

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/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Species of Ash Trees, Parts Thereof and Products and Debris Therefrom Which Are at Risk for Infestation by the Emerald Ash Borer

I.D. No. AAM-21-15-00004-EP

Filing No. 362

Filing Date: 2015-05-11

Effective Date: 2015-05-11

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

Proposed Action: Repeal of Part 141; and addition of 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: At present, 44 counties and portions of four others are under an EAB quarantine. This rule repeals the existing Part 141 and replaces it with a new Part 141, which, among other things, replaces the quarantines in the counties with 14 restricted zones. These restricted zones have been shown to be infested with EAB through survey and trapping.

The Emerald Ash Borer, *Agilus planipennis*, is a destructive wood-

boring insect that is not indigenous to the United States. EAB causes serious damage to healthy ash trees by boring through their bark, which ultimately results in the death of the tree within two years.

Ash trees, ash nursery stock, and material from ash trees like logs, green lumber, firewood, stumps, roots, branches and debris 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*). The movement of these materials poses a serious threat to susceptible ash trees in forests as well as in the urban landscape throughout the State.

EAB was first discovered in Michigan in June 2002, and has since spread to at least 15 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. A quarantine of both counties was established pursuant to federal protocols for control of EAB.

Further detections were confirmed in six other counties (Monroe, Genesee, Livingston, Steuben, Greene and Ulster) during July and August, 2010. Due to the patchwork nature of these detections, limited detection capabilities and stakeholder input, the EAB quarantine was extended to the following 10 counties in western New York: Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung. A new quarantine region was also established in eastern New York comprised of Greene and Ulster Counties.

In 2011, there were multiple new detections within the Western New York quarantine area. New detections of EAB in Albany and Orange Counties demonstrate further spread of EAB within the Eastern New York quarantine area and prompted the extension of the quarantine to include those counties.

In 2013, the two quarantine zones were combined by adding the counties of Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins as well as portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga.

In 2014, based upon new findings of EAB, the quarantine was extended to include all of Onondaga and Madison Counties.

Based upon ongoing surveys, it has been determined that all of the counties currently under quarantine are not infested with EAB; instead, there are 14 areas in the State which are infested with the pest. Under the rule, these have been designated restricted zones.

The 14 restricted zones established under this rule are located in and around the following municipalities or areas: Albany-Rensselaer; Bath; Binghamton; Buffalo; Livingstonville; Mid-Hudson; Montezuma; Nichols; Randolph; Rochester; Sheridan; Syracuse; Unadilla; and West Point. Each restricted zone consists of a core area, which is the location of an EAB infestation, and a buffer area, which surrounds the core area and extends a distance of five miles. If the core area encompasses 30-percent or more of a municipality, the entire municipality will be included within the restricted zone.

The rule allows for the movement of regulated articles within a restricted area and controls the intrastate movement of regulated articles to other locations in the state outside of the restricted zones. Regulated articles that may be moved intrastate outside of a restricted area, require a valid certificate of inspection, limited permit or administrative instructions from the Commissioner. Movement is allowed for experimental and scientific purposes. Persons engaged in growing, handling or moving regulated articles intrastate may apply for a compliance agreement for the restricted movement of regulated articles.

The benefits offered by the regulations are the more effective control of the spread of EAB with the reduction of regulation of movement of ash wood from areas where there is no EAB infestation. The immediate adoption of this rule is necessary to mitigate negative economic and ecological impacts that have resulted from the current configuration of the quarantine.

Based on the facts and circumstances set forth above, the Department

has determined that the immediate adoption of this rule 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.

Subject: Species of ash trees, parts thereof and products and debris therefrom which are at risk for infestation by the emerald ash borer.

Purpose: To limit the emerald ash borer quarantine to 14 restricted zones where infestations exist.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.agriculture.ny.gov): Section 141.1 sets forth the definitions used in this Part.

Section 141.2 sets forth the current quarantine map. The map identifies the 14 restricted zones which are infested with the Emerald Ash Borer (EAB). This section also provides that any amendment to the map shall be made by regulation.

Section 141.3 governs the movement of regulated articles within restricted zones. It generally provides that any ash material or wood material that is commingled and otherwise indistinguishable from ash material may be moved within a restricted zone for processing, treatment, use or disposal. This includes EAB-infested material.

Section 141.4 governs the intrastate movement of regulated articles originating within restricted zones. This section generally prohibits the movement of ash nursery stock year round and chips between April 15th and May 15th. This section permits the movement of regulated articles accompanied by a valid certificate of inspection, limited permit, administrative instructions by the Commissioner or those being moved for experimental or scientific purposes. Section 141.4 also provides that regulated articles from outside a restricted zone may be moved through the restricted zone to a point outside that zone, as long as the origin and destination of the articles are on a waybill and the articles are moved without stopping except for traffic conditions or refueling.

Section 141.5 governs compliance agreements. This section generally provides that persons engaged in growing, handling or moving regulated articles intrastate may apply for a compliance agreement, subject to Department approval. Any person who enters into a compliance agreement must agree to comply with Part 141 and any condition in the agreement. Any compliance agreement may be cancelled either orally or in writing, whenever an inspector determines that the person holding the compliance agreement has not complied with Part 141 or the conditions in the agreement.

Section 141.6 governs certificates of inspection and limited permits. An inspector may issue a certificate of inspection for the movement of regulated articles outside restricted zones, provided that the article is apparently free of EAB; has been grown, produced, manufactured, treated, stored or handled in a manner that prevents the regulated article from presenting a risk of spreading EAB; and is eligible for unrestricted movement under all other state plant quarantines and regulations. If the regulated articles are not eligible for a certificate of inspection, an inspector may issue a limited permit for movement of the articles, provided the articles are being moved to a specified destination for specific processing, handling or utilization, and the movement will not result in the spread of EAB since EAB will be destroyed by the specific processing, handling or utilization. Any certificate of inspection or limited permit may be cancelled either orally or in writing, whenever an inspector determines that the person holding the certificate or permit has not complied with Part 141.

Section 141.7 provides that regulated articles may be moved intrastate for experimental or scientific purposes on conditions and safeguards as may be prescribed in writing by the Department. The container carrying the articles shall bear an identifying tag issued by the Department showing compliance with such conditions.

Section 141.8 governs marking requirements. It generally provides that every container of regulated articles intended for intrastate movement shall be marked with the names and addresses of the consignor and consignee. A valid certificate of inspection or limited permit shall also be attached to the container.

Section 141.9 governs the assembly of regulated articles for inspection. This section generally requires that persons intending to move regulated articles intrastate shall apply for certification as far in advance as possible and assemble regulated articles at such points and in such manner as the inspector shall designate. This section also provides that the Department will not be responsible for any cost incident to the inspection other than for the services of the inspector.

Section 141.10 governs the inspection and disposition of shipments. It generally provides that any vehicle, container and any item to be moved, which is moving or which has been moved intrastate from a restricted zone, and may contain regulated articles or infestations of EAB, may be examined by an inspector. It also provides that when regulated articles are found to be moving or have been moved in violation of these regulations, an inspector may take such action deemed necessary to eliminate the

danger of the spread of EAB. Infested articles must be rendered free of infestation at no cost to the State.

Section 141.11 provides that no provision of Part 141 relieves any person from the obligation of complying with any other applicable federal, state or local law or regulation. The section also provides that this Part only applies to intrastate movement of regulated articles.

Section 141.12 sets forth the effective date of the regulation. The rule becomes effective in a particular county on and after the tenth day from the filing of a certified copy in the office of the clerk of that county.

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 August 8, 2015.

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

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

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

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 adopted to implement these laws.

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.

2. Legislative objectives:

These regulations are consistent with the public policy objectives the Legislature sought to advance when enacting the statutory authority -- preventing the spread within the State of an injurious insect and easing a regulatory burden by lifting the quarantines in areas where an infestation of this insect does not exist.

3. Needs and benefits:

At present, 44 counties and portions of four others are under an EAB quarantine. This rule repeals the existing Part 141 and replaces it with a new Part 141, which, among other things, replaces the quarantines in the counties with 14 restricted zones. These restricted zones have been shown to be infested with EAB through survey and trapping.

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Ash trees, ash nursery stock, and material from ash trees like logs, green lumber, firewood, stumps, roots, branches and debris 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*). The movement of these materials poses a serious threat to susceptible ash trees in forests as well as in the urban landscape throughout the State.

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Counties demonstrated further spread of EAB within the Eastern New York quarantine area and prompted the extension of the quarantine to include those counties.

In 2013, the two quarantine zones were combined by adding the counties of Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schoenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins as well as portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga.

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Based upon ongoing surveys, it has been determined that all of the counties currently under quarantine are not infested with EAB; instead, there are 14 areas in the State which are infested with the pest. Under the rule, these have been designated restricted zones.

The 14 restricted zones established under this rule are located in and around the following municipalities or areas: Albany-Rensselaer; Bath; Binghamton; Buffalo; Livingstonville; Mid-Hudson; Montezuma; Nichols; Randolph; Rochester; Sheridan; Syracuse; Unadilla; and West Point. Each restricted zone consists of a core area, which is the location of an EAB infestation, and a buffer area, which surrounds the core area and extends a distance of five miles. If the core area encompasses 30-percent or more of a municipality, the entire municipality will be included within the restricted zone.

The rule allows for the movement of regulated articles within a restricted area and controls the intrastate movement of regulated articles to other locations in the state outside of the restricted zones. The rule does not regulate the interstate movement of regulated articles, since this movement is regulated by federal laws and regulations.

Regulated articles that may be moved intrastate outside of a restricted area, require a valid certificate of inspection, limited permit or administrative instructions from the Commissioner. The administrative instructions from the commissioner would be used in cases where the regulated articles would not be moved pursuant to certificate of inspection or limited permit. An example would be the removal of storm debris. The administrative instructions would be expedient and would alleviate a regulatory burden by eliminating the need to apply for a certificate or permit.

Movement is allowed for experimental and scientific purposes on such conditions and under such safeguards as may be prescribed in writing by the Department. This means that the Department would provide conditions for movement to ensure that the pest does not escape in transit and that it will be properly contained and disposed of at the destination. Permits from the United States Department of Agriculture may also be required if the insect is moved interstate.

Persons engaged in growing, handling or moving regulated articles intrastate may apply for a compliance agreement for the restricted movement of regulated articles. The holder of a compliance agreement is authorized to issue certificates of inspection or limited permits for the one-time movement of regulated articles without a Department inspection prior to such movement.

The benefits offered by the regulations are the more effective control of the spread of EAB with the reduction of regulation of movement of ash wood from areas where there is no EAB infestation. The immediate adoption of this rule is necessary to mitigate negative economic and ecological impacts that have resulted from the current configuration of the quarantine.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: It is anticipated that costs will be minimal. There are 346 registered nursery growers and 514 registered plant dealers in the new restricted zones. However, only a fraction of these regulated parties carry regulated articles. There is no approved protocol eliminating EAB from ash nursery stock that does not kill the nursery stock; and EAB infestation has significantly reduced or eliminated the market for ash nursery stock as ornamental, street and park plantings. The new rule, by decreasing the geographical scope of the areas subject to quarantine, imposes less regulation and fewer costs on regulated parties.

Tree removal services would have the option of leaving regulated articles within the restricted zone, chipping the material, or transporting them outside of the restricted zone under a certificate of inspection or limited permit for specific processing, handling, or utilization.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: The Department will realize lower costs and a reduced workload by having fewer inspections. 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 restricted zones. Accordingly, local governments within a restricted zone will not incur any additional expenses.

(c) The information, including the sources of such information and the methodology upon which the cost analysis is based: The costs analysis set forth above is based upon observations of the industry.

5. Local government mandate:

None.

6. Paperwork:

Regulated articles inspected and certified to be free of EAB moving from a restricted zone established by the rule will have to be accompanied by a state or federal certificate of inspection or a limited permit.

7. Duplication:

The New York State Department of Environmental Conservation (DEC) is implementing a regulation parallel to this one.

8. Alternatives:

The alternative of no action was considered. However, this option is not feasible, given the fact that many of the counties presently under quarantine are not infested, and the modification of the quarantine could reduce regulatory burden and better target infested areas of the State. The Department considered but rejected the option of establishing an entire state quarantine because this approach could place the State's forest, urban and agricultural resources at risk from the spread of EAB that could result from the unrestricted movement of ash materials. In light of these factors, there does not appear to be any viable alternative to the establishment of restricted zones as set forth in this rule.

9. Federal standards:

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

10. Compliance schedule:

This rule shall take effect immediately upon filing.

Regulatory Flexibility Analysis

1. Effect of rule.

It is anticipated that the modification of the Department's regulatory approach on nursery dealers, nursery growers and those handling ash wood growers, regardless of their size, should have minimal impact on regulated parties. The EAB infestation and current federal and state quarantines have significantly reduced or eliminated the market for ash nursery stock as ornamental, street, park plantings and ash wood; and the modifications ease restrictions on movement of regulated articles by limiting restricted zones to areas of known infestation.

Arborists and tree care companies would have the option of leaving regulated articles within the restricted zones, chipping the material or transporting the articles outside the restricted zones to a federal/state disposal site for processing under a limited permit.

The greatest economic impact of EAB regulation would continue to be on municipalities within the restricted zones, as they deal with the costs to manage the effect of this pest through tree removals, treatments and assessments of existing ash inventories. However, the modifications of the EAB regulations would not alter that impact.

2. Compliance requirements.

All parties in the restricted zones would be required to obtain certificates and limited permits (or enter into compliance agreements) to ship regulated articles (e.g. firewood and forest products) outside those areas.

As there is no approved protocol to diagnose or treat nursery stock (since approved methods of eliminating EAB would kill the plants), movement of ash nursery stock outside a restricted zone is prohibited.

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

3. Professional services.

Those shipping regulated articles from restricted zones (without having a compliance agreement with the Department) would require professional inspection services provided by the Department, the Department of Environmental Conservation (DEC) 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 restricted zones.

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:

Regulated parties exporting regulated articles, exclusive of nursery stock, from the restricted zones, other than pursuant to compliance agreements, would require an inspection of the materials, taking and analyzing soil samples, reviewing shipment records and issuing a federal or state certificate of inspection. These services are available at a rate of \$25 per hour. Most inspections will take one hour or less. However, most shipments would be made pursuant to compliance agreements, for which there is no charge.

Tree removal services would have the option to leave ash materials within the restricted zones or transport them outside of the zones 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 restricted zones.

5. Economic and technological feasibility.

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 outside restricted zones would require an inspection and the issuance of a certificate of inspection. The majority of shipments would be made pursuant to compliance agreements, which would not require independent inspection.

6. Minimizing adverse impact.

The Department has designed the rule to minimize adverse economic impact on small businesses and local governments. By limiting the EAB quarantine to areas where infestations exist, the rule minimizes economic impacts while maintaining, without compromising, efforts to slow the spread of EAB.

Approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act (SAPA) and suggested by section 202-b(1) of SAPA were considered. The Department has sought to minimize adverse impact of the EAB quarantine by continuing the use of compliance agreements between the Department and regulated parties, agreements which permit the shipment of regulated articles without state or federal inspection and for which there is no charge. Given all of the facts and circumstances, the regulations minimize adverse economic impact as much as is currently possible.

7. Small business and local government participation.

Movement of firewood continues to present a serious threat to spread EAB and other invasive insects. State and federal entities are continuing aggressive outreach efforts in promoting the message “don’t move firewood.”

The Department is and will continue to keep stakeholder groups informed concerning this rule. On March 6, 2015, a stakeholders meeting was held in the Department’s Albany Offices. Approximately 30 regulated parties attended and expressed support for the rule.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

It is anticipated that the modification of the Department’s regulatory approach on nursery dealers, nursery growers and those handling ash wood growers, including those in rural areas, should have minimal impact on regulated parties. The EAB infestation and current federal and state quarantines have significantly reduced or eliminated the market for ash nursery stock as ornamental, street, park plantings and ash wood; and the modifications ease restrictions on movement of regulated articles by limiting restricted zones to areas of known infestation.

Arborists and tree care companies would have the option of leaving regulated articles within the restricted zones, chipping the material or transporting the articles outside the restricted zones to a federal/state disposal site for processing under a limited permit.

The greatest economic impact of EAB regulation would continue to be on municipalities within the restricted zones, including those in rural areas, as they deal with the costs to manage the effect of this pest through tree removals, treatments and assessments of existing ash inventories. However, the modifications of the EAB regulations would not alter that impact.

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

All parties in the restricted zones, including those in rural areas, would be required to obtain certificates and limited permits (or enter into compliance agreements) to ship regulated articles (e.g. firewood and forest products) outside those areas.

As there is no approved protocol to diagnose or treat nursery stock (since approved methods of eliminating EAB would kill the plants), movement of ash nursery stock outside a restricted zone is prohibited.

It is not anticipated that local governments, including those in rural areas, would be involved in the shipment of regulated articles from the restricted zones.

Those in rural areas shipping regulated articles from restricted zones (without having a compliance agreement with the Department) would require professional inspection services provided by the Department, the Department of Environmental Conservation (DEC) or the United States Department of Agriculture (USDA).

It is not anticipated that local governments in rural areas would be involved in the shipment of regulated articles from the restricted zones.

3. Costs:

Regulated parties in rural areas exporting regulated articles, exclusive of nursery stock, from the restricted zones, other than pursuant to compliance agreements, would require an inspection of the materials, taking and analyzing soil samples, reviewing shipment records and issuing a federal or state certificate of inspection. These services are available at a rate of \$25 per hour. Most inspections will take one hour or less. However, most shipments would be made pursuant to compliance agreements, for which there is no charge.

Tree removal services in rural areas would have the option to leave ash

materials within the restricted zones or transport them outside of the zones under a limited permit to a federal/state disposal site for processing.

It is not anticipated that local governments in rural areas would be involved in the shipment of regulated articles from the restricted zones.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the Department has designed the rule to minimize adverse economic impact on small businesses and local governments in rural areas. By limiting the EAB quarantine to areas where infestations exist, the rule minimizes economic impacts while maintaining, without compromising, efforts to slow the spread of EAB.

Approaches for minimizing adverse economic impact were considered. The Department has sought to minimize adverse impact of the EAB quarantine by continuing the use of compliance agreements between the Department and regulated parties in rural areas, agreements which permit the shipment of regulated articles without state or federal inspection and for which there is no charge. Given all of the facts and circumstances, the regulations minimize adverse economic impact as much as is currently possible.

5. Rural area participation:

Movement of firewood continues to present a serious threat to spread EAB and other invasive insects. State and federal entities are continuing aggressive outreach efforts in promoting the message “don’t move firewood.”

The Department is and will continue to keep stakeholder groups informed concerning this rule. On March 6, 2015, a stakeholders meeting was held in the Department’s Albany Offices. Approximately 30 regulated parties attended and expressed support for the rule.

Job Impact Statement

The forest-based economy generates payrolls of more than \$2 billion. 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.

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 the State’s forests. The unchecked spread of the infestation would have substantial 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.

The modifications of the Department’s EAB regulations will: (1) target areas of infestation with greater precision, (2) more effectively slow the spread of the infestation; and, (3) at the same time, ease the regulatory burden on entities in areas where there is no current EAB infestation. Accordingly, the new regulations will not have a substantial adverse impact on jobs or employment opportunities; and will better protect jobs and employment opportunities in the wood-based forest economy.

Delaware River Basin Commission

INFORMATION NOTICE

Notice of Proposed Rulemaking and Public Hearing

Proposed Amendments to the Rules of Practice and Procedure to Allow Each Signatory Party and the DRBC to Administer a Single Process for the Review and Adjudication of Projects.

The Delaware River Basin Commission (“DRBC” or “Commission”) is a federal-interstate compact agency charged with managing the water resources of the Delaware River Basin without regard to political boundaries. Its commissioners are the governors of the four basin states – New York, New Jersey, Delaware, and Pennsylvania – and a federal representative, the North Atlantic Division Commander of the U.S. Army Corps of Engineers. The Commission is not subject to the requirements of the New York State Administrative Procedure Act. This notice is published by the Commission for information purposes.

Summary: The Commission will hold a public hearing to receive comments on proposed amendments to its Administrative Manual Part III – Rules of Practice and Procedure (18 C.F.R. Part 401) to provide for DRBC and each of the parties to the Delaware River Basin Compact (United States Public Law 87-328, Approved September 27, 1961, 75 Statutes at Large 688; 53 Delaware Laws, Chapter 71, Approved May 26, 1961; New Jersey Laws of 1961, Chapter 13, Approved May 1, 1961; New York Laws of 1961, Chapter 148, Approved March 17, 1961; Pennsylvania Acts of 1961, Act No. 268, Approved July 7, 1961) (“the

Compact”) – Delaware, New Jersey, New York, Pennsylvania and the federal government (“Signatory Parties”) – to coordinate and collaborate in the administration of a single process for the review and adjudication of projects. The program, called “One Process/One Permit,” (also herein, “the Program”) will allow DRBC and administrative agencies of the Signatory Parties participating in the Program, to incorporate the requirements and determinations of both DRBC and the Signatory Party agency into a single permit or other approval instrument.

Dates: The public hearing will start on or around 2:00 P.M. on Tuesday, June 9, 2015 during the Commission’s regularly scheduled public hearing. The hearing will continue until all those wishing to testify have had an opportunity to do so. Depending upon the number of people wishing to speak, the hearing officer may impose time limits on speakers. Written comments will be accepted by any of the means described below and must be received by 5:00 P.M. on Wednesday, July 1, 2015. More information regarding the procedures for the hearings and comments is set forth in the section “Oral Testimony and Written Comments.”

Addresses: The public hearing will be held at the Washington Crossing Historic Park Visitor’s Center at 1112 River Road in Washington Crossing, Pennsylvania. Please check washingtoncrossingpark.org/contact/ for directions, as Internet mapping services provide unreliable directions to this location.

Oral Testimony and Written Comments: Persons wishing to testify at the hearing are asked to register in advance by contacting Paula Schmitt at 609-883-9500, ext. 224 or paula.schmitt@drbc.state.nj.us. Written comments may be submitted as follows: If by email (preferred), to paula.schmitt@drbc.state.nj.us; by fax, to Commission Secretary at 609-883-9522; by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; or by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. Comments also may be delivered by hand at any time during DRBC’s regular office hours (Monday through Friday, 8:30 A.M. through 5:00 P.M. except on national holidays) until the close of the comment period. In all cases, please include the commenter’s name, address and affiliation, if any, in the comment document and “One Process/One Permit” or “OPOP” in the subject line.

For Further Information: The rule text is available on the DRBC website, drbc.net. Also posted to the website are an extensive FAQ document; DRBC Resolution No. 2015-4, authorizing the Executive Director to initiate rulemaking and enter into an administrative agreement with the New Jersey Department of Environmental Protection (NJDEP) for demonstration of the Program; and the administrative agreement between DRBC and the NJDEP to provide for the demonstration program, which includes provisions for fully implementing One Process/One Permit once a final rule has been adopted. Detailed procedures of the DRBC for public hearings, public meetings and “Public Dialogue” are available on the web at: <http://www.state.nj.us/drbc/library/documents/procedures120414.pdf>. For further information, please contact Commission Secretary Pamela M. Bush, 609-477-7203.

Supplementary Information

Background. Because DRBC and its Signatory Parties share common water resource management objectives, sponsors of many water resource-related projects in the Delaware River Basin are currently required to apply to both the DRBC and a state agency, among others, for approvals. The proposed rule provides for DRBC and the administrative agencies of the Signatory Parties to identify regulatory programs that by mutual agreement will be managed through a single process resulting in one decision or approval. Agreements between DRBC and federal agencies are possible under the rule, but none are currently contemplated.

One Process/One Permit is intended to promote interagency cooperation and collaboration on shared mission objectives, achieve regulatory program efficiencies, avoid unnecessary duplication of effort, and reduce the potential for confusion on the part of regulated entities and the public. The regulatory standards and authorities of the DRBC and each of its Signatory Parties are expressly preserved by the Program, including in the proposed rule. The more protective of the applicable DRBC or Signatory Party agency’s requirements will be included in each permit or approval issued under the Program.

The proposed rule provides for DRBC and each Signatory Party agency choosing to implement One Process/One Permit to enter into an administrative agreement that identifies the types of projects and approvals to be covered. Initially, the Program is expected to be implemented for (a) withdrawals of basin waters subject to both DRBC review and state allocation programs; and (b) wastewater discharges subject to DRBC review and the state-administered National Pollutant Discharge Elimination System (NPDES) program. For water withdrawals, the lead agency under One Process/One Permit may be the state or the DRBC, depending upon current state programs. The delegated state environmental agencies will be the lead agencies for the review of

wastewater discharges. Other regulatory programs, such as programs relating to floodplain management, could be included in the future. All administrative agreements between DRBC and agencies of the Signatory Parties for implementing One Process/One Permit will be subject to Commission approval following a public hearing.

Authority. Sections 1.5 and 3.9 of the Compact and existing DRBC rules allow and encourage the Commission to use the agencies of the Signatory Parties wherever feasible and advantageous consistent with the Compact. Accordingly, under the proposed rule, permits issued by Signatory Party agencies may include a finding required by Section 3.8 of the Compact. Specifically, after the rule and amended agreements are in place, based on the appropriate level of review and a recommendation by the DRBC staff, approvals issued under the Program may include the finding that when operated in accordance with the terms and conditions of the approval, the activities regulated by the approval will not substantially impair or conflict with DRBC’s comprehensive plan.

Operation of the Program. Under the proposed rule, an application for initial approval, renewal or revision of project activities subject to the One Process/One Permit program will be filed only with the lead agency. This does not mean that the DRBC or others will not be involved in the review of applications for new and renewal water withdrawal and discharge projects. Rather, DRBC and the Signatory Party agency will follow a single process, and reviews will be performed more efficiently and more collaboratively.

Consistent with the proposed rule, the agreements between DRBC and Signatory Party agencies will provide for a level of DRBC review appropriate to the circumstances. Some reviews, such as those for simple and standard renewals of existing permits, may be significantly streamlined or subject to inter-agency notifications only. Others, including to implement standards for which the DRBC staff have special expertise, will involve substantial DRBC staff effort. For example, under the wastewater discharge program, DRBC staff will continue to perform modeling to determine “No Measurable Change” requirements for the Commission’s Special Protection Waters program and to calculate an alternative mixing zone for a discharge of treated industrial wastewater to the Delaware Estuary. For certain projects, DRBC staff also will continue to identify conditions of approval to ensure that projects subject to review under the Compact and implementing regulations do not impair or conflict with the Commission’s comprehensive plan. The purpose of One Process/One Permit is to eliminate unnecessary effort, not to eliminate effort needed to fully review a project under all applicable standards and rules. Under the Program, each party continues to recognize the authority of the other to promulgate rules, regulations and standards. The rule does not change that authority.

Notably, a separate DRBC review and decision for water withdrawal and discharge activities will still be required in certain cases, such as when a new project must be incorporated into the Commission’s comprehensive plan. Both parties also will retain the right to act separately, such as in the instances, anticipated to be rare, where the parties cannot agree on the terms and conditions of approval. Certain categories of projects that are subject to DRBC review will not be covered by the Program, and the Executive Director and Commissioners will have the ability to remove a project from the Program. However, the objective of One Process/One Permit is to encompass most, if not all, elements of the review and approval for covered projects.

The proposed rule does not modify the existing project review fee schedule of the DRBC or that of any Signatory Party agency. Although One Process/One Permit is expected to improve process efficiency, in many instances as described above, the DRBC will devote significant resources and work effort to review projects and support its regulatory programs. Accordingly, the DRBC regulatory program will continue for the present to be supported by its existing regulatory program fees. The Commission’s fee schedule set forth in Resolution No. 2009-2 will remain in effect unless and until the Commission amends it through rulemaking or a comparable public process. Under One Process/One Permit, all DRBC fees applicable under current practices will continue to be paid directly to the Commission.

The proposed rule provides that persons aggrieved by the final action of a state agency on behalf of the Commission under One Process/One Permit must exhaust their administrative remedies under the law of the Signatory Party agency that issued the decision.

New Jersey Demonstration Program. By Resolution No. 2015-4 approved by the Commission on March 11, 2015, DRBC and NJDEP have agreed to “practice” using new collaborative processes between the two agencies for review of wastewater discharge applications, pending the adoption of a new rule such as the one proposed today. The agreement between DRBC and NJDEP provides for the demonstration program and sets forth provisions needed to fully implement One Process/One Permit once a final rule has been adopted. In the event that a

project reviewed under the New Jersey Demonstration Program reaches the stage where it is ready for final approval before DRBC has adopted a final rule, the application will be acted upon by DRBC and the NJDEP independently. As explained above, additional information about the New Jersey Demonstration Program is available on the Commission's website.

Preservation of the 1954 Supreme Court Decree. In accordance with Sections 3.3(a) and 3.5 of the Compact, the proposed rule expressly provides that it does not grant authority to any Signatory Party agency to impair, diminish or otherwise adversely affect the diversions, compensating releases, rights, conditions, obligations and provisions for administration thereof provided in the United States Supreme Court decree in *New Jersey v. New York*, 347 U.S. 995 (1954) ("Decree"). The rule further reiterates that any such action may be taken only by the Commission with the unanimous consent of the parties to the Decree or upon unanimous consent of the members of the Commission following a declaration of a state of emergency in accordance with Section 3.3(a) of the Compact.

No Effect on Section 401 State Water Quality Certification Programs. The proposed rule also does not affect the authority of Signatory Party states to issue water quality certifications under Section 401 of the Clean Water Act.

Dated: May 12, 2015

PAMELA M. BUSH, ESQ.

Commission Secretary

Text of proposed amendments:

It is proposed to amend Article 3 of the Administrative Manual – Rules of Practice and Procedure by the addition of the following section:

2.3.11 One Permit Program

A. Purpose. The purpose of the One Permit Program set forth in this Section is to provide for the environmental agency and/or other administrative agency of a Signatory Party ("Signatory Party Agency") and the Commission to coordinate and collaborate in the administration of a single process for the review and adjudication of projects. The One Permit Program will incorporate, where appropriate, the Signatory Party Agency and Commission requirements and determinations in a single permit or other approval instrument.

B. Scope. This Section applies to all projects that: are reviewable under the Compact; meet the thresholds for review set forth in Section 2.3.5 of these Rules of Practice and Procedure; are subject to review by a Signatory Party Agency under its own statutory authorities; and are within categories of projects that have been identified in a duly adopted Administrative Agreement between the Commission and a Signatory Party Agency under this Section 2.3.11 of the Rules.

C. Regulatory Programs. A Signatory Party Agency or the Commission may at any time propose to the other that a regulatory program be administered within the Basin under the One Permit Program. Regulatory programs eligible for administration under the One Permit Program include but are not limited to those concerning: basin discharges, basin water withdrawals, and basin flood plain requirements.

D. Procedure. The categories of projects covered and the procedures for processing applications under the One Permit Program shall be set forth in one or more Administrative Agreements between the Commission and the Signatory Party Agency that have been adopted by the Commission following a duly noticed public hearing and are in form and substance acceptable to the Commission and the Signatory Party Agency, consistent with the following:

1. Except as provided in subsection 2.3.11.E of these Rules or in an Administrative Agreement that has been duly executed by the Commission and the Signatory Party Agency under this Section, an application for initial approval, renewal or revision of any project subject to the One Permit Program shall be filed only with the Signatory Party Agency.

2. Notice that the project sponsor has filed an application with the Signatory Party Agency shall be provided to the Commission in the manner specified in the applicable Administrative Agreement.

3. The Signatory Party Agency receiving the application shall for those categories of projects identified in the Administrative Agreement as requiring Commission input, solicit the recommendation of the Commission staff as to any conditions of approval that may be necessary or appropriate to include in the project review determination under § 3.8 of the Compact. The process for solicitation of the recommendation by Commission staff shall be as defined within the applicable Administrative Agreement.

4. Unless the Signatory Party Agency disapproves the project or the Administrative Agreement provides for separate Commission action under § 3.8 of the Compact, the Signatory Party Agency shall make the project review determination under § 3.8 of the Compact as to the regulatory program covered by the Signatory Party Agency's approval

and include the determination and any associated conditions of approval within the permit or other approval instrument that it issues to the project sponsor.

5. The Commission will maintain a list of all projects being administered pursuant to the Program.

E. Comprehensive Plan Projects. Articles 11 and 13 of the Compact require certain projects to be included in the Comprehensive Plan. To add a project not yet included in the Comprehensive Plan, the project sponsor shall submit a separate application to the Commission before initiating project design. If following its review and public hearing the Commission approves the addition of the project to the Comprehensive Plan, the Commission's approval will include such project requirements as are necessary under the Compact and Commission regulations. All other project approvals that may be required from the Signatory Party Agency or the Commission under regulatory programs administered pursuant to this Section may be issued through the One Permit Program. An application for renewal of a project in the Comprehensive Plan that does not change the project so substantially as to render it a new and different project may be submitted only to the Signatory Party Agency unless otherwise specified in the Administrative Agreement.

F. Retention of Commission Review and Enforcement Authorities. Notwithstanding any other provision of this Section 2.3.11, any Commissioner or the Executive Director may designate for Commission review any project that is reviewable under the Compact. Nothing in this Section 2.3.11 shall limit the authority of the Commission to exercise its review authority under the Compact and applicable Commission regulations. Similarly, although Administrative Agreements executed pursuant to this Section may include collaborative and cooperative compliance and enforcement procedures, nothing in this Section 2.3.11 shall limit the authority of the Commission to exercise its enforcement authority under the Compact and applicable regulations.

G. Exhaustion of Signatory Party Administrative Remedies Prerequisite to Appeal. Before commencing an action in a court of appropriate jurisdiction challenging any final action taken by a Signatory Party Agency on behalf of the Commission, the appellant must first exhaust its administrative remedies under the law of the Signatory Party whose agency issued the decision at issue.

H. Fees. The Commission shall establish and maintain a schedule of fees for any or all of the services it renders pursuant to this Section 2.3.11. Project sponsors shall pay such fees, if any, directly to the Commission in accordance with such schedule and applicable rules.

I. Termination of existing Commission docket. At such time as the Signatory Party Agency makes the Project Review Determination and issues a permit or other approval instrument to a project sponsor in accordance with this Section 2.3.11, the Executive Director is authorized to terminate in whole or in part any Commission docket then in effect with respect to such project, provided that such termination shall not serve to remove a project from or otherwise modify the Comprehensive Plan.

J. Modification of Rules of Practice and Procedure to Conform to this Section. Any project subject to the One Permit Program shall be governed by this Section 2.3.11 and not Sections 2.1.4, 2.1.5, 2.1.6, 2.1.8, 2.3.4 A, C and E, 2.3.6, 2.3.7 and Article 6 where they are inconsistent with the procedures provided in this Section.

K. No Interference with Supreme Court Decree. In accordance with Sections 3.3(a) and 3.5 of the Compact, nothing in this Section 2.3.11 shall grant the authority to any Signatory Party Agency to impair, diminish or otherwise adversely affect the diversions, compensating releases, rights, conditions, obligations and provisions for administration thereof provided in the United States Supreme Court decree in *New Jersey v. New York*, 347 U.S. 995 (1954) ("Decree"). Any such action shall be taken only by the Commission with the unanimous consent of the parties to the Decree or upon unanimous consent of the members of the Commission following a declaration of a state of emergency in accordance with Section 3.3(a) of the Compact.

Education Department

EMERGENCY RULE MAKING

Appeals Process on Regents Exams Passing Score for English Language Learners (ELLs)

I.D. No. EDU-08-15-00006-E

Filing No. 360

Filing Date: 2015-05-11

Effective Date: 2015-05-11

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

Action taken: Amendment of section 100.5(d)(7) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 215(not subdivided), 305(1), (2), 308(not subdivided), 309(not subdivided), 2117(1), 3204(2), (2-a), (3) and (6)

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

Specific reasons underlying the finding of necessity: The proposed amendment would extend the English Language Learner (ELL) specific pathway to graduate with a Local Diploma via appeal to ELLs who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter, and clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal.

The proposed amendment was adopted as an emergency action at the February 9-10, 2015 Regents meeting, effective February 10, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on February 25, 2015. Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the May 18-19, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the May meeting, would be June 3, 2015, the date a Notice of Adoption would be published in the State Register. However, the February emergency rule will expire on May 10, 2015, 90 days from its filing with the Department of State on February 10, 2014. A lapse in the rule's effective date could disrupt appeals pursuant to section 100.5(d)(7) which provides a specific pathway for English Language Learner (ELL) students who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter to graduate with a Local Diploma. Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the February 2015 Regents meeting remains continuously in effect until the rule can be adopted and take effect as a permanent rule.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the May 18-19, 2015 Regents meeting, which is the first meeting scheduled after expiration of the 45-day period for public comment pursuant to the State Administrative Procedure Act.

Subject: Appeals process on Regents exams passing score for English Language Learners (ELLs).

Purpose: To extend ability to graduate with a Local Diploma via appeal process to qualifying English Language Learner (ELL) students who satisfy all other graduation requirements (including those who satisfy such requirements via available alternative pathways) in January 2015 or thereafter.

Text of emergency rule: Paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective May 11, 2015, as follows:

(7) Appeals process on Regents examinations passing score to meet Regents diploma requirements.

(i) School districts shall provide unlimited opportunities for all students to retake required Regents examinations to improve their scores.

(a) . . .

(b) A student who first enters school in the United States (the 50 States and the District of Columbia) in grade nine, ten, eleven or twelve [in September 2010 or thereafter] and is otherwise eligible to graduate in

January 2015 or thereafter, is identified as an English Language Learner pursuant to Part 154 of this Title, and fails, after at least two attempts, to attain a score of 65 or above on the required Regents examination in English language arts for graduation shall be given an opportunity to appeal such score in accordance with the provisions of this paragraph, provided that no such student may appeal his or her score on more than two of the five required Regents examinations and provided further that the student:

(1) has scored between 55 and 61 on the required Regents examination in English language arts under appeal;

(2) provides evidence that he or she has received academic intervention services by the school in English language arts;

(3) has an attendance rate of at least 95 percent for the school year during which the student last took the required Regents examination in English language arts;

(4) has attained a course average in English language arts that meets or exceeds the required passing grade by the school and is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year; and

(5) is recommended for an exemption to the passing score on the required Regents examination in English language arts by his or her teacher or department chairperson in English language arts.

[(c)] (ii) An appeal may be initiated by the student, the student's parent or guardian, or the student's teacher, and shall be submitted in a form prescribed by the commissioner to the student's school principal.

[(d)] (iii) The school principal shall chair a standing committee comprised of three teachers (not to include the student's teacher in the subject area of the Regents examination under appeal) and two school administrators (one of whom shall be the school principal). The standing committee shall review an appeal within 10 school days of its receipt and make a recommendation to the school superintendent or, in the City School District of the City of New York, to the chancellor of the city school district or his/her designee, to accept or deny the appeal. The standing committee may interview the teacher or department chairperson who recommended the appeal, and may also interview the student making the appeal to determine that he or she has demonstrated the knowledge and skills required under the State learning standards in the subject area in question.

[(e)] (iv) The school superintendent or, in the City School District of the City of New York, the chancellor of the city school district or his/her designee, shall make a final determination to accept or deny the appeal. The school superintendent or chancellor or chancellor's designee may interview the student making the appeal to determine that the student has demonstrated the knowledge and skills required under the State learning standards in the subject area in question.

[(f)] (v) Diplomas.

[(1)] (a) A student whose appeal is accepted for one required Regents examination pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the four remaining required Regents examinations (or satisfied the corresponding graduation requirement via an alternative assessment pursuant to section 100.2(f)(1) of this Part or a pathway assessment pursuant to section 100.5(a)(5)(i)(f) of this Part), shall earn a Regents diploma.

[(2)] (b) A student whose appeal is accepted for two required Regents examinations pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the three remaining required Regents examinations (or satisfied the corresponding graduation requirement via an alternative assessment pursuant to section 100.2(f)(1) of this Part or a pathway assessment pursuant to section 100.5(a)(5)(i)(f) of this Part), shall earn a local diploma.

[(3)] (c) A student whose appeal is accepted for the required Regents examination in English language arts pursuant to clause (b) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the four remaining required Regents examinations (or satisfied the corresponding graduation requirement via an alternative assessment pursuant to section 100.2(f)(1) of this Part or a pathway assessment pursuant to section 100.5(a)(5)(i)(f) of this Part), shall earn a local diploma.

[(4)] (d) A student whose appeal is accepted for the required Regents examination in English language arts pursuant to clause (b) of subparagraph (i) of this paragraph and for one other required Regents examination pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the three remaining required Regents examinations (or satisfied the corresponding graduation requirement via an alternative assessment pursuant to section 100.2(f)(1) of this Part or a pathway assessment pursuant to section 100.5(a)(5)(i)(f) of this Part), shall earn a local diploma.

[(g)] (vi) Each school shall keep a record of all appeals received and granted and report this information to the State Education Department on a form prescribed by the commissioner. All school records relating to appeals of scores on required Regents examinations shall be made available for inspection by the State Education Department.

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. EDU-08-15-00006-EP, Issue of February 25, 2015. The emergency rule will expire July 9, 2015.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

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

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 215 authorizes the Regents and the Commissioner to require school districts to prepare and submit reports containing such information as they may prescribe.

Education Law section 305 (1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and execute all educational policies determined by the Regents.

Education Law section 2117(1) empowers the Regents and the Commissioner to require school districts to submit any information they deem appropriate.

Education Law section 3204(2) and (2-a) provide for instructional programs for pupils with limited English proficiency (LEP) to be conducted in accordance with regulations of the Commissioner. Education Law section 3204(3) authorizes the Commissioner to establish standards for the instruction of LEP children, and section 3204(6) requires the Commissioner to establish standards by regulation.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

NEEDS AND BENEFITS:

Over the past 10 years, New York State English Language Learner (ELL) student enrollment has increased by 20%. According to the U.S. Department of Education, ELL student enrollment has increased by 18% nationally. Currently in New York State, over 230,000 ELLs make up 8.9% of the total student population. Their linguistic diversity makes up over 140 languages spoken in New York State; 61.5% for whom Spanish is the home language. In addition, 41.2% were born in another country.

Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process. Therefore, at their January 2015 meeting, the Board of Regents amended Commissioner's Regulation section 100.5(d)(7) to adopt this pathway for ELLs to graduate with a Local Diploma pursuant to an appeal process if they score between 55-61 on the Regents Exam in English and meet all other conditions for appeal of a Regents score (State Register, January 28, 2015, EDU-44-14-00026-A).

At its January 2015 meeting, the Board of Regents also adopted amendments to Commissioner's Regulations sections 100.2 and 100.5 to establish a 4+1 pathway to graduation for all students (State Register, January 28, 2015, EDU-44-14-00025-P). The 4+1 pathway option applies begin-

ning with students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma in June 2015 and thereafter. The amendment creates graduation pathways assessments in the Humanities, STEM, Biliteracy (languages other than English [LOTE]), CTE and the Arts.

Public comment in response to the January 2015 amendments to section 100.5(d)(7) recommended making this option for graduation also available to ELLs who are in their 6th year of high school. These ELLs are currently excluded from this option because they entered high school prior to the 2010-11 school year. Public comment also highlighted the need to clarify that the appeal option under section 100.5(d)(7) is available to ELLs who satisfy graduation assessment requirements through the 4+1 pathway option in sections 100.2 and 100.5 or via another alternative pathway. After considering these policy concerns, the Department agrees that 6th year ELLs, as well as ELLs who satisfy graduation requirements via the 4+1 pathway options or via another alternative pathway, would benefit from the ability to utilize this graduation option.

COSTS:

(a) Costs to State government: none.

(b) Costs to local government: The proposed amendment will not impose any significant costs on local governments. An appeals process and criteria are already in place in section 100.5(d)(7) for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal.

Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. In the long term, the proposed amendment is expected to be a cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

(c) Costs to private regulated parties: none.

(d) Costs to regulating agency for implementation and continued administration of this rule: none.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon school districts. An appeals process and criteria are already in place for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal. Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other appeals of Regents examination scores. ELL students would remain eligible for the current appeals process as well.

PAPERWORK:

The proposed amendment will not require any additional paperwork beyond what is necessary to process a limited number of additional appeals for a local diploma from qualifying late entry ELLs who score a 55-61 on the Regents examination in English after two tries who meet other conditions for appeal. Appeals by ELLs under the proposed amendment would be subject to the existing requirement in section 100.5(d)(7) that each school keep a record of all appeals received and granted and report this information to Department on a form prescribed by the Commissioner. All school records relating to appeals of scores shall be made available for inspection by the Department.

DUPLICATION:

The proposed amendment does not duplicate existing State or Federal requirements.

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

The proposed amendment is necessary to ensure compliance with

Education Law sections 3204 and 4403, Title I and III of the ESEA, Title IV of the Civil Rights Act of 1964, and the EEOA. These laws require states and school districts to provide ELL students with appropriate services to overcome language barriers. In addition, federal jurisprudence in landmark cases such as *Castañeda v. Pickard* established standards to ensure compliance with EEOA. For example, the *Castañeda* standard mandates that programs for language-minority students must be (1) based on a sound educational theory, (2) implemented effectively with sufficient resources and personnel, and (3) evaluated to determine whether they are effective in helping students overcome language barriers.

COMPLIANCE SCHEDULE:

It is anticipated that school districts and BOCES will be able to achieve compliance with the proposed amendment by its effective date. An appeals process and criteria are already in place for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements, and is necessary to implement policy adopted by the Regents relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). The proposed amendment does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 689 public school districts and 37 boards of cooperative educational services (BOCES) in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on local governments. An appeals process and criteria are already in place for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal. Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other appeals of Regents examination scores. ELL students would remain eligible for the current appeals process as well.

The proposed amendment will not require any additional paperwork beyond what is necessary to process a limited number of additional appeals for a local diploma from qualifying late entry ELLs who score a 55-61 on the Regents examination in English after two tries who meet other conditions for appeal. Appeals by ELLs under the proposed amendment would be subject to the existing requirement in section 100.5(d)(7) that each school keep a record of all appeals received and granted and report this information to Department on a form prescribed by the Commissioner. All school records relating to appeals of scores shall be made available for inspection by the Department.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on local governments.

4. COMPLIANCE COSTS:

The proposed amendment will not impose any significant costs on school districts or BOCES. An appeals process and criteria are already in place in section 100.5(d)(7) for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal.

Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. In the long term, the proposed amendment is expected to be a cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements on school districts. Economic feasibility is addressed above under compliance costs.

6. MINIMIZE ADVERSE IMPACT:

The proposed amendment implements policy adopted by the Board of Regents relating to ELL equal access to education, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act, Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

The proposed amendment does not impose any additional compliance requirements or significant costs upon school districts. An appeals process and criteria are already in place in section 100.5(d)(7) for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal.

Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. In the long term, the proposed amendment is expected to be a cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

Federal civil rights and education laws, as well as federal court jurisprudence, require that ELL students must be provided with equal access to all school programs and services offered to non-ELL students. Education Law section 3204 and Part 154 of the Regulations of the Commissioner (CR Part 154) contain standards for educational services provided to ELLs in New York State in order to meet these federal obligations.

Over the past 10 years, New York State ELL student enrollment has increased by 20%. Currently in New York State, over 230,000 ELLs make up 8.9% of the total student population. While former ELLs generally achieve graduation rates equal to or above that of all non-ELLs, the graduation rate of current ELLs lagged well below that of non-ELLs. In June 2013, only 31.4% of ELLs graduated, compared to 74.9% of all students. Many of these ELLs were students who entered school in the United States for the first time on or after grade nine.

Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process. Therefore, at their January 2015 meeting, the Board of Regents amended Commissioner's Regulation section 100.5(d)(7) to adopt this pathway for ELLs to graduate with a Local Diploma pursuant to an appeal process if they score between 55-61 on the Regents Exam in English and meet all other conditions for appeal of a Regents score (State Register, January 28, 2015, EDU-44-14-00026-A).

At its January 2015 meeting, the Board of Regents also adopted amendments to Commissioner's Regulations sections 100.2 and 100.5 to establish a 4+1 pathway to graduation for all students (State Register, January 28, 2015, EDU-44-14-00025-P). The 4+1 pathway option applies beginning with students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma in June 2015 and thereafter. The amendment creates graduation pathways assessments in the Humanities, STEM, Biliteracy (languages other than English [LOTE]), CTE and the Arts.

Public comment in response to the January 2015 amendments to section 100.5(d)(7) recommended making this option for graduation also available to ELLs who are in their 6th year of high school. These ELLs are currently excluded from this option because they entered high school prior to the 2010-11 school year. Public comment also highlighted the need to clarify that the appeal option under section 100.5(d)(7) is available to ELLs who satisfy graduation assessment requirements through the 4+1 pathway option in sections 100.2 and 100.5 or via another available alternative pathway. After considering these policy concerns, the Department agrees that 6th year ELLs, as well as ELLs who satisfy graduation requirements via the 4+1 pathway options or via another available alternative pathway, would benefit from the ability to utilize this graduation option. The proposed amendment will expand access to the Local Diploma to this precise group of ELLs who are in a position to benefit from the opportunity to obtain postsecondary education or enter a career with a high school diploma. Because ELLs by definition are not yet fluent in English, this alternate pathway to graduation facilitates equal access to the Local Diploma. The proposed amendment minimizes the adverse impact of denying ELLs who satisfy all other conditions for appeal the ability to attain a high school diploma on account of their lack of fluency in English.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts.

8. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy relating to improving graduation outcomes for students who are English Language Learners. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and boards of cooperative educational services (BOCES) 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 does not impose any additional reporting, recordkeeping or other compliance requirements on school districts and BOCES located in rural areas. An appeals process and criteria are already in place for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal. Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other appeals of Regents examination scores. ELL students would remain eligible for the current appeals process as well.

The proposed amendment will not require any additional paperwork beyond what is necessary to process a limited number of additional appeals for a local diploma from qualifying late entry ELLs who score a 55-61 on the Regents examination in English after two tries who meet other conditions for appeal. Appeals by ELLs under the proposed amendment would

be subject to the existing requirement in section 100.5(d)(7) that each school keep a record of all appeals received and granted and report this information to Department on a form prescribed by the Commissioner. All school records relating to appeals of scores shall be made available for inspection by the Department.

3. COMPLIANCE COSTS:

The proposed amendment will not impose any significant costs on school districts or BOCES located in rural areas. An appeals process and criteria are already in place in section 100.5(d)(7) for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal.

Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. In the long term, the proposed amendment is expected to be a cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements policy adopted by the Board of Regents relating to ELL equal access to education, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act, Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

The proposed amendment does not impose any additional compliance requirements or significant costs upon school districts or BOCES located in rural areas. An appeals process and criteria are already in place in section 100.5(d)(7) for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal.

Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. In the long term, the proposed amendment is expected to be a cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

Federal civil rights and education laws, as well as federal court jurisprudence, require that ELL students must be provided with equal access to all school programs and services offered to non-ELL students. Education Law section 3204 and Part 154 of the Regulations of the Commissioner (CR Part 154) contain standards for educational services provided to ELLs in New York State in order to meet these federal obligations.

Over the past 10 years, New York State ELL student enrollment has increased by 20%. Currently in New York State, over 230,000 ELLs make up 8.9% of the total student population. While former ELLs generally achieve graduation rates equal to or above that of all non-ELLs, the graduation rate of current ELLs lagged well below that of non-ELLs. In June 2013, only 31.4% of ELLs graduated, compared to 74.9% of all students. Many of these ELLs were students who entered school in the United States for the first time on or after grade nine.

Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process. Therefore, at their January 2015 meeting, the Board of Regents amended Commissioner's Regulation section

100.5(d)(7) to adopt this pathway for ELLs to graduate with a Local Diploma pursuant to an appeal process if they score between 55-61 on the Regents Exam in English and meet all other conditions for appeal of a Regents score (State Register, January 28, 2015, EDU-44-14-00026-A).

At its January 2015 meeting, the Board of Regents also adopted amendments to Commissioner's Regulations sections 100.2 and 100.5 to establish a 4+1 pathway to graduation for all students (State Register, January 28, 2015, EDU-44-14-00025-P). The 4+1 pathway option applies beginning with students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma in June 2015 and thereafter. The amendment creates graduation pathways assessments in the Humanities, STEM, Biliteracy (languages other than English [LOTE]), CTE and the Arts.

Public comment in response to the January 2015 amendments to section 100.5(d)(7) recommended making this option for graduation also available to ELLs who are in their 6th year of high school. These ELLs are currently excluded from this option because they entered high school prior to the 2010-11 school year. Public comment also highlighted the need to clarify that the appeal option under section 100.5(d)(7) is available to ELLs who satisfy graduation assessment requirements through the 4+1 pathway option in sections 100.2 and 100.5 and via other approved alternative assessments. After considering these policy concerns, the Department agrees that 6th year ELLs, as well as ELLs who satisfy graduation requirements via the 4+1 pathway options and via other approved alternative assessments, would benefit from the ability to utilize this graduation option.

The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements, and is necessary to implement policy adopted by the Regents relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). Because this policy is applicable throughout the State, it was not possible to provide for a lesser standard or an exemption for school districts and BOCES in rural areas.

5. RURAL AREA PARTICIPATION:

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

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy relating to improving graduation outcomes for students who are English Language Learners. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment relates to an additional graduation pathway for qualifying students who are English Language Learners (ELLs), to allow such students to graduate with a Local Diploma via an appeals process.

The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements, and is necessary to implement policy adopted by the Regents relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). The proposed amendment will not have a substantial adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact, or a positive 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.

EMERGENCY RULE MAKING

Teacher Certification

I.D. No. EDU-08-15-00007-E

Filing No. 361

Filing Date: 2015-05-11

Effective Date: 2015-05-11

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

Action taken: Amendment of section 80-1.6(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), 3001(2), 3004(1) and 3006(1)

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

Specific reasons underlying the finding of necessity: The proposed amendment provides for a time extension of up to one year for an expired initial certificate, transitional certificate and/or conditional initial certificate to provide time for a candidate's results on the content specialty test to be released without penalizing the teacher candidate.

The proposed amendment was adopted as an emergency action at the February 9-10, 2015 Regents meeting, effective February 10, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on February 25, 2015. Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the May 18-19, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the May meeting, would be June 3, 2015, the date a Notice of Adoption would be published in the State Register. However, the February emergency rule will expire on May 10, 2015, 90 days from its filing with the Department of State on February 10, 2014. A lapse in the rule's effective date could cause teachers to lose their teaching certificates and possibly their jobs. Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the February 2015 Regents meeting remains continuously in effect until the rule can be adopted and take effect as a permanent rule.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the May 18-19, 2015 Regents meeting, which is the first meeting scheduled after expiration of the 45-day period for public comment pursuant to the State Administrative Procedure Act.

Subject: Teacher certification.

Purpose: To provide for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the revised Content Specialty Test (CST) results to be released by the Department without penalizing the certificate holder.

Text of emergency rule: Subdivision (c) of section 80-1.6 of the Regulations of the Commissioner of Education is amended, effective May 11, 2015, to read as follows:

(c) [The] *Except as otherwise provided in this subdivision*, the commissioner may extend the time validity of an expired provisional, excluding an expired provisional certificate in the classroom teaching service or an expired provisional certificate in the title of school administrator and supervisor, initial or transitional certificate beyond the two-year extension provided for in subdivision (a) of this section, for a period not to exceed one additional year, if in the six-months preceding the end of the two-year extension, the candidate is faced with extreme hardship or other circumstances beyond the control of the individual and is unable to complete the requirements for the professional certificate in a timely manner. *The commissioner may further extend the time validity of an expired initial or transitional certificate for an additional period of not to exceed one additional year; and may extend the validity of a conditional initial certificate for a period of up to one year if a candidate took one of the revised content specialty examinations administered on or after September 2014, and is required for his/her certificate title and he/she did not receive his/her score on such examination from the department on such examination within a timeframe prescribed by the commissioner and he/she has met all the other certification requirements for the next certificate (i.e., the initial or professional certificate, as applicable).*

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. EDU-08-15-00007-EP, Issue of February 25, 2015. The emergency rule will expire July 9, 2015.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents. Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

2. LEGISLATIVE OBJECTIVES:

Consistent with the above statutory authority, the proposed amendment provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the Content Specialty Tests (CSTs) results to be released by the Department without penalizing the certificate holders.

3. NEEDS AND BENEFITS:

At the November and December 2009 Board of Regents meetings, the Board approved a number of initiatives for the purpose of transforming teaching and learning and school leadership in New York State. The Board of Regents discussion included the development of new examinations, including revision of the current Content Specialty Tests (CSTs).

The CSTs are currently being revised. The first group of revised CSTs became operational in September 2014. However, the results/scores on the revised CSTs will not be released to teacher candidates until the standard setting process is complete.

Since the CSTs results have not being released to candidates, there are certificate holders that may lose their certification as of January 31, 2015 if their certificates are not extended by the Department. This could result in some teachers being terminated from employment as they will no longer hold a valid certificate.

The proposed amendment is necessary to ensure that teachers who have taken one of the revised CST administered on or after September 2014 that is required for their certificate title but have not received a score from the Department on their revised CST, receive a time extension of up to one year on their expired certificate to ensure that they do not lose their certification and/or employment.

4. COSTS:

(a) Cost to State government: none.

(b) Cost to local government: none.

(c) Cost to private regulated parties: none.

(d) Costs to the State Education Department, as regulatory agency: none.

The proposed amendment does not impose any costs, but merely provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the CSTs results to be released by the Department without penalizing the certificate holders.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES, but merely provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the CSTs results to be released by the Department without penalizing the certificate holders.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements, but merely provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the CSTs results to be released by the Department without penalizing the certificate holders.

7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. Because of the nature of the proposed amendment, no additional period of time is necessary to enable regulated parties to comply. The proposed amendment does not impose any costs or compliance requirements, but merely provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the CSTs results to be released by the Department without penalizing the certificate holders.

Regulatory Flexibility Analysis

The proposed amendment relates to teacher certification, and provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate in order to provide time for the revised Content Specialty Tests (CSTs) results to be released by the Department without penalizing the certificate holder.

The CST's are currently being revised. The first group of revised CST's became operational in September 2014. However, the results/scores on the revised CST's will not be released to teacher candidates until the standard setting process is complete.

Since the CST results have not being released to candidates, there are certificate holders that could lose their certification as of January 31, 2015 if their certificates are not extended by the Department. This will result in some teachers being terminated from employment as they will no longer hold a valid certificate.

In an effort to resolve this issue, the proposed amendment provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the exam results to be released by the Department without penalizing the certificate holder.

The proposed amendment does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment relates to teacher certification and applies to holders of an initial certificate, transitional certificate and/or a conditional initial certificate, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The proposed amendment does not impose any compliance requirements, but merely provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the Content Specialty Tests (CSTs) results to be released by the Department without penalizing the certificate holders.

The CST's are currently being revised. The first group of revised CST's became operational in September 2014. However, the results/scores on the revised CST's will not be released to teacher candidates until the standard setting process is complete.

Since the CST results have not being released to candidates, there are certificate holders that could lose their certification as of January 31, 2015 if their certificates are not extended by the Department. This will result in some teachers being terminated from employment as they will no longer hold a valid certificate.

The proposed amendment is necessary to ensure that teachers who have taken one of the revised CST administered on or after September 2014 that is required for their certificate title but have not received a score from the Department on their revised CST, receive a time extension of up to one year on their expired certificate to ensure that they do not lose their certification and/or employment.

The proposed amendment does not require any professional services to comply.

3. COSTS:

The proposed amendment does not impose any costs on entities in rural areas, but merely provides for a time extension of up to one-year for an

expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the CSTs results to be released by the Department without penalizing the certificate holders.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on entities in rural areas, but merely provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the CSTs results to be released by the Department without penalizing the certificate holders. The proposed amendment is necessary to ensure that teachers who have taken one of the revised CST administered on or after September 2014 that is required for their certificate title but have not received a score from the Department on their revised CST, receive a time extension of up to one year on their expired certificate to ensure that they do not lose their certification and/or employment. The State Education Department does not believe any changes for certificate holders who live or work in rural areas is warranted because uniform standards for certification are necessary across the State.

5. RURAL AREA PARTICIPATION:

The State Education Department has sent the proposed amendment to the Rural Advisory Committee, which has members who live or work in rural areas across the State.

Job Impact Statement

The proposed amendment relates to teacher certification, and provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate in order to provide time for the revised Content Specialty Tests (CSTs) results to be released by the Department without penalizing the certificate holder.

The CST's are currently being revised. The first group of revised CST's became operational in September 2014. However, the results/scores on the revised CST's will not be released to teacher candidates until the standard setting process is complete.

Since the CST results have not been released to candidates, there are certificate holders that could lose their certification as of January 31, 2015 if their certificates are not extended by the Department. This will result in some teachers being terminated from employment as they will no longer hold a valid certificate.

In an effort to resolve this issue, the proposed amendment provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the exam results to be released by the Department without penalizing the certificate holder.

Because it is evident from the nature of the proposed amendment that it will have no impact on the number of jobs or employment opportunities in New York State, 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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Emerald Ash Borer Quarantine

I.D. No. ENV-21-15-00010-P

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

Proposed Action: Addition of section 192.7 to Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), (d), 3-0301(1)(b), (d), (2)(m), 9-0105(1), (3) and 9-1303

Subject: Emerald Ash Borer Quarantine.

Purpose: To restrict EAB to 14 restricted zones where infestations exist.

Substance of proposed rule (Full text is posted at the following State website: www.dec.ny.gov): Section 192.7(a) sets forth the purpose, scope and applicability of this section.

Section 192.7(b) sets forth the definitions used in this section.

Section 192.7(c) sets forth the process for establishing the current quarantine map. The map, promulgated in regulation by the New York State Department of Agriculture and Markets (NYSDAM), in Part 141 of Title 1 of NYCRR, identifies the 14 restricted zones which are infested

with the Emerald Ash Borer (EAB). This section also provides that any amendment to the map shall be made by regulation.

Section 192.7(d) governs the movement of regulated articles within restricted zones. It generally provides that any ash material or wood material that is commingled and otherwise indistinguishable from ash material may be moved within a restricted zone for processing, treatment, use or disposal. This includes EAB-infested material.

Section 192.7(e) governs restrictions on movement of regulated articles originating within or traveling through restricted zones. This section generally prohibits the movement of ash nursery stock year round and chips between April 15th and May 15th. This section permits the movement of regulated articles accompanied by a valid certificate of inspection, limited permit, both from NYSDAM, administrative instructions by the Commissioner of NYSDAM, or those being moved for experimental or scientific purposes. Section 192.7(e) also provides that regulated articles from outside a restricted zone may be moved through the restricted zone to a point outside that zone, as long as the origin and destination of the articles are on a waybill and the articles are moved without stopping except for traffic conditions or refueling.

Section 192.7(f) governs compliance agreements. This section generally provides that persons engaged in growing, handling or moving regulated articles intrastate may apply to NYSDAM for a compliance agreement, subject to NYSDAM approval. Any person who enters into a compliance agreement must agree to comply with this section and NYSDAM regulation, Part 141 of Title 1 NYCRR and any condition in the agreement. Any compliance agreement may be cancelled either orally or in writing, whenever an inspector determines that the person holding the compliance agreement has not complied with this section or NYSDAM regulation, Part 141 of Title 1 NYCRR or the conditions in the agreement.

Section 192.7(g) governs certificates of inspection and limited permits. An inspector may issue a certificate of inspection for the movement of regulated articles outside restricted zones, provided that the article is apparently free of EAB; has been grown, produced, manufactured, treated, stored or handled in a manner that prevents the regulated article from presenting a risk of spreading EAB; and is eligible for unrestricted movement under all other state plant quarantines and regulations. If the regulated articles are not eligible for a certificate of inspection, an inspector may issue a limited permit for movement of the articles, provided the articles are being moved to a specified destination for specific processing, handling or utilization, and the movement will not result in the spread of EAB since EAB will be destroyed by the specific processing, handling or utilization. Any certificate of inspection or limited permit may be cancelled either orally or in writing, whenever an inspector determines that the person holding the certificate or permit has not complied with this section or NYSDAM regulation, Part 141 of Title 1 NYCRR.

Section 192.7(h) provides that regulated articles may be moved intrastate for experimental or scientific purposes on conditions and safeguards as may be prescribed in writing by NYSDAM. The container carrying the articles shall bear an identifying tag issued by NYSDAM showing compliance with such conditions.

Section 192.7(i) governs marking requirements. It generally provides that every container of regulated articles intended for intrastate movement shall be marked with the names and addresses of the consignor and consignee. A valid certificate of inspection or limited permit shall also be attached to the container.

Section 192.7(j) governs the assembly of regulated articles for inspection. This section generally requires that persons intending to move regulated articles intrastate shall apply for certification as far in advance as possible and assemble regulated articles at such points and in such manner as the inspector shall designate. This section also provides that the Department and/or NYSDAM will not be responsible for any cost incident to the inspection other than for the services of the inspector.

Section 192.7(k) governs the inspection and disposition of shipments. It generally provides that any vehicle, container and any item to be moved, which is moving or which has been moved intrastate from a restricted zone, and may contain regulated articles or infestations of EAB, may be examined by a DEC official or an inspector. It also provides that when regulated articles are found to be moving or have been moved in violation of these regulations, a DEC official or an inspector may take such action deemed necessary to eliminate the danger of the spread of EAB. Infested articles must be rendered free of infestation at no cost to the state.

Section 192.7(l) provides that no provision of section 192.7 relieves any person from the obligation of complying with any other applicable federal, state or local law or regulation.

Section 192.7(m) sets forth the effective date of the regulation. The rule becomes effective in a particular county on and after the tenth day from the filing of a certified copy in the office of the clerk of that county.

Text of proposed rule and any required statements and analyses may be obtained from: Bruce Williamson, Chief Bureau of Private Land Services, NYS Department of Environmental Conservation, 625 Broadway,

Albany, NY 12233-4253, (518) 402-9425, email: bruce.williamson@dec.ny.gov

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: Short EAF/Determination of non-significance.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) section 1-0101 (3) (b) directs the Department of Environmental Conservation (“Department”) to guarantee “that the widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintentional consequences.” ECL section 1-0101 (3) (d) directs the Department to preserve the unique qualities of the Adirondack Forest Preserve. ECL section 3-0301 (1) (b) gives the Department the responsibility to “promote and coordinate management of...land resources to assure their protection... and take into account the cumulative impact upon all such resources in... promulgating any impact upon all such resources... in promulgating any rule or regulation.” ECL section 3-0301 (1) (d) authorizes the Department to “exercise care, custody and control” of forest preserve lands; ECL section 9-0105(1) authorizes the Department to “exercise care, custody and control of the several preserves, parks and other state lands described” in ECL Article 9; ECL section 3-0301 (2) (m) authorizes the Department to adopt rules and regulations “as may be necessary, convenient or desirable to effectuate the purposes of the ECL”; and ECL 9-0105 (3) authorizes DEC to “make necessary rules and regulations to secure proper enforcement of ECL Article 9.”

ECL section 9-1303 grants the following authority for the purpose of control and preventing the spread of forest insects and forest tree diseases: to enter into cooperative agreements; to accept and expend gifts of money for control and prevention work; to conduct necessary investigations to discover better methods of control or prevention of the spread of forest insects and forest tree diseases; to enter upon any lands for the purpose of determining if such property is infested with forest insects or forest tree diseases; to establish quarantine districts in the State; to prohibit the movement of materials which may be harboring forest insects or forest tree diseases in any of their different forms; to poison forest areas in or near sections infested by insect pests or forest tree diseases; to establish zones for preventing the spread of forest insect and disease pests and make modifications in the composition of the forest growth as deemed necessary, including spraying, cutting, destroying or treating vegetation; and to make rules and regulations to prevent the spread of or to control forest insects and forest tree diseases, their pupae, eggs and caterpillars, and plants or trees infested by them.

2. Legislative objectives:

These regulations are consistent with the public policy objectives the Legislature sought to advance when enacting the statutory authority, preventing the spread within the State of an injurious insect and protecting trees, forests and the environment from harm or degradation.

3. Needs and benefits:

At present, 44 counties and portions of four others are under an EAB quarantine. This regulation replaces a DEC Emerald Ash Borer, *Agrilus planipennis* (EAB) quarantine order and replaces it with a new section 192.7, in parallel with the New York State Department of Agriculture and Markets (NYSDAM) repealing its existing Part 141 of Title 1 NYCRR and replacing it with a new Part 141, as an emergency and Proposed rulemaking, which, among other things, replaces the quarantines in the counties with 14 restricted zones. These restricted zones have been shown to be infested with EAB through survey and trapping or lie substantially within a 5 mile protective buffer zone around known infestations.

EAB, is a destructive wood-boring insect that is not indigenous to the United States. EAB causes serious damage to healthy ash trees by boring through their bark, which ultimately results in the death of the tree within two years.

Ash trees, ash nursery stock, and material from ash trees like logs, green lumber, firewood, stumps, roots, branches and debris 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*). The movement of these materials poses a serious threat to susceptible ash trees in forests as well as in the urban landscape throughout the state.

EAB was first discovered in Michigan in June 2002, and has since spread to at least 15 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. A quarantine of both counties was established pursuant to federal protocols for control of EAB.

Further detections were confirmed in six other counties (Monroe, Genesee, Livingston, Steuben, Greene and Ulster) during July and August, 2010. Due to the patchwork nature of these detections, limited detection capabilities and stakeholder input, the EAB quarantine was extended to the following 10 counties in western New York: Niagara, Erie, Orleans, Wyoming, Allegany, Wayne, Ontario, Yates, Schuyler and Chemung. A new quarantine region was also established in eastern New York comprised of Greene and Ulster Counties.

In 2011, there were multiple new detections within the Western New York quarantine area. New detections of EAB in Albany and Orange Counties demonstrated further spread of EAB within the Eastern New York quarantine area and prompted the extension of the quarantine to include those counties.

In 2013, the two quarantine zones were combined by adding the counties of Broome, Cayuga, Chenango, Columbia, Cortland, Delaware, Dutchess, Otsego, Putnam, Rensselaer, Schenectady, Schoharie, Seneca, Sullivan, Tioga and Tompkins as well as portions of Fulton, Herkimer, Madison, Montgomery, Oneida and Onondaga.

In 2014, based upon new findings of EAB, the quarantine was extended to include all of Onondaga and Madison Counties.

Based upon ongoing surveys, it has been determined that all of the counties currently under quarantine are not infested with EAB; instead, there are 14 areas in the state which are infested with the pest. Under the rule, these have been designated restricted zones.

The 14 restricted zones established under this rule are located in and around the following municipalities or areas: Albany-Rensselaer; Bath; Binghamton; Buffalo; Livingstonville; Mid-Hudson; Montezuma; Nichols; Randolph; Rochester; Sheridan; Syracuse; Unadilla; and West Point. Each restricted zone consists of a core area, which is the location of an EAB infestation, and a buffer area, which surrounds the core area and extends a distance of five miles. If the core or buffer area encompasses 30-percent or more of a municipality, the entire municipality will be included within the restricted zone.

The rule allows for the movement of regulated articles within a restricted area and controls the intrastate movement of regulated articles to other locations in the state outside of the restricted zones. The rule does not regulate the interstate movement of regulated articles, since this movement is regulated by federal laws and regulations. Regulated articles that may be moved intrastate outside of a restricted area, require a valid certificate of inspection, limited permit or administrative instructions from the Commissioner of NYSDAM. The administrative instructions from the Commissioner of NYSDAM would be used in cases where the regulated articles would not be moved pursuant to Certificate of inspection or limited permit. An example would be the removal of storm debris. The administrative instructions would be expedient and would alleviate a regulatory burden by eliminating the need to apply for a certificate or permit.

Movement is allowed for experimental and scientific purposes on such conditions and under such safeguards as may be prescribed in writing by NYSDAM. This means that NYSDAM would provide conditions for movement to ensure that the pest does not escape in transit and that it will be properly contained and disposed of at the destination. Permits from the United States Department of Agriculture may also be required if the insect is moved interstate.

Persons engaged in growing, handling or moving regulated articles intrastate may apply for a compliance agreement for the restricted movement of regulated articles. The holder of a compliance agreement is authorized to issue certificates of inspection or limited permits for the one-time movement of regulated articles without a NYSDAM inspection prior to such movement.

The benefits offered by the regulations are the more effective control of the spread of EAB with the reduction of regulation of movement of ash wood from areas where there is no EAB infestation. The immediate adoption of this rule is necessary to mitigate negative economic and ecological impacts that have resulted from the current configuration of the quarantine.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: It is anticipated that costs will be minimal. There are 346 registered nursery growers and 514 registered plant dealers in the new restricted zones. However, only a fraction of these regulated parties carry regulated articles. There is no approved protocol eliminating EAB from ash nursery stock that does not kill the nursery stock; and EAB infestation has significantly reduced or eliminated the market for ash nursery stock as ornamental, street and park plantings. The new rule, by decreasing the geographical scope of the areas subject to quarantine, imposes less regulation and fewer costs on regulated parties.

Tree removal services would have the option of leaving regulated articles within the restricted zone, chipping the material, or transporting them outside of the restricted zone under a certificate of inspection or limited permit for specific processing, handling, or utilization.

(b) Costs to the agency, the state and local governments for the

implementation and continuation of the rule: The only costs to the Department are for outreach and enforcement, neither of which will change from the current situation under our existing EAB quarantine order. Some local governments may face expenses in tree maintenance or removal due to EAB infestation, since ash trees have become popular trees to use to line streets. However, those costs will occur with or without this rule, most likely sooner without. The regulation does not require local governments to remove the trees from the restricted zones. Accordingly, local governments within a restricted zone will not incur any additional expenses.

(c) The information, including the sources of such information and the methodology upon which the cost analysis is based: The costs analysis set forth above is based upon observations of the industry.

5. Local government mandates:

This new section 6 NYCRR 192.7 will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district or fire district, or other special district.

6. Paperwork:

Regulated articles inspected and certified to be free of EAB moving from a restricted zone established by the rule will have to be accompanied by a state or federal certificate of inspection or a limited permit.

7. Duplication:

The New York State Department of Agriculture and Markets (NYSDAM) has implemented a regulation parallel to this one, under their overlapping authorities.

8. Alternatives:

The alternative of no action was considered. However, this option is not feasible, given the fact that many of the counties presently under quarantine are not infested, and the modification of the quarantine could reduce regulatory burden and better target infested areas of the State. The Department considered but rejected the option of establishing an entire state quarantine because this approach could place the State's forest, urban and agricultural resources at risk from the spread of EAB that could result from the unrestricted movement of ash materials. In light of these factors, there does not appear to be any viable alternative to the establishment of restricted zones as set forth in this rule.

9. Federal standards:

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

10. Compliance schedule:

This rule shall become effective in a particular county on and after the tenth day from the filing of a certified copy in the office of the clerk of that county.

Regulatory Flexibility Analysis

1. Effect of rule:

It is anticipated that the modification of the Department of Environmental Conservation's (DEC's) regulatory approach on those handling ash wood, regardless of their size, should have minimal adverse impact on regulated parties. The Emerald Ash Borer (EAB) infestation and current federal and state quarantines have already significantly changed business practices and patterns with respect to regulated articles. Conversely, some of the changes proposed, particularly regarding movement of regulated articles within restricted zones, will benefit many parties handling ash material.

Arborists, tree care companies, utilities, municipalities and homeowners would have the option of freely moving regulated articles within the restricted zones for use, treatment or disposal, chipping the material or transporting the articles outside the restricted zones during the non-flight season, to a facility for use, treatment or disposal under a New York State Department of Agriculture and Markets (NYSDAM) compliance agreement or limited permit.

The greatest economic impact of EAB would continue to be on municipalities within the restricted zones (infested areas), as they deal with the costs to manage the impacts of this pest through assessments of existing ash inventories, tree removals, protective chemical treatments and eventual replacement of lost community trees. However, the modifications of the EAB regulations would not alter that impact.

2. Compliance requirements:

All parties in the restricted zones would be required to obtain certificates of inspection and limited permits from NYSDAM (or enter into compliance agreements with NYSDAM) to ship regulated articles (e.g. treated firewood and ash logs or lumber) outside those areas.

As there is no approved protocol to diagnose or treat nursery stock (since approved methods of eliminating EAB would kill the plants), movement of ash nursery stock outside a restricted zone is prohibited.

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

3. Professional services:

Those shipping regulated articles from restricted zones (without having a compliance agreement with NYSDAM) would require professional inspection services provided by NYSDAM, the Department of Environ-

mental Conservation (DEC) or the United States Department of Agriculture Animal Plant Health Inspection Service (USDA APHIS).

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

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:

Regulated parties exporting regulated articles, exclusive of nursery stock, from the restricted zones, other than pursuant to compliance agreements, would require an inspection of the materials, reviewing shipment records and issuing a federal or state certificate of inspection. These services are available from NYSDAM at a rate of \$25 per hour. Most inspections will take one hour or less. However, most shipments would be made pursuant to compliance agreements, for which there is no charge.

Tree removal services would have the option to leave ash materials within the restricted zones or transport them outside of the zones 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 restricted zones.

5. Economic and technological feasibility:

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 outside restricted zones would require an inspection and the issuance of a certificate of inspection. The majority of shipments would be made pursuant to compliance agreements, which would not require independent inspection.

6. Minimizing adverse impact:

DEC and NYSDAM have designed their parallel rules to minimize adverse economic impact on small businesses and local governments. By limiting the EAB quarantine to areas where infestations exist, the rules minimize economic impacts while maintaining, without compromising, efforts to slow the spread of EAB.

Approaches for minimizing adverse economic impact required by section 202-a(1) of the State Administrative Procedure Act (SAPA) and suggested by section 202-b(1) of SAPA were considered. DEC has sought to minimize adverse impact of the EAB quarantine by continuing the use of compliance agreements between NYSDAM and regulated parties, agreements which permit the shipment of regulated articles without state or federal inspection and for which there is no charge. Given all of the facts and circumstances, the regulations minimize adverse economic impact as much as is currently possible.

7. Small business and local government participation:

Movement of firewood continues to present a serious threat to spread EAB and other invasive insects. State and federal entities are continuing aggressive outreach efforts in promoting the message "don't move firewood."

DEC is and will continue to keep stakeholder groups informed concerning this rule. On March 6, 2015, a stakeholders meeting was held in NYSDAM's Albany Offices. Approximately 30 regulated parties attended and expressed support for the rule.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

It is anticipated that the modification of the Department's regulatory approach on those handling ash wood, regardless of their size, should have minimal adverse impact on regulated parties. The emerald ash borer (EAB) infestation and current federal and state quarantines have already significantly changed business practices and patterns with respect to regulated articles. Conversely, some of the changes proposed, particularly regarding movement of regulated articles within restricted zones, will benefit many parties handling ash material.

Arborists, tree care companies, utilities, municipalities and homeowners would have the option of leaving regulated articles within the restricted zones, chipping the material or transporting the articles outside the restricted zones to a disposal site for processing under a New York State Department of Agriculture and Markets (NYSDAM) compliance agreement or limited permit.

The greatest economic impact of EAB regulation would continue to be on municipalities within the restricted zones (infested areas), including those in rural areas, as they deal with the costs to manage the effect of this pest through assessments of existing ash inventories, tree removals, protective chemical treatments and eventual replacement of lost community trees. However, the modifications of the EAB regulations would not alter that impact.

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

All parties in the restricted zones, including those in rural areas, would be required to obtain certificates of inspection and limited permits from

NYSDAM (or enter into compliance agreements with NYSDAM) to ship regulated articles (e.g. treated firewood and ash logs and lumber) outside those areas.

As there is no approved protocol to diagnose or treat nursery stock (since approved methods of eliminating EAB would kill the plants), movement of ash nursery stock outside a restricted zone is prohibited.

It is not anticipated that local governments, including those in rural areas, would be involved in the shipment of regulated articles from the restricted zones.

Those in rural areas shipping regulated articles from restricted zones (without having a compliance agreement with NYSDAM) would require professional inspection services provided by NYSDAM, the Department of Environmental Conservation (DEC) or the United States Department of Agriculture Animal Plant Health Inspection Service (USDA APHIS).

It is not anticipated that local governments in rural areas would be involved in the shipment of regulated articles from the restricted zones.

3. Costs:

Regulated parties in rural areas exporting regulated articles, exclusive of nursery stock, from the restricted zones, other than pursuant to compliance agreements, would require an inspection of the materials, taking and analyzing soil samples, reviewing shipment records and issuing a federal or state certificate of inspection. These services are available from NYSDAM at a rate of \$25 per hour. Most inspections will take one hour or less. However, most shipments would be made pursuant to compliance agreements, for which there is no charge.

Tree removal services in rural areas would have the option to leave ash materials within the restricted zones or transport them outside of the zones under a limited permit from NYSDAM to a disposal site for processing.

It is not anticipated that local governments in rural areas would be involved in the shipment of regulated articles from the restricted zones.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the Department has designed the rule to minimize adverse economic impact on small businesses and local governments in rural areas. By limiting the EAB quarantine to areas where infestations exist, the rule minimizes economic impacts while maintaining, without compromising, efforts to slow the spread of EAB.

Approaches for minimizing adverse economic impact were considered. The Department and NYSDAM have sought to minimize adverse impact of the EAB quarantine by continuing the use of compliance agreements between NYSDAM and regulated parties in rural areas, compliance agreements which permit the shipment of regulated articles without state or federal inspection and for which there is no charge. Given all of the facts and circumstances, the regulations minimize adverse economic impact as much as is currently possible.

5. Rural area participation:

Movement of firewood continues to present a serious threat to spread EAB and other invasive insects. State and federal entities are continuing aggressive outreach efforts in promoting the message "don't move firewood."

The Department and NYSDAM are and will continue to keep stakeholder groups informed concerning this rule. On March 6, 2015, a stakeholders meeting was held in NYSDAM's Albany Offices. Approximately 30 regulated parties attended and expressed support for the rule.

Job Impact Statement

The forest-based economy generates payrolls of more than \$2 billion. 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.

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 the State's forests. The unchecked spread of the infestation would have substantial 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.

The modifications of the Department's EAB regulations will: (1) target areas of infestation with greater precision, (2) more effectively slow the spread of the infestation; and, (3) at the same time, ease the regulatory burden on entities in areas where there is no current EAB infestation. Accordingly, the new regulations will not have a substantial adverse impact on jobs or employment opportunities; and will better protect jobs and employment opportunities in the wood-based forest economy.

Department of Labor

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Methods of Payment of Wages

I.D. No. LAB-21-15-00009-P

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

Proposed Action: Addition of Part 192 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 21 and 199

Subject: Methods of Payment of Wages.

Purpose: This regulation provides clarification and specification as to the permissible methods of payment, including payroll debit cards.

Text of proposed rule: Part 192 Methods of Payment of Wages

Subpart-1 General Provisions

§ 192-1.1 Permissible Methods of Payment

Employees may be paid wages by employers using the following permissible methods:

- (a) Cash;
- (b) Check;
- (c) Direct Deposit; or
- (d) Payroll Debit Card.

§ 192-1.2 Definitions

For the purposes of this part:

(a) *Payroll Debit Card shall mean a card that provides access to an account with a financial institution established directly or indirectly by the employer, and to which transfers of the employee's wages are made on an isolated or recurring basis.*

(b) *Consent shall mean an express, advance, written authorization given voluntarily by the employee and only given following receipt by the employee of written notice of all terms and conditions of the payment. Consent may be withdrawn at any time, provided however, that the employer shall be given a reasonable period of time to finalize such change.*

(c) *No Cost shall mean that an employee can access his or her wages, in full, without encumbrances, costs, charges, or fees.*

(d) *Local Access shall mean that the employee is provided with access to his or her wages, at a facility or machine which is located within a reasonable travel distance to the employee's work location or home.*

(e) *Employee shall be as it is defined in Section 190 of the Labor Law and shall not include any person employed in a bona fide executive, administrative, or professional capacity whose earnings are in excess of nine hundred dollars a week, or an employee working on a farm not connected with a factory.*

(f) *Direct Deposit shall mean the transfer of wages into an account, of the employee's choosing, of a financial institution.*

(g) *Reasonable Intervals shall mean not less frequently than annually.*

(h) *Negotiable instrument shall be as it is defined in Section 3-104 of the New York State Uniform Commercial Code.*

Subpart-2 Methods of Payment

§ 192-2.1 Payment of Wages by Check

When paying wages by check, an employer shall ensure that:

(a) *The check is a negotiable instrument;*
 (b) *There is at least one means of no-cost local access to the full amount of wages through check cashing or deposit of check at a financial institution or other establishment reasonably accessible to the employee's place of employment; and*

(c) *The employer does not impose any fees in connection with the use of checks for the payment of wages, including a fee for replacement of a lost or stolen check.*

§ 192-2.2 Payment of Wages by Direct Deposit

When paying wages by direct deposit, an employer shall ensure that:

(a) *It has consent from the employee;*
 (b) *A copy of the employee's consent must be maintained by the employer during the period of the employee's employment and for six years following the last payment of wages by direct deposit. A copy of the employee's written consent must be provided to the employee; and*

(c) *Such direct deposit is made to a financial institution selected by the employee.*

§ 192-2.3 Payment of Wages by Payroll Debit Card

(a) *When paying wages by payroll debit card, an employer shall ensure that:*

- (1) It has consent from the employee;
- (2) It provides the following information at least seven business days prior to seeking consent to issue wages by payroll debit card. This information shall be provided by the employer in writing, in the employee's primary language or in a language that the employee understands and in at least 12 point font:
- (i) a plain language description of all of the employee's options for receiving wages;
 - (ii) a statement that the employer may not require the employee to accept wages by payroll debit card or by direct deposit;
 - (iii) a statement that the employee may not be charged any fees for services that are necessary for the employee to access his or her wages in full; and
 - (iv) a list of locations where employees can access and withdraw wages at no charge to the employees within reasonable proximity to their place of residence and place of work.
- (3) It obtains the employee's informed consent without intimidation, coercion, or fear of adverse action by the employer for refusal to accept the payroll debit card or payroll debit card account; and
- (4) Does not make participation in the payroll debit card program a condition of hire or of continued employment.
- (b) An employer shall not deliver payment of wages by payroll debit card unless each of the following is provided:
- (1) At least one network of automated teller machines that offers withdrawals at no cost to the employee;
 - (2) At least one method to withdraw up to the total amount of wages for each pay period or balance remaining on the payroll debit card without the employee incurring a fee;
 - (3) Upon the employee's written or oral request, the following statements must be provided either electronically or on paper:
 - (i) a periodic statement not less frequently than monthly; or if there is a balance but no activity with respect to the payroll debit card, not less frequently than every three months;
 - (ii) a transaction history covering at least 12 months preceding the request, which shall include all transactions, including deposits, withdrawals, fees charged or other transactions by any entity from or to the employee's payroll debit card account; and
 - (iii) electronic balance notifications on a per day or per transaction basis.
 - (4) An annual electronic or paper notice of the right to obtain a transaction history, annual statement, or periodic statement on request.
- (c) An employers or agent shall not charge, directly or indirectly, an employee a fee for any of the following:
- (1) Application, initiation, loading, participation or other action necessary to receive wages or to hold the payroll debit card;
 - (2) Point of sale transactions, declined transactions, and other transactions;
 - (3) Overdraft, shortage, or low balance status;
 - (4) Account inactivity;
 - (5) Maintenance;
 - (6) Telephone or online customer service;
 - (7) Accessing balance or other account information online, by Interactive Voice Response through any other automated system offered in conjunction with the payroll debit card, or at any ATM in network made available to the employee;
 - (8) Providing the employee with written statements, transaction histories or the issuer's policies;
 - (9) Replacing the payroll debit card at reasonable intervals;
 - (10) Closing an account or issuing payment of the remaining balance by check or other means; or
 - (11) Any fee not explicitly identified by type and by dollar amount in the contract between the employer and the issuer or in the terms and conditions of the payroll debit card provided to the employee.
- (d) An employer or its agent shall not deliver payment of wages by payroll debit card account that is linked to any form of credit, including a loan against future pay or a cash advance on future pay. Nothing in this subsection shall prohibit an issuer from covering an occasional inadvertent overdraft transaction if there is no charge to the employee.
- (e) An employer shall not pass on any of its own costs associated with a payroll debit card account to an employee, nor may an employer receive any kickback or other financial remuneration from the issuer, card sponsor, or any third party for delivering wages by payroll debit card.
- (f) An employer or its agent shall not deliver payment of wages by payroll debit card unless the agreement between the employer and issuer requires that the funds on a payroll debit card shall not expire. Notwithstanding this requirement, the agreement may provide that the account may be closed for inactivity provided that the issuer gives reasonable notice to the employee and that the remaining funds are refunded within seven days.
- (g) An employer or its agent shall not deliver payment of wages by

payroll debit card unless the agreement between the employer and issuer requires that, if the employee reports the payroll debit card as lost or stolen or reports fraudulent activity on the payroll debit card, the issuer must stop all card activity, conduct a reasonable investigation within 10 days, and re-credit or reimburse any fraudulent or unauthorized transactions within one business day of the conclusion of the investigation.

(h) At least thirty days before any change in the terms and conditions of a payroll debit card takes effect, an employer must provide written notice in plain language, in the employee's primary language or in a language the employee understands, and in at least 12-point font of any change to the terms or conditions of the payroll debit card account including any changes in the itemized list of fees. If the issuer charges the employee any new or increased fee before thirty days after the date the employer has provided the employee with written notice of the change in accordance with the provisions of this subsection, the employer must reimburse the employee for the amount of that fee.

(i) An employer and an issuer each shall not engage in unfair, deceptive or abusive practices in relation to the payment of wages by payroll debit card. No employer or his agent, or the officer or agent of any corporation, shall discharge, penalize or in any other manner discriminate against any employee because such employee has not consented to receive his or her wages by payroll debit card.

(j) Where an employee is covered by a valid collective bargaining agreement that expressly provides the method or methods by which wages may be paid to employees, an employer must also have the approval of the union before paying by payroll card.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Paglialonga, NYS Department of Labor, Building 12, State Office Campus, Room 509, Albany, NY 12240, (518) 457-4380, email: regulations@labor.ny.gov

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

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

Regulatory Impact Statement

Statutory Authority: Labor Law §§ 21(11) and § 199.

Legislative Objectives: Sections 21(11) and 199 of the Labor Law provide the Commissioner with the authority to adopt regulations to carry out the provisions of the Labor Law. Article 6 of the Labor Law governs the payment of wages, and sets forth general provisions regarding such. This regulation provides clarification and specification as to the permissible methods of payment, including payroll debit cards, that employers can use to pay employees wages in conformity with Article 6 of the Labor Law.

Needs and Benefits: This regulation provides clarity to the permissible methods of wage payment, which both employees and employers have expressed interest in recent years. This rulemaking provides clear rules governing the payment of wages via payroll debit cards, a method of payment that was not specifically addressed in anything other than Departmental guidance document.

Costs: The Department estimates that there will be no direct costs to the regulated community to implement this rulemaking. Employers may realize significant cost savings through the availability of the use of payroll debit cards, over checks, while maintaining the legislative objectives of Article 6 of the Labor Law. The Department does not anticipate any significant increased costs as a result of this rulemaking.

Local Government Mandate: This rulemaking does not impose any mandate upon local governments or municipalities as they are excluded from the coverage of this rule.

Paperwork: This rulemaking does not impact any governmental reporting requirements currently required in either statute or regulation. Employers paying employees via payroll debit card will be required to provide employees with notices, either paper or electronic, of the terms conditions on the use of such cards. Employers will also be required to maintain a copy of written authorizations or consents received by employees for six years, consistent with the recordkeeping requirements in Article 6 of the Labor Law.

Duplication: This rulemaking does not duplicate, overlap or conflict with any other State or federal requirements.

Alternatives: There were no significant alternatives considered. The Department is seeking to provide clarity to the regulated community in relation to the payment of wages, and to codify the existing interpretations of the requirements of Article 6 of the Labor Law into regulation.

Federal Standards: This rulemaking is unrelated to any Federal rule or standard.

Compliance Schedule: This rulemaking shall become effective upon publication of its adoption in the State Register.

Regulatory Flexibility Analysis

Effect of Rule: This regulation provides clarification and specification as to the permissible methods of payment, including payroll debit cards,

that employers can use to pay employees wages in conformity with Article 6 of the Labor Law.

Compliance Requirements: Small businesses and local governments will not have to undertake any new reporting, recordkeeping, or other affirmative act in order to comply with this rulemaking.

Professional Services: No professional services would be required to effectuate the purposes of this rulemaking.

Compliance Costs: Small businesses and local governments will not incur costs to comply with this rulemaking.

Economic and Technological Feasibility: The rulemaking does not require any use of technology to comply.

Minimizing Adverse Impact: The Department does not anticipate that this rulemaking will adversely impact small businesses or local government. Since no adverse impact to small business or local government will be realized, it was unnecessary for the Department to consider approaches for minimizing adverse economic impacts as suggested in SAPA § 202-b(1).

Small Business and Local Government Participation: The Department will ensure that small businesses and local governments will have an opportunity to participate in the rule-making process. The Department will elicit input from small businesses and local governments during the public comment period.

Initial review of the rule pursuant to SAPA § 207: Initial review of this rulemaking shall occur no later than the third calendar year in which it is adopted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The Department of Labor (hereinafter "Department") anticipates that the adoption of this rulemaking will have a positive or neutral impact upon all areas of the state; there is no adverse impact anticipated upon any rural area of the state resulting from adoption of this rulemaking.

2. Reporting, recordkeeping and other compliance requirements: This rulemaking does not impact any governmental reporting requirements currently required in either statute or regulation. Employers paying employees via payroll debit card will be required to provide employees with notices, either paper or electronic, of the terms conditions on the use of such cards. Employers will also be required to maintain a copy of written authorizations or consents received by employees for six years, consistent with the recordkeeping requirements in Article 6 of the Labor Law.

3. Professional services: No professional services will be required to comply with this rule.

4. Costs: The Department estimates that there will be no direct costs to the regulated community to implement this rulemaking. Employers may realize significant cost savings through the availability of the use of payroll debit cards, over checks, while maintaining the legislative objectives of Article 6 of the Labor Law. The Department does not anticipate any significant increased costs as a result of this rulemaking.

5. Minimizing adverse impact: The Department does not anticipate that the adopted changes will have an adverse impact upon any region of the state. As such, different requirements for rural areas were not necessary.

6. Rural area participation: The Department has ensured that employers from all regions of the state, including rural areas, will have an opportunity to participate in the rule-making process. The Department will elicit input from members of the regulated community in rural areas during the public comment period.

Job Impact Statement

Nature of impact: The Department of Labor (hereinafter "Department") projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this proposed rulemaking. This rulemaking codifies the long standing requirements and rules for the payment of wages by cash, check, and direct deposit, and sets forth requirements applicable for the payment of wages via payroll debit card.

Categories and numbers affected: The Department does not anticipate that this rulemaking will have an adverse impact on jobs or employment opportunities in any category of employment.

Regions of adverse impact: The Department does not anticipate that adoption of this rulemaking an adverse impact upon jobs or employment opportunities statewide or in any particular region of the state.

Minimizing adverse impact: Since the Department does not anticipate any adverse impact upon jobs or employment opportunities resulting from these fees being eliminated, no measures to minimize any unnecessary adverse impact on existing jobs or to promote the development of new employment opportunities are required.

Self-employment opportunities: The Department does not foresee a measureable impact upon opportunities for self-employment resulting from adoption of this rulemaking.

Initial review of the rule pursuant to SAPA § 207: Initial review of this rulemaking shall occur no later than the third calendar year in which it is adopted.

Department of Motor Vehicles

NOTICE OF ADOPTION

Physician Assistants Performing Medical Review After Loss of Consciousness

I.D. No. MTV-12-15-00009-A

Filing No. 363

Filing Date: 2015-05-12

Effective Date: 2015-05-27

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

Action taken: Amendment of sections 9.1, 9.3, 9.4 and 9.5 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 502(1) and 510(3)(b)

Subject: Physician assistants performing medical review after loss of consciousness.

Purpose: To allow physician assistants to perform a medical review after a loss of consciousness.

Text or summary was published in the March 25, 2015 issue of the Register, I.D. No. MTV-12-15-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Insurance ID Cards

I.D. No. MTV-21-15-00002-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 32.5 and 32.10 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 311(10), 312(1), (4), (5), 319(3) and 370(1)

Subject: Insurance ID cards.

Purpose: To accept insurance ID cards for up to 180 days from effective date for part of the vehicle registration process.

Text of proposed rule: Paragraph (11) of subdivision (c) of section 32.5 is amended to read as follows:

(11) The effective date is more than [45] 180 days prior to the date of registration or the issuance of a temporary 45-day registration.

Paragraph (1) of subdivision (c) of section 32.10 is amended to read as follows:

(1) DMV developed software. The DMV stand-alone software requires a Windows operating system, an ink-jet or laser printer (desktop or network printing at a minimum of 300 dpi), a modem (28.8 minimum speed) and at least temporary access to the Internet along with an e-mail address. The modem and Internet requirements are only for initial download, set-up, and to receive any future updates. Upon the request of a New York State Department of Financial Services licensed agent, broker, agency or insurance company [NYSID] the New York State Department of Financial Services shall distribute the DMV software to its licensees in accordance with procedures established by the New York State Department of Financial Services.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Christine Legorius, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: christine.legorius@dmv.ny.gov

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

Consensus Rule Making Determination

Vehicle and Traffic Law Section 312(1) provides that no motor vehicle shall be registered in this state unless the registration application is accompanied by proof of financial security. Under Vehicle and Traffic Law Section 311(3), "proof of financial security" is evidenced by an owner's policy of liability insurance, a financial security bond, a financial security deposit, or qualifications as a self-insurer in accordance with the Vehicle and Traffic Law or under the self-insurance provisions of the jurisdiction of a non-resident. Proof of financial security is also required under Vehicle and Traffic Law 370(1) relative to for-hire vehicles.

Under Vehicle and Traffic Law Section 311(10), an "insurance identification card", in relevant part, is defined as a card issued by or on behalf of an insurance company or bonding company stating that such company has issued an owner's policy of liability insurance or a financial security bond on the designated vehicle(s). Under Part 32 of the Commissioner's Regulations, an insurance certificate is defined in section 32.3(k) as a type of insurance identification card that is issued for a for-hire motor vehicle. Under Part 32.2 and section 32.3(j) of the Commissioner's Regulations, insurance identification cards, including for-hire insurance certificates, constitute the sole paper proof of motor vehicle liability insurance and must be carried in the vehicle at all times.

The current regulation requires that DMV reject registration transactions in situations when a customer presents an insurance ID card beyond 45 days from the effective date of the insurance. In such circumstances, customers must obtain an updated insurance ID card from their insurance company, agent or broker. This results in multiple visits to a DMV office, which is inefficient and inconvenient for the customer. By extending the time that the DMV accepts insurance ID cards as acceptable proof of insurance, the number of office registration transactions that are rejected will be reduced, thus improving customer service.

This is submitted as a consensus rule as no person is likely to object to the rule as proposed and written.

Job Impact Statement

A JIS is not submitted because this rule will have no adverse impact on job creation or job development in New York State.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Consolidated Fiscal Report Penalty Amendments

I.D. No. PDD-10-15-00005-A

Filing No. 364

Filing Date: 2015-05-12

Effective Date: 2015-06-01

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

Action taken: Amendment of section 635-4.4 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) and 43.02

Subject: Consolidated Fiscal Report Penalty Amendments.

Purpose: To change requirements for imposing a penalty on providers that fail to meet filing deadlines for cost reports.

Text or summary was published in the March 11, 2015 issue of the Register, I.D. No. PDD-10-15-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, Albany, NY 12229, (518) 474-7700, email: RAU.unit@opwdd.ny.gov

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Assessment of Public Comment

This document contains responses to public comments submitted about the CFR Penalty Amendments during the public comment period for the proposed regulations on this topic. OPWDD received comments from one provider of services to people with developmental disabilities.

Comment: The provider commented that since the 150 days for providers with a fiscal year ending on June 30 falls on November 27, it often coincides with the Thanksgiving Holiday weekend, and it would be helpful to change the deadline to the first business day of December. The provider stated that for large agencies it takes at least four months or sometimes longer to close the fiscal year, have the CPA perform their audit, perform third party verifications, resolve accounting issues that may arise during the course of the audit process, prepare the CFR, perform reviews, etc. The provider indicated that all agencies want to submit their CFR as accurate as possible and the process is very labor intensive. The provider commented that CPA firms do not work on just one agency's audit exclusively, they have other clients that need to submit June 30 financial statements and CFRs at the same time. The provider asserted that, additionally, the CPA firm review process and approval of a final audit work and financial statements has become more involved and extensive in recent years.

The provider also commented that should auditing or accounting circumstances arise which are beyond the control of the provider and/or auditing firm, the provider should be granted an automatic 30 days additional approved extension beyond the 150 days.

Response: OPWDD considered the provider's comments and is promulgating the regulations with no changes. The Centers for Medicare and Medicaid Services (CMS) and OPWDD share the position that the 150 day deadline with an extension should be sufficient for a provider to submit all necessary documentation. The provider may request a waiver of the penalty when there are unforeseeable circumstances beyond the provider's control that will prevent the provider from filing the cost report by the 150 day deadline. OPWDD will approve the request if it determines that the circumstances warrant a waiver of the penalty.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Limitations on Locating Multiple Generation Facilities Under Electric Utility Tariffs for Remote Net Metering

I.D. No. PSC-21-15-00005-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 limitations on the interconnection of multiple generation facilities at host and satellite locations under electric utility tariffs providing for remote net metering.

Statutory authority: Public Service Law, sections 5(2), 66-j and 66-l

Subject: Limitations on locating multiple generation facilities under electric utility tariffs for remote net metering.

Purpose: Consider limitations on locating multiple generation facilities under electric utility tariffs for remote net metering.

Substance of proposed rule: The Public Service Commission is considering, pursuant to a Notice Instituting Proceeding and Soliciting Comments issued May 11, 2015 in Case 15-E-0267, limitations on the interconnection of multiple generation facilities at host and satellite locations imposed under electric utility tariffs providing for remote net metering. These tariffs limit remote net metering to arrangements where credits are distributed from a single generator serving a single host meter, with the installation of generation at satellite locations prohibited. The Commission may grant or deny, in whole or in part, any relief proposed, and may resolve related matters.

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.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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.

(15-E-0267SP1)

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

Issuance of Promissory Notes and the Assumption of the Costs and Benefits of Certain Derivative Instruments

I.D. No. PSC-21-15-00006-P

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

Proposed Action: The PSC is considering a petition by Central Hudson Gas and Electric Corporation to enter into multi-year committed credit agreements in amounts not to exceed \$200 million in the aggregate, and issue long-term debt in an amount not to exceed \$350 million.

Statutory authority: Public Service Law, section 69

Subject: Issuance of promissory notes and the assumption of the costs and benefits of certain derivative instruments.

Purpose: To authorize the issuance of the above notes and to authorize entering into agreements concerning derivative transactions.

Substance of proposed rule: On April 27, 2015, Central Hudson Gas and Electric, Corp (Company) submitted a petition (Petition) requesting Commission approval to issue and sell securities. The proposed agency action would permit the Company (i) to issue and sell not to exceed \$350 million aggregate principal amount of unsecured debt obligations of the Company having a maturity of more than one year for purposes of reimbursement of the Company's treasury for moneys expended for capital purposes and refinancing of existing debt (ii) to enter into or continue one or more committed credit agreements and to issue and sell an amount not to exceed \$200 million aggregate principal amount at any time outstanding of unsecured debt obligations having a maturity of more than one year pursuant to the agreement(s), such issuance and sale to be for purposes of reimbursement of the Company's treasury for moneys expended for capital purposes. The Commission may decide to approve, reject or modify the Petition, in whole or in part. The Commission may also address related matters.

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.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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.

(15-M-0251SP1)

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

Whether Bath Should be Permitted to Recover Purchased Gas Costs, Interest and Consulting Fees from Its Ratepayers

I.D. No. PSC-21-15-00007-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 approve, modify or reject, in whole or in part, a petition filed by Bath Electric, Gas & Water Systems (Bath) to recover \$649,823 in purchased gas costs, interest and consulting fees from its ratepayers.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Whether Bath should be permitted to recover purchased gas costs, interest and consulting fees from its ratepayers.

Purpose: Whether Bath should be permitted to recover purchased gas costs, interest and consulting fees from its ratepayers.

Substance of proposed rule: The Public Service Commission is consider-

ing a petition filed by Bath Electric, Gas & Water Systems (Bath) to recover \$649,823 in purchased gas costs, interest and consulting fees from its ratepayers. On May 18, 2009, the Commission issued an Order in Case 08-G-1364 granting Bath a minor increase to its delivery rates. As a result of the review in that case, the Commission directed Bath to investigate its high Lost and Unaccounted For (LAUF) gas. As a result of the investigation, Bath filed a petition dated November 17, 2010 (Case 10-G-0598), where it sought a refund from Corning Natural Gas Corporation (Corning) of over \$1.1 million for overbilling spanning the previous seven years. On December 1, 2014, Bath and Corning entered into a memorandum of understanding (MOU) to resolve the outstanding issues between Bath and Corning. By the terms of the MOU, Bath agreed to terminate its complaint against Corning in return for Corning undertaking and completing six different capital projects to improve service to Bath to enhance metering accuracy and reliability. The total capital expenditures agreed to were in the range of \$170,000 to \$360,000. Bath claims it has a cumulative shortfall of under-recovered purchased gas costs of \$451,866 dating back to 2003, with associated interest of \$95,767 through August 2014. Further, Bath claims it has incurred approximately \$102,190 in fees for outside services relating to this matter, for a total loss of approximately \$649,823. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

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.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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.

(15-G-0241SP1)

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

Transfer of Water Supply Assets

I.D. No. PSC-21-15-00008-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 a Joint Petition filed April 27, 2015 by West Valley Crystal Water Company, Inc. and the Town of Ashford for approval of the transfer of all of the water supply assets to the Town of Ashford.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10) and 89-h

Subject: Transfer of water supply assets.

Purpose: Transfer the water supply assets of West Valley Crystal Water Company, Inc. to the Town of Ashford.

Text of proposed rule: The Commission is considering a whether to approve, modify or reject, in whole or in part, a joint petition filed April 27, 2015 by West Valley Crystal Water Company, Inc. (Company) and the Town of Ashford (Town) for approval of the transfer of all of the water supply assets to the Town. The Company provides unmetered water service to approximately 200 customers in the Hamlet of West Valley located within the Town in Cattaraugus County. The Company does not provide fire protection service. The Commission may consider any related matters.

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.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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.
 (15-W-0256SP1)

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-08-15-00012-A
Filing No. 359
Filing Date: 2015-05-08
Effective Date: 2015-05-08

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.
Statutory authority: Tax Law, sections 171, subd. First; 301-h(c), 509(7), 523(b) and 528(a)
Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.
Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2015 through June 30, 2015.
Text of final rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxxviii) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxxvii) Jan.- March 2015					
16.0	24.0	41.8	16.0	24.0	40.05
(lxxviii) April - June 2015					
15.0	23.0	40.8	16.0	24.0	40.05

Final rule as compared with last published rule: Nonsubstantive changes were made in section 492.1(b)(1).

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O’Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

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

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-21-15-00001-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 492.1(b)(1) of Title 20 NYCRR.
Statutory authority: Tax Law, section 171, subd. First; 301-h(c), 509(7), 523(b) and 528(a)
Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.
Purpose: To set the sales tax component and the composite rate per gallon for the period July 1, 2015 through September 30, 2015.
Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxxix) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxxviii) April-June 2015					
15.0	23.0	40.8	16.0	24.0	40.05
(lxxix) July -September 2015					
14.7	22.7	40.5	16.0	24.0	40.05

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen D. O’Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

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

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.

