

carefully drafted to meet statutory requirements and Regents policy while minimizing the impact on school districts, by providing school districts with flexibility to determine the specific processes and procedures they will follow to ensure the prompt enrollment of students who are released or conditionally released from homes and facilities operated by or under contract with the Office of Children and Family Services and other State and local agencies.

5. RURAL AREA PARTICIPATION:

The State Education Department participated in eight regional information sessions conducted by the Lieutenant Governor's Office throughout the State. The education community (including teachers, administrators, members of boards of education, community members and others) from rural areas attended and provided comments and suggestions. This input was considered in the drafting of the proposed amendment.

Comments on the proposed amendment were also solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment applies to school districts and is necessary to implement section 21 of Chapter 181 of the Laws of 2000, Project SAVE Safe Schools Against Violence in Education Act, by requiring that boards of education ensure the prompt enrollment and admittance to attendance of youths released or conditionally released from residential facilities operated by or under contract with the Office of Children and Family Services. The proposed amendment will not have an adverse impact on jobs or employment opportunities. In order to comply with the new requirements, some school districts may choose to employ new personnel, which may result in an increase in jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

2004 model year. Section 1.2 sets out a list of applicable definitions and includes changes made commensurate with definition changes made by California.

Subpart 2 is entitled Certification and Prohibitions. Section 218-2.1 requires 1993, 1994, 1996 and subsequent model year vehicles sold, registered, offered for sale or lease, imported, delivered, purchased, rented, leased, acquired or received in New York to be certified to California standards with certain exceptions. These standards are incorporated by reference in section 218-2.1. The existing exemptions are: replacement of a vehicle stolen or severely damaged while out of state, vehicles transferred by inheritance or court decree, any vehicle sold after the effective date of this Subpart if the vehicle was registered in this state before the effective date, or a vehicle registered in another state which is brought by the original owner into New York as a result of the owner's move into New York. This amendment adds three new categories of exempted vehicles for clarification; emergency vehicles, military tactical vehicles, and vehicles exempted by California. The amendments to section 218-2.2 streamline manufacturers' reporting requirement. Manufacturers are only required to submit the California Executive Order and Certificate of Conformity to New York instead of the complete package of paperwork submitted to California. The Department retains the right to ask for any of the materials submitted to California if thought necessary for the proper administration and enforcement of this Part. A new section 218-2.3 entitled Enforcement is added to clarify the Department's ability to enter and inspect premises and review records for the purpose of enforcement of this Part. It also adds a requirement that relevant records must be retained for three years.

Subpart 3 is entitled Fleet Average. This Subpart requires manufacturers to meet a fleet average for non-methane organic gas for vehicles produced and delivered for sale in New York. It copies the California requirement. This Subpart is streamlined by incorporating by reference the California requirements. Fleet average reporting and enforcement requirements are moved from Subpart 5 into this Subpart. Manufacturers are required to submit projected and actual fleet average emission reports. Failure to meet the fleet average results in requiring a manufacturer to file a fleet average noncompliance report. In addition the amendments clarify that a manufacturer is potentially subject to penalties under Article 71 of the Environmental Conservation Law.

Subpart 4 is entitled Zero Emission Vehicle Sales Mandate. This Subpart continues the requirement that manufacturers produce and deliver for sale in New York 10% of its fleet certified to a zero emission standard for 2003 and subsequent model-years. This portion of the rule has been streamlined by incorporating by reference the California requirement. New California credit and debit requirements are included in the incorporation by reference. The amendments to this section remove the mandate for model-years 1998-2002.

Subpart 5 is entitled Testing. This Subpart sets forth testing requirements for new vehicles. New York relies on testing and reports required by California and only requires New York specific testing and reports if facilities not subject to California's testing requirements produce vehicles for sale in New York. This subpart is being amended to include changes to California's assembly-line quality audit testing. Reporting, remedial action plans, inspection testing and compliance testing remain the same. Assembly-line surveillance has been moved from Subpart 6 to this Subpart but otherwise remains the same. It requires manufacturers to permit the Department to monitor assembly-line testing. Fleet average reporting and enforcement sections have been moved to another subpart.

Subpart 6 is entitled Surveillance and has been renumbered from Subpart 8. This Subpart prohibits motor vehicle dealers from selling vehicles that do not conform to certain operating standards such as idle speed, timing and idle mixture and sets forth the Department's existing authority to enter dealerships for the purposes of surveillance. This subpart also prohibits persons from operating or leaving standing on any highway a motor vehicle which is not in compliance with the applicable exhaust emission standards and requirements. Assembly-line surveillance has been moved to another subpart. Grammar changes have been made in this section but it otherwise remains the same.

Subpart 7 is entitled Aftermarket Parts and has been renumbered from Subpart 9. This Subpart sets forth the requirements for the sale of aftermarket parts for air contaminant emission control systems. The amendments to this subpart include grammar changes and updates to internal section references. It otherwise remains the same.

Old Subpart 10, entitled Specifications for Fill Pipes and Openings of Motor Vehicle Fuel Tanks, has been deleted, its provisions incorporated by reference in other sections of this Part.

Department of Environmental Conservation

NOTICE OF ADOPTION

Motor Vehicle Emission Control Standards

I.D. No. ENV-29-00-00006-A

Filing No. 1674

Filing date: Nov. 28, 2000

Effective date: 30 days after filing

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

Action taken: Amendment of section 200.9 and Part 218 of Title 6 NYCRR.

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

Subject: Motor vehicle emission control standards.

Purpose: To reduce emissions of air contaminants from new motor vehicles and incorporate a range of improvements into the New York program.

Substance of final rule: The Department of Environmental Conservation (Department) is amending existing Parts 218 and 200.9. The amendments to Part 200.9 are updates and additions to the table of documents incorporated by reference in Part 218. The revisions to Part 218 include adding new standards to maintain identity with California as required by the federal Clean Air Act, adding standards for medium-duty vehicles, removing references to the 1995 model year, streamlining existing procedures and cleaning up typographical errors.

Part 218 consists of 8 Subparts. Subpart 1 is entitled Applicability and Definitions. Section 218-1.1 sets forth the applicability of Part 218. This Part applies to all 1993, 1994, 1996 and subsequent model-year passenger cars, light duty trucks, motor vehicle engines and air contaminant emission control systems offered for sale or lease, sold or leased in New York. This section is amended to include medium-duty vehicles beginning with the

Old Subpart 11, entitled Severability, has been renumbered to Subpart 8 and retains a severability clause.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 200.9.

Text of rule and any required statements and analyses may be obtained from: Steven Flint, Department of Environmental Conservation, Division of Air Resources, 50 Wolf Rd., Albany, NY 12233-3255, (518) 485-8913, e-mail: seflint@gw.dec.state.ny.us

Additional matter required by statute: Pursuant to art. 8 of the State Environmental Quality Review Act a short environmental assessment form, a negative declaration and a coastal assessment form have been prepared and are on file. Pursuant to art. 5 of the Environmental Conservation Law, this rule has been approved by the State Environmental Board prior to adoption.

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

Nonsubstantive changes were made in Part 200.9, which does not necessitate a revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Business and Local Government, Rural Area Flexibility Analysis, nor Job Impact Statement.

Assessment of Public Comment

Comments were received from 178 parties regarding the proposed New York adoption of the LEV 2 program. Comments from the United States Environmental Protection Agency and the Alliance of Automobile Manufacturers focused on the emissions modeling conducted by the Department, and the Department's conclusion that LEV 2 is more protective of the environment than Tier 2. These commenters suggested revisions to phase in rates for standards, fleet mix and fraction of SULEVs in the fleet, and phase in and emission standards for LDT 3 and 4. The Department evaluated these comments, and agreed with many of the suggestions. Based on this information, the Department performed additional modeling analyses of the emissions benefits of both Tier 2 and LEV 2. The USEPA commented that the Tier 2 evaporative limits will yield the same evaporative benefits as LEV 2, since some manufacturers have indicated to EPA that they intend to build a single evaporative control system which meets both LEV 2 and Tier 2 requirements.

It should be noted that many of the comments regarding the emissions modeling are directed at the LDT 3 and 4 standards and implementation schedule, which is currently less restrictive for LEV 2 than for Tier 2. California has indicated, however that it intends to make the LEV 2 LDT 3 and 4 standards similar to the Federal Tier 2 standards later this year.

The Department has concluded that, while the modeled emissions from the alternative programs are similar, certain attributes of LEV 2 make LEV 2 the better control program for New York. The Department believes that since the LEV 2 evaporative benefits are enforceable limits, and will be monitored by the OBD, they represent a benefit over Tier 2. LEV 2 also includes provisions to continuously force emissions control technology to become more stringent and durable, which will have a long term benefit in in-use emissions. The ZEV mandate element of LEV 2 forces the development and deployment of new and innovative technology which can ultimately zero out the continued emissions increases associated with increases in vehicle miles traveled. Finally, the LEV 2 provides greater control of hydrocarbon emissions than Tier 2, and New York's SIP is in great need of hydrocarbon reduction.

The Auto Alliance also commented that the fleet average should not be enforced, and that the fleet average requirement would create difficulty for dealers and consumers and could result in restrictions on sales of certain vehicle models in New York. The Department responded that a review of previous fleet average reports indicates that manufacturers will be able to meet the required fleet average without limiting sales. The fleet average requirement will not be burdensome to dealers or consumers so long as vehicle sales are not limited. Flexibility in the fleet average program, including Banking, Averaging and Trading provisions will mitigate the issues suggested by the manufacturers.

The Auto Alliance commented that the ZEV mandate is not feasible and should not be required, and that the Tier 2 program includes advanced technology elements which would be available in New York. The Department responded stating that flexibility included in the program, coupled with the tax incentives in place and the expected cost reductions resulting from mass production should make the program feasible. The Department also responded that the advanced technology element of the LEV 2 program is preferred over Tier 2 because LEV 2 forces the development of cleaner and more durable motor vehicle technology, while Tier 2 simply provides an opportunity for this technology to be certified and enter the marketplace.

The Auto Alliance also commented that ZEVs are not competitive on a cost basis, and that there is inadequate market demand or infrastructure to support the mandate. The Department responded with an acknowledgment that there is need for additional infrastructure development. The Department also discussed the cost incentives available, and an expectation that ZEV costs will improve with higher levels of production.

Additional comments were received from the public and Environmental and Public Health organizations strongly supporting the adoption of LEV 2 by New York, including the ZEV mandate. Commenters indicated that the emissions benefits of LEV 2 are necessary to reduce the health impacts associated with ground level ozone. Commenters indicated support for the ZEV mandate, citing the partial ZEV credit program as providing an opportunity for development of hybrid, fuel cell, natural gas, and methanol technologies, and indicated a belief that the mandate is feasible.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rules and Regulations on Controlled Substances

I.D. No. HLT-50-00-00001-P

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

Proposed action: Amendment of sections 80.131 and 80.137 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3381(6)(a)

Subject: Rules and regulations on controlled substances.

Purpose: To allow the sale of furnishing of hypodermic needles and syringes without a prescription.

Text of proposed rule: 10 NYCRR 80.131 is amended as follows:

Section 80.131 Prescription, sale and possession of hypodermic syringes and hypodermic needles.

(a) It shall be unlawful for any person to sell or furnish, to any other person or persons, a hypodermic syringe or hypodermic needle, except:

(1) pursuant to a written prescription of a practitioner; or

(2) to persons who have been authorized by the commissioner to obtain and possess such instruments; or

(3) in an emergency, pursuant to an oral prescription from a practitioner, if the pharmacist complies with the requirements of subdivision (b); or

(4) pursuant to Section 80.137 of this Part.

(b)(1) In an emergency, a practitioner may orally prescribe and a pharmacist may dispense, to an ultimate user, syringes and hypodermic needles, provided however, the pharmacist shall:

(i) contemporaneously reduce such oral prescription to a written memorandum indicating the name, address and phone number of the prescriber, name and address of the ultimate user, date on which the hypodermic needles and/or syringe was ordered, quantity prescribed, direction for use, and the fact that it is a telephone order; and

(ii) the pharmacist filling such oral prescription shall indicate on the face of the memoranda the date filled, and the serial number of the prescription under which it is recorded in the pharmacy prescription file, and sign the memorandum.

(2) The pharmacist shall make a good faith effort to verify the identity of both the practitioner and the ultimate user if not known to the pharmacist.

(3) No oral prescription shall be filled for a quantity of hypodermic syringes and/or needles which would exceed a ten-day supply.

(4) Within 72 hours after authorizing such an oral prescription, the prescribing practitioner shall cause to be delivered to the pharmacist a written prescription. If the pharmacist fails to receive such prescription, he shall record on the oral prescription memorandum: "Written prescription not received", and sign and date the recording.

(5) Written follow-up prescriptions from prescribers shall be attached to the corresponding oral prescription memorandum and shall be filed in accordance with this section.