and Tunnels Operated by Triborough Bridge and Tunnel Authority

I.D. No. TBA-49-18-00011-A

Filing No. 146

Filing Date: 2019-02-27

Effective Date: 2019-02-27

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

Action taken: Repeal of section 1021.1 and addition of new section 1021.1 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 553(5)

Subject: To establish a new crossing charge schedule for use of bridges and tunnels operated by Triborough Bridge and Tunnel Authority.

Purpose: To raise additional revenue.

Text of final rule: *TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY CROSSING CHARGES*

A. E-ZPass Charges for E-ZPass New York Customer Service Center Customers

CLASSIFICATION	VERRAZANO-NARROWS BRIDGE (A)	ROBERT F. KENNEDY, BRONX-WHITESTONE, AND THROGS NECK BRIDGES AND QUEENS MIDTOWN AND HUGH L CAREY TUNNELS	HENRY HUDSON BRIDGE	MARINE PARKWAY-GIL HODGES MEMORIAL, AND CROSS BAY VETERANS MEMORIAL BRIDGES
	Crossing Charges			
1 Two-axle vehicles, including: passenger vehicles, station wagons, self-propelled mobile homes, ambulances, hearses, vehicles with seating capacity of not more than 15 adult persons (including the driver) and trucks with maximum gross weight (MGW) of 7,000 lbs. and under	$6.12	$6.12	$2.80	$2.29
Registered Staten Island Residents using an eligible vehicle taking 3 or more trips per month	$3.44			
Registered Staten Island Residents using an eligible vehicle taking less than 3 trips per month	$3.63			
Registered Staten Island Residents using an eligible vehicle with three or more occupants (HOV)	$1.70			
Registered Rockaway Residents using an eligible vehicle				$1.49
Each additional axle costs	$4.00	$4.00	$3.00	$3.00
2 All vehicles with MGW greater than 7,000 lbs. and buses (other than franchise buses using E-ZPass and motor homes)				
Two-axle vehicles	$11.06	$11.06		$5.53
Three-axle vehicles	$18.12	$18.12		$9.06
Four-axle vehicles	$23.16	$23.16		$11.58
Five-axle vehicles	$30.19	$30.19		$15.10
Six-axle vehicles	$35.23	$35.23		$17.62
Seven-axle vehicles	$42.26	$42.26		$21.13
Each additional axle	$7.06	$7.06		$3.53
3 Two-axle franchise buses	$4.43	$4.43		$2.21
4 Three-axle franchise buses	$5.26	$5.26		$2.77
5 Motorcycles	$2.66	$2.66	$1.91	$1.91
Each additional axle	$1.59	$1.59	$1.59	$1.59

See Footnotes on next page

The Authority reserves the right to determine whether any vehicle is of unusual or unconventional design, weight or construction and therefore not within any of the listed categories. The Authority also reserves the right to determine the crossing charge for any such vehicle of unusual or unconventional design, weight or construction.

Bicycles are not permitted over Bronx-Whitestone, Throgs Neck, and Verrazano-Narrows Bridges, or through the tunnels. Such vehicles may cross the Robert F. Kennedy, Henry Hudson, Marine Parkway-Gil Hodges Memorial and Cross Bay Veterans Memorial Bridges without payment of crossing charge, but must be walked across the pedestrian paths of such bridges.

Only vehicles authorized to use parkways are authorized to use the Henry Hudson Bridge. An unauthorized vehicle using the Henry Hudson Bridge must pay the Marine Parkway-Gil Hodges Memorial Bridge rate.

E-ZPass crossing charges apply to New York E-ZPass Customer Service Center customers only and are available subject to terms, conditions and agreements established by the Authority.

There are no residential restrictions with regard to enrollment as a TBTA Customer in the New York Customer Service Center.

(a) Under Verrazano-Narrows one-way crossing charge collection program, all per crossing charges shown should be doubled. Presently paid in westbound direction only.

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY CROSSING CHARGES

B. For Fare Media Other Than E-ZPass Charges for E-ZPass New York Customer Service Center Customers

CLASSIFICATION	VERRAZANO-NARROWS BRIDGE (A)	ROBERT F. KENNEDY, BRONX-WHITESTONE, AND THROGS NECK BRIDGES AND QUEENS MIDTOWN AND HUGH L CAREY TUNNELS	HENRY HUDSON BRIDGE	MARINE PARKWAY-GIL HODGES MEMORIAL, AND CROSS BAY VETERANS MEMORIAL BRIDGES
	Crossing Charges			
1 Two-axle vehicles, including: passenger vehicles, station wagons, self-propelled mobile homes, ambulances, hearses, vehicles with seating capacity of not more than 15 adult persons (including the driver) and trucks with maximum gross weight (MGW) of 7,000 lbs. and under	$9.50	$9.50	$7.00	$4.75
The following discounted charges are available for eligible class 1 vehicles:				
Charge per crossing for E-Tokens				$3.17
Charge per crossing for E-Tokens for registered Staten Island Residents using an eligible vehicle	$4.90			
Charge per crossing for E-Tokens for registered Rockaway Peninsula/Broad Channel Residents using an eligible vehicle				$2.05
Each additional axle costs	$4.00	$4.00	$3.00	$3.00
2 All vehicles with MGW greater than 7,000 lbs. and buses (other than franchise buses using E-ZPass and motor homes)				
Two-axle vehicles	$19.00	$19.00		$9.50
Three-axle vehicles	$31.29	$31.29		$15.65
Four-axle vehicles	$39.12	$39.12		$19.56
Five-axle vehicles	$51.41	$51.41		$25.71
Six-axle vehicles	$59.24	$59.24		$29.62
Seven-axle vehicles	$73.76	$73.76		$36.88
Each additional axle	$11.18	$11.18		$5.59
3 Two-axle franchise buses	$9.25	$9.25		$4.50
4 Three-axle franchise buses	$10.25	$10.25		$5.25
5 Motorcycles	$4.00	$4.00	$4.00	$4.00
Each additional axle	$1.68	$1.68	$1.68	$1.68

See Footnotes on next page

The Authority reserves the right to determine whether any vehicle is of unusual or unconventional design, weight or construction and therefore not within any of the listed categories. The Authority also reserves the right to determine the crossing charge for any such vehicle of unusual or unconventional design, weight or construction.

Bicycles are not permitted over Bronx-Whitestone, Throgs Neck, and Verrazano-Narrows Bridges, or through the tunnels. Such vehicles may cross the Robert F. Kennedy, Henry Hudson, Marine Parkway-Gil Hodges Memorial and Cross Bay Veterans Memorial Bridges without payment of crossing charge, but must be walked across the pedestrian paths of such bridges.

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(a) Under Verrazano-Narrows one-way crossing charge collection program, all per crossing charges shown should be doubled. Presently paid in westbound direction only.

Final rule as compared with last published rule: Substantial revisions were made in section 1021.1.

Text of rule and any required statements and analyses may be obtained from: M. Margaret Terry, Senior Vice President and General Counsel, Triborough Bridge and Tunnel Authority, 2 Broadway, 24th Floor, New York, New York 10004, (646) 252-7619, email: mterry@mtabt.org

Revised Regulatory Impact Statement

A revised regulatory impact statement 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.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis 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.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis 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.

Revised Job Impact Statement

A revised job impact statement 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.

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.