

# 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.

## State Board of Elections

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

#### Routine Testing of Voting Systems

I.D. No. SBE-17-16-00009-P

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

**Proposed Action:** Amendment of section 6210.2 of Title 9 NYCRR.

**Statutory authority:** Election Law, sections 3-102(1), 7-202(3) and 7-206(3)

**Subject:** Routine testing of voting systems.

**Purpose:** To provide for testing of voting machines not less than once per year.

**Text of proposed rule:** Part 6210.2 of Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

§ 6210.2 Routine [maintenance and] testing of voting systems

(a) Testing of all voting systems shall be conducted by the county board before the use of the system in any election and at such other times of the year as prescribed by these regulations. Testing procedures shall be approved by the State Board. The voting system shall be tested to determine that the system is functioning correctly and that all system equipment, including but not limited to hardware, memory, and report printers, are properly integrated with the system and are capable of properly performing in an election. Testing, other than pre-qualification testing, shall be conducted by casting manual votes and may include the casting of simulated votes.

(b) *All voting equipment owned by a county board of election shall be tested at least once every calendar year. All other voting equipment that*

*has not undergone pre-election testing prior to use in any election in the calendar year shall be tested no later than December 31st of the calendar year. Such tests are in [In] addition to vendor-prescribed maintenance tasks and diagnostic tests, [tests of voting equipment shall be] conducted by the county board [, on each piece of equipment owned by the county board. Such testing shall be administered periodically and be completed during the following periods during each year that the equipment is in use:*

- (1) January 15-April 15;
- (2) April 16-July 15;
- (3) July 16-September 15; or
- (4) September 16-November 15].

Whenever a voting system is to be tested for pre-qualification purposes, such test must be conducted while the voting system is in election mode. Votes cast for pre-qualification test purposes shall be manually cast using all of the devices available to voters on election day (i.e.: audio, key pads and or pneumatic switches, and/or alternate language displays).

(c) Testing shall include the comparison of software installed on the delivered system to certified software, via the use of a Secure Hash Signature Standard (SHS) Validation Program, as described in Federal Information Processing Standards Publication 180-2 issued by the National Institute Standards Technology (This publication is available electronically by accessing [[http:// csrc.nist.gov/publications/](http://csrc.nist.gov/publications/)] *the NIST website*. Alternatively, copies of NIST computer security publications are available from: National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.)

Testing shall consist of the re-calibration of equipment, as appropriate, pursuant to recommendations made in vendor's maintenance documentation, and the casting of a test deck by voting the minimum number of ballots, determined pursuant to the requirements of section 6210.8 of this Part, to ensure that all voting positions for each ballot configuration are tested. Votes cast for the purposes of this section shall be cumulative ballots cast on each piece of equipment [during each of the prescribed periods outlined].

(1) If the system does not accurately count the votes from the test deck cast manually, simulated, or both, (aside from those that were deliberately designed to fail), or the calibration test, the cause or causes for the error or errors shall be ascertained and corrected. The voting system shall be retested until there are two consecutive error-free tests before the system is approved for use in the count of actual ballots. The commissioners of the county board or their designees shall certify that they have reviewed and verified the results of said testing. The summary results of all tests, including all inaccurate test results, their causes and the actions taken to correct them, as well as the results of all errorless counts, shall be entered upon the maintenance log. *Maintenance logs are to be kept as a permanent record of the county board.* All other documentation and/or test decks, simulation cartridges and any test data including but not limited to copies of ballot programming used for required maintenance tests shall be maintained in secure locked storage for two years after the election, pursuant to Election Law section 3-222.

[(2) Maintenance logs are to be kept as a permanent record of the county board.]

(d) [During the period including July 16 - September 15 (and in years when a presidential primary is conducted, during the January 15 - April 15 period),] *For pre-qualification testing of a system to be used in a primary election, the test ballot format for each piece of equipment assigned for use in said primary election shall consist of each primary ballot configuration as certified by the county board [, if said equipment is to be utilized in a primary election].* The voting system shall be cleared of all votes and a printed report shall be produced by the system, to verify the correct ballot configuration and election configuration, and to confirm that all voting positions are at zero. Ballots cast for the purposes of this test shall be manually cast and a printed tabulation report shall be produced. The system shall again be cleared of all votes and a printed report shall be produced by the system to confirm that all voting positions are at zero. *Each officer or board charged with the duty of preparing voting machines*

for use in any election shall give written notice pursuant to Election Law section 7-128 and section 7-207, by first class mail, to the State Board and to all candidates, except candidates for member of the county committee, who are lawfully entitled to have their names appear thereon, of the time when, and the place where, they may inspect the voting machines to be used for such election. [Each officer or board charged with the duty of preparing voting machines for use in any election shall give written notice, by first class mail, to the State Board and to all candidates, except candidates for member of the county committee, who are lawfully entitled to have their names appear thereon, of the time when, and the place where, they may inspect the voting machines to be used for such election.] The candidates or their designated representatives may appear at the time and place specified in such notice to inspect such machines, provided, however, that the time so specified shall be not less than two days prior to the date of the election.

(e) For the period between ballot certification and seven days before the general election, the test ballot format for each piece of equipment shall consist of each general election ballot configuration as certified by the county board. The voting system shall be cleared of all votes and a printed report shall be produced by the system, to verify the correct ballot configuration and election configuration, and to confirm that all voting positions are at zero. Ballots cast for the purposes of this test shall be manually cast and a printed tabulation report shall be produced. The system shall again be cleared of all votes and a printed report shall be produced by the system to confirm that all voting positions are at zero. Each officer or board charged with the duty of preparing voting machines for use in any election shall give written notice pursuant to Election Law section 7-128 and section 7-207, by first class mail, to the State Board and to all candidates, except candidates for member of the county committee, who are lawfully entitled to have their names appear thereon, of the time when, and the place where, they may inspect the voting machines to be used for such election. The candidates or their designated representatives may appear at the time and place specified in such notice to inspect such machines, provided, however, that the time so specified shall be not less than two days prior to the date of the election.

(f) In addition to any vendor provided training, the State Board shall provide training on routine maintenance and testing of voting systems to county board personnel responsible for voting systems. The State Board shall provide sample tests to be utilized by each county board. The State Board may revise said testing format, based upon its audit and review.

(g) All results of [each] any testing [routine maintenance, test and/or] in addition to pre-qualification testing, including the final errorless test, shall be certified as accurate by the county board commissioners or their designees, and such certification shall be entered upon the maintenance log for each such piece of equipment, together with any other information prescribed in said log by the State Board.

(h) The county board shall certify to the State Board, the completion of any [each routine maintenance], testing [and/or] including pre-qualification testing. All documentation and/or test decks, simulation cartridges and any test data including but not limited to copies of ballot programming used for required maintenance tests shall be maintained in secure locked storage for two years after the election, pursuant to Election Law section 3-222. Such certification shall be on a form prescribed and furnished by the State Board, and shall be accompanied by copies of each maintenance log.

(i) Each county shall keep a detailed log of maintenance performance and testing procedures. Such logs shall be in a format provided by the State Board and the same shall have been reviewed by the vendor.

(j) Such logs shall be provided upon completion of any testing, including pre-qualification testing [quarterly to] or as requested by the State Board, for their review and inspection, and shall be made available to the public, upon request.

(k) The State Board may, upon review of the maintenance logs, require further testing of any such piece of equipment or may remove a piece of equipment from use in an election until further examination and testing has been completed, or may rescind certification pursuant to section 6209.8 of the State Board regulations.

(1) The State Board may reinstate the certification if the equipment passes these further tests, and a review of the maintenance logs supports such reinstatement.

(2) County boards shall make the system or equipment available to the State Board for any such additional testing and shall provide such assistance as may be deemed necessary.

(l) During the initial time period in which such system or equipment is used, to include a primary election and a general election, the State Board shall assist in the routine maintenance, testing and the operation of the voting machines or systems. Such assistance shall include but not be limited to:

(1) election configuration and ballot configuration related to voting system testing and use;

- (2) pre-qualification and post-election tests;
- (3) election day support, via phone, email, facsimile or on-site, as necessary;
- (4) post-election support, to include recanvass, challenges, and audit conducted pursuant to Election Law section 9-211;
- (5) staff training;
- (6) defining personnel requirements and tasks;
- (7) defining procedures for pre-qualification, post-election, and maintenance tests; and
- (8) defining procedures for canvassing and recanvassing votes cast in an election.

(m) During successive years, the State Board, whenever it deems necessary, or at the request of a county board, may assist in any or all aspects of the operation of the system.

**Text of proposed rule and any required statements and analyses may be obtained from:** Brian L. Quail, Esq., New York State Board of Elections, 40 North Pearl Street, Ste. 5, Albany, New York 12207, (518) 474-2063, email: brian.quail@elections.ny.gov

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

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

#### **Regulatory Impact Statement**

1. Statutory authority: Election Law 3-102[1]; 7-202[3]; 7-206[3] requires the Boards of Elections to provide routine testing of voting systems, and this requires rules for implementation. Election Law 3-102[1]; 7-202[3]; 7-206[3] expressly authorizes the New York State Board of Elections to promulgate such rules and regulations.

2. Legislative objectives: The legislative objective furthered by the regulation is to provide an efficient, reliable voting machine testing protocol to ensure accurate tabulation of votes cast.

3. Needs and benefits: The legislature has mandated that the State Board of Elections promulgate procedures for the testing of voting equipment to ensure the accuracy of election result tabulation. This regulation requires testing of voting machines not used in an election to still occur at least once per year to ensure an accurate accounting of the condition of all voting equipment. The testing regimen continues to require pre-election testing on all units to be used in the election to ensure accurate functioning of voting machines in all elections.

4. Costs:

a. This regulatory amendment does not increase costs to regulated parties as the regulation reflects only existing statutory obligations and eliminates certain unnecessary testing.

b. There are no new agency or state costs created by this rulemaking.

c. This assessment of cost is based on the nature of the regulation.

d. This regulatory amendment does not create any new costs as it does not impose any new regulatory burden or compliance activity.

5. Local government mandates: There are no additional responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This proposed rule imposes no new documentation, reporting or regulatory filing requirements.

7. Duplication: There is no jurisdictional duplication created by this rulemaking.

8. Alternatives: This rulemaking amends the existing regulations for voting machine testing. There are no known alternatives, but public comment will be accepted.

9. Federal standards: Not applicable.

10. Compliance schedule: The rule provides no new compliance schedules and will go into effect upon publication of the Notice of Adoption in the New York State Register.

#### **Regulatory Flexibility Analysis**

Under SAPA, when it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on small business or local governments, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. The rule provides for a modification to the process for the testing of voting machines. This rulemaking imposes no regulatory burden on any facet of small business or local government.

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

Under SAPA 202-bb(4)(a), when a rule does not impose an adverse economic impact on rural areas and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, the agency may file a Statement in Lieu of. This rule has statewide application, amending the rules for routine testing of voting systems as provided by Election Law section 3-102[1]; 7-202[3]; 7-206[3]. The proposed rule does not create any new reporting, record-

keeping or other increased compliance requirements. Accordingly, this rule has no adverse impacts on any area.

#### **Job Impact Statement**

Under SAPA 201-a(2)(a), when 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, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. The rule provides for modifying the process for testing voting machines. This rulemaking imposes no regulatory burden on any facet of job creation or employment.

## Department of Environmental Conservation

### PROPOSED RULE MAKING HEARING(S) SCHEDULED

#### **Croton Gorge Unique Area**

**I.D. No.** ENV-17-16-00001-P

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

**Proposed Action:** Addition of section 190.10(g) to Title 6 NYCRR.

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

**Subject:** Croton Gorge Unique Area.

**Purpose:** To protect public safety and natural resources on the Croton Gorge Unique Area.

**Public hearing(s) will be held at:** 7:00 p.m., May 18, 2016 at Ossining Public Library, 53 Croton Ave., Ossining, 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.

**Text of proposed rule:** A new subdivision (g) is added to 6 NYCRR section 190.10 to read as follows:

(g) *Croton Gorge Unique Area. Description: For the purposes of this section, Croton Gorge Unique Area, referred to in this section as "the area", means all those state lands located in Westchester County in the Town of Cortlandt, in a portion of the Cortlandt Patent.*

(1) *All camping shall be prohibited.*

(2) *Public use of the property will be allowed from sunrise to sunset only.*

(3) *The use of any type of fire shall be prohibited including the use of charcoal or gas grills.*

(4) *Possession or consumption of alcoholic beverages shall be prohibited.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Jeff Wiegert, Division of Lands and Forests, 21 South Putt Corners Road, New Paltz, NY 12561, (845) 256-3084, email: jeffrey.wiegert@dec.ny.gov

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

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

**Additional matter required by statute:** A Short EAF has been prepared in compliance with Article 8 of the Environmental Conservation Law.

#### **Regulatory Impact Statement**

##### **1. Statutory authority**

Environmental Conservation Law ("ECL") section 1-0101(3)(b) directs the Department of Environmental Conservation (Department) to guarantee "that the widest range of beneficial uses of the environment is attained without risk to health or safety, unnecessary degradation or other undesirable or unintentional consequences." ECL section 3-0301(1)(b) gives the Department the responsibility to "promote and coordinate management of...land resources to assure their protection, enhancement, provision, allocation, and balanced utilization...and take into account the cumulative impact upon all such resources in promulgating any rule or regulation."

ECL section 9-0105(1) authorizes the Department to "[e]xercise care, custody, and control" of state lands. ECL section 3-0301(2)(m) authorizes the Department to adopt rules and regulations "as may be necessary, convenient or desirable to effectuate the purposes of [the ECL]," and ECL 9-0105(3) authorizes the Department to "[m]ake necessary rules and regulations to secure proper enforcement of [ECL Article 9]."

##### **2. Legislative objectives**

In adopting various articles of the ECL, the legislature has established that forest, fish, and wildlife conservation are policies of the state and has empowered the Department to exercise care, custody, and control over certain state lands and other real property. Consistent with these statutory interests, the proposed regulations will protect natural resources and the safety and welfare of those who engage in recreational activities within the Croton Gorge Unique Area. The Department has also been authorized by the state legislature to manage state owned lands (see ECL section 9-0105(1)), and to promulgate rules and regulations for the use of such lands (see ECL sections 3-0301(2)(m) and 9-0105(3)).

##### **3. Needs and benefits**

The Croton Gorge Unique Area ("the Area") is located in the town of Cortlandt in Westchester County and was acquired in 1978 by the state because of its natural beauty. As early as 1965, Westchester County identified this stretch of the Croton River for public acquisition in its open space program. In 1974, discussions involving the Department, Westchester County officials, the Nature Conservancy, and various local and regional conservationists culminated in the formal submission of a nomination of a portion of the Croton Gorge for acquisition by the Department with Environmental Quality Bond Act funds under the unique category for inclusion in the State Nature and Historical Preserve. In 1976, the Board of the State Nature and Historical Preserve Trust advised the commissioner of the Department of Environmental Conservation that "the Croton River and Gorge from the New Croton Dam to the River's confluence with the Hudson qualifies as a "Unique Area" in the natural beauty category; that the Board recommend that the commissioner explore and report on means of protecting the entire Gorge either by State, County, private or municipal acquisition or other method of protection; and that as a first step the commissioner acquire by easement or fee title up to 40 acres in the section designated..." Original parcels identified for acquisition included lands owned by (a) the Village of Croton-on-Hudson, (b) the Union Free School District #2, (c) Towns of Cortlandt and Yorktown, and (d) three private landowners. An internal memo described the acquisition as "one of the grandest hemlock gorges in the State, and the finest immediately adjacent to the Tidal Hudson. Despite the propinquity to New York City, the tract is largely undisturbed." The same memo proposed that an emergency action was required "in order to secure a crucial portion from adverse development."

In 1978, the Department acquired 19.2 acres in three separate parcels east of the Croton River in the Town of Cortlandt, from two willing private sellers. The 19.2 acre acquisition by the Department became the Croton Gorge Unique Area. Part 190 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") contain the general regulations concerning the public's use of state lands, but it does not adequately address the majority of management issues confronting this property including overuse, alcohol consumption, campfires, and camping.

Due to the large influx of public users to this small property in the summer months, there is degradation to the natural resources of the Area and an increase in public safety issues. These include the trampling of vegetation resulting in areas of compacted soil and bare ground, damage to trees resulting from limb removal for fire use, littering, and graffiti. In addition, trespassing onto neighboring private properties is an issue. In the case of wildfire, efforts to contain a blaze by local first responders would be hampered with the lack of fire hydrants near the property and the rugged terrain.

The proposed regulations will improve public safety by prohibiting the consumption of alcohol and the use of fire on the property. By prohibiting camping and restricting hours of use, it is anticipated that litter, trespass and other degradation problems will be reduced or eliminated. In contrast to other similar regulations, the proposed regulations specify the start and end of hours of public use as sunrise and sunset, rather than times of day. This language will help to ensure that users leave the area while there is still sufficient daylight to safely navigate the steep trail that is the only means of ingress and egress from the property.

Local government is very supportive of this regulatory proposal and are expected to assist the Department with enforcement. Local law enforcement and public safety officials are the first responders to incidents on this property. A Task Force composed of local municipal leaders, neighbors, law enforcement and public safety officials has been formed to address management issues on the Croton Gorge Unique Area. The Task Force has requested that the Department promulgate regulations to increase public safety and address overuse while still providing a quality outdoor