

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/propregulations.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 refinishing, 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) Effective Until December 31, 2020 | VOC Content Limit (grams per liter) 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 Retard-ers | 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 Coat-ings | 420 | 420 |
| Impacted Immersion Coatings | 780 | 780 |
| Industrial Maintenance Coatings | 340 | 250 |
| Low Solids Coatings | 120 | 120 |
| Magnesite Cement Coat-ings | 450 | 450 |
| Mastic Texture Coatings | 300 | 100 |
| Metallic Pigmented Coat-ings | 500 | 500 |
| Multi Color Coatings | 250 | 250 |
| Nuclear Coatings | 450 | 450 |
| Pre Treatment Wash Prim-ers | 420 | 420 |
| Primers, Sealers, and Un-dercoaters | 200 | 100 |
| Quick Dry Enamels | 250 | N/A |
| Quick Dry Primers, Seal-ers and Undercoaters | 200 | N/A |
| Reactive Penetrating Sealer | N/A | 350 |
| Reactive Penetrating Car-bonate Stone Sealer | N/A | 500 |
| Recycled Coatings | 250 | 250 |
| Roof Coatings | 250 | 250 |
| Rust Preventative Coat-ings | 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/proproregulations.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 follows¹:

| 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.

¹ "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).*