

6 NYCRR Part 199

Regulatory Impact Statement

1. Statutory Authority

Real Property Tax Law (“RPTL”) §480-a related to taxation of forest land authorizes the Department of Environmental Conservation to, after public hearings, adopt and promulgate rules and regulations necessary to implement the provisions of RPTL §480-a.

2. Legislative Objectives

RPTL 480-a and the implementing regulations, 6 NYCRR Part 199 (“Part 199”) were initially adopted in 1976 for the purpose of providing tax relief to qualifying landowners to encourage long-term private ownership of woodlands to produce forest crops and thereby increase the likelihood of a stable forest economy. The Part 199 regulations established to implement RPTL 480-a have not been significantly changed or updated since they were originally adopted 45 years ago. The proposed amendments to Part 199 are intended to improve and sustainably manage New York’s forest resources and lessen the administrative burden placed on participating landowners and Department staff. Specifically, the primary objective of this amendment is to respond to public feedback by improving the efficiency and effectiveness of the program.

3. Needs and Benefits

Over the years, many 480-a program participants have expressed dissatisfaction and frustration with the current law and regulations. Chief among these complaints are the rigid annualized work schedule and the costs associated with following program

requirements. Similarly, other eligible forest owners have indicated their reluctance to enroll because of the burdensome requirements imposed by the current regulations. These concerns have limited the program's reach and effectiveness as a tool to promote and support forest retention and sustainable management of forests. After over 45 years of existence, only about 12-15% of all eligible properties are currently enrolled in the 480-a program.

The revised regulations are intended to provide efficiencies which will allow staff to improve the administration of the current program. The proposed amendments are intended to address these concerns by:

Amending §199.5(b) to require a signed attestation certifying that the owner has reviewed the requirements of the program with a Department forester. This will keep the landowner informed of program requirements and reduce compliance issues.

Amending §199.5 (e) to set a new application and update deadline of September 1st, preceding the first eligible taxable status date for enrollment. The review period will also increase from 60 to 90 days. This will allow staff to inspect properties during the field season to give sufficient time for a thorough review prior to enrollment and will allow the landowner and consulting forester more time to correct errors found on the property or in the management plan before the taxable status date.

Amending §199.6 (a) to extend the term of the forest management plan from one 15 year work schedule to 20 years broken into two ten year work periods will allow landowners a longer period to complete required work as opposed to an annualized

work schedule. This flexibility will achieve efficiencies by reducing the frequency of management plan amendments.

Amending §199.9 (b) to extend the required management plan update from five to ten years will eliminate unnecessary data collection and provide efficiencies for participating landowners. Additionally, §199.9 (c) now requires landowners to provide a narrative update of material changes to the enrolled parcel every five years which will keep Department staff informed of substantive changes on the property, without requiring unnecessary field data collection.

RTPL 480-a is intended, in part, to incentivize enrollees to continuously produce a merchantable forest crop consistent with environmentally and economically sound silvicultural practices. The current regulations do not adequately ensure that enrollees will provide for adequate regeneration, nor do they ban the practice of high grading. The proposed amendment is intended to ensure forest sustainability within the program by:

Amending §199.1 by adding §199.1 (r) to define high grading as the removal of the most commercially valuable trees (by reason of size, quality or species) at the expense of future growth or financial return, often leaving a residual stand composed of trees of poor condition or species composition. Proposed language to §199.6 (c) now states that high grading is not an acceptable silvicultural practice the owner can select. This explicitly makes it clear that unsustainable forestry practices or prescriptions will not be accepted under Forest Tax Law and is grounds for revocation from the program.

Amending §199.6 (b) so that any cutting prescriptions submitted to and approved by the Department pursuant to §199.7(b) shall be incorporated into and become part of the approved management plan. Deviation from the approved prescription is therefore a deviation from the approved plan.

Amending §199.6 (d) to allow grazing by domestic animals for the purposes of treating interfering vegetation under an approved prescription. This allows landowners to incorporate new methods of interfering vegetation control to help secure forest regeneration on their property using domestic animals, if the owner incorporates the practice into the approved forest management plan

Amending §199.8 (e) so that at the time of amending the management plan as required in §199.9 (b), the work schedule shall be amended to include treatments to establish regeneration in stands that have undergone a natural or human disturbance, if the stand is not reoccupied with enough regeneration of commercial species to ensure future production of merchantable forest crops. This proposed provision establishes a requirement of the enrollee to attempt to regenerate stands by using accepted forestry methods within a reasonable, scientific time frame (ten years) with a provision to remedy a failure. A penalty would only be appropriate if an owner refuses to attempt to regenerate a stand as stated in the approved management plan.

Adding a new section 199.10(g) to clarify the Department can remove committed acres due to re-measurement without penalty.

Adding a new section 199.12 to establish a management plan and cutting prescription preparers training requirement. Landowners are for the most part,

exclusively reliant on the advice and skill of a consultant forester to comply with many of the forestry provisions of the Forest Tax Law. The Department is proposing to create a training requirement for consulting foresters working under Forest Tax Law on the behalf of the landowner. This training along with other proposed regulations and handbook changes set requirements on how management plans and prescriptions should be written under Forest Tax Law.

Additionally, the proposed amendment revises section 199.6(a) to require forest management plans use a template approved by the Department. This approved template will provide clear guidance to consulting foresters on what is an acceptable plan and allow staff to review plans more efficiently and accurately.

A robust outreach effort was developed and implemented throughout 2018 and 2019 to gather stakeholder input on how to improve the Forest Tax Law program through regulatory reform. In the fall of 2018, program staff gathered suggestions from Department field staff as well as attendees of the annual New York Society of American Foresters (NYSAF) meeting in January of 2019. Eleven public meetings (ten in person meetings and one webinar) were held throughout the winter and spring throughout the state. These stakeholder meetings were well attended by enrolled and non-enrolled landowners, consulting foresters, Department program and regional staff as well as municipal officials. Staff presented ideas for reform that had been received from the July 2019 meeting, regional staff visits, and program discussions. Comments were taken at each meeting and incorporated into subsequent presentations. Additional comments were received via email, letter and by phone and are currently posted on the Department's Division of Lands and Forests Private Land Services website. At the

NYSAF annual meeting in January 2020 staff received additional comments on recommended regulatory changes. There will be an opportunity for the public to officially comment on the proposed regulations during a 60-day public comment period when the regulation appears in the New York State Register as a proposed rulemaking.

4. Costs:

The proposed revisions to Part 199 pursuant to the provisions of §199.8 (e) may increase costs to participating landowners by requiring them to secure forest regeneration through deer control strategies or competing vegetation control for some certified acres to remain enrolled. However, such costs are offset by the long-term tax savings from enrollment in the program. The proposed amendments are intended to improve forestry outcomes and to lessen the administrative burden on current enrollees and the Department.

5. Local government mandates:

Real Property Tax Law 480-a provides tax relief to qualifying landowners in exchange for implementation of sustainable forest management. The proposed amendments to Part 199 change what is required of enrolled landowners; they do not impose any new or additional burdens on county clerks or local government officials.

6. Paperwork:

The proposed regulatory revisions will reduce paperwork requirements for Forest Tax Law program applicants and participants by extending the period between mandatory management plan updates from every five years to every ten years. A shorter narrative check-in at five years will replace the requirement for a full five year update.

7. Duplication:

The proposed regulatory revisions do not duplicate any existing state or federal regulation.

8. Alternatives:

The no action alternative is not feasible since leaving the existing regulation as is would not reflect the need to update the regulations to provide efficiencies for both the regulated community and the Department. One alternative to the proposed revisions would be a legislative amendment to allow comprehensive revisions to RPTL 480-a. This would allow for other regulatory amendments such as: lowering the minimum acreage requirement, revising the penalty structure, or requiring the landowner to be the primary manager for enrolled forest acreage for timber. These amendments would make the Forest Tax Law more attractive to landowners and thus increase enrollment, make the program more efficient and increase program benefits, however without legislative authorization the Department cannot make these amendments. The Department tried the legislative approach, but the proposal was not approved.

A public meeting suggestion requiring landowners to take a course to learn program requirements before enrollment was not adopted and deemed overburdensome for enrollees. Other public meeting suggestions included developing a mapping standard and technical forestry and management plan details which did not require regulatory amendments to remedy.

9. Federal standards:

There are no applicable federal standards.

10. Compliance schedule:

It is anticipated that enrollees and new applicants will be able to comply with the amendments prior to the effective date of March 1, 2023 for the 2024 tax roll year.