

able alternatives are biodegradable, recyclable, or made of recycled content, increasing the environmental benefits associated with the ban. The prohibitions within the legislation do not favor one industry over another, but rather promote a shift to more environmentally preferable solutions to ensure a healthy future for all in New York State.

2. CATEGORIES AND NUMBERS AFFECTED

While the implementation of the proposed regulations is not expected to have a substantial effect on jobs or employment opportunities, the categories of jobs that could be affected by the requirement of the law include: (1) covered food service providers (persons engaged on the business of selling or distributing prepared food or beverages for on-premises or off-premises consumption); (2) stores (retail or wholesale establishments other than covered food service providers); (3) manufacturers or distributors of disposable food containers; and (4) manufacturers or distributors of polystyrene loose fill packaging. Covered food service providers include retail food stores, delicatessens; grocery stores; restaurants; cafeterias; coffee shops; hospitals, adult care facilities, and nursing homes; and elementary and secondary schools, colleges and universities. Title 30 and the proposed regulations allow covered food service providers and certain facilities to apply for a financial hardship waiver, which would reduce any potential financial impacts to eligible covered food service providers and facilities.

Any job impacts would likely be experienced by manufacturers or distributors of disposable food service containers that contain expanded polystyrene foam and manufactures of polystyrene loose fill packaging because these products will be banned from being sold or distributed under the law. The number of jobs or employment opportunities at these businesses that will be affected by the law and regulations is unknown, but it is estimated to be minimal. To the extent that any manufacturers and distributors of these products are located in New York, jobs could be negatively impacted if these entities rely heavily on the sale and distribution of food service containers and loose fill packaging made from expanded polystyrene foam and do not have the ability to shift to, or increase, the production and distribution of other products. However, manufacturers of these products typically manufacture other packaging and products and could shift product development to those market opportunity areas over time. Manufacturers of reusable or disposable food service containers that do not contain polystyrene foam and other non-polystyrene packaging fill could experience an increase in sales due to purchasing shifts by regulated entities. Although it is difficult to predict the impact of the law and regulations on employment, there is potential for a small number of jobs to be created due to the need for increased alternatives to expanded polystyrene foam disposable food service containers and polystyrene loose fill packaging.

3. REGIONS OF ADVERSE IMPACT

Except for New York City, to which the proposed regulations do not apply because it has its own similar law banning expanded polystyrene containers and polystyrene loose fill packaging, all covered entities must adhere to the same requirements regardless of where they are located in this State. Therefore, there is no region of the State expected to be adversely impacted from the proposed regulations more than other areas of the State.

4. MINIMIZING ADVERSE IMPACT

Section 27-3005 of the law outlines provisions related to a financial hardship waiver and applying for a waiver. The proposed regulations implement Title 30's financial hardship waiver provisions by addressing financial hardship waiver eligibility, applying for a waiver, approval criteria, and renewal of a waiver in order to assist in minimizing adverse impacts for those entities that meet the requirements outlined in Section 27-3005. Covered food service providers that meet certain criteria (have an annual gross income under \$500,000 per location, do not operate 10 or more locations in New York State, and are not operated according to a franchise agreement), as well as facilities operated by a not-for-profit corporation or by a federal, state, or local government agency that provide food and meals to food insecure individuals, may request from the Department a renewable 12-month hardship waiver of the requirements of Title 30. Hardship waivers may be granted for one or more disposable food service containers to a covered food service provider that demonstrates there is no alternative product of comparable cost that is not composed of expanded polystyrene foam and that the purchase or use of an alternative product would create an undue financial hardship. In addition, the Department intends to undertake efforts to minimize any potential impacts by engaging stakeholders directly through outreach, education, and guidance documents.

5. SELF-EMPLOYMENT OPPORTUNITIES

The proposed regulations are not expected to negatively impact self-employment opportunities and may drive entrepreneurial endeavors for those seeking to develop reusable food service containers, other allowable alternative food service containers, or non-polystyrene loose fill packaging.

6. INITIAL REVIEW OF RULE

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.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Medium- and Heavy-Duty (MHD) Zero Emission Truck Annual Sales Requirements and Large Entity Reporting

I.D. No. ENV-36-21-00004-P

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

Proposed Action: Amendment of Parts 200 and 218 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101, 1-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-1101, 19-1103, 19-1105, 71-2103, 71-2105; Federal Clean Air Act, section 177 (42 USC 7507)

Subject: Medium- and heavy-duty (MHD) zero emission truck annual sales requirements and large entity reporting.

Purpose: Annual zero emission MHD truck sales requirements for model years 2025-2035. Report MHD volumes, operations, and locations.

Public hearing(s) will be held at: 2:00 p.m., Nov. 9, 2021 via electronic webinar.

Instructions on how to "join" the hearing webinar and provide an oral statement will be published on the Department's proposed regulations webpage for 6 NYCRR Part 218 by September 8, 2021. The proposed regulations webpage for 6 NYCRR Part 218 may be accessed at: <https://www.dec.ny.gov/regulations/propregulations.html>

Persons who wish to receive the instructions by mail or telephone may call the Department at (518) 402-9003. Please provide your first and last name, address, and telephone number and reference the Part 218 public comment hearing.

The Department will provide interpreter services for hearing impaired persons, and language interpreter services for individuals with difficulty understanding or reading English, at no charge upon written request submitted no later than October 19, 2021. The written request must be addressed to ALJ Michele M. Stefanucci, NYS DEC Office of Hearings and Mediation Services, 625 Broadway, 1st Floor, Albany, NY 12233-1550 or emailed to ALJ Stefanucci at ohms@dec.ny.gov.

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: <https://www.dec.ny.gov/regulations/propregulations.html>

#public): The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Part 218 and Section 200.9. Section 200.9 is a list that cites Federal and California codes and regulations that have been referenced by the Department while amending Part 218. The purpose of the amendment is to revise the existing low emission vehicle (LEV) program to incorporate California's Advanced Clean Truck (ACT) medium- and heavy-duty zero emission vehicle (ZEV) standards. The Department is amending Sections 218-1.1, Applicability; 218-2.1, Prohibitions; 218-4.1, ZEV percentages; and adding a new 218-4.2, Large Entity Reporting Requirement. The remaining Sections in Part 218 are unchanged.

Section 218-1.1(a) is amended to include ZEV standards for 2025 and subsequent model year medium- and heavy-duty trucks and to correct miscellaneous typographical errors.

Section 218-2.1(a) is amended to update the sections being incorporated by reference from the California Code of Regulations.

Section 218-4.1 is amended to incorporate California's latest (ZEV) standards for medium- and heavy-duty trucks. The proposed ACT amendments would introduce ZEV sales requirements for all manufacturers that sell vehicles in weight classes 2b through 8 (gross vehicle weight rating (GVWR) > 8,500 lbs.) in New York. The sales requirement would be a percentage, varying by model year, vehicle class, and vehicle type of the manufacturer's annual New York sales volume for that model year. Starting with MY 2025 in New York, manufacturers would incur deficits for each vehicle sold that must be met with credits generated from selling medium- and heavy-duty ZEVs or near zero emission vehicles (NZEVs).

Medium- and heavy-duty ZEV and NZEV credits may be generated,

banked, and traded in New York by manufacturers. Credits would have a limited lifetime to ensure medium and heavy-duty ZEVs are sold in New York. Manufacturers subject to the sales requirement must report sales information and credit trade information annually to the Department to demonstrate compliance.

Section 218-4.2 is being added. The proposed ACT amendments include a one-time large entity reporting requirement that applies to large fleet owners. Subject entities must report information regarding vehicle ownership and operation, as well as company-wide information about their New York locations and how they and their contractors move freight and perform other services. The extent of reporting will vary based on size of the company and truck ownership. State and local government agencies would also be required to report.

Text of proposed rule and any required statements and analyses may be obtained from: Jeff Marshall, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3255, (518) 402-8292, email: air.regs@dec.ny.gov

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

Public comment will be received until: November 17, 2021.

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: <https://www.dec.ny.gov/regulations/propregulations.html#public>):

The New York State Department of Environmental Conservation (DEC or the Department) proposes to amend Title 6 of the New York Codes, Rules and Regulations (NYCRR) Part 218, "Emissions Standards for Motor Vehicles and Motor Vehicle Engines", and Part 200, "General Provisions". These amendments further the goals of reducing air pollution from motor vehicles, including criteria pollutants and greenhouse gases (GHGs), by incorporating California's medium- and heavy-duty zero emission vehicle (ZEV) regulation, known as "Advanced Clean Trucks" (ACT). The amendments are consistent with the requirements of the Climate Leadership and Community Protection Act, Chapter 106 of the Laws of 2019 (CLCPA or Climate Act), to further reduce greenhouse gas (GHG) emissions in the State. The CLCPA emphasizes reducing greenhouse gas emissions and co-pollutants in disadvantaged communities including requiring all state agencies to not disproportionately burden disadvantaged communities when considering and issuing permits, licenses, and other administrative approvals and decisions.

The proposed amendments establish annual ZEV sales requirements in New York State for truck manufacturers. Manufacturers will be required to meet a certain sales percentage of ZEV trucks, which will vary among vehicle weight classes, beginning with model year (MY) 2025, and increasing annually through MY 2035.

The proposed amendments also establish a one-time large entity fleet reporting requirement. Subject entities will be required to submit a one-time report to the Department detailing information that will help identify future strategies to accelerate adoption of zero emission medium- and heavy-duty vehicles.

The United States Environmental Protection Agency (EPA)'s 2017 National Emissions Inventory (NEI) data estimated that on-road medium- and heavy-duty vehicles emitted approximately 13.6 million tons of GHG (when measured in CO₂e GWP100, rather than the GWP20 required by the Climate Act) in New York. The CLCPA defines "carbon dioxide equivalent" (CO₂e) as a measurement of global warming potential (GWP) based on a twenty-year timeframe (GWP20), rather than a one hundred-year timeframe (GWP100). The transportation sector accounts for at least 27 percent of all GHG emissions in New York State when measured pursuant to the Climate Act and Part 496. Diesel fuel and biodiesel, mainly used by medium- and heavy-duty vehicles, accounts for 21.5 percent of all on-road transportation sector GHG emissions, when measured pursuant to the Climate Act and Part 496.

The 2017 NEI data estimated that on-road medium- and heavy-duty vehicles emitted approximately 40,765 tons of nitrogen oxides (NO_x) and 3,345 tons of fine particulate matter (PM_{2.5}) in New York. Medium- and heavy-duty vehicles account for approximately 46 percent of total on-road vehicle NO_x emissions while making up a smaller percentage of vehicles.

New York State has a statewide diesel PM₁₀ ambient concentration from on-road medium- and heavy-duty vehicles of approximately 0.265 micrograms/meter³ (µg/m³), which is one of the highest in the nation. PM_{2.5} emissions from on-road mobile sources in the New York City region contribute to approximately 320 deaths and 870 hospitalizations and emergency department visits. Of the 320 deaths attributed to PM_{2.5} emissions, 170 deaths can be associated with buses and trucks.

The proposed ACT amendments would introduce ZEV sales requirements for all manufacturers that sell vehicles in weight classes 2b through

8 (gross vehicle weight rating (GVWR) > 8,500 lbs.) in New York. The sales requirement would be a percentage, varying by model year, vehicle class, and vehicle type of the manufacturer's annual New York sales volume for that model year. Starting with MY 2025 in New York, manufacturers would incur deficits for each vehicle sold that must be met with credits generated from selling medium- and heavy-duty ZEVs or near zero emission vehicles (NZEVs).

Medium- and heavy-duty ZEV and NZEV credits may be generated, banked, and traded in New York by manufacturers. Credits would have a limited lifetime to ensure medium and heavy-duty ZEVs are sold in New York. Manufacturers subject to the sales requirement must report sales information and credit trade information annually to the Department to demonstrate compliance.

Large entities that operate medium and heavy-duty trucks in New York would be required to submit a one-time reporting requirement. Large entities would include, but not be limited to, retailers, manufacturers, refiners, drayage terminal operators, utility providers, refuse companies, and government agencies.

The Department has estimated the emission reduction benefits associated with the proposed adoption of California's ACT regulation from two sources:

1. By comparing the annual vehicle miles traveled (VMT) of medium- and heavy-duty trucks for New York State to California, a scaling factor can be developed. The Department applied the calculated scaling factor of 0.32 to California's ACT Attachment D emission reductions to estimate New York State emission reductions.

2. The International Council on Clean Transportation (ICCT) utilized EPA's Motor Vehicle Emissions Simulator (MOVES3) model at the county scale using 2017 National Emissions Inventory representative counties to evaluate New York State's adoption of several California medium- and heavy-duty vehicle regulations, including ACT.

Using the first source, the Department estimates that New York's adoption of ACT would achieve emission benefits of 18,635 tons of NO_x, 349 tons of PM_{2.5}, and 5.52 million metric tons of GHG expressed in carbon dioxide equivalents with a global warming potential based on a one hundred-year timeframe (CO₂e, GWP100) from 2025-2040. California's ACT rulemaking estimates emissions reductions using a 100-year GWP which is standard practice. New York's Climate Act requires emissions be calculated using a 20-year GWP. Estimating emissions from internal combustion engines using a 20-year GWP would increase the emissions reductions realized from the proposed ACT.

The second source estimated that New York's adoption of ACT would achieve emission benefits of 16,210 tons of NO_x, 230 tons of PM_{2.5}, and 17.91 million metric tons of CO₂e, GWP100 from 2025-2040.

Where appropriate, costs and benefits associated with New York's proposed adoption of California's ACT regulation were estimated by applying the VMT-based scaling factor to California values. The scaling factor was applied to incremental ZEV cost, Phase 2 GHG compliance savings, large entity reporting costs, sales and excise tax, vehicle maintenance costs, maintenance bay upgrade costs, midlife service costs, electric vehicle supply equipment infrastructure and maintenance costs, and transition and workforce development costs.

The incremental cost of requiring medium- and heavy-duty ZEV sales in New York is estimated at \$2.9 billion from 2025-2040. The Department believes there will be no additional certification costs for manufacturers to comply with ACT in New York. The Department estimates Phase 2 GHG compliance savings of \$201 million to New York for 2025-2040.

Large fleet owners and those large companies that contract for transportation services will be required to report vehicle information and how they are operated. The Department estimates the cost of the one-time ACT reporting requirement in New York to be \$4.8 million.

Vehicles purchased in New York are subject to state and local sales tax applied to the vehicle purchase price. The Department estimated combined state/local sales tax of 8.45 percent. Class 8 vehicles are subject to an additional 12 percent federal excise tax. The Department estimates sales and excise tax costs in New York to be \$295 million from 2025-2040.

An overall total fuel cost savings is expected due to the replacement of diesel and gasoline fuel with the cost of electricity and hydrogen fuel. The Department estimates an overall savings of \$4.07 billion considering all fuel costs in New York from 2025-2040.

Vehicle maintenance costs consist of labor and parts for routine maintenance and repairs. The maintenance costs for battery electric vehicles are predicted to be lower compared to diesel fueled vehicles due to fewer moving parts and a simpler design. The Department estimates vehicle maintenance costs to be a net savings of \$1.21 billion in New York from 2025-2040.

Maintenance facilities would require upgrades to safety equipment, diagnostic tools, and other equipment to service electric vehicles. New York costs to upgrade maintenance facilities to service medium and heavy-duty ZEVs are estimated at \$180 million from 2025-2040.

Midlife costs represent the cost to rebuild or replace the main propulsion components of vehicles due to wear and deterioration. These include engine rebuild for diesel vehicles; battery pack replacement for battery electric vehicles; and fuel cell stack refurbishment for hydrogen fuel-cell vehicles. The Department estimates midlife costs of \$305 million in New York from 2025-2040.

Fleets will need to complete significant infrastructure upgrades to provide fuel for battery-electric and hydrogen fuel cell vehicles. The Department estimates electric vehicle fueling infrastructure installation and maintenance costs of \$3.10 billion in New York from 2025-2040.

The cost for transitioning to a new technology and its deployment is assumed to be approximately 2.5 percent of the incremental cost between a diesel truck and ZEV truck of the same class. The Department estimates transitional and workforce development costs in New York to be approximately \$12 million from 2025-2040.

Commercial vehicles of all fuel types are subject to registration fees, county use taxes, and supplemental fees depending on their fuel and vehicle weight. Diesel-powered commercial vehicles weighing 8,501 pounds GVWR or more are subject to an additional 3.25 percent increase to the listed registration fee, as required by the New York State Heavy-Duty Vehicle Diesel Emissions Reduction Act (DERA). Under ACT, ZEV purchases would not be subject to the DERA fee applicable to similar weight diesel-powered vehicles. DERA savings are estimated to be approximately \$3.4 million from 2025-2040.

ACT adoption would reduce state and local tax and fee revenue from gasoline and diesel sales, while increasing revenue from electricity. The Department estimated the fiscal impact on tax and fee revenue for New York State as a -\$250 million offset to benefits for 2025-2040.

The Department estimated the health benefits of reduced NOx and PM2.5 emissions derived from ACT adoption in New York from two sources:

1. California Air Resources Board (CARB)'s ACT Health Benefits
2. Northeast States for Coordinated Air Use Management (NESCAUM) sponsored CO-Benefits Risk Assessment (COBRA) modeling based on ICCT MOVES3 modeling of ACT in New York State (2025-2040)

The Department estimated the total number of incidents and estimated health benefits to New York using state population and the proximity of residents to major roadways in accordance with the U.S. Department of Transportation's Transportation and Health Tool. The Department estimates health benefits to New York of \$3.3 billion for 2025-2040.

The Department also considered COBRA simulations to examine the health impacts of ACT adoption in New York based on ICCT MOVES3 modeling results. A COBRA simulation estimated \$184 to \$423 million in monetized health benefits to New York from 2025-2040.

The monetized benefits of GHG reductions are estimated by considering the social cost of carbon. The Climate Act directed the Department to establish a value of carbon for use by state agencies. The Department evaluated the value of carbon in accordance with DEC's Value of Carbon guidance using a two percent discount rate. Scaling California's CO2e reductions results in an estimated avoided social cost of carbon of \$632 million from 2025-2040. Using ICCT MOVES3 modeling results in an estimated avoided social cost of carbon of \$2.06 billion from 2025-2040. Since the Department couldn't separate CARB's CO2e value into the component gases we have taken a conservative approach of calculating the value of carbon by applying the value of CO2 to the CO2e metric. Estimating the value for the individual gases in the CO2e metric would likely result in a higher value.

Fleet owners, however, are not required to purchase ZEV trucks under the proposed ACT adoption. If fleet owners choose to purchase electric trucks, they would incur costs after the point of sale, as well as costs relating to electric vehicle infrastructure. The proposed amendments would reduce overall costs as reduced operational costs significantly outweigh higher upfront vehicle purchase price and infrastructure costs. Battery-electric technologies are expected to reach total cost of ownership parity with diesel-powered vehicles by the 2024 MY for some applications.

New York State has several programs to promote the transition of the transportation sector to cleaner energy including the New York Truck Voucher Incentive Program administered by the New York State Energy and Research Development Authority, the New York City Clean Trucks Program administered by the New York City Department of Transportation, and a medium- and heavy-duty fleet make-ready pilot program pursuant to a New York State Public Service Commission order.

The proposed ACT amendments include a one-time large entity reporting requirement that applies to large fleet owners. Subject entities must report information regarding vehicle ownership and operation, as well as company-wide information about their New York locations and how they and their contractors move freight and perform other services. The extent of reporting will vary based on size of the company and truck ownership. State and local government agencies would also be required to report.

The proposed amendments will affect tax revenue at the state and local

level. Sales tax revenues are likely to increase due to the higher purchase costs of zero-emissions trucks. Fuel tax revenue will be reduced as gasoline and diesel vehicles will be displaced with electric and hydrogen fuel vehicles reducing the amount of gasoline and diesel dispensed in the state.

The proposed amendments are not expected to cause a change in overall employment in New York. Motor vehicle and parts manufacturing represents a small portion of employment in New York. Businesses that sell gasoline and diesel fuel in New York State may be negatively impacted. Businesses involved in the manufacturing of electric vehicle batteries, fuel-cell technologies, and electric vehicle parts are likely to be positively impacted. Businesses involved in installation, maintenance, and repair of electric vehicle charging infrastructure and hydrogen fueling infrastructure are likely to be positively impacted.

The ACT regulation would take effect beginning with MY 2025 for vehicles with GVWR greater than 8,500 lbs. The sales requirements would increase annually until MY 2035. Entities subject to the one-time large entity reporting requirement would be required to report by April 1, 2023.

Regulatory Flexibility Analysis

1. Effect of rule:

The New York State Department of Environmental Conservation (Department) is adopting amendments to 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's Advanced Clean Truck (ACT) standards for medium- and heavy-duty trucks, which became effective March 15, 2021 in California. These changes apply to manufacturers' requirements for the manufacture and sale of medium- and heavy-duty zero emission vehicles (ZEVs) sold in New York. The proposed revisions may have an adverse impact on businesses involved in manufacturing, selling, servicing, or purchasing medium- and heavy-duty vehicles.

State and local governments are also consumers of medium- and heavy-duty vehicles that will be regulated under the adopted amendments. Therefore, local governments who own or operate vehicles in New York State are subject to the same requirements as owners of private vehicles in New York State. The adopted changes are revisions to the current low emission vehicle (LEV) standards. New York State has had the California on-road motor vehicle emissions program in effect since model year 1993 for passenger cars and light-duty trucks, with the exception of model year 1995, medium-duty vehicles since model year 2004, and heavy-duty vehicles for model years 2005 through 2007 and the Department is unaware of any adverse impact to small businesses or local governments as a result of previous revisions. Section 177 of the federal Clean Air Act requires New York to maintain standards identical to California's in order to maintain the LEV program.

2. Compliance requirements:

There are no specific requirements in the proposed regulation which apply exclusively to small businesses. Local governments may be subject to the one-time large entity reporting requirement if they operate at least one medium- or heavy-duty vehicle. The large entity reporting requirements are effective statewide. Medium- and heavy-duty vehicle manufacturers will be required to submit annual compliance reports to the Department to demonstrate compliance with the proposed regulations. The reporting requirements are expected to be similar to existing light-duty reporting requirements. Professional services are not anticipated to be necessary to comply with the rules.

3. Professional services:

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

4. Compliance costs:

The proposed amendments include a one-time large entity reporting requirement that applies to large fleet owners, government agencies, and companies that contract for transportation related services. The extent of reporting will vary based on size of the company and truck ownership. Businesses with a single facility category and with few vehicles can expect to complete their reporting in 4 to 10 hours. Businesses with a moderate amount of facilities and vehicles can expect to complete their reporting in 20 to 30 hours. Businesses with a large amount of facilities can expect to complete their reporting in approximately 40 hours. The cost to the business is expected to be the number of hours expected multiplied by the cost for staffing per hour and the lost revenue from the employee assigned to collect information. The cost of the one-time large entity reporting for all New York entities combined is estimated to be approximately \$4.8 million.

New York State currently maintains personnel and equipment to administer the LEV program. No additional costs will be incurred by local governments for the administration of this program.

5. Economic and technological feasibility:

Most commercial medium- and heavy-duty vehicles operate less than 100 miles per day and operate from fixed locations. There are numerous models of medium- and heavy-duty zero-emission vans, trucks and buses from several manufacturers currently available, which are ideally suited to serve local and last-mile operations. It is expected that a growing number of ZEVs across all vehicle classes will become suitable for more applications as technology advances.

The proposed amendments would reduce costs to the state's overall trucking fleet as the savings from reduced operational costs of ZEVs significantly outweigh the higher upfront vehicle purchase price (without application of incentives) and infrastructure costs. For battery-electric vehicles, the total cost of ownership is lower compared to diesel vehicles. Cost parity is anticipated to be achieved for a growing number of classes by 2035 as battery prices fall and technology improves. Incentives are currently available to offset some or all of the higher vehicle capital costs and some of the early infrastructure costs to help fleets begin transitioning to ZEVs now.

Several funding programs are available to support the use of advanced technologies administered by state agencies, federal agencies, and local air districts. Two such programs are the New York Truck Voucher Incentive Program (NYTVIP) administered by the New York State Energy and Research Development Authority and the New York City Clean Trucks Program administered by the New York City Department of Transportation. Currently, NYTVIP offers vouchers, or discounts to the initial purchase price, to eligible New York fleets that purchase Class 4-8 battery-electric and fuel cell vehicles. Vouchers for battery-electric and fuel cell vehicles currently cover 95 percent of the incremental cost of the electric vehicle. The incremental cost is the cost difference between the ZEV and a comparable diesel vehicle, up to a certain cap depending on vehicle class, per vehicle.

The New York City Clean Trucks Program also offers rebate incentives for Class 4-8 heavy-duty battery-electric vehicles that would be registered in the nine county New York Metropolitan Area and operated within, or near, New York City Industrial Business Zones that are located near disadvantaged communities. The New York City Clean Trucks Program electric vehicle incentives are aligned with NYTVIP.

The New York Public Service Commission has also approved a Medium- and Heavy-Duty Fleet Make-Ready Pilot Program. The Pilot Program focuses on disadvantaged communities and offers incentives to mitigate the cost of developing Electric Vehicle charging capacity for qualifying medium- and heavy-duty vehicle fleets. The incentives cover up to 90 percent of the utility-side make-ready costs.

6. Minimizing adverse impact:

The proposed changes apply statewide. The regulation attempts to minimize adverse impacts on medium- and heavy-duty vehicle manufacturers by offering various compliance flexibility mechanisms. These include weight class modifiers, near zero emission vehicle (NZEV) credit provisions, and credit averaging-banking-trading (ABT) programs. The weight class modifier provides flexibility allowing manufacturers to produce more ZEVs in one vehicle class to avoid having to produce a small number of ZEVs in other groups. Credit is also given for NZEVs through model year 2035. Credits may be banked, traded, and sold among vehicle classes and to other manufacturers. The regulation is not expected to have adverse impacts on medium- and heavy-duty vehicle dealers. The Department is minimizing the reporting requirement for large entities that own or operate medium- and heavy-duty vehicles by requiring entities to only report once.

There will be no adverse impact on local governments who own or operate vehicles in the state because they are subject to the same requirements as those imposed on owners of private vehicles. This rulemaking is not a local government mandate pursuant to Executive Order 17. This regulation contains exemptions for emergency vehicles, and military tactical vehicles and equipment.

7. Small business and local government participation:

The Department plans on holding a virtual public hearing after the amendments are proposed. Small businesses and local governments will have the opportunity to attend this public hearing. Additionally, there will be a public comment period in which interested parties can submit written comments.

8. For rules that either establish or modify a violation or penalties associated with a violation:

In accordance with NYS State Administrative Procedures Act (SAPA) Section 202-b, this rulemaking does not include a cure period because the Department is undertaking this rulemaking to maintain identity with Section 177 of the Clean Air Act.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is adopting amendments to 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's Advanced Clean Truck (ACT) standards for medium- and heavy-duty trucks, which became effective March 15, 2021 in California.

There are no requirements in the adopted regulation which apply only to rural areas. These changes apply to manufacturers' requirements for the manufacture and sale of medium- and heavy-duty zero emission vehicles (ZEVs) sold in New York. The proposed revisions may have an adverse impact on businesses involved in manufacturing, selling, servicing, or purchasing medium- and heavy-duty vehicles.

The adopted changes are revisions to the current low emission vehicles (LEV) standards. New York State has had the California on-road motor vehicle emissions program in effect since model year 1993 for passenger cars and light-duty trucks, with the exception of model year 1995, medium-duty vehicles since model year 2004, and heavy-duty vehicles for model years 2005 through 2007; the Department is unaware of any adverse impact to rural areas as a result. The beneficial emission reductions from the program accrue to all areas of the state.

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

There are no specific requirements in the proposed regulation which apply exclusively to rural areas. Under the proposed amendments, large entities that operate medium and heavy-duty trucks in New York would be required to submit a one-time reporting requirement of aggregated and binned data for representative facilities. Entities would also be able to report binned, representative information about the vehicle types owned. Large entities would include, but not be limited to; retailers, manufacturers, refiners, hotels, drayage terminal operators, utility providers, refuse companies, federal, state, and local government agencies, and other types of large employers. Professional services are not anticipated to be necessary to comply with the proposed rules.

Medium- and heavy-duty vehicle manufacturers will be required to submit annual compliance reports to the Department to demonstrate compliance with the proposed regulations. The reporting requirements are expected to be similar to existing light-duty reporting requirements. Professional services are not anticipated to be necessary to comply with the rules.

3. Costs:

The adopted revisions are expected to result in additional costs for New York State consumers of medium- and heavy-duty vehicles. The one-time large entity reporting requirement is estimated to have a total cost of \$4.8 million for all subject entities in New York State. Consumers of medium- and heavy-duty vehicles will also face increased upfront purchase costs for new zero emission vehicles, primarily from the cost of battery packs. Increased purchase costs are expected to be offset in part by state and federal purchase rebates and reduced operation and maintenance costs relative to gasoline and diesel fueled vehicles. Medium- and heavy-duty vehicles are anticipated to achieve cost parity with conventionally fueled vehicles by 2035 without state or federal rebates.

Medium- and heavy-duty vehicle manufacturers will likely see increased costs to produce and deliver compliant vehicles to the New York market. These costs are anticipated to be passed thought to consumers in the form of increased purchase prices. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year for light-duty vehicles, the 2004 model year for medium-duty vehicles, and the 2005 model year for heavy-duty vehicles, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. The implementation of the regulation is not expected to be burdensome in terms of additional reporting requirements for dealers.

4. Minimizing adverse impact:

The proposed changes apply statewide. The regulation attempts to minimize adverse impacts on medium- and heavy-duty vehicle manufacturers by offering various compliance flexibility mechanisms. These include weight class modifiers, near zero emission vehicle (NZEV) credit provisions, and credit averaging-banking-trading (ABT) programs. The weight class modifier provides flexibility allowing manufacturers to produce more ZEVs in one vehicle class to avoid having to produce a small number of ZEVs in other groups. Credit is also given for NZEVs through model year 2035. Credits may be banked, traded, and sold among vehicle classes and to other manufacturers. The regulation is not expected to have adverse impacts on medium- and heavy-duty vehicle dealers. The Department is minimizing the reporting requirement for large entities that own or operate medium- and heavy-duty vehicles by requiring entities to only report once.

5. Rural area participation:

The Department plans on holding a virtual public hearing to provide information on the proposed regulation and solicit public comments. Additionally, there will be a public comment period in which interested parties can submit written comments.

Job Impact Statement

1. Nature of Impact:

The New York State Department of Environmental Conservation (Department) is adopting amendments to 6 NYCRR Section 200.9 and 6 NYCRR Part 218 to incorporate California's Advanced Clean Truck (ACT) standards for medium- and heavy-duty trucks, which became effective March 15, 2021 in California.

The proposed amendments to the regulations may adversely impact jobs and employment opportunities in New York State. New York State has had the California on-road motor vehicle emissions program in effect since model year 1993 for passenger cars and light-duty trucks, with the

exception of model year 1995, medium-duty vehicles since model year 2004, and heavy-duty vehicles for model years 2005 through 2007. The Department is unaware of any significant adverse impact to jobs and employment opportunities as a result of previous revisions.

2. Categories and numbers affected:

The proposed revisions may have an adverse impact on businesses involved in manufacturing, selling, servicing, or purchasing medium- and heavy-duty vehicles. Medium- and heavy-duty vehicle manufacturers are expected to incur costs to comply with the regulation. The proposal will require an increasing percentage of annual medium- and heavy-duty vehicle sales be zero emission vehicles (ZEVs) for model years 2025 through 2035. There is currently little, or no, medium- and heavy-duty vehicle manufacturing in New York State. As a result, no significant job losses in this sector are expected within the State. Most, if not all, medium- and heavy-duty vehicle manufacturers will have to allocate resources to produce a greater quantity of California compliant zero emission medium- and heavy-duty vehicles to supply the New York market along with associated record keeping, reporting, and warranty costs.

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

Ancillary businesses such as gas stations, repair shops, and parts retailers may be adversely impacted as the medium- and heavy-duty vehicle fleet transitions from gasoline and diesel fueled internal combustion engines to battery electric and other zero emission propulsion systems. It is anticipated that any losses in these sectors will be offset by increased employment opportunities in fields related to electric vehicle charging infrastructure and training technicians to service new medium- and heavy-duty ZEVs.

3. Regions of adverse impact:

None.

4. Minimizing adverse impact:

The regulation attempts to minimize adverse impacts on medium- and heavy-duty vehicle manufacturers by offering various compliance flexibility mechanisms. These include weight class modifiers, near zero emission vehicle (NZEV) credit provisions, and credit averaging-banking-trading (ABT) programs. The weight class modifier provides flexibility allowing manufacturers to produce more ZEVs in one vehicle class to avoid having to produce a small number of ZEVs in other groups. Credit is also given for NZEVs through model year 2035. Credits may be banked, traded, and sold among vehicle classes and to other manufacturers.

The regulation is not expected to have adverse impacts on medium- and heavy-duty vehicle dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year for light-duty vehicles, the 2004 model year for medium-duty vehicles, and the 2005 model year for heavy-duty vehicles, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. The implementation of the regulation is not expected to be burdensome in terms of additional reporting requirements for dealers. There would be no change in the competitive relationship with out-of-state businesses.

5. Self-employment opportunities:

None that the Department is aware of at this time.

Action taken: Amendment of sections 4043.2(b) and 4120.2(b) of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19), 301(1) and (2)

Subject: Lasix administrations on race day.

Purpose: To enhance the safety and integrity of pari-mutuel racing.

Text or summary was published in the March 3, 2021 issue of the Register, I.D. No. SGC-09-21-00014-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3332, email: gamingrules@gaming.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 2026, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Three comments were received from private practicing veterinarians at Finger Lakes Racetrack. These were from Bryan Hobson, Brendan Worrell and Robin Zack, who works with Dr. Hobson. Another comment was received from Beth Albrecht, chief examining veterinarian employed by Finger Lakes. All four suggested that rules for Finger Lakes should be different than other racetracks due to unique circumstances, such as the difficulty in recruiting veterinarians to work on-track or the lack of familiarity by a third-party with the horses to be treated. The three private practicing veterinarians also raised financial considerations, indicating that their practices relied upon the revenue derived from Lasix administration and that the loss of revenue might make their respective practices unsustainable. These three also suggested the State authorize third-party verification, wherein a third-party accompanies the private veterinarian during the veterinarian's rounds to observe the administration and verify that no wrongdoing occurs. In addition, Dr. Hobson's comment indicated disagreement with the Commission's language in the Regulatory Impact Statement included in the published proposed rulemaking.

The Commission notes that the third-party Lasix administration standard has been adopted by numerous states and notes that while a verification system is used in five jurisdictions (Minnesota, Indiana, Illinois, West Virginia and Washington state), three of those states (Minnesota, Illinois, Washington) simply require the administering veterinarian to swear that appropriate administration occurred, while the remaining two (Indiana and West Virginia) require the administration to occur before a regulatory official.

The Commission recognizes the potential financial implications and suggests that the three comments from private-practice veterinarians underscore the necessity for the third-party administration, because a business model that places a veterinarian's entire practice in jeopardy due to the loss of income from race-day medication is unsustainable, conflicts with the current nation-wide industry philosophy of medication reform and is not ultimately in the best long-term interest of the sport. The Commission also notes that with the impending establishment of the federal Horseracing Integrity and Safety Authority, the future general use of Lasix appears likely to be limited.

The Commission disagrees with Dr. Hobson and stands by its explanatory information provided in the Regulatory Impact Statement.

Vieden Zahariev, the assistant general manager of Finger Lakes Racetrack, submitted a comment. Mr. Zahariev made a financial argument against the proposal, indicating that the financial burden of independent veterinarians or veterinary technicians would provide no significant benefit. Mr. Zahariev also argued that third-party Lasix administration monitoring would be sufficient, noting that in 2019 the National Thoroughbred Racing Association ("NTRA") recommended this third-party monitoring as an option in a review of Finger Lakes.

The Commission believes that Mr. Zahariev is overbroad in his statement about the NTRA. The Commission reviewed the 2019 NTRA Safety Audit and finds the NTRA did not endorse the Finger Lakes monitoring practice and specifically raised concern that Finger Lakes veterinarians all provided varying descriptions of how their monitoring programs worked, noting that the explanation provided by two veterinarians were "completely incorrect."

The Commission notes that third-party Lasix administration monitoring is not authorized in either the National Uniform Medication Program or the ARCI Model Rule. The Commission further notes that the NTRA has representation on the RMTTC, with the NTRA's president and chief executive officer serving in the capacity of RMTTC chair, which suggests a conflict in interpretation is unlikely.

Peter Kanter, the racetrack veterinarian at Buffalo Raceway and Batavia Downs, questioned the need for the rule and raised a concern that adoption of the rule could prohibit him from performing surgery.

New York State Gaming Commission

NOTICE OF ADOPTION

Lasix Administrations on Race Day

I.D. No. SGC-09-21-00014-A

Filing No. 909

Filing Date: 2021-08-19

Effective Date: 2021-10-08

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