

manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. The implementation of the proposed GHG regulation is not expected to be burdensome in terms of additional reporting requirements for dealers.

There will be no adverse impact on local governments who own or operate vehicles in the state because they are subject to the same requirements as those imposed on owners of private vehicles. In other words, state and local governments will be required to purchase California certified vehicles. This rulemaking is not a local government mandate pursuant to Executive Order 17.

This regulation contains exemptions for emergency vehicles, and military tactical vehicles and equipment.

6. Small business and local government participation:

The Department plans on holding public hearings at various locations throughout New York State after the amendments are proposed. Small businesses and local governments will have the opportunity to attend these public hearings. Additionally, there will be a public comment period in which interested parties can submit written comments.

7. Economic and technological feasibility:

The GHG requirements are not expected to have any adverse impacts on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. The implementation of the proposed GHG regulation is not expected to be burdensome in terms of additional reporting requirements for dealers. As stated previously, there would be no change in the competitive relationship with out-of-state businesses.

The GHG requirements attempt to minimize adverse impacts on automobile manufacturers by offering them the voluntarily option of demonstrating compliance based on the proposed federal GHG emission standards for the 2012 through 2016 model years as an alternative compliance option to the existing CARB GHG emission standards. The GHG revisions to Part 218 would apply to all 2012 through 2016 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9, and 6 NYCRR Part 218. Part 218 is being amended to incorporate revisions to the greenhouse gas (GHG) requirements that have been adopted by the California Air Resources Board (CARB) as part of the Low Emission Vehicle (LEV) program.

There are no requirements in the regulation which apply only to rural areas. These changes apply to vehicles purchased by consumers, businesses, and government agencies in New York. The changes to these regulations may impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks.

The changes are additions to the current LEV standards. The new motor vehicle emission program has been in effect in New York State since model year 1993 for passenger cars as well as light-duty trucks, with the exception of model year 1995, and the Department is unaware of any adverse impact to rural areas as a result. The beneficial emission reductions from the program accrue to all areas of the state.

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

There are no specific requirements in the proposed regulations which apply exclusively to rural areas. Reporting, recordkeeping and compliance requirements apply primarily to vehicle manufacturers, and to a lesser degree to automobile dealerships. Manufacturers reporting requirements mirror the California requirements, and are thus not expected to be burdensome. Dealerships do not have reporting requirements, but must maintain records to demonstrate that vehicles are California certified. This documentation is the same as documentation already required by the New York State Department of Motor Vehicles for vehicle registration.

Professional services are not anticipated to be necessary to comply with the rules.

3. Costs:

The proposed amendments to the GHG standards are not expected to have any impact on consumers. The amendments are intended to provide manufacturers with compliance flexibility by offering them the voluntarily option of demonstrating compliance based on the proposed federal GHG emission standards for the 2012 through 2016 model years. There are no costs associated with this change that would be passed along to consumers in the form of higher prices.

4. Minimizing adverse impact:

The changes will not adversely impact rural areas.

5. Rural area participation:

The Department plans on holding public hearings at various locations

throughout New York State once the regulation is proposed. Some of these locations will be convenient for persons from rural areas to participate. Additionally, there will be a public comment period in which interested parties can submit written comments.

Job Impact Statement

1. Nature of impact:

The New York State Department of Environmental Conservation (Department) is proposing to amend 6 NYCRR Section 200.9, and 6 NYCRR Part 218. Part 218 is being amended to incorporate revisions to the greenhouse gas (GHG) requirements that have been adopted by the California Air Resources Board (CARB) as part of the Low Emission Vehicle (LEV) program.

The amendments to the regulations are not expected to negatively impact jobs and employment opportunities in New York State. New York State has had a LEV program in effect since model year 1993 for passenger cars and light-duty trucks, with the exception of model year 1995, and the Department is unaware of any adverse impact to jobs and employment opportunities as a result.

2. Categories and numbers affected:

The changes to this regulation will not adversely impact businesses involved in manufacturing, selling or purchasing passenger cars or trucks. Automobile manufacturers are not expected to incur costs in order to comply with the regulation. Dealerships will be able to sell California certified vehicles to buyers from states bordering New York. Since vehicles must be California certified in order to be registered in New York, New York residents will not be able to buy non-complying vehicles out-of-state, but may be able to buy complying vehicles out-of-state. These businesses compete within the state and generally are not subject to competition from out-of-state businesses. Therefore, the proposed regulation is not expected to impose a competitive disadvantage on affiliated businesses, and there would be no change from the current relationship with out-of-state businesses.

3. Regions of adverse impact:

None.

4. Minimizing adverse impact:

The GHG requirements are not expected to have adverse impacts on automobile dealers. Dealerships will be required to ensure that the vehicles they sell are California certified. Starting with the 1993 model year, most manufacturers have included provisions in their ordering mechanisms to ensure that only California certified vehicles are shipped to New York dealers. The implementation of the proposed GHG regulation is not expected to be burdensome in terms of additional reporting requirements for dealers. As stated previously, there would be no change in the competitive relationship with out-of-state businesses.

The GHG requirements attempt to minimize adverse impacts on automobile manufacturers by offering them the voluntarily option of demonstrating compliance based on the proposed federal GHG emission standards for the 2012 through 2016 model years as an alternative compliance option to the existing CARB GHG emission standards. The GHG revisions to Part 218 would apply to all 2012 through 2016 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles.

5. Self-employment opportunities:

None that the Department is aware of at this time.

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

Endangered and Threatened Species of Fish and Wildlife

I.D. No. ENV-31-10-00020-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 182 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 11-0535

Subject: Endangered and Threatened Species of Fish and Wildlife.

Purpose: To clarify process and procedures for handling listed species issues in New York State.

Substance of proposed rule (Full text is posted at the following State website: <http://www.dec.ny.gov>): The Department of Environmental Conservation (the department) proposes to amend the regulations pertaining to endangered, threatened and special concern species under Part 182 of 6 NYCRR. Under the New York State Endangered Species Law, endangered and threatened species may not be taken except under permit by the department. These amendments clarify the department's jurisdiction pertaining to listed species, delineate an application and review process for addressing proposals that will take listed species and establish standards for permit issuance. An incidental take permitting program for proj-

ects that will result in a take of listed species as part of otherwise legal activities is described in detail. A process consistent with Uniformed Procedures Act procedures is established for the issuance of incidental take permits when proposed actions are anticipated to result in the taking of listed species. The standard for permit issuance is that the proponent of an action that will take listed species must also take actions that ensure that the affected species will be afforded a net conservation benefit. This requirement ensures that the applicant's actions will have an overall positive affect on the status of the affected species, even if some portions of the project may be detrimental to the listed species or its habitat. Further clarification is also provided by the inclusion of several new definitions of terms associated with listed species project review.

Text of proposed rule and any required statements and analyses may be obtained from: Dan Rosenblatt, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4750, (518) 402-8884, email: wildliferegs@gw.dec.state.ny.us

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

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

Additional matter required by statute: SEQR documentation including an EAF and Negative Declaration are on file with the department.

Regulatory Impact Statement

1. Statutory authority: Environmental Conservation Law (ECL) 11-0535.

2. Legislative objectives: To protect threatened and endangered species from going extinct and recover populations of same to a level where listed status is no longer required.

3. Needs and benefits: The current Endangered Species Act regulations (6 NYCRR Part 182) list species that have been classified by the department as endangered or threatened and provide for the prohibition against the "take" of listed species unless permitted by the department. However, the current regulations do not establish procedures or standards for review of such permit applications. Recent court decisions in relation to the enforcement of ECL 11-0535 have provided additional clarity on the situations where such permits are necessary and how the department should proceed in such cases. These revised regulations build upon those decisions to provide a predictable regulatory framework for establishment of jurisdiction under 11-0535 and the process for addressing listed species issues, including the review and issuance of relevant permits.

4. Costs: Since these regulations do not create a new regulatory burden, there will be no significant additional costs to the department or the regulated community as a result of these regulations. However, due to an increase in the availability of information on listed species through recently initiated programs, there may be an apparent increase in the number of projects that fall under the jurisdiction of these regulations. However, those same projects would still be subject to similar requirements under the existing regulations.

5. Local government mandates: None.

6. Paperwork: The proposed regulations define the paperwork that would be necessary to obtain a permit under the new regulations. Currently, the lack of regulations delineating the information necessary for the department to render decisions and issue permits has led to the need for multiple correspondences between applicants and the department. The new regulations make explicit the information necessary to complete an application. In addition to reducing the amount of written correspondence currently required under existing regulations, the new regulations require information that should already be generated under existing regulations, including the State Environmental Quality Review Act.

7. Duplication: The proposed regulations do not duplicate any State requirement. However, there is some duplication of Federal requirements where there is overlap with species listed by the Federal Government. This overlap is necessary in order for New York State to be in compliance with federal programs regarding the issuance of permits to take listed species. This also allows the State greater flexibility in tailoring conditions for federally listed species to meet State management objectives.

8. Alternatives: There are no significant alternatives. By law (ECL, section 11-0535), when the department has determined that an endangered species will be taken, the proposed action may only legally continue under a permit issued by the department. The proposed regulatory changes provide guidance to the regulated public as to how the permit process works and when it is applicable.

9. Federal standards: For Federally listed species, standards are well established. These regulations would not supercede or replace federal standards for permit issuance. Instead, these regulations borrow definitions liberally from Federal regulations (50 CFR - Wildlife and Fisheries - part 17 - revised as of October 1, 1998 - pages 95-177) in developing a regulation that is compatible with Federal guidance. These regulations will allow for the department to participate in Federally funded species management programs such as Safe Harbor Agreements and Habitat Con-

servation Plans that require the issuance of incidental take permits. State permits for federally protected species would be invalid without the project proponent procuring the appropriate permit from the regulating Federal entity.

10. Compliance schedule: The proposed changes are largely based on current interpretations of the existing law and regulations, as supported by recent court decisions. Therefore, the department will be able to comply with the proposed regulatory changes within one month of implementation. It is anticipated that the regulated community be able to comply with the requirements within one month of implementation due to the similarity of the proposed regulations to existing regulations and implementation by department personnel. The regulated community will also have the opportunity to become familiar with the regulatory changes during the public review process.

Regulatory Flexibility Analysis

1. Effect of rule: This rule making will provide businesses and local governments with a better understanding of the types of projects that fall under the jurisdiction of Article 11-0535 and the requirements and procedures for projects to follow once such jurisdiction has been determined.

2. Compliance requirements: Compliance requirements are not altered over existing regulations. As already required under SEQR and Article 11-0535, listed species impacts must already be addressed. Compliance with this requirement is made easier through the issuance of better guidance and the creation of a predictable, transparent process for evaluating the need for permits and the regulatory requirements necessary for the issuance of said permits.

3. Professional services: As is the case under the existing regulations, environmental consultant services will continue to be necessary for projects subject to the jurisdiction of this rule making.

4. Compliance costs: This regulation does not impose any additional burden on affected local governments and small businesses. Instead, it provides a better defined process for project proponents to follow when they fall under the jurisdiction of this rule making. Those entities that pursue projects subject to the jurisdiction of this rule making will continue to adjust their projects to avoid the taking of listed species. This rule making makes the alternative process explicit, creating an opportunity for project proponents to proceed by preparing and funding an effective listed species mitigation plan and obtaining a permit to authorize the planned activity.

5. Economic and technological feasibility: The implementation of this rule making is both economically and technologically feasible.

6. Minimizing adverse impact: These regulations are clarifications of the existing law and regulation based on over 30 years of program implementation under the existing regulations and supplemented with legal decisions relevant to this regulation. As such, this rule making is not anticipated to create any new or additional impacts on local government or small business, as the existing rule already established the prohibitions and permit needs that are clarified in this rule making. The focus of the rule making is on avoidance. Projects that are able to achieve avoidance of impacts do not require permits at all. Minimization of adverse environmental impacts is accomplished through permitting standards. Permits will only be issued when projects achieve a net conservation benefit, which requires that status of impacted listed species and/or their occupied habitats are improved over pre-project conditions.

7. Small business and local government participation: The State Administrative Procedures Act requires agencies to provide public and private interests the opportunity to participate in the rule making process and/or public hearings. The Department will hold public hearings on Part 182 throughout the state and will notify interested parties of this proposed rulemaking. Listed species issues will also still primarily be addressed through the SEQR process, with local governments continuing to frequently be lead agencies.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

Part 182 applies statewide and this rule making will not alter that. However, a new exemption for routine and ongoing agricultural activities may reduce the extent of application of this regulation in some rural areas.

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

The changes that the department is proposing will establish a predictable and transparent process for the implementation of the State's Endangered Species Law. Existing law and regulation requires permits for activities that result in harm to listed species, but the current regulations do not provide any relevant guidance on how the department will review projects or permits. This rule provides guidance and procedures to assist project proponents assess and avoid impacts to listed species. Permit procedures are established for those projects that can not avoid such impacts. These regulations codify the existing process utilized by the department and make that process open and accessible to the public.

3. Costs:

The proposed rule does not create any new requirement for landowners or municipalities, as it provides clarification to existing regulations where little guidance currently exists. The impact of this rule making on rural communities may actually reduce any costs associated with this rule as an exemption is provided for routine and ongoing agricultural activities, where none previously existed.

4. Minimizing adverse impact:

These regulations are clarifications of the existing law and regulation based on over 30 years of program implementation under the existing regulations and supplemented with legal decisions relevant to this regulation. As such, this rule making is not anticipated to create any new or additional impacts on rural communities, as the existing rule already established the prohibitions and permit needs that are clarified in this rule making. Additionally, there are explicit exemptions for routine and ongoing agricultural activities which should mitigate the likelihood of adverse impacts in rural farming communities.

5. Rural area participation:

The State Administrative Procedures Act requires agencies to provide public and private interests in rural areas the opportunity to participate in the rule making process and or public hearings. The department will hold public hearings on Part 182 in upstate and rural areas and will notify interested parties of this proposed rule making.

Job Impact Statement

1. Nature of impact:

This rule making will modify the existing regulations to clarify the jurisdictional authority of the department over endangered species and creates standard procedures for the determination of jurisdiction and establishes the parameters for the application, review and issuance of required permits. The actions outlined in the regulation have been undertaken by the department under existing regulatory authority and supported through legal decisions relevant to the underlying law and regulations. Therefore, the impact on jobs is estimated to be neutral.

2. Categories and numbers affected:

As with the existing regulation, projects may not take listed species. While there may be a perception that this regulation may increase the requirements of project proponents in relation to listed species, this rule making provides guidance and delineates procedures that will enable project proponents to more effectively design their projects and assemble the information required by the department. The result will be an increase in the efficiency in which listed species issues are addressed, potentially resulting in more rapid project approvals. This rule making clarifies the types of actions that would result in a take of listed species and provides a transparent process for applicants to pursue alternatives to harmful projects. No net impact to jobs is expected.

3. Regions of adverse impact:

This rule making makes no modification of the regions impacted by the existing regulation.

4. Minimizing adverse impact:

This rule making includes explicit exemptions for routine and ongoing agricultural activities, where no such exemption formerly existed. Therefore, any adverse impacts of the existing regulation may actually be reduced through this rule making.

5. Self-employment opportunities:

Not applicable.

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

Specific reasons underlying the finding of necessity: This part sets forth the license fees for life settlement providers and life settlement brokers, registration fees for life settlement intermediaries and financial accountability requirements for life settlement providers as required under sections 2137, 7803, and 7804 of the Insurance Law as added by Chapter 499 of the Laws of 2009. These sections, along with other sections of the new life settlement legislation, became effective May 18, 2010.

These sections of the Insurance Law require licensing and registration of life settlement providers, life settlement intermediaries and life settlement brokers. In order to license and register these persons, the fees associated with the licensing and registration, as well as financial accountability requirements which life settlement providers must demonstrate at licensing, must be established by regulation as required by the legislation. The licensing of these entities is a critical aspect of the new life settlement law in order to properly safeguard the public in life settlement transactions.

Section 21 of Chapter 499 of the Laws of 2009 permits a person lawfully operating as a life settlement provider, life settlement intermediary, or life settlement broker in this state with respect to life settlement transactions not heretofore regulated under the Insurance Law to continue to do so pending approval or disapproval of the person's application for license or registration, if such person filed the appropriate application with the Superintendent not later than 30 days after the Superintendent published the application on the Department's website and certified that the applicant shall comply with all applicable provisions of the Insurance Law and regulations promulgated thereunder. The licensing applications for life settlement provider, life settlement intermediary and life settlement broker were posted on the Department's website on April 29, 2010, May 18, 2010 and June 17, 2010 respectively. Because the law provides that the Superintendent must establish the application filing fees for licensing of life settlement providers and brokers, and the registration of life settlement intermediaries, and financial accountability requirements for life settlement providers, and such constitutes rulemaking under the State Administrative Procedure Act, it is critical that the fees, established by Emergency Measure on April 23, 2010, be maintained in effect on an emergency basis to facilitate the continued processing of these applications and acceptance of new licensing and registration applications. Otherwise, life settlement providers, life settlement intermediaries and life settlement brokers who previously submitted licensing or registration applications will be able to continue to operate in New York and engage in life settlement transactions without being licensed by or registered with the Superintendent, which will not adequately protect the public. In addition, absent continuation of this regulation on an emergency basis, no additional applications for licensure or registration could be accepted; thus prohibiting the growth of the New York life settlement market.

The Department is now focused on the issues that need to be addressed regarding licensing (e.g., development of licensing applications; establishing internal procedures, processes and systems; responding to inquiries). The Department is also engaging in outreach to interested parties to get their input regarding the additional provisions to be added to the regulation.

For the reasons stated above, an emergency adoption of Regulation No. 198 is necessary for the general welfare.

Subject: Life Settlements.

Purpose: Implement Chapter 499 of the Laws of 2009's provisions of license fees and financial accountability requirements.

Text of emergency rule: Chapter XV of Title 11 is renamed "Life Settlements."

Section 381.1 License fees and financial accountability requirements for life settlement providers.

(a) The application for a license as a life settlement provider shall be made on such forms and supplements as prescribed by the superintendent and shall be accompanied by a non-refundable fee of \$10,000.

(b) The financial accountability of a life settlement provider required in accordance with section 7803(c)(2)(E) of the Insurance Law, to assure the faithful performance of its obligations to owners and insureds on life settlement contracts subject to Article 78 of the Insurance Law, shall be in an amount at least equivalent to \$250,000, shall be maintained at all times and may be evidenced in one of the following manners:

(1) Assets in excess of liabilities in an amount at least equal to \$250,000 as reflected in the applicant's financial statements;

(2) A surety bond in an amount at least equal to \$250,000 placed in trust with the superintendent issued by an insurer licensed in this State to write fidelity and surety insurance under section 1113(a)(16) of the Insurance Law; or

(3) Securities placed in trust with the superintendent consisting of securities of the types specified in section 1402(b)(1) and (2) of the Insurance Law, estimated at an amount not exceeding their current market value, but with a total par value not less than \$250,000; provided that:

(i) If the life settlement provider is incorporated in another state,

Insurance Department

EMERGENCY RULE MAKING

Life Settlements

I.D. No. INS-31-10-00001-E

Filing No. 741

Filing Date: 2010-07-19

Effective Date: 2010-07-19

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

Action taken: Addition of Part 381 (Regulation 198) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201 and 301 and sections 2137, 7803 and 7804 as added by L. 2009, ch. 499 and L. 2009, ch. 499, section 21