

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

- AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
- E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Agriculture and Markets

EMERGENCY RULE MAKING

Ash Trees, Nursery Stock, Logs, Green Lumber, Firewood, Stumps, Roots, Branches and Debris of a Half Inch or More

I.D. No. AAM-01-11-00014-E

Filing No. 393

Filing Date: 2011-04-29

Effective Date: 2011-04-29

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

Action taken: Repeal of Part 141; and addition of a new Part 141 to Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The repeal of Part 141 and the addition of Part 141 of 1 NYCRR is being adopted as an emergency measure because of the threat that the Emerald Ash Borer (EAB) will spread outside the areas it now infests in New York State.

EAB, *Agilus planipennis*, an insect species non-indigenous to the United States, is a destructive wood-boring insect native to eastern Russia, northern China, Japan and the Korean peninsula. The average adult Emerald Ash Borer is 3/4 of an inch long and 1/6 of an inch wide and is a dark metallic green in color, hence its name. The larvae are approximately 1 to 1 1/4 inches long and are creamy white in color. Adult insects emerge

in May and June and begin laying eggs in crevasses in the bark about two weeks after emergence. One female can lay 60 to 90 eggs. After hatching, the larvae burrow into the bark and begin feeding on the cambium and phloem tissue, usually from late July or early August through October, before overwintering in the outer bark. The larvae emerge as adult insects the following spring, and the life cycle begins anew. Evidence of the presence of the Emerald Ash Borer includes loss of tree bark, S-shaped larval galleries, or tunnels, just beneath the bark, small, D-shaped exit holes through the bark and dying and thinning branches near the top of the tree. A tree infested by EAB will die within two years. Ash trees, as well as ash nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are all subject to infestation.

The pest was first discovered in Michigan in 2002, and has since spread to at least 12 other states as well as to two provinces in Canada. In 2009, EAB was detected in New York in Cattaraugus County. This prompted the establishment of a quarantine in Cattaraugus County and adjacent Chautauqua County. In 2010, the pest was detected in Monroe, Livingston, Genesee, Steuben, Greene and Ulster Counties. As a result of these latest findings, on October 1, 2010, the Department, on an emergency basis, repealed Part 141 and adopted a new Part 141, which establishes a quarantine in the following counties: Cattaraugus, Monroe, Livingston, Genesee, Steuben, Greene, Ulster, Chautauqua, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung. Chautauqua, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung Counties will serve as a buffer between counties with known or suspected infestations and those which have no known infestations. Since the current emergency regulation expires on February 28, 2011, this measure will readopt the regulation on an emergency basis.

The quarantine will help ensure that as control measures are undertaken, EAB does not spread beyond those areas via the movement of infested trees and materials. Since the EAB is not considered established in the State, the risk of moving infested materials poses a serious threat to susceptible ash trees in forests as well as in parks and yards throughout the State. The immediate adoption of this amendment is necessary to preserve the general welfare and compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest. The failure to immediately establish a quarantine in these additional counties could result in the further spread of this pest, thereby threatening the State's forest, yard and park trees while potentially subjecting New York to a federal quarantine and quarantines by other states which would affect the entire State. The spread of EAB would cause economic hardship to the nursery and forest products industry as well as cause reductions in private property values and recreation revenues. The consequent loss of business would harm industries which are important to New York State's economy and as such would harm the general welfare.

Based on the facts and circumstances set forth above, the Department has determined that the immediate adoption of this amendment is necessary for the preservation of the general welfare and that compliance with subdivision one of section 202 of the State Administrative Procedure Act would be contrary to the public interest. The amendments establishing the quarantine will help ensure that as control measures are undertaken, the Emerald Ash Borer infestation does not spread beyond those areas via the artificial movement of infested trees and materials.

Subject: Ash trees, nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more.

Purpose: To establish an Emerald Ash Borer quarantine to prevent the spread of the beetle to other areas.

Text of emergency rule: Part 141 of 1 NYCRR is repealed and a new Part 141 is added thereto, to read as follows:

Part 141

Control of the Emerald Ash Borer

(Statutory Authority: Agriculture and Markets Law sections 18, 164 and 167)

Section 141.1. Definitions.

For the purpose of this Part, the following words, names and terms shall be construed respectively, to mean:

(a) *Certificate of inspection.* A valid form certifying the eligibility of products for intrastate movement under the requirements of this Part.

(b) *Compliance agreement.* An approved document, executed by persons or firms, covering the restricted movement, processing, handling or utilization of regulated articles not eligible for certification for intrastate movement.

(c) *Emerald Ash Borer.* The insect known as the Emerald Ash Borer, *Agrilus planipennis*, in any stage of development.

(d) *Firewood.* This term applies to any kindling, logs, chunkwood, boards, timbers or other wood cut and split, or not split, into a form and size of twenty eight inches or less appropriate for use as fuel.

(e) *Infestation.* This term refers to the presence of the Emerald Ash Borer in any life stage or as determined by evidence of activity of one or more of the life stages.

(f) *Inspector.* An inspector of the New York State Department of Agriculture and Markets, or cooperator from the New York State Department of Environmental Conservation (DEC) or the United States Department of Agriculture (USDA), when authorized to act in that capacity.

(g) *Limited permit.* A valid form authorizing the restricted movement of regulated articles from a quarantined area to a specified destination for specified processing, handling or utilization.

(h) *Moved; movement.* Shipped, offered for shipment to a common carrier received for transportation or transported by a common carrier, or carried, transported, moved or allowed to be moved into or through any area of the State.

(i) *Nursery stock.* This term applies to and includes all trees, shrubs, plants and vines and parts thereof.

(j) *Quarantined Area.* This term applies to Niagara, Erie, Orleans, Genessee, Wyoming, Allegany, Monroe, Livingston, Steuben, Wayne, Ontario, Yates, Schuyler, Chemung, Greene, Ulster, Chautauqua and Cattaraugus Counties.

(k) *Regulated article.* This term applies to firewood from any species of tree, and any trees and all host material, living, dead, cut or fallen, inclusive of nursery stock, logs, green lumber, stumps, roots, branches and debris of the following genera: *White Ash (Fraxinus Americana)*; *Green Ash Fraxinus pennsylvanica*; *Black Ash (Fraxinus nigra)*; and *Blue Ash (Fraxinus quadrangulata)*, and any wood material that is commingled and otherwise indistinguishable from the regulated article.

Section 141.2. Quarantined area.

Regulated articles as described in section 141.3 of this Part shall not be shipped, transported or otherwise moved from any point within Niagara, Erie, Orleans, Genessee, Wyoming, Allegany, Monroe, Livingston, Steuben, Wayne, Ontario, Yates, Schuyler, Chemung, Greene, Ulster, Chautauqua and Cattaraugus Counties to any point outside of said counties, except in accordance with this Part.

*Section 141.3. Regulated articles.**(a) Prohibited movement.*

(1) The intrastate movement of living Emerald Ash Borer in any stage of development, whether moved independent of or in connection with any other article, except as provided in section 141.9 of this Part.

(2) The intrastate movement of nursery stock from the quarantined area to any point outside the quarantined area.

(3) The intrastate movement of regulated articles other than nursery stock from the quarantined area to any point outside the quarantined area, except as provided in section 141.5 of this Part.

(b) Regulated movement.

(1) Regulated articles shall not be moved from the quarantined area to any point outside the quarantined area, except under a limited permit or unless accompanied by a certificate of inspection indicating freedom from infestation.

(2) Regulated articles may be moved through the quarantined area if the regulated articles originated outside the regulated area and:

(i) the points of origin and destination are indicated on a waybill accompanying the regulated article; and

(ii) the regulated articles, if moved through the quarantined area during the period of May 1 through August 31, are moved in an enclosed vehicle or are completely covered to prevent access by the Emerald Ash Borer; and

(iii) the regulated articles are moved directly through the quarantined area without stopping, except for refueling and traffic conditions, or have been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by the Emerald Ash Borer.

Section 141.4. Conditions governing the intrastate movement of regulated articles.

(a) *Movement from quarantined area.* Unless exempted by administrative instructions of the Commissioner of Agriculture and Markets of the State of New York, regulated articles shall not be moved intrastate from the quarantined area to or through any point outside thereof unless accompanied by a valid certificate or limited permit issued by an inspector, authorizing such movement.

Section 141.5. Conditions governing the issuance of certificates and permits.

(a) *Certificates of inspection.* Certificates of inspection may be issued for the intrastate movement of regulated articles when they have been inspected and determined to have been:

(1) treated, fumigated, or processed by approved methods; or

(2) grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, no infestation would be transmitted thereby, provided that subsequent to certification, the regulated articles shall be loaded, handled, and shipped under such protection and safeguards against reinfestation as are required by the inspector.

(b) *Limited permits.* Limited permits may be issued for the movement of noncertified regulated articles to specified destinations for specified processing, handling, or utilization. Persons shipping, transporting, or receiving such articles may be required to enter into written compliance agreements to maintain such sanitation safeguards against the establishment and spread of infestation and to comply with such conditions as to the maintenance of identity, handling, processing, or subsequent movement of regulated products and the cleaning of cars, trucks and other vehicles used in the transportation of such articles, as may be required by the inspector. Failure to comply with conditions of the agreement will result in its cancellation.

(c) *Cancellation of certificates of inspection or limited permits.* Certificates or limited permits issued under these regulations may be withdrawn or canceled by the inspector and further certification refused whenever in his or her judgment the further use of such certificates or permits might result in the dissemination of infestation.

Section 141.6. Inspection and disposition of shipments.

Any car or other conveyance, any package or other container, and any article or thing to be moved, which is moving, or which has been moved intrastate from the quarantined area, which contains, or which the inspector has probable cause to believe may contain, infestations of the Emerald Ash Borer, or articles or things regulated under this quarantine, may be examined by an inspector at any time or place. When articles or things are found to be moving or to have been moved intrastate in violation of these regulations, the inspector may take such action as he deems necessary to eliminate the danger of dissemination of the Emerald Ash Borer. If found to be infested, such articles or things must be free of infestation without cost to the State except that for inspection and supervision.

Section 141.7. Assembly of regulated articles for inspection.

(a) Persons intending to move intrastate any regulated articles shall make application for certification as far in advance as possible, and will be required to prepare and assemble materials at such points and in such manner as the inspector shall designate, so that thorough inspection may be made or approved treatments applied. Articles to be inspected as a basis for certification must be free from matter which makes inspection impracticable.

(b) The New York State Department of Agriculture will not be responsible for any cost incident to inspection, treatment, or certification other than the services of the inspector.

Section 141.8. Marking requirements.

Every container of regulated articles intended for intrastate movement shall be plainly marked with the name and address of the consignor and the name and address of the consignee, when offered for shipment, and shall have securely attached to the outside thereof a valid certificate (or limited permit) issued in compliance with these regulations: provided, that:

(a) for lot freight shipments, other than by road vehicle, one certificate may be attached to one of the containers and another to the waybill; and for carlot freight or express shipment, either in containers or in bulk, a certificate need be attached to the waybill only and a placard to the outside of the car, showing the number of the certificate accompanying the waybill; and

(b) for movement by road vehicle, the certificate shall accompany the vehicle and be surrendered to consignee upon delivery of shipment.

Section 141.9. Shipments for experimental and scientific purposes.

Regulated articles may be moved intrastate for experimental or scientific purposes, on such conditions and under such safeguards as may be prescribed by the New York State Department of Agriculture and Markets.

The container of articles so moved shall bear, securely attached to the outside thereof, an identifying tag issued by the New York State Department of Agriculture and Markets showing compliance with such conditions.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. AAM-01-11-00014-P, Issue of January 5, 2011. The emergency rule will expire June 27, 2011.

Text of rule and any required statements and analyses may be obtained from: Kevin King, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087

Regulatory Impact Statement

1. Statutory authority:

Section 18 of the Agriculture and Markets Law provides, in part, that the Commissioner may enact, amend and repeal necessary rules which shall provide generally for the exercise of the powers and performance of the duties of the Department as prescribed in the Agriculture and Markets Law and the laws of the State and for the enforcement of their provisions and the provisions of the rules that have been enacted.

Section 164 of the Agriculture and Markets Law provides, in part, that the Commissioner shall take such action as he may deem necessary to control or eradicate any injurious insects, noxious weeds, or plant diseases existing within the State.

Section 167 of the Agriculture and Markets Law provides, in part, that the Commissioner is authorized to make, issue, promulgate and enforce such order, by way of quarantines or otherwise, as he may deem necessary or fitting to carry out the purposes of Article 14 of said Law. Section 167 also provides that the Commissioner may adopt and promulgate such rules and regulations to supplement and give full effect to the provisions of Article 14 of the Agriculture and Markets Law as he may deem necessary.

2. Legislative objectives:

The proposed regulations accord with the public policy objectives the Legislature sought to advance by enacting the statutory authority in that it will help to prevent the spread within the State of an injurious insect, the Emerald Ash Borer (EAB).

3. Needs and benefits:

The rule will repeal Part 141 and add a new Part 141 which will establish an EAB quarantine to the seven counties where EAB has been detected (i.e. Cattaraugus, Monroe, Genesee, Livingston, Steuben, Greene and Ulster Counties), as well as to the following 11 counties: Chautauqua, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung Counties. Each of these additional 11 counties will serve as a buffer between counties with known infestations and those which have no known infestations.

On August 9, 2010, the Pennsylvania Department of Agriculture expanded the Commonwealth's Emerald Ash Borer quarantine by adding 31 counties to the 12 counties currently under quarantine. The quarantine in Pennsylvania now includes the 42 western counties of the commonwealth. This is significant since movement of wood products occurs frequently across the New York - Pennsylvania border and although Pennsylvania's action is not coordinated with New York's, it strongly correlates with the Department's proposed quarantine.

The Emerald Ash Borer, *Agrilus planipennis*, an insect species non-indigenous to the United States, is a destructive wood-boring insect native to eastern Russia, northern China, Japan and the Korean peninsula. It was first discovered in Michigan in June 2002, and has since spread to at least twelve other states as well as to two provinces in Canada. The initial detection of this pest in New York occurred on June 16, 2009 in the Town of Randolph, which is located in southwestern Cattaraugus County and is adjacent to Chautauqua County. More recently, additional detections have been confirmed in six other counties (Monroe, Genesee, Livingston, Steuben, Greene and Ulster) during July and August, 2010.

EAB can cause serious damage to healthy trees by boring through their bark, consuming cambium tissue, which contains growth cells, and phloem tissue, which is responsible for carrying nutrients throughout the tree. This boring activity results in loss of bark, or girdling, and ultimately results in the death of the tree within two years.

The average adult EAB is 3/4 of an inch long and 1/6 of an inch wide and is a dark metallic green in color, hence its name. The larvae are approximately 1 to 1 1/4 inches long and are creamy white in color. Adult insects emerge in May and June and begin laying eggs in crevasses in the bark about two weeks after emergence. One female can lay 60 to 90 eggs. After hatching, the larvae burrow into the bark and begin feeding on the cambium and phloem, usually from late July or early August through October, before overwintering in the outer bark. The larvae emerge as adult insects the following spring, and the life cycle begins anew. Evidence of the presence of the EAB includes loss of tree bark, S-shaped

larval galleries, or tunnels, just beneath the bark, small, D-shaped exit holes through the bark and dying and thinning branches near the top of the tree.

Ash trees, nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter are subject to infestation. Materials at risk of attack and infestation by the EAB include the following species of North American ash trees: White Ash (*Fraxinus Americana*); Green Ash (*Fraxinus pennsylvanica*); Black Ash (*Fraxinus nigra*); and Blue Ash (*Fraxinus quadrangulata*).

Since the EAB is not considered established in the State, moving infested nursery stock, logs, green lumber, firewood, stumps, roots, branches and debris of a half inch or more in diameter poses a serious threat to susceptible ash trees in forests as well as in parks and yards throughout the State.

The proposed regulations would prohibit the movement of any article infected with EAB, regardless of where the articles are located in the State. Otherwise, only the movement of regulated articles, i.e. trees, firewood and all host material living, dead, cut or fallen, inclusive of nursery stock, logs, green lumber, stumps, roots, branches and debris of the White Ash, Green Ash, Black Ash and Blue Ash genera susceptible to the pest, is restricted under the rule. The extent of the restrictions depends on the regulated articles in question.

In the case of nursery stock, the proposed regulations would prohibit the following: the intrastate movement of these articles from the quarantine area to any point outside the quarantine area.

In the case of all other regulated articles, the proposed regulations would prohibit the following: the intrastate movement of these articles from the quarantine area to any point outside the quarantine area, except under a limited permit or unless accompanied by a certificate of inspection indicating freedom of infestation.

In the case of all regulated articles, the rule would permit movement of these articles through the quarantine area if the regulated articles originate outside the quarantine area and the point of origin of the regulated articles is on the waybill or bill of lading; a certificate of inspection accompanies the regulated articles; the vehicle moving the regulated articles does not stop in the quarantine area except for refueling or traffic conditions; and the vehicle moving the regulated articles during the period May 1 through August 31 is either an enclosed vehicle or is completely covered by canvas, plastic or closely woven cloth.

Under the regulations, certificates of inspection may be issued when the regulated articles have been inspected and found to be free of infestation or have been grown, produced, stored or handled in such a manner that, in the judgment of the inspector, no infestation is present in the articles.

Limited permits may be issued for the movement of noncertified regulated articles from the quarantine area to a specified destination outside the quarantine area for specified processing, handling or utilization.

Under the rule, certificates of inspection and limited permits may be withdrawn or canceled whenever an inspector determines that further use of such certificate or permit might result in the spread of infestation.

The regulations would also provide that persons shipping, transporting, or receiving regulated articles may be required to enter into written compliance agreements. These agreements would allow the shipment of these articles without a state or federal inspection. They are entered into by the Department with persons who are determined to be capable of complying with the requirements necessary to insure that EAB is not spread.

The regulations are necessary, since the effective control of the EAB within the limited areas of the State near and where this insect has been found is important to protect New York's nursery and forest products industry. The failure of states to control insect pests within their borders can lead to federal quarantines that affect all areas of those states, rather than just the infested portions. Such a widespread federal quarantine would adversely affect the nursery and forest products industry throughout New York State.

4. Costs:

(a) Costs to the State government: None. Annual surveys would be required to monitor the natural spread of the beetle at a cost of \$200,000 to \$250,000. However, it is anticipated that this survey program would be funded by the United States Department of Agriculture (USDA) through a continuing cooperative agreement with the New York State Department of Environmental Conservation (DEC).

Additional work will be required of Department staff to inspect regulated parties and implement compliance agreements. The Department is working with USDA-APHIS to develop a cooperative agreement to fund and support the additional regulatory activity necessitated by the rule.

(b) Costs to local government: None, as a result of the quarantine. Some local governments may face expenses in tree maintenance since ash trees have become popular trees to use to line streets. However, the rule does not require local governments to remove the trees from the quarantine area. Accordingly, local governments within the quarantine area will not incur any additional expenses due to the quarantine.

(c) Costs to private regulated parties: There are 2,768 licensed nursery growers and/or nursery dealers in the quarantined counties which would be affected by the quarantine set forth in the regulations. However, it is anticipated that fewer than half of these establishments carry regulated articles. There is no approved protocol for ash nursery stock. Furthermore, experience has shown that the presence of EAB and its destructive potential will significantly reduce or eliminate the market for ash nursery stock as ornamental, street and park plantings.

There are an unknown number of loggers, sawmills and forest-products manufacturers using white ash in these counties. According to the Empire State Forest Products Association, white ash accounts for 10 to 15-percent by volume of the total hardwood lumber manufactured in New York, and approximately 7 to 10-percent by value. Forest-based manufacturing provided \$7.4-billion in value of shipments to New York's economy in 2001. Additionally, purchases of white ash stumpage from New York landowners exceeds \$13-million annually.

Regulated parties exporting regulated articles (exclusive of nursery stock) from the quarantine area established under the proposed regulations, other than pursuant to compliance agreement, would require an inspection and the issuance of a federal or state certificate of inspection. This service is available at a rate of \$25 per hour. Most inspections will take one hour or less. It is anticipated that there will be 100 or fewer such inspections each year with a total annual cost of less than \$2,500.00.

Most shipments would be made pursuant to compliance agreements. Services required prior to shipment of host materials, including inspection of the materials, taking and analyzing soil samples and reviewing shipping records, are available at a rate of \$25 per hour.

Tree removal services would have the option of leaving host materials within the quarantine area or transporting them outside of the quarantine area under a limited permit to a federal/state disposal site for processing.

(d) Costs to the regulatory agency:

(i) The initial expenses the agency will incur in order to implement and administer the regulation: None.

(ii) Additional work will be required of Department staff to inspect regulated parties and implement compliance agreements. The Department is working with USDA-APHIS to develop a cooperative agreement to fund and support the additional regulatory activity required under the rule.

5. Local government mandate:

None.

6. Paperwork:

Regulated articles inspected and certified to be free of EAB moving from the quarantine area established by the rule would have to be accompanied by a state or federal certificate of inspection and a limited permit or be undertaken pursuant to a compliance agreement.

7. Duplication:

None.

8. Alternatives:

The alternative of no action was considered. However, that option was not feasible, given the threat EAB poses to the State's forests and forest-based industries. Additionally, the option of establishing a quarantine throughout the entire state was also considered, but rejected as too onerous on regulated parties in counties near or where there has been no finding of the pest. However, the failure of the State to establish the quarantine in and near the counties where EAB has been observed could result in exterior quarantines by foreign and domestic trading partners as well as a federal quarantine of the entire State. It could also place the State's own natural resources (forest, urban and agricultural) at risk from the spread of EAB that could result from the unrestricted movement of White Ash, Green Ash, Black Ash and Blue Ash from the quarantine areas. In light of these factors, there does not appear to be any viable alternative to the quarantine set forth in this proposal.

9. Federal standards:

The proposed regulations do not exceed any minimum standards for the same or similar subject areas.

10. Compliance schedule:

It is anticipated that regulated persons would be able to comply with the proposed regulations immediately.

Regulatory Flexibility Analysis

1. Effect on small business.

The small businesses affected by the regulations establishing an Emerald Ash Borer (EAB) quarantine in Cattaraugus, Chautauqua, Monroe, Genesee, Livingston, Steuben, Greene, Ulster, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung Counties are the nursery dealers, nursery growers, landscaping companies, loggers, sawmills and other forest products manufacturers located within those counties. There are 2,768 licensed nursery growers and/or dealers within these counties. There are an unknown number of loggers, sawmills and forest-products manufacturers using white ash in these counties. However, it is anticipated that fewer than half of these establishments carry regulated articles. Furthermore, experience has

shown that the presence of EAB and its destructive potential will significantly reduce or eliminate the market for ash nursery stock as ornamental, street and park plantings.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

2. Compliance requirements.

There is no approved protocol to diagnose or treat nursery stock, since approved methods (e.g. debarking) would kill the plants. All regulated parties in the quarantine area established by the regulations would be required to obtain certificates and limited permits in order to ship other regulated articles (e.g. firewood and forest products) from that area. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

3. Professional services.

In order to comply with the regulations, small businesses shipping regulated articles from the quarantine area would require professional inspection services, which would be provided by the Department or the United States Department of Agriculture (USDA).

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

4. Compliance costs.

(a) Initial capital costs that will be incurred by a regulated business or industry or local government in order to comply with the rule: None.

(b) Annual cost for continuing compliance with the rule: There are 2,768 licensed growers and/or dealers which would be affected by the quarantine set forth in the regulations. There are an unknown number of loggers, sawmills and forest-products manufacturers using white ash in these counties. However, it is anticipated that fewer than half of these establishments carry regulated articles. There is no approved protocol to diagnose or treat nursery stock, since approved methods (e.g. debarking) would kill the plants.

According to the Empire State Forest Products Association, white ash accounts for 10 to 15-percent by volume of the total hardwood lumber manufactured in New York, and approximately 7 to 10-percent by value. Forest-based manufacturing provided \$7.4-billion in value of shipments to New York's economy in 2001. Additionally, purchases of white ash stumpage from New York landowners exceeds \$13-million annually.

Regulated parties exporting other types of host materials (e.g. firewood and forest products) from the quarantine area established under the regulations, other than pursuant to compliance agreement, would require a federal or state certificate of inspection. This service is available at a rate of \$25 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 or fewer such inspections each year with a total annual cost of less than \$2,500.00.

Most shipments would be made pursuant to compliance agreements. Services required prior to shipment of host materials, including inspection of the materials, taking and analyzing soil samples and reviewing shipping records, are available at a rate of \$25 per hour.

Tree removal services would have the option to leave host materials within the quarantine area or transport them outside of the quarantine area under a limited permit to a federal/state disposal site for processing.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

5. Minimizing adverse impact.

The Department has designed the rule to minimize adverse economic impact on small businesses. This is done by limiting the quarantine area to only those parts of New York State near or where EAB has been detected; and by limiting the inspection and permit requirements to only those necessary to detect the presence of EAB; and to prevent its movement in host materials from the quarantine area. As set forth in the regulatory impact statement, the regulations provide for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the rule was designed to minimize adverse impact. The approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act and suggested by section 202-b(1) of the State Administrative Procedure Act were considered. Given all of the facts and circumstances, it is submitted that the regulations minimize adverse economic impact as much as is currently possible.

It is not anticipated that local governments would be involved in the shipment of regulated articles from the quarantine area.

6. Small business and local government participation.

With the discovery of EAB in Cattaraugus County in 2009, The Department had ongoing discussions with representatives of various nurseries, arborists, the forestry industry, and local governments regarding the general needs and benefits of the Emerald Ash Borer quarantine.

On June 25, 2009, the Department sent a letter to licensed nursery grow-

ers and nursery dealers, providing information regarding the threat the Emerald Ash Borer is posing to the State's ash trees and the State's response to that threat.

On July 9, 2009, the Department hosted an informational meeting on the Emerald Ash Borer and the needs and benefits of a quarantine to control the artificial spread of this pest. Representatives of the Empire State Forrest Products Association, New York State Nursery Landscape Association and New York State Arborist Association attended the meeting on behalf of their constituencies, which are regulated parties. Representatives of DEC and USDA also attended the meeting.

On July 14, 2009, the Empire State Forrest Products Association hosted an informational meeting on the Emerald Ash Borer in Randolph, New York. Approximately 90 people attended this informational meeting. A general public meeting on the Emerald Ash Borer was held following the informational meeting. Approximately 150 people attended the public meeting.

These discussions ultimately resulted in the establishment of an EAB quarantine in Cattaraugus and Chautauqua Counties.

With the discovery of EAB in Monroe, Genesee, Livingston, Steuben, Greene and Ulster Counties in 2010, the Department has had ongoing discussions with representatives of various nurseries, arborists, the forestry industry, and local governments regarding the general needs and benefits of extending the EAB quarantine.

On August 4, 2010, the Department held an information meeting for regulated and interested parties to share information about EAB detections during July 2010. The meeting involved about 35 individuals representing environmental groups, forest products manufacturers, nursery and landscape businesses, local government, forest landowners and maple producers.

The group heard presentations about current survey, detections and infestation levels discovered during July and early August. A national perspective was provided by USDA-APHIS regarding survey, regulatory, and other control measures being implemented nationally and by other states. The attendees were asked to provide their views regarding what State government should be doing and specifically asked to identify issues related to where to draw lines for quarantine purposes.

There was significant agreement and support for quarantining large blocks of counties. There was strong feelings about the need to avoid gaps in the quarantine area and the resulting economic hardship that might ensue if this were done. Several individuals specifically identified the lines that NSYDAM has determined as appropriate for the quarantine region.

These discussions ultimately resulted in a consensus to establish an EAB quarantine, not only in Cattaraugus and Chautauqua Counties, but in Monroe, Genesee, Livingston, Steuben, Greene, Ulster, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung Counties as well.

Outreach efforts will continue.

7. Assessment of the economic and technological feasibility of compliance with the rule by small businesses and local governments.

The economic and technological feasibility of compliance with the rule by small businesses and local governments has been addressed and such compliance has been determined to be feasible. Regulated parties shipping regulated articles (exclusive of nursery stock) from the quarantine area, other than pursuant to a compliance agreement would require an inspection and the issuance of a certificate of inspection. Most shipments, however, would be made pursuant to compliance agreements.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The regulated parties affected by the regulations establishing an Emerald Ash Borer (EAB) quarantine in Cattaraugus, Chautauqua, Monroe, Genesee, Livingston, Steuben, Greene, Ulster, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung Counties are the nursery dealers, nursery growers, landscaping companies, loggers, sawmills and other forest products manufacturers located within those counties. There are 2,768 licensed nursery growers and/or dealers within these counties. There are an unknown number of loggers, sawmills and forest-products manufacturers using white ash in these counties. However, it is anticipated that fewer than half of these establishments carry regulated articles. Furthermore, experience has shown that the presence of EAB and its destructive potential will significantly reduce or eliminate the market for ash nursery stock as ornamental, street and park plantings.

Most of these businesses are in rural areas as defined by section 481(7) of the Executive Law.

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

There is no approved protocol to diagnose or treat nursery stock, since approved methods (e.g. debarking) would kill the plants. All regulated parties in the quarantine area established by the rule would be required to

obtain certificates and limited permits in order to ship other regulated articles (e.g. firewood and forest products) from that area. In order to facilitate such shipments, regulated parties may enter into compliance agreements.

In order to comply with the regulations, all regulated parties shipping regulated articles from the quarantine area would require professional inspection services, which would be provided by the Department, the Department of Environmental Conservation (DEC) and the United States Department of Agriculture (USDA).

3. Costs:

There are 2,768 licensed nursery growers and/or dealers in the 18 counties which would be affected by the quarantine. There are an unknown number of loggers, sawmills and forest-products manufacturers using white ash in these counties. According to the Empire State Forest Products Association, white ash accounts for 10 to 15-percent by volume of the total hardwood lumber manufactured in New York, and approximately 7 to 10-percent by value. Forest-based manufacturing provided \$7.4-billion in value of shipments to New York's economy in 2001. Additionally, purchases of white ash stumpage from New York landowners exceeds \$13-million annually.

Regulated parties exporting regulated articles (exclusive of nursery stock) from the quarantine area established under the regulations, other than pursuant to compliance agreement, would require a federal or state certificate of inspection. This service is available at a rate of \$25 per hour. Most inspections would take one hour or less. It is anticipated that there would be 100 or fewer such inspections each year with a total annual cost of less than \$2,500.00.

Most shipments would be made pursuant to compliance agreements. Services required prior to shipment of host materials, including inspection of the materials, taking and analyzing soil samples and reviewing shipping records, are available at a rate of \$25 per hour.

Tree removal services would have the option to leave host materials within the quarantine area or transport them outside of the quarantine area under a limited permit to a federal/state disposal site for processing.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the regulations were drafted to minimize adverse economic impact on all regulated parties, including those in rural areas. This is done by limiting the quarantine area to only those parts of New York State near and where the Emerald Ash Borer has been detected; and by limiting the inspection and permit requirements to only those necessary to detect the presence of EAB and prevent its movement in host materials from the quarantine area. As set forth in the regulatory impact statement, the regulations would provide for agreements between the Department and regulated parties that permit the shipment of regulated articles without state or federal inspection. These agreements, for which there is no charge, are another way in which the proposed regulations were designed to minimize adverse impact. Given all of the facts and circumstances, it is submitted that the rule minimizes adverse economic impact as much as is currently possible.

5. Rural area participation:

With the discovery of EAB in Cattaraugus County in 2009, The Department had ongoing discussions with representatives of various nurseries, arborists, the forestry industry, and local governments regarding the general needs and benefits of the Emerald Ash Borer quarantine.

On June 25, 2009, the Department sent a letter to licensed nursery growers and nursery dealers, providing information regarding the threat the Emerald Ash Borer is posing to the State's ash trees and the State's response to that threat.

On July 9, 2009, the Department hosted an informational meeting on the Emerald Ash Borer and the needs and benefits of a quarantine to control the artificial spread of this pest. Representatives of the Empire State Forrest Products Association, New York State Nursery Landscape Association and New York State Arborist Association attended the meeting on behalf of their constituencies, which are regulated parties. Representatives of DEC and USDA also attended the meeting.

On July 14, 2009, the Empire State Forrest Products Association hosted an informational meeting on the Emerald Ash Borer in Randolph, New York. Approximately 90 people attended this informational meeting. A general public meeting on the Emerald Ash Borer was held following the informational meeting. Approximately 150 people attended the public meeting.

These discussions ultimately resulted in the establishment of an EAB quarantine in Cattaraugus and Chautauqua Counties.

With the discovery of EAB in Monroe, Genesee, Livingston, Steuben, Greene and Ulster Counties in 2010, the Department has had ongoing discussions with representatives of various nurseries, arborists, the forestry industry, and local governments regarding the general needs and benefits of extending the EAB quarantine.

On August 4, 2010, the Department held an information meeting for

regulated and interested parties to share information about EAB detections during July 2010. The meeting involved about 35 individuals representing environmental groups, forest products manufacturers, nursery and landscape businesses, local government, forest landowners and maple producers.

The group heard presentations about current survey, detections and infestation levels discovered during July and early August. A national perspective was provided by USDA- APHIS regarding survey, regulatory, and other control measures being implemented nationally and by other states. The attendees were asked to provide their views regarding what State government should be doing and specifically asked to identify issues related to where to draw lines for quarantine purposes.

There was significant agreement and support for quarantining large blocks of counties. There was strong feelings about the need to avoid gaps in the quarantine area and the resulting economic hardship that might ensue if this were done. Several individuals specifically identified the lines that NSYDAM has determined as appropriate for the quarantine region.

These discussions ultimately resulted in a consensus to establish an EAB quarantine, not only in Cattaraugus and Chautauqua Counties, but in Monroe, Genesee, Livingston, Steuben, Greene, Ulster, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung Counties as well.

Outreach efforts will continue.

Job Impact Statement

The repeal of Part 141 of 1 NYCRR and the addition of a new Part 141 will not have a substantial adverse impact on jobs or employment opportunities and in fact, will likely aide in protecting jobs and employment opportunities for now and in the future. Forest related activities in New York State provide employment for approximately 70,000 people. Of that number, 55,000 jobs are associated with the wood-based forest economy, including manufacturing. The forest-based economy generates payrolls of more than \$2 billion.

By extending the Emerald Ash Borer (EAB) quarantine to Cattaraugus, Chautauqua, Monroe, Genesee, Livingston, Steuben, Greene, Ulster, Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung Counties, the regulation is designed to prevent the further spread of this pest to other parts of the State. There are an estimated 750-million ash trees in New York State (excluding the Adirondack and Catskill Forest Preserves), with ash species making up approximately seven percent of all trees in our forests. A spread of the infestation would have very adverse economic consequences to the nursery, forestry and wood-working (e.g. lumber yard, flooring and furniture and cabinet making) industries of the State, due to the destruction of the regulated articles upon which these industries depend. Additionally, a spread of the infestation could result in the imposition of more restrictive quarantines by the federal government, other states and foreign countries, which would have a detrimental impact upon the financial well-being of these industries.

By helping to prevent the spread of EAB, the rule would help to prevent such adverse economic consequences and in so doing, protect the jobs and employment opportunities associated with the State's nursery, forestry and wood-working industries.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

Banking Department

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. BNK-20-11-00004-E

Filing No. 388

Filing Date: 2011-04-28

Effective Date: 2011-05-02

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

Action taken: Addition of Part 419 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Banking Board or Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers' response to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers' performance.

In addition to addressing the pressing issue of mortgage loan delinquencies and loss mitigation, the rule addresses other areas of significant concern to homeowners, including the handling of borrower complaints and inquiries, the payment of taxes and insurance, crediting of payments and handling of late payments, payoff balances and servicer fees. The rule also sets forth prohibited practices such as engaging in deceptive practices or placing homeowners' insurance on property when the servicers has reason to know that the homeowner has an effective policy for such insurance.

Subject: Business conduct of mortgage loan servicers.

Purpose: To implement the purpose and provisions of the Mortgage Lending Reform Law of 2008 with respect to mortgage loan servicers.

Substance of emergency rule: Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including "Servicer", "Qualified Written Request" and "Loan Modification".

Section 419.2 establishes a duty of fair dealing for Servicers in connection with their transactions with borrowers, which includes a duty to pursue loss mitigation with the borrower as set forth in Section 419.11.

Section 419.3 requires compliance with other State and Federal laws relating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

Section 419.4 describes the requirements and procedures for handling to consumer complaints and inquiries.

Section 419.5 describes the requirements for a servicer making payments of taxes or insurance premiums for borrowers.

Section 419.6 describes requirements for crediting payments from borrowers and handling late payments.

Section 419.7 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period and the amounts deposited into and disbursed from escrow. The section also describes the Servicer's obligations with respect to providing a payment history when requested by the borrower or borrower's representative.

Section 419.8 requires a late payment notice be sent to a borrower no later than 17 days after the payment remains unpaid.

Section 419.9 describes the required provision of a payoff statement that contains a clear, understandable and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date.

Section 419.10 sets forth the requirements relating to fees permitted to be collected by Servicers and also requires Servicers to maintain and update at least semi-annually a schedule of standard or common fees on their website.

Section 419.11 sets forth the Servicer's obligations with respect to handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This Section includes requirements relating to procedures and protocols for handling loss mitigation, providing borrowers with information regarding the Servicer's loss mitigation process, decision-making and available counseling programs and resources.

Section 419.12 describes the quarterly reports that the Superintendent may require Servicers to submit to the Superintendent, including information relating to the aggregate number of mortgages serviced by the Servicer, the number of mortgages in default, information relating to loss mitigation activities, and information relating to mortgage modifications.

Section 419.13 describes the books and records that Servicers are required to maintain as well as other reports the Superintendent may

require Servicers to file in order to determine whether the Servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received, communications with borrowers, financial reports and audited financial statements.

Section 419.14 sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and placing insurance on a mortgage property without written notice when the Servicer has reason to know the homeowner has an effective policy in place.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 26, 2011.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, NYS Banking Department, 1 State Street, New York, NY 10004, (212) 709-1658, email: sam.abram@banking.state.ny.us

Regulatory Impact Statement

1. Statutory Authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2)(b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Mortgage Lending Reform Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent. The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations.

New Paragraph (d) was added to Subsection (5) of Section 590 by the Mortgage Lending Reform Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be promulgated by the Banking Board or prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Mortgage Lending Reform Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Mortgage Lending Reform Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Mortgage Lending Reform Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Mortgage Lending Reform Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Mortgage Lending Reform Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Mortgage Lending Reform Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations

of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for mortgage loan servicer registration and branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative Objectives.

The Mortgage Lending Reform Law was intended to address various problems related to residential mortgage loans in this State. The law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there has heretofore been no general regulation of servicers by the state or the Federal government.

The Mortgage Lending Reform Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The new law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Banking Board and the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Banking Board and the superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, addresses the first component of the mortgage servicing statute by setting standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as setting financial responsibility standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. This part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Collectively, the provisions of Part 418 and 419 implement the intent of the Legislature to register and supervise mortgage loan servicers.

3. Needs and Benefits.

Governor Paterson reported in early 2008 that there were more than 52,000 foreclosure filings in 2007, or approximately 1,000 per week. That number increased in 2008, averaging approximately 1,100 per week in the first quarter. While there was some drop in foreclosure filings in 2009 to just over 50,000, the crisis continues and the problems that have affected so many have been found to implicate not only the origination of residential mortgage loans, but also their servicing and foreclosure. The Mortgage Lending Reform Law adopted a multifaceted approach to the problem. It addressed a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Until July 1, 2009, when the mortgage loan servicer registration provisions first became effective, the Department regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; erroneously force-placing insurance when borrowers already have insurance; and failing to engage in prompt and appropriate loss mitigation efforts.

More than 2,000,000 loans on residential one-to-four family properties

are being serviced in New York. Of these over 8% were seriously delinquent as of the fourth quarter of 2009. Despite various initiatives adopted at the state level and the creation of federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners, the number of loans modified have not kept pace with the number of foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

As noted above, Part 418, initially adopted on an emergency basis on July 1 2009, relates to the first component of the mortgage servicing statute - the registration of mortgage loan servicers. It was intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers. It also provided for the suspension, revocation and termination of licenses involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower's account, authorized fees, late charges and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer's compliance with applicable laws, its financial condition and the status of its servicing portfolio.

Since the adoption of Part 418, 45 entities have pending applications or been approved for registration and nearly 180 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements.

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and will be required to comply with the conduct of business and consumer protection rules applicable to mortgage loan servicers.

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.

4. Costs.

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC and OTS publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. The State Foreclosure Working Group, consisting of thirteen state Attorneys General and three state Banking regulators, including New York, collects and reports on similar data from the largest subprime mortgage servicers. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Banking Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local Government Mandates.

None.

6. Paperwork.

Part 419 requires mortgage loan servicers to keep books and records related to its servicing for a period of three years and to produce quarterly reports and financial statements as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically and would therefore be virtually paperless. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations. The various federal laws that touch upon aspects of mortgage loan servicing are noted in Section 9 "Federal Standards" below.

8. Alternatives.

The Mortgage Lending Reform Law required the registration of mortgage loan servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to register mortgage loan servicers and regulate the manner in which they conduct business. The Department circulated a proposed draft of Part 419 and received comments from and met with industry and consumer groups. The current Part 419 reflects the input received. The alternative to these regulations is to do nothing or to wait for the newly created federal bureau of consumer protection to promulgate national rules, which could take years, may not happen at all or may not address all the practices covered by the rule. Thus, neither of those alternatives would effectuate the intent of the legislature to address the current foreclosure crisis, help at-risk homeowners vis-à-vis their loan servicers and ensure that mortgage loan servicers engage in fair and appropriate servicing practices.

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan. While the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may propose additional regulations for mortgage loan servicers, there is no certainty that it will do so or to what extent.

10. Compliance Schedule.

The regulations will become effective on October 1, 2010.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The rule will not have any impact on local governments. The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. Of the 45 entities which have pending applications or have been approved for registration to date and the nearly 180 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Banking Department of servicers who are not a bank, mortgage banker, mortgage broker or other exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promul-

gate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, sets for the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

3. Professional Services:

None.

4. Compliance Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC and OTS publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. The State Foreclosure Working Group, consisting of thirteen state Attorneys General and three state Banking regulators, including New York, collects and reports on similar data from the largest subprime mortgage servicers. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

5. Economic and Technological Feasibility:

For the reasons noted in Section 4 above, the rule should impose no adverse economic or technological burden on mortgage loan servicers that are small businesses.

6. Minimizing Adverse Impacts:

As noted in Section 1 above, most servicers are not small businesses. Many of the requirements contained in the rule derive from federal or state laws, existing servicer guidelines utilized by Fannie Mae and Freddie Mac and best industry practices.

Moreover, the ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

7. Small Business and Local Government Participation:

The Banking Department distributed a draft of proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department likewise distributed a draft of proposed Part 419 to consumer groups, received their comments on the proposed rule and met with consumer representatives to discuss the proposed rule in person. The rule as finally proposed reflects the input received from both industry and consumer groups.

Rural Area Flexibility Analysis

Types and Estimated Numbers. Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 45 entities have pending applications or have been approved for registration and nearly 180 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 100 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

Compliance Requirements. The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Banking Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs. The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 45 entities that have pending applications or have been approved for registration, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

Minimizing Adverse Impacts. As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas.

In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than \$5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

Rural Area Participation. The Department issued a draft of Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups following the release of the draft rule. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule reflect derive from federal or state laws and reflect existing best industry practices.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-20-11-00005-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from and classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Audit and Control, by deleting therefrom the position of Coordinator of Public Authority Programs and by increasing the number of positions of Special Assistant from 2 to 3.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy

Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-20-11-00006-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State Department Service under the subheading "All State Departments and Agencies," by deleting therefrom the positions of Assistant Clinical Physician, Assistant Clinical Physician (various parenthetics), Assistant Psychiatrist, Clinical Physician 1, Clinical Physician 2, Clinical Physician 3, Clinical Physician 1 (various parenthetics), Clinical Physician 2 (various parenthetics), Dentist 1, Dentist 2, Dentist 3, Dentist 4, Medical Specialist 1, Medical Specialist 2, Medical Specialist 3, Pathologist 3, Psychiatrist 1, Psychiatrist 2, Psychiatrist 3, Psychiatrist 1 (various parenthetics), Psychiatrist 2 (various parenthetics), Psychiatrist 3 (various parenthetics), Veterinarian 1, Veterinarian 2 and Veterinarian 3.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

Jurisdictional Classification

I.D. No. CVS-20-11-00007-P

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

Proposed Action: 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 to delete a position from the non-competitive class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by adding thereto the positions of Director Office of Cyber Security, Director Office of Counter Terrorism and Director Office of Interoperable and Emergency Communications.

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by deleting therefrom the position of Director Cyber Security and Critical Infrastructure Coordination (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

Jurisdictional Classification

I.D. No. CVS-20-11-00008-P

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

Proposed Action: 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 to classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of the Budget," by increasing the number of positions of Program Associate from 3 to 4; and, in the Executive Department under the subheading "Office for Technology," by adding thereto the position of Program Associate and increasing the number of positions of Special Assistant from 4 to 5.

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office for Technology," by adding thereto the position of Principal Program Specialist (OPAL) (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

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

Jurisdictional Classification

I.D. No. CVS-20-11-00009-P

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

Proposed Action: Amendment of Appendix 1 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 exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Taxation and Finance, by deleting therefrom the positions of Executive Deputy Director and Special Office Assistant and by increasing the number of positions of Assistant Deputy Commissioner from 2 to 3 and Deputy Commissioner from 4 to 5.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AESSOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was

previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-11-00003-P, Issue of January 19, 2011.

Delaware River Basin Commission

INFORMATION NOTICE

INFORMATION NOTICE NOTICE OF FINAL RULEMAKING

Delaware River Basin Commission - 21 NYCRR 860.30 and 860.31 - Amendment to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for Toxic Pollutants in the Delaware Estuary and Extend These Criteria to Delaware Bay.

I.D. No.: Not applicable.

Filing Date: May 2, 2011

Effective Date: Upon filing with each of the signatory parties in accordance with Section 14.2 of the Delaware River Basin Compact and publication in the Federal Register.

The Delaware River Basin Commission ("Commission" or "DRBC") is a federal state regional agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its members are the governors of the four Basin states, Delaware, New Jersey, New York and Pennsylvania, and the North Atlantic Division Commander of the U.S. Army Corps of Engineers, representing the federal government. The DRBC is not subject to the requirements of the State Administrative Procedure Act. The purpose of this notice is to advise the public that duly adopted regulations of the Commission have been filed with the State of New York in accordance with Section 14.2 of the Delaware River Basin Compact.

Action Taken: On December 8, 2010, the Delaware River Basin Commission adopted amendments to its Water Quality Regulations § 3.30 and Water Code § 3.20 and 21 NYCRR 860.30 and 860.31.

Statutory Authority: Delaware River Basin Compact, New York Laws of 1961, Chapter 148, Approved March 17, 1961.

Subject: Commission Human Health and Aquatic Life Stream Quality Objectives for Toxic Pollutants.

Purpose: To establish a current and uniform set of water quality standards regulations for measuring and managing the ecological health of interstate waters and the tidal portions of tributaries to the Delaware Estuary and Bay and for protecting the health of people who use these shared waters.

Substance of final rule: By Resolution No. 2010-13 on December 8, 2010, the Delaware River Basin Commission (DRBC or "Commission") approved amendments to its Water Quality Regulations, Water Code and Comprehensive Plan updating the Commission's human health and aquatic life stream quality objectives (also called "water quality criteria") for toxic pollutants in the Delaware Estuary (DRBC Water Quality Zones 2 through 5) and extended application of the criteria to Delaware Bay (DRBC Water Quality Zone 6).

Text of rule may be obtained from: The text of Resolution No. 2010-13, the final rule, the comment and response document, and the basis and background document published simultaneously with the proposed rule are available on the Commission's Web site, at http://www.state.nj.us/drbc/toxics_info.htm.

Assessment of public comment: Notice of the proposed amendments appeared in the New York State Register (p. 6) on July 21, 2010, as well

as in the Federal Register (75 FR 41106) on July 15, 2010, the Delaware Register of Regulations (14 DE Reg. 70-83 (08/01/2010)) on August 1, 2010, the New Jersey Register (42 N.J.R. 1701(a)) on August 4, 2010, and the Pennsylvania Bulletin (40 Pa. B. 4208) on July 31, 2010. A public hearing was held on September 23, 2010 and written comments were accepted through October 1, 2010. The commission received two written submissions and no oral testimony on the proposed changes. The Commission made minor revisions to the proposed amendments in response to the comments received. A comment and response document setting forth the Commission's responses and revisions in detail was approved by the Commission simultaneously with adoption of the final rule.

Pamela M. Bush

Commission Secretary and Assistant General Counsel

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

District-Wide School Safety Plans and Building-Level School Safety Plans

I.D. No. EDU-20-11-00001-P

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

Proposed Action: Amendment of section 155.17 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 305 and 2801-a

Subject: District-wide school safety plans and building-level school safety plans.

Purpose: To amend the content requirements of each plan to reflect current confidentiality requirements and concerns.

Text of proposed rule: Subdivision (e) of section 155.17 of the Regulations of the Commissioner of Education is amended, effective August 10, 2011, as follows:

(e) School safety plans. District-wide school safety plans and building-level school safety plans shall be designed to prevent or minimize the effects of serious violent incidents and emergencies and to facilitate the coordination of schools and school districts with local and county resources in the event of such incidents or emergencies.

(1) District-wide school safety plans. A district-wide school safety plan shall be developed by the district-wide school safety team and shall include, but not be limited to:

(i) the identification of sites of potential emergency;

(ii) except in a school district in a city having a population of more than one million inhabitants, a description of plans for taking the following actions in response to an emergency where appropriate:

(a) school cancellation;

(b) early dismissal;

[(c) evacuation;

(d) sheltering;]

(iii) policies and procedures for responding to implied or direct threats of violence by students, teachers, other school personnel and visitors to the school;

(iv) policies and procedures for responding to acts of violence by students, teachers, other school personnel and visitors to the school, including consideration of zero-tolerance policies for school violence;

(v) appropriate prevention and intervention strategies, such as:

(a) collaborative arrangements with State and local law enforcement officials, designed to ensure that school safety officers and other security personnel are adequately trained, including being trained to de-escalate potentially violent situations, and are effectively and fairly recruited;

(b) nonviolent conflict resolution training programs;

(c) peer mediation programs and youth courts; and

(d) extended day and other school safety programs;

(vi) policies and procedures for contacting appropriate law enforcement officials in the event of a violent incident;

(vii) except in a school district in a city having a population of more than one million inhabitants, a description of the arrangements for obtaining assistance during emergencies from emergency services organizations and local governmental agencies;

(viii) except in a school district in a city having a population of

more than one million inhabitants, the procedures for obtaining advice and assistance from local government officials, including the county or city officials responsible for implementation of article 2-B of the Executive Law;

(ix) except in a school district in a city having a population of more than one million inhabitants, the identification of district resources which may be available for use during an emergency;

(x) except in a school district in a city having a population of more than one million inhabitants, a description of procedures to coordinate the use of school district resources and manpower during emergencies, including identification of the officials authorized to make decisions and of the staff members assigned to provide assistance during emergencies;

(xi) policies and procedures for contacting parents, guardians or persons in parental relation to the students of the district in the event of a violent incident or an early dismissal;

(xii) policies and procedures relating to school building security, including, where appropriate, the use of school safety officers and/or security devices or procedures;

(xiii) policies and procedures for the dissemination of informative materials regarding the early detection of potentially violent behaviors, including but not limited to the identification of family, community and environmental factors to teachers, administrators, parents and other persons in parental relation to students of the school district or board, students and other persons deemed appropriate to receive such information;

(xiv) policies and procedures for annual multi-hazard school safety training for staff and students;

(xv) procedures for review and the conduct of drills and other exercises to test components of the emergency response plan, including the use of tabletop exercises, in coordination with local and county emergency responders and preparedness officials;

(xvi) the identification of appropriate responses to emergencies, including protocols for responding to bomb threats, hostage-takings, intrusions and kidnappings;

(xvii) strategies for improving communication among students and between students and staff and reporting of potentially violent incidents, such as the establishment of youth-run programs, peer mediation, conflict resolution, creating a forum or designating a mentor for students concerned with bullying or violence and establishing anonymous reporting mechanisms for school violence;

(xviii) a description of the duties of hall monitors and any other school safety personnel, the training required of all personnel acting in a school security capacity, and the hiring and screening process for all personnel acting in a school security capacity;

(xix) in the case of a school district, except in a school district in a city having more than one million inhabitants, a system for informing all educational agencies within such school district of a disaster; and

(xx) in the case of a school district, except in a school district in a city having more than one million inhabitants, certain information about each educational agency located in the school district, including information on school population, number of staff, transportation needs and the business and home telephone numbers of key officials of each such agency].

(2) School emergency response plan. A school *building* emergency response plan shall be developed by the building-level school safety team and shall include the following elements:

(i) policies and procedures for the safe evacuation of students, teachers, other school personnel and visitors to the school in the event of a serious violent incident or other emergency which may occur before, during or after school hours, which shall include *the description of plans of action for evacuation and sheltering*, evacuation routes and shelter sites, and procedures for addressing medical needs, transportation and emergency notification to persons in parental relation to a student;

(ii) designation of an emergency response team, other appropriate incident response teams, and a post-incident response team;

(iii) procedures for assuring that crisis response, fire and law enforcement officials have access to floor plans, blueprints, schematics or other maps of the school interior, school grounds and road maps of the immediate surrounding area;

(iv) establishment of internal and external communication systems in emergencies;

(v) definition of the chain of command in a manner consistent with the National [Interagency] Incident Management System (NIMS)/Incident Command System (ICS);

(vi) coordination of the school safety plan with the statewide plan for disaster mental health services to assure that the school has access to Federal, State and local mental health resources in the event of a violent incident;

(vii) procedures for an annual review and the conduct of drills and other exercises to test components of the emergency response plan, includ-

ing the use of tabletop exercises, in coordination with local and county emergency responders and preparedness officials;

(viii) policies and procedures for securing and restricting access to the crime scene in order to preserve evidence in cases of violent crimes on school property;

(ix) *in the case of a school district, except in a school district in a city having more than one million inhabitants, certain information about each educational agency located in the school district, including information on school population, number of staff, transportation needs and the business and home telephone numbers of key officials of each such agency.*

Text of proposed rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Bldg., Rm. 148, Albany, NY 12234, (518) 473-8296

Data, views or arguments may be submitted to: John B. King, Senior Deputy Commissioner of P-12, State Education Department, Office of P-12 Education, State Education Building, Room 125, 89 Washington Ave., Albany, NY 12234, (518) 474-3862, email: nysedp12@mail.nysed.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Subdivisions (1) and (2) of section 305 of the Education Law grants the Commissioner of Education, as chief executive officer of the State system of education and of the Board of Regents, general supervisory authority over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education.

Section 2801-a of the Education Law requires that every school district, board of cooperative educational services (BOCES) and county vocational education extension board, as well as the Chancellor of the City School District of the City of New York, develop a district-wide school safety plan and building-level school safety plans regarding crisis intervention and emergency response ("school emergency response plan"). Section 2801-a further grants the Commissioner of Education general supervisory authority over the implementation of and compliance with these requirements.

Section 2801-a of the Education Law prescribes the minimum content requirements of the district-wide safety plan and school emergency response plan and authorizes the Commissioner of Education, in consultation with the Division of Criminal Justice Services, the Superintendent of the State Police and any other appropriate State agency to develop the form in which the plans shall be developed. Section 2801-a also requires that each district-wide school safety plan be filed with the Commissioner of Education no later than thirty days after adoption and that each building-level safety plan be filed with the appropriate local law enforcement agency and State Police within thirty days from adoption. Section 2801-a further provides that each school emergency response plan will be kept confidential and prohibited from disclosure pursuant to Article VI of the Public Officers Law, the Freedom of Information Law (FOIL).

2. LEGISLATIVE OBJECTIVES:

The proposed amendment to section 155.17 of the Regulations of the Commissioner of Education is consistent with the authority conferred by the above statutes, and is necessary to implement the requirements of developing a district-wide school safety plan and school emergency response plan in accordance with current confidentiality requirements and concerns.

3. NEEDS AND BENEFITS:

The proposed amendment will update the content requirements of the district-wide school safety plan and the emergency response plan to address certain confidentiality requirements and concerns. Currently, under Education Law § 2801-a, each school emergency response plan must be kept confidential and is not subject to disclosure under FOIL in order to ensure the safety of students, staff and the public. Under existing provisions of the Commissioner's regulations, each school district and BOCES, excluding a City School District in the City of New York, must include in its district-wide school safety plan, a description of the plans of evacuation and sheltering in response to an emergency. Additionally, under the regulations, each school district must include in its district-wide school safety plan information on school population, number of staff, transportation needs and the business and home telephone numbers of key officials of each educational agency within such district.

The proposed amendment will merely require that certain information currently being disclosed in the district-wide school safety plan, such as school officials' home telephone numbers, now be included in the school

emergency response plan, which is not made available to the public. This amendment will also clarify that the school emergency response plan is building specific in that it will provide, in pertinent part, that “[a] school building emergency response plan shall be developed by the building-level school safety team.” For further clarification, it will also specifically provide that any plans of evacuation and sheltering will be included in the emergency response plan in addition to any other policies and procedures for evacuation currently required to be included in such plan.

Since the adoption of this regulation, various emergency and critical events have occurred, including that attacks on September 11, 2001. This amendment will ensure that confidential information including the home telephone numbers of local education officials and the tactical strategies for responding to critical events such as building evacuation and sheltering are not included in any publicly available document. If disclosed, this information could threaten the safety of students, staff and the public. Therefore, this amendment is needed.

4. COSTS:

(a) Costs to State government: The proposed amendment is not expected to impose any additional costs on State government.

(b) Cost to local government: Under existing law and regulations, each school district, BOCES and county vocational education and extension board is currently required to develop a district-wide school safety plan by and through a district-wide school safety team, and to develop emergency response plans by and through a building-level school safety team. This amendment will merely require that certain information currently being disclosed in the district-wide school safety plan now be included in the school emergency response plan, which is not made available to the public. The proposed amendment will not impose any new costs on local government.

(c) Cost to private regulated parties: None.

(d) Cost to the regulatory agency: See Cost to State Government above.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is not expected to impose any significant program, service, duty or responsibility upon local governments.

6. PAPERWORK:

Each school district and BOCES must submit its district-wide school safety plan to the Commissioner of Education and all building-level school safety plans must be submitted to local law enforcement and the State Police. The proposed amendment is not anticipated to impose any additional reporting or recordkeeping requirements beyond those already required by law and regulation.

7. DUPLICATION:

The proposed amendment does not duplicate other existing State or federal requirements.

8. ALTERNATIVES:

The proposed amendment is necessary to update the content requirements of the district-wide school safety plan and emergency response plan to address current confidentiality requirements and concerns. Given the nature of the amendment, there were no viable alternatives.

9. FEDERAL STANDARDS:

There are no federal standards applicable to this amendment.

10. COMPLIANCE SCHEDULE:

It is anticipated that school districts and BOCES will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed amendment applies to each school district, BOCES and county vocational education and extension board within the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment merely updates the content requirements of the district-wide school safety plan and the emergency response plan to address certain confidentiality requirements and concerns. Currently, under Education Law § 2801-a, the building-level school safety plan (“school emergency response plan”) must be kept confidential and is not subject to disclosure under FOIL in order to ensure the safety of students, staff and the public. Under existing provisions of the Commissioner’s regulations, each school district and BOCES, excluding a city school district in the city of New York, must include in its district-wide school safety plan, a description of the plans of evacuation and sheltering in response to an emergency, and each school district must include in such plan, information on school population, number of staff, transportation needs and the business and home telephone numbers of key officials of each educational agency within such district.

The proposed amendment will merely require that certain information currently being disclosed in the district-wide school safety plan, such as school official’s home numbers, be included in the school emergency response plan, which is not made available to the public. Accordingly, it is anticipated that this amendment will not impose any additional reporting, recordkeeping and other compliance requirements associated with developing and implementing these plans.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements on school districts or BOCES.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional, significant costs on school districts or BOCES. The proposed amendment will merely require that certain information, such as local education officials’ home telephone numbers, be included in the emergency response plan, which is confidential, rather than the district-wide school safety plan, which is made publicly available.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any technological requirements on school districts or BOCES. Economic feasibility is addressed under the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to protect the safety of students, staff and the public. It will not impose any additional costs or compliance requirements on school districts or BOCES.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule may be solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS, AND PROFESSIONAL SERVICES:

The proposed amendment will update the content requirements of the district-wide school safety plan and the emergency response plan to address certain confidentiality requirements and concerns. Currently, under Education Law § 2801-a, each school emergency response plan must be kept confidential and is not subject to disclosure under FOIL in order to ensure the safety of students, staff and the public. Under existing provisions of the Commissioner’s regulations, each school district and BOCES, excluding a City School District in the City of New York, must include in its district-wide school safety plan, a description of the plans of evacuation and sheltering in response to an emergency.

Additionally, under the regulations, each school district must include in its district-wide school safety plan information on school population, number of staff, transportation needs and the business and home telephone numbers of key officials of each educational agency within such district. It is anticipated that this amendment will impose no additional reporting, recordkeeping and other compliance requirements associated with developing and implementing these plans. The proposed amendment imposes no additional professional service requirements on school districts.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any significant costs on school districts or BOCES. School districts are currently required to develop these safety plans. The amendment merely requires that certain information currently disclosed in the district-wide safety plan be included in the school emergency response plan, which is confidential.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to protect the safety of students, staff and the public. It will not impose any additional costs or compliance requirements on school districts or BOCES.

5. RURAL AREA PARTICIPATION:

It is expected that comments on the proposed amendment will be solicited from the Department’s Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment merely updates the content requirements of the district-wide school safety plan and the emergency response plan currently required to be developed by school districts and BOCES in order to address certain confidentiality requirements and concerns. Because it is evident from the nature of the proposed amendments that there will be no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Recreational Harvest Regulations for Summer Flounder (Fluke)

I.D. No. ENV-20-11-00011-EP

Filing No. 389

Filing Date: 2011-04-29

Effective Date: 2011-04-29

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

Proposed Action: Amendment of Part 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 13-0105 and 13-0340-b

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: These regulations are necessary for New York to optimize recreational fishing opportunities available to state residents while limiting harvest in order to remain in compliance with the Fishery Management Plan (FMP) for Summer Flounder, Scup and Black Sea Bass as adopted by the Atlantic States Marine Fisheries Commission (ASMFC), and to avoid potential federal sanctions for lack of compliance with such plan.

Each member state of ASMFC is expected to promulgate regulations that comply with FMPs adopted by ASMFC. These regulations are needed to properly manage the State's recreational fisheries and prevent the State from exceeding the State's recreational harvest limit, as assigned by the FMP. The regulations proposed for 2011 are a relaxation of regulations in place in 2010, so there is little risk of exceeding the State's recreational harvest limit under current regulations. However, the relaxation of these regulations provides the recreational fishing industry and private anglers an opportunity to take advantage of an abundant natural resource, potentially resulting in significant economic activity.

The promulgation of this regulation as an emergency rule making is necessary because the normal rule making process would not promulgate these regulations in the time frame necessary for the commencement of the proposed summer flounder season, pursuant to the proposed regulations. National Marine Fisheries Service (NMFS) usually publishes the recommended management measures for summer flounder in the Federal Register in the first quarter of each year. As of this writing (April 13, 2011), the 2011 management measures have not yet published by NMFS. However, New York State did determine its 2011 management measures for summer flounder in April based on preliminary data released by ASMFC and NMFS, and after consultation with New York's Marine Resources Advisory Council. Traditionally, the recreational season for summer flounder in New York begins in May. If this rule making were to be promulgated by the normal rule making process, it would not be effective until several months after the traditional start of the fishing seasons. New York State anglers, party and charter boat concerns and bait and tackle shops are dependent on the season opening on time. It is in the best interests of New York State's anglers and recreational fishing industry not to delay the opening of the seasons by promulgating the proposed regulation through the normal rule making process.

Subject: Recreational harvest regulations for summer flounder (fluke).

Purpose: To maximize recreational angler opportunities for summer flounder while staying in compliance with the ASMFC and MAFMC.

Text of emergency/proposed rule: Existing subdivision 40.1(f) of 6 NYCRR is amended to read as follows: Species Striped bass through Atlantic cod remain the same. Species Summer flounder is amended to read as follows:

40.1(f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
Summer flounder	May [15] / Sept[6]30	[21]20.5" TL	[2]3

Species Yellowtail flounder through Oyster toadfish remain the same.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire July 27, 2011.

Text of rule and any required statements and analyses may be obtained from: John D. Maniscalco, New York State Department of Environmental Conservation, 205 North Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0437, email: jdmanisc@gw.dec.state.ny.us

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

Public comment will be received until: 45 days after publication of this notice.

Additional matter required by statute: Pursuant to the State Environmental Quality Review Act, a negative declaration is on file with the department.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 13-0105 and 13-0340-b authorize the Department of Environmental Conservation (DEC or department) to establish by regulation the open season, size, catch limits, possession and sale restrictions and manner of taking for summer flounder.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies, and interstate fishery management plans.

3. Needs and benefits:

These regulations are necessary for New York to maintain compliance with the Interstate Fishery Management Plan (FMP) for Summer Flounder and Black Sea Bass as adopted by the Atlantic States Marine Fisheries Commission (ASMFC). New York, as a member state of ASMFC, must comply with the provisions of the Interstate Fishery Management Plans adopted by ASMFC. These FMPs are designed to promote the long-term sustainability of quota managed marine species, preserve the States' marine resources, and protect the interests of both commercial and recreational fishermen. All member states must promulgate any necessary regulations that implement the provisions of the FMPs to remain in compliance with the FMPs. If ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state comes into compliance with the FMP.

Under the FMP for summer flounder, ASMFC will assign New York an annual harvest for summer flounder for the 2011 recreational season. The 2011 quota will be greater than the 2010 quota. Under existing regulations, it is unlikely that New York will meet the 2011 assigned harvest. The proposed regulations will increase the duration of the 2011 recreational summer flounder season along with a decrease in the minimum size and increase in number of fish that can be taken to allow New York State recreational anglers to utilize the fishing opportunities made available by the increase in summer flounder quota. According to a report released by NOAA Fisheries, recreational fishing in New York generated \$424 million in total sales in 2006. Summer flounder is one the most popular fish taken by recreational harvesters in New York.

The promulgation of this regulation is necessary for DEC to remain in compliance with the FMP for summer flounder. The regulatory changes in this emergency rule are calculated, and have been approved by ASMFC. The proposed rule will allow New York State recreational anglers to achieve the harvest level provided by the 2011 quota, yet to prevent these anglers from exceeding the assigned summer flounder quota. New York State would remain in compliance with the FMP.

Specific amendments to the current regulations include the following:

1. Summer Flounder: Implement an open season for the summer flounder recreational fishery from May 1 through September 30, reduction of the minimum size to 20.5 inches, and an increase of the bag limit to 3 fish.

4. Costs:

(a) Cost to State government:

There are no new costs to state government resulting from this action.

(b) Cost to local government:

There will be no costs to local governments.

(c) Cost to private regulated parties:

There are no new costs to regulated parties resulting from this action.

(d) Costs to the regulating agency for implementation and continued administration of the rule:

The department will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational harvesters, party and charter boat operators and other recreational support industries of the new rules.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

1. Summer flounder "No Action" Alternative (no amendment to summer flounder regulations) - The "no action" alternative would leave current summer flounder regulations in place. Under existing regulations, it is unlikely that New York recreational anglers will meet the 2011 assigned harvest. New York recreational anglers would not be able to utilize the summer flounder resources that would be made available with the increased quota. Party and charter boat businesses would not be able to benefit from the increased duration of the recreational summer flounder in New York State waters. This alternative was rejected.

9. Federal standards:

The amendments to Part 40 are in compliance with the ASMFC and Regional Fishery Management Council FMPs.

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news releases and via DEC's website of the changes to the regulations. The emergency regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Effect of rule:

The Atlantic State Marine Fisheries Commission (ASMFC) facilitates cooperative management of marine and anadromous fish species among the fifteen Atlantic Coast member states. The principal mechanism for implementation of cooperative management of migratory fish is the ASMFC's Interstate Fishery Management Plans (FMPs) for individual species or groups of fish. The FMPs are designed to promote the long-term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

ASMFC recently adopted quota changes for summer flounder. The Department of Environmental Conservation (DEC or department) now seeks to amend its summer flounder regulations to comply with the requirements of the ASMFC FMP. There are severe consequences for failure to comply with FMPs. If ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state comes into compliance with the FMP. Furthermore, failure to take required actions to protect our marine and anadromous resources may lead to the collapse of the targeted species' populations. Either situation could have a significant adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries.

Those most affected by the proposed rule are recreational anglers, licensed party and charter businesses, and retail and wholesale marine bait and tackle shops operating in New York State. The department consulted with the Marine Resources Advisory Council (MRAC) and other individuals who chose to share their views on summer flounder recreational management measures. The new regulations include additional days added on to the season, a reduction in minimum size, and increase in number of fish that can be taken (bag or creel limit). The response indicates that there is a belief by some that a long season will provide economic benefits to businesses because their customers will take advantage of the additional opportunities to go fishing for summer flounder. This is the second year in a row where MRAC has supported the liberalization of regulations primarily through season extension. The responses received by DEC suggest that a long season will result in more charter bookings, more party boat trips, and more bait and tackle sales. Some private individuals (mostly boating and shore-based anglers) have instead indicated their preference for greater reductions in minimum size to provide them more opportunities to take home fish while fishing for summer flounder. The proposed rule increases the number of days available to recreationally fish for summer flounder, from 115 days in 2010 to 153 days in 2011 as proposed in the regulations, an increase of 38 days (this is in addition to the 37 days that were added to the season in 2010). The minimum size of summer flounder that can be taken was also reduced by 0.5 inches to 20.5 inches and the bag limit was increased by 1 fish for a total of 3 summer flounder per day per angler.

There are no local governments involved in the recreational fish harvesting business, nor do any participate in the sale of marine bait fish or tackle. Therefore, no local governments are affected by these proposed regulations.

2. Compliance requirements:

None.

3. Professional services:

None.

4. Compliance costs:

There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. The changes required by the proposed regulations may increase the income of party and charter businesses and marine bait and tackle shops because of the increase in the number of days available for recreational fishers to take summer flounder.

There is no additional technology required for small businesses, and this action does not apply to local governments; there are no economic or technological impacts for either.

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for DEC to maintain compliance with the FMPs for summer flounder while optimizing opportunities for its recreational fishing industry and private anglers. Since these regulatory amendments are consistent with Federal and Interstate FMPs, DEC anticipates that New York State will remain in compliance with the FMPs.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, including party and charter boat fisheries as well as wholesale and retail bait and tackle shops and other support industries for recreational fisheries. Failure to comply with FMPs and take required actions to protect our natural resources could cause the collapse of a stock and have a severe adverse impact on the commercial and recreational fisheries for that species, as well as the supporting industries for those fisheries. These regulations are being proposed in order to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

7. Small business and local government participation:

The department received recommendations from the MRAC, which is comprised of representatives from recreational and commercial fishing interests. The proposed regulations are also based upon comments received from recreational fishing organizations, party and charter boat owners and operators, retail and wholesale bait and tackle shop owners, recreational anglers and state law enforcement personnel. There was no special effort to contact local governments because the proposed rule does not affect them.

Rural Area Flexibility Analysis

The Department of Environmental Conservation has determined that this rule will not impose an adverse impact on rural areas. There are no rural areas within the marine and coastal district. The summer flounder fisheries directly affected by the proposed rule are entirely located within the marine and coastal district, and are not located adjacent to any rural areas of the state. Further, the proposed rule does not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Since no rural areas will be affected by the proposed amendments of 6 NYCRR Part 40, a Rural Area Flexibility Analysis is not required.

Job Impact Statement

1. Nature of impact:

The promulgation of this regulation is necessary for the Department of Environmental Conservation (DEC) to maintain compliance with the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass, to avoid potential federal sanctions for lack of compliance with such plan, and to optimize recreational fishing opportunities available to New Yorkers. The proposed rule increases the summer flounder recreational fishing season by 38 days, from 115 days in 2010 to 153 days. In addition it reduces the minimum size of summer flounder by 0.5 inches to 20.5 inches and increases the bag limit by 1 fish to a total of 3 summer flounder per angler per day.

Many currently licensed party and charter boat owners and operators, as well as bait and tackle businesses, will be affected by these regulations. Due to the increase in the number of fishing days for summer flounder and relaxed limits, there may be a corresponding increase in the number of fishing trips and bait and tackle sales during the upcoming fishing season.

2. Categories and numbers affected:

In 2010, there were 502 licensed party and charter businesses in New York State. There were also a number of retail and wholesale marine bait and tackle shop businesses operating in New York; however, DEC does not have a record of the actual number. The number of recreational fishers in New York has been estimated by the National Marine Fisheries Service to be just over 1 million in 2007. However, this Job Impact Statement does not include them in this analysis, since fishing is recreational for them and not related to employment.

3. Regions of adverse impact:

This rule making will result in a liberalization of current harvest limits and therefore should not result in any adverse impacts.

4. Minimizing adverse impact:

There will not be any substantial adverse impact on jobs or employment opportunities as a consequence of this rule making.

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

Hunting Seasons for Black Bear

I.D. No. ENV-20-11-00002-P

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

Proposed Action: Amendment of section 1.31 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-0903 and 11-0907

Subject: Hunting seasons for black bear.

Purpose: To expand the areas open for bear hunting and establish a uniform bear hunting season in New York's Southern Zone.

Text of proposed rule: Existing subdivisions 6 NYCRR 1.31(b) is repealed and a new subdivision 6 NYCRR 1.31(b) is adopted as follows:

(b) "Bear hunting seasons." Bears may be taken only during the open seasons and areas listed below:

(1) Regular bear seasons:

<i>Bear range</i>	<i>Open season</i>
<i>Northern</i>	<i>WMUs 5A, 5C, 5F, 5G, 5H, 5J, 6C, 6F, 6H, 6J, and that part of WMU 6K east of Route 26: Next to last Saturday in October through the first Sunday in December.</i>
<i>Southern</i>	<i>WMUs 3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 3R, 3S, 4C, 4F, 4G, 4H, 4K, 4L, 4O, 4P, 4R, 4S, 4T, 4U, 4W, 4Y, 4Z, 5S, 5T, 7M, 7P, 7R, 7S, 8H, 8J, 8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X and 9Y: The twenty-three day period beginning on the third Saturday in November.</i>
<i>Rest of State</i>	<i>Closed</i>

(2) Early bear season:

<i>Bear range</i>	<i>Open season</i>
<i>Northern</i>	<i>WMUs 5A, 5C, 5F, 5G, 5H, 5J, 6C, 6F, 6H, 6J, and that part of WMU 6K east of Route 26: First Saturday after the second Monday in September through the Friday immediately preceding the Northern muzzleloading bear season.</i>
<i>Rest of State</i>	<i>Closed</i>

(3) Bowhunting bear seasons:

<i>Bear range</i>	<i>Open season</i>
<i>Northern</i>	<i>WMUs 5A, 5C, 5F, 5G, 5H, 5J, 6C, 6F, 6H, 6J, and that part of WMU 6K east of Route 26: September 27th through the Friday immediately preceding the Northern regular bear season.</i>
<i>Southern</i>	<i>WMUs 3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 3R, 3S, 4C, 4F, 4G, 4H, 4K, 4L, 4O, 4P, 4R, 4S, 4T, 4U, 4W, 4Y, 4Z, 5S, 5T, 7M, 7P, 7R, 7S, 8H, 8J, 8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X and 9Y: The Saturday following the second Monday in October (Columbus Day) through the Friday immediately preceding the Southern regular bear season and the nine-day period immediately following the Southern regular bear season.</i>
<i>Rest of State</i>	<i>Closed</i>

(i) Any person participating in the bowhunting bear hunting season may not have in his or her possession, or be accompanied by a person who has in his or her possession, any hunting implement other than a legal longbow.

(4) Muzzleloading bear seasons:

<i>Bear range</i>	<i>Open season</i>
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<i>Northern</i>	<i>WMUs 5A, 5C, 5F, 5G, 5H, 5J, 6C, 6F, 6H, 6J, and that part of WMU 6K east of Route 26: The seven day period immediately preceding the Northern Zone regular bear season.</i>
<i>Southern</i>	<i>WMUs 3A, 3C, 3F, 3G, 3H, 3J, 3K, 3M, 3N, 3P, 3R, 3S, 4C, 4F, 4G, 4H, 4K, 4L, 4O, 4P, 4R, 4S, 4T, 4U, 4W, 4Y, 4Z, 5S, 5T, 7M, 7P, 7R, 7S, 8H, 8J, 8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X and 9Y: The nine day period immediately following the Southern regular bear season.</i>
<i>Rest of State</i>	<i>Closed</i>

(i) Any person participating in the muzzleloading bear hunting season may not have in his or her possession, or be accompanied by a person who has in his or her possession, a firearm other than a muzzleloading firearm which is lawful for taking big game.

Text of proposed rule and any required statements and analyses may be obtained from: Bryan Swift, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8883, email: wildliferegs@gw.dec.state.ny.us

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

Public comment will be received until: 45 days after publication of this notice.

Additional matter required by statute: A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

Regulatory Impact Statement

1. Statutory authority:

Section 11-0303 of the Environmental Conservation Law directs the Department of Environmental Conservation (DEC or department) to develop and carry out programs that will maintain desirable species in ecological balance, and to observe sound management practices. This directive is to be met with regard to ecological factors, the compatibility of production and harvest of wildlife with other land uses, the importance of wildlife for recreational purposes, public safety, and protection of private premises. Section 11-0903(8) provides the authority to set open seasons, open areas, bag limit, manner of taking, possession and disposition of bear and parts of bears, and the intentional and incidental feeding of bears. Section 11-0907 governs open seasons and bag limits for deer and bear.

2. Legislative objectives:

The legislative objective behind the statutory provisions listed above is to establish, or authorize the department to establish by regulation, certain basic wildlife management tools, including the setting of open areas, and restrictions on methods of take and possession. These tools are used by the department to maintain desirable wildlife species in ecological balance, while observing sound management practices.

3. Needs and benefits:

The department proposes adjustments to black bear hunting areas and seasons in the Southern Zone to provide some relief from growing bear - human conflicts in these areas, while establishing a uniform bear hunting season across the Southern tier of New York State.

The specific changes proposed are as follows:

- 1) Open 14 WMUs east of the Hudson River to bear hunting for the bowhunting, regular and muzzleloading seasons; and
- 2) Establish an earlier opening date for regular (shotgun or rifle) bear hunting seasons in 28 WMUs in Western and Central New York.

Black bears have been thriving in New York in recent years and have expanded their range considerably. This has led to a growing number of interactions between bears and people. In areas with high agricultural activity or human densities, these interactions have been numerous, including some serious conflicts. In response to apparent and expected trends in bear populations east of the Hudson River, and in Western and Central New York, we are proposing changes to bear hunting regulations in those areas.

Bear hunting remains the only viable and cost effective tool for controlling bear numbers on a landscape scale. This rule making is intended as a proactive measure to help maintain a stable bear population while reducing the growth of negative impacts. This management action is designed to help maintain a favorable balance between the positive and negative impacts that have been identified in these areas.

East of the Hudson:

The area east of the Hudson, that would be opened to bear hunting by this regulation amendment (WMUs 3F, 3G, 3N, 3R, 3S, 4C, 4K, 4L, 4T, 4U, 4Y, 4Z, 5S and 5T), routinely experiences >100 complaints and observations of black bears annually. Reports of family groups and

observations (including captures) of breeding age females are clear evidence of an established bear population that is likely to expand in size and distribution, especially in the absence of hunter harvest.

Consistent with the department's Planning Framework for Black Bear Management, staff conducted Stakeholder Input Groups in eastern New York in 2006 and 2009. In each case, stakeholders recognized the value of having bears in their area and have encouraged education efforts to boost understanding and tolerance of bears. Stakeholders also identified concern for bear-related property damage and interest in reducing bear-human conflicts. The department has promoted education efforts through seminars, web and print information, and development and distribution of the DVD, "Living with Black Bears in New York." The department now proposes that population management through regulated hunting is a necessary and appropriate mechanism to continue to address stakeholder concerns.

Opening bear hunting in eastern New York will help alleviate agricultural and homeowner conflicts with bears, provide recreational opportunity, and facilitate acceptable use of bear meat and hides.

The proposed bear hunting season east of the Hudson would be consistent with adjoining areas in the Southern Zone. The hunting season dates for bear are the same as for deer in those areas, so the proposed area would increase harvest opportunity without complicating our big game hunting regulations.

Western and Central New York:

The department last amended its bear hunting regulations in 2008 to open many additional WMUs in Western and Central New York to bear hunting. Most of those WMUs were located north of or between areas that were previously open to bear hunting and which were experiencing a growing number of bear sightings and conflicts. A primary purpose for opening those WMUs was to slow the expansion of bear populations in DEC Regions 7, 8 and 9, and help prevent bear dispersal into urban areas such as Buffalo, Rochester, and Syracuse.

When the additional WMUs were opened in 2008, bear hunting seasons in Western and Central New York (7M, 7P, 7R, 7S, 8H, 8J, 8M, 8N, 8P, 8R, 8S, 8T, 8W, 8X, 8Y, 9G, 9H, 9J, 9K, 9M, 9N, 9P, 9R, 9S, 9T, 9W, 9X and 9Y) were similar to deer hunting seasons, except that bear hunting was not allowed during the first week of the regular (shotgun and rifle) deer hunting season. This reduced hunter opportunity to harvest bears and added some complexity to our big game hunting regulations.

After three years experience with additional areas open to hunting, and continued concern about bear-human interactions throughout Western and Central New York, we propose that the regular black bear season be timed concurrent with the existing Southern Zone regular deer season and consistent with the regular black bear season in southeastern New York. This will remove a 7-day lag between the start of the regular deer and the regular bear season in this portion of New York and will thereby increase opportunity for big game hunters to encounter and harvest bears. Consistent season timing for black bears across the Southern Zone will also simplify regulations, easing compliance and enforcement.

4. Costs:

Implementation of this regulation has no additional costs, other than normal administrative expenses of the department associated with game management.

5. Local government mandates:

There are no local governmental mandates associated with this proposal.

6. Paperwork:

This amendment does not require any additional paperwork by any regulated entity.

7. Duplication:

None.

8. Alternatives:

1) No change. No change in the areas open to hunting or season dates would allow continued growth of bear populations and expansion of bear range in closed areas. This would result in a higher likelihood of negative human-bear interactions with increased risks to human health and safety and increased costs for department interventions. Therefore, the department does not consider a "no action" alternative to be viable.

2) Reduce the size of the area to be opened. Opening a smaller area would likely lead to a more rapid increase in bear populations and negative human-bear interactions in WMUs that were not opened. This would result in the department needing to open hunting in those areas at some later date under more critical circumstances, and would be counter to the department's efforts to limit negative bear-human conflicts in these areas in the interim.

3) Limit bear hunting east of the Hudson to bow hunting season only. This would be a more cautious approach to address any concerns that opening a season might eliminate bears from this region. Opening bear hunting only during bowhunting season would likely reduce the potential bear harvest by >50 percent. Given the patterns of bear population growth experienced in other portions of New York, such limited harvest may be

insufficient to stem bear population growth in eastern New York. As the bear population continues to grow, future rule making would be necessary to increase bear harvest. Furthermore, existing law prohibits the taking of cubs, any bear in a group of bears, or any bear in a den, and these measures help ensure that hunting will not eliminate viable bear populations from any area.

9. Federal standards:

There are no federal government standards associated with the management of black bears.

10. Compliance schedule:

Hunters will be required to comply with the new regulations beginning with the start of the archery deer and bear hunting seasons in the Southern Zone during the 2011-2012 license year, which begins October 1, 2011.

Regulatory Flexibility Analysis

The proposed regulation would amend the Department of Environmental Conservation's (department) black bear hunting regulations to allow hunting of black bears east of the Hudson River, and to open the regular bear hunting season a week earlier in Central and Western New York. The department has historically made regular revisions to its hunting regulations in New York. Based on the department's experience in promulgating those revisions and the familiarity of the department's regional personnel with the Southern Zone, the department has determined that this rule making will not have an adverse economic effect on small businesses or local governments.

Few, if any, small businesses directly participate in hunting activities. Such a business (e.g., professional hunting guides) will not suffer any substantial adverse impact as a result of this proposed rule making because it increases the number of wildlife management units open to bear hunting and could increase the number of participants or the frequency of participation in the bear hunting season.

All reporting, recordkeeping, and compliance requirements associated with black bear hunting is administered by the department. Therefore, the department has determined that this rule making will not impose any reporting, record-keeping, or other compliance requirements on small businesses or local governments.

Therefore, the department has determined that a Regulatory Flexibility Analysis for Small Businesses and Local Governments is not needed.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

Black bears live in most areas of New York, but their populations are particularly numerous in the Adirondacks, southeastern New York, eastern New York, and portions of Central and Western New York, especially along the Pennsylvania border. Consequently, the proposed regulation impacts rural areas throughout New York State.

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

All reporting, recordkeeping and other compliance requirements; and professional services associated with black bears is the responsibility of the New York State Department of Environmental Conservation (department).

3. Costs:

All costs associated with the implementation and enforcement of the proposed regulation are the responsibility of the department.

4. Minimizing adverse impact:

The proposed rule making will increase the number of wildlife management units open to bear hunting and could increase the number of participants or the frequency of participation in the bear hunting season. The proposed rule making is expected to reduce negative bear human interactions and to reduce the levels of bear nuisance activity, thereby reducing property damage in the Southern Zone. The proposed changes will continue management actions recommended by the public and enhance bear hunter satisfaction, thereby having a positive effect on rural areas.

5. Rural area participation:

A key component of the New York State Black Bear Management Program is the creation and use of Stakeholder Input Groups (SIGs) that are tasked to identify and prioritize bear impacts and to help department staff articulate black bear management objectives that would enhance positive impacts and lessen negative impacts. Since 2003, six SIGs have been convened throughout the Southern Zone. In each case, stakeholders recognized the value of having bears in their area and have encouraged education efforts to boost understanding and tolerance of bears. Stakeholders also identified concern for bear-related property damage and interest in reducing bear-human conflicts. The department has promoted education efforts through seminars, web and print information, and development and distribution of the DVD, "Living with Black Bears in New York." The department now proposes that population management through regulated hunting is a necessary and appropriate mechanism to continue to address stakeholder concerns.

Job Impact Statement

The proposed regulation would amend the Department of Environmental Conservation's (department) black bear hunting regulations to allow hunting of black bears east of the Hudson River and to open the regular bear hunting season a week earlier in Central and Western New York. Few, if any, persons actually hunt as a means of employment. Such a person, for whom hunting is an income source (e.g., professional guides), will not suffer any substantial adverse impact as a result of this proposed rule making because it increases the number of wildlife management units open to bear hunting and could increase the number of participants or the frequency of participation in the bear hunting season. For this reason, the department anticipates that this rule making will have no impact on jobs and employment opportunities.

Therefore, the department has concluded that a job impact statement is not required.

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

Mechanically Propelled Vessel Use Restrictions on Thirteenth Lake

I.D. No. ENV-20-11-00003-P

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

Proposed Action: Amendment of section 196.5 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), (d), 3-0301(1)(b), (d), (2)(m) and 9-0105(1); Executive Law, section 816(3); and New York State Constitution, art. XIV, section 1

Subject: Mechanically propelled vessel use restrictions on Thirteenth Lake.

Purpose: To prohibit the use of mechanically propelled vessels, other than electric powered vessels on Thirteenth Lake.

Text of proposed rule: Subdivision (d) of Section 196.5 of 6 NYCRR is renumbered as subdivision (e) and a new subdivision (d) is added to read as follows:

(d) The operation of mechanically propelled vessels other than those powered by an electric motor is prohibited on the following body of water:

Name	Latitude	Longitude
Warren County Thirteenth Lake	43° 42' N	74° 07' W

Newly renumbered subdivision (e) is amended to read as follows:

(e) The operation of mechanically propelled vessels is permitted on all of the bodies of water listed in subdivisions [(a)-(c)] (a)-(d) of this section by agents and officers of the department acting in emergency situations and in the performance of administrative functions authorized by the commissioner.

Text of proposed rule and any required statements and analyses may be obtained from: Peter Frank, Bureau Chief, Forest Preserve Management, NYS DEC, 625 Broadway, Albany, New York 12233, (518) 473-9518, email: pjfrank@gw.dec.state.ny.us

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

Public comment will be received until: 45 days after publication of this notice.

Additional matter required by statute: This regulatory action is included in the Siamese Ponds Wilderness Unit Management Plan/Environmental Impact Statement completed in May 2005 which is in compliance with Article 8 of the Environmental Conservation Law.

Regulatory Impact Statement

1. Statutory authority

The Environmental Conservation Law (ECL) provides statutory authority for guaranteeing the beneficial use of the environment without risk to health or safety or unnecessary degradation (ECL Section 1-0101(3)(b)); preserving the unique characteristics of the Adirondack Forest Preserve (ECL Section 1-0101(3)(d)); promoting and coordinating management of land resources to assure their protection (ECL Section 3-0301(1)(b)), adopting rules and regulations (ECL Section 3-0301(2)(m)), providing for the care, custody, and control of the Forest Preserve (ECL Section 3-0301(1)(d) and 9-0105(1)). Furthermore, Executive Law Section 816(3) authorizes the Department to adopt rules and regulations necessary, convenient or desirable to effectuate management planning responsibilities for State lands in the Adirondack Park. Finally, the New York State Constitution, Article XIV, Section 1 mandates that the Forest Preserve be forever kept as wild forest lands.

2. Legislative objectives

The proposed rulemaking to limit boats to electric motors or motorless craft on Thirteenth Lake will contribute to the fulfillment of the legislative objective of the ECL by "preserving the unique qualities of special resources such as the Adirondack and Catskill forest preserves". The prohibition to limit boats to electric motors will enable the Department to fulfill its statutory obligation to preserve, protect and enhance the natural resource value of Thirteenth Lake.

3. Needs and benefits

The proposed regulations are necessary in order to create an environment consistent with the surrounding wilderness area. Management of the lake must give consideration to the impacts of motorized boats on the adjacent Siamese Ponds Wilderness Area, private property owners, users of the Forest Preserve and the environment. Gas powered boats can create noise that can be heard in areas within the Siamese Ponds Wilderness Area which can negatively affect the "wilderness experience" of users. Water and air pollution from gas powered boats can also negatively impact the lake. In addition, the wake created from these boats can harm nesting loons and can create difficulties for those canoeing, kayaking or using other motorless craft. There have been complaints regarding conflicting uses on the lake by the Garnet Hill Homeowners Association. As a result, the association has adopted a 5 horsepower limit on boats launched from its property. In addition, it is expected that they will go along with the Department's recommendation to limit boat use on the lake to electric motors or motorless craft. The Town of Johnsbury has passed a town law prohibiting the use of personal watercraft on Thirteenth Lake.

The proposed rulemaking was addressed in the Draft Unit Management Plan/ Environmental Impact Statement for the Siamese Ponds Wilderness Area. The plan underwent a lengthy public review process, including a public meeting, direct mailings, a press release, extensive public distribution, a responsiveness summary and web postings. This was designed to assure public participation in the planning process by all stakeholders. In addition, the Plan/Environmental Impact Statement was presented to the Forest Preserve Advisory Committee. This group is representative of recreational users, environmental groups and local governments. Public comments were addressed in a responsiveness summary that is part of the final unit management plan/environmental impact statement.

4. Costs

This rulemaking would impose no costs on the regulated public. It would impose no costs on the Department, since existing staff and public information and education programs would be used to publicize and enforce the regulation. There would be no cost to local governments.

5. Local government mandates

The proposed rulemaking would not impose any program, service, duty nor responsibility upon any county, city, town, village, school district or fire district.

6. Paperwork

With the possible exception of a slight increase in the number of citations issued by the Department during the first few months after the regulation takes effect, an increase in paperwork is not expected.

7. Duplication

The proposed regulation would not duplicate any existing State or Federal regulation.

8. Alternative approaches

Several options were considered in determining a preferred management strategy. The first option considered in the Unit Management Plan (UMP) was to do nothing and allow public use to continue as is. This alternative would not enhance protection of the environment, people seeking a wilderness experience and the adjacent property owners. The "No Action" alternative is not acceptable since it would not enhance protection of the environment, would hinder those individuals seeking a wilderness experience and is opposed by the adjacent property owners. Therefore, this option was not preferred.

A second option considered was adopting a horsepower limit, similar to that of the homeowners association. The majority of boaters currently use a motor of 10 horsepower or smaller, although there are some boaters using larger motors. A regulation could be adopted limiting the motor size to 5 or 10 horsepower. The motor size limit would reduce the size of a wake created by a motor boat and consequently reduce conflict with non-motorized users. While the motor size limit would reduce air, water and noise pollution, it would not eliminate it completely.

A third option, which is the preferred alternative, is to limit the public use of Thirteenth Lake to electric motors only. It is expected that the homeowners association would adopt a similar restriction. By limiting access to electric motors only, the noise, air and water pollution concerns on Thirteenth Lake would be eliminated. In addition, the use of electric motors would reduce the size of the wake created by boats, minimizing the potential impact on nesting loons and other boaters on the lake. The use of electric motors is feasible on this particular lake because it would provide sufficient power to traverse this relatively small lake.

A fourth alternative is to ban all boat motors from Thirteenth Lake. While this may appease many users, given that a portion of the shoreline is in private ownership, this is not a feasible alternative.

The preferred alternative limiting boat use to electric motors and motorless craft as approved in the 2005 UMP will not preclude the administrative use of fossil fueled out-board motors for search and rescue efforts and fisheries management purposes. The UMP recognized this management strategy would require the promulgation of supporting regulations to limit the use of motors.

9. Federal standard

There is no Federal standard that applies to the public use of gas powered boats on State lands.

10. Compliance schedule

The proposed regulation will become effective on the date of publication of the rulemaking in the New York State Register. No time is needed for regulated persons to achieve compliance with the regulations since compliance consists of not undertaking prohibited activities, as opposed to undertaking required activities. Once the regulations are adopted, they are effective immediately and all persons will be expected to comply with them.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with these regulations because the proposal will not impose any reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Since there are no identified cost impacts for compliance with the proposed regulations on the part of small businesses and local governments, they would bear no economic impact as a result of this proposal. The proposed regulation will protect Thirteenth Lake from conflicting use, create a "wilderness" experience for users and protect wildlife and users from the impacts associated with mechanically gas propelled vessels.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this proposal because the proposal will not impose any reporting, recordkeeping or other compliance requirements on rural areas. The proposed regulation will protect Thirteenth Lake from conflicting use, create a "wilderness" experience for users and protect wildlife and users from the impacts associated with mechanically gas propelled vessels.

Job Impact Statement

A Job Impact Statement is not submitted with this proposal because the proposal will have no substantial adverse impact on existing or future jobs and employment opportunities. The proposed regulation will protect Thirteenth Lake from conflicting use, create a "wilderness" experience for users and protect wildlife and users from the impacts associated with mechanically gas propelled vessels.

Insurance Department

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Insurance Department publishes a new notice of proposed rule making in the NYS Register.

Standards for the Management of the New York State Retirement Systems

I.D. No.	Proposed	Expiration Date
INS-11-10-00002-P	March 17, 2010	April 28, 2011

Niagara Frontier Transportation Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

NFTA's Procurement Guidelines

I.D. No. NFT-20-11-00010-P

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

Proposed Action: This is a consensus rule making to amend sections 1159.4 and 1159.5 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 1299-e(5) and 1299-t

Subject: NFTA's Procurement Guidelines.

Purpose: To amend the NFTA's Procurement Guidelines to make technical changes and conform to Federal and State law.

Text of proposed rule: Subsection (3) to subdivision (h) of section 1159.4 is amended to add a new subsection (v) follows:

(v) *The published selection criteria shall be as follows: Professional Services, 40% qualifications and experience, 30% technical criteria and 30% cost; Revenue Generating and Other Services, 20% qualifications and experience, 30% technical criteria and 50% cost; Technical/Operation Sensitive Services, 20% qualifications and experience, 40% technical criteria and 40% cost; Transit Buses, 20% qualifications and experience, 50% technical criteria and 30% cost.*

Subsections (v), (vi), (vii) and (viii) to subdivision (h) of section 1159.4 are renumbered (vi), (vii), (viii) and (ix).

Subsection (vii) to subsection (2) of subdivision (i) of section 1159.4 is amended as follows:

(vii) The selection board, at its option may conduct interviews, presentations, and/or discussions. If this option is elected, interviews, presentation, and/or discussions must be held with each consultant who has submitted a technical proposal *if the initial solicitation was by way of RFQ. If not, interviews, presentations, and/or discussions must be held with each consultant in the competitive range in accordance with the evaluation of the technical proposals.*

A new subdivision (j) of section 1159.4 is added as follows:

(j) *Options. An option is a unilateral right in a contract by which, for a specified time, the Authority may acquire additional equipment, supplies, or services than originally procured. An option may also extend the term of the contract. An option must be evaluated as part of the original contract award. In addition, for procurements funded by the Federal Transit Administration, a cost and price analysis must be conducted at the time of exercise of the option in order to ensure that the option price is still fair and reasonable.*

Subdivisions (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v) and (w) of section 1159.4 are renumbered (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w) and (x).

A new subsection (5) is added to subdivision (l) of section 1159.4 as follows:

(5) *All eligible contracts for the purchase of goods or services which are to be awarded on a single source basis, sole source basis or pursuant to any other method of procurement that is not a competitive procurement and where the aggregate consideration under the contract may reasonably be valued in excess of \$1,000,000 and eligible amendments to contracts previously approved by the Comptroller where the value of the amendment is 10% or more of the contract amount previously approved by the Comptroller are subject to the prior review and approval of the New York State Comptroller. Please refer to section 2979-a of the Public Authorities Law and Part 206 to 2 N.Y.C.R.R. for relevant definitions and the process to be followed.*

A new subsection (2) is added to subdivision (q) of section 1159.4 as follows:

(2) *The Federal Aviation Administration and the Federal Transit Administration each have specific criteria for the procurement of Design-Bid-build and Design-build contracts. Please refer to the relevant Advisory Circular for specific requirements.*

A new subsection (3) is added to subdivision (q) of section 1159.4 as follows:

(3) *The Federal Aviation Administration and the Federal Transit Administration each prohibit the use of in-State or local geographical preferences, with the exception of architectural and engineering services.*

A new subsection (4) is added to subdivision (q) of section 1159.4 as follows:

(4) *The Federal Aviation Administration and the Federal Transit Administration require a cost analysis or a price analysis in connection with every procurement action.*

A new subsection (5) is added to subdivision (q) of section 1159.4 as follows:

(5) *The Federal Transit Administration requires the use of Part 31 of the Federal Acquisition Regulations with respect to pricing issues.*

A new subsection (6) is added to subdivision (q) of section 1159.4 as follows:

(6) *The Federal Transit Administration has specific rules governing advance payments and progress payments. Advance payments are prohibited. Progress payments are permitted provided that title has been obtained. Please refer to FTA Circular 4220.IF.*

Subsection (2) to subdivision (q) of section 1159.4 is renumbered to (7).

Subsection (2) to subdivision (s) of section 1159.4 is amended as follows:

(2) [The director, EEO/diversity development, shall maintain a list of all MBE, WBE and DBE entities certified to perform public work, supply items for purchase contracts, or perform personal or professional services of a kind and nature which may be needed by the authority.] *An updated list of all DBE certified firms in New York State may be obtained from the New York State Unified Certification Program website at www.biznet.nysucp.net. A directory of MWBE certified firms may be obtained from the New York State MWBE website at www.nylovesmwbe.ny.gov. The Procurement Department shall be responsible for referencing such lists prior to the publication of a notice of procurement opportunity or informal solicitation to determine the availability of certified DBE, MBE and WBE entities.*

A new subsection (3) to subdivision (s) of section 1159.4 is added as follows:

(3) *The Director, EEO/Diversity Development shall ensure that the Authority establishes appropriate goals for participation by minority or women-owned business enterprises in procurement contracts awarded by the Authority and for the utilization of minority and women-owned business enterprises as subcontractors and suppliers by entities having procurement contracts with the Authority. Statewide numerical participation target goals shall be established by the Authority based on the findings of the 2010 disparity study.*

A new subsection (4) to subdivision (s) of section 1159.4 is added as follows:

(4) *Every effort will be made to achieve the MWBE goals assigned to projects. The Authority's procurement solicitation documents shall include MWBE goals as appropriate. These documents are advertised and posted on the Authority's website. MWBE utilization will be monitored and reported by the EEO/Diversity Development Department with assistance from the Engineering and Procurement Departments.*

A new subsection (5) to subdivision (v) of section 1159.4 is added as follows:

(5) *The Federal Transit Administration prohibits cardinal changes, defined as significant changes in contract work that cause major deviations from the original purpose of the work or the intended method of achievement, or cause revisions of contract work so extensive, significant, or cumulative that, in effect, the contractor is required to perform very different work from that described in the original contract. Please refer to FTA Circular 4220.1F for further information.*

A new subdivision (y) of section 1159.4 is added as follows:

(y) *Waiver of competition pursuant to section 2879 of the public authorities law. Pursuant to section 2879 of the Public Authorities Law the Board may waive competition for the purchase of goods or services from small business concerns or those certified as minority- or women-owned business enterprises, or goods or technology that are recycled or remanufactured, in an amount not-to-exceed \$200,000.00. Such a waiver may only be granted for non-federally funded purchases and shall require a two-thirds vote of the Members in attendance at a Meeting of the Board.*

Subdivisions (x), (y), (z), (aa), (ab), (ac) and (ad) of section 1159.4 are renumbered to (z), (aa), (ab), (ac), (ad), (ae) and (af).

A new subsection (6) to subdivision (ab) of section 1159.4 is added as follows:

(6) *EEO/Diversity Development Department: The Office of EEO/ Diversity Development shall develop DBE and MWBE goals. EEO/ Diversity Development will monitor DBE and MWBE participation for federal and state funded project. The EEO/Diversity Development Department will also report DBE and MWBE utilization to appropriate federal and state agencies.*

Subsection (5) to subdivision (b) of section 1159.5 is amended as follows:

(5) *Protestor's Appeal to Federal or State Agencies. In the event [that the Authority fails to abide by the protest procedures set forth above, and] federal or state funds are participating in the procurement, then the protestor may seek a review by the appropriate funding agency. The Federal Transit Administration will only consider a protest if the Authority (a) does not have protest procedures, (b) has not complied with its protest procedures, or (c) has not reviewed the protest when given the opportunity to do so. The Federal Transit Administration will exercise discretionary jurisdiction over those appeals involving issues important to the Federal Transit Administration's overall public transportation program.*

Protestors shall file such a protest not later than five (5) business days after a final decision is rendered under the Authority's protest procedure. In instances where the protestor alleges that the Authority failed to make a final determination on the protest, protestors shall file a protest with the appropriate agency not later than five (5) business days after the protestor knew or should have known of Authority's failure to render a final determination on the protest.

Text of proposed rule and any required statements and analyses may be obtained from: Ruth A. Keating, Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14203, (716) 855-7398, email: Ruth_Keating@nfta.com

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

Public comment will be received until: 45 days after publication of this notice.

Consensus Rule Making Determination

The Niagara Frontier Transportation Authority has determined that no person is likely to object to the rule being amended for the following reasons:

1. The major changes are to conform to state law requirements.
2. The changes are not controversial.

Job Impact Statement

The Niagara Frontier Transportation Authority has determined adoption of the proposed rule will have no impact on jobs or employment opportunities for the following reasons:

1. The subject of the proposed rule is to conform to changes in state law. Changes to the rules will not impact the level of procurements made by the NFTA, and therefore will not impact jobs or employment opportunities.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-20-11-00012-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by KMW Group LLC to submeter electricity at 122 West Street, Brooklyn, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of KMW Group LLC to submeter electricity at 122 West Street, Brooklyn, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by KMW Group LLC to submeter electricity at 122 West Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-E-0184SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Determining the Reasonableness of Niagara Mohawk Power Corporation d/b/a National Grid's Make Ready Charges

I.D. No. PSC-20-11-00013-P

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

Proposed Action: The Commission is considering whether to take action on the complaint of SLIC Network Solutions, Inc. regarding Niagara Mohawk Power Corporation d/b/a National Grid's February 2011 increase in its make ready charges for pole attachments.

Statutory authority: Public Service Law, section 65 and 119-a

Subject: Determining the reasonableness of Niagara Mohawk Power Corporation d/b/a National Grid's make ready charges.

Purpose: To determine if the make ready charges of Niagara Mohawk Power Corporation d/b/a National Grid are reasonable.

Substance of proposed rule: On April 15, 2011, SLIC Network Solutions, Inc.; Development Authority of the North Country; and ION HoldCo, LLC (SLIC) filed a complaint with the Public Service Commission alleging that the make ready charges for pole attachments recently revised by Niagara Mohawk Power Corporation d/b/a National Grid (Grid), were unreasonably high.

On February 2, 2011, consistent with the Commission's policy on pole attachments, Grid updated its make ready charges, which concern the cost of work done to prepare utility poles for third party attachments. SLIC alleges that Grid's new charges are unreasonably high and threaten contracts SLIC has to provide expanded broadband service to rural areas of New York.

In its complaint, SLIC argues that the increased charges will make it impossible to perform under its contract to expand broadband service and frustrate the national broadband policy. SLIC is requesting that the Commission prevent Grid's new rates from being applied until it determines that they are legitimately cost-based.

The Commission is considering whether to take action on the complaint. The Commission may modify other aspects of its pole attachment rules and policies and may make the decision reached here applicable to other utilities.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(11-M-0186SP1)