

# 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.

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## Department of Agriculture and Markets

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### NOTICE OF ADOPTION

#### Shell Eggs; Acidified Foods

**I.D. No.** AAM-40-18-00021-A  
**Filing No.** 142  
**Filing Date:** 2019-02-14  
**Effective Date:** 2019-03-06

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

**Action taken:** Repeal of Part 261; addition of new Part 261 to Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 16, 18 and 214-b

**Subject:** Shell Eggs; Acidified Foods.

**Purpose:** To continue regulatory powers in connection with acidified foods and shell eggs used in foods for human consumption.

**Text or summary was published** in the October 3, 2018 issue of the Register, I.D. No. AAM-40-18-00021-EP.

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

**Text of rule and any required statements and analyses may be obtained from:** John Luker, Asst. Director, Division of Food Safety & Inspection, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-5382, email: john.luker@agriculture.ny.gov

#### Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2024, which is no later than the 5th year after the year in which this rule is being adopted.

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Certification of Industrial Hemp Seed

**I.D. No.** AAM-43-18-00002-A  
**Filing No.** 143  
**Filing Date:** 2019-02-15  
**Effective Date:** 2019-03-06

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

**Action taken:** Addition of Part 119 to Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 141 and 142

**Subject:** Certification of Industrial Hemp Seed.

**Purpose:** To establish standards for certification of industrial hemp seed.

**Text or summary was published** in the October 24, 2018 issue of the Register, I.D. No. AAM-43-18-00002-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Christopher Logue, Director, Division of Plant Industry, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 485-2383, email: Christopher.Logue@agriculture.ny.gov

#### Revised Job Impact Statement

The proposed rule will not have an adverse impact upon employment opportunities.

The proposed rule will allow the Department of Agriculture and Markets to certify industrial hemp seed using standards generally accepted by growers, dealers, and consumers. The proposed rule incorporates by reference such standards, set forth in the 2018 edition of the Seed Certification Handbook, a widely-recognized authoritative resource.

The proposed rule will facilitate the growing, cultivation, sale, and distribution of industrial hemp seed; as such, the Department believes that the proposed rule will have a beneficial impact upon jobs.

#### Assessment of Public Comment

The agency received no public comment.

### NOTICE OF ADOPTION

#### Licensing of Malt Operators and Processors

**I.D. No.** AAM-49-18-00001-A  
**Filing No.** 141  
**Filing Date:** 2019-02-13  
**Effective Date:** 2019-03-06

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

**Action taken:** Amendment of sections 276.1 and 276.4 of Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 16, 18 and 251-z-4

**Subject:** Licensing of malt operators and processors.

**Purpose:** To exempt malt operators and processors producing under a certain volume from licensing requirements and fees.

**Text of final rule:** Section 276.1 of 1 NYCRR is amended to read as follows:

All food processing establishments subject to regulation under article

20-C of the Agriculture and Markets Law shall be subject to the current good manufacturing practices of Part [261] 260 of this Title unless exempted by said article 20-C or by this Part.

Subdivisions (g) and (h) of section 276.4 of 1 NYCRR are re-lettered to be subdivisions (h) and (i), respectively.

Section 276.4 of 1 NYCRR is amended by adding thereto a new subdivision (g), to read as follows:

(g) *Malt Operators and Processors.*

(1) *Definitions. As used in this subdivision:*

(i) *Malting is the process of converting barley or other cereal grains, such as oats, wheat or rye, into malt for use in brewing and/or distilling, and takes place in a maltings, sometimes called a malthouse, or a malting floor.*

(ii) *Person means a natural person, partnership, corporation, association, limited liability company or other legal entity.*

(iii) *Processing means that term as defined in Agriculture and Markets Law section 251-z-2(4) except processing, as used in this subdivision, shall not mean non-mechanical drying.*

(2) *Any person who participates in the process of malting in a volume that does not exceed 4,000,000 lbs annually shall be exempt from the licensing requirements of Article 20-C of the Agriculture and Markets Law, and shall be exempt annually from the license fee requirement of Agriculture and Markets Law section 251-z-2(4), provided that:*

(i) *such establishment is maintained in a sanitary condition and follows the current good manufacturing practices set forth in Part 260 of this Title; and*

(ii) *no other food processing operations for which licensing under article 20-C of the Agriculture and Markets Law is required are being conducted at the establishment.*

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 276.4(g), (h) and (i).

**Text of rule and any required statements and analyses may be obtained from:** John Luker, Dept. of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-4492, email: john.luker@agriculture.ny.gov

#### Revised Job Impact Statement

The nonsubstantive change to the rulemaking consists of a revision to the previous lettering of subsections (g), (h), and (i). The previous lettering would have moved section (h) and (i) to (i) and (j) without a replacement subsection (h). Since this amendment merely re-letters the sections for consistency purposes, it is nonsubstantive in nature, and does not necessitate revision to the previously published Statement in Lieu of Job Impact Statement.

#### Assessment of Public Comment

The agency received no public comment.

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

#### National Institute of Standards and Technology (NIST) Handbook 44

I.D. No. AAM-10-19-00002-P

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

**Proposed Action:** This is a consensus rule making to amend section 220.2 of Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 16, 18 and 179

**Subject:** National Institute of Standards and Technology (NIST) Handbook 44.

**Purpose:** To incorporate NIST Handbook 44 (2019 edition).

**Text of proposed rule:** Subdivision (a) of section 220.2 of 1 NYCRR is amended to read as follows:

(a) Except as otherwise provided in this Part, the specifications, tolerances and regulations for commercial weighing and measuring devices shall be those adopted by the [102nd] 103rd National Conference on Weights and Measures [2017] 2018 as published in the National Institute of Standards and Technology Handbook 44, [2018] 2019 edition. This document is available from the National Conference on Weights and Measures, 1135 M Street, Suite 110, Lincoln, NE 68508, or the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is available for public inspection and copying in the office of the Director of Weights and Measures, Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, or in the office of the

Department of State, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, New York 12231.

**Text of proposed rule and any required statements and analyses may be obtained from:** Mike Sikula, Director, Bureau of Weights & Measures, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-3146, email: Mike.Sikula@agriculture.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.

**This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.**

#### Consensus Rule Making Determination

The proposed rule will amend subdivision (a) of 1 NYCRR section 220.2 to incorporate by reference the 2019 edition of National Institute of Standards and Technology Handbook 44.

The proposed amendment to subdivision (a) of 1 NYCRR section 220.2 is non-controversial. The 2019 edition of Handbook 44 has been adopted by or is in the process of being adopted by every state; manufacturers of weighing and measuring devices located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce. Furthermore, the State's users of commercial weighing and measuring devices also already use devices that conform to the provisions of this document due to its nearly-nationwide applicability.

Based upon the foregoing, the proposed rule will not have any adverse impact upon parties regulated pursuant thereto and is, therefore, non-controversial.

#### Job Impact Statement

The proposed rule will not have an adverse impact on jobs or on employment opportunities.

The proposed rule will incorporate by reference in subdivision (a) of 1 NYCRR section 220.2 the 2019 edition of National Institute of Standards and Technology Handbook 44 (henceforth, "Handbook 44 (2019 edition)") which contains specifications, tolerances and regulations for commercial measuring devices. The 2018 edition of Handbook 44 is presently incorporated by reference. Handbook 44 (2019 edition) differs from the 2019 edition in that it prohibits the display of auxiliary rounding digits for direct sales on pharmacy and jewelry scales; requires receipts from gas stations to identify the dispenser; specifies requirements for a fuel delivery truck equipped with means of clearing a discharge hose; sets forth requirements, applicable to LPG liquid measuring devices, for eliminating air/vapor before the fuel reaches the meter; and requires taximeters to specify a start date for activation/deactivation of the distance measuring mechanism. Handbook 44 (2019 edition) has been adopted or is in the process of being adopted by every state; manufacturers and users of weighing and measuring devices located in New York already, therefore, conform their operations to the provisions of this document in order to sell their products in interstate commerce.

The proposed rule requires manufacturers and users of weighing and measuring devices to do no more than they are practically required to do presently and/or lessens certain regulatory burdens; as such, the proposed rule will not have an adverse impact upon jobs or employment opportunities.

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## Department of Civil Service

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### NOTICE OF ADOPTION

#### Jurisdictional Classification

**I.D. No.** CVS-33-18-00013-A

**Filing No.** 136

**Filing Date:** 2019-02-13

**Effective Date:** 2019-03-06

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a subheading and a position in the non-competitive class.

**Text or summary was published** in the August 15, 2018 issue of the Register, I.D. No. CVS-33-18-00013-P.

**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-46-18-00006-A  
**Filing No.** 132  
**Filing Date:** 2019-02-13  
**Effective Date:** 2019-03-06

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

**Action taken:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class.

**Text or summary was published** in the November 14, 2018 issue of the Register, I.D. No. CVS-46-18-00006-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-46-18-00007-A  
**Filing No.** 135  
**Filing Date:** 2019-02-13  
**Effective Date:** 2019-03-06

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the non-competitive class.

**Text or summary was published** in the November 14, 2018 issue of the Register, I.D. No. CVS-46-18-00007-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-46-18-00008-A  
**Filing No.** 137  
**Filing Date:** 2019-02-13  
**Effective Date:** 2019-03-06

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

**Action taken:** Amendment of Appendix 1 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify positions in the exempt class.

**Text or summary was published** in the November 14, 2018 issue of the Register, I.D. No. CVS-46-18-00008-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-46-18-00009-A  
**Filing No.** 139  
**Filing Date:** 2019-02-13  
**Effective Date:** 2019-03-06

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the non-competitive class.

**Text or summary was published** in the November 14, 2018 issue of the Register, I.D. No. CVS-46-18-00009-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-46-18-00010-A  
**Filing No.** 133  
**Filing Date:** 2019-02-13  
**Effective Date:** 2019-03-06

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify positions in the non-competitive class.

**Text or summary was published** in the November 14, 2018 issue of the Register, I.D. No. CVS-46-18-00010-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-46-18-00011-A  
**Filing No.** 134  
**Filing Date:** 2019-02-13  
**Effective Date:** 2019-03-06

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

**Action taken:** Amendment of Appendixes 1 and 2 of Title 4 NYCRR.  
**Statutory authority:** Civil Service Law, section 6(1)  
**Subject:** Jurisdictional Classification.  
**Purpose:** To classify positions in the exempt class and the non-competitive classes.  
**Text or summary was published** in the November 14, 2018 issue of the Register, I.D. No. CVS-46-18-00011-P.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov  
**Assessment of Public Comment**  
 The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-46-18-00012-A  
**Filing No.** 138  
**Filing Date:** 2019-02-13  
**Effective Date:** 2019-03-06

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

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.  
**Statutory authority:** Civil Service Law, section 6(1)  
**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify positions in the non-competitive class.

**Text or summary was published** in the November 14, 2018 issue of the Register, I.D. No. CVS-46-18-00012-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov.

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

**Department of Environmental Conservation**

**PROPOSED RULE MAKING HEARING(S) SCHEDULED**

**Regulate Volatile Organic Compounds (VOCs) in Architectural and Industrial Maintenance (AIM) Coatings**

**I.D. No.** ENV-10-19-00003-P

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

**Proposed Action:** Amendment of Parts 200 and 205 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:** Regulate volatile organic compounds (VOCs) in architectural and industrial maintenance (AIM) coatings.

**Purpose:** To set new and lower VOC limits for certain coating categories. Update categories and methods.

**Public hearing(s) will be held at:** 11:00 a.m., May 6, 2019 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A/B, Albany, NY; 11:00 a.m., May 13, 2019 at SUNY at Stony Brook, 50 Circle Rd., Rm. B02, Stony Brook, NY; and 11:00 a.m., May 14, 2019 at Department of Transportation, One Hunter’s Point Plaza, 47-40 21st St., Rm. 834, Long Island City, 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/proproregulations.html#public>):** Architectural and industrial maintenance (AIM) coatings, commonly referred to as paints, release volatile organic compounds (VOCs) into the atmosphere. VOC content is regulated in Part 205 for 52 coating categories. The major revisions to this proposal are to reduce the VOC limit on 12 coating categories, create VOC limits for 12 additional coating categories, eliminate 15 coating categories and eliminate the quart exemption. This proposal applies to any person who supplies, sells, offers for sale or manufactures architectural coatings for use in the State of New York.

Changes to Section 205.1, Applicability: The proposed revisions remove the exemption provided to coatings sold in one liter (1.057 quart) containers. This is often referred to as the “quart exemption.”

Changes to Section 205.2, Definitions: Transitional language was added to all definitions which are proposed to be changed. The definitions contain language stating that categories eliminated on January 1, 2021 will be absorbed by another category.

The Department is also revising Section 205.2 by:

- Eliminating fifteen categories from the rule. These being antenna coatings, antifouling coatings, clear brushing lacquers, lacquers, sanding sealers, varnishes, clear fire retardant coatings, opaque fire retardant coatings, flow coatings, quick dry enamels, quick dry primers sealers and undercoaters, swimming pool repair and maintenance coatings, temperature indicator coatings, waterproofing sealers and waterproofing concrete/masonry sealers.

- Adding twelve new categories to the rule. These being aluminum roof, basement specialty coatings, concrete/masonry sealer, conjugated oil varnish, driveway sealer, reactive penetrating sealer, reactive penetrating carbonate stone sealer, stone consolidants, tub and tile refinish, waterproofing membranes, wood coatings, zinc-rich primers.

Changes to Section 205.3, Standards:

The current and proposed standards are shown in the table below.

Coating Category	VOC Content Limit (grams per liter)	VOC Content Limit (grams per liter)
	Effective Until December 31, 2020	Effective January 1, 2021
Flat Coatings	100	50
Nonflat Coatings	150	100
Nonflat – High Gloss Coatings	250	150
‘Specialty Coatings’		
Aluminum Roof	N/A	450
Antenna Coatings	530	N/A
Antifouling Coatings	400	N/A
Basement Specialty Coatings	N/A	400
Bituminous Roof Coatings	300	270
Bituminous Roof Primers	350	350
Bond Breakers	350	350
Calcimine Recoaters	475	475
‘Clear Wood Coatings’		
• Clear Brushing Lacquers	680	N/A
• Lacquers (including lacquer sanding sealers)	550	N/A
• Sanding Sealers (other than lacquer sanding sealers)	350	N/A
• Varnishes	350	N/A
Concrete Curing Compounds	350	350
Concrete/Masonry Sealer	N/A	100

Coating Category	VOC Content Limit (grams per liter)	VOC Content Limit (grams per liter)
Concrete Surface Retarders	780	780
Conjugated Oil Varnish	N/A	450
Conversion Varnish	725	725
Driveway Sealers	N/A	50
Dry Fog Coatings	400	150
Faux Finishing Coatings	350	350
Fire Resistive Coatings	350	350
‘Fire Retardant Coatings’		
• Clear	650	N/A
• Opaque	350	N/A
Floor Coatings	250	100
Flow Coatings	420	N/A
Form Release Compounds	250	250
Graphic Arts Coatings (Sign Paints)	500	500
High Temperature Coatings	420	420
Impacted Immersion Coatings	780	780
Industrial Maintenance Coatings	340	250
Low Solids Coatings	120	120
Magnesite Cement Coatings	450	450
Mastic Texture Coatings	300	100
Metallic Pigmented Coatings	500	500
Multi Color Coatings	250	250
Nuclear Coatings	450	450
Pre Treatment Wash Primers	420	420
Primers, Sealers, and Undercoaters	200	100
Quick Dry Enamels	250	N/A
Quick Dry Primers, Sealers and Undercoaters	200	N/A
Reactive Penetrating Sealer	N/A	350
Reactive Penetrating Carbonate Stone Sealer	N/A	500
Recycled Coatings	250	250
Roof Coatings	250	250
Rust Preventative Coatings	400	250
‘Shellacs’		
• Clear	730	730
• Opaque	550	550
Specialty Primers, Sealers, and Undercoaters	350	100
Stains	250	250
Stone Consolidant	N/A	450
Swimming Pool Coatings	340	340
Swimming Pool Repair and Maintenance Coatings	340	N/A
Temperature Indicator Safety Coatings	550	N/A
Thermoplastic Rubber Coatings and Mastics	550	550

Coating Category	VOC Content Limit (grams per liter)	VOC Content Limit (grams per liter)
Traffic Marking Coatings	150	100
Tub and Tile Refinish	N/A	420
Waterproofing Membranes	N/A	250
Waterproofing Sealers	250	N/A
Waterproofing Concrete/Masonry Sealers	400	N/A
Wood Coatings	N/A	275
Wood Preservatives	350	350
Zinc-Rich Primer	N/A	340

The most restrictive limit subdivision 205.3(b) was updated and subdivision 25.3(c) was added to reflect the new and removed categories.

Changes to Section 205.4, Container labeling requirements: The labeling requirements were updated to reflect the new and removed categories.

Changes to Section 205.5, Reporting requirements: The existing language was removed and replaced with language requiring manufacturers to preserve and provide certain information upon the request of the Director. The information proposed for retention includes facility information and product information to be maintained by a responsible official for a minimum of three years.

Changes to Section 205.6, Compliance provisions and test methods: The Department is adding the following text to subdivision 205.6(a); “If the manufacturer does not recommend thinning, the VOC Content must be calculated for the product as supplied. If the manufacturer recommends thinning, the VOC Content must be calculated including the maximum amount of thinning solvent recommended by the manufacturer. If the coating is a multi-component product, the container must display the VOC Content as mixed or catalyzed. If the coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process, the VOC Content must include the VOCs emitted during curing.”

In addition, new and updated test methods have been added. Changes to Section 205.7, Limited exemption for small AIM coatings manufacturers: This Section has been removed.

Changes to Section 200.9 Referenced Material: This Section was updated to cite the changed and updated test methods referenced throughout Part 205.

**Text of proposed rule and any required statements and analyses may be obtained from:** Ona Papageorgiou, NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: air.regs@dec.ny.gov

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

**Public comment will be received until:** May 20, 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>):**

**INTRODUCTION**  
The Department of Environmental Conservation (DEC) proposes to adopt revisions to 6 NYCRR Part 205, “Architectural and Industrial Maintenance (AIM) Coatings,” and Part 200, “General Provisions” (collectively, Part 205). AIM coatings, such as paint, are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements, or curbs. The purpose of this rulemaking is to lower VOC emissions by lowering VOC limits for some coating categories. DEC will be required to incorporate the revisions to Part 205 and the attendant revisions to Part 200 into New York’s SIP, and provide the revised SIP to EPA for review and approval.

**STATUTORY AUTHORITY**  
The statutory authority for the promulgation of 6 NYCRR Part 205 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.

**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.

**NEEDS AND BENEFITS**  
New York faces a significant public health challenge from ground-level

ozone which causes health effects ranging from respiratory disease to death. In response to this public health concern, New York has enacted a series of regulations designed to control ozone and its chemical precursors, including VOCs. In the course of establishing this regulatory framework, New York has promulgated regulations under 6 NYCRR Part 205 to limit the VOCs emitted from architectural and industrial maintenance coatings (AIM coatings).

The 2008 8-hour ozone NAAQS level is 0.075 parts per million (ppm). In 2015 the EPA reduced the 8-hour ozone NAAQS to a level of 0.070 ppm. Areas in New York are currently designated as nonattainment for the 2008 and 2015 ozone NAAQS.

Pursuant to the Clean Air Act, New York State is required to develop and implement enforceable strategies that will bring the entire state into attainment for the 2008 and 2015 8-hour ozone NAAQS. DEC is proposing to revise Part 205 to get further VOC reductions necessary to achieve compliance with the 2008 and 2015 ozone NAAQS.

The OTC estimated that the OTC Region’s specific percent reductions in the architectural and industrial maintenance coating sector resulting from implementation of the rule are as follows<sup>1</sup>:

Coating Category	Percent VOC reduction
Flat, Non Flat	32.4
Traffic Markings	9.7
Industrial Maintenance	38
Other Specialty Coatings	34.3
Overall AIM Coating Reduction	33.7

Applying these categorical reductions to New York, DEC estimates the rule revisions will achieve VOC mass reductions of approximately 16 tons per day (TPD).

Summary of the proposed rule  
 DEC proposes to revise Part 205 consistent with a model rule developed by the Ozone Transport Commission (OTC) in 2011. Key provisions of this proposal include:

- Eliminating 15 coating categories and sub-categories
- Adding 12 new coating categories
- Lowering VOC limits on 12 coating categories
- Broadening the scope of DEC’s data collecting authority
- Adding transitional language
- Updating definitions and codes (revise section 200.9)
- Eliminating the quart exemption (not included in the model rule)

Brief discussions of the DEC’s proposed revisions to Part 205 are presented below.

Eliminate 15 coating categories and sub-categories

The coating categories proposed for elimination with the coating category it is proposed to be absorbed by:

Eliminated Category	Absorbed By
Antenna Coatings (530 grams per liter (g/l))	Industrial Maintenance (250 g/l)
Antifouling Coatings (400 g/l)	Industrial Maintenance (250 g/l)
Clear Wood Coatings	
• Clear Brushing Lacquers (680 g/l)	
• Lacquers (550 g/l)	Wood Coatings (275 g/l)
• Sanding Sealers (350 g/l)	
• Varnishes (350 g/l)	
Fire Retardant Coatings	
• Clear (650 g/l)	Industrial Maintenance (250 g/l)
• Opaque (350 g/l)	
Flow Coatings (420 g/l)	Industrial Maintenance (250 g/l)
Quick Dry Enamels (250 g/l)	Flat (50 g/l) or Nonflat (100 g/l) or Nonflat High Gloss (150 g/l)
Quick Dry Primers, Sealers & Undercoaters (200 g/l)	Specialty Primers, Sealers & Undercoaters (100 g/l)
Swimming Pool Repair & Maintenance Coatings (340 g/l)	Swimming Pool Coatings (340 g/l)
Temperature Indicator Coatings (550 g/l)	Industrial Maintenance (250 g/l)
Waterproofing Sealers (250 g/l)	Concrete/Masonry Sealers (100 g/l) or Waterproofing Membranes (250 g/l)

Eliminated Category	Absorbed By
Waterproofing Concrete/Masonry Sealers (400 g/l)	Basement Specialty Coatings (400 g/l) or Concrete/Masonry Sealers (100 g/l) or Waterproofing Membranes (250 g/l)

Add 12 new coating categories  
 The coating categories proposed for addition are:

New Category	Limit (g/l)
Aluminum Roof	450
Basement Specialty Coatings	400
Concrete/Masonry Sealer	100
Conjugated Oil Varnish	450
Driveway Sealer	50
Reactive Penetrating Sealer	350
Reactive Penetrating Carbonate Stone Sealer	500
Stone Consolidants	450
Tub and Tile Refinish	420
Waterproofing Membranes	250
Wood Coatings	275
Zinc-Rich Primer	340

Lower VOC limits on 12 coating categories  
 The coating categories proposed for lowered VOC limits are:

Category	Limit lowered (g/l)
Bituminous Roof Coatings	From 300 to 270
Dry Fog Coatings	From 400 to 150
Flat Coatings	From 100 to 50
Floor Coatings	From 250 to 100
Industrial Maintenance	From 340 to 250
Mastic Texture Coatings	From 300 to 100
Nonflat Coatings	From 150 to 100
Nonflat-High Gloss	From 250 to 150
Primers, Sealers & Undercoaters	From 200 to 100
Rust Preventative	From 400 to 250
Specialty Primers, Sealers & Undercoaters	From 350 to 100
Traffic Marking	From 150 to 100

Add transitional language

At the request of stakeholders, DEC is revising sections 205.2 and 205.3 by adding transitional language to clarify definitions, including those related to the new coating categories, and explicitly identifying when certain categories will be phased out and new ones phased in under the revised rule.

Update definitions and codes as necessary

DEC is revising Section 205.2, “Definitions”, to clarify and update specific definitions that are currently unclear or require updating to reflect the other program changes.

DEC is also revising subdivision 205.3(b), which is the “most restrictive VOC limit” provision of the rule to address the new and eliminated coating categories.

Section 205.6 will be updated to reflect the most up-to-date ASTM publications. As a result of these updates, Section 200.9 will also be updated.

Eliminate the quart exemption

DEC is revising paragraph 205.1(b)(3) of the applicability section to eliminate what is known as the “quart exemption.” Currently, Part 205 does not regulate coatings sold in containers with a volume of one liter (1.057 quart) or less. Manufacturers and suppliers may circumvent the VOC limits in Part 205 by selling the coatings in bundles of quart containers inside a larger pail resulting in greater than anticipated VOC emissions. To address this issue, the proposed revision will eliminate the language of Part 205 exempting quart containers. This provision is not included in the OTC AIM Model Rule.

Broaden the scope of DEC’s data collection authority

DEC is broadening the scope of its authority to collect information pursuant to the reporting requirements in Section 205.5 of the rule. This

revision allows DEC to request more information than under the existing rule and gives manufacturers additional time to respond. Currently, DEC cannot request information on products manufactured for use outside of the state (which could then be sold back into the state) or sold in the state in containers of one liter or less. In the past, some manufacturers have voluntarily provided this information when requested, but others have not. The collection of this information is important in developing emission inventories and enforcing the rule.

#### COSTS

In 2007, CARB implemented the VOC limits being proposed in the revisions to Part 205. CARB conducted a thorough study of affected businesses to determine control costs that would be incurred. CARB estimated a per-limit cost-effectiveness ranging from a net savings to \$13.90 per pound of VOC reduced, with an overall cost-effectiveness of \$1.12 per pound of VOC reduced (in 2007 dollars). These values were based upon the assumption that companies will absorb all costs (i.e. none were passed down to consumers) and may therefore be slightly inflated. CARB computed an average 2.1 percent decline in return on owner's return on equity (ROE - calculated by dividing net profit by net worth), and used this to gauge economic impact. In its analysis, CARB concluded that the lower VOC limits should not significantly impact the profitability of most businesses, although it may have an impact on the smallest operations. Overall, business profitability and job opportunities would not be significantly affected.

#### PAPERWORK

The proposed changes to Part 205 broaden the scope of DEC's authority to collect information. Specifically, Section 205.5 requires that manufacturers keep data on file for three years. If DEC requests this information, the manufacturer's responsible official shall provide this information within 180 days of written request.

#### LOCAL GOVERNMENT MANDATES

No record keeping, reporting, or other requirements will be imposed on local governments. The authority and responsibility for implementing and administering Part 205 resides solely with DEC. Requirements for record keeping, reporting, etc. are applicable only to the person(s) who manufactures, sells, supplies, or offers AIM coatings for sale.

#### DUPLICATION BETWEEN THIS REGULATION AND OTHER REGULATIONS AND LAWS

The revisions to Part 205 regulate all of the architectural and industrial maintenance coatings regulated by the federal government under 40 CFR Part 59, National Volatile Organic Compound Emission Standards for Architectural Coatings. The federal rule was developed in 1998 and has not been revised since. The AIM coating sector has seen many technological advancements since 1998, and as a result, manufacturers have been able to formulate quality coatings with lower VOC content.

While the definitions in Part 205 are somewhat different than that in the federal rule, the VOC limits within Part 205 are at least as stringent, and more often more stringent, than those set in the federal rule. Part 205 contains all coatings listed in the federal rule. Therefore, with the exception of coatings that contain post consumer recycled content, a manufacturer need only comply with the limits in Part 205 to be in compliance with the architectural coatings VOC content limits for the New York State and the federal rule.

#### ALTERNATIVES

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

1. No action taken;
2. Revising paragraph 205.1(b)(3); and
3. Removing paragraphs 205.3(b)(1)-(19).

#### FEDERAL STANDARDS

Both the current version of Part 205 (2003) and this proposed rule are more stringent than the current federal AIM coatings standard, 40 CFR Part 59, National Volatile Organic Compound Emission Standards for Architectural Coatings. The federal standard became effective in 1998 and AIM coating technology has advanced to allow for quality products formulated with lower VOCs. The New York Metropolitan Area continues to be designated non-attainment for ozone and as a result, additional VOC emission reductions need to be achieved.

#### COMPLIANCE SCHEDULE

The proposed effective date for the revisions to Part 205 is January 1, 2021. The sell-through provision allows for product manufactured before January 1, 2021 to be sold through December 31, 2022.

<sup>1</sup> "Model Regulations for Nitrogen Oxides (NOx) and Photo-reactive Volatile Organic Compounds (VOCs) Technical Support Document" (Revised August, 2016)

#### Regulatory Flexibility Analysis

The Department of Environmental Conservation (DEC) proposes to adopt revisions to 6 NYCRR Part 205, "Architectural and Industrial Main-

tenance (AIM) Coatings," and Part 200, "General Provisions" (collectively, Part 205). AIM coatings, such as paint, are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements, or curbs. The purpose of this rulemaking is to reduce emissions from AIM coatings by reducing the volatile organic compound (VOC) content limits for some coating categories.

#### EFFECT OF THE RULE

Local governments are not expected to be directly affected by the proposed revisions to Part 205. The revisions to Part 205 may require small businesses to reformulate coatings to bring them into compliance with the new VOC limits as well as label accordingly. Small businesses may not have the level of research and development staff available as larger businesses, so this rulemaking may have a greater impact on small businesses. Since 2010 DEC staff have communicated with small businesses as well as coatings associations to prepare businesses for the proposed changes. According to the U.S. Census Bureau, County Business Patterns Report for 2015 show that New York State had 88 paint manufacturing facilities, of which, at least two were small businesses or manufacturers.

#### COMPLIANCE REQUIREMENTS

Local governments are not expected to be directly affected by the proposed revisions to Part 205. Small businesses that manufacture AIM coatings will need to comply with the proposed VOC content limits of Part 205. In addition, these small businesses will need to comply with the labeling requirements of Part 205 which requires manufacturers to display specific information on the coating container or label. The label information required include:

- the date the coating was manufactured or the date code representing the date of manufacture
- the manufacturer's recommendations for thinning of the coating
- the maximum or actual VOC content of the coating

There are additional labeling requirements or specific instructions for:

- industrial maintenance coatings
- clear brushing lacquers
- faux finishing coatings
- rust preventive coatings
- quick dry enamels
- non flat high gloss coatings
- specialty primers, sealers, and undercoaters
- quick dry enamels
- reactive penetrating sealers
- reactive penetrating carbonate stone sealers
- stone consolidants
- wood coatings
- zinc rich primers

Small businesses which manufacture AIM coatings will be expected to comply with the reporting requirements of Part 205. The proposed changes to Part 205 broaden the scope of the DEC's authority to collect information. Specifically, Part 205.5 requires that manufacturers keep the following data on file for three years:

- (1) name and mailing address of the manufacturer;
- (2) name, address and telephone number of a contact person;
- (3) name of the coating product as it appears on the label and the application coating category;
- (4) whether the product is marketed for interior or exterior use or both;
- (5) number of gallons sold in New York State in containers greater than one liter (1.057 quart) and equal to or less than one liter (1.057 quart);
- (6) VOC Actual content and the VOC Regulatory content in grams per liter;
- (7) names and chemical abstract service (CAS) numbers of the VOC constituents of the product;
- (8) names and CAS numbers of any compound in the product specifically exempted from the VOC definition, as listed in subsections 205.2 (cg) and (ch);
- (9) whether the product is marketed as solventborne, waterborne, or 100 percent solids;
- (10) description of resin or binder in the product;
- (11) whether the coating is a single-component or multi-component product;
- (12) density of the product in pounds per gallon;
- (13) percent of weight of solids, all volatile materials, water, and any compounds in the product specifically exempted from the VOC definition, as listed in subsections 205.2 (cg) and (ch); and
- (14) percent by volume of solids, water and any compounds in the product specifically exempted from the VOC definition, as listed in subsection 205.2 (cg) and (ch).

If requested, the manufacturer would be required to provide this information to the DEC within 180 days.

#### PROFESSIONAL SERVICES

It is not anticipated that small businesses that manufacture AIM coat-

ings will need professional services to comply with the proposed revisions to Part 205. However, if a business does not want to reformulate in-house, they may choose to purchase a formulation outside of their business.

#### COMPLIANCE COSTS

The proposed revisions to Part 205 closely match the California Air Resources Board (CARB) 2007 Suggested Control Measure (SCM) for AIM coatings. CARB performed a cost analysis as part of the development of its SCM AIM report in 2007. Because the proposed revisions match so closely with CARB's measures, DEC utilized CARB's cost analysis for the purpose of estimating compliance costs for this rule making.

CARB conducted a thorough study of affected businesses to determine control costs that would be incurred. CARB estimated a per-limit cost-effectiveness ranging from a net savings to \$13.90 per pound of VOC reduced, with an overall cost-effectiveness of \$1.12 per pound of VOC reduced (in 2007 dollars). These values were based upon the assumption that companies will absorb all costs (i.e. none were passed down to consumers) and may therefore be slightly inflated. CARB computed an average 2.1 percent decline in return on owner's return on equity (ROE - calculated by dividing net profit by net worth), and used this to gauge economic impact. In its analysis, CARB concluded that the lower VOC limits should not significantly impact the profitability of most businesses, although it may have an impact on the smallest operations. Overall, business profitability and job opportunities would not be significantly affected. DEC staff note that these costs were estimated in 2007 and that formulations and research have improved. Staff have concluded that compliance costs should be lower as a result of these improvements. While the 2007 CARB report stated that there may be an impact on the smallest operations research and formulations experience since then should minimize this impact.

#### ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Local governments are not expected to be directly affected by the proposed revisions to Part 205. The limits and requirements proposed in the revisions to Part 205 are technically feasible as they have been in effect in California since 2008. In addition, the coating categories which are not listed under the CARB rule were requested by industry stakeholders who also offered technically feasible limits associated with each category. DEC staff did not conduct independent cost analysis, rather depended on the CARB 2007 analysis to assess the economic feasibility. The CARB cost information does include information supplied by manufacturers who market AIM coatings nationally and therefore extend to New York State. In their 2007 SCM, CARB determined that most manufacturers or marketers of AIM coatings would absorb the cost of the proposed changes with no significant impacts on profitability. Nevertheless, to help minimize the potential impact on small businesses, the proposed changes to Part 205 include a two year sell through provision. This provision allows manufacturers to sell products compliant with the current standard (and manufactured prior to the effective date of the proposed revisions) for two years after the new standard takes effect.

#### MINIMIZING ADVERSE IMPACT

Local governments are not expected to be directly affected by the proposed revisions to Part 205. In recognition of the potential for adverse impacts on small businesses, DEC staff led a stakeholder process with manufacturers and coatings associations, including a stakeholder process with national and local manufacturers and coatings associations on May 12, 2010 in association with the Ozone Transport Commission. DEC staff also attended several coatings conferences and meetings with manufacturers, including the American Coatings Association (ACA) on May 14, 2013 and, the Metropolitan New York Coatings Association (MNYCA) on June 12, 2014. Outreach with individual manufacturers and interested parties was also conducted.

The proposed VOC limits have been in effect in California since 2007 and products with these lower limits have already been available and sold in the marketplace. All manufacturers, including small businesses, have had ample time to research, prepare and implement re-formulation strategies.

#### SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

As stated above, local governments are not expected to be directly affected by the proposed revisions to Part 205. In recognition of the potential adverse impacts on small businesses, DEC staff met with many stakeholders, including national and local associations and manufacturers, and have given stakeholders several opportunities to participate in the development of the proposed rule. DEC staff also gave presentations at ACA and MNYCA meetings and provided educational outreach on the proposed rule. These outreach efforts, including meetings and communications with DEC staff, have been ongoing since 2012. 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.

#### CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other opportunity for ameliorative action is included in the revisions to Part 205. This proposal will not result in immediate violations or impositions of penalties for existing facilities. To help reduce impacts on affected sources, Part 205 will not become effective immediately after promulgation and offers a sell-through of two years.

#### INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

#### Rural Area Flexibility Analysis

The Department of Environmental Conservation (DEC) proposes to adopt revisions to 6 NYCRR Part 205, "Architectural and Industrial Maintenance (AIM) Coatings," and Part 200, "General Provisions" (collectively, Part 205). AIM coatings, such as paint, are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements, or curbs. The purpose of this rulemaking is to reduce emissions from AIM coatings by reducing the volatile organic compound (VOC) content limits for some coating categories.

#### TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

The last survey conducted by DEC in 2005 resulted in a list of 121 manufacturers associated with coatings throughout New York State. The U.S. Census Bureau, County Business Patterns Report for 2015 shows that New York State had 88 paint manufacturing facilities. Part 205 will apply to manufacturers, sellers and advertisers statewide and, as a result, stores which sell AIM coatings in rural areas will be subject to the revised rule. The proposed revisions should not single out or impact rural areas.

#### COMPLIANCE REQUIREMENTS

On January 1, 2021, revised Part 205 will apply to manufacturers, sellers and advertisers of AIM coatings. Manufacturers will be required to formulate and label coatings in compliance with the revisions to Part 205. Retailers and advertisers will be required to sell and advertise compliant coatings.

#### COSTS

In 2007, CARB implemented the VOC limits proposed in the revisions to Part 205 and conducted a thorough study of affected businesses to determine compliance costs that would be incurred. CARB estimated a per-limit cost-effectiveness ranging from a net savings to \$13.90 per pound of VOC reduced, with an overall cost-effectiveness of \$1.12 per pound of VOC reduced (in 2007 dollars). These values were based upon the assumption that companies will absorb all costs (i.e. none were passed down to consumers) and may therefore be slightly inflated. CARB computed an average 2.1 percent decline in return on owner's return on equity (ROE - calculated by dividing net profit by net worth), and used this to gauge economic impact. In its analysis, CARB concluded that the lower VOC limits should not significantly impact the profitability of most businesses, although it may have an impact on the smallest operations. Overall, business profitability and job opportunities would not be significantly affected. DEC staff note that these costs were estimated in 2007 and that formulations and research have improved. Staff concluded that compliance costs should be lower as a result of these improvements. Costs associated with the proposed revisions to Part 205 are not expected to be greater in rural areas.

#### MINIMIZING ADVERSE IMPACT

The revisions to Part 205 have statewide applicability and do not specifically affect rural areas. DEC conducted a stakeholder process with national and local manufacturers and coatings associations on May 12, 2010 in association with the Ozone Transport Commission. DEC staff also attended several coatings conferences and meetings with manufacturers, including the American Coatings Association (ACA) on May 14, 2013 and, the Metropolitan New York Coatings Association (MNYCA) on June 12, 2014. Outreach with individual manufacturers and interested parties was also conducted.

The proposed VOC limits have been in effect in California since 2007 and products with these lower limits have already been available and sold in the marketplace. All manufacturers, including those located in rural areas of the state, have had ample time to research, prepare and implement re-formulation strategies.

#### RURAL AREA PARTICIPATION

The revisions to Part 205 have statewide applicability and do not specifically affect rural areas. As stated above, DEC staff met with many stakeholders, including national and local associations and manufacturers, and have given stakeholders several opportunities to participate in the development of the proposed rule. DEC staff also gave public presentations at ACA and MNYCA meetings, providing educational outreach on the proposed rule. These outreach efforts, including meetings and communications with DEC staff, have been ongoing since 2012. 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.

#### INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.



**Job Impact Statement**

The Department of Environmental Conservation (Department) proposes to adopt revisions to 6 NYCRR Part 205, "Architectural and Industrial Maintenance (AIM) Coatings," and Part 200, "General Provisions" (collectively, Part 205). AIM coatings, such as paint, are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements, or curbs. The purpose of this rulemaking is to reduce emissions from AIM coatings by reducing the volatile organic compound (VOC) content limits for some coating categories.

**NATURE OF IMPACT**

Part 205 may impact jobs and employment opportunities with manufacturers producing AIM coatings in New York State. The regulation, as proposed, will require lowered VOC limits which would likely require reformulation of any products which do not meet the new limits. The time and expertise required to reformulate AIM coatings may result in increased employment for consultation and testing. However, reformulation guidance has been made available through the American Coatings Association (ACA) and through raw material chemical distributors so the increase may be limited.

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 205, 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**

Changes to Part 205 may impact coating and raw material manufacturers, distributors and stores that sell coatings. This would include companies that sell or manufacture coatings for New York State sales. In the last New York State survey in 2005 it was estimated that over 75 million gallons of AIM coatings were sold in New York State.

The revisions to Part 205 may lead to increased time and expertise spent reformulating impacted coating categories. Manufacturers that sell into California, Utah and Delaware have already reformulated their coatings, so those companies should not be impacted. Those companies which need to reformulate will either need to spend more in house resources for reformulation or will need to hire outside help to reformulate.

**REGIONS OF ADVERSE IMPACT**

The paint and coatings industry sector which is impacted by this rule are distributed throughout the state. Manufacturers may be found both up-state and in the New York City metropolitan area. Since this is a statewide rulemaking, the Department does not expect it to have any region-specific adverse impacts.

**MINIMIZING ADVERSE IMPACT**

To minimize any adverse impacts Department staff conducted a stakeholder process with national and local manufacturers and coatings associations on May 12, 2010 in association with the Ozone Transport Commission. Department staff also attended several coatings conferences and meetings with manufacturers, including the American Coatings Association (ACA) on May 14, 2013 and, the Metropolitan New York Coatings Association (MNYCA) on June 12, 2014. Outreach with individual manufacturers and interested parties has also been supported.

The proposed VOC limits have been in effect in California since 2007 and products with these lower limits have already been available and sold in the marketplace. All manufacturers, including small businesses, have had ample time to research, prepare and implement re-formulation strategies.

**SELF-EMPLOYMENT OPPORTUNITIES**

The adoption of revised Part 205 is not expected to result in negative impacts to self-employment opportunities.

**INITIAL REVIEW**

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

**Department of Health****EMERGENCY/PROPOSED  
RULE MAKING  
NO HEARING(S) SCHEDULED****Body Scanners in Local Correctional Facilities****I.D. No.** HLT-10-19-00004-EP**Filing No.** 145**Filing Date:** 2019-02-15**Effective Date:** 2019-02-15

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

**Proposed Action:** Addition of section 16.70; amendment of Part 89 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 201, 225 and 3502

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

**Specific reasons underlying the finding of necessity:** Compliance with the requirements of the State Administrative Procedure Act for filing of a regulation on a non-emergency basis including the requirement for a period of time for public comment cannot be met because to do so would be detrimental to the health and safety of inmates in local correctional facilities.

Effective January 30, 2019, Public Health Law § 3502(6) permits unlicensed personnel working at local correctional facilities to utilize body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening inmates committed to such facility, in connection with the implementation of such facility's security program. Such equipment is intended to be used as an efficient method of detecting contraband, such as knives and other weapons, as well as illegal drugs including heroin and opioids, and will enhance the safety of both inmates and correction officers.

The regulations provide protections to the inmates and staff by establishing requirements and controls to ensure appropriate operation of the body scanning imaging equipment. These include testing of the equipment by a licensed medical physicist prior to use and annually thereafter; annual training for operators of the equipment to ensure proper operation and application; establishment of policies and procedures to guide use of the equipment; and documentation and inspection requirements to monitor and ensure that inmates are not overexposed to radiation based on the dose limits in the law.

Delaying these regulations would prevent local correctional facilities from enhancing security programs through the use of body imaging scanning equipment while minimizing the risks posed to inmates by exposure to ionization.

**Subject:** Body Scanners in Local Correctional Facilities.

**Purpose:** Establish operational requirements for local correctional facilities that use body scanning imaging equipment for security purposes.

**Text of emergency/proposed rule:** Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 201, 225, and 3502 of the Public Health Law, Parts 16 and 89 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

New section 16.70 is added to Part 16 to read as follows:

*16.70 Use of Body Scanning.*

(a) *Practitioners licensed under Article 35 of the Public Health Law and unlicensed personnel employed at a local correctional facility may utilize body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening inmates committed to such facility, solely in connection with the implementation of such facility's security program and in accordance with the provisions of this Part.*

(b) *Definitions*

(1) *"Body imaging scanning equipment" or "equipment" means equipment that utilizes a low dose of ionizing radiation to produce an anatomical image capable of detecting objects placed on, attached to or secreted within a person's body. The utilization of body imaging scanning equipment is for purposes of screening inmates committed to such facility, in connection with the implementation of such facility's security program.*

(2) *"Local correctional facility" shall mean a local correctional facility as defined in Correction Law section 2(16).*

(3) "Equipment operator" or "operator" means personnel employed at the local correctional facilities that have successfully completed a training course approved by the Department.

(4) "Screening" means the sum of radiation exposures or scans necessary to image objects concealed on all sides of the body as intended by the system design under normal conditions.

(c) Equipment use and installation requirements

(1) Prior to the equipment's first use on humans at a specific physical location or upon any major repairs that could influence image quality or exposure:

(i) body imaging scanning equipment purchased or installed at a local correctional facility must be registered with the Department, in accordance with § 16.50 of this Part; and

(ii) radiation protection survey, shielding evaluation and verification of image usefulness for detecting foreign objects must be completed by a licensed medical physicist.

(2) Equipment must have a clearly marked restricted area and one or more indicators when a scan is in process that is clearly visible to all security screening system operators and anyone approaching the restricted area.

(3) Equipment must be periodically inspected by the Department as directed in § 16.10 of this Part.

(4) Equipment must be tested by a licensed medical physicist annually to verify the equipment is operating as designed.

(5) The facility must maintain a policy and procedure manual describing equipment operations, body scanning procedures, records and associated facility policies shall be maintained and available upon request by the Department. The policy and procedure manual must include the following items:

(i) operating procedures appropriate for the specific equipment and intended scan types;

(ii) policy prohibiting the use of the equipment on individuals who are not inmates;

(iii) policy regarding the determination of pregnancy that has been approved by the jail physician;

(iv) emergency contact information in the event the equipment overexposes any individual or there are equipment related failure that potentially requires service prior to scanning other inmates;

(v) requirements for exposure records to be provided to an inmate upon release or transfer to another facility; and

(vi) exposure per scan for each scan protocol used.

(6) Records and documentation of the program operation shall be maintained in accordance with § 16.14 of this Part and shall include, at a minimum, the following:

(i) the number of times the equipment was used on inmates upon intake, after visits, and upon the suspicion of contraband, as well as any other event that triggers the use of such equipment;

(ii) the average, median, and highest number of times the equipment was used on any inmate, with corresponding exposure levels;

(iii) the number of times the use of the equipment detected the presence of drug contraband, weapon contraband, and any other illegal or impermissible object or substance; and

(iv) the number of times an inmate has been scanned.

(d) Exposure limits and reporting requirements

(1) No person other than an inmate of a local correctional facility shall be exposed to the useful beam and then only by an individual that has met the provisions of subdivision (d) of this section.

(2) Limits on the use of equipment exposure to inmates are:

(i) no more than fifty percent of the annual exposure limits for non-radiation workers as specified by applicable regulations, not to exceed 0.5 mSv (50 mrem);

(ii) inmates under the age of eighteen shall not be subject to more than five percent of such annual exposure limits, not to exceed 0.05 mSv (5 mrem); and

(iii) pregnant women shall not be subject to scanning at any time.

(3) The following events shall be reported to the Department in writing within 30 days:

(i) incidents or any injuries or illness resulting from the use of such equipment or reported by persons scanned by such equipment; and

(ii) exposure that exceeds the limits set forth in this Part.

(e) Training Requirements

(1) Every equipment operator shall receive initial operator training, to be provided by the equipment manufacturer or their approved representative, or another source approved by the Department.

(2) The contents of the initial operator training must include radiation safety, equipment operations, exposure and exposure limits for occupational exposed staff and inmates; applicable regulations; and facility policies and procedures.

(3) Initial operator training must be documented and available for review by the Department upon request. Such documentation must include

the names of the presenter or sources, attendees, dates and contents of the training.

(4) Every equipment operator shall receive refresher training, to be provided by the equipment manufacturer or their approved representative, or another source approved by the Department. Such training shall meet the requirements listed in paragraphs (1), (2) and (3) of this subdivision and include any changes to the policies and procedures manual or updates to the regulations.

Section 89.30 is amended by adding a new subdivision (c) to read as follows:

(c) A person employed at a local correctional facility, as defined by Correction Law section 2(16), is exempt from licensure as a radiologic technologist when operating body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening inmates committed to such facility, in connection with the implementation of such facility's security program.

**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 15, 2019.

**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

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

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

**This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.**

**Regulatory Impact Statement**

Statutory Authority:

The Department of Health (Department) is required by Public Health Law (PHL) § 201(1)(r) to supervise and regulate the public health aspects of ionizing radiation. PHL § 225(4) authorizes the Public Health and Health Planning Council (PHHPC) to establish, amend and repeal provisions of the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. PHL § § 225(5)(p) and (q) and 201(1)(r) authorize PHHPC to establish regulations in the SSC to protect the public from the adverse effects of ionizing radiation.

PHL § 3502 authorizes personnel employed at local correctional facilities to utilize body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening inmates as part of the facilities' screening program, provided that the use of such equipment is in accordance with regulations promulgated by the Department.

Legislative Objectives:

The legislative intent of PHL § § 201(1)(r) and 225(5)(p) and (q) is to protect the public from the adverse effects of ionizing radiation. Establishing regulations to ensure safe and effective use of radiation producing equipment is consistent with this legislative objective.

The legislative intent of Article 35 of the PHL is to ensure that when radiation is applied to a human being it is being done appropriately and by a qualified individual. Although in general radiation should only be applied to humans for medical reasons, PHL § 3502 allows correctional facilities to utilize very low dose x-ray equipment for security screening of inmates, while protecting the health of screened inmates.

Needs and Benefits:

Effective January 30, 2019, PHL § 3502(6) permits unlicensed personnel working at local correctional facilities to utilize body imaging scanning equipment that applies ionizing radiation to humans, for purposes of screening inmates committed to such facilities, in connection with the implementation of a facility's security program. Such equipment can be an efficient method of detecting contraband, such as knives, other weapons, and illegal drugs including heroin and opioids, and will enhance the safety of both inmates and correction officers.

These regulations provide protections to the inmates and staff by establishing requirements and controls to ensure appropriate operation of the body scanning imaging equipment. These include testing of the equipment by a licensed medical physicist prior to use and annually thereafter; annual training for equipment operators to ensure proper operation and application; establishment of policies and procedures for use of the equipment; and documentation and inspection requirements to monitor and ensure that inmates are not overexposed to radiation based on the dose limits set forth in the law. The regulations will permit local correctional facilities to take advantage of the enhanced security that body imaging scanning equipment can provide, while minimizing the risk to inmates posed by exposure to ionizing radiation.

Costs:

Costs for the Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

The regulations will impose little or no cost to regulated entities. The

regulations would only apply to local correctional facilities that voluntarily choose to use body imaging scanning equipment as part of the facility's security program. Local correctional facilities that choose to utilize body imaging scanning equipment will be subject to equipment purchase costs; costs to hire a licensed medical physicist to test the body scanning imaging equipment annually, at a cost of approximately \$500 per test; administrative costs associated with maintaining records of the use of the equipment; and annual staff training costs. County facilities must register their new x-ray equipment, but they are fee-exempt and will not be charged by the Department for registration or inspections.

**Costs to State and Local Governments:**

These regulations apply only to local correctional facilities operated by county and New York City governments that voluntarily choose to use body imaging scanning equipment as part of the facility's security program. Such facilities will be subject to the costs described above.

**Costs to the Department of Health:**

This regulation will require an increase in inspections of no more than 60 additional facilities out of a total of approximately 11,000 currently registered facilities that are inspected by the Department's Bureau of Environmental Radiation Protection. The Department will incur costs through preparing and disseminating guidance to the New York State Commission of Correction (NYSCOC) and the NYS Sheriffs Association as well as any local correctional facilities that wish to utilize body imaging scanning equipment. Staff time for registering, inspecting and providing guidance is expected to be handled using existing resources and staff.

**Local Government Mandates:**

The regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district. The regulations apply only to local correctional facilities that voluntarily choose to use body imaging scanning equipment as part of the facility's security program. Such facilities will be subject to the costs described above.

**Paperwork:**

Local correctional facilities that voluntarily choose to use body imaging scanning equipment as part of the facility's security program will be required to register the equipment and maintain records related to the policies, procedures and utilization of the equipment.

**Duplication:**

The regulations do not duplicate, overlap or conflict with any existing federal or state rules or regulations.

**Alternatives:**

There are no suitable alternatives to the regulations that would meet the requirements of PHL § 3502 while adequately protecting the health of inmates.

**Federal Standards:**

Not applicable. The operation of radiation producing equipment is regulated by the State only.

**Compliance Schedule:**

There is no compliance schedule imposed by these regulations, which shall be effective upon publication of a Notice of Adoption in the New York State Register.

**Regulatory Flexibility Analysis**

**Effect of Rule:**

The regulation will only apply to local correctional facilities, operated by county and New York City governments, that voluntarily choose to use body imaging scanning equipment as part of the facility's security program. This regulation will not impact local governments unless they operate such facilities. The regulation will have no impact on small businesses.

**Compliance Requirements:**

A local correctional facility that chooses to use body imaging scanning equipment as part of the facility's security program will need to ensure that equipment is installed properly and is operating as designed through licensed medical physicist verification. In addition, the local correctional facility must develop and maintain policies and a procedure manual; provide all personnel who will utilize the equipment with required training; and maintain records of the utilization.

**Professional Services:**

A local correctional facility that chooses to use body imaging scanning equipment as part of the facility's security program will be required to have equipment installed by qualified installers for the specific brand of body imaging scanning equipment being used. At facilities with female inmates, the jail physician will be required to develop policies regarding the determination of pregnancy and to update those policies over time as needed. Body scanning imaging equipment will require annual testing by a licensed medical physicist with an estimated cost of approximately \$500; such testing is also required prior to use of the equipment.

**Compliance Costs:**

A local correctional facility that chooses to use body imaging scanning equipment as part of the facility's security program will acquire the equip-

ment based on their own requirements. Annual compliance costs are expected to be minimal, and will consist of the costs of refresher training, annual testing by a licensed medical physicist, and record keeping of the inmates scanned.

**Economic and Technology Feasibility:**

This regulation is economically and technically feasible, as these regulations only impose requirements on local correctional facilities that choose to use body imaging scanning equipment as part of the facility's security program. Such facilities will acquire equipment based on their own requirements and, as described above, ongoing compliance costs are minimal.

**Minimizing Adverse Impact:**

The impact of this regulation is expected to be minimal as these regulations only impose requirements on local correctional facility that choose to use body imaging scanning equipment as part of the facility's security program. To assist such facilities in minimizing any adverse impact, the Department will provide guidance to NYSCOC and the NYS Sheriffs Association as well as any local correctional facilities that wish to utilize body imaging scanning equipment.

**Small Business and Local Government Participation:**

The Department has consulted with the NYS Sheriffs' Association and the New York City Department of Health and Mental Hygiene during the development of the regulations.

**Cure Period:**

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement under the proposed regulation. This regulatory amendment governing the utilization of body imaging scanning equipment by local correctional facilities does not mandate that local correctional facilities use such equipment. Hence, no cure period is necessary.

**Rural Area Flexibility Analysis**

**Types and Estimated Numbers of Rural Areas:**

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>).

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Every county in NYS operates a local corrections facility, except Greene and Schoharie counties where the local corrections facilities are currently out of commission. They anticipate eventually being back in operational status. Approximately 77% of local correctional facilities are in rural areas.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

A local correctional facility that chooses to use body imaging scanning equipment as part of the facility's security program will need to ensure that equipment is installed properly and is operating as designed through licensed medical physicist verification. In addition, the local correctional facility must develop and maintain policies and a procedure manual; provide all personnel who will utilize the equipment with required training; and maintain records of the utilization.

**Costs:**

A local correctional facility that chooses to use body imaging scanning equipment as part of the facility's security program will acquire the equipment based on their own requirements. Annual compliance costs are expected to be minimal, and will consist of the costs of refresher training and record keeping of the inmates scanned.

**Minimizing Adverse Impact:**

The impact of this regulation is expected to be minimal as these regulations only impose requirements on local correctional facility that choose to use body imaging scanning equipment as part of the facility's security program. To assist such facilities in minimizing any adverse impact, the Department will provide guidance to NYSCOC and the NYS Sheriffs' association as well as any local correctional facilities that wish to utilize body imaging scanning equipment.

**Rural Area Participation:**

The Department consulted with the NYS Sheriffs' Association during the development of the regulation. Sheriff's operate all the local correctional facilities in NYS except for Westchester County and New York City. They indicated that there were no specific issues in this rule that would impact the use body scanning equipment at rural facilities.

**Job Impact Statement**

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

## Office of Parks, Recreation and Historic Preservation

### NOTICE OF ADOPTION

**Regulation of Pets in OPRHP Facilities**

**I.D. No.** PKR-48-18-00006-A

**Filing No.** 140

**Filing Date:** 2019-02-13

**Effective Date:** 2019-03-06

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

**Action taken:** Amendment of section 372.7(g)(17); addition of section 377.2; and repeal of sections 397.6, 398.6, 399.6, 400.5, 401.4, 402.4, 415.2, 416.5, 417.5 and 418.2 of Title 9 NYCRR.

**Statutory authority:** Parks, Recreation and Historic Preservation Law, sections 3.02, 3.09(5) and (8)

**Subject:** Regulation of pets in OPRHP facilities.

**Purpose:** To adopt on statewide pet regulation that replaces regional regulations that are inconsistent with each other.

**Text or summary was published** in the November 28, 2018 issue of the Register, I.D. No. PKR-48-18-00006-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Nicholas Ference, NYS Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, NY 12238, (518) 486-2921, email: Nicholas.Ference@parks.ny.gov

**Initial Review of Rule**

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2024, which is no later than the 5th year after the year in which this rule is being adopted.

**Assessment of Public Comment**

The agency received no public comment.

## Office for People with Developmental Disabilities

### NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Office for People with Developmental Disabilities publishes a new notice of proposed rule making in the NYS Register.

**Enrollment in Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for IDD**

I.D. No.	Proposed	Expiration Date
PDD-07-18-00001-ERP	February 14, 2018	February 14, 2019

## Public Service Commission

### NOTICE OF ADOPTION

**Water Service Agreement and Requested Waivers**

**I.D. No.** PSC-39-17-00009-A

**Filing Date:** 2019-02-13

**Effective Date:** 2019-02-13

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

**Action taken:** On 2/7/19, the PSC adopted an order approving the terms and conditions of the Agreement for the Provision of Water Service by and between Saratoga Water Services Inc. (SWS) and Krunim, Inc. (Krunim) and SWS's waiver request.

**Statutory authority:** Public Service Law, sections 4(1), 20(1) and 89-b

**Subject:** Water service agreement and requested waivers.

**Purpose:** To approve SWS and Krunim's water service agreement and SWS' requested waivers.

**Substance of final rule:** The Commission, on February 7, 2019, adopted an order approving the terms and conditions of the Agreement for the Provision of Water Service dated February 11, 2016, by and between Saratoga Water Services Inc. (SWS) and Krunim, Inc. and the requested waivers of SWS' tariff PSC No. 3 – Water, § XI (1) and XIII, and 16 NYCRR § 501.2, 501.3, 501.4, 501.6, 501.9, and 502.3, subject to the terms and conditions set forth in the order.

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

**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 An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(16-W-0191SA1)

### NOTICE OF ADOPTION

**Submetering of Electricity**

**I.D. No.** PSC-22-18-00007-A

**Filing Date:** 2019-02-13

**Effective Date:** 2019-02-13

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

**Action taken:** On 2/7/19, the PSC adopted an order approving Red Apple Surf Realty III, LLC's (Red Apple III) notice of intent to submeter electricity at 3514 Surf Avenue, Brooklyn, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Submetering of electricity.

**Purpose:** To approve Red Apple III's notice of intent to submeter electricity.

**Substance of final rule:** The Commission, on February 7, 2019, adopted an order approving Red Apple Surf Realty III, LLC's notice of intent to submeter electricity at 3514 Surf Avenue, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

**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 An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(18-E-0185SA1)

## NOTICE OF ADOPTION

### Submetering of Electricity

**I.D. No.** PSC-26-18-00015-A

**Filing Date:** 2019-02-13

**Effective Date:** 2019-02-13

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

**Action taken:** On 2/7/19, the PSC adopted an order approving BOP Greenpoint F LLC's (BOP Greenpoint) notice of intent to submeter electricity at 41 Blue Slip, Brooklyn, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Submetering of electricity.

**Purpose:** To approve BOP Greenpoint's notice of intent to submeter electricity.

**Substance of final rule:** The Commission, on February 7, 2019, adopted an order approving BOP Greenpoint F LLC's notice of intent to submeter electricity at 41 Blue Slip, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

**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 An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(18-E-0192SA1)

## NOTICE OF ADOPTION

### Submetering of Electricity

**I.D. No.** PSC-42-18-00009-A

**Filing Date:** 2019-02-13

**Effective Date:** 2019-02-13

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

**Action taken:** On 2/7/19, the PSC adopted an order approving Landing A Associates LLC's (Landing A) notice of intent to submeter electricity at 50 Bridge Park Drive, Brooklyn, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Submetering of electricity.

**Purpose:** To approve Landing A's notice of intent to submeter electricity.

**Substance of final rule:** The Commission, on February 7, 2019, adopted

an order approving Landing A Associates LLC's notice of intent to submeter electricity at 50 Bridge Park Drive, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

**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 An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(18-E-0479SA1)

## NOTICE OF ADOPTION

### Reliability Rules Modifications

**I.D. No.** PSC-44-18-00008-A

**Filing Date:** 2019-02-13

**Effective Date:** 2019-02-13

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

**Action taken:** On 2/7/19, the PSC adopted an order adopting modifications to the New York State Reliability Council's (NYSRC) Version 43 of the Reliability Rules & Compliance Manual (RR&C Manual).

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

**Subject:** Reliability rules modifications.

**Purpose:** To adopt modifications to NYSRC's Version 43 of the RR&C Manual.

**Substance of final rule:** The Commission, on February 7, 2019, adopted an order adopting modifications to the New York State Reliability Council's Version 43 of the Reliability Rules & Compliance Manual, to be included in the New York State reliability standards and rules, subject to the terms and conditions set forth in the order.

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

**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 An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

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

(05-E-1180SA19)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Notice of Intent to Submeter Electricity

**I.D. No.** PSC-10-19-00005-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 the notice of intent of Davidson Equities, LLC to submeter electricity at 34-46 Vernon Boulevard, Long Island City, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Notice of intent to submeter electricity.

**Purpose:** To ensure adequate submetering equipment and consumer protections are in place.

**Substance of proposed rule:** The Commission is considering the notice of intent filed by Davidson Equities, LLC on February 5, 2019, to submeter electricity at 34-46 Vernon Boulevard, Long Island City, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison).

By stating its intent to submeter electricity, Davidson Equities, LLC

requests authorization to take electric service from Con Edison and then distribute and meter that electricity to its residents. Submetering of electricity to residential residents is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96.

The full text of the notice of intent and the full record of the proceeding may be reviewed online at the Department of Public Service web page: [www.dps.ny.gov](http://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](mailto: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](mailto: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-0074SP1)

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

**Notice of Intent to Submeter Electricity**

**I.D. No.** PSC-10-19-00006-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 the notice of intent of 215 Chrystie Condominium to submeter electricity at 215 Chrystie Street, New York, New York.

**Statutory authority:** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

**Subject:** Notice of intent to submeter electricity.

**Purpose:** To ensure adequate submetering equipment and consumer protections are in place.

**Substance of proposed rule:** The Commission is considering the notice of intent filed by 215 Chrystie Condominium on October 25, 2018, to submeter electricity at 215 Chrystie Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison).

By stating its intent to submeter electricity, 215 Chrystie Condominium requests authorization to take electric service from Con Edison and then distribute and meter that electricity to its residents. Submetering of electricity to residential residents is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96.

The full text of the notice of intent and the full record of the proceeding may be reviewed online at the Department of Public Service web page: [www.dps.ny.gov](http://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](mailto: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](mailto: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.

(18-E-0671SP1)