

**New York State Department of Transportation's
Large Truck Policy:**

**The Unreasonable Impact of the
Reasonable Access Highway Regulation**

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INTRODUCTION

Background: In September of 2008, the New York State Department of Transportation (the Department) announced a proposed statewide regulation designed to reduce large truck through traffic on many state roads across New York.¹ Claiming that truck transportation should achieve a harmonious balance with local economic development, environmental sustainability, and public safety, the Department identified seven highways in the Finger Lakes region on which it determined that access to large through trucks could be restricted. This choice, the Department claims, followed consideration of 64 highways throughout the state, and was ostensibly based on a safety and engineering analysis.

There are five stated objectives of the proposed regulation, including reducing large truck traffic in community or village settings; improving the quality of life for affected communities through reductions in noise and emissions; encouraging large trucks to use the National Network (primarily the Interstate system) for all large truck through traffic; reducing safety risks to affected communities, tourism and school areas, scenic byways and designated bike routes; and reducing the rate of pavement deterioration. The Department asserts it considered three alternatives to arrive at a policy choice that would best strike the balance between quality of life and any negative economic implications:

Alternative 1: This “null,” or no action alternative, was rejected because it did not adequately address the concerns of all stakeholders, including adjacent property owners and multimodal users like pedestrians and bicyclists.

Alternative 2: This mandated regulation for large truck routing was rejected because its lack of flexibility would create implementation problems and potentially cover too large a geographic area, and strong objections by the Trucking and Agricultural industries and the Federal Highway Administration.

Alternative 3: Known as the *Reasonable Access Highway Regulation*, this approach was accepted because it recommends, rather than mandates, highway usage and achieves the stated objectives “while minimizing to the extent practical the social, economic and environmental impacts.”²

Prior to implementation, the regulation must receive authorization from the Governor's Office of Regulatory Reform (GORR) to be published in the State Register, after which will be a 45-day period of public comment and a subsequent evaluation of such input to assess validity and determine whether changes in the draft should be made. The Department submitted its proposal to GORR late last year.

¹ A Large Truck, as defined by the Department, is any combination of vehicles consisting of a truck or tractor and a trailer where the length of the trailer is forty-five (45) feet or more.

² *Transportation Report Final Environmental Assessment: Reducing Large Truck Traffic in Local Communities in New York State*. New York State Department of Transportation. October 2008, Chapter 3.

The Department estimates that the economic implications of the regulation would be minimal – at \$4.2 million to the trucking industry – and that the quality of life benefits outweigh such a minor economic impact.

Approach: This paper evaluates the definitional and analytical criteria the Department used to validate its choice of alternatives. Using anecdotal case studies for three industries that will be impacted by the regulation, it finds the Department analysis to be wholly inadequate, in that it only estimates its impact on the trucking industry itself, and fails completely to consider its impact on all other industries throughout the region and the state. Even in its limited scope of the Finger Lakes Region, the proposed regulation will be far more costly to the trucking industry and businesses that depend on it than the Department anticipates in a geographic area that has already been impacted far more heavily than the rest of the state by the current recession.

It also finds the Department’s definitional criteria for the proposed regulation to be indefensible, in that they are applied in an arbitrary manner. Its vague references to “short cuts” and “established community character” could apply to virtually every region of the state in which residents may be subjectively offended by large truck traffic in their communities. What’s more, the argument the Department has chosen to make – that the daily activity of long pre-existing industries conflict with the character of the communities of which they have long been a part – is in direct conflict with established state policy in other economic sectors.

ECONOMIC IMPACT

The Department’s Analysis

The Department is implementing the new Large Truck Policy (LTP) in the Finger Lakes Region of the state, applying the restrictions to seven “short cut” routes it recommends as *Reasonable Access Highways* (Figure 1).³ These seven were selected to initially implement a statewide policy that applies to 64 routes analyzed by the Department. Ostensibly, they were selected because analysis demonstrated there would be economic savings for through trucks to use them.⁴

“Certain state highways in community settings, state tourism areas, school areas, historical areas, scenic byways, and designated bike routes are used by large trucks to deliver inter and intra state freight. In some cases, this large truck traffic conflicts with established community character.”⁵

The Department finds that the absence of large truck through traffic would benefit businesses along the restricted routes by minimizing negative impacts like noise, emissions, congestion

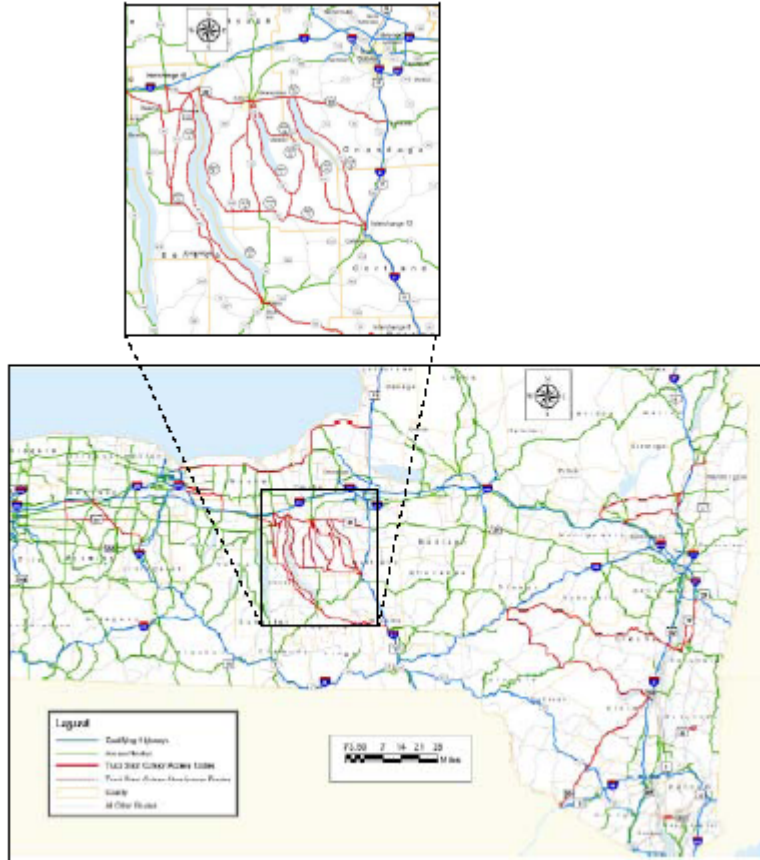
³ NY Route 41 in Cortland and Onondaga Counties, NY Route 41A in Cortland, Cayuga and Onondaga Counties, NY Route 90 in Cortland and Cayuga Counties, NY Route 38 in Cayuga County, NY Route 79 in Broom, Tioga and Tompkins Counties, NY Route 89 in Tompkins and Seneca Counties, and NY Route 96 in Tompkins and Seneca Counties.

⁴ *Supra* note 1, p. 2-15

⁵ *Supra* note 1, p. 1-2.

and safety concerns to make the locations more desirable for outdoor activities, tourism, dining, shopping and lodging.⁶

Figure 1



This is as sophisticated as the Department’s economic analysis gets. Its argument is thus an arbitrary and capricious response to residents who hold a particular vision of the character of their community, and suffers from both definitional and analytical flaws. Standing alone, each flaw is severely damaging; considered together, they reveal the Department’s argument to be specious at best, and a contrived attempt to accommodate specific interests while ignoring the interests of the broader population, at worst.

From the definitional perspective, the Department’s vague references to the positive and negative consequences of the LTP, combined with its overwhelming reliance on the “quality of life” in the communities most affected, make it clear that the Department is reacting to emotional input from community residents more than hard analysis. “Established community character” is undefined, both in terms of physical character and in terms of when such “character establishment” takes place. Such loose criteria could easily be ascribed to virtually any community throughout the state. What is more, the “character” of a community is both subjective and ephemeral, wherein the changing demographic of a village along a long-established truck route can result in a different interpretation of character over time.

⁶ *Supra.* note 1, p. 2-1.

Community character is not “established”; rather, it is ever evolving. The State of New York already recognizes this phenomenon and has established statutory protections with regard the agriculture industry. With the “Right to Farm” statute, policymakers understood that the evolution of a community’s demographic composition – particularly in environments where suburban growth encroaches on working farmland – could result in conflict between new residential property owners and existing agricultural enterprises. The statute specifically declares that an “...agricultural practice shall not constitute a private nuisance...” in such situations.⁷

Under “Right to Farm,” the state recognizes and protects pre-existing industry against the subjective whims of changing communities. In the case of through-truck transportation, however, the state, acting through the Department, arbitrarily re-defines long established direct transportation routes as “short cuts,” and restricts the flow of pre-existing commerce along those routes because it negatively impacts the newly-emerging character of communities. The Department essentially turns the intent of *established* state policy on its head to accommodate *nuisance* complaints.

In a time when existing industries from all sectors are failing under pressures due to the global recession, the state should apply the same standards with regard to any pre-existing industry whose viability is similarly threatened by evolving community character. If such standards are not established, the Department will be making similar arbitrary and capricious judgments on “quality of life” questions for every community that recognizes truck traffic only as a local nuisance, rather than an essential element of economic activity.

From the analytical perspective, the Department’s assessment of economic impact appears to examine only the cost per mile for the trucking industry, and is geographically limited to the seven routes under consideration. Even in this regard, it is severely restricted in scope, concluding only that independent truck drivers and small trucking firms which operate on tighter profit margins will be most impacted, and that the annual increase in fuel, toll and operating expenses will be \$4.2 million.⁸ This is an extremely low estimate of the total economic impact of the proposed restrictions, even without considering the complexities involved or the probability that the program will be expanded statewide. Indeed, the Department’s claim that the annual costs associated with the LTP can be “readily calculated” dismisses the intricate interrelationships between industrial sectors in a given economy. To be fair, the Department’s analysis leaves open the suggestion that other industries will be affected when it acknowledges that consumers may experience an increase in the price of goods where transportation costs are a higher percentage of overall production, such as agricultural products.⁹ It does not make any attempt, however, to assess these collateral effects.

Equally weak is the Department’s assessment of the positive impacts cited above, which is confined to “[s]pecific businesses associated with these types of activities could benefit from

⁷ Article 25-AA, Section 308 of the NYS Agriculture and Markets Law.

⁸ *Supra*. note 1, p. 2-1.

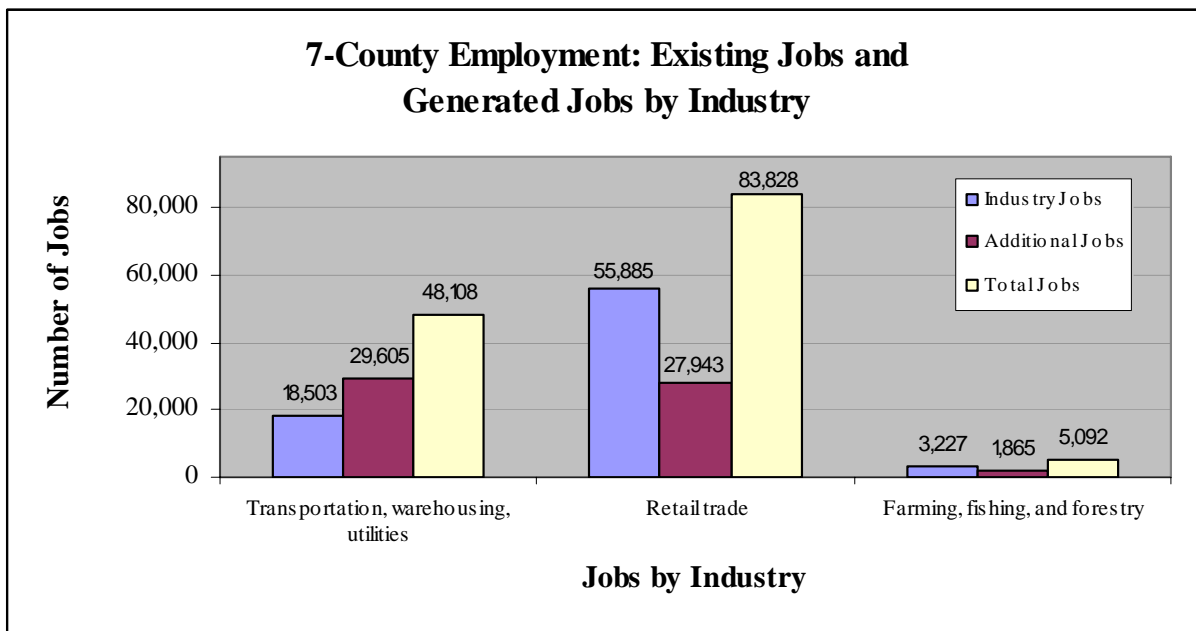
⁹ *Supra* note 1, p. 1-5.

this alternative.”¹⁰ Any thorough policy assessment must consider the broadest possible implications of implementation. In this particular case, it must consider 1) that industries other than “truckers” depend on truck transport, and 2) what economists refer to as the “multiplier effect,” and 3) the impact on businesses outside the restricted areas that must react to increased freight costs as direct through routes are restricted, either by increasing prices or absorbing costs. These three elements must be viewed together.

The following analysis examines anecdotal estimates by representatives from three industries – the trucking industry (including warehousing), the wood products industry, and the agricultural industry – that will be negatively impacted by the LTP. It also briefly examines the potential impact generated by increased costs to area convenience store owners, who are representative of the retail sector. In all cases, it looks at localized examples of impact and expands the analysis to estimate the effects of a statewide policy.

Together, these industries employ about 77,600 employees in the seven-county area that comprises the Finger Lakes Region. Cumulatively, they generate an additional 59,400 jobs in all other regional industries, bringing their total job impact on the region to about 137,000 (Chart 1).¹¹

Chart 1



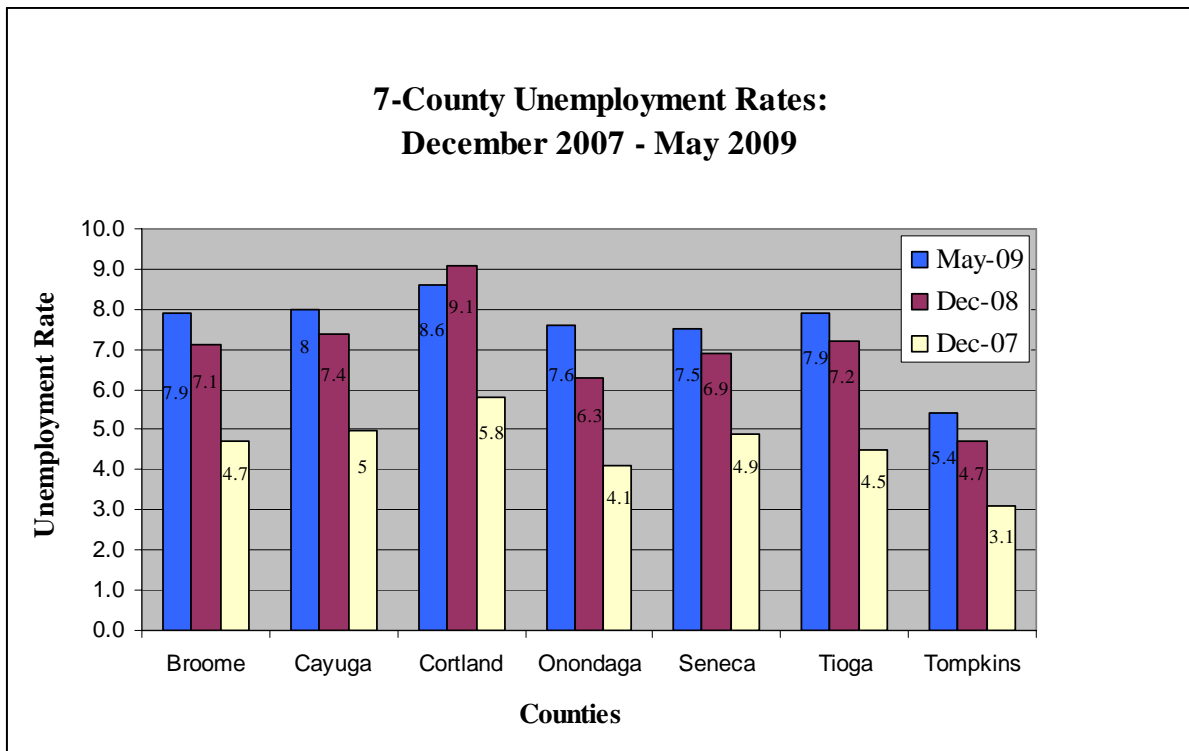
Additionally, the seven-county region that will be directly impacted by the LTP has already been affected by the global recession more than the rest of the state. New York State has seen a 3.5 percent rise in unemployment, from 4.7 percent to 8.2 percent, from December of 2007 to May of 2009. The number of unemployed state residents is at its highest level since July

¹⁰ *Ibid.*

¹¹ Employment statistics from the U.S. Census Bureau, 2005-2007 American Community Survey, available at www.census.gov.

1976. The industries registering the largest job losses from May of 2008 to May 2009 were trade, transportation and utilities with a drop of 61,200 jobs. These are the same industries that are the focus of this report. With the exception of Tompkins County, which is insulated from recessionary pressures due to the presence of Cornell University, the seven-county region has seen an average 3.0 percent increase in unemployment over the last 17 months (Chart 2).¹²

Chart 2



For Albany policymakers to implement any policy based on such weak definitional and analytical criteria is irresponsible. The use of such criteria to justify the trade-off of potentially hundreds of jobs of hard-working central New Yorkers for the comfort of a few residents who view vital commerce as a nuisance raises serious questions about the Paterson Administration’s priorities.

Industry Examples

The Trucking Industry

Trucks transport over 90 percent of all manufactured freight in New York State, leaving virtually no industry unaffected by shipping costs. In 2005, the trucking industry itself provided 516,479 jobs in the state, at an average wage of \$47,281, with total wages exceeding

¹² Data from NYS Department of Labor at <http://www.labor.state.ny.us/workforceindustrydata/Pressreleases/prtbur.txt>.

\$24.4 billion.¹³ This translates into 464,831 *additional* jobs, bringing the total job impact of the trucking industry to nearly one million jobs for New York's economy. Earnings from the trucking industry generate an additional \$22.7 billion in wages for all industries throughout the state.

The Department estimates that the LTP will add an average of 17 miles per one-way trip that "will not add or reduce a substantial amount of time from the trip, due to the higher speeds on the National Network and fewer stops," for a total of 1.4 million additional miles traveled by large trucks per year.¹⁴ This will result in the additional consumption of 313,000 gallons of fuel (primarily diesel) each year, with a consequential increase of 3,400 tons of CO₂ emissions.

Estimates of increased mileage associated with the LTP range from 6 percent to 13 percent, with most falling above 10 percent. The Ontario Trucking Association (OTA) anticipates that statewide imposition of the LTP would result in a 10 percent increase in the number of miles its drivers travel in New York State. To illustrate the impact of statewide implementation, OTA assesses two routes normally traveled by its members – Lewiston to Elmira, and Alexandria Bay to Albany. The LPT will add 27 miles to the former trip and 23 miles to the latter, increases of 15 percent and 10 percent, respectively. Since OTA members travel 206.5 million miles in New York State each year, statewide application of the LTP would increase the miles they travel by over 20 million, at a cost of \$34 million. By the Department's mileage calculations, OTA trucks alone would consume nearly 4.5 million additional gallons of fuel, with an increase of 49,500 tons of CO₂ each year.¹⁵

We can apply the OTA estimate of increased travel miles to all trucking in New York. The trucking industry reports its use of New York public roads totaled 8.6 billion miles in 2005.¹⁶ A 10 percent increase would mean an additional 860 million miles of truck travel per year, at a cost of \$1.46 billion to the industry that would be passed on to consumers in higher shipping costs. The additional miles would consume more than 192 million gallons of fuel and release more than 2.13 million tons of CO₂ each year.

If increased freight costs are passed on to consumers, it can mean an increase in the price of almost everything that we buy in New York. We need look no further than the summer of 2008 to see the trickle-down effect for an economy when transportation costs rise. As oil prices soared to record levels and diesel prices hit highs of over \$5.00 per gallon, many shippers imposed fuel surcharges – extra fees tacked onto normal prices that compensate carriers or manufacturers for rising and volatile oil prices. Most freight companies calculate fuel surcharges according to fuel indexes such as the U.S. Department of Energy index that tracks the price of diesel fuel.¹⁷ The surcharges were passed on by the industry, either to the producer or to the final destination recipient.

¹³ American Transportation Research Institute.

¹⁴ *Supra* note 1, p. 3-23

¹⁵ The U.S. Environmental Protection Agency estimates CO₂ emissions at 22.2 lbs/gallon. See <http://www.epa.gov/oms/climate/420f05001.htm#calculating>.

¹⁶ *Supra* note 10.

¹⁷ http://www.businessweek.com/bwdaily/dnflash/apr2005/nf20050428_1394_db035.htm

Retail: Convenience Stores

Passing increases in shipping costs on to the consumer impacts virtually every business in the Finger Lakes Region, and will hit small retail trade proprietors particularly hard. Statewide, there are 51,322 convenience store employees, earning \$715 million in wages and salaries. These jobs generate an additional 25,660 jobs and \$357.5 million in additional earnings.

There are approximately 410 convenience stores, employing an estimated 4,428 employees, and paying \$61.7 million in wages and salaries, in the Finger Lakes Region.¹⁸ The multipliers allow us to calculate that these jobs generate an additional 2,214 jobs for the area, bringing the total jobs impact for regional convenience stores to about 6,642, and a total impact in wages and salaries to \$92.5 million.

While we have no definitive data on the effects of increased transportation costs on the convenience store industry, we can make the following observations. If the increased transportation costs force each store to lay off just a single employee, the loss to the regional economy in terms of earnings will be \$8.6 million. At the state level, the loss of just a single employee per store due to higher shipping costs would translate into a loss of about 7,000 jobs and nearly \$100 million in lost earnings.

Agriculture

In other cases, rises in transportation costs catch suppliers in the middle, as competitive markets force the producer to absorb the cost. Agriculture-based businesses are generally “price takers,” rather than “price makers,” meaning they have no control over market prices and cannot pass increased costs on to the consumer. Area agricultural businesses, whose primary industrial activity is *not* trucking, have reported that the new regulations will have a severe impact on their bottom lines, ranging from \$43,000 and \$50,000 a year, respectively, for two area apple growers, to \$125,000 a year for a corn and hay distributor. The problem will be particularly acute in the case of dairy products, where producers and distributors have no control over the final product price due to federal pricing mandates. A regional milk distributor estimates the impact of the proposed regulation, in terms of extra miles traveled, will be \$960,000 per year.¹⁹

The fact that the annual cumulative costs to these four businesses alone, concentrated in a single sector of the economy outside the trucking industry, total \$1.18 million is enough to raise serious questions about the accuracy of the Department’s calculations. In addition, the impact will surpass state boundaries for New York’s agricultural sector, because increased in-state transportation costs will impact the industry’s ability to compete in markets outside the state. Businesses from other states whose products do not have to travel through New York will enjoy a significant competitive advantage.

¹⁸ Calculated using statewide data available from the NYS Association of Convenience Stores.

¹⁹ Businesses include apple producers in Geneva and Williamson, a corn and hay distributor in Interlaken and a milk distributor in northern Seneca County.

The Forest Products Industry

The Wagner Companies is comprised of three hardwood sawmills located in the Southern Tier and the Finger Lakes regions of New York. Wagner's impact on the local economy is substantial: the companies employ over 260 people with a combined payroll of over \$10 million, and generate 312 jobs outside the wood products industry.

Wagner estimates that 15 to 20 percent of their "procurement zone" for hardwoods lies within the region that will be subject to the restrictions of the LTP. Of the 12,000 loads of logs hauled into Wagner facilities, 1,500 to 2,000 loads travel through the Finger Lakes Region. The vast majority, if not all, of these loads qualify under the LTP as "local delivery" and therefore not subject to restriction. Wagner's concern, however, is that although their business should be exempt from the regulation, enforcement officials will still be stopping their trucks for weight checks and inspection, and perhaps be misinterpreting the new regulations. With such stoppages occurring on just 10 percent of the trips, Wagner anticipates a two percent reduction in output that would cost the companies \$600,000 in gross revenue per year, which could cause a loss of six to seven jobs.

Gutchess Lumber of Cortland, which employs 250, is a timber company comprised of 28 harvesting crews, 10 contract trucking firms, and its own trucking fleet that operates within a 150-mile radius of Cortland. The firm has a production output of \$20 million per year. Similar to Wagner, Gutchess' employment generates 300 *additional* jobs in the community.

A significant part of the Gutchess operation involves trucking logs from Skaneateles Falls to Cortland over routes that are subject to LTP restrictions. The company anticipates that the new regulations will reduce product deliveries from that area to its facility by 25 percent. While the product hauled over this particular route constitutes only a part of Gutchess' total production, such a reduction is significant. Assuming a similar impact to that of Wagner Companies, a two percent drop in production is not an unreasonable assumption, and would result in a loss of four to five jobs.

While this loss of jobs seems minimal, there are several things to keep in mind. First, at a time when New York's economic situation is in a state of continual decline, now is not the time to be implementing policies that will result in job loss. Indeed, the State should be developing policies that encourage job growth. Second, these are just two of the many forest products companies that operate in the area and throughout the state and, while the seven routes that fall under the new restrictions may all be in the Finger Lakes Region, the LTP is a *statewide* action.²⁰ The general concern among businesses throughout the state for whom truck transport constitutes a major part of their operating expense is that similar restricted routes will be imposed in other regions.

Ticonderoga Fiber Supply, a subsidiary of International Paper, employs 600 at its paper manufacturing facility in Ticonderoga, and has an annual payroll of \$44 million. The activity stimulated by this company generates another 960 jobs, making its total impact 1,560 jobs. Though the facility is not located in the Finger Lakes Region, the concern that it will be

²⁰ *Supra.* note 2, p. 1-2.

impacted by the LTP in the future is real, as many of its supply routes are through areas with similar characteristics to those cited by the Department. Since transportation comprises 35 to 40 percent of the total delivered cost of the pulp the facility uses, Ticonderoga anticipates an annual increase of \$1.5 million if the policy is implemented statewide. Assuming the same two percent drop in production in response to these increased costs, a loss of six to seven jobs would result.

This calculation, however, understates the possible impact for the Ticonderoga facility, because multipliers are only a formula that interprets the interrelationship between manufacturing sectors of a given economic region. They do not take into account unique characteristics of individual facilities, such as productivity, age of physical plant, and operational efficiency, nor do they anticipate managerial decisions. Thus, they cannot anticipate what operational decision makers will do given a certain scenario. Ticonderoga is an old facility that operates with the highest cost structure within the International Paper system, and is even now not operating a full capacity. Any increase in operational costs for the facility that would further its competitive disadvantage vis-à-vis other facilities in other states, could seriously threaten its viability for the parent company. Closure of the plant would mean the loss of all 1,560 jobs it generates statewide.

Because the LTP will not be confined to the Finger Lakes Region, its impact must be viewed from a statewide perspective. Thus, the forest products industry employed 47,758 in New York State in 2003, with a total payroll of \$1.7 billion.²¹ These jobs generate an additional 38,206 jobs throughout the state. If the LTP was to be extended statewide, and the impact on the industry was a two percent drop in production, the industry would lose 332 jobs.

CONCLUSION

The New York State Department of Transportation has proposed a Large Truck Policy that would prohibit through travel by large trucks on seven roads in the Finger Lakes Region. The Department has concluded that the economic impact of this policy will be minimal to affected industries, and that a relatively minor cost to the trucking industry does not outweigh the benefits in quality of life for the region.

This paper examines the Department's analysis and concludes that it has severely underestimated the implications of its policy. Using case study estimates from a number of affected businesses, it concludes that the policy holds potential for significant job loss if expanded to a statewide level, at a time when the entire state is struggling from the impact of the national recession. In addition, it finds the definitional criteria the Department has used to be highly subjective and in conflict with existing state policy with regard to pre-existing industry.

It is the obligation of the state to weigh the balance of benefits for the few against the greater common benefit of all the people of New York. The Department admittedly has not measured the benefits to the Finger Lakes community because such benefits "are not typically

²¹ See Empire State Forest Products Association at www.esfpa.org/economicimpact/majoreconstats.asp

quantified in terms of dollars.”²² Two of the industries most immediately affected – agriculture and wood products – are among the oldest in the region, have sustained the regional economy for nearly two centuries, and are mainstays of the state economy. A third industry – truck transport – will endure the higher costs associated with the policy by passing the increases on to all New York consumers, thereby jeopardizing the State’s intrastate and international competitiveness.

The Department fails to provide convincing evidence that it has fully considered the implications of this first stage of policy implementation, and has refused to consider the cumulative effect of implementation statewide.

²² *Supra* note 1, p. 1-12. The Department ascribes this phrase to Welfare/Quality of Life Benefits, Health Benefits (Noise and Air Quality), and Health Benefits (Visual/Aesthetics).