

# 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 Audit and Control

---

---

### NOTICE OF ADOPTION

#### Harmonize Regulation with Recent Amendments to the State Finance Law and Resolve Ambiguities in the Law

**I.D. No.** AAC-26-09-00006-A

**Filing No.** 1245

**Filing Date:** 2009-11-04

**Effective Date:** 2009-11-18

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

**Action taken:** Repeal of Part 22 and addition of new Part 22 to Title 2 NYCRR.

**Statutory authority:** State Finance Law, sections 8 and 179-y

**Subject:** To harmonize regulation with recent amendments to the State Finance Law and resolve ambiguities in the law.

**Purpose:** To harmonize regulation with recent amendments to the State Finance Law and resolve ambiguities in the law.

**Text of final rule:** Part 22 of 2 NYCRR is repealed and replaced as follows:

TITLE 2. DEPARTMENT OF AUDIT AND CONTROL CHAPTER I. AUDIT OF REVENUES AND ACCOUNTS PAYABLE FROM STATE FUNDS AND FUNDS UNDER ITS CONTROL

PART 22. PROMPT CONTRACTING AND INTEREST PAYMENTS FOR NOT-FOR-PROFIT ORGANIZATIONS

#### Section 22.1 Purpose

The purpose of this Part is to implement the provisions of Article XI-B of the State Finance Law as added by Chapter 166 of the Laws of 1991

and as amended by chapter 648 of the Laws of 1992 and chapter 292 of the Laws of 2007.

#### Section 22.2 Definitions

All terms shall have the meaning prescribed to them pursuant to section 179-q of the State Finance Law unless otherwise provided for in this Part.

#### Section 22.3 Agency notification with respect to renewal contracts

A State agency administering a contract subject to this Part, shall, as required by section 179-t of the State Finance Law, provide written notice by mail (including the use of electronic mail) to the not-for-profit organization of its preliminary determination whether or not to renew the contract. Such notification must be provided no later than ninety days prior to the end of the contract or thirty days after an appropriation providing funding for continued payments shall become law, whichever is later. Where a State agency fails to provide such notice by the required date, the existing contract shall be deemed to be extended until ninety days after the date the State agency provides the not-for-profit organization with the required notice. The not-for-profit organization shall be entitled to payment consistent with the terms of the existing contract and may submit invoices or vouchers to the State agency on billing cycles consistent with those applicable to the existing contract. The State agency shall then submit the necessary documentation to the Comptroller in order for payment to be processed. The not-for-profit organization shall be entitled to interest under Article IX-A of the State Finance Law to the extent that payment is not timely made as provided in such Article IX-A, which relates to the prompt payment of contracts.

Section 22.4 Comptroller's determination whether unusual circumstances warrant denial of interest

1. If a State agency believes that it is unable to comply with the timeframes established by section 179-t of the State Finance Law due to unusual circumstances beyond its control, and that such unusual circumstances warrant the denial of interest, in whole or in part, to the not-for-profit organization, the State agency shall so advise the Comptroller, the Division of the Budget and the not-for-profit organization and shall provide the basis for such assertion in writing on or before ninety days prior to the end of the contract or thirty days after an appropriation providing funding for continued payments shall become law, whichever is later.

(2) "Unusual circumstances" does not mean a State agency's (a) failure to plan for implementation of a program; (b) failure to assign sufficient staff resources to implement a program; (c) failure to establish a schedule for the implementation of a program; [or] (d) failure to anticipate any other reasonably foreseeable circumstance; or (e) routine contract negotiations.

(3) Not more than twenty days after receipt of the State agency's written notice, the Comptroller shall determine whether unusual circumstances exist and whether such circumstances warrant the denial of interest in whole or in part; and inform the State agency. If the Comptroller determines that the denial of interest is not warranted, in whole or in part, the Comptroller shall notify the State agency, the Division of the Budget, and the not-for-profit organization of such determination. Thereafter, the State agency shall, if the contract is then fully executed, immediately submit for the Comptroller's approval a voucher requesting payment of the interest, if any, due under section 22.7. If the contract is not then fully executed, the State agency shall immediately submit a voucher for the Comptroller's approval requesting payment of interest, if any, due under section 22.7 once the contract is fully executed.

#### Section 22.5 Written directives

(a) 1. Upon receipt of a written directive (by mail or electronic mail) a not-for-profit organization may begin to provide the services required by a State agency on the date provided [] by such written directive. A "written directive" means a written request by a State agency to a not-for-profit organization authorizing such organization either to begin providing services during the negotiation of a contract or to continue providing services during the negotiation of a renewal contract. For purposes of this section, a State agency shall be deemed to have issued a written directive

where: (i) with respect to a renewal contract it has provided notice to the not-for-profit organization of its intent to renew the contract which shall include the transmission of a proposed renewal agreement to the not-for-profit organization; or (ii) with respect to new contracts, it has provided the not-for-profit organization with a proposed contract containing a start date, in which case such start date shall be deemed the date of the written directive.

2. If a written directive does not contain a start date, then the not-for-profit is authorized to provide services immediately.

(b) Any not-for-profit organization receiving a written directive to perform services under a new contract between such not-for-profit organization and a State agency that has not been fully executed by the contract start date shall be eligible for interest payments to the extent authorized by section 22.7 of this Part.

(c) In order for a State agency to exercise an option in an existing contract to provide for an additional quarter of financing or any advance payment to such not-for-profit organization in accordance with section 22.6 of this Part, the State agency shall provide a written directive to such organization.

(d) Any not-for-profit organization in receipt of a written directive from a State agency with an existing contract which does not contain an optional financing quarter may be eligible for an advance payment in accordance with section 22.6 of this Part.

(e) A written directive shall only be executed by State agency personnel duly authorized to sign contracts on behalf of such State agency.

#### Section 22.6 Advance payments for renewal contracts

(a) Where a State agency administering a contract has advised a not-for-profit organization of the State agency's intention to renew the contract, the State agency may authorize an advance payment to the not-for-profit organization pursuant to this section pending execution of the renewal contract, if such contract is not fully executed by the commencement date of the renewal contract.

(b) Existing or renewal contracts that do not contain an optional financing or fifth quarter financing provision shall be eligible for an advance payment providing such organization receives a written directive from a State agency.

(c) An advance payment under this section shall not exceed one quarter of the amount paid or to be paid to the not-for-profit organization pursuant to the existing contract.

(d) Any advance payment shall offset the amount of money due to the organization for services provided during the period for which payment was made.

(e) Any State agency that wishes to provide an advance payment pursuant to this section shall submit to the Comptroller a written directive, a voucher and such other documents as may be required by the Comptroller. The Comptroller shall review such written directive and either approve or disapprove such written directive. Such written directive shall include language indicating that if the agency subsequently determines pursuant to section 179-w of the State Finance Law that substantive and significant differences exist between the State agency and the not-for-profit organization in the negotiation of the contract or that the not-for-profit organization is not negotiating the renewal contract in good faith, the written directive shall be deemed suspended and the not-for-profit organization shall not be eligible for subsequent advance payments thereunder.

#### Section 22.7 Interest payments

(a) (1) A not-for-profit organization that provides services to a State agency pursuant to a written directive prior to the date that the contract for such services has been fully executed, shall, once such contract has been approved and become fully executed, be entitled to interest in accordance with, and to the extent authorized by, this section on those moneys that would be due under the terms of a contract or a renewal contract prior to the date on which the contract became fully executed.

(2) For purposes of this section, a State agency shall be deemed to have issued a written directive where: (i) with respect to a renewal contract it has provided notice to the not-for-profit organization of its intent to renew the contract which shall include the transmission of a proposed renewal agreement to the not-for-profit organization; or (ii) with respect to new contracts, it has provided the not-for-profit organization with a proposed contract containing a start date, in which case such start date shall be deemed the date of the written directive.

(b) A not-for-profit organization that has borrowed funds to provide services pursuant to a written directive may receive interest under this section where the not-for-profit organization has: (i) been denied an advance payment pursuant to section 22.6 of this Part; and (ii) did not obtain a loan from the Not-For-Profit Short Term Revolving Loan Fund.

(c) A not-for-profit organization may not receive interest payments pursuant to this section where the not-for-profit organization received an advance payment pursuant to section 22.6 of this Part, provided however that if the contract has not been fully executed at the end of the period covered by such advance payment, the not-for-profit organization shall be

eligible for interest payments pursuant to this section in respect to services performed after such period; or

(d) (1) Except as provided in paragraph (2) in this subsection, any not-for-profit organization eligible to receive an interest payment pursuant to subdivision (a) or (b) of this section shall receive such interest payments at a rate equal to the rate set by the Commissioner of Taxation and Finance for corporation taxes pursuant to paragraph 1 of subsection (e) of section 1096 of the Tax Law.

(2) A not-for-profit organization eligible to receive interest pursuant to subdivision (b) of this section shall submit to the State agency the interest rate at which it borrowed funds and such other documentation as prescribed under subdivision 2 of 179-v of the State Finance Law. Such not-for-profit organization shall receive interest pursuant to this section at a rate of interest equal to the rate it is paying on such borrowed funds, provided the State agency has approved of such rate and the Comptroller determines such rate is reasonable.

(e) (1) Interest shall be due a not-for-profit organization for each payment that would have been due if the contract had been fully executed before the scheduled commencement date. Interest shall be calculated for the period commencing thirty days after the end of each billing period as specified in the contract and ending on the date payment is actually made, except where under the terms of the contract the not-for-profit organization is entitled to a payment or payments on specified dates without the submission of an invoice or voucher, in which case interest shall run from each such specified date or dates. Interest shall be calculated separately with respect to each payment due under the contract. For purposes of this section, if a contract does not specify billing periods or a payment schedule, it shall be presumed that the not-for-profit is authorized to submit invoices or vouchers at the end of each month for a pro rata portion of the total contract amount. The State agency is responsible for calculating interest due and preparing a separate voucher to pay such interest consistent with this section. A State agency may not deny interest to a not-for-profit organization on the basis that it failed to submit invoices or vouchers during the period prior to final execution of the contract. However, where the not-for-profit fails to submit an invoice or voucher for such payment by the thirtieth day after the date the contract became fully executed, no additional interest shall accrue after such thirtieth day.

(2) Once a late contract is fully executed, interest on any late payments due subsequent to the date the contract is fully executed shall be made in accordance with the requirements of the Article XI-A of the State Finance Law which relates to the prompt payment of contracts.

(f) Any interest payments made pursuant to subdivision (a) or (b) of this section shall be made from appropriations for State operations that are available for the administrative programs for the State agency which contracted with the not-for-profit organization. Interest payments shall not be made from amounts appropriated for program purposes. Any interest payments made to a not-for-profit organization shall not reduce the amount of money that otherwise would be payable to the not-for-profit organization under the terms of the contract.

(g) No interest shall be payable pursuant to the provisions of this section with respect to any contract or renewal contract where such contract is required to be approved by the Attorney General and the Comptroller, but is never approved.

(h) No interest shall be payable under this section where a State agency and a not-for-profit organization have entered into an agreement under section 179-v subdivision (7) waiving interest, and the Comptroller has determined that the waiver of interest is warranted. If the Comptroller determines the waiver of interest is unwarranted the State agency shall immediately submit for the Comptroller's approval a voucher requesting payment of interest to such not-for-profit organization. If such voucher is not received within 30 days after the date of the Comptroller's written determination, the Comptroller will calculate the amount of unpaid interest due to the not-for-profit organization pursuant to section 179-v of the State Finance Law and this Part, and pay such amount to the not-for-profit organization as a charge against the agency's appropriations.

(i) (1) Interest payable pursuant to the provisions of this section shall be suspended where the State agency has, in accordance with section 179-w of the State Finance Law, determined that significant and substantive differences exist between the State agency and the not-for-profit organization in the negotiation of a contract or renewal contract or that the not-for-profit organization is not negotiating in good faith; and the State agency has provided written notice of such determination to the not-for-profit organization and the Comptroller, as required by section 179-w.

(2) Interest shall be suspended only for the period during which the State agency has determined that the significant and substantive differences existed or the not-for-profit was not negotiating in good faith. Any State agency that has made a determination under paragraph (1) of this subdivision shall, when it submits the contract to the Comptroller for approval, provide notice to the Comptroller and the not-for-profit organization of the date on which the conditions that justified the suspension of interest, ceased to exist.

(j) A determination that extenuating circumstances exist pursuant to section 179-w shall not suspend the accrual of interest unless the State agency also determines, and such determination is approved by the Comptroller, that the circumstances are unusual which warrant the denial of interest as prescribed by section 22.4 of this Part.

(k) No State agency shall be liable for interest payments under this section on contracts executed pursuant to appropriations made in whole or in part for liabilities incurred in a prior fiscal year that were awarded without the use of competitive process.

#### Section 22.9 Reports

(a) On or before March thirty-first, each State agency shall, for each annual period beginning January second and ending the following January first prepare and transmit a report to the Office of the State Comptroller in relation to such State agency's contracting activities with not-for-profit organizations. The Office of the State Comptroller shall make such report available to the public.

(b) Such report shall include, but not be limited to:

(i) information regarding the number of programs affected by Article XI-B of the State Finance Law;

(ii) the ability of the State agency to meet the time frames described within Article XI-B of the State Finance Law and the regulations;

(iii) the number of programs, contracts, renewal contracts both complying and failing to comply with the time frames set forth in Article XI-B of the State Finance Law;

(iv) the number of contracts on which interest was paid;

(v) the amount of interest paid by each State agency; and

(vi) any other information deemed relevant in relation to the implementation of prompt contracting and payments affecting not-for-profit organizations.

(c) On or before May thirty-first of each year, the Comptroller shall prepare an annual report examining the effectiveness and implementation of prompt contracting; and make any recommendations deemed necessary to improve existing contracting and payment methods between State agencies and not-for-profit organizations. Such report shall be transmitted to the temporary president and minority leader of the Senate, the speaker and minority leader of the Assembly, the director of the Division of the Budget, the chairman of the Senate Finance Committee and the Chairman of the Assembly Ways and Means Committee.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 22.3, 22.4(2) and 22.5(a)(1)(2).

**Text of rule and any required statements and analyses may be obtained from:** Jamie Elacqua - Legislative Counsel, Office of the State Comptroller, 110 State St., Albany, NY 12236, (518) 474-4146, e-mail: JElacqua@osc.state.ny.us

#### Revised Regulatory Impact Statement

1. Statutory Authority: State Finance Law Sections 8 and 179-y.

2. Legislative Objectives: This rule will harmonize the regulatory scheme with the recent amendments to the Prompt Contracting Law and resolve ambiguities in the law. Additionally, the Prompt Contracting Law provides that the Comptroller promulgate regulations to develop and implement procedures for the Prompt Contracting Law.

3. Needs and Benefits: As stated above, the rules are necessary to harmonize recent amendments to the Law to the regulations and resolve ambiguities in the law. As to the latter, specifically, the Prompt Contracting Law provides time frames for the execution of contracts between state agencies and Not-for-profit organizations ("NFP's"). Section 179-v provides that a NFP shall be entitled to interest payments in certain instances. It is generally accepted that the interest runs under this section only where the time frames established are not met and contract is not in place prior to the date when the NFP is required to begin providing services. The statutory language is somewhat ambiguous concerning the date when such interest begins to accrue. State agencies have adopted conflicting interpretations. Since it is the Comptroller's duty to interpret and implement procedures relating to this Law, these rules are necessary for uniformity.

4. Costs: a. There will be no associated costs of compliance for NFP's.

b. It is likely there will be increased costs to State agencies since a recent study conducted by the Comptroller revealed that no State agencies in the sample had paid the interest statutorily required. We do not believe that this cost can be reasonably calculated since it is dependent on future events; however OSC believes that had State agencies in its recent sample study been in compliance with the relevant law that in the 2007-2008 year that a total of \$44,411 of interest should have been paid for renewal grant contracts and \$55,816 of interest should have been paid for new grant contracts and these regulations will clarify their obligation to do so in certain circumstances.

c. A Review of State Agency Compliance with Prompt Contracting Statute by the Office of the State Comptroller's Bureau of State Expenditures examined a random sample of 95 grant contracts from a population

of 1,788 grant contracts received by OSC after the contract start date during the period of January 1 through April 30, 2008. The sample included 67 new grant contracts (including member items) and 28 renewal grant contracts. The corresponding contract files, vouchers and accompanying documents were reviewed and State agency officials were interviewed. It should be noted that cost is premised on the fact that State agencies are being penalized for their failure to execute these contracts in a timely manner; if State agencies were to execute these contracts in a timely manner there would be no cost associated with this rule.

5. Local Government Mandates: The Prompt Contracting Law governs State agencies; there will be no impact on local governments.

6. Paperwork: The rules would require a written directive, if work is to be continued under the old contract. Additionally, when interest is due vouchers must be submitted to OSC.

7. Duplication: None.

8. Alternatives: There are no alternatives for the portion of the rule that merely harmonizes the regulations to the recent amendments to the Law. There are several alternatives to the interpretation given to the time frames for the calculation of interest for late contracts. First, if read literally the language of section 179-v of the State Finance Law could be read to require interest from the scheduled commencement dated or the date that the NFP began to provide services (whichever later). Such interpretation ignores the fact that interest only accrues on amounts that would have been payable under the contract, and therefore should not accrue before the date when such payments could have been made if the contract had been timely. This interpretation would place the NFP in a better position where the contract is late; than it would have been in if the contract had been timely. Specifically, it would provide interest to the NFP for periods before it could ever have expected payment if the contract had been timely executed and in place prior to the date the NFP began providing services.

Another alternative is that the interest does not begin to run under 179-v until 30 days after the date or dates when the NFP actually submits vouchers for services under the proposed contract. This interpretation is based upon the theory that interest only accrues on amounts that would be due under the contract, and that since no payment can be made until a voucher is submitted, no interest can accrue until a voucher has been submitted. This interpretation is flawed since it would provide for interest only where a voucher is submitted which could not be at that time. Accordingly, the alternative adopted in this rule requires payment of interest, once a contract is fully executed and approved, from the date(s) when, consistent with the terms of the contract, the NFP could reasonably have expected payment(s), if the contract had been fully executed and approved before the date when the NFP began providing services under such contract. Since the Prompt Payment Law requires State agencies generally to make payment within 30 days of the date of the submission of an invoice or voucher, it follows that interest should run on each payment covered by section 179-v from the 30th day after each date on which the NFP could have submitted an invoice or voucher if the contract had been fully executed.

9. Federal Standards: None.

10. Compliance Schedule: It is expected that all State agency should comply immediately upon this rules adoption.

#### Revised Regulatory Flexibility Analysis

1. Effect of rule: This rule will not effect local governments. This rule will effect small businesses which are not-for-profit businesses that have a contract with a State agency.

2. Compliance requirements: In order to comply with this rule, small businesses under the purview of the rule must submit invoices or vouchers, which they are already statutorily required to do if they have a contract with a State agency.

3. Professional services: It is not likely that a small business would be required to hire professional services to comply with this rule.

4. Compliance costs: There will be no costs associated with this rule.

5. Economic and technological feasibility: Compliance will not require any new technological requirements and the economic impact will be minimal. In fact, it appears that this clarification will confer an economic benefit to small businesses since in the past State agencies have not paid interest on these types of contracts.

6. Minimizing adverse impact: This rule will have no adverse impact on local governments. This rule may adversely impact small businesses if such businesses have a contract with a State agency and fail to provide a voucher for work performed within thirty days after the contract has been fully executed. In such instances, the small business will lose its right to additional interest payments for periods after such thirtieth day. It is believed to be reasonable and necessary since it provides the small business an additional reasonable time period to submit the voucher and it appears that all businesses should have ample time to comply with such requirement. Small businesses should not encounter any issues in complying with this rule. Additionally, the clarification contained in this rule as stated above, will confer an economic benefit to small businesses since in the past State agencies have not paid interest on these types of contracts.

7. Small businesses and local government participation: This rule will not effect local governments. This rule will effect small businesses which are not-for-profit businesses that have a contract with a State agency.

#### **Revised Rural Area Flexibility Analysis**

This action will not effect local governments in rural areas. This rule will effect small businesses which are not-for-profit businesses in rural areas that have a contract with a State.

#### **Assessment of Public Comment**

OSC received written comments from the Nature Conservancy and the UJA Federation. Generally, these entities voiced their support in the Comptroller's efforts to clarify the Prompt Contracting Laws. Some comments made by the Nature Conservancy indicated that it was their belief that some terms needed further clarification. Based on such comments we reviewed the proposed rules and found the meanings of these terms were implicit; however non substantial revisions were made to the rules to make these implicit meanings explicit. In addition, OSC received verbal comments from the Division of Budget that did not require any changes to the regulations.

## Division of Criminal Justice Services

### NOTICE OF ADOPTION

#### **Forensic Laboratory Accreditation & the State DNA Databank**

**I.D. No.** CJS-32-09-00006-A

**Filing No.** 1244

**Filing Date:** 2009-11-03

**Effective Date:** 2009-11-18

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

**Action taken:** Amendment of sections 6190.1, 6192.1, 6192.3 and 6192.4 of Title 9 NYCRR.

**Statutory authority:** Executive Law, sections 837(13), 995-b(1) and 995-c

**Subject:** Forensic laboratory accreditation & the State DNA Databank.

**Purpose:** To update references to documents incorporated by reference and the address of the Department of State.

**Text of final rule:** 1. Paragraphs (8), (9), and (11) of subdivision (a) of section 6190.1 of Title 9 NYCRR are amended to read as follows:

(8) The term ASCLD/LAB refers to the American Society of Crime Laboratory Directors/Laboratory Accreditation Board. Current ASCLD/LAB accreditation guidelines are contained in the [2003] 2008 edition of the ASCLD/LAB manual, which may be obtained from the ASCLD/LAB, 139 Technology Drive, Garner, NC 27529. *Current ASCLD/LAB International accreditation guidelines are contained in the ISO/IEC 17025-2005 "General Requirements for the competence and testing of calibration laboratories," which can be obtained from ISO at www.iso.org or from the American National Standards Institute (ANSI) at www.ansi.org, and the 2006 ASCLD/LAB International Supplemental Requirements, which may be obtained from ASCLD/LAB, 139 Technology Drive, Garner, NC 27529.* These guidelines may also be viewed at the Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, and the Department of State, [41 State Street] One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.

(9) The phrase Quality Assurance Standards for Forensic DNA Testing Laboratories refers to standards recommended by the Federal DNA Advisory Board, and approved by the Director of the Federal Bureau of Investigation [on July 15, 1998], which took effect [October 1, 1998] July 1, 2009. These standards may be obtained from the Federal Bureau of Investigation, Laboratory Division, [935 Pennsylvania Avenue, N.W., Washington, DC 20535] 2501 Investigation Parkway, Quantico, Va. 22135. These standards may also be viewed at the Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, and the Department of State, [41 State Street] One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.

(11) The term ABFT refers to the American Board of Forensic Toxicology, Inc. The current ABFT laboratory accreditation program is found in the [2002] 2006 Forensic Toxicology Laboratory Accreditation Manual, which may be obtained from ABFT, [Administrative Office, P.O. Box 669] 410 North 21st Street, Colorado Springs, CO [80901-0669]

80904. This program may also be viewed at the Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, and the Department of State, [41 State Street] One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.

2. Subdivision (t) of section 6192.1 of Title 9 NYCRR is amended to read as follows:

The term NDIS [Standards for Acceptance of] DNA Data *Acceptance Standards* refers to the document prepared by the FBI specifying the requirements for DNA data to be accepted for searching and storage at the national level, which was [authored] *created* by the FBI, Laboratory Division, [935 Pennsylvania Avenue, NW, Washington, DC 20535] 2501 Investigation Parkway, Quantico, Va. 22135, [effective] on January 11, 2000 and revised May 4, 2005. This document may be reviewed at the Division of Criminal Justice Services, Four Tower Place, Albany, NY 12203, and the Department of State, [41 State Street] One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231.

3. Subdivisions (a) and (b) of section 6192.3 of Title 9 NYCRR are amended to read as follows:

(a) The DNA databank shall be comprised of data generated from DNA testing methods approved in the NDIS [Standards for Acceptance of] DNA Data *Acceptance Standards*. Loci required for the upload of authorized DNA profiles to the national system shall be in accordance with the NDIS [Standards for Acceptance of] DNA Data *Acceptance Standards*.

(b) Casework evidence DNA profiles to be maintained in the DNA databank shall be comprised of information for at least six of the STR loci or other combinations of loci using alternative technologies approved for use in the NDIS [Standards for Acceptance of] DNA Data *Acceptance Standards*. This requirement for a minimum number of loci applies only to those casework evidence DNA profiles which an authorized laboratory desires to have maintained in the forensic index of the DNA databank.

4. Section 6192.4 of Title 9 NYCRR is amended to read as follows:

6192.4 Accuracy and completeness of DNA records. The accuracy and completeness of all DNA records maintained as part of the DNA databank will be assured through compliance with laboratory accreditation standards as promulgated by the commission in Part 6190 of this Title. In addition, accuracy and completeness of all DNA records maintained as part of the DNA databank will be assured through compliance with all forensic DNA laboratories with the requirements of the NDIS [Standards for Acceptance of] DNA Data *Acceptance Standards*. Each DNA profile (for either convicted offender or forensic samples) submitted must be certified by the submitting laboratory as being associated with the appropriate controls and blanks. Copies of all official correspondence between the DNA databank and participating laboratories will be maintained in the appropriate division file.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 6090.1(a)(8).

**Text of rule and any required statements and analyses may be obtained from:** Mark Bonacquist, Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203, (518) 457-8413.

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

A nonsubstantive change was made in section 6190.1(a)(8) to clarify the components of the ASCLD/LAB International accreditation program guidelines and where they may be obtained. The information contained in the regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and job impact statement previously filed remains accurate and no modification of the statement is required.

#### **Assessment of Public Comment**

The agency received no public comment.

## Education Department

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

#### **Veterans Tuition Awards Program**

**I.D. No.** EDU-46-09-00002-P

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

**Proposed Action:** Amendment of Part 162 of Title 8 NYCRR.

**Statutory authority:** Education Law, sections 207 and 669-a

**Subject:** Veterans Tuition Awards Program.

**Purpose:** Implement Chapter 57 of the Laws of 2008 and make technical amendments to conform to current practice.

**Text of proposed rule:** Part 162 of the Regulations of the Commissioner of Education is amended, effective November 24, 2009, as follows:

Part 162

Tuition Awards for Vietnam, *Persian Gulf, Afghanistan and other Eligible Combat Veterans*: Approval Requirements for Vocational Training Programs

§ 162.1 Scope of Part.

The purpose of this Part is to establish standards and approval requirements for eligible agencies seeking to obtain approval of vocational training programs for purposes of tuition awards to Vietnam, *Persian Gulf, Afghanistan and other Eligible Combat veterans* pursuant to section 669-a of the Education Law.

§ 162.2. . . .

§ 162.3 Program Approval.

(a) . . . .

(b) . . . .

(c) To qualify for tuition awards to Vietnam, *Persian Gulf, Afghanistan and other Eligible Combat veterans*, an eligible agency other than an institution of higher and professional education, registered business school or licensed trade school shall submit an application, in a form prescribed by the commissioner, for each vocational training program for which approval is sought. The governing body of such eligible agency shall assure in its application for approval that:

(1) . . . .

(2) the program shall be a *non-credit program which is at least three hundred twenty clock hours in length* and conducted in accordance with:

(i) a curriculum approved or developed by the department, or

(ii) a curriculum approved or developed by another State agency and acceptable to the department as meeting the requirements of this Part;

(3) Vietnam, *Gulf, Afghanistan and other Eligible Combat veterans* who are enrolled in programs approved pursuant to this Part shall be provided the same instruction, materials and resources as are provided to other students enrolled in the program;

(4) . . . .

(5) . . . .

(6) . . . .

(7) . . . .

(8) . . . .

(9) . . . .

(10) . . . .

(11) . . . .

(12) . . . .

(d) . . . .

(e) . . . .

(f) . . . .

(g) . . . .

(h) . . . .

**Text of proposed rule and any required statements and analyses may be obtained from:** Christine Moore, New York State Education Department, Education Building, 89 Washington Avenue, Albany, New York 12234, (518) 473-8296, email: cmoore@nysed.mail.gov

**Data, views or arguments may be submitted to:** Joseph Frey, Associate Commissioner, New York State Education Department, Room 978, Education Building, 89 Washington Avenue, Albany, New York 12234, (518) 486-3633, email: sroberson@nysed.mail.gov

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

**This action was not under consideration at the time this agency's regulatory agenda was submitted.**

**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.

Section 669-a of the Education Law establishes tuition awards for Vietnam, *Persian Gulf, Afghanistan and other eligible combat veterans* and authorizes the Commissioner of Education to approve for veterans tuition awards funding certain non-credit programs which are at least three hundred twenty clock hours in length and which meet standards of instructional quality established in regulations by the commissioner.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment to the Regulations of the Commissioner of

Education is necessary to implement Chapter 57 of the Laws of 2008 and to conform the regulations to current practice.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to conform Part 162 of the Regulations of the Commissioner of Education to Chapter 57 of the Laws of 2008 to allow *Persian Gulf, Afghanistan and other Eligible Combat veterans* to receive veterans tuition awards (VTA) for veterans enrolled in approved undergraduate or graduate programs at degree granting institutions or enrolled in approved vocational training programs and who apply for a tuition assistance program award. The proposed amendment also conforms the current regulations to current practice by authorizing the Commissioner to approve for VTA funding vocational training programs whose curricula is approved or developed by another state agency acceptable to the Department.

4. COSTS:

(a) Cost to State government: None.

(b) Cost to local government: There are no additional costs to local government.

(c) Cost to private regulated parties: None.

5. LOCAL GOVERNMENT MANDATES:

The amendment does not impose any programs, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment does not impose any paperwork requirements.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that relate to the approval of programs for veterans tuition awards.

10. COMPLIANCE SCHEDULE:

The proposed amendment must be complied with on its effective date. No additional period of time is necessary to enable regulated parties to comply with the regulation.

**Regulatory Flexibility Analysis**

The proposed amendment applies to veterans and vocational training programs whose curricula is approved by the State Education Department or another state agency acceptable to the Department and does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse financial impact, on small businesses or local governments. Because it is evident from the nature of the rules that it does not affect small businesses or local governments, no further measures were needed to ascertain that fact and none 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 will affect veterans who apply for veterans tuition awards (VTA), including those that are 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 purpose of the proposed amendment is to conform Part 162 of the Regulations of the Commissioner of Education to Chapter 57 of the Laws of 2008 to allow *Persian Gulf, Afghanistan and other Eligible Combat veterans* to receive veterans tuition awards (VTA) for veterans enrolled in approved undergraduate or graduate programs at degree granting institutions or enrolled in approved vocational training programs and who apply for a tuition assistance program award. The proposed amendment also conforms the current regulations to current practice by authorizing the Commissioner to approve for VTA funding vocational training programs whose curricula is approved or developed by another state agency acceptable to the Department.

The proposed amendment does not require any licensee or firm to hire any professional services to comply.

3. COSTS:

The proposed amendment does not impose any costs on the State or any regulated party.

4. MINIMIZING ADVERSE IMPACT:

The statute requires that these requirements apply to all veterans in the State, including those located in rural areas.

5. RURAL AREA PARTICIPATION:

The State Education Department solicited comments from the Rural Advisory Committee, which includes members located in all areas of New York State, including rural areas of the State.

**Job Impact Statement**

The purpose of the proposed amendment is to conform Part 162 of the Regulations of the Commissioner of Education to Chapter 57 of the Laws of 2008 to allow Persian Gulf, Afghanistan and other Eligible Combat veterans to receive veterans tuition awards (VTA) for veterans enrolled in approved undergraduate or graduate programs at degree granting institutions or enrolled in approved vocational training programs and who apply for a tuition assistance program award. The proposed amendment also conforms the current regulations to current practice by authorizing the Commissioner to approve for VTA funding vocational training programs whose curricula is approved or developed by another state agency.

Because it is evident from the nature of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, no affirmative 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

**Proposed Fishery Closures for Hudson River American Shad and Fishery Restrictions for the Delaware River American Shad**

**I.D. No.** ENV-46-09-00009-P

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

**Proposed Action:** Amendment of Parts 10, 11, 35, 36 and 40 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 11-0303, 11-0305, 11-0315, 11-0317, 11-0319, 11-1301, 11-1303, 11-1305, 13-0105 and 13-0339

**Subject:** Proposed fishery closures for Hudson River American shad and fishery restrictions for the Delaware River American shad.

**Purpose:** To protect the Hudson River and Delaware River American shad stocks from further decline.

**Text of proposed rule:** Amendment of Part 10 of Title 6 NYCRR.

Part 10 of 6 NYCRR, entitled "Sportfishing" is amended to read as follows:

- (Paragraphs 10.1(b)(1) through 10.1(b)(12) remain unchanged)
- Existing paragraph 10.1(b)(13) is amended to read as follows:
- (b) "Table A. Sportfishing regulations"

	Species	Open Season	Minimum Length	Daily limit
(13)	American Shad - in the Hudson River and tributaries north of the George Washington Bridge	[All year] <i>Pos-session prohibited</i>	[Any size]	[1]
	American Shad - all other inland waters	All year	Any size	[6]3

(Paragraphs 10.1(b)(14) through 10.1(b)(19) remain unchanged)

Amendment of Part 11 of Title 6 NYCRR.

Part 11 of 6 NYCRR, entitled "More than one species" is amended to read as follows:

(Section 11.1 remains unchanged)

Section 11.2 is amended to read as follows:

11.2. Taking, possessing, sale, offering or exposing for sale or trafficking in certain Hudson River and Delaware River fish.

Subdivision 11.2(a) through paragraph 11.2 (b)(3) remains unchanged.

Addition of paragraph 11.2 (b)(4) reads as follows:

(4) *Take or possess American shad in the Hudson River and its tributary waters upstream from the river to the first falls or barrier impassable by fish, from the Federal Dam at Troy south to the Governor Malcom Wilson Tappan Zee Bridge, and the Marine and Coastal District at any time.*

Subdivision 11.2(c) through 11.2(d) remains unchanged.

Addition of subdivision 11.2 (e) reads as follows:

(e) *Possession and sale of American shad in the Hudson River, and its tributary waters upstream from the river to the first falls or barrier impassable by fish, from the Federal Dam at Troy south to the Governor Malcom Wilson Tappan Zee Bridge, and the Marine and Coastal District.*

(1) *Any American shad inadvertently taken in the Hudson River, and its tributary waters upstream from the river to the first falls or barrier impassable by fish, from the Federal Dam at Troy south to the Governor Malcom Wilson Tappan Zee Bridge, and the Marine and Coastal District must be returned to the water immediately without unnecessary injury.*

(2) *It is unlawful for any person to sell, import, traffic in or possess American shad in New York except that fish from other than New York waters that are accompanied by a bill of lading or sale denoting the State of origin.*

(3) *Any person violating any provision of this subdivision may be subject to license revocation as provided in Part 175 of this Title as well as other applicable penalties as set forth in law.*

Addition of subdivision 11.2 (f) reads as follows:

(f) *In the Delaware River, and its tributary waters upstream from Port Jervis, no person may:*

Addition of paragraph 11.2 (f)(1) reads as follows:

(1) *Fish commercially for American shad in the New York waters of the Delaware River and its tributaries at any time. For the purposes of this paragraph, fish commercially means either: the possession, setting, tending, operating or maintaining of nets or other devices for which a license is required pursuant to section 11-1503 of the Environmental Conservation Law; or the sale, offering for sale, exposing for sale or transporting of such fish other than in the boat in which such fish were landed after being taken.*

Amendment of Part 35 of Title 6 NYCRR.

Part 35 of 6NYCRR, entitled "Licenses" is amended to read as follows:

Existing subdivision 35.1(a) is amended to read as follows: Gear or operation scoop, dip and scap nets 10 feet square or under through gill nets per lineal foot remains the same.

(a) Schedule of license fees for commercial fishing in inland waters

	Gear or operation	Residents	Nonresidents of the State
[Gill nets in Hudson and Delaware Rivers from March 15 to June 15, 600 feet or under]		[10.00]	[100.00]

Gill nets in Chaumont Bay and waters of Jefferson County within one-half mile of the shore between Horse Island and Tibbet's Light, 2,500 feet or under to inboard motor boat over 15 tons in Lakes Erie and Ontario remains the same.

Amendment of Part 36 of Title 6 NYCRR.

Part 36 of 6NYCRR, entitled "Gear and operation of gear" is amended as follows:

Subdivision 36.1(a), paragraphs (1) through (3) remain unchanged.

Paragraph 36.1(a)(4) is rescinded.

[(4) It is unlawful for any person to take American shad for commercial purposes without having in possession either a valid gill net or shad and herring gill net Marine permit. Only one valid licensed gill net per fisher may be used to take American shad.]

Subdivision 36.1(b) through section 36.2 remain unchanged.

Subdivision 36.3(a) is amended to read as follows:

(a) [Shad and] *Anadromous alewife and blueback herring* may be taken with nets in the Hudson River from March 15th to June 15th. This subdivision is subject to additional emergency restrictions of the department pursuant to section 11-0315 of the Environmental Conservation Law.

Subdivision 36.3(b) through subparagraph 36.3(c)(2)(iii) remain unchanged.

Subparagraph 36.3(c)(2)(iv) is rescinded:

(iv) Gill nets having a stretched mesh equal to 5 2 inches stretched mesh, inside measure, through the net, may be possessed and used in or on that section of the Hudson River between the Rip VanWinkle Bridge and the George Washington Bridge.]

Subparagraph 36.3(c)(2)(v) is renumbered as subparagraph 36.3 (c)(2)(iv).

Subparagraph 36.3(c)(3)(i) remains unchanged.

Subparagraph 36.3(c)(3)(ii) is rescinded.

[(ii) gill nets equal to 5 ½ inches stretched mesh, inside measure, through the net, may be used to take American shad.]

Paragraph 36.3(c)(4) is amended to read as follows:

(4) Escapement period. During the [shad and] *anadromous alewife and blueback herring* season, from March 15th to June 15th, both dates inclusive, no nets shall be set, placed or drawn or allowed to remain in, or

possessed on the waters of the Hudson River below the dam at Troy between 6 a.m. prevailing time on Friday and 6 p.m. prevailing time on the following Saturday; provided, however, that:

Subparagraphs 36.3(c)(4)(i) and 36.3(c)(4)(ii) remain the same.

Subparagraph 36.3(c)(4)(iii) is rescinded.

[(iii) Shad closure. Gill nets equal to 5 ½ inches stretched mesh, inside measure, through the net, may not be set in or possessed on the waters of the Hudson River below the Rip VanWinkle Bridge to the George Washington Bridge between 6 a.m. prevailing time on Wednesday and 6 p.m. prevailing time on the following Saturday.]

Paragraphs 36.3(c)(5) through 36.3(c)(7) remain unchanged.

Amendment of Part 40 of Title 6 NYCRR.

Part 40 of 6 NYCRR, entitled "Marine Fish" is amended as follows:

Existing subdivision 40.1 (f) is amended to read as follows: Species striped bass through black sea bass remain the same. Species American shad is amended to read as follows:

40.1 (f) Table A - Recreational Fishing.

Species	Open Season	Minimum Length	Possession Limit
American shad	[All year] Possession prohibited	[No minimum size limit]	[1]

Species hickory shad through prohibited sharks remain the same.

Existing subdivision 40.1 (i) is amended to read as follows: Species striped bass through black sea bass remain the same. Species American shad is amended to read as follows:

40.1 (i) Table B - Commercial Fishing.

Species	Open Season	Minimum Length	Possession Limit
American shad	[All year] Possession prohibited	[No minimum length]	[No more than 5 percent of the total weight of all foodfish landed per trip]

Species oyster toadfish through prohibited sharks remain the same.

Addition of subdivision 40.1 (w) reads as follows:

(w) American shad commercial fishing--special regulations.

(1) Any American shad inadvertently taken in New York must be returned to the water immediately without unnecessary injury.

(2) It is unlawful for any person to sell, import, traffic in or possess American shad or American shad products in New York except for fish or products from other than New York waters that are accompanied by a bill of lading or sale denoting the State of origin.

(3) Any person violating any provision of these regulations may be subject to license revocation as provided in Part 175 of this Title as well as other applicable penalties as set forth in law.

**Text of proposed rule and any required statements and analyses may be obtained from:** Kathryn Hattala, Environmental Conservation, 21 South Puff Corners Rd., New Paltz, NY 12561, (845) 256-3071, email: kahattal@gw.dec.state.ny.us

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

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

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

**This action was not under consideration at the time this agency's regulatory agenda was submitted.**

**Regulatory Impact Statement**

1. Statutory authority:

Environmental Conservation Law (ECL) sections 3-0301, 11-0303, 11-0305, 11-0306, 11-0315, 11-0317, 11-0319, 11-1301, 11-1303, 11-1305, 11-1501, 11-1503, 11-1505, 13-0105 and 13-0339 authorize the Department of Environmental Conservation (department) to establish, by regulation, the open season, size and catch limits, possession and sale restrictions and manner of taking for American shad.

2. Legislative objectives:

It is the objective of the above-cited legislation that the department manages marine fisheries to optimize resource use for commercial and recreational harvesters, consistent with marine fisheries conservation and management policies and interstate Fishery Management Plans (FMPs).

3. Needs and benefits:

The department is adopting amendments to 6 NYCRR Parts 10, 11, 35,

36 and 40 which will implement recreational and commercial fishery closures for American shad in the Hudson River and Marine District and implement a recreational fishery restriction and preclude a commercial fishery on the Delaware River American shad stock. These regulations are necessary to protect American shad and therefore, are a part of the department's stewardship responsibilities over the State's natural resources.

**Hudson River American shad**

American shad of the Hudson River are anadromous. They spawn in the river, but spend most of their life in the near shore Atlantic Ocean from Virginia to Maine. They are caught by recreational and commercial fishermen while they are in the Hudson and by commercial fishermen while they are in the ocean.

Recently, department staff completed a stock assessment of the Hudson River American shad as part of a coast-wide assessment of American shad stocks under the coordination of the Atlantic States Marine Fisheries Commission (ASMFC). Abundance of Hudson River American shad has declined since the early 1990's and is now at a historic low. Moreover, fish in the spawning stock (adult fish) became smaller and younger, mortality increased to excessive and unacceptable levels, and production of young dropped more than 70 percent to an all time low in 2002. The primary cause of these changes was over-fishing. Through the ASMFC, New York worked toward, and achieved closure of ocean harvest of Hudson shad in ocean commercial fisheries that targeted shad in 2005. This closure substantially reduced losses of Hudson River American shad in known ocean fisheries. In 2008, the department restricted commercial and recreational harvest of American shad from the Hudson River. Neither the ocean closure nor the in river restrictions have helped. Production of young remains low and mortality on adults remains excessive. The few fish produced from 2002 to 2008 are now returning as adults and are what remains to recover the stock. These fish need substantial protection if the Hudson shad stock is to recover. Our analysis indicates that all harvest needs to be eliminated to allow the stock to begin recovery. The department recognizes that this is a serious problem which needs immediate attention.

Under ECL 11-0303, it is the department's responsibility to act in behalf of the natural resources of the state. To allow for stock recovery, New York will reduce mortality on surviving adults by implementing measures to eliminate all known harvest. In order to accomplish this, the department will implement actions to close all recreational and commercial fisheries that affect the Hudson River American shad stock. Failure of New York to adopt these amendments would jeopardize recovery of the Hudson River American shad stock.

**Delaware River American shad**

The abundance of adult Delaware River shad has declined during the last ten years, however, production of young remains stable. New York has worked closely with the other Basin States of Pennsylvania and New Jersey to develop a cooperative management strategy for the Delaware River American shad stock. In New York waters, only recreational fishing occurs on the stock. The Basin States determined that a reduction in the current recreational creel limit will assist in focusing attention on the Delaware stock and will serve to educate the user public on current stock condition. Current regulations do not prevent operation of a commercial fishery for American shad in the New York portion of the Delaware River watershed. New York proposes to change regulations to preclude a commercial fishery and decrease adult mortality.

**Atlantic States Marine Fisheries Commission**

Pursuant to section 13-0371 of the ECL, New York State is a party to the Atlantic States Marine Fisheries Compact which established the Atlantic States Marine Fisheries Commission (ASMFC). The Commission facilitates cooperative management of marine and anadromous fish species among the fifteen member states. The principal mechanism for implementation of cooperative management of migratory fish is ASMFC's Interstate Fishery Management Plans (FMP) for individual species or groups of fish. The FMPs are designed to promote the long-term health of these species, preserve resources and protect the interests of both commercial and recreational fishers.

Confirming New York's actions, the ASMFC has initiated preparation of Amendment III to the Fishery Management Plan (FMP) for Shad and River Herring. This amendment will require reductions in mortality for shad stocks currently in decline such as the Hudson River and Delaware River stocks. However, the new amendment will not be in place until 2010. The department needs to implement measures now to stop the stock's decline.

4. Costs:

- (a) Cost to state government: Minor costs will be incurred by the regulating agency. See below.
- (b) Cost to Local government: There will be no costs to local governments.
- (c) Cost to private regulated parties:

## Hudson River

Certain regulated parties may experience adverse economic effects due to the closure of the Hudson River commercial American shad fishery. One targeted party is the commercial shad fishers who will lose the ability to harvest shad, incurring an economic loss to these businesses. Over the last five years, an average of 25 commercial shad fishermen on the Hudson River targeted (intentionally fished for) American shad. Most of the fishermen work alone; only a few hire assistants. Furthermore, American shad are now only in the river in harvestable numbers for up to eight weeks each spring. Therefore, commercial shad fishing constitutes by nature a short part-time job that provides supplemental income to fishermen and a few helpers.

Over the last 30 years, the number of weeks of fishing activity and the number of participants in the commercial fishery in the Hudson River has dwindled as the stock abundance has declined. This industry has reached a level where the costs associated with fishing are high in relation to profit, or even meeting costs, for most fishers.

Over the long-term, however, the recovery of a sustainable shad fishery will have a positive effect on small businesses in the Hudson River shad fishery. Any losses during the moratorium will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. These regulations are designed to rebuild fish stocks for future utilization.

Another possible affected party is a co-occurring (during the same time period shad are present in the river) commercial bait fishery for river herring. However, proposed regulations were designed to allow this activity to continue without change. Thus, herring netters will retain the ability to harvest fish and bait shops to purchase bait as they have in the past. There should be little economic impact to these businesses.

Another targeted party is the recreational shad fishers and charter boat operators who will lose the ability to fish for and harvest shad. Charter boat operators may incur some economic loss due to the closure. It is not known how many charter operators exclusively fish for American shad. Most fishing charters focus on striped bass in the Hudson with a few that advertise trips for American shad. A closure for shad may incur some economic loss to the shad charters, but charters for the more abundant striped bass can continue.

## Marine District

American shad are caught and sold as by-catch from a variety of fisheries conducted in the Marine District. Since 1995, American shad bycatch has made up less than one tenth of a percent of the total food fish landed in New York's Marine District. The loss of this minimal level of landings should not incur much economic impact. No known recreational fishery for American shad exists in the Marine District.

## Delaware River

Adoption of Delaware regulations should not be controversial. Department staff met several times with recreational anglers and fishing guides of the Delaware Valley and discussed possible regulation changes. Few anglers harvest more than the proposed three American shad. Guides will still be able to operate their businesses with no impact. Commercial fishing for American shad has not occurred in the New York portion of the Delaware River since the late 1930s.

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

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

## 5. Local government mandates:

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

## 6. Paperwork:

None.

## 7. Duplication:

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

## 8. Alternatives:

The department considered the following significant alternatives and rejected them for the reasons set forth below:

## Hudson River American shad stock:

(1) Further reduce but allow harvest of American shad from the recreational and commercial fishery. New York placed restrictions on the Hudson's recreational and commercial fisheries in 2008. No sign of recovery occurred in 2008, even with reduced harvest on the stock. This option was rejected because it puts the stock at unacceptable risk of survival. The current record low stock level and persistent record low production of young would make it impossible for the spawning stock to compensate for any unfavorable environmental conditions during spawning if harvest continued. This would lead to continued loss of production and certain stock decline. Department staff believes that maintaining the stock at current low levels would be inconsistent with a sustainable fishery. In 2005, the department enacted commercial fishing trip limits for Ameri-

can shad in the Marine waters as required by the ASMFC. American shad landings were limited to five percent of the total food fish landings of each trip. Any further reduction in the Marine District would approximate the total closure now proposed.

## (2) No Action (no amendment to regulations).

The "no action" alternative would leave current regulations in place and continue to jeopardize the Hudson American shad stock status. This would put New York in a position of allowing continued excessive mortality as defined in the ASMFC Shad Fishery Management Plan and allowing the potential demise of the Hudson River American shad. This result would be contrary to the objectives of ECL 11-0303 to effectively manage the fish resources of New York State. For this reason, this alternative was rejected.

## Delaware River American shad stock:

(1) Further reduce harvest of American shad from the recreational fishery to a no harvest, or catch and release, fishery only. New York works cooperatively with the other Basin States to manage anadromous fish stocks in the Delaware River. Pennsylvania and New Jersey have already started the process for regulation change. Basin States agreed that currently, a no harvest option was not yet warranted given the stable juvenile production.

## (2) No Action (no amendment to regulations).

The "no action" alternative would leave current regulations in place. New York works cooperatively with the other Basin States to consistently manage anadromous stocks in the Delaware River. Pennsylvania and New Jersey have already started the process for regulation change. If New York were to retain the six fish daily creel, it would create inconsistency in border water regulations, confusion for anglers and law enforcement.

## 9. Federal standards:

The amendments to Parts 10, 11, 35, 36, and 40 are in compliance with the ASMFC Fishery Management Plan for American shad.

## 10. Compliance schedule:

The regulations will take effect following a 45 day public comment period and publishing in the State Register. Regulated parties will be notified of the changes to the regulations by mail, through appropriate news releases and via the department's website.

**Regulatory Flexibility Analysis**

## 1. Effect of Rule:

Hudson River: The amendments to 6 NYCRR Parts 10, 11, 35, 36 and 40 close all recreational and commercial fisheries for American shad in the Hudson River and the Marine District. Because this rule making addresses recreational and commercial fishing, the businesses that will be directly affected are commercial shad fishers and recreational charters. These regulations do not apply directly to local governments, and will not have any direct effects on local governments.

In the last five years, an average of 20 Hudson River commercial fishermen targeted American shad. Although the season March 15th to June 15th spans 13 weeks, shad are only harvested for approximately eight weeks prior to fish spawning, as the market is for female shad roe (eggs). Because shad are only in the river for a limited time in harvestable quantities, all commercial shad operations are part-time businesses of short duration. New York will implement measures to close all commercial fisheries in New York waters to eliminate all known directed harvest on the Hudson stock.

The American shad commercial fishery has provided only part-time employment for fishers since the 1970's. The number of weeks of fishing activity and the number of participants in the commercial fishery in the Hudson River has dwindled as the stock abundance has declined. Over the last five years, an average of 25 commercial fishermen targeted American shad. This industry has reached a level where the costs associated with fishing are high in relation to profit, or even meeting costs, for most fishers.

The number of fishing charter vessels that operate in the Hudson River, New York for American shad is not known. The proposed closure will result in some reduction for fishing charters, however, this closure is not expected to change charter boat activities as others species, such as striped bass, are available. Moreover, most fishing charters are for striped bass.

Marine waters: So that regulations for fisheries of American shad are consistent, all rules will apply to New York's Marine District, American shad are currently landed as by-catch. Landing in marine waters are minimal and have not exceeded one-tenth of a percent of all food fish landed in the state for the past 15 years.

Delaware River: This rule making proposes a reduction for recreational fishing. The only businesses that may be affected are recreational charters or guides. The American shad fishery is mostly catch and release, with few fish harvested. Since the proposed rule reduces the number of shad that can be harvested, but does not eliminate harvest or fishing, charters and guides will not be greatly affected.

In the long-term, the maintenance of sustainable shad populations and fisheries will have a positive effect on small businesses in the fisheries in

question. Any short-term losses in participation and sales will be offset by the restoration of fishery stocks and an increase in yield from well-managed resources. These regulations are designed to protect the stock to continue to rebuild stocks for future utilization.

2. Compliance Requirements:

The proposed rule is in compliance with the Atlantic States Marine Fisheries Commission Interstate Fisheries Management Plan (ISFMP) for Shad and River Herring.

3. Professional Services:

None.

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes.

There is no additional technology required for small businesses, and this action does not apply to local governments.

6. Minimizing Adverse Impact:

The promulgation of this regulation is necessary in order for the department to protect and restore New York's American shad stock. The regulations are intended to protect the resource.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, as well as wholesale and retail outlets and other support industries. Failure to take actions to protect the shad population could cause the collapse of the stock and subsequent end of the fisheries. These regulations are being adopted in order to provide the appropriate level of protection to sustain the resource.

7. Small Business and Local Government Participation:

The department consulted the Hudson River Estuary Management Advisory Committee (HREMAC) and the Marine Resources Advisory Council regarding the proposed action. The HREMAC is comprised of representatives from recreational and commercial fishing interests, local government, educational and research institutions in the Hudson River Valley. The Committee supported the need to eliminate fishing mortality on the Hudson shad stock and encouraged the department to continue to implement the recovery plan for American shad. However, the HREMAC did not come to a consensus on this issue. The Marine Council, comprised of representatives from recreational and commercial fishing interests, and an educational institution on Long Island, voted 9-2 to support the proposed fishery closures. The department also held public information meetings for the general public and affected commercial and recreational fishermen regarding the fishery closure issues. The department has and will provide a notice of the rule making to affected fishers through mailings, newspapers and other media outlets. Local governments were not contacted because the rule does not affect them.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

Hudson River: Five of the nine Hudson Valley counties fall into the rural area category: Columbia, Greene, Putnam, Rensselaer and Ulster Counties. The proposed regulations will affect individuals who are currently licensed to operate fishing gear to catch American shad in the Hudson River. Some of the affected individuals are residents of other areas in down State New York, lower Hudson Valley counties and Long Island.

Delaware River: Two of the Delaware River counties are rural: Delaware and Sullivan Counties, along with the Town of Deerpark in Orange County.

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

No recordkeeping is required for the proposed regulation.

3. Costs:

There will be no initial capital or annual costs to comply with the new regulations.

4. Minimizing adverse impact:

The promulgation of this regulation is necessary in order for the Department of Environmental Conservation (department) to protect and restore the Hudson River American shad stock and the Delaware River American shad stock. The regulations are intended to protect the resource. The unavoidable adverse economic and social impacts associated with closure of the fishery will be ultimately off set by the recovery of the stock. The future maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, as well as wholesale and retail outlets and other support industries. These regulations are being adopted in order to provide the appropriate level of protection and allow for stock recovery.

5. Rural area participation:

The department met with affected parties at four public meetings to inform them of the American shad stock status and to discuss the restric-

tions necessary to protect the stock and to reduce mortality on the stock. The department has maintained a regular dialogue with several of these fishermen regarding the issues. Moreover, the department has and will continue to provide notice to affected fishers through mailings, newspapers and other media outlets, including those in rural counties and towns.

**Job Impact Statement**

1. Nature of impact:

Hudson River: The American shad commercial fishery has only provided part-time employment for fishers since the 1970's. These commercial fishing operations are very small businesses that operate for a short-time (up to eight weeks) each year. Most fishermen work alone. Only a few hire short-term assistants. The number of weeks of fishing activity and the number of participants in the commercial fishery in the Hudson River has dwindled as the stock abundance has declined. This industry has reached a level where the costs associated with fishing are high in relation to profit, or even meeting costs, for most fishers.

The number of fishing charter vessels that operate in the Hudson River, New York for American shad is not known. The proposed closure will result in some reduction for fishing charters, however, this closure is not expected to change charter boat activities as others species, such as striped bass are available. Moreover, most fishing charters are for striped bass.

Delaware River: Only a recreational fishery exists for American shad on the Delaware. Associated businesses include charter or guide services comprised of single individuals. The total number of guides that operate in New York waters is unknown, but suspected to be very low (less than five). The American shad fishery is mostly catch and release, with few fish harvested. Since the proposed rule reduces the number of shad that can be harvested, but does not eliminate harvest or fishing, charters and guides will not be greatly affected.

2. Categories and numbers affected:

For the past five years, approximately 20 individuals, from Hudson Valley counties, targeted (intentionally fished for) shad for harvest in the commercial river fishery. An additional 6 to 10 individuals harvested shad as a by-catch while seeking river herring. In the Marine District, American shad are caught as by-catch by individuals fishing for other species. Allowed harvest of American shad is limited to five percent of each trip's total catch. In 2008, New York's American shad landings totaled 20,102 pounds, or less than 0.01 percent of the total landings of marine food fish for the most recent year for which data are available.

3. Regions of adverse impact:

Hudson River: The recreational fishery occurs from Troy south to approximately Kingston; the commercial fishery occurs south of Catskill to Nyack. The by-catch fishery occurs in ocean water of the Marine District along Long Island.

Delaware River: The recreational fishery occurs from Port Jervis to Hancock NY.

4. Minimizing adverse impact:

The department's intent of the proposed rule is to provide protection to the long-term health of the stock so that restoration efforts will provide for a sustainable fishery for future years. In the long-term, the maintenance of a sustainable fishery will have a positive effect on employment for the American shad fishery.

5. (IF APPLICABLE) Self-employment opportunities:

Not applicable.

---



---

## Insurance Department

---



---

### EMERGENCY RULE MAKING

**Flexible Rating for Nonbusiness Automobile Insurance Policies**

**I.D. No.** INS-33-09-00007-E

**Filing No.** 1232

**Filing Date:** 2009-10-29

**Effective Date:** 2009-10-29

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

**Action taken:** Repeal of Part 163 and addition of new Part 163 (Regulation 153) to Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 2350 and art. 23

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

**Specific reasons underlying the finding of necessity:** This regulation was

previously promulgated on an emergency basis on December 24, 2008, March 16, 2009, June 9, 2009 and September 3, 2009. The emergency regulation will expire on November 2, 2009. Regulation No. 153 needs to remain effective for the general welfare.

Chapter 136 of the Laws of 2008, which became effective on January 1, 2009, enacts a new Section 2350 of the Insurance Law, which replaces the prior approval system, in effect since 2001 for nonbusiness motor vehicle insurance rates, with a flexible rating (flex-rating) system. Section 2350 requires the superintendent to promulgate rules and regulations implementing the new flexible rating system. Since insurers are authorized to use the new flexible rating system as of the effective date of the new law, January 1, 2009, it is essential that this regulation be promulgated on an emergency basis in order to have procedures in place that implement the provisions of the law. It also is essential that insurers be made aware of the rules and standards governing the notice requirements as soon as possible.

For the reasons cited above, this regulation is being promulgated on an emergency basis for the preservation of the general welfare.

**Subject:** Flexible Rating for Nonbusiness Automobile Insurance Policies.

**Purpose:** This rule re-establishes flexible rating for nonbusiness automobile insurance policies required by section 2350 of the Insurance Law.

**Text of emergency rule:** A new Part 163 is added to read as follows:

§ 163.0 Preamble.

On June 30, 2008, the Governor signed Chapter 136 of the Laws of 2008 into law to enhance competition in the nonbusiness motor vehicle market, by adding a new Insurance Law section 2350. Chapter 136 replaces the prior approval system, in effect since 2001 for nonbusiness motor vehicle insurance rates, with a flexible rating (flex-rating) system. The new system, which takes effect on January 1, 2009, is a blend of prior approval and competitive rating. The system allows periodic overall average rate changes up to five percent on a file and use basis, and requires the superintendent's prior approval of overall average rate increases above five percent in any twelve-month period. The new section 2350 requires the superintendent to promulgate rules and regulations implementing the new flex-rating system.

§ 163.1 Definitions.

For the purpose of this Part, the following definitions shall apply:

(a) Base rate means the dollar charge for a given coverage for one car year prior to the application of rating factors.

(b) Car year means insuring a motor vehicle for one year.

(c) Coverage means the following motor vehicle insurance coverages:

(1) no-fault (personal injury protection), residual bodily injury liability, property damage liability, statutory uninsured motorists, supplementary uninsured/underinsured motorists, comprehensive, and collision; and

(2) any other motor vehicle coverage.

(d) Current average rate for a given coverage means the weighted average of an insurer's latest filed base rates modified by the applicable rating factors for each motor vehicle for the given coverage with the weights proportional to the latest available number of car years associated with each rating factor, or any materially equivalent calculation.

(e) Current overall average rate means:

(1) the weighted average of the current average rate for:

(i) all coverages listed in paragraph (1) of subdivision (a) of this section; and

(ii) any other motor vehicle coverages not listed in paragraph (1) of subdivision (a) of this section, if the insurer proposes a change in the rate for that coverage, with the weights proportional to the latest available number of car years for the respective coverages; or

(2) any materially equivalent calculation.

(f) Effective date means the date a revised set of base rates or rating factors shall apply to all existing nonbusiness automobile insurance policies as such policies are renewed. If a filing only applies to new business, then the effective date means the date that an insurer may first write new business.

(g) File and use means the process by which an insurer files with the superintendent a proposed overall average rate change that is within the flex-band, and then uses the proposed overall average rate change without having to obtain the superintendent's prior approval.

(h) Flexibility band or flex-band means the range of overall average rate increase or decrease (up to +5%) within which an insurer may change its motor vehicle insurance rates without having to obtain the superintendent's prior approval.

(i) Motor vehicle has the meaning set forth in section 5102(f) of the Insurance Law.

(j) Nonbusiness automobile insurance policy means a contract of insurance covering losses or liabilities arising out of the ownership, operation or use of a motor vehicle that is predominately used for nonbusiness purposes, when a natural person is the named insured.

(k) Proposed average rate for a given coverage means the weighted

average of an insurer's proposed base rates modified by the applicable rating factors for each motor vehicle for the given coverage with the weights proportional to the latest available number of car years associated with each rating factor, or any materially equivalent calculation.

(l) Proposed overall average rate means:

(1) the weighted average of the proposed average rate for:

(i) each coverage listed in paragraph (1) of subdivision (a) of this section regardless of whether the insurer is filing a change for that coverage; and

(ii) any other motor vehicle coverages not listed in paragraph (1) of subdivision (a) of this section if the insurer proposes a change in the rate for that coverage, with the weights proportional to the latest available number of car years for the respective coverages; or

(2) any materially equivalent calculation.

(m) Proposed overall average rate change means the percentage difference between the proposed overall average rate and the current overall average rate. For example, if the proposed overall average rate is \$1,200 and the current overall average rate is \$1,000, then the proposed overall average rate change is 20%  $((1,200/1,000)-1) \times 100$ .

(n) Rating factors means the various elements that are applied or added to the base rates to obtain the actual nonbusiness automobile insurance policy premiums. These include classification factors based on the age, sex, and marital status of the insured, territorial rating factors, merit rating factors based on the driving record of the insured, increased limit factors, motor vehicle symbol and model year rating factors, and multi-tier rating factors.

§ 163.2 Rules and standards governing proposed file and use overall average rate changes for nonbusiness automobile insurance policies.

(a) An insurer may implement a proposed overall average rate increase on a file and use basis provided that the change is within the five percent flex-band. If the proposed overall average rate increase exceeds the five percent flex-band, then the insurer shall obtain the superintendent's prior approval before implementing the change.

(b) During any twelve-month period, an insurer may implement no more than two overall average rate increases on a file and use basis provided that the cumulative effect of the increases shall be within the five percent flex-band. If a proposed overall average rate increase combined with a prior rate increase implemented within a twelve-month period of the proposed effective date of the request exceeds the five percent flex-band, then the insurer shall obtain the superintendent's prior approval before implementing the change. The cumulative effect of two or more rate changes in a twelve-month period is derived in a multiplicative manner. For example, if an insurer implements on a file and use basis a +2.9% overall average rate increase effective February 1, 2009 and a +2% overall average rate increase effective August 1, 2009, then the insurer may not implement another file and use overall average rate increase before February 1, 2010. However, at such time, the insurer may implement an overall average rate increase up to a maximum of +2.9%.

(c) An insurer may implement an overall average rate decrease on a file and use basis up to a maximum of five percent at any one time from the overall average rate currently in effect.

(d) Notwithstanding any provision of this Part, an insurer shall not implement an overall average rate increase on a file and use basis subsequent to an overall average rate increase greater than the five percent flex-band that the superintendent has already prior approved in the twelve-month period immediately preceding the effective date of the proposed increase.

§ 163.3 Rules and standards governing changes in rating factors.

(a) An insurer may adjust its rating factors as part of a file and use change. The insurer shall incorporate the rate impact of these adjustments in the overall average rate change. These changes shall be consistent with the rate change limitations for individual insureds contained in section 163.4 of this Part.

(b) An insurer may adjust its rating factors in separate and distinct filings independent of an overall average rate change. If these filings have no overall average rate impact, then the insurer may implement them on a file and use basis and the insurer shall not be precluded from implementing a file and use change for an overall average rate increase within the time periods specified in section 163.2(b) of this Part. For example, the introduction of a physical damage coverage's model year rating factor for a new model year that is consistent with an existing model year rating rule is not subject to prior approval. These filings shall be consistent with the rate change limitations for individual insureds contained in section 163.4 of this Part.

§ 163.4 Rules and standards governing nonbusiness automobile insurance policy premium change limitations for individual insureds as a consequence of file and use filings.

(a) In any twelve-month period, the total premium on any nonbusiness automobile insurance policy shall not change by more than 30% as a consequence of file and use filings. An insurer shall meet this requirement by

adjusting the base rates or rating factors in the file and use filing. An insurer shall not cap an individual insured's premium as a final step. If a filing produces an annual total premium change on an insurance policy that exceeds the 30% maximum, then the filing shall be subject to the superintendent's prior approval.

(b) Changes in the premium of a nonbusiness automobile insurance policy as a consequence of changes in an insured's rating characteristics or changes in the coverages or the amounts of coverage being purchased shall not be considered within the calculation of the individual insured premium limitation contained in subdivision (a) of this section. For example, if an insured has an accident during the prior year and incurs a 25% surcharge or uptier, then this 25% surcharge/uptier shall not be considered within the individual premium limitation. Similarly, if a change in the age of an insured results in the application of a different classification factor, the rate effect attributable to that classification change shall also not be considered within the individual premium limitation.

§ 163.5 Support for filings submitted on a file and use basis.

An insurer shall include support for all proposed changes specified in each filing submitted on a file and use basis. The support shall include the specific reasons for the proposed changes, and any other material information required by section 2304 of the Insurance Law (e.g., the underlying data upon which the change is based). Filings submitted on a file and use basis shall be subject to the superintendent's review in accordance with Article 23 of the Insurance Law.

§ 163.6 Support for filings subject to prior approval.

(a) An insurer shall include support for all proposed changes specified in each filing subject to the superintendent's prior approval. The support shall include the specific reasons for the proposed changes, and any other material information as required by section 2304 of the Insurance Law.

(b) Subject to all other requirements of this Part and article 23 of the Insurance Law, an insurer may adjust rating factors associated with territories or classifications as part of its file and use filing, provided that there are no changes to the underlying definitions which remain subject to the superintendent's prior approval pursuant to article 23 of the Insurance Law. Examples of rating classifications include discounts, surcharges, merit rating plans or multi-tier programs.

(c) If any one element of a filing is subject to prior approval, then the entire filing shall be subject to prior approval.

§ 163.7 Notification to insureds of rate changes.

(a) An insurer shall mail or deliver to every named insured affected by a rate increase due to a flex-band rate filing, at least 30 but not more than 60 days in advance of the end of the policy period, a notice of its intention to change the insured's rate. The notice shall set forth the specific reason or reasons for the rate change.

(b) An insurer shall not implement a rate increase due to a flex-band rate filing unless the insurer has mailed or delivered to the named insured affected by the rate increase the notice required by subdivision (a) of this section.

(c) An insurer shall submit a flex-band rate filing to the superintendent in a timely manner. An insurer shall not submit a flex-band rate filing to the superintendent after insureds have received notification pursuant to subdivision (a) of this section.

**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. INS-33-09-00007-P, Issue of August 19, 2009. The emergency rule will expire December 27, 2009.

**Text of rule and any required statements and analyses may be obtained from:** Andrew Mais, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-2285, email: amais@ins.state.ny.us

**Regulatory Impact Statement**

1. Statutory authority: Sections 201, 301, and Article 23 of the Insurance Law (most specifically, section 2350).

These sections establish the superintendent's authority to promulgate regulations establishing standards for flexible rating systems providing nonbusiness automobile insurance policies. Sections 201 and 301 of the Insurance Law authorize the superintendent to effectuate any power accorded to him by the Insurance Law, and prescribe regulations interpreting the Insurance Law.

Article 23 promotes the public welfare by regulating insurance rates to the end that they not be excessive, inadequate or unfairly discriminatory, to promote price competition and competitive behavior among insurers.

Chapter 136 of the Laws of 2008 adds a new section 2350 to the Insurance Law, which reintroduces flexible rating for nonbusiness automobile insurance rates.

2. Legislative objectives: The stated purpose of Article 23 of the Insurance Law is to ensure the availability and reliability of insurance, and to promote public welfare, by regulating insurance rates to assure that they are not excessive, inadequate or unfairly discriminatory and are responsive

to competitive market conditions. Chapter 136 of the Laws of 2008 reestablished flexible rating for nonbusiness automobile insurance. It should strengthen the high level of competition that already exists in this market. The nonbusiness automobile market can benefit from the additional competitive impetus of a flexible rating system.

3. Needs and benefits: Flexible rating, which is a hybrid system borrowing elements from open competition and prior approval, has been applicable to commercial risk, professional liability and public entity insurance since 1986. In those markets, flexible rating has proved successful in restoring stability, promoting fair competition, and providing a firm foundation for long-term thinking and strategic planning, not only on the part of the insurance industry, but for the benefit of businesses and consumers that must rely upon, and budget for, insurance protection.

The above benefits are pertinent to the application of flex rating for the nonbusiness automobile market. Competition and market forces have always been strong determinants of rates for nonbusiness automobile coverages, and flex rating should strengthen the high level of competition that already exists in this market.

Chapter 113 of the Laws of 1995 first introduced flex rating to nonbusiness automobile insurance effective July 1, 1995 until it expired on August 2, 2001 and was replaced by prior approval requirements. However, section 13 of Chapter 136 of the Laws of 2008 adds a new section 2350 to the Insurance Law, which reintroduces flexible rating for nonbusiness automobile insurance rates. It permits insurers to place nonbusiness automobile insurance rates in effect without the superintendent's prior approval, provided that the overall average rate level does not result in an increase above five percent from the insurer's prior rate level in effect during the preceding 12 months. Section 2350 also limits the overall average rate level decreases without prior approval up to five percent from the insurer's current rate level regardless of when it went into effect. The prior regulation, which implemented the former flex rating system, is hereby being repealed pursuant to this new Part 163 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 153). In accordance with section 2350(c), Insurance Department Regulation No. 153 (11 NYCRR 163) is being promulgated to provide guidance to insurers in implementing the new law's requirements.

4. Costs: This rule imposes no compliance costs on state or local governments. There are no additional costs incurred by the Insurance Department. For regulated parties, the costs of submitting a flexible rate filing should be no different than the costs of submitting a rate filing under the prior law. Since insurers will be able to implement flexible rate changes without having to wait for the Insurance Department's formal approval, they will be able to respond more quickly to competitive forces in the marketplace. However, there is an additional requirement to provide notice to all policyholders affected by a rate increase due to a flexible rate filing. Compliance with this notice requirement of premium increases pursuant to the flexible rating regulation will have a minimal cost, since the notice language may be included along with the renewal policy information sent to insureds. In any event, the notice requirement is imposed by the statute, not the regulation.

5. Local government mandates: This amendment does not impose any program, service, duty or responsibility upon a city, town or village, or school or fire district.

6. Paperwork: While the paperwork associated with the submission and monitoring of a flexible rate filing is essentially the same as that associated with private passenger automobile insurance rate filings under the prior law, there is an additional requirement imposed by the statute to provide notice to all policyholders affected by a rate increase due to a flexible rate filing. This notice language may be included along with the renewal policy information sent to insureds.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Department performed outreach with three property/casualty insurer trade organizations (individually "insurer trade organization") and two property/casualty insurance agents and brokers trade organizations (individually "agents and brokers trade organization") and received comments from four out of the five organizations.

a. The legislative intent was for any rate change that results in an overall rate increase above 5% during a 12-month period to require prior approval. The alternative approach would be not to consider any rate increase that exceeds the 5% overall flex band limit that has been prior approved during the same 12-month period. While this approach would require newer data to support any flex rate filing made subsequent to a prior approved rate filing, it still seems to be clearly against the legislative intent to keep significant automobile rate increases occurring within a 12-month period to be subject to prior approval. For example, if an insurer received approval for a rate increase of 7% effective February 1, 2009, the insurer may not implement an additional increase to be effective before February 1, 2010 on a flexible rating basis.

b. The Department considered reducing the limitation from the prior regulation standard of a 30% maximum individual premium change as a consequence of file and use filings to 25%, with the understanding that such maximum policyholder change bears some relationship to the overall flex band (which has decreased from 7% in the prior flex rating statute to 5% in the new statute). However, in consideration of comments received, the Department agreed that the maximum individual premium change is not truly relevant to the overall average rate change resulting from a flexible rate filing made by an insurer. It is quite common for rate filings with little or no overall rate effect to still produce significant individual policyholder impacts.

c. An insurer trade organization objected to the provision of Section 163.4, which precludes an insurer from capping an individual insured's premium to comply with the maximum individual premium change provision. This organization asserted that "capping" is a method that is considered acceptable in other states to achieve that result as opposed to making adjustments to base rates and factors for an entire class of policyholders. However, it has long been the Department's view that the capping of individual policy premiums is unfairly discriminatory to new policyholders with the same characteristics as current policyholders whose rates have been capped and therefore contrary to Article 23.

d. An insurer trade organization inquired as to whether the cumulative effect of two flexible rate increases would be measured, by simple addition or by multiplication. In response to this comment, further clarification has been added to Section 163.2 of this regulation, stating that the cumulative effect is determined in a multiplicative manner and an example has been included.

e. Two insurer trade organizations commented that the regulation fails to specify the instances under which the superintendent may order an insurer to make a change in its rates filed under file and use basis. However, section 2320 of the Insurance Law provides procedures that must be followed by the superintendent and insurers in addressing issues related to rate filings that are not subject to prior approval. Thus, no change to the proposal was made in response to this comment.

f. An insurer trade organization and an agents and brokers trade organization suggested that the Department clarify that the maximum permitted increase for an individual insured's premium should be applied to the full coverage or total premium of a nonbusiness automobile insurance policy. Consequently, the Department modified section 163.4(a) of the regulation to clarify that the provision applies to an insured's total policy premium and not to a specific coverage.

g. Two insurer trade organizations and an agents and brokers trade organization requested a definition of the term "predominantly" with regard to the definition of "nonbusiness automobile insurance policy" and a revision to the definition of the term "effective date" with regard to new business and renewals. However, the term "predominantly" is not unique to the flexible rating statute, and is used elsewhere in the Insurance Law, such as section 3425. In addition, the term "predominantly" has been previously clarified through opinions of the Department's Office of General Counsel. Thus, the Department made no changes to the regulation in response to this comment. The Department considered the request for revision of the definition of the term "effective date" but determined that the current definition, contained in section 163.1 of the regulation, was appropriate.

h. An agents and brokers trade organization inquired if an insurer may increase the premium on a six month policy at each policy renewal. However, article 23 of the Insurance Law requires an insurer to use the rates in effect upon renewal of each policy, regardless of the rate filing system used to make the rate filing (i.e., regardless of whether the filing was made as file and use or in accordance with prior approval). Thus, the Department made no changes to the regulation in response to this comment.

i. An insurer trade organization commented on the fact that the regulation would allow an insurer to file multiple file and use rate reductions while being limited to only two file and use increases within any 12-month period. The flexible rating statute provides for a maximum of two file and use overall average rate increases within any 12-month period, up to an overall maximum increase of 5%. The statute does not, however, provide any restrictions on the number of file and use overall average rate decreases, provided that the overall average rate decrease does not exceed the 5% flex-band from the rate currently in effect. All rate filings must include support for the proposed changes as required by Article 23 of the Insurance Law, as the Department will monitor the cumulative effect of the decreases to ensure that the rates are not inadequate or otherwise in violation of the Insurance Law.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: Insurers should be able to comply with the requirements of this rule as soon as they are effective.

#### **Regulatory Flexibility Analysis**

##### **1. Small businesses:**

The Insurance Department finds that this rule will not impose any

adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at property/casualty insurance companies licensed to do business in New York State, none of which falls within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Insurance Department has monitored Annual Statements and Reports on Examination of authorized property/casualty insurers subject to this rule, and believes that none of the insurers falls within the definition of "small business", because there are none that are both independently owned and have fewer than one hundred employees.

##### **2. Local governments:**

The rule does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at property/casualty insurance companies, none of which are local governments.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: This regulation applies to all property/casualty insurance companies licensed to write insurance in New York State (specifically, those writing automobile insurance). Property/casualty insurance companies do business throughout New York State, including rural areas as defined under State Administrative Procedure Act Section 102(10).

2. Reporting, recordkeeping and other compliance requirements, and professional services: This regulation is not expected to impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This regulation re-establishes flexible rating for nonbusiness automobile insurance policies, as required by section 2350 of the Insurance law. While the paperwork associated with the submission and monitoring of a flexible rate filing is essentially the same as that associated with private passenger automobile insurance rate filings under the prior law, there is an additional requirement imposed by the statute to provide notice to all policyholders affected by a rate increase due to a flexible rate filing. This notice language may be included together with the renewal policy information that is sent to insureds.

3. Costs: The costs to regulated parties of submitting a flexible rate filing should be no different than the costs for submitting a rate filing under the prior law. Since insurers will be able to implement flexible rate changes without having to wait for the Insurance Department's formal approval, they will be able to respond more quickly to competitive forces in the marketplace. However, there is an additional requirement to provide notice to all policyholders affected by a rate increase due to a flexible rate filing. Compliance with this notice requirement of premium increases pursuant to the flexible rating regulation will have a minimal cost, since the notice language may be included along with the renewal policy information sent to insureds. In any event, the notice requirement is imposed by the statute, not the regulation.

4. Minimizing adverse impact: The regulation does not impose any impact unique to rural areas.

5. Rural area participation: This regulation is required by statute.

#### **Job Impact Statement**

The Insurance Department finds that this rule will have no adverse impact on jobs and employment opportunities. It merely implements section 2350 of the Insurance Law, which directs the superintendent to establish standards for flexible rating systems providing nonbusiness automobile insurance policies. The number of insurance company personnel necessary to submit a flexible rating filing should be no different than submitting a rate filing under the prior law.

---



---

## Department of Labor

---



---

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### **Ski Tows and Other Passenger Tramways**

**I.D. No.** LAB-46-09-00003-P

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

**Proposed Action:** Repeal of Part 32 and addition of new Part 32 to Title 12 NYCRR.

**Statutory authority:** Labor Law, sections 27 and 202-c; and General Obligations Law, art. 18

**Subject:** Ski Tows and Other Passenger Tramways.

**Purpose:** To ensure that ski tows and other passenger tramways are designed, constructed, operated, and maintained in a manner that helps reduce danger and exposure to risk to passengers and maintenance and operational personnel.

**Public hearing(s) will be held at:** 1:00 p.m. and 4:00 p.m., Jan. 19, 2010 at Department of Labor, State Office Campus, Bldg. 12, Rms. A and B, Albany, NY.

**Interpreter Service:** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Substance of proposed rule (Full text is posted at the following State website: [www.labor.state.ny.us](http://www.labor.state.ny.us)):** These regulations are being revised at this time at the request of the ski industry in New York. The proposed amendments repeal Part 32 in its entirety. This was done to facilitate the change in format that will take place with this newest edition of the regulations. The new Part 32 makes New York State regulations once again consistent with nationally accepted standards for design and installation of ski tows and passenger tramways. The standard has been incorporated by reference into the regulation and issued by the national standard organization, American National Standard for Passenger Ropeways-Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors-Safety Requirements (hereinafter Standards). The proposed amendments repeal Sections 32-1 (General Provisions) 32-2 (Ariel Tramways) 32-3 (Detachable Grip Aerial Lifts) 32-4 (Fixed Grip Aerial Lifts) 32-5 (Surface Lifts) 32-6 (Tows) 32-7 (Reserved) 32-8 (Conveyers) in their entirety and replace them with a shorter set of rules.

The proposed new sections of ICR 32 are summarized as follows:

Section 32.1 Title and citation. Administrative information about ICR 32.

Section 32.2 Application. Defines the scope of regulations and what they apply to as well as the statutory authority.

Section 32.3 Purpose and intent of Part. Defines the intent of the regulation and when this edition becomes effective. Also explains when regulations apply to existing equipment installed prior to the effective date of this edition.

Section 32.4 Definitions. This section provides a list of definitions used in the revised Code Rule. It incorporates definitions from the current ICR 32 and the ANSI B77 standard.

Section 32.5 Quality program. Lists quality program requirements for the design and construction of tramways.

Section 32.6 General requirement of safety. Requires that tramways not be operated with known defects and that all operations be conducted in a manner that will provide reasonable protection against personal injuries to employees and the public.

Section 32.7 Approval of materials and devices. That unless otherwise stated in the rule no special approvals by the Commissioner are required for use of devices and materials associated with tramways.

Section 32.8 Plans and specifications. Explains the requirements for plan submissions to the Commissioner and requires approval of the same by the Commissioner for new installations as well as major modifications of existing installations. Also defines what changes would be considered major modifications.

Section 32.9 Registration. Requires that all devices be registered with the Commissioner prior to operation. Explains the Commissioner's authority to suspend or cancel a registration.

Section 32.10 Personal injury report. Requires an operator to notify the Commissioner by the close of the next business day on any accident with a lift that resulted in a serious personal injury.

Section 32.11 Severability clause.

Section 32.12 Adoption of standards. Lists the nationally recognized standards that are applicable to the design, operation and maintenance of ski lifts.

Section 32.13 Adoption of ANSI B77 Standard. In the process of reviewing the ANSI B-77 Standard several exceptions to the requirements of the Standard were identified. The exceptions are provided in the context of the text of the B-77 Standard. These exceptions are requirements that were carried over from previous versions of Code Rule 32.

**Text of proposed rule and any required statements and analyses may be obtained from:** Nancy Pepe, New York State Department of Labor, Building 12, State Office Campus, Room 509, Albany, NY 12240, (518) 457-4380.

**Data, views or arguments may be submitted to:** Lansing Lord, New York State Department of Labor, Building 12, State Office Campus, Room 157, Albany, NY 12240, (518) 485-2586.

**Public comment will be received until:** Five days after the last scheduled public hearing.

**Additional matter required by statute:** ANSI B77

#### Regulatory Impact Statement

##### 1. Statutory authority:

Labor Law Section 200(1) makes it the public policy of the State of New York to protect the health and safety of employees by ensuring that all machinery, equipment and devices are maintained efficiently. Section 202-c of Article 7 of the Labor Law authorizes the Commissioner to "make rules consistent with article eighteen of the general obligations law, guarding against personal injuries to employees and the public in the use and operation of ski tows, other passenger tramways and downhill ski areas."

##### 2. Legislative objectives:

The intent of the Legislature was to ensure the health and safety of employees of ski resorts and the general public who frequent these areas. The Legislature has authorized the Commission of Labor to adopt, amend or repeal safety and health standards which provide reasonable and adequate protection to the lives, safety or health of employees and of persons lawfully frequenting a place of employment. It was the intent to establish a code and regulations to promote safety for all aspects of the ski industry.

These amendments fulfill these legislative objectives and are in accordance with the legislative objectives of Labor Law Section 27 and 202-c.

##### 3. Needs and benefits:

These regulations are being revised at the request of the alpine ski industry in New York. The regulations address two key points: the design of these devices and their operation and maintenance. In crafting the regulations, considerations were given to the financial impact these changes could create.

All of the changes to the design requirements are for lifts that are to be built after the effective date of the new regulation. There are no new requirements or changes to existing requirements that would require a modification to existing equipment that is currently in compliance with Code Rule 32. When a ski area expands or upgrades its lifts, the new design requirements will enable the ski area to do so without incurring the added expenses of complying with the current New York specific regulations. By incorporating the national standards to a much greater degree, the proposed regulation simultaneously make compliance less complicated and costly and promotes implementation of the latest design features.

The revisions to Part 32 are needed to conform New York State regulations to national safety standards outlined in the American National Standard for Passenger Ropeways-Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors-Safety Requirements, (hereinafter referred to as the Standards). In developing the proposed amendments, the Department sought assistance from the National Ski Areas Association (NSAA) and Ski Areas of New York (SANY), which represent ski areas, architects, engineers, design consultants, construction managers and ski lift owners, and other organizations and businesses most affected by parts of the code under review. NSAA and SANY concluded that these recommendations would not increase costs and will actually reduce costs.

According to data compiled by the NSAA and SANY, New York State leads the nation in the number of ski areas. New York is fifth in the nation in skier visits with over an estimated 4,000,000 skier visits expected during 2009. The ski industry has an economic impact of over \$1.1 billion on the upstate economy. The industry estimates that during 2007/2008 total wages and salaries paid to the 18,000 New York employees was \$50 million. The bulk of the employment occurs during the winter months with 1,700 employees working full time year round.

The absence of consistency between current New York State regulations and the Standards increases construction costs in the form of higher consulting fees charged to the ski industry by architects and engineers. These professionals are accustomed to designing ski tows and passenger tramways in accordance with prevailing industry norms. The incorporation of the Standards into the code will eliminate this inconsistency and associated costs, thus lowering the overall cost of design and construction. The Standards themselves also emphasize flexibility, recognizing the need for ski tows and passenger tramway owners to design and configure their passenger tramways in ways that respond to an industry which is characterized by innovation and ongoing change.

It is the purpose and intent of this Part to require reasonable and proper guarding against personal injuries to employees and the public in the use and operation of ski tows and other passenger tramways. It is recognized that certain dangers and risks are inherent in machines of this type and their operation. It is also recognized that inherent and other risks or dangers exist for those who are in the process of approaching, loading, unloading, and departing from passenger tramways. This rule is intended to result in passenger tramways that are designed, constructed, operated, and maintained in a manner that helps reduce danger and exposure to risk to pas-

sengers and maintenance and operational personnel. It is intended to be construed accordingly and to be read, construed and applied with Sections 27, 200 and 202-c of the Labor Law.

4. Costs:

To impacted parties: All of the proposed changes to the regulations are for lifts to be built. These changes will allow new lifts to be constructed at lower costs to the ski areas since no special New York requirements will have to be met, or special approvals requested for new installations. The operational and maintenance requirements for existing ski lifts will remain the same as they have been in the past and are consistent with national standards for ski lift operation.

To the Department of Labor: There is no additional administrative or inspection cost to the Department of Labor.

5. Local government mandates:

There are 7 ski centers that are operated by villages or towns. They are subject to the same provisions of the rule that privately owned ski centers are. This rule imposes no mandates on local governments for inspection and enforcement. This remains the sole responsibility of the Department. This rule should have no adverse economic impact on local governments. The rule will simplify and streamline existing regulations which will enable new lifts to be built at a lower cost by using national standards and fewer New York specific standards.

6. Paperwork:

This regulation will not require any additional paperwork.

7. Duplication:

None.

8. Alternatives:

Overall, there are no viable alternatives to the design requirements set forth in the proposed rule. The rule reinforces basic nationally accepted engineering requirements for the design of ski tows and other passenger tramways. These standards have been adopted by consensus by the various stakeholders in the industry. If the regulation is kept as is, all ski lift facilities would continue to pay for the extra costs that are created by New York having a special standard.

In reviewing the specifics of the standards the Department, in consultation with the Passenger Tramway Advisory Council, did make some changes to the operational sections of the standards.

For example, under the current ANSI Standard, all lifts and tows are now required to have hardwired voice communication between the top and bottom terminals. This requirement addresses a problem that occurs in areas with multiple lifts, where conversations could be confused and instructions misunderstood. While the vast majority of the ski areas in New York have already employed this technology, some smaller municipal locations have not; it was decided to allow these existing locations to continue using radio phones.

Another example of changes to the operational part of the ANSI regulation is the approval of evacuation plans. Under ANSI, all facilities with aerial lifts are required to have written evacuation plans and to conduct at least one test drill each year. The Department, in conjunction with the Tramway Council, decided many years ago that in order to ensure that every area had a plan, the plan would have to be approved by the Department and the Department would witness at least one drill in order to ensure the plans and drills were adequately protecting the safety of employees and the public.

9. Federal standards:

None

10. Compliance schedule:

Existing installations should already be in compliance. No provision of this Part as amended requires or is intended to require any modifications to any passenger tramway whose plan review was completed prior to the effective date of this code, and which complies with prior editions or versions of this Part or with variations granted and in effect.

Operators will be required to comply with standards after the effective date of the standard. Existing passenger tramways, when removed and reinstalled, shall be classified as new installations.

### **Regulatory Flexibility Analysis**

1. Effect of rule:

This rule change was undertaken at the request of the ski industry in New York. The major change accomplished by the proposed amendments would be to make New York State regulations more consistent with the latest version of the national safety standards outlined in the American National Standard for Passenger Ropeways-Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors-Safety Requirements, (hereinafter referred to as the Standards). The absence of consistency between current New York State regulations and the Standards increases construction costs in the form of higher consulting fees charged by architects and engineers. These professionals are accustomed to designing facilities in accordance with prevailing industry norms. The incorporation of much of the Standards into the code will eliminate this inconsistency and these associated costs, thus lowering the overall costs of design and construction.

The Standards themselves also emphasize flexibility, recognizing the need for ski tows and passenger tramway owners to design and configure their passenger tramways in ways that respond to an industry which is characterized by innovation and ongoing change.

All of the locations are either alpine ski areas, snow tubing operations or amusement parks. Six of the locations are operated primarily as winter recreation facilities by local towns or villages. One other facility, the McCauley Mountain is a commercial operation operated by the Town of Webb. Three facilities are operated by State agencies or authorities, Gore Mountain, Lake Placid and Belleayre Mountain. The remaining fifty-seven (57) locations are privately owned and operated. All of these privately owned facilities are considered small businesses.

2. Compliance requirements:

Thus, the proposed amendments do not impose new design requirements on those facilities and design and consulting firms that are small businesses, nor on local governments that run ski lifts or passenger tramways and they may actually lower the costs of doing business and be conducive to the implementation of cost-saving innovations by such entities.

3. Professional services:

New York requires that licensed professional engineers are used for the construction of new aerial tramways. This requirement has been in place for over forty years.

4. Compliance costs:

There are no changes in the cost of ongoing maintenance for existing aerial tramways. The cost of maintenance of lifts to be installed are driven mainly by the particular design and terrain where the device is to be used and other market factors. The regulations require that owners maintain devices in compliance with manufacturer's maintenance requirements. This requirement is carried out equally by small business, local municipalities or State agencies that operate these devices. The design and components chosen are the factors impacting cost, not the regulation. There are no additional costs to the Department of Labor.

5. Economic and technological feasibility:

There are no undue economic or technological requirements being imposed by this Standard. The new regulations should make it easier to achieve compliance since the technology being used is the same across the country. Economies of scale should help to control costs for new installations.

6. Minimizing adverse impact:

This rule should have no adverse economic impact on small business or local governments. It will help to control the costs of new installations by making State regulations consistent with nationally accepted standards for design and installation of aerial tramways. This will reduce potential extra costs that could be created by having a New York only special standard.

In crafting the regulations considerations were given to the financial impact that some changes could have on these small businesses. For example, language was retained that would allow existing tramway installations to retain their current communication systems instead of installing new ones.

7. Small businesses and local government participation:

In developing the proposed amendments, the Department sought assistance from the National Ski Areas Association (NSAA) and Ski Areas of New York (SANY), which represented ski areas, architects, engineers, design consultants, construction managers and ski lift owners and other organizations and businesses most affected by parts of the code under review. NSAA and SANY concluded that they would not increase costs. As noted in the foregoing narrative on cost impact, it is expected that the proposed changes will actually reduce costs.

Department staff deals with architects, construction managers and ski lift planners in the interpretation and application of construction regulations to individual projects. The proposed amendments reflect this knowledge as well as the expertise of NSAA and SANY.

### **Rural Area Flexibility Analysis**

1. Types and estimated numbers:

With the exception of the Roosevelt Island Tramway, all ski area locations are in rural upstate areas. All of the locations are either alpine ski areas, snow tubing operations or amusement parks. Six of the locations are operated primarily as winter recreation facilities by local towns or villages. One other facility, the McCauley Mountain is a commercial operation operated by the Town of Webb. Three facilities are operated by State agencies or authorities, Gore Mountain, Lake Placid and Belleayre Mountain. The remaining fifty-seven (57) locations are privately owned and operated.

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

The proposed rule does not impose any additional reporting, recordkeeping or other compliance requirements on ski lifts or passenger tramways in rural areas.

Thus, the proposed amendments do not impose new compliance requirements on those facilities and design and consulting firms that are in

rural areas, and they may actually lower the costs of doing business and be conducive to the implementation of cost -saving innovations by such entities.

3. Costs:

This rule will help to control the costs of new installations by making State regulations consistent with nationally accepted standards for design and installation of aerial tramways. This will reduce potential extra costs that could be created by having a New York only special standard.

4. Minimizing adverse impacts:

This rule should have no adverse economic impact on rural areas. It will help to control the costs of new installations by making State Regulations consistent with nationally accepted standards for design and installation of aerial tramways. This will reduce potential extra costs that could be created by having a New York only special standard.

5. Rural area participation:

In developing the proposed amendments, the Department sought assistance from the National Ski Areas Association (NSAA) and Ski Areas of New York (SANY), which represented rural ski areas, architects, engineers, design consultants, construction managers and ski lift owners and other organizations and businesses most affected by parts of the code under review. Among the factors which influenced the recommendation of these regulatory amendments by NSAA and SANY were that these amendments would not increase the costs of design, construction, or operation of ski trams. As noted in the foregoing narrative on cost impact, it is expected that the proposed changes will actually reduce costs.

**Job Impact Statement**

No job impact statement is submitted with this notice because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities. These revisions to Part 32 are to bring New York State regulations in conformance with national standards and these changes will not reduce or affect the need for employees at any of the ski resorts throughout the state.

---



---

## Department of Motor Vehicles

---



---

### NOTICE OF WITHDRAWAL

**Point System**

**I.D. No.** MTV-40-09-00002-W

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

**Action taken:** Notice of proposed rule making, I.D. No. MTV-40-09-00002-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on October 7, 2009.

**Subject:** Point system.

**Reason(s) for withdrawal of the proposed rule:** Received a negative comment.

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

**Onondaga County Motor Vehicle Use Tax**

**I.D. No.** MTV-46-09-00001-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 section 29.12(ff) of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); and Tax Law, section 1202(c)

**Subject:** Onondaga County motor vehicle use tax.

**Purpose:** To impose a Onondaga County motor vehicle use tax.

**Text of proposed rule:** Section 29.12 is amended by adding a new subdivision (ff) to read as follows:

(ff) *Onondaga County. The Onondaga County Legislature adopted a local law on October 13, 2009, to establish an Onondaga County Motor Vehicle Use Tax. The County Executive and the Chief Fiscal Officer of Onondaga County entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations*

*made on and after February 1, 2010 and upon the renewal of registrations expiring on and after April 1, 2010. The Chief Fiscal Officer is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Onondaga County referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be \$5.00 per annum on such motor vehicles weighing 3,500 lbs. or less and \$10.00 per annum for such motor vehicles weighing in excess of 3,500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Onondaga County, except for vehicles used in connection with the operation of a farm by the owner or tenant thereof shall be \$10.00 per annum.*

**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. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.state.ny.us

**Data, views or arguments may be submitted to:** Ida Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.state.ny.us

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

**Consensus Rule Making Determination**

This proposed regulation would create a new 15 NYCRR Part 29.12(ff) to provide for the collection of an Onondaga County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On October 13, 2009, the Onondaga County Legislature enacted a local law requiring that a motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this local law, the Commissioner is required to collect the tax on behalf of the county and transmit the revenue to the County, minus the administrative costs required to process the tax. The tax is five dollars per annum on a passenger vehicle weighing 3,500 pounds or less, ten dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and ten dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, i.e., it must be collected per the mandate of the Onondaga County local law. The merits of the tax may have been debated before the Onondaga County Legislature, but are no longer the subject of debate—it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

**Job Impact Statement**

A Job Impact Statement is not submitted with this rulemaking, because it will not have any impact on job creation or development in New York State.

---



---

## Public Service Commission

---



---

### NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-50-99-00004-W	December 15, 1999
PSC-34-02-00009-W	August 21, 2002
PSC-36-05-00017-W	September 7, 2005
PSC-31-09-00008-W	August 5, 2009
PSC-43-09-00018-W	August 28, 2009

**PROPOSED RULE MAKING  
HEARING(S) SCHEDULED**

**Major Electric Rate Filing**

**I.D. No.** PSC-46-09-00005-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 a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its Schedules for Electric Service.

**Statutory authority:** Public Service Law, section 66(12)

**Subject:** Major electric rate filing.

**Purpose:** To consider a proposal to increase annual electric revenues by approximately \$854.4 million or 7.4%.

**Public hearing(s) will be held at:** 10:30 a.m., Jan. 12, 2010 at Department of Public Service, 90 Church St., Fourth Fl. Board Rm., New York, NY\*

\*On occasion there are requests to reschedule or postpone hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website ([www.dps.state.ny.us](http://www.dps.state.ny.us)) under Case 09-E-0428.

**Interpreter Service:** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Substance of proposed rule:** The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) which would increase its annual electric revenues by about \$854.4 million or 7.4% (19.5% on transmission and delivery). The statutory suspension period for the proposed filing runs through April 4, 2010. The Commission may adopt in whole or in part or reject terms set forth in Con Edison's proposal.

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

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

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

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

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

(09-E-0428SP1)

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

**Reactive Power**

**I.D. No.** PSC-46-09-00006-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 a proposed filing by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its Schedules for Electric Service, PSC Nos. 9, 2 and 4—Electricity.

**Statutory authority:** Public Service Law, section 66(12)

**Subject:** Reactive Power.

**Purpose:** To establish reactive power rates including provisions to customers operating on-site induction generators.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by

Consolidated Edison Company of New York, Inc. to establish reactive power rates including provisions to service classes with customers operating on-site induction generators in compliance with Commission Order issued September 22, 2009 in Case 08-E-0751. The proposed revisions have an effective date of March 1, 2010.

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

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

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

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

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

(08-E-0751SP10)

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

**Reactive Power**

**I.D. No.** PSC-46-09-00007-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 a proposed filing by Orange and Rockland Utilities, Inc. to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, PSC No. 2—Electricity.

**Statutory authority:** Public Service Law, section 66(12)

**Subject:** Reactive Power.

**Purpose:** To establish reactive power rates including provisions to customers operating on-site induction generators.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a proposed filing by Orange and Rockland Utilities, Inc. to establish reactive power rates including provisions to service classes with customers operating on-site induction generators in compliance with Commission Order issued September 22, 2009 in Case 08-E-0751. The proposed revisions have an effective date of March 1, 2010.

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

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

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

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

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

(08-E-0751SP9)

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

**Minor Rate Filing**

**I.D. No.** PSC-46-09-00008-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 a proposed filing by the

Village of Churchville to make various changes in the rates, charges, rules and regulations contained in its Schedule for Electric Service, P.S.C. No. 1—Electricity.

**Statutory authority:** Public Service Law, section 66(12)

**Subject:** Minor Rate Filing.

**Purpose:** To increase annual base electric revenues by approximately \$299,000 or 30.1%.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a filing by the Village of Churchville to increase its base electric revenues by approximately \$299,000 or 30.1%. The proposed filing has an effective date of April 1, 2010.

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

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

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

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

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

(09-E-0782SP1)

## Department of State

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

#### Firefighter Training

**I.D. No.** DOS-46-09-00004-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 438 to Title 19 NYCRR.

**Statutory authority:** Executive Law, section 156(6); L. 2006, ch. 615

**Subject:** Firefighter Training.

**Purpose:** To set forth standards regarding the state firefighter training program.

**Substance of proposed rule (Full text is posted at the following State website: [www.dos.state.ny.us](http://www.dos.state.ny.us)):** MINIMUM STANDARDS REGARDING OUTREACH FIRE TRAINING PROGRAM

[Statutory Authority: Executive Law, § 156(6)]

Section 438.1 Purpose. The purpose of this rule is to implement the requirements of subdivision 6 of section 156 of the Executive Law, as enacted by Chapter 615 of the Laws of 2006. This subdivision empowers the State Fire Administrator to plan, coordinate, and provide training related to fire and arson prevention and control for paid and volunteer firefighters and governmental officers and employees. Subdivision 6 also directs the Office of Fire Prevention and Control (OFPC) to adopt rules and regulations relating to training, including training standards, the allocation of training hours to counties and the establishment of a uniform procedure for counties to request and OFPC to provide additional training hours.

Section 438.2 contains definitions of terms used in Part 438.

Section 438.3 describes training standards to guide OFPC in its implementation of the rule including instructor and student qualifications, live fire training requirements, and a listing of the standards, manuals, statutes, and regulations which will be used to provide the training authorized by subdivision 6 of section 156 of the Executive Law.

Section 438.4 deals with firefighter training hours, course allocations and scheduling procedures delivered through the Outreach Training Program.

Section 438.5 deals with the requirements and restrictions associated with creating and maintaining a supplemental firefighter training program.

Section 438.6 deals with the requirements and restrictions associated with creating and maintaining a municipal training program.

Section 438.7 deals with the requirements and restrictions associated with creating and maintaining a fire brigade training program.

Section 438.8 deals with firefighter training course allocations and scheduling procedures delivered through the Regional Training Program and Residential Training Program.

Section 438.9 deals with restrictions relating to the state fire training programs.

Section 438.10 deals with the State Fire Administrator's ability to suspend and/or terminate authorization to deliver state fire training courses if an officer, instructor or program violates one or more of the provisions of this Part.

**Text of proposed rule and any required statements and analyses may be obtained from:** Elisha S. Tomko, Esq., Department of State, 99 Washington Avenue, Albany NY 12231, (518) 474-6740

**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 156(6) of the Executive Law requires that the Office of Fire Prevention and Control of the Department of State (OFPC) provide fire and arson prevention and control training to firefighters and related governmental officers and employees. This section requires OFPC to adopt rules related to such training. These rules must include statements concerning training standards used by OFPC, the process by which OFPC allocates training hours to counties, and a uniform procedure for counties to request and OFPC to provide additional training hours.

##### 2. LEGISLATIVE OBJECTIVES

The legislative objectives behind section 156(6) are to make the state training program more transparent, addressing the following processes: allocation of training hours to counties; the uniform procedure for counties to request and OFPC to provide additional training hours; and the training standards which OFPC and its representatives will follow when it delivers training. This rule fulfills the legislative objectives.

##### 3. NEEDS AND BENEFITS

Section 156(6) of the Executive Law requires that OFPC adopt a rule related to firefighter training. Adoption of this rule would add transparency to the process by which firefighter training hours are allocated to counties, describe the training standards which will be followed by OFPC when it delivers training, establish the qualifications of instructors delivering state fire training courses and prescribe a uniform procedure for counties to request and OFPC to provide additional training hours.

##### 4. COSTS

a. Cost to regulated parties for the implementation of and continuing compliance with the proposed rule.

Fire departments would experience no additional out-of-pocket costs if the rule is adopted. The equipment and facilities required by the training provided for in this rule are already in the possession of these departments.

b. Costs to the Agency, the State and Local Governments for the Implementation and Continuation of the Rule.

This rule would not impose any additional costs on the State or local governments. The Department of State is currently appropriated approximately \$1,500,000 per year for outreach firefighter training.

County participation in the Supplemental Training Program element of this rule is completely voluntary. Furthermore, each county chooses its level of participation in the supplemental program. Since county participation in the supplemental program is purely voluntary, attendant costs would be voluntarily incurred. Approximately 10 counties currently participate in the Supplemental Training Program and incur training costs for a county fire instructor at an estimated rate of between \$20 and \$22 per hour.

##### 5. LOCAL GOVERNMENT MANDATES

This rule making will not impose any program, service, duty or responsibility upon counties, cities, towns, villages, school districts, fire districts or other special districts. Participation in the firefighter training provided for in this rule is voluntary.

##### 6. PAPERWORK

Several new forms would be required as a result of the rule:

County fire coordinators desiring that training be provided to fire departments within their jurisdiction will be required to answer a survey related to such training and submit a proposed training schedule.

If this rule is adopted, state fire instructors, municipal fire instructors, and county fire instructors would be required to complete student attendance cards.

##### 7. DUPLICATION

No rules or other legal requirements of either the state or federal govern-

ment exist at the present time which duplicate, overlap, or conflict with the proposed rule.

#### 8. ALTERNATIVES

Section 156(6) of the Executive Law requires that OPFC adopt a rule which deals with firefighter training. This section requires that the rule describe the process by which firefighter training hours are allocated to counties, the training standards which will be followed by OPFC when it delivers such training, and prescribe a uniform procedure for counties to request and OPFC to provide additional training hours.

The Department of State considered several alternatives to this rule but established this rule to ensure public safety and compliance with the current federal regulations related to training. For instance, the Department of State considered assigning less state fire instructors per county, but needed to assign 4 instructors per county based on safety concerns, workload and the National Fire Protection Association standard for a required number of instructors based on student enrollment for certain firefighter training, such as live fire. The Department of State also considered using only full-time staff to conduct firefighter training statewide, but it would be cost prohibitive to consider that alternative. Another example of an alternative that was given consideration was the idea of removing pre-requisites which are required for training courses, but based on the hazardous nature of firefighting and the need for skills progression, such an alternative was not advisable.

#### 9. FEDERAL STANDARDS

No standards have been set by the federal government for the same or similar subject areas addressed by this proposed rule.

#### 10. COMPLIANCE SCHEDULE

Fire departments interested in receiving the training which is provided for in this proposed rule can comply immediately with the requirements of the rule.

#### *Regulatory Flexibility Analysis*

##### 1. Effect of rule

The proposed rule potentially would affect all of the counties and all of the approximately 1850 fire departments located in New York State. The proposed rule would not affect small businesses located in New York State.

##### 2. Compliance requirements

Counties and fire departments wishing to avail themselves of the training offered by the proposed rule would be required to submit a proposed fire training schedule to the Office of Fire Prevention and Control of the Department of State.

##### 3. Professional services

Counties and fire departments will not need any additional professional services in order to comply with the proposed rule.

##### 4. Compliance costs

Fire departments would experience no additional out-of-pocket costs if the rule is adopted. The equipment and facilities required by the training provided for in this rule are already in the possession of these departments.

This rule would not impose any additional costs on local governments. The Department of State is currently appropriated approximately \$1,500,000 per year for outreach firefighter training.

County participation in the Supplemental Training Program element of this rule is completely voluntary. Furthermore, each county chooses its level of participation in the supplemental program. Since county participation in the supplemental program is purely voluntary, attendant costs would be voluntarily incurred. Approximately 10 counties currently participate in the Supplemental Training Program and incur training costs for a county fire instructor at an estimated rate of between \$20 and \$22 per hour.

##### 5. Economic and technological feasibility

The proposed rule sets forth a voluntary process whereby counties and fire departments may make requests for firefighter training. The only requirement that the rule imposes on these counties and fire departments is that they make requests for this training. It is therefore economically and technologically feasible for these counties and fire departments to comply with this rule.

##### 6. Minimizing adverse impact

The proposed rule sets forth a voluntary process whereby counties and fire departments may make requests for firefighter training. Since the rule would regulate the administration of a state program rather than the activities of counties and fire departments, engaging in this voluntary process would not have any adverse economic impact on these entities.

##### 7. Small business and local government participation

Representatives of fire departments and local governments participated in legislative hearings at which they urged the implementation of a more transparent process for the allocation of firefighter training resources. This resulted in the passage of Chapter 615 of the Laws of 2006, which requires the promulgation of these rules.

OPFC has reached out to the regulated parties, including County Fire Coordinators, State Fire Instructors, Regional Fire Administrators and

Municipal Training Officers to provide them with the processes and procedures OPFC will be following and requiring with respect to the state fire training program. OPFC has provided copies of the rulemaking to the regulated parties. In addition, this rule has been discussed at the instructor's conferences, the regional state fire administrators conference, county fire coordinators conferences, Association of State Fire Chiefs conference and it has been posted on the Office of Fire Prevention and Control's website. To date, the Department of State has not received any feedback based on its outreach.

#### *Rural Area Flexibility Analysis*

##### 1. Types and estimated numbers of rural areas

The proposed rule would apply throughout New York State. All of the counties and all of the approximately 1850 fire departments in New York State, including those located in rural areas as that term is defined in section 102(10) of the State Administrative Procedure Act ("SAPA"), would potentially be affected by the rule.

The proposed rule would not regulate any activities of private entities in rural areas of the State.

##### 2. Reporting, recordkeeping and other compliance requirements, and professional services

Counties wishing to avail themselves of the training offered by the proposed rule would be required to submit a proposed fire training schedule to the Office of Fire Prevention and Control of the Department of State. Counties and fire departments located in rural areas will not need any additional professional services in order to comply with the proposed rule.

##### 3. Costs

Fire departments would experience no additional out-of-pocket costs if the rule is adopted. The equipment and facilities required by the training provided for in this rule are already in the possession of these departments.

This rule would not impose any additional costs on local governments. The Department of State is currently appropriated approximately \$1,500,000 per year for outreach firefighter training.

County participation in the Supplemental Training Program element of this rule is completely voluntary. Furthermore, each county chooses its level of participation in the supplemental program. Since county participation in the supplemental program is purely voluntary, attendant costs would be voluntarily incurred. Approximately 10 counties currently participate in the Supplemental Training Program and incur training costs for a county fire instructor at an estimated rate of between \$20 and \$22 per hour.

##### 4. Minimizing adverse impact

The proposed rule sets forth a voluntary process whereby counties may make requests for firefighter training. The rule would regulate the administration of a state program rather than the activities of public or private entities located in rural areas. Since this process is voluntary, it would not have any adverse economic impact on rural areas of New York State.

##### 5. Rural area participation

Representatives of rural areas participated in legislative hearings at which they urged the implementation of a more transparent process for the allocation of firefighter training resources. This resulted in the passage of Chapter 615 of the Laws of 2006.

OPFC has reached out to the regulated parties, including County Fire Coordinators, State Fire Instructors, Regional Fire Administrators and Municipal Training Officers to provide them with the processes and procedures OPFC will be following and requiring with respect to the state fire training program. OPFC has provided copies of the rulemaking to the regulated parties. In addition, this rule has been discussed at the instructor's conferences, the regional state fire administrators conference, county fire coordinators conferences, Association of State Fire Chiefs conference and it has been posted on the Office of Fire Prevention and Control's website. To date, the Department of State has not received any feedback based on its outreach.

#### *Job Impact Statement*

This rule will not have any substantial adverse impact on jobs and employment opportunities. In fact, this rule may result in the employment of several additional Office of Fire Prevention and Control fire protection specialists and temporary part-time instructors by the Department of State.