§ 19-0303. Codes, rules and regulations.

1. A code, rule or regulation or any amendment or repeal thereof shall not be adopted until after a public hearing within the area of the state concerned. Notice of such hearing shall be given at least sixty days prior to the scheduled date of the hearing by public advertisement of the date, time, place and purpose of such hearing. At such hearing, opportunity to be heard by the department with respect to the subject thereof shall be given to the public. A code, rule or regulation or an amendment or repeal thereof shall not become effective until thirty days after certified copies thereof shall have been filed with the secretary of state. Any person heard at such hearing shall be given written notice of the action of the department with respect to the subject thereof.

2. The code, rule and/or regulation or any amendment thereof which shall be adopted by the department may differ in its terms and provisions as between particular types and conditions of air pollution or of air contamination; as between particular air contamination sources; and as between particular areas of the state.

3. In exercising the power conferred upon it by section 19-0301 to formulate, adopt and promulgate, and to amend and repeal, codes and rules and regulations for preventing, controlling or prohibiting air pollution, the department shall give due recognition to the fact that the quantity or characteristics of air contaminants or the duration of their presence in the atmosphere, which may cause air pollution in one area of the state, may cause less air pollution or not cause any air pollution in another area of the state, and it shall take into consideration in this connection such factors, among others found by it to be proper and just, as existing physical conditions, zoning classifications, topography and prevailing wind directions and velocities and also the fact that a code, rule or regulation and the degree of conformance therewith which may be proper as to an essentially residential area of the state may not be proper as to a highly developed industrial area of the state.

4. In adopting any code, rule or regulation which contains a

requirement that is more stringent than the Act or regulations issued pursuant to the Act by the United States environmental protection agency, the commissioner shall, in addition to the provisions of section two hundred two-a of the state administrative procedure act, include in the regulatory impact statement:

(a) a detailed explanation of the reason or reasons that justify exceeding federal minimum requirements, including:

(i) satisfying any requirement of the Act as it relates to New York state, including any requirement for demonstrating attainment or maintenance of ambient air quality standards or meeting reasonable further progress pursuant to Title I of the Act;

(ii) preventing an assessment or imposition of sanctions, or the imposition of a federal implementation plan, pursuant to the Act;

(iii) complying with a final decree of a court; or

(iv) protecting public health or the environment;

(b) an evaluation of the cost-effectiveness of the proposed code, rule or regulation, in comparison with the cost-effectiveness of reasonably available alternatives; and

(c) a review of the reasonably available alternative measures considered by the commissioner and an explanation of the reasons for rejecting such alternatives.

5. The state, through its representatives on the interstate transport commission established pursuant to section 7506a of the Act, shall provide for public review of proposed recommendations for additional control measures and attainment strategies. Such public review will be effected by the governor's designee causing a notice of such proposed recommendations to be published in the Environmental Notice Bulletin. Such public review may be conducted concurrently with any public review required pursuant to the Act.