

## 4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any costs or compliance requirements on local governments, but merely aligns the Commissioner's Regulations pertaining to high school performance levels and the computation of the high school performance index with the June 2014 Board of Regents approval of the cut points for the five performance levels on the new Common Core Regents Examinations in English language arts and mathematics.

It should be noted that the proposed amendment will have a limited impact on schools and districts during the 2013-14 through 2015-16 school years. Most of the students who are graduating in the next two years will have already taken Regents Examinations based on the 2005 Learning Standards and, therefore, student results will be incorporated into the High School Performance Index based on performance on those tests. As successive cohorts of students graduate, the High School Performance Index for schools and districts will increasingly reflect the performance of students on Common Core Regents Examinations.

## 5. RURAL AREA PARTICIPATION:

The proposed amendment was submitted for review and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts 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 public school and school district accountability. The proposed amendment aligns the Commissioner's Regulations pertaining to high school performance levels and the computation of the high school performance index with the June 2014 Board of Regents approval of the cut points for the five performance levels on the new Common Core Regents Examinations in English language arts and mathematics. 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 public school and school district accountability and is necessary to align the Commissioner's Regulations pertaining to high school performance levels and the computation of the high school performance index with the June 2014 Board of Regents approval of the cut points for the five performance levels on the new Common Core Regents Examinations in English language arts and mathematics. The proposed amendment applies to public schools, school districts and charter schools that receive funding as LEAs pursuant to the ESEA, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it will have no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

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## Department of Environmental Conservation

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### NOTICE OF ADOPTION

**Prohibited and Regulated Invasive Species**

I.D. No. ENV-43-13-00013-A

Filing No. 753

Filing Date: 2014-08-25

Effective Date: 2015-03-10

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

**Action taken:** Addition of new Part 575 to Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, art. 9, title 17, sections 1-0101, 3-0301, 9-0105, 9-1303, 9-1701, 9-1705, 9-1707, 9-1709,

11-0507, 11-0509, 11-0511, 71-0703 and 71-0307; Agriculture and Markets Law, section 167(3-a), arts. 9, 11 and 14

**Subject:** Prohibited and regulated invasive species.

**Purpose:** To control invasive species by reducing the introduction of new and the spread of existing populations in the State.

**Substance of final rule:** A new Part 575 will be adopted under 6 NYCRR Chapter V, Subchapter C. Existing Subchapter C, Real Property and Land Acquisition, will become Subchapter D, and existing Subchapter D, Water Regulation, will be placed in a new Subchapter E. This document provides a summary of the final invasive species regulations. The Express Terms of Part 575 control should a conflict exist between this summary document and the Express Terms.

As a result of public comments received, and an effort to clarify the proposed regulations, the following changes were made to the final regulations: modified the definitions of "Native Species", "Natural Areas" and "Person" in 575.2; the common name of Small Carpet Grass, the common name of European Frogbit, the scientific name of Border Privet *Ligustrum obtusifolium*, and the scientific name of Broadleaf Water-milfoil Hybrid *Myriophyllum heterophyllum* x *M. laxum* in 575.3 (d)(2). *Tenck Tinca tinca* was changed from regulated to prohibited in 575.3 (d)(3). The Japanese Mystery Snail *Bellamya japonica* was changed from regulated to prohibited and the scientific name of Carpet Tunicate *Didemnum* spp. was modified to include several species, in 575.3 (d)(4). The common name of Goldfish was corrected in 575.4 (c)(3). Also, the European Rabbit *Oryctolagus cuniculus* was changed from prohibited to regulated in 575.4 (c)(5). A duplication error was corrected under 575.7 Petitions; and two minor clarifications were made under 575.8. These non-substantive changes will not have a significant impact on the regulated public and do not require a revised or new rulemaking.

## Section 575.1: Purpose, scope and applicability

The purpose of the final invasive species regulations is to provide rules and procedures to identify, classify and establish a permit system in an effort to restrict the sale, purchase, possession, propagation, introduction, importation, and transport of invasive species in New York, as part of the New York State Department of Environmental Conservation's ("DEC") statewide invasive species management program, as required by Environmental Conservation Law (ECL) sections 9-1709 and 71-0703. The regulations set forth in this Part may be complemented by existing regulations promulgated by the DEC and the New York State Department of Agriculture and Markets ("DAM") and local laws or regulations designed to restrict the sale, purchase, possession, propagation, introduction, importation, transport and disposal of specific invasive species in New York. These existing regulations continue to apply, unless in conflict, superseded or expressly stated otherwise in this Part.

## Section 575.2: Definitions

As used in this Part, the following words and terms have the meanings ascribed in the final rule under section 575.2: Animal, Certificate of Inspection, Commissioner, Compliance Agreement, Container, Control, Cultivar, Department, Disposal, Ecosystem, Education, Environmental Notice Bulletin, Free-living State, Fungi, Import, Incidental, Introduce, Invasive Species, Limited Permit, Native Species, Natural Areas, Nonnative Species, Person, Plant, Possess, Prohibited Invasive Species, Propagate, Propagule, Public Lands, Public Waters, Purchase, Reasonable Precautions, Regulated Invasive Species, Research, Sell, Species, and Transport. "Invasive Species" means a species that is nonnative to the ecosystem under consideration, and whose introduction causes or is likely to cause economic or environmental harm or harm to human health. For the purposes of this Part, the harm must significantly outweigh any benefits. The remainder of the definitions are not included in this summary.

## Section 575.3: Prohibited invasive species

Prohibited invasive species are identified in section 575.3 by scientific and common names and by specific categories of species including: algae and cyanobacteria, plants, fish, terrestrial and aquatic invertebrates, and terrestrial and aquatic vertebrates, and fungi. Species are not listed in this summary. Except as otherwise provided by this Part, no person shall knowingly possess with the intent to sell, import, purchase, transport, or introduce any prohibited invasive Species. Except as otherwise provided by this Part, no person shall sell, import, purchase, transport, introduce or propagate any prohibited invasive species. Prohibited invasive species shall only be disposed of in a manner that renders them nonliving and nonviable. A person may possess, sell, purchase, transport or introduce for a maximum of one year following the effective date of this Part, Japanese Barberry, a prohibited invasive species. Furthermore, a person may possess, sell, offer for sale, distribute, transport, or otherwise market or trade live Eurasian boars until September 1, 2015; however, no person shall knowingly import, propagate or introduce Eurasian boars into a free-living state. "Free-living state" is defined as unconfined and outside the control of a person, and provides that species released to public lands and waters, as well as natural areas, are considered to be in a "free-living state."

**Section 575.4: Regulated invasive species**

Regulated invasive species are identified in section 575.4 by scientific and common names and by specific categories of species including: algae and cyanobacteria, plants, fish, aquatic invertebrates, and terrestrial and aquatic vertebrates. Species are not listed in this summary. Except as otherwise provided by in this Part, no person shall knowingly introduce into a free-living state or introduce by a means that one knew or should have known would lead to the introduction into a free-living state any regulated invasive species, although such species shall be legal to possess, sell, buy, propagate and transport.

**Section 575.5: Classifications**

Section 575.5 provides that in classifying a nonnative species as either a Prohibited or Regulated species, DEC and DAM apply the invasiveness ranking system established in 'A Regulatory System for Non-Native Species, June 2010, and consider one or more of the following ecological and socio-economic factors to determine the invasiveness rank of a species and whether it should be listed as prohibited or regulated: (1) whether a species meets the definition of an invasive species; (2) whether the species is currently on a federal list or listed in other states as an invasive species and its native habitat has climatic conditions similar to that of New York State; (3) ecological impacts; (4) biological characteristics and dispersal ability; (5) ecological amplitude and distribution; (6) difficulty of control; (7) economic benefits or negative impacts of the species; (8) human health benefits or negative impacts of the species; and (9) cultural or societal significance of the benefits or harm caused by the species. "Invasiveness Rank" means a rank assigned to a nonnative species, applying the criteria described above, to signify its level of invasiveness (Very High, High, Medium, Low or Insignificant). Species ranking "Moderate" or higher invasiveness in the ecological assessment are classified as "Regulated" or "Prohibited" based on the outcomes of the assessments, including a socio-economic assessment. Species that have been determined to be "High" or "Very High" invasiveness, posing a clear risk to New York's ecological well being, and for which the subsequent socio-economic assessments have determined that social or economic benefits are not significantly positive, are classified as "Prohibited." Species that have been determined to have "Moderate" invasiveness and the socio-economic assessments have determined there is no significantly negative or positive socio-economic harm or benefit are classified as "Regulated." Those species that have ranked "High" or "Very High" invasiveness in the ecological assessment, and pose a clear risk to New York's ecological well-being, but have significantly positive socio-economic benefit may be classified as "Regulated." In other instances, species ranking "Moderate," but have significantly negative socio-economic value, may be classified as "Prohibited." Grace periods may be established for species classified as Prohibited by DEC and DAM to allow businesses to plan for the management of existing stock. All future classifications of prohibited and regulated invasive species shall apply the invasiveness ranking system established in the Report and required by this section.

**Section 575.6: Conditions governing regulated invasive species**

Pursuant to section 575.6, a regulated invasive species that is sold or offered for sale shall have attached, a label with the words "Invasive Species-Harmful to the Environment" in at least 14 point bold font and will offer alternative non-invasive species information and provide instructions to prevent the spread of invasive species. Where it is impracticable to display a label, written notice shall be provided upon sale to the purchaser. Before supplying or planting a regulated invasive species as part of a landscape service, a person shall give written notice to the customer that the invasive species is harmful to the environment, including the common and scientific names of the invasive species immediately followed by the words "Invasive Species-Harmful to the Environment" in 14 point bold type or greater. The notice shall offer alternative non-invasive species and shall provide instructions to prevent the spread of invasive species. No person selling or offering for sale a regulated species shall conceal, detach, alter, deface, or destroy any label, sign, or notice required under this subpart. Any person who purchases a Regulated invasive species shall be required to follow any instructions required by this subpart and maintain the required instructions until the Regulated species is disposed of in a manner that renders it nonliving and nonviable.

Section 575.7: Petitions to add a species or remove a species from the invasive species list. Under section 575.7, a person may petition DEC to have a species added to or removed from the invasive species list. DEC may only classify additional nonnative species that meet the established criteria in section 575.5 for prohibited or regulated invasive species and may only remove previously classified invasive species if those invasive species no longer meet the established criteria in section 575.5. Under both circumstances, DEC must get concurrence from DAM.

**Section 575.8: Exemptions**

Section 575.8 provides exemptions from compliance with Part 575 for certain activities related to regulated and prohibited species, such as: if the DEC determines such activities or introduction were incidental or un-

knowing and not due to a person's failure to take reasonable precautions; transportation for disposal or identification; the control or management of invasive species; cultivars that meet certain criteria; persons authorized by permit or compliance agreements from DEC, DAM, or US Department of Agriculture; and wetland plant species associated with a vegetation treatment unit used in a wastewater treatment facility authorized by a DEC permit prior to the adoption of this Part. "Reasonable Precautions" is defined in this Part as "intentional actions that prevent or minimize the possession, transport, or introduction of invasive species."

**Section 575.9: Invasive species permits**

Under section 575.9, a person may possess, with intent to sell, import, purchase, transport or introduce a prohibited or regulated invasive species if the person has been issued a permit by DEC for research, education, or other approved activity. This section describes permit conditions and requirements for issuance of invasive species permits including: written application requirements, approval criteria, issuance and conditions, records and reporting, permits transfer/ alterations, violations and other permits or approvals. The permit would require that the applicant demonstrate to DEC's satisfaction that adequate safeguards are in place to control and dispose of the invasive species to prevent the potential spread. Specific language has not been included in this summary document.

**Section 575.10: Penalties and enforcement**

Section 575.10 provides that any person who violates this Part or any license or permit or order issued by the DEC pursuant to section 9-1709 of the ECL or pursuant to the provisions of this Part shall be liable for all penalties and other remedies provided for in the Environmental Conservation Law, including section 71-0703. Such penalties and remedies may be in addition to any other penalty available under other laws, including, but not limited to, permit revocation.

**575.11: Coordination**

Section 575.12 clarifies that Part 575 does not affect the existing authority of DAM and that DAM will be responsible for the inspection of registered growers and dealers of plant material for compliance with this Part. Furthermore, any violation issued by DAM shall be referred to the DEC for assessment of penalties pursuant to Environmental Conservation Law section 71-0703.

**Section 575.12: Severability**

If a provision of this Part or its application to any person or circumstance is determined to be contrary to law by a court of competent jurisdiction, pursuant to section 575.13, such determination shall not affect or impair the validity of the other provisions of this Part or the application to other persons and circumstances.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 575.2(u), (v), (x), 575.3(d)(2), (3), (4), 575.4(c)(3), (5), 575.7(b) and 575.8(a)(3).

**Text of rule and any required statements and analyses may be obtained from:** Leslie Surprenant, NYS DEC, Division of Lands and Forests, 625 Broadway, Albany, NY 12233, (518) 402-8980, email: leslie.surprenant@dec.ny.gov

**Additional matter required by statute:** A Negative Declaration was prepared in compliance with Article 8 of the Environmental Conservation Law.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement since the changes involved spelling and other word corrections, minor text clarifications and two species moved from the regulated to the prohibited list and one species moved from the prohibited to the regulated list.

**Initial Review of Rule**

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year, which is no later than the 3rd year after the year in which this rule is being adopted.

**Assessment of Public Comment**

The Departments of Environmental Conservation (DEC) and Agriculture and Markets (DAM) (collectively the "Departments") proposed draft invasive species regulations, known as Part 575 of 6 NYCRR, on October 23, 2014. A total of 264 unique comments were received from 223 individuals, or organizations, during the sixty day public comment period. Changes were made to the regulations to reiterate or further clarify the original meaning for the benefit of the public and take questions into account. These changes are noted below. As stated in the Notice of Adoption, non-substantive changes were made to sections 575.2, 575.3, 575.4, 575.7 and 575.8. The Assessment of Public Comment presents and responds to all of the unique comments that were received during the public comment period. A revised or new rule making is not required. A summary of the public comments received and the Departments' responses are noted below.

Public comments were received pertaining to the proposed definitions for this regulation. While most of the comments did not result in any modifications, several edits to the final regulations were made as a result of these comments. The term "New York State" was added to the definition of Native Species to be consistent with the definition of Nonnative Species. The final regulations read: "Native Species means with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem, or in New York State." The definition of Natural Areas was modified to include the term "and waters". The final regulations read: "Natural Areas means those lands and waters that are preserved, restored, or managed for their natural features, including but not limited to parks, forests, refuges, nature preserves, grasslands, wetlands and shorelines." Some commenters identified concerns with the unintentional introduction of invasive species and potential liability for the "control" or "disposal" of invasive species. In response, the Departments made clear that the definition of "introduce" includes both the intentional and unintentional release of invasive species, and that the regulations prohibit the transport, control or disposal of invasive species where it results in a new introduction of the species. The Departments further explained that the definition of "disposal" requires that the method of disposal prevent the establishment, introduction or spread of the disposed species. "Control" also requires preventing spread of invasive species from areas where they are present. However, the control, management and disposal of pre-existing invasive species, including the transportation of the species for these purposes is exempt from compliance with the provisions of this Part under section 575.8.

Public comments were received pertaining to the classification of Prohibited Invasive Species listed in section 575.3. While most of the comments did not result in any modifications to the Express Terms, several edits to the final regulations were made as a result of these comments and the professional opinions of DEC staff to correct technical issues. A correction to the spelling of the scientific name for Border Privet was made, *Ligustrum obtusifolium*. The scientific name for Broadleaf Water-milfoil Hybrid was corrected from *Myriophyllum x pinnatum* to *Myriophyllum heterophyllum x M. laxum* based on the latest scientific findings. The scientific name for Carpet Tunicate was changed to *Didemnum* spp. in order to recognize the fact that several tunicate species exist within the genus, depending on geographic location. European Rabbit, *Oryctolagus cuniculus*, was downgraded from prohibited to regulated classification recognizing the socio-economic importance of the species in that most domestic rabbits are of European heritage. In instances that changes were not made, the Departments determined that the specific invasive species posed an unacceptable ecological risk without a substantial countervailing socio-economic benefit and should be classified as prohibited. Specifically, the Departments explained that, in generating the lists of invasive species proposed to be prohibited or regulated, the Departments first applied a standard ecological assessment to each species. A scoring system based on ecological assessment determined each species' relative ecological risk and each species was assigned one of five ranks ranging from "Insignificant" to "Very High." Species ranking "Moderate" in the ecological assessment or higher were further assessed for their socio-economic benefit or harm and were assigned one of three ranks ("Significantly Positive" [high benefit], "Significantly Negative" [high harm] or "Equal Outcome" [neutral].)

Public comments were received pertaining to the classification Regulated Invasive Species within section 575.4. While most of the comments did not result in any modifications to the Express Terms, several edits to the final regulations were made as a result of these comments and the professional opinions of DEC staff to correct technical issues. The common name of *Carassius auratus* was changed to Goldfish, eliminating the hyphen used previously. Tench, *Tinca tinca*, was elevated to prohibited classification after a re-assessment of the ecological and socio-economic evaluation of the species. Japanese Mystery Snail, *Bellamya japonica*, was elevated to prohibited classification due to the fact that the species is nearly identical to the Chinese Mystery Snail, *Bellamya chinensis*, which ranked Very High and is classified as prohibited. In instances that changes were not made, the Departments determined that while the individual invasive species represented a potential significant ecological risk, the socio-economic assessment determined that the species provided a considerable positive benefit. The Departments further explained that the restrictions that are placed on regulated species will provide sufficient protection from the potential spread, while also ensuring continued economic benefits to nurseries, landscapers and other stakeholders.

Public comments were received pertaining to the process of classifying species as described in section 575.5. The general process for classifying invasive species is detailed in the regulations and the 2010 report "A Regulatory System for Non-native Species" prepared by the New York Invasive Species Council. In addition, a process is defined in the regulations for a person to petition for a species to be added or removed from the lists of prohibited and regulated species. Some comments urged the

Departments to consider using an expedited process for classifying invasive species. In response to this comment, the Departments determined that a rule making process is the most appropriate means to develop and revise the lists of prohibited and regulated species. The Departments plan to continue assessing non-native species for potential classification, as capacity and resources allow, and to post lists of the species assessed along with their ecological invasiveness assessments on its website and to periodically publish the same in the Environmental Notice Bulletin. The Departments intend to encourage industry to voluntarily label or avoid selling candidate species. Some comments were directed at the outcomes of either the ecological assessments or socio-economic assessment or the combined regulatory status results of the two tools utilized together. No substantive information was provided to alter the results of the two assessment tools, with the exceptions being those comments noted in the two paragraphs above. Several new species were suggested for ecological and socio-economic assessment, but this work is beyond the scope and capacity of the current regulations and will need to be addressed at a later time.

Some public comments were also received pertaining to the labeling requirements for the sale of listed regulated species. While the regulations provide general specifications pertaining to labeling requirements, many of the details pertaining to actual label wording and design will need to be developed in collaboration with the Department of Agriculture and Markets in the future.

Public comments were received pertaining to the enumerated exemptions in section 575.8. The comments generally suggested alternative wording to the exemptions specified. In response to these comments, the Departments have clarified that possession of a prohibited or regulated invasive species for disposal is exempt from compliance with the provisions of this Part. Subsection 575.8(a)(3) has been revised to read: "Compliance with the provisions of this Part do not apply to: ... a person who possesses or transports a prohibited invasive species or regulated invasive species for the purpose of identification or disposal." This change reflects, and is consistent with, the primary goal of ECL § 9-1709 to prevent the spread of invasive species by prohibiting or regulating the sale or importation of invasive species, rather than mandating certain management practices that would control or eradicate pre-existing invasive species. By providing exceptions for the control or disposal of pre-existing invasive species, DEC expects that the regulated community would be more likely to undertake efforts to prevent the spread of invasive species because it would remove the burden of having to obtain a DEC- issued permit.

Some comments also raised concerns with enforcement capacity of agencies pertaining to the final regulations. Agency staff recognizes that enforcement issues will need to be addressed in the future once the final regulations go into effect. No changes were made to this section of the express terms as a result of these comments.

One comment asked how often the Department of Agriculture and Markets inspects registered growers and dealers. The Department of Agriculture and Markets has a team of horticultural inspectors that inspect registered growers and dealers on a regular basis, depending on staff availability.

In addition to the specific comments addressed above, general comments were received pertaining to a number of varied subjects. A number of these comments were supportive of the proposed invasive species regulations. A couple of the comments opposed the proposed regulations citing economic losses to certain industries, such as the nursery and landscape industry, and other reasons. The proposed regulations will take effect 180 days after filing the final regulations. Further, there is an additional one year grace period for Japanese Barberry, *Berberis thunbergii*. This grace period is intended to provide time for businesses to manage stocks and adjust to the regulations. One comment suggested that landowners should be required to manage *Phyllostachys* species of running bamboo. Property owners are not liable for pre-existing prohibited invasive species on private lands. Several comments encouraged education and outreach pertaining to the regulations. The Departments of Environmental Conservation and Agriculture and Markets intend to develop and deliver education and outreach materials and methods as well as best management practices (BMPs) within the agencies' capacities and resources. Several comments were received pertaining to funding and financial incentives. Incentives and grants are beyond the scope of this rule making. Nonetheless, Partnerships for Regional Invasive Species Management (PRISMs) and other implementation underway in New York contribute substantially to education and outreach as well as strategic approaches to invasive species management and control. The Department of Environmental Conservation receives annual funding from the Environmental Protection Fund to support its implementation framework for all taxa of invasive species.

Finally, public comments were received pertaining to the supporting documents including the Regulatory Flexibility Analysis, Rural Area Flexibility, Job Impact Statement and Regulatory Impact Statement. The

typographical error noted in the Rural Area Flexibility Analysis has been corrected. One comment suggested that businesses can minimize the potential negative impacts of the regulations by expanding their stocks of native plants. The Regulatory Flexibility Analysis, Regulatory Impact Statement and Rural Area Flexibility Analysis all state that this is the case, and further state that new businesses that market non-invasive and native alternatives may start. The Job Impact Statement states that negative impacts to industry will be reduced by increasing sales of alternative non-invasive species along with the grace period for Eurasian boar, Sus Scrofa, and Japanese Barberry, Berberis Thunbergii.

A detailed table depicting all of the individual public comments received and agency responses can be found on the DEC's website at: <http://www.dec.ny.gov/>.

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## Department of Financial Services

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

#### Mandatory Underwriting Inspection Requirement for Private Passenger Automobiles

I.D. No. DFS-36-14-00015-P

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

**Proposed Action:** Amendment of Part 67 of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 3411, 5303 and art. 53

**Subject:** Mandatory Underwriting Inspection Requirement for Private Passenger Automobiles.

**Purpose:** Revise requirements regarding the inspection of private passenger automobiles for physical damage coverage.

**Substance of proposed rule (Full text is posted at the following State website: <http://www.dfs.ny.gov/>):** Section 67.1 amends the definitions to clarify the types of vehicles subject to the inspection requirement and establishes definitions for a new, unused automobile, durable medium, and New automobile dealer.

Section 67.3(b)(3) is amended to reduce the minimum time frame from 4 years to 2 years for an insured to be eligible for an inspection waiver for an additional and/or replacement automobile when the insured has been continuously insured for automobile insurance, with the same insurer or another insurer under common control or ownership.

Section 67.3(b)(11) is added to allow an inspection waiver when an insured under a new policy had the automobile continuously insured for physical damage coverage by a previous insurer that inspected the automobile within the prior two years, or ownership.

Section 67.4(b) is amended to increase the inspection deferral period from 5 to 10 calendar days.

Section 67.5 is amended to recognize the use of new technology (digital photography, electronic storage and retrieval of inspection reports and photographs, use of email).

Section 67.7(c)(1)(i) is amended to expand the current renewal inspection notice requirement from 33 days prior to renewal date to at least 45 days but no more than 60 calendar days prior to the annual policy renewal date in order to track with Insurance Law section 3425.

The proposed rule also includes non-substantive technical changes designed to clarify various provisions in the regulation.

**Text of proposed rule and any required statements and analyses may be obtained from:** Camielle Barclay, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5299, email: [camielle.barclay@dfs.ny.gov](mailto:camielle.barclay@dfs.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

1. Statutory authority: Sections 202 and 302 of the Financial Services Law, and Sections 301, 3411, 5303, and Article 53 of the Insurance Law.

Financial Services Law sections 202 and 302 and Insurance Law section 301 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law.

Insurance Law section 3411 requires insurers to inspect private passenger automobiles insured for physical damage coverage except as provided for in a regulation prescribed by the Superintendent.

Article 53 authorizes the Superintendent to approve plans for providing motor vehicle insurance coverage to persons who are unable to obtain coverage in the voluntary insurance market. The New York Automobile Insurance Plan ("NYAIP"), also commonly known as the Assigned Risk Plan, is the mechanism for providing such coverage. Insurance Law section 5303 specifies coverages that are available through the NYAIP, and subjects those coverages to the requirements of Insurance Law section 3411 as well as other provisions in the Insurance Law.

2. Legislative objectives: Insurance Law section 3411 directs the Superintendent to promulgate regulations implementing the section, which, among other things, requires insurers to inspect private passenger automobiles ("automobiles") when issuing physical damage coverage on the automobiles.

3. Needs and benefits: Insurance Law section 3411 prescribes a framework when insurers provide physical damage coverage for automobiles and the duties of insurers and insureds with respect to inspections of automobiles. Inspections of automobiles have been mandatory since 1977 in order to combat insurance fraud, and only under limited circumstances has the current rule permitted insurers to waive or defer inspections. However, with advances in technology to combat automobile physical damage insurance fraud, certain provisions of the current rule have been rendered obsolete or unduly burdensome to insurers and insureds. This proposed rule updates the regulation, which should reduce unnecessary expenses to insurers and consumers, while maintaining necessary requirements to combat fraud. The proposed rule also clarifies various provisions of the regulation, including the types of automobiles subject to the inspection requirement, as well as expands the optional inspection waivers available to insurers.

4. Costs: The proposed rule imposes no compliance costs on state or local governments. The proposed rule should reduce costs to insurers overall for the administration, processing of paperwork, operations and underwriting of automobile physical damage insurance. These savings ultimately should be passed to consumers.

5. Local government mandates: None.

6. Paperwork: The proposed rule does not generate any additional paperwork, other than a revised Plan of Operation that insurers would file with the Department if insurers choose to incorporate the optional waivers in the proposed rule. However, the rule reduces the paperwork requirements on an insurer by permitting an insurer to utilize separate entities such as CARCO Group, Inc., to maintain a central repository of its physical damage inspections reports.

7. Duplication: None.

8. Alternatives: Recognizing advances in technology and measures to reduce automobile insurance fraud, the Superintendent submitted an outreach draft to various stakeholders for comment. Some of the more significant comments that the Superintendent considered are set forth below.

Stakeholders recommended adding a number of optional waivers to the inspection requirement, including waivers for certain types of insureds, where the insured has other types of coverage with the insurer, and when the vehicle is at least three years old rather than seven years, as the current rule provides. The Superintendent considered those optional waivers and concluded that waiving the inspection requirement under those circumstances may present improper inducement and discrimination concerns, and could lead to increased instances of fraud. Other suggestions for optional waivers already were addressed in the Department's amended to the current rule.

The Superintendent also considered a suggestion that the rule no longer should require inspection reports to settle physical damage claims because to do so is counter-productive and would delay settlement. The Superintendent rejected this suggestion, concluding that using an inspection report in settling a physical damage claim is necessary to protect both the consumer and the insurer because the report confirms the condition of the insured's automobile, thus deterring fraud, which in turn, may lower insurance rates.

Stakeholders also recommended that the five-day inspection deferral period be expanded to 10-14 days. The Superintendent considered this alternative and agreed that a 10-day deferral period would give insureds at least one full weekend in which to comply with the inspection requirements. However, the Superintendent rejected any time longer than 10 days because to do so may lead to increased incidences of fraud.

9. Federal standards: None.

10. Compliance schedule: There is no compliance requirement placed on insurers because changes made to the regulation are optional and insurers could maintain their existing procedures. Insurers that opt to adopt those optional changes would be able to do so as soon as they file revised Plan of Operation with the Department.

#### Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services finds that this rule will not impose any adverse economic impact on small busi-