

NYSDAM (or enter into compliance agreements with NYSDAM) to ship regulated articles (e.g. treated firewood and ash logs and lumber) outside those areas.

As there is no approved protocol to diagnose or treat nursery stock (since approved methods of eliminating EAB would kill the plants), movement of ash nursery stock outside a restricted zone is prohibited.

It is not anticipated that local governments, including those in rural areas, would be involved in the shipment of regulated articles from the restricted zones.

Those in rural areas shipping regulated articles from restricted zones (without having a compliance agreement with NYSDAM) would require professional inspection services provided by NYSDAM, the Department of Environmental Conservation (DEC) or the United States Department of Agriculture Animal Plant Health Inspection Service (USDA APHIS).

It is not anticipated that local governments in rural areas would be involved in the shipment of regulated articles from the restricted zones.

3. Costs:

Regulated parties in rural areas exporting regulated articles, exclusive of nursery stock, from the restricted zones, other than pursuant to compliance agreements, would require an inspection of the materials, taking and analyzing soil samples, reviewing shipment records and issuing a federal or state certificate of inspection. These services are available from NYSDAM at a rate of \$25 per hour. Most inspections will take one hour or less. However, most shipments would be made pursuant to compliance agreements, for which there is no charge.

Tree removal services in rural areas would have the option to leave ash materials within the restricted zones or transport them outside of the zones under a limited permit from NYSDAM to a disposal site for processing.

It is not anticipated that local governments in rural areas would be involved in the shipment of regulated articles from the restricted zones.

4. Minimizing adverse impact:

In conformance with State Administrative Procedure Act section 202-bb(2), the Department has designed the rule to minimize adverse economic impact on small businesses and local governments in rural areas. By limiting the EAB quarantine to areas where infestations exist, the rule minimizes economic impacts while maintaining, without compromising, efforts to slow the spread of EAB.

Approaches for minimizing adverse economic impact were considered. The Department and NYSDAM have sought to minimize adverse impact of the EAB quarantine by continuing the use of compliance agreements between NYSDAM and regulated parties in rural areas, compliance agreements which permit the shipment of regulated articles without state or federal inspection and for which there is no charge. Given all of the facts and circumstances, the regulations minimize adverse economic impact as much as is currently possible.

5. Rural area participation:

Movement of firewood continues to present a serious threat to spread EAB and other invasive insects. State and federal entities are continuing aggressive outreach efforts in promoting the message "don't move firewood."

The Department and NYSDAM are and will continue to keep stakeholder groups informed concerning this rule. On March 6, 2015, a stakeholders meeting was held in NYSDAM's Albany Offices. Approximately 30 regulated parties attended and expressed support for the rule.

Job Impact Statement

The forest-based economy generates payrolls of more than \$2 billion. Forest related activities in New York State provide employment for approximately 70,000 people. Of that number, 55,000 jobs are associated with the wood-based forest economy, including manufacturing.

There are an estimated 750 million ash trees in New York State (excluding the Adirondack and Catskill Forest Preserves), with ash species making up approximately seven percent of all trees in the State's forests. The unchecked spread of the infestation would have substantial adverse economic consequences to the nursery, forestry and wood-working (e.g. lumber yard, flooring and furniture and cabinet making) industries of the State, due to the destruction of the regulated articles upon which these industries depend.

The modifications of the Department's EAB regulations will: (1) target areas of infestation with greater precision, (2) more effectively slow the spread of the infestation; and, (3) at the same time, ease the regulatory burden on entities in areas where there is no current EAB infestation. Accordingly, the new regulations will not have a substantial adverse impact on jobs or employment opportunities; and will better protect jobs and employment opportunities in the wood-based forest economy.

Department of Labor

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Methods of Payment of Wages

I.D. No. LAB-21-15-00009-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 192 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 21 and 199

Subject: Methods of Payment of Wages.

Purpose: This regulation provides clarification and specification as to the permissible methods of payment, including payroll debit cards.

Text of proposed rule: Part 192 Methods of Payment of Wages

Subpart-1 General Provisions

§ 192-1.1 Permissible Methods of Payment

Employees may be paid wages by employers using the following permissible methods:

- (a) Cash;
- (b) Check;
- (c) Direct Deposit; or
- (d) Payroll Debit Card.

§ 192-1.2 Definitions

For the purposes of this part:

(a) *Payroll Debit Card shall mean a card that provides access to an account with a financial institution established directly or indirectly by the employer, and to which transfers of the employee's wages are made on an isolated or recurring basis.*

(b) *Consent shall mean an express, advance, written authorization given voluntarily by the employee and only given following receipt by the employee of written notice of all terms and conditions of the payment. Consent may be withdrawn at any time, provided however, that the employer shall be given a reasonable period of time to finalize such change.*

(c) *No Cost shall mean that an employee can access his or her wages, in full, without encumbrances, costs, charges, or fees.*

(d) *Local Access shall mean that the employee is provided with access to his or her wages, at a facility or machine which is located within a reasonable travel distance to the employee's work location or home.*

(e) *Employee shall be as it is defined in Section 190 of the Labor Law and shall not include any person employed in a bona fide executive, administrative, or professional capacity whose earnings are in excess of nine hundred dollars a week, or an employee working on a farm not connected with a factory.*

(f) *Direct Deposit shall mean the transfer of wages into an account, of the employee's choosing, of a financial institution.*

(g) *Reasonable Intervals shall mean not less frequently than annually.*

(h) *Negotiable instrument shall be as it is defined in Section 3-104 of the New York State Uniform Commercial Code.*

Subpart-2 Methods of Payment

§ 192-2.1 Payment of Wages by Check

When paying wages by check, an employer shall ensure that:

(a) *The check is a negotiable instrument;*

(b) *There is at least one means of no-cost local access to the full amount of wages through check cashing or deposit of check at a financial institution or other establishment reasonably accessible to the employee's place of employment; and*

(c) *The employer does not impose any fees in connection with the use of checks for the payment of wages, including a fee for replacement of a lost or stolen check.*

§ 192-2.2 Payment of Wages by Direct Deposit

When paying wages by direct deposit, an employer shall ensure that:

(a) *It has consent from the employee;*

(b) *A copy of the employee's consent must be maintained by the employer during the period of the employee's employment and for six years following the last payment of wages by direct deposit. A copy of the employee's written consent must be provided to the employee; and*

(c) *Such direct deposit is made to a financial institution selected by the employee.*

§ 192-2.3 Payment of Wages by Payroll Debit Card

(a) *When paying wages by payroll debit card, an employer shall ensure that:*

- (1) It has consent from the employee;
- (2) It provides the following information at least seven business days prior to seeking consent to issue wages by payroll debit card. This information shall be provided by the employer in writing, in the employee's primary language or in a language that the employee understands and in at least 12 point font:
- (i) a plain language description of all of the employee's options for receiving wages;
 - (ii) a statement that the employer may not require the employee to accept wages by payroll debit card or by direct deposit;
 - (iii) a statement that the employee may not be charged any fees for services that are necessary for the employee to access his or her wages in full; and
 - (iv) a list of locations where employees can access and withdraw wages at no charge to the employees within reasonable proximity to their place of residence and place of work.
- (3) It obtains the employee's informed consent without intimidation, coercion, or fear of adverse action by the employer for refusal to accept the payroll debit card or payroll debit card account; and
- (4) Does not make participation in the payroll debit card program a condition of hire or of continued employment.
- (b) An employer shall not deliver payment of wages by payroll debit card unless each of the following is provided:
- (1) At least one network of automated teller machines that offers withdrawals at no cost to the employee;
 - (2) At least one method to withdraw up to the total amount of wages for each pay period or balance remaining on the payroll debit card without the employee incurring a fee;
 - (3) Upon the employee's written or oral request, the following statements must be provided either electronically or on paper:
 - (i) a periodic statement not less frequently than monthly; or if there is a balance but no activity with respect to the payroll debit card, not less frequently than every three months;
 - (ii) a transaction history covering at least 12 months preceding the request, which shall include all transactions, including deposits, withdrawals, fees charged or other transactions by any entity from or to the employee's payroll debit card account; and
 - (iii) electronic balance notifications on a per day or per transaction basis.
 - (4) An annual electronic or paper notice of the right to obtain a transaction history, annual statement, or periodic statement on request.
- (c) An employers or agent shall not charge, directly or indirectly, an employee a fee for any of the following:
- (1) Application, initiation, loading, participation or other action necessary to receive wages or to hold the payroll debit card;
 - (2) Point of sale transactions, declined transactions, and other transactions;
 - (3) Overdraft, shortage, or low balance status;
 - (4) Account inactivity;
 - (5) Maintenance;
 - (6) Telephone or online customer service;
 - (7) Accessing balance or other account information online, by Interactive Voice Response through any other automated system offered in conjunction with the payroll debit card, or at any ATM in network made available to the employee;
 - (8) Providing the employee with written statements, transaction histories or the issuer's policies;
 - (9) Replacing the payroll debit card at reasonable intervals;
 - (10) Closing an account or issuing payment of the remaining balance by check or other means; or
 - (11) Any fee not explicitly identified by type and by dollar amount in the contract between the employer and the issuer or in the terms and conditions of the payroll debit card provided to the employee.
- (d) An employer or its agent shall not deliver payment of wages by payroll debit card account that is linked to any form of credit, including a loan against future pay or a cash advance on future pay. Nothing in this subsection shall prohibit an issuer from covering an occasional inadvertent overdraft transaction if there is no charge to the employee.
- (e) An employer shall not pass on any of its own costs associated with a payroll debit card account to an employee, nor may an employer receive any kickback or other financial remuneration from the issuer, card sponsor, or any third party for delivering wages by payroll debit card.
- (f) An employer or its agent shall not deliver payment of wages by payroll debit card unless the agreement between the employer and issuer requires that the funds on a payroll debit card shall not expire. Notwithstanding this requirement, the agreement may provide that the account may be closed for inactivity provided that the issuer gives reasonable notice to the employee and that the remaining funds are refunded within seven days.
- (g) An employer or its agent shall not deliver payment of wages by

payroll debit card unless the agreement between the employer and issuer requires that, if the employee reports the payroll debit card as lost or stolen or reports fraudulent activity on the payroll debit card, the issuer must stop all card activity, conduct a reasonable investigation within 10 days, and re-credit or reimburse any fraudulent or unauthorized transactions within one business day of the conclusion of the investigation.

(h) At least thirty days before any change in the terms and conditions of a payroll debit card takes effect, an employer must provide written notice in plain language, in the employee's primary language or in a language the employee understands, and in at least 12-point font of any change to the terms or conditions of the payroll debit card account including any changes in the itemized list of fees. If the issuer charges the employee any new or increased fee before thirty days after the date the employer has provided the employee with written notice of the change in accordance with the provisions of this subsection, the employer must reimburse the employee for the amount of that fee.

(i) An employer and an issuer each shall not engage in unfair, deceptive or abusive practices in relation to the payment of wages by payroll debit card. No employer or his agent, or the officer or agent of any corporation, shall discharge, penalize or in any other manner discriminate against any employee because such employee has not consented to receive his or her wages by payroll debit card.

(j) Where an employee is covered by a valid collective bargaining agreement that expressly provides the method or methods by which wages may be paid to employees, an employer must also have the approval of the union before paying by payroll card.

Text of proposed rule and any required statements and analyses may be obtained from: Michael Paglialonga, NYS Department of Labor, Building 12, State Office Campus, Room 509, Albany, NY 12240, (518) 457-4380, email: regulations@labor.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

Statutory Authority: Labor Law §§ 21(11) and § 199.

Legislative Objectives: Sections 21(11) and 199 of the Labor Law provide the Commissioner with the authority to adopt regulations to carry out the provisions of the Labor Law. Article 6 of the Labor Law governs the payment of wages, and sets forth general provisions regarding such. This regulation provides clarification and specification as to the permissible methods of payment, including payroll debit cards, that employers can use to pay employees wages in conformity with Article 6 of the Labor Law.

Needs and Benefits: This regulation provides clarity to the permissible methods of wage payment, which both employees and employers have expressed interest in recent years. This rulemaking provides clear rules governing the payment of wages via payroll debit cards, a method of payment that was not specifically addressed in anything other than Departmental guidance document.

Costs: The Department estimates that there will be no direct costs to the regulated community to implement this rulemaking. Employers may realize significant cost savings through the availability of the use of payroll debit cards, over checks, while maintaining the legislative objectives of Article 6 of the Labor Law. The Department does not anticipate any significant increased costs as a result of this rulemaking.

Local Government Mandate: This rulemaking does not impose any mandate upon local governments or municipalities as they are excluded from the coverage of this rule.

Paperwork: This rulemaking does not impact any governmental reporting requirements currently required in either statute or regulation. Employers paying employees via payroll debit card will be required to provide employees with notices, either paper or electronic, of the terms conditions on the use of such cards. Employers will also be required to maintain a copy of written authorizations or consents received by employees for six years, consistent with the recordkeeping requirements in Article 6 of the Labor Law.

Duplication: This rulemaking does not duplicate, overlap or conflict with any other State or federal requirements.

Alternatives: There were no significant alternatives considered. The Department is seeking to provide clarity to the regulated community in relation to the payment of wages, and to codify the existing interpretations of the requirements of Article 6 of the Labor Law into regulation.

Federal Standards: This rulemaking is unrelated to any Federal rule or standard.

Compliance Schedule: This rulemaking shall become effective upon publication of its adoption in the State Register.

Regulatory Flexibility Analysis

Effect of Rule: This regulation provides clarification and specification as to the permissible methods of payment, including payroll debit cards,

that employers can use to pay employees wages in conformity with Article 6 of the Labor Law.

Compliance Requirements: Small businesses and local governments will not have to undertake any new reporting, recordkeeping, or other affirmative act in order to comply with this rulemaking.

Professional Services: No professional services would be required to effectuate the purposes of this rulemaking.

Compliance Costs: Small businesses and local governments will not incur costs to comply with this rulemaking.

Economic and Technological Feasibility: The rulemaking does not require any use of technology to comply.

Minimizing Adverse Impact: The Department does not anticipate that this rulemaking will adversely impact small businesses or local government. Since no adverse impact to small business or local government will be realized, it was unnecessary for the Department to consider approaches for minimizing adverse economic impacts as suggested in SAPA § 202-b(1).

Small Business and Local Government Participation: The Department will ensure that small businesses and local governments will have an opportunity to participate in the rule-making process. The Department will elicit input from small businesses and local governments during the public comment period.

Initial review of the rule pursuant to SAPA § 207: Initial review of this rulemaking shall occur no later than the third calendar year in which it is adopted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The Department of Labor (hereinafter "Department") anticipates that the adoption of this rulemaking will have a positive or neutral impact upon all areas of the state; there is no adverse impact anticipated upon any rural area of the state resulting from adoption of this rulemaking.

2. Reporting, recordkeeping and other compliance requirements: This rulemaking does not impact any governmental reporting requirements currently required in either statute or regulation. Employers paying employees via payroll debit card will be required to provide employees with notices, either paper or electronic, of the terms conditions on the use of such cards. Employers will also be required to maintain a copy of written authorizations or consents received by employees for six years, consistent with the recordkeeping requirements in Article 6 of the Labor Law.

3. Professional services: No professional services will be required to comply with this rule.

4. Costs: The Department estimates that there will be no direct costs to the regulated community to implement this rulemaking. Employers may realize significant cost savings through the availability of the use of payroll debit cards, over checks, while maintaining the legislative objectives of Article 6 of the Labor Law. The Department does not anticipate any significant increased costs as a result of this rulemaking.

5. Minimizing adverse impact: The Department does not anticipate that the adopted changes will have an adverse impact upon any region of the state. As such, different requirements for rural areas were not necessary.

6. Rural area participation: The Department has ensured that employers from all regions of the state, including rural areas, will have an opportunity to participate in the rule-making process. The Department will elicit input from members of the regulated community in rural areas during the public comment period.

Job Impact Statement

Nature of impact: The Department of Labor (hereinafter "Department") projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this proposed rulemaking. This rulemaking codifies the long standing requirements and rules for the payment of wages by cash, check, and direct deposit, and sets forth requirements applicable for the payment of wages via payroll debit card.

Categories and numbers affected: The Department does not anticipate that this rulemaking will have an adverse impact on jobs or employment opportunities in any category of employment.

Regions of adverse impact: The Department does not anticipate that adoption of this rulemaking an adverse impact upon jobs or employment opportunities statewide or in any particular region of the state.

Minimizing adverse impact: Since the Department does not anticipate any adverse impact upon jobs or employment opportunities resulting from these fees being eliminated, no measures to minimize any unnecessary adverse impact on existing jobs or to promote the development of new employment opportunities are required.

Self-employment opportunities: The Department does not foresee a measureable impact upon opportunities for self-employment resulting from adoption of this rulemaking.

Initial review of the rule pursuant to SAPA § 207: Initial review of this rulemaking shall occur no later than the third calendar year in which it is adopted.

Department of Motor Vehicles

NOTICE OF ADOPTION

Physician Assistants Performing Medical Review After Loss of Consciousness

I.D. No. MTV-12-15-00009-A

Filing No. 363

Filing Date: 2015-05-12

Effective Date: 2015-05-27

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

Action taken: Amendment of sections 9.1, 9.3, 9.4 and 9.5 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 502(1) and 510(3)(b)

Subject: Physician assistants performing medical review after loss of consciousness.

Purpose: To allow physician assistants to perform a medical review after a loss of consciousness.

Text or summary was published in the March 25, 2015 issue of the Register, I.D. No. MTV-12-15-00009-P.

Final rule as compared with last published rule: No changes.

Text of 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.ny.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Insurance ID Cards

I.D. No. MTV-21-15-00002-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 sections 32.5 and 32.10 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 311(10), 312(1), (4), (5), 319(3) and 370(1)

Subject: Insurance ID cards.

Purpose: To accept insurance ID cards for up to 180 days from effective date for part of the vehicle registration process.

Text of proposed rule: Paragraph (11) of subdivision (c) of section 32.5 is amended to read as follows:

(11) The effective date is more than [45] 180 days prior to the date of registration or the issuance of a temporary 45-day registration.

Paragraph (1) of subdivision (c) of section 32.10 is amended to read as follows:

(1) DMV developed software. The DMV stand-alone software requires a Windows operating system, an ink-jet or laser printer (desktop or network printing at a minimum of 300 dpi), a modem (28.8 minimum speed) and at least temporary access to the Internet along with an e-mail address. The modem and Internet requirements are only for initial download, set-up, and to receive any future updates. Upon the request of a New York State Department of Financial Services licensed agent, broker, agency or insurance company [NYSID] the New York State Department of Financial Services shall distribute the DMV software to its licensees in accordance with procedures established by the New York State Department of Financial Services.

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. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Data, views or arguments may be submitted to: Christine Legorius, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: christine.legorius@dmv.ny.gov