

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 Corrections and Community Supervision

NOTICE OF ADOPTION

Contraband Drugs

I.D. No. CCS-36-11-00007-A

Filing No. 1202

Filing Date: 2011-11-03

Effective Date: 2011-11-23

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

Action taken: Amendment of sections 1010.4(c) and 1010.6 of Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Contraband Drugs.

Purpose: To update the regulation with terminology that was revised in the associated internal management policy.

Text or summary was published in the September 7, 2011 issue of the Register, I.D. No. CCS-36-11-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, Harriman State Campus - Building 2 - 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCCS.ny.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Butler Correctional Facility

I.D. No. CCS-47-11-00002-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 section 100.69(c) of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Butler Correctional Facility.

Purpose: Amend the text to remove reference to functions that are no longer operational at this correctional facility.

Text of proposed rule: The Department of Corrections and Community Supervision proposes to amend section 100.69(c) of Title 7 NYCRR as follows:

Section 100.69 Butler Correctional Facility.

(a) There shall be in the department an institution to be known as the Butler Correctional Facility, which shall be located in the Town of Butler, Wayne County, New York.

(b) Butler Correctional Facility shall be a correctional facility for males 16 years of age or older.

(c) Butler Correctional Facility shall be *classified as a medium security facility to be used as a general confinement correctional facility* [classified as a dual purpose facility consisting of a minimum security compound and an adjacent medium security compound].

[(1) The minimum security compound shall be used as a general confinement facility.

(2) The medium security compound shall be used as an alcohol and substance abuse treatment facility]

Text of proposed rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, Albany, NY 12226-2050, (518) 457-4951, email: Rules@DOCCS.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.

Consensus Rule Making Determination

The Department of Corrections and Community Supervision has determined that no person is likely to object to the proposed action. The amendment of this section removes the reference to functions that are no longer operational at a correctional facility and are no longer applicable to any person. See SAPA section 102(11)(a).

The proposed rule change amends 7 NYCRR § 100.69 to reflect that Butler Correctional Facility no longer has a minimum security compound. The Department's authority resides in section 70 of Correction Law, which mandates that each correctional facility must be designated in the rules and regulations of the Department and assigns the Commissioner the duty to classify each facility with respect to the type of security maintained and the function as specified. See Correction Law § 70(6).

Job Impact Statement

A job impact statement is not submitted because this proposed rulemaking will merely amend the regulation to be consistent with the current func-

tions of Butler Correctional Facility; therefore it has no adverse impact on jobs or employment opportunities. Additionally, there is no adverse impact on jobs or employment.

Department of Economic Development

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-47-11-00001-E

Filing No. 1055

Filing Date: 2011-11-02

Effective Date: 2011-11-02

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

Action taken: Amendment of Parts 10 and 11; renumbering and amendment of Parts 12 through 14 to Parts 13, 15 and 16; and addition of new Parts 12 and 14 to Title 5 NYCRR.

Statutory authority: General Municipal Law, art. 18-B, section 959; L. 2000, ch. 63; L. 2005, ch. 63; and L. 2009, ch. 57

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate. It bears noting that General Municipal Law section 959(a), as amended by Chapter 57 of the Laws of 2009, expressly authorizes the Commissioner of Economic Development to adopt emergency regulations to govern the program.

Subject: Empire Zones reform.

Purpose: Allow Department to continue implementing Zones reforms and adopt changes that would enhance program's strategic focus.

Substance of emergency rule: The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2000, Chapter 63 of the Laws of 2005, and Chapter 57 of the Laws of 2009. These laws, which authorize the empire zones program, were changed to make the program more effective and less costly through higher standards for entry into the program and for continued eligibility to remain in the program. Existing regulations fail to address these requirements and the existing regulations contain several outdated references. The emergency rule will correct these items.

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16 as amended), which governs the empire zones program, is amended as follows:

1. The emergency rule, tracking the requirements of Chapter 63 of the Laws of 2005, requires placement of zone acreage into "distinct and separate contiguous areas."

2. The emergency rule updates several outdated references, including: the name change of the program from Economic Development Zones to Empire Zones, the replacement of Standard Industrial Codes with the North American Industrial Codes, the renaming of census-tract zones as investment zones, the renaming of county-created zones as development zones, and the replacement of the Job Training Partnership Act (and private industry councils) with the Workforce Investment Act (and local workforce investment boards).

3. The emergency rule adds the statutory definition of "cost-benefit analysis" and provides for its use and applicability.

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant project) and conforms several existing regulatory

definitions to statutory definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise ("QEZE") Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

5. The emergency rule requires additional statements to be included in an application for empire zone designation, including (i) a statement from the applicant and local economic development entities pertaining to the integration and cooperation of resources and services for the purpose of providing support for the zone administrator, and (ii) a statement from the applicant that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed zone.

6. The emergency rule amends the existing rule in a manner that allows for the designation of nearby lands in investment zones to exceed 320 acres, upon the determination by the Department of Economic Development that certain conditions have been satisfied.

7. The emergency rule provides a description of the elements to be included in a zone development plan and requires that the plan be resubmitted by the local zone administrative board as economic conditions change within the zone. Changes to the zone development plan must be approved by the Commissioner of Economic Development ("the Commissioner"). Also, the rule adds additional situations under which a business enterprise may be granted a shift resolution.

8. The emergency rule grants discretion to the Commissioner to determine the contents of an empire zone application form.

9. The emergency rule tracks the amended statute's deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

10. The emergency rule reflects statutory changes to the process to revise a zone's boundaries. The primary effect of this is to limit the number of boundary revisions to one per year.

11. The emergency rule describes the amended certification and decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

12. The emergency rule describes new eligibility standards for certification. The new factors which may be considered by the Commissioner when deciding whether to certify a firm is (i) whether a non-manufacturing applicant firm projects a benefit-cost ratio of at least 20:1 for the first three years of certification, (ii) whether a manufacturing applicant firm projects a benefit-cost ratio of at least 10:1 for the first three years of certification, and (iii) whether the business enterprise conforms with the zone development plan.

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had

transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

14. The emergency rule adds a new Part 12 implementing record-keeping requirements. Any firm choosing to participate in the empire zones program must maintain and have available, for a period of six years, all information related to the application and business annual reports.

15. The emergency rule clarifies the statutory requirement from Chapter 63 of the Laws of 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality.

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

17. The emergency rule clarifies the statutory requirement that certain defined "regionally significant" projects can be located outside of the distinct and separate contiguous areas. There are four categories of projects: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agribusiness or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York, and (iv) a clean energy research and development enterprise. Other projects may be considered by the empire zone designation board. Only one category of projects, manufacturers projecting the creation of 50 or more net new jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

18. The emergency rule clarifies the status of community development projects as a result of the statutory reconfiguration of the zones.

19. The emergency rule clarifies the provisions under Chapter 63 of the Laws of 2005 that allow for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

20. The emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business development and there are other areas of the applicant municipality that can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

The full text of the emergency rule is available at www.empire.state.ny.us

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires January 30, 2012.

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany NY 12245, (518) 292-5123, email: tregan@empire.state.ny.us

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of a business enterprises as to eligibility of benefits under the program and the decertification of a business enterprise so as to revoke the certification of business enterprises for benefits under the program.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to statutory amendments and the remaining revisions either conform the regulations to existing statute or clarify administrative procedures of the program. These amendments further the Legislative goals and objectives of the Empire Zones program, particularly as they relate to regionally significant projects, the cost-benefit analysis, and the process for certification and decertification of business enterprises. The proposed amendments to the rule will facilitate the administration of this program in a more efficient, effective, and accountable manner.

NEEDS AND BENEFITS:

The emergency rule is required in order to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire Zones program, only voluntary participants.

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's adminis-

tration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

This emergency rule does not impose any additional costs to the local governments for administration of the Empire Zones program.

PAPERWORK:

The emergency rule imposes new record-keeping requirements on businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years.

DUPLICATION:

The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes new record-keeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the Empire Zone program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

No professional services are likely to be needed by small and large businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

No initial capital costs are likely to be incurred by small and large businesses choosing to participate in the Empire Zones program. Annual compliance costs are estimated to be negligible for both small and large businesses. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this record-keeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in full compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small businesses and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are eligible to participate in the program, participation by the municipalities and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule will have either no impact or a positive impact on job and employment opportunities, no further 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.

Education Department

EMERGENCY RULE MAKING

Teaching Certificate in Earth Science, Biology, Chemistry, Physics, Mathematics or a Closely Related Field

I.D. No. EDU-09-11-00005-E

Filing No. 1205

Filing Date: 2011-11-08

Effective Date: 2011-11-08

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

Action taken: Amendment of Part 80 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 305(1), (2), 3001(2), 3004(1), (6) and 3006(1)

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

Specific reasons underlying the finding of necessity: Supply and demand data has shown that in many regions of New York there is a shortage of certified teachers in the areas of science and mathematics. To address this issue, the proposed regulations have been developed to create an expedited pathway for individuals with advanced degrees in STEM and related teaching experience at the postsecondary level to become certified teachers in mathematics or one of the sciences or a closely related field.

The proposed rule provides eligible candidates with advanced degrees in the STEM areas and teaching experience at the postsecondary level with two certification options. The candidate could obtain a Transitional G certificate to teach math or one of the sciences at the secondary level without completing additional pedagogical study for two years. The district would commit to providing mentoring and appropriate professional development in the areas of pedagogy during the period that the teacher is employed on a Transitional G certificate. After two years of successful teaching experience with the district on a Transitional G certifi-

icate the teacher would be eligible for the initial certificate in that subject area.

The other option is for individuals who meet the other requirements but do not have an offer of employment by a school district they would still have the option of completing six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study.

The proposed rule was adopted as an emergency action at the February 2011 Regents meeting, effective February 15, 2011, and readopted as an emergency rule at the May, June and July 2011 meetings. A Notice of Proposed Rule Making was published in the State Register on March 2, 2011 and a Notice of Revised Rule Making was published on June 1, 2011. The July emergency rule will expire on November 7, 2011. However, additional time is needed for the Department to explore the possible use of Transfer Fund grant funds under the federal Race To The Top program to encourage STEM faculty to work in high-need schools. Emergency action is necessary to ensure that the emergency rule remains continuously in effect until such time as it can be adopted as a permanent rule.

Subject: Teaching certificate in Earth Science, Biology, Chemistry, Physics, Mathematics or a Closely Related Field.

Purpose: To allow individuals with advanced degrees in the STEM areas and related teaching experience to teach certain subjects in 7-12.

Text of emergency rule: 1. Paragraphs (45) through (47) of subdivision (b) of Section 80-1.1 of the Regulations of the Commissioner of Education should be renumbered (46) through (48) of Section 80-1.1 of the Regulations of the Commissioner of Education, effective November 8, 2011.

2. A new paragraph (45) of subdivision (b) is added to Section 80-1.1 of the Regulations of the Commissioner of Education, effective November 8, 2011, to read as follows:

(45) *Transitional G certificate means the first teaching certificate obtained by a candidate who holds an appropriate graduate degree in science, technology, engineering or mathematics and has two years of acceptable experience teaching in a post-secondary institution, that qualifies that individual to teach in the public schools of New York State, subject to the requirements and limitations of this Part, and excluding the provisional certificate, initial certificate, internship certificate, conditional initial certificate, transitional A certificate, transitional B certificate and transitional C certificate.*

3. Subparagraph (i) of paragraph (2) of subdivision (b) of section 80-3.3 of the Regulations of the Commissioner of Education is amended, effective November 8, 2011, to read as follows:

(i) [The] (a) *Except as otherwise provided in subdivision (b) of this section, the candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test, written assessment of teaching skills, and content specialty test(s) in the area of the certificate, except that a candidate seeking an initial certificate in the title of Speech and Language Disabilities (all grades) shall not be required to achieve a satisfactory level of performance on the content specialty test.*

(b) *Examination requirement for candidates with a graduate degree in science, technology, engineering or mathematics and two years of post-secondary teaching experience in the area of the certificate sought. Any candidate seeking an initial certificate in earth science, biology, chemistry, physics, mathematics or in a closely related field as determined by the Department in (grades 7-12) and who is seeking an initial certificate through individual evaluation under section 80-3.7(a)(3)(ii)(c) shall not be required to achieve a satisfactory level of performance on the written assessment of teaching skills examination or the content specialty test.*

4. Section 80-3.7 of the Regulations of the Commissioner of Education is amended, effective November 8, 2011, to read as follows:

This section prescribes requirements for meeting the education requirements for classroom teaching certificates through individual evaluation. [This] *Except as otherwise provided in this section, this option for meeting education requirements shall only be available for candidates who apply for a certificate in childhood education by February 1, 2007 and for candidates who apply for any other certificate in the classroom teaching service by February 1, 2012, and who upon application qualify for such certificate. Candidates with a graduate degree in science, technology, engineering or mathematics who apply for an initial teaching certificate under 80-3.7(a)(3)(ii)(c)(3) may continue to meet the education requirements for classroom teaching certificates through individual evaluation after February 1, 2012.* The candidate must have achieved a 2.5 cumulative grade point average or its equivalent in the program or programs leading to any degree used to meet the requirements for a certificate under this section. In addition, a candidate must have achieved at least a C or its equivalent in any undergraduate level course and at least a B- or its equivalent in any graduate level course in order for the semester hours associated with that course to be credited toward meeting the content core or pedagogical core semester hour requirements for a certificate under this

section. All other requirements for the certificate, including but not limited to, examination and/or experience requirements, as prescribed in this Part, must also be met.

(a) Satisfaction of education requirements through individual evaluation for initial certificates in all titles in classroom teaching service, except in specific career and technical subjects within the field of agriculture, business and marketing and consumer services, health, a technical area, or a trade (grades 7 through 12).

- (1) . . .
- (2) . . .
 - (i) . . .
 - (ii) . . .
 - (iii) . . .
 - (iv) . . .
 - (v) . . .

(3) Additional requirements. A candidate seeking to fulfill the education requirement for the initial certificate through individual evaluation of education requirements shall meet the additional requirements in this paragraph or their substantial equivalent as determined by the commissioner, if so prescribed for that certificate title, in addition to the general requirements prescribed in paragraph (2) of this subdivision.

(i) . . .

(ii) *Specialist in middle childhood education (5-9) and adolescence education (7-12).*

- (a) . . .
- (b) . . .

(c) *For candidates with a graduate degree in science, technology, engineering or mathematics and two years of postsecondary teaching experience in the certificate area to be taught or in a closely related subject area acceptable to the Department, who apply for a certificate or license in (grades 7-12) on or after February 2, 2011 in earth science, biology, chemistry, physics, mathematics or a closely related field, the candidate shall not be required to meet the general requirements in paragraph (2) (iii), (iv) or (v) of subdivision (a) of this section. However, the candidate shall meet the following requirements:*

(1) *Degree completion. The candidate shall possess a graduate degree in science, technology, engineering or mathematics from a regionally or nationally accredited institution of higher education, a higher education institution that the Commissioner deems substantially equivalent, or from an institution authorized by the Board of Regents to confer degrees and whose programs are registered by the Department. The candidate shall have completed a graduate major in the subject of the certificate sought, or in a related field approved by the department for this purpose.*

(2) *Post-secondary teaching experience. The candidate must show evidence of at least two years of satisfactory teaching experience at the post-secondary level in the certificate area to be taught or in a closely related subject area acceptable to the Department.*

(3) *Pedagogical study or two years of satisfactory teaching experience in a school district under a Transitional G certificate. The candidate shall complete one of the following:*

(i) *at least six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study for the initial certificate in the area of the candidate's certificate, as prescribed for the certificate title in this paragraph, which shall include study in the methods of teaching in the certificate area, teaching students with disabilities; curriculum and lesson planning aligned with the New York State Learning Standards; and classroom management and teaching at the developmental level of students to be taught; or*

(ii) *at least two years of satisfactory teaching experience in a school district while the candidate holds a Transitional G certificate under this Part.*

- (iii) . . .
- (iv) . . .
- (v) . . .
- (vi) . . .
- (vii) . . .
- (viii) . . .
- (ix) . . .
- (x) . . .
- (xi) . . .
- (xii) . . .

- (b) . . .
- (c) . . .

5. Section 80-5.22 of the Regulations of the Commissioner is added, effective November 8, 2011 as follows:

§ 80-5.22 *Transitional G certificate for career changers and others holding a graduate or higher degree in science, technology, engineering or mathematics and with at least two years of acceptable post-secondary teaching experience.*

(a) General requirements.

(1) Time validity. The transitional G certificate shall be valid for two years.

(2) Limitations. The transitional G certificate shall authorize a candidate to teach only in a school district for which a commitment for employment has been made. The candidate shall meet the requirements in each of the following paragraphs:

(i) Education. A candidate shall hold a graduate degree in science, technology, engineering or mathematics from a regionally or nationally accredited institution of higher education, a higher education institution that the Commissioner deems substantially equivalent, or from an institution authorized by the Board of Regents to confer degrees. A candidate shall complete study in the means for identifying and reporting suspected child abuse and maltreatment, which shall include at least two clock hours of coursework or training in the identification and reporting of suspected child abuse or maltreatment in accordance with the requirements of section 3004 of the Education Law. In addition, the candidate shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the Department pursuant to Subpart 57-2 of this Title.

(ii) Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination liberal arts and sciences test.

(iii) Post-secondary teaching experience. The candidate shall submit evidence of at least two years of satisfactory teaching experience at the post-secondary level in the certificate area to be taught or in a closely related subject area acceptable to the Department.

(iv) Employment and support commitment. The candidate shall submit satisfactory evidence of having a commitment from a school district of at least two years of employment as a teacher with the school district in the area of the certificate sought, which shall include a plan from the school district for mentoring, appropriate instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills, over the two years of employment.

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. EDU-09-11-00005-EP, Issue of March 2, 2011. The emergency rule will expire January 6, 2012.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

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.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Subdivision (6) of section 3004 of the Education Law requires the Regents and the Commissioner to develop programs to assist in the expansion of alternative teacher preparation programs.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above referenced statutes by establishing an alternative certification pathway for candidates with an advanced degree in either science, technology, engineering or mathematics and two years of teaching experience at the post-secondary level, to teach in the certificate area of their advanced degree or one closely related to it.

3. NEEDS AND BENEFITS:

The proposed amendment establishes a transitional G certificate to create a mechanism for schools to employ applicants with a graduate degree or higher in science, technology, engineering or mathematics, and two years of experience teaching at the college level in the same area as the certificate requested, or in a closely related field as determined by the Commissioner, to address demonstrated shortage areas in these subjects. School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder for two years of employment, which shall include a plan for mentoring, appropriate instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment. For individuals who meet the other requirements but do not have an offer of employment by a school district they would still have the option of completing six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study.

The proposed amendment is needed to facilitate the State's ability to address persistent shortages of certified teachers who are qualified to teach in one of the sciences or mathematics at the 7-12 grade level. The proposed amendment is designed to support the Department's continuing efforts to certify a sufficient number of properly qualified candidates to fill the need for science and mathematics teachers in the State's schools.

The transitional G certificate will be valid for two years from its effective date and will not be renewable. It will be limited to employment with an employing entity.

4. COSTS:

(a) Cost to State government. The amendment will not impose any additional cost on State government, including the State Education Department. The State Education Department will use existing staff and resources to process certificate applications.

(b) Cost to local government. The amendment does not impose additional costs upon local governments, including schools districts and BOCES.

(c) Cost to private regulated parties. A candidate seeking a transitional G certificate will be required to pay a \$100 application fee.

(d) Costs to the regulatory agency. As stated above in Costs to State Government, the amendment will not impose any additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, and that the district or BOCES has a plan for mentoring, appropriate instructional support services and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements beyond existing requirements. The employing school district or BOCES will be required to certify that the district wants to employ the candidate in a position for which the candidate would need the transitional G certificate to qualify, and that it will provide a plan for mentoring, appropriate instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

7. DUPLICATION:

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

8. ALTERNATIVES:

No alternative proposals were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that address alternative certification requirements in the areas of science and mathematics.

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. Because of the nature of the proposed amendment, no additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis**(a) Small Businesses:**

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 7-12 to address the demonstrated shortage areas in these subjects and grade levels. The amendment does not impose any reporting, record-keeping, or compliance requirements and will not have an economic impact on small businesses. Because it is evident from the nature of the rule that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken.

(b) Local Governments:

1. Effect of the rule:

The proposed amendment affects all school districts and BOCES in the State that wish to hire a teacher for employment that holds a transitional G certificate.

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 7-12 to address the demonstrated shortage areas in these subjects and grade levels.

The proposed amendment establishes a transitional G certificate which authorizes a qualified applicant, upon meeting the prescribed requirements, a certification to teach at the 7-12 grade level in science, mathematics, or a closely related field as determined by the Commissioner. School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, with a plan for mentoring and appropriate instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

2. Compliance requirements:

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 7-12 to address the demonstrated shortage areas in these subjects and grade levels.

The proposed amendment establishes a transitional G certificate which authorizes a qualified applicant, upon meeting the prescribed requirements, a certification to teach at the 7-12 grade level in science, mathematics, or a closely related field as determined by the Commissioner. School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, with a plan for mentoring and appropriate instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

3. Professional services:

The proposed amendment does not mandate school districts or BOCES to contract for additional professional services to comply.

4. Compliance costs:

There are no compliance costs for school districts or BOCES that exercise the option of employing a teacher under a transitional G certificate. However, the candidate will be required to pay an application fee of \$100 for the transitional G certificate.

5. Economic and technological feasibility:

Meeting the requirements of the proposed amendment is economically and technologically feasible. As stated above in compliance costs, the amendment imposes no costs on school districts or BOCES.

6. Minimizing adverse impact:

The amendment establishes requirements for the issuance of a transitional G certificate. The State Education Department does not believe that establishing different standards for local governments is warranted. A uniform standard ensures the quality of the State's teaching workforce.

7. Local government participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives of school districts and BOCES.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed amendment will affect candidates, New York State school districts and BOCES in all parts of the State, including the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square mile or less.

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

The purpose of the proposed amendment is to establish an expedited pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science or mathematics in grades 7-12 to address the demonstrated shortage areas in these subjects and grade levels. The proposed amendment also establishes requirements regarding the application for and issuance of the transitional G certification. This certification will authorize a qualified applicant, with an advanced degree in either science, technology, engineering, mathematics

or a closely related field as determined by the Commissioner, and two years of teaching experience at the post-secondary level, to teach in the certificate area of their advanced degree or one closely related to it, for the period of two years, at which time the candidate may apply for an initial certificate in that subject area. For individuals who meet the other requirements but do not have an offer of employment by a school district they would still have the option of completing six credits of undergraduate pedagogical core study or four credits of graduate pedagogical study. Certificate areas identified for the transitional G include: Biology, Chemistry, Earth Science, Physics, Mathematics, or a closely related field as determined by the Commissioner, at the 7-12 grade level.

School districts and BOCES that wish to employ a teacher with the transitional G certificate must certify to the State Education Department that the district has made a commitment of employment to the transitional G holder, which shall include a plan for appropriate mentoring and instructional support as determined by school leadership and at least 70 hours of professional development targeted toward appropriate pedagogical skills over the two years of employment.

3. Costs:

There are no compliance costs for school districts or BOCES that exercise the option of employing a teacher under a transitional G certificate. However, the candidate will be required to pay an application fee of \$100 for the transitional G certificate.

4. Minimizing adverse impact:

The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of the State's teaching workforce.

5. Rural area participation:

Comments on the proposed rule were solicited from the State Professional Standards and Practices Board for Teaching. This is an advisory group to the Board of Regents and the Commissioner of Education on matters pertaining to teacher education, certification, and practice. The Board has representatives who live and/or work in rural areas, including individuals who are employed as educators in rural school districts and BOCES.

Job Impact Statement

The purpose of the proposed amendment is to establish requirements for an expedited certification pathway for individuals with advanced degrees in science, technology, engineering and mathematics and at least two years of postsecondary teaching experience to become certified in science and mathematics in grades 5-9 and 7-12.

The proposed amendment is needed to facilitate the Department's continuing ability to certify a sufficient number of properly qualified candidates to address shortage areas in the State's public schools and BOCES. This proposal is intended to increase the supply of teachers who are certified in the sciences and mathematics in grades 5-9 and 7-12, all of which are shortage areas.

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.

Assessment of Public Comment

The agency received no public comment

Department of Environmental Conservation

NOTICE OF ADOPTION

Procedures for Issuance of Summary Abatement Orders

I.D. No. ENV-30-11-00002-A

Filing No. 1204

Filing Date: 2011-11-07

Effective Date: 2011-11-23

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

Action taken: Amendment of section 620.2(a) of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 71-0301

Subject: Procedures for issuance of summary abatement orders.

Purpose: To correct two typographical errors from the original 1977 rulemaking to conform the regulatory language to the enabling statute.

Text or summary was published in the July 27, 2011 issue of the Register, I.D. No. ENV-30-11-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: James T. McClymonds, Chief Administrative Law Judge, NYS-DEC, Office of Hearings and Mediation Services, 625 Broadway, 1st Floor, Albany, New York 12233-1550, (518) 402-9003, email: jtmcclym@gw.dec.state.ny.us

Assessment of Public Comment

The agency received no public comment.

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

Water Withdrawal Permit, Reporting and Registration Program

I.D. No. ENV-47-11-00012-P

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

Proposed Action: Repeal of Parts 601 and 675; addition of new Part 601; and amendment of section 621.4 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301(1)(f), (2)(m), 3-0306(4), 8-0113(2) and 70-0107; art. 15, titles 15, 16 and 33; art. 21, title 10; and art. 70

Subject: Water withdrawal permit, reporting and registration program.

Purpose: Implement amendments to Environmental Conservation Law (ECL) article 15, title 15, key provisions of ECL article 15 title 16, 6 NYCRR 675 and ECL article 15 title 33.

Substance of proposed rule (Full text is posted at the following State website: <http://www.dec.ny.gov/65.html>): This document summarizes the proposed water withdrawal regulations. Most subparts are condensed. Two provisions are presented verbatim. Subparts 15, 16, 19, 20, 21, 22, and 23 are similar to provisions in the part 750 SPDES regulations and are not summarized here. The Express Terms of proposed Part 601 control should a conflict exist between this summary document and the Express Terms.

§ 601.1 Purpose

The purpose of part 601 is to regulate the use of NY's water resources pursuant to ECL article 15 title 15 by implementing a permitting, registration and reporting program for water withdrawals equaling or exceeding a threshold volume. This Part also implements New York's commitment under the Great Lakes-St. Lawrence River Basin Water Resources (GLSLRBWR) Compact to create a regulatory program for water withdrawals in the Great Lakes Basin.

§ 601.2 Definitions

Subpart § 601.2 provides definitions of terms. One of the numerous definitions is included here. The term threshold volume means "the withdrawal of water of a volume of one hundred thousand gallons or more per day, determined by the limiting maximum capacity of the water withdrawal system; except that for withdrawals for agricultural purposes the threshold volume shall mean the withdrawal of water of a volume in excess of an average of one hundred thousand gpd in any consecutive thirty-day period."

§ 601.3 Applicability

"[Part 601] applies to any person who is engaged in, or proposes to engage in, the construction, operation or maintenance of a water withdrawal system that withdraws water of a volume equal to or greater than the threshold volume; the taking, condemnation or acquisition of land for the development or protection of sources of public water supply; the extension of a water service area associated with a water withdrawal system that withdraws water of a volume equal to or greater than the threshold volume; and the interbasin diversion of water or wastewater. This Part also applies to any person who proposes to transport or carry waters of the state to any location outside the state, or to transport or carry by vessel more than ten thousand gallons in any one day of the waters of the state. All valid public water supply permits and approvals issued by DEC or its predecessors that are in effect as of February 15, 2012 shall remain in effect for the purpose of satisfying the [part 601] permit requirements..., except that DEC may seek modification of such a permit in accordance with this Part."

§ 601.4 Prohibitions

Any water withdrawal is prohibited if it is subject to and not in compliance with the GLSLRBWR Compact, will result in an interbasin diversion prohibited by § 601.18, or is otherwise subject to and not in compliance with this part, a compact basin commission, or any other law.

§ 601.5 Annual Reporting

Submit an annual water withdrawal report if you are subject to the permit requirements of §§ 601.6 or 601.7, the agricultural registration requirements of § 601.17, or the interbasin registration requirements of § 601.18; or you are a hydropower operator under a Federal Energy Regulating Commission license; and are not otherwise exempt under § 601.9.

Complete the annual reports on DEC forms, submit the first one on or before March 31, 2013, and then submit another by March 31 every year thereafter. Annual reports include withdrawals for the previous calendar year and a specific list of elements, including volume withdrawn, the volume, locations and methods of any water returns; volumes and rates of water lost or consumptively used; and water conservation and efficiency measures taken. Exempt withdrawals include those for fire suppression or public emergency, under Long Island water well permits, for non-extractive geothermal heat pumps, and for reuse of reclaimed wastewater.

These annual reports satisfy the registration and annual reporting provisions of ECL article 15 titles 16 and 33 until the effective date of their repeal, December 31, 2013. However, the two-year registration fee of two hundred dollars (\$200) or the annual report fee of fifty dollars (\$50) pursuant to ECL article 15 title 16 or title 33 remain due until their repeal, except for agricultural withdrawals registered under § 601.17.

§ 601.6 Water Withdrawal Permit

This subpart lists the actions that may not be undertaken without a water withdrawal permit under Part 601. There are eleven listed actions that require a permit. The core actions are the construction, operation or maintenance of a water withdrawal system with a capacity at or above the threshold volume. Additional listed actions include those that extend, alter or change an existing water withdrawal system such that the system capacity increases to meet or exceed the threshold volume, or exceed the threshold volume more than it did previously. The transport of any amount of NY fresh surface or groundwater to any location outside NY through pipes, conduits, ditches or canals requires a permit as does the transport by vessel (floating craft) of more than ten thousand gpd of NY surface water. For a public water supply system with a capacity at or above the threshold volume, no agreement for the bulk sale of water for commercial, industrial, oil and gas well development outside of the public water supply system's approved water service area may be entered into without a permit.

§ 601.7 Initial Permits

A person must apply for an 'initial permit' with respect to a water withdrawal system, other than public water supply, that has a capacity at or above the threshold volume as of February 15, 2012. Such persons must also have properly reported their withdrawals to DEC pursuant to ECL article 15 title 16 or 33 as of February 15, 2012 and must not be exempt under § 601.9. Persons subject to this subpart who failed to report existing withdrawals as of February 15, 2012 must submit a standard permit application under § 601.6 by February 15, 2013.

Persons who qualify for the initial permit process must apply for an initial permit. To do so, complete an initial permit application on DEC forms and submit it to DEC by the following deadlines: February 15, 2013 for systems designed to withdraw 100 million gallons per day (mgd) or more; February 15, 2014 for systems with a capacity of 10 or more but less than 100 mgd; February 15, 2015 for capacities of 2 or more but less than 10 mgd; February 15, 2016 for systems capacities of 0.5 or more but less than 2 mgd; February 15, 2017 for systems capacities of 0.1 or more but less than 0.5 mgd. For withdrawals that are specifically regulated as of February 15, 2012 under a SPDES permit or a permit issued under ECL article 15 (other than title 15), an initial permit application must be submitted within 180 days before the existing permit is scheduled to expire absent renewal.

Initial permits are issued for the capacities previously reported on or before February 15, 2012, are issued for a fixed terms of up to ten years, include the terms of a standard water withdrawal permit, including water conservation measures, and are subject to modification, suspension and revocation under this Part.

§ 601.8 Consolidation of Existing Public Water Supply Permits. 'Please see Express Terms.'

§ 601.9 Permit Exemptions

There are fourteen listed actions that are exempt from the water withdrawal permit requirements. They are quite specific and the reader is referred to the Express Terms. Among the exempt actions are the following: agricultural withdrawals registered or reported pursuant to ECL article 15 title 16 or title 33 by February 15, 2012 (such withdrawals are still subject to § 601.5 and/or § 601.17); withdrawals approved by the DRBC or SRBC; withdrawals of hydropower facilities under a FERC license; withdrawals from the NYS Canal System by the NYS Canal Corporation; non-extractive geothermal systems; Long Island wells with Part 602 permits; on-site water withdrawals for approved inactive hazardous waste remedial site programs; fire suppression or public emergency withdrawals; withdrawals from the Atlantic Ocean or Long Island Sound; water main extensions in an approved water service area, reconstruction

of existing water withdrawal facilities, or construction of filtration or treatment facilities, where there is no change in capacity; ballast water withdrawals necessary for normal and lawful vessel activity; and withdrawals related to routine maintenance and emergency repairs of dams.

§ 601.10 Application for a Permit. Please see Express Terms.

§ 601.11 Action on Permit Applications

DEC may grant or deny a water withdrawal permit, or grant the permit with conditions. Permit terms are up to ten years. In making the permit decisions, DEC will examine whether, for example, other sources were considered, the quantity is adequate and necessary for the proposed use, the project is equitable to affected municipalities, the withdrawal can be avoided or lessened through conservation, there will be significant adverse impacts to the quantity or quality of the source and water dependent natural resources, including aquatic life, and water conservation measures are incorporated. DEC may impose special permit conditions on public water supplies in, adjacent to, or serving an agricultural district.

§ 601.12 General Provisions of a Water Withdrawal Permit

The general provisions in § 601.12 that are fairly standard to DEC permits do not appear in this summary. The permit provisions that are more tailored to water withdrawals are: withdrawal systems must not exceed design capacity without approval; intake structures must sustain any passby flow requirement in the permit; withdrawals in a compact basin commission must comply with those requirements; and if operation pursuant to the permit causes or contributes to a contravention of State water quality standards, or if a permit modification is needed to prevent impairment of the best use of the waters, DEC may require a permit modification, abatement of the contravention or impairment, and may prohibit operation pending the modification.

§ 601.13 Approval of Plans by the Department of Health. "Applies to public water supply systems."

§ 601.14 Approval of Completed Works

Construction must be under the supervision of a professional engineer and cannot be operated until certified that it was completed in accordance with the issued permit. Public water supply permittees may start operation upon submission of an Approval of Completed Works letter issued by the Department of Health.

§ 601.17 Registration of Water Withdrawals for Agricultural Purposes

This subpart applies to persons who operate a water withdrawal system for agricultural purposes above the threshold volume on February 15, 2012 or the effective date of this Part, and who registered or reported, prior to February 15, 2012, their annual water usage pursuant to ECL article 15 title 16 or 33. Such persons must submit a request to register agricultural withdrawals by March 31st of each year. Requests shall include a completed form, a general map showing specified information, and the annual report for the previous year under § 601.5.

§ 601.18 Registration of Interbasin Diversions; Prohibitions

Interbasin diversions of more than an average of 1 mgd must be registered, as must increases in volume that cause such diversions to exceed this threshold. Construction of facilities or use of equipment must await registration. However, interbasin diversions under a part 601 water withdrawal permit need not be registered.

Submit the registration by February 15, 2013 for the subject diversions that exist on February 15, 2012 or the effective date of these regulations. Submit registration renewals annually by March 31 and within 60 days of a transfer. A registration must include: a completed form; a general map with specified information; and the annual report under § 601.5 for the previous calendar year; a professional engineer's report covering specified topics. DEC's receipt of a registration is not an approval. A new or increased interbasin diversion must not cause a significant adverse impact on the source New York major drainage basin quantity. Diversions of any quantity the Great Lakes-St. Lawrence River Basin are prohibited by the GLSLRBWR Compact. Limited exceptions under article 21 for public water supply systems are considered by the GLSLRBWR Council and Regional Body if in compliance with that Compact.

Summary of Part 621

6 NYCRR §§ 621.1(b), 621.4(b), and 621.11(c)(2) are modified to replace the term "supply" with "withdrawals", and establish initial permits under ECL article 15 title 15 as minor projects under 601.7.

Text of proposed rule and any required statements and analyses may be obtained from: Robert Simson, Division of Water, New York State Department of Environmental Conservation, 625 Broadway, 4th Floor, Albany, NY 12233-3500, (518) 402-8271, email: rjsimson@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.

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

Summary of Regulatory Impact Statement

1. Statutory Authority. Chapter 401, Laws of 2011, amended ECL article 15 titles 15, 16 and 33, and article 71 section 71-1127 to authorize

the New York State Department of Environmental Conservation (DEC) to implement an expanded permitting, reporting and registration program for water withdrawals and adopt regulations to implement the expanded program.

2. Legislative Objectives. The statutory amendments have a broad array of legislative objectives, all of which are carried out in the proposed revisions to 6 NYCRR part 601. ECL article 15 title 15 originally required permits solely for public water supplies with five or more service connections, regardless of the volume of water withdrawn. The amendments expand the permit program to include withdrawals for purposes beyond public water supply, such as those for commercial, manufacturing, industrial, oil and gas development, and other purposes. However, the amendments also limit the permit program to only include withdrawals that meet or exceed a threshold volume of 100,000 gallons per day (gpd). The effect is to regulate more of the higher-volume withdrawals across the state while no longer issuing water withdrawal permits for lower-volume public water supplies. Withdrawals below the size threshold must still comply with water pollution control laws (ECL article 17), Department of Health regulations and state environmental quality review (SEQR) requirements, as applicable.

To summarize, the legislative objectives: add water conservation elements and encourage water efficiency and reuse consistent with the Great Lakes-St. Lawrence River Basin Water Resources Compact as set forth in ECL article 21 title 10 (Compact); implement key provisions in ECL article 15 title 16 for the registration of Great Lakes watershed withdrawals and in ECL article 15 title 33 for water withdrawal reporting, both of which are now consolidated into title 15 (ECL article 15 titles 16 and 33 are then repealed effective December 31, 2013); exempt agricultural withdrawals from the permit requirement so long as the withdrawals are registered in accordance with current law, including ECL article 15 titles 16 and/or 33, as of February 15, 2012 under the provisions of ECL § 15-1504 (any person withdrawing water for agricultural purposes that has not registered or reported to DEC by February 15, 2012 shall be required to apply for and obtain a water withdrawal permit); allow a more generous size threshold for agricultural withdrawal registrations (100,000 gpd in any consecutive 30-day period) consistent with title 16; provide additional exemptions to the permit requirement; prohibit new or increased interbasin diversions in excess of one million gpd unless it is registered with DEC; require that existing diversions in excess of one million gpd are registered with DEC by February 15, 2013, subject to limited exemptions; provide that the construction of any water withdrawal system must be supervised by a licensed professional engineer; and increase the maximum civil penalty for violations of ECL article 15 from \$500 to \$2,500 per violation and from \$100 to \$500 for each day during which the violation continues.

These legislative objectives are fulfilled (and often statutorily required) by the proposed regulations, which largely mirror the statutory amendments, by: the proposed repeal of 6 NYCRR part 601, Water Withdrawal Regulations, and part 675, Great Lakes Water Withdrawal Registration Regulations; the proposed adoption of a new part 601; and the proposed revision to part 621.4, Uniform Procedures.

3. Needs and Benefits. Pursuant to ECL article 15, DEC has been entrusted with the responsibility to conserve and manage New York State's water resources for the benefit of all the inhabitants of the State. Good policy and sound natural resource management practices are critical to assuring long-term supplies of water to meet these needs. In addition to these benefits, the amendments in Chapter 401 allow DEC to fully comply with commitments under the Compact: regulation of water withdrawals occurring in the New York portion of the Great Lakes Basin. The amendments also direct DEC to establish a water conservation and efficiency program, another key responsibility of New York State under the Compact. The proposed revisions to part 601 carry out this commitment and program.

DEC worked extensively with stakeholders, including agriculture, industry and environmental advocates, to resolve their concerns during development of the legislation. As a result, existing agricultural withdrawals are exempt from the new permit requirement as long as these withdrawals are reported to DEC as of February 15, 2012 as is already required under existing law. In addition, other (non-agricultural) existing water withdrawals above the size threshold are entitled to an initial permit, subject to appropriate terms and conditions, based on the maximum water withdrawal capacity reported to DEC on or before February 15, 2012 pursuant to existing law. Chapter 401 also authorizes DEC to establish quantitative standards that maintain stream flows protective of aquatic life, consistent with the policy objectives of ECL article 15. Further, the criteria that DEC must consider in making its permit decisions are based on the decision-making standard in the Compact. The proposed part 601 reflects and carries out each of these aspects of the legislative amendments.

The proposed regulations implement a comprehensive statewide permitting program for significant water withdrawals, help ensure that water remains available for drinking water supply, agriculture, hydropower,

manufacturing, aquatic habitat, navigation, water-based recreation, wetlands, and other uses, while allowing DEC to regulate withdrawals of water that are unregulated now, like water taken by bottled water companies, or large withdrawals of water anticipated for high-volume hydraulic fracturing. The regulations will help the Department to protect existing water users, especially for drinking water purposes, and help new businesses to know where to locate in New York, especially if the business is heavily water dependent.

Modifications to 6 NYCRR part 621.4, Uniform Procedures, are also included in this rule making for consistent use of terms and to expand the 'minor' project category to include water withdrawal initial permits.

The Repeal of 6 NYCRR part 675 is also included in this rulemaking as the proposed 601 includes the requirements of part 675 as necessary.

4. Costs.

(a) Costs for initially complying and continuing to comply with the proposed regulations: Such costs will vary depending upon the size, capacity and complexity of the water withdrawal system or interbasin diversion. Reporting costs should be minimized because withdrawal systems within the ambit of the proposed rule are already required to report their withdrawals annually under ECL article 15 title 33, and if they are not required to report under this ECL provision, then they are required to report under another program that requires similar reporting. The new one-time costs primarily consist of the Engineer's Report associated with the permit application process for previously-unregulated water withdrawal systems. For new projects, the cost of an Engineer's Report can range from \$5,000 to \$25,000, depending on the water withdrawal system. It bears mentioning that most persons who construct new or expanded water withdrawal systems of a size that meet or exceed the size threshold in these regulations still typically need to retain a professional engineer, regardless of the new regulations.

Other elements of the permit application process will typically include either a 72-hour pump test and analysis of groundwater withdrawals, or a safe yield analysis for surface water withdrawals. Either of these tests can cost between \$10,000 and \$30,000, with the cost of a safe yield analysis typically occupying the lower end of this range. Again, these tests are routinely pursued, regardless of these regulations, by most water withdrawal system proposals that are above the size threshold.

The preparation and submission of a Water Conservation Program is also required by the permitting provisions of these regulations as well as the preparation and analysis necessary to present the Project Justification. A Water Conservation Program does not need to be prepared by a Professional Engineer, and may typically cost between \$500 and \$5,000, depending on the size of the withdrawal.

The availability of an 'initial permit' for pre-existing water withdrawals will reduce the costs the permit application process for existing withdrawals through the avoidance of the time and costs associated with a public hearing while maintaining the public involvement through the written public comment process.

New, smaller public water supply systems - those that do not exceed the size threshold - are now spared of the costs of the permit application process; however it is expected that many such smaller systems will complete the same or similar elements as a means of good design, less costly asset management, and efficient business practices.

(b) Costs to DEC, the state, and local governments for the implementation and continued compliance with the rule: The greatest direct cost to DEC will occur in the Division of Water, and to a lesser extent, other units needed to support the program's work. DEC may conduct outreach and training, develop additional guidance documents, prepare notifications, develop a compliance database to track receipt of required reports, prepare case referrals to DEC's attorneys for enforcement, and face an increase in water withdrawal permit applications.

There are no significant costs anticipated for state or local governments except with respect to their roles as owners or operators of water withdrawal systems above the size threshold. Many local governments have previously-permitted public water supplies; there should be no significant additional costs for these local governments. Various state agencies may operate water withdrawal systems over the size threshold and unless exempt will be subject to the same costs as provided above for other owners of operators of water withdrawal systems. The regulations and Chapter 401 define 'person' to include state agencies.

5. Local Government Mandates. There are no programs, services, duties, or responsibilities imposed by the rule upon any county, city, town, village, school district, fire district or other special district except with respect to their role as owners or operators of water withdrawal systems over the size threshold (unless exempt). New smaller public water supply systems are spared of the costs of the permit application process if the systems do not reach the size threshold.

6. Paperwork. The proposed regulations require water withdrawal permittees to prepare and maintain documents about the water withdrawal system. Annual Reports or Registrations are periodic submissions but the

predominant obligation to prepare and submit documents occurs once during the permit application process.

7. Duplication. For most water withdrawal systems, there are no relevant rules or other legal requirements of the state and federal governments that duplicate, overlap or conflict with the rule. The full text of the RIS provides additional clarification and answers frequent questions concerning potential duplication.

8. Alternatives. The Department considered proposing regulations without the monitoring, recording and recordkeeping provisions (§§ 601.19 and 601.20), the permit denial, suspension and revocation provisions (§ 601.16), the inspection and entry provisions (§ 601.21), the signature of forms provision (§ 601.22), and the references provision (§ 601.24), respectively. However, it was determined that the legislative objectives of the Chapter 401 amendments and the Compact cannot be met without the monitoring, recording and recordkeeping provisions. The Department adapted the proposed regulations in §§ 601.19 and 601.20 from existing SPDES regulations because they are already well-known to and implemented by those who use withdrawn water for purposes that generate waste water discharges. The permit denial, suspension and revocation provision in proposed § 601.16 appears in substantially similar form in the SPDES regulations, and is necessary to put permittees on notice of the circumstances that can lead to rejection of a water withdrawal proposal or suspension or revocation of a permit. The same is true for proposed § 601.22 and 601.24.

9. Federal Standards. The state's water withdrawal law does not derive its authority from federal laws or regulations. The regulations exempt withdrawals that are regulated by FERC from the permit requirements.

10. Compliance Schedule. The proposed regulations provide time to enable regulated persons to achieve compliance with the rule. A table summarizing the applicable time frames is provided in the full text of the Regulatory Impact Statement; however, the proposed regulations should be consulted for a fuller understanding of the time frames.

Summary of Regulatory Flexibility Analysis

1. Effect of Rule. Recent statutory amendments to Environmental Conservation Law (ECL) article 15, title 15 (Chapter 401 of the 2011 Laws of New York) both expand and limit this water withdrawal permit program. The amendments expand the permit program to include withdrawals for purposes beyond public water supply, such as those for commercial, manufacturing, industrial, oil and gas development, and other purposes. The amendments generally limit the permit program to withdrawals that meet or exceed a threshold volume (of 100,000 gallons per day (gpd)). The effect is to regulate far more of the higher-volume withdrawals across the state while exempting from permitting requirements withdrawals associated with lower-volume public water supply systems (PWSS). The proposed amendments to 6 NYCRR part 601 and subpart 621.4, and the consolidation of part 675 (Great Lakes water withdrawal registration) into part 601, implement this permitting program. The types of water withdrawal systems that are subject to the permit program are located in all areas of the state; so small businesses and local governments that undertake water withdrawals for purposes other than PWSS will be impacted by the proposed regulations, although the impact will be offset by the 100,000 gpd threshold, other exemptions, the availability of an 'initial permit,' and the staggered or delayed implementation schedule.

2. Compliance Requirements. The proposed regulations do not distinguish between water withdrawal systems operated by small businesses and those operated by local governments. Existing agricultural withdrawals of any volume are exempt from the permit requirement altogether so long as these existing withdrawals are registered in accordance with current law (including ECL article 15 titles 16 and/or 33) as of February 15, 2012. Moreover, the registration requirement for agricultural withdrawals is subject to an even more generous size threshold of an average of 100,000 gpd in any consecutive 30-day period. New agricultural withdrawals above the size threshold will require permits. The proposed new part 601 implements other statutory exemptions to the water withdrawal permit requirement, including fire suppression withdrawals and withdrawals approved by the Delaware River Basin Commission or Susquehanna River Basin Commission. Small businesses and local governments may benefit from these provisions.

Initial Permits. An 'initial permit' includes all of the terms and conditions of a water withdrawal permit, but is a 'minor action' under the proposed revision to subpart 621.4 that results in a slightly abbreviated permitting process. A water withdrawal system qualifies for an initial permit under the following circumstances: the withdrawal exists as of February 12, 2012; it is over the size threshold; it is properly reported to DEC by February 15, 2012 under existing law; it is not a public water supply; and the withdrawal is not otherwise exempt. The slightly simpler administrative process for initial permits eases the compliance requirements for existing and previously-unregulated water withdrawals that are not exempt.

In addition, the 'initial permit' application deadline for existing water

withdrawals above the size threshold depends on the amount of water withdrawn. Specifically, applications for initial permits are not due until: February 15, 2017 for withdrawals equal to or greater than 0.1 but less than 0.5 million gallons per day (mgd); February 15, 2016 for withdrawals equal to or greater than 0.5 mgd but less than 2 mgd; February 15, 2015 for withdrawals equal to or greater than 2 mgd but less than 10 mgd; February 15, 2014 for withdrawals equal to or greater than 10 mgd but less than 100 mgd; and February 15, 2013 for withdrawals equal to or greater than 100 mgd. These rolling deadlines will benefit small businesses and local governments that withdraw lesser amounts of water.

3. Professional Services. Small business owners and local governments that own or operate water withdrawal systems are subject to the same requirements as other owners of water withdrawal systems, and would be required to retain the same level of professional services to comply with the regulations. The requirements are described in the 'Costs' section of the Regulatory Impact Statement (RIS). A small business or local government who has a professional engineer with relevant experience on staff may use its engineer to produce the documents required in the proposed regulations.

4. Compliance Costs. Small business owners and local governments that operate water withdrawal systems are subject to the same requirements as others, and will likely incur similar costs as other withdrawal operators. The requirements are summarized in the 'Costs' section in the RIS.

5. Economic and Technological Feasibility. Small businesses and local governments who operate existing, currently-unregulated water withdrawal systems above the size threshold will need to meet the 'initial permit' requirements of the proposed regulations, unless exempt. Applying for an 'initial permit' is quicker and less costly because it usually avoids the need for a permit hearing (as described in the RIS). While public notice and comment on the 'initial permit' application must occur, a permit hearing on top of that would generally not be necessary.

It is important to understand that the economic burden related to the 'initial permit' process would be greater if the applicant has not or does not report or register their withdrawals under ECL article 15 titles 16 or 33 by February 12, 2012, as is discussed in the RIS. The water withdrawal reporting requirements in ECL article 15 title 33 are statutory and compliance is a pre-condition to eligibility to apply for an 'initial permit'. The same is true for the Great Lakes Basin registrations requirements of ECL article 15 title 16. If such existing withdrawals at or above the size threshold are not reported or registered under titles 16 or 33, as applicable, by February 12, 2012, the small business owner or municipal entity will not be eligible to apply for the quicker and less costly 'initial permit' and will instead be required to apply for and obtain a standard water withdrawal permit under its more time consuming and more costly process. The costs associated with applying for an 'initial permit' for existing water withdrawals should be substantially less as most engineering, testing, environmental and alternative analyses costs would have already been incurred when the project was initially constructed.

In addition to creating a more flexible permit application process for existing withdrawals above the size threshold, through the 'initial permit,' the proposed regulations also afford flexibility and enhance the feasibility by providing additional time, up to five years depending on the capacity of the water withdrawal system, to submit the 'initial permit' application to the Department.

6. Minimizing Adverse Impacts. In terms of additional measures taken to minimize potential adverse impacts of complying with the proposed regulations, we note that water hydropower withdrawals that are federally regulated through a FERC (Federal Energy Regulating Commission) license are exempt from the water withdrawal permit requirement. To avoid potential duplication in the annual reporting obligation, and as is further discussed in the RIS, annual reports or registrations of water withdrawals that are submitted under ECL article 15 titles 16 or 33 are deemed sufficient under the proposed regulations until those statutory provisions sunset on December 31, 2013.

As stated above, under the amended statute and these proposed regulations, new public water supply systems below the volume threshold, regardless of the number of service connections, are no longer required to apply for water withdrawal permits. Similarly, existing agricultural withdrawals that are registered or reported to DEC under ECL article 15 titles 16 or 33 on or before February 15, 2012 are exempt altogether from the water withdrawal permit requirement and the registration requirement for agricultural withdrawals is subject to a more generous size threshold.

For water withdrawal systems that are not exempt and that are above the size threshold as of February 15, 2012, the 'initial permit' process is somewhat less costly and time consuming than the standard permit process and provides additional time to comply depending on the capacity of the water withdrawal system.

7. Small Business and Local Government Participation. The public outreach that occurred during the development of the statutory amend-

ments was of significant and material assistance in drafting these proposed regulations. DEC played a role in drafting the legislation underlying this rulemaking. In that process, DEC sought and received input from many stakeholders, including representatives of small businesses and local governments. The discussions were about how regulated entities would be subject to the law, and the discussions resulted in legislative changes to address concerns that are now also carried out in these proposed regulations.

In response to discussions with the New York Farm Bureau, DEC modified the statutory definition of threshold volume for agricultural withdrawals, and made other changes applicable to agricultural withdrawals. During the legislative process, DEC also met with the Business Council and the New York State Chemical Alliance to address concerns of New York's businesses. These groups explained that it would be burdensome for such groups to apply for permits for withdrawals that have already existed. To address this concern, the amended legislation includes provisions allowing existing systems to utilize the more efficient and less costly "initial permit" process. DEC also met with and had discussions with representatives of the New York State Association of Town Superintendents of Highways, Inc.; Ski Areas of New York, Inc. and representatives of the state's ski areas; persons representing the interests of golf courses and installers of irrigation systems; and several local governments. These, either individually or collectively, resulted in changes to the draft statutory amendments prior to their passage and thereby also to these proposed regulations. The regulatory provisions that reflect a direct response to the public outreach include, without limitation, the following: the definitions in § 601.2 ('environmentally sound and economically feasible,' establishment of the 'threshold volume' at a level as high as 100,000 gallons per day, with a more generous interpretation for farm withdrawals, and 'vessel' is defined such that it does not include tanker trucks); the annual reporting in § 601.5 (potential duplication with reporting under ECL article 15 titles 16 and 33 eliminated, the list of over seven exemptions from annual reporting); the 'initial permit' provisions in § 601.7, in their entirety; the provision of fourteen separate water withdrawal permit exemptions in § 601.9, which includes eight more than are in the amended statute, particularly the permit exemption for all withdrawals for agricultural purposes that are properly registered or reported by February 15, 2012; inclusion of "economically feasible" in the water conservation program that is required under the permit application provisions in § 601.10; and the allowance for the water conservation programs to be developed without the services of a professional engineer.

DEC has also undertaken outreach in an effort to ensure that all affected entities were made aware of the water withdrawal reporting requirements of ECL article 15, title 33 that became effective April 1, 2009. DEC posted information about the new reporting requirement on its webpage at <http://www.dec.ny.gov/lands/55509.html>. In 2009, DEC sent letters to thousands of persons potentially subject to the new reporting requirement as well as to organizations representing those persons, including the Association of Towns of the State of New York, public water suppliers, State Pollutant Discharge Elimination System permittees, and Concentrated Animal Feeding Operations. In 2010, DEC contacted the same list of persons via e-mail. In August 2011, DEC met with the New York Farm Bureau to discuss further outreach to alert farmers to the benefits to them of registering or reporting prior to February 15, 2012.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas. Environmental Conservation Law (ECL) article 15 title 15 originally required permits solely for public water supplies with five or more service connections, regardless of the volume of water withdrawn. Recent statutory amendments (Chapter 401 of the 2011 Laws of New York) both expand and limit this water withdrawal permit program. The amendments expand the permit program to include withdrawals for purposes beyond public water supply, such as those for commercial, manufacturing, industrial, oil and gas development, and other purposes. The amendments generally limit the permit program to withdrawals that meet or exceed a threshold volume (of 100,000 gallons per day (gpd)). The effect is to regulate far more of the higher-volume withdrawals across the state while no longer issuing water withdrawal permits for lower-volume public water system withdrawals. Withdrawals below the size threshold must still comply with water pollution control laws (ECL article 17), Department of Health regulations, as applicable, and state environmental quality review (SEQR) requirements. The amended law also authorizes the Department of Environmental Conservation (DEC) to establish quantitative standards to maintain stream flows protective of aquatic life, consistent with the policy objectives in ECL article 15 of assuring drinking water supplies, aquatic habitat, and recreational uses. The proposed amendments to 6 NYCRR part 601 and subpart 621.4, and the consolidation of part 675 (Great Lakes water withdrawal registration) into part 601, implement this expanded permitting program and the authorized exemptions thereto. The types of water withdrawal systems that are subject to the expanded permit program are lo-

cated in all areas of the state, including rural areas. Therefore, all rural areas may be impacted by the proposed regulation.

2. Reporting, Recordkeeping and Other Compliance Requirements, and Professional Services. The proposed regulations are the same for water withdrawal systems located in rural areas. However, to the extent that water withdrawal systems in rural areas are less likely to exceed the above-stated size threshold, they are less likely to be subject to the water withdrawal permit requirement. Agricultural withdrawals of any volume are exempt from the permit requirement altogether so long as the withdrawals are registered in accordance with current law (including ECL article 15 titles 16 and/or 33) as of February 15, 2012. Moreover, the registration requirement for agricultural withdrawals is subject to an even more generous size threshold of an average of 100,000 gpd in any consecutive 30-day period. The new part 601 implements other statutory exemptions to the water withdrawal permit requirement, such as those for fire suppression withdrawals and withdrawals approved by the Delaware River Basin Commission or Susquehanna River Basin Commission.

Initial Permits. An "initial permit" includes all of the terms and conditions of a standard water withdrawal permit, but is a "minor action" under the proposed modification to subpart 621.4 4 that results in a slightly abbreviated permitting process. In the absence of a timely application for an initial permit, a standard water withdrawal permit must be applied for and approved under the full permit process. A water withdrawal system qualifies for an initial permit under the following circumstances: the withdrawal exists as of February 12, 2012; it is over the size threshold; it is properly reported to DEC by February 15, 2012 under existing law; it is not a public water supply; and the withdrawal is not otherwise exempt. Existing public water supplies with water supply permits need do nothing different. The slightly simpler administrative process for initial permits eases the compliance requirements for existing and previously-unregulated water withdrawals that are not exempt.

In addition, among water withdrawal systems above the size threshold that qualify for initial permits, the proposed regulations in part 601 provide more time for operators of smaller water withdrawal systems to apply for initial permits. This is more likely to be a benefit in rural areas. Specifically, under the provisions of proposed part 601.7, initial permit applications are not due until February 15, 2017 for withdrawals equal to or greater than 0.1 but less than 0.5 million gallons per day (mgd); February 15, 2016 for withdrawals equal to or greater than 0.5 mgd but less than 2 mgd; February 15, 2015 for withdrawals equal to or greater than 2 mgd but less than 10 mgd; February 15, 2014 for withdrawals equal to or greater than 10 mgd but less than 100 mgd; and February 15, 2013 for withdrawals equal to or greater than 100 mgd.

3. Costs. The cost to comply with the proposed regulations will depend on the size, purpose and complexity of the water withdrawal system. Other than the factors mentioned above, it is not expected that there will be any variation in the compliance costs based upon rural area status.

4. Minimizing Adverse Impacts. Please see Items 1 and 2, above. As stated, public water supply systems below the size threshold, which are more likely to be located in rural areas, are no longer required to have water withdrawal permits. As further stated above, existing agricultural withdrawals that are registered or reported to DEC under ECL article 15 titles 16 or 33 on or before February 15, 2012 are exempt from the water withdrawal permit requirement under the amended law and the proposed part 601 amendments (although such withdrawals must continue to be registered). The registration requirement for agricultural withdrawals is subject to a more generous size threshold.

For water withdrawal systems that are not exempt and that are above the size threshold as of February 15, 2012, the initial permit process is somewhat less costly and time consuming than the standard permit process. Initial permit applications are due last for the smallest withdrawal systems above the size threshold. Existing public water supplies with water supply permits need do nothing different.

5. Rural Area Participation. DEC sought and received input from many stakeholders in the development of the amendments enacted in Chapter 401, which included representatives of farmers as well as business interests which may have some facilities located in rural areas. In 2010 DEC had several discussions with the New York Farm Bureau and modified the proposed statutory amendments to add ECL § 15-1504 (specific to agricultural withdrawals), change the definition of threshold volume for agricultural withdrawals, and make other changes applicable to agricultural withdrawals to address concerns of New York's farmers. DEC also met with the Business Council and the New York State Chemical Alliance in 2010 to address concerns of New York's businesses and significant amendments were made to the proposed law to address their concerns, including the addition of the "initial permit" provisions. In March, April and May 2011 DEC had a meeting and several discussions with persons representing the interests of the New York State Association of Town Superintendents of Highways, Inc. to discuss potential permit requirements for water pumping equipment at mines owned and operated by

towns. In April 2011, DEC met with Ski Areas of New York, Inc. and representatives of the state's ski areas to address concerns related to the impacts the proposed statutory amendments and implementing regulations might have on New York's ski areas. DEC also discussed the proposed amendments with persons representing the interests of golf courses and installers of irrigation systems. In addition, DEC undertook outreach in an effort to ensure that all affected entities were made aware of the water withdrawal reporting requirements of ECL article 15, title 33 that became effective April 1, 2009. DEC posted information about this reporting requirement on its webpage at <http://www.dec.ny.gov/lands/55509.html>. In 2009, DEC sent letters to thousands of persons potentially subject to the new reporting requirement as well as to organizations representing those persons, including the Association of Towns of the State of New York, public water suppliers, State Pollutant Discharge Elimination System permittees, and Concentrated Animal Feeding Operations. In 2010, DEC contacted the same list of persons via e-mail. In August 2011, DEC met with the New York Farm Bureau to discuss further outreach to alert farmers to the benefits to them of registering or reporting prior to February 15, 2012.

Job Impact Statement

1. Nature of impact. The proposed revision to the water withdrawal regulations may create high-paying technical jobs in engineering and training.

2. Categories and numbers affected. Under the proposed revisions to 6 NYCRR Part 601, operators of previously-unregulated water withdrawal systems must submit several technical documents, such as annual reports as well as various parts of a permit application, including an engineer's report, pump tests and analyses for groundwater withdrawals, safe yield analyses for surface water withdrawals, water conservation programs, and the analysis of alternatives sufficient to complete a project justification. It is expected that the proposed regulatory revisions will generate high-paying engineering jobs, as well as technical jobs that do not require the services of a professional engineer. The field of water withdrawal planning, monitoring and reporting includes specialized areas of expertise: civil/structural engineering and hydrologic/hydraulic analysis, with some utilizing computer modeling. There will be a need for engineers and other professionals to have additional training in water withdrawal and the proposed water conservation programs. Therefore, there will be an opportunity for companies and colleges to develop training programs and offer specialized training in New York. This would create job opportunities for trainers as well as support staff opportunities. The Department has no way of determining the number of engineering or construction jobs or training opportunities.

3. Regions of adverse impact. There are no adverse job impacts expected.

4. Minimizing adverse impacts. There are no adverse job impacts expected.

5. Self-employment opportunities. The proposed regulations will create an environment favorable for experienced engineers, licensed surveyors, computer modelers, and water conservation planners specializing in hydrology and hydraulic analysis to start their own businesses. Self-employment opportunities also will likely exist for experienced engineers to conduct training and inspections, and to prepare engineering reports, and for experienced individuals in the additional trades indicated above.

Department of Labor

ERRATUM

A Notice of Adoption, I.D. No. LAB-43-10-00003-A, pertaining to Restrictions on the Consecutive Hours of Work for Nurses as Enacted in Section 167 of the Labor Law, published in the October 12, 2011 issue of the *State Register* failed to reference a previously published revised rule making. A Notice of Emergency Adoption and Revised Rule Making for this rule was published in the August 24, 2011 issue of the *State Register* (I.D. No. LAB-43-10-00003-ERP).

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

National Grid's Emergency Economic Development Programs to Provide Immediate Assistance to Qualifying Customers

I.D. No. PSC-47-11-00010-EP

Filing Date: 2011-11-08

Effective Date: 2011-11-08

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

Proposed Action: The PSC adopted an order approving the request of Niagara Mohawk Power Corporation d/b/a National Grid for four new Emergency Economic Development Programs in order to provide immediate assistance to qualifying customers in its service area.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

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

Specific reasons underlying the finding of necessity: This action is taken on an emergency basis pursuant to State Administrative Procedures Act (SAPA) § 202(6). The Emergency Programs are designed to provide customers and communities with quick and immediate access to all available resources for the repairs and rebuilding necessary after the devastating effect of Hurricane Irene and Tropical Storm Lee. The repair and reconstruction of the electric and gas infrastructure, as well as the supporting reconstruction activities, is essential to the public health and general welfare of the citizens of New York. Failure to implement these Programs now on an emergency basis could deny communities and businesses access to necessary additional funding sources.

Subject: National Grid's Emergency Economic Development Programs to provide immediate assistance to qualifying customers.

Purpose: To approve National Grid's Emergency Economic Development Programs to provide immediate assistance to qualifying customers.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.dps.state.ny.us): The Public Service adopted an order approving the request of Niagara Mohawk Power Corporation d/b/a National Grid for four new Emergency Economic Development Programs in order to provide immediate assistance to qualifying customers in its service area recovering from the effects of Hurricane Irene and Tropical Storm Lee. The Commission may adopt permanently, reject or modify the provisions of the order.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 5, 2012.

Text of rule may be obtained from: 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: Jaelyn 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

A regulatory impact statement is 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.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is 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.

Rural Area Flexibility Analysis

A rural area flexibility analysis is 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.

Job Impact Statement

A job impact statement is 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.

(10-E-0050EP10)

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval for NYSEG's Emergency Economic Development Programs to Provide Immediate Assistance to Qualifying Customers

I.D. No. PSC-47-11-00011-EP

Filing Date: 2011-11-08

Effective Date: 2011-11-08

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

Proposed Action: The Public Service Commission adopted an order approving, with modifications, the request of New York State Electric and Gas Corporation for three new Emergency Economic Development Programs in order to provide immediate assistance to qualifying customers in its service area.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10), (12) and (12-b)

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

Specific reasons underlying the finding of necessity: This action is taken on an emergency basis pursuant to State Administrative Procedure Act (SAPA) § 202(6). These Emergency Programs are designed to provide customers and communities with quick and immediate access to all available resources for the repairs and rebuilding necessary after the devastating effect of Hurricane Irene and Tropical Storm Lee. The repair and reconstruction of the electric and gas infrastructure, as well as the supporting reconstruction activities, is essential to the public health and general welfare of the citizens of New York. Failure to implement these Programs now on an emergency basis could deny communities and businesses access to necessary additional funding sources.

Subject: Approval for NYSEG's Emergency Economic Development Programs to provide immediate assistance to qualifying customers.

Purpose: To approve NYSEG's Emergency Economic Development Programs to provide immediate assistance to qualifying customers.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.dps.state.ny.us): The Public Service adopted an order approving, with modification, the request of New York State Electric and Gas Corporation (NYSEG) for three new Emergency Economic Development Programs in order to provide immediate assistance to qualifying customers in its service area recovering from the effects of Hurricane Irene and Tropical Storm Lee. The Commission may adopt permanently, reject or modify the provisions of the order.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 5, 2012.

Text of rule may be obtained from: 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: Jaelyn 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

A regulatory impact statement is 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.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is 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.

Rural Area Flexibility Analysis

A rural area flexibility analysis is 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.

Job Impact Statement

A job impact statement is 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.

(11-E-0559EP1)

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

Incentive Mechanism for Public Utilities Administering Energy Efficiency Programs

I.D. No. PSC-47-11-00005-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 adoption of an incentive mechanism for public utilities administering energy efficiency programs.

Statutory authority: Public Service Law, sections 5(2), 66(1) and (2)

Subject: Incentive mechanism for public utilities administering energy efficiency programs.

Purpose: To establish a mechanism to encourage utilities to achieve the targets for efficiency programs established by the Commission.

Substance of proposed rule: The Commission is discontinuing the existing incentive mechanism for utilities administering energy efficiency programs. The Commission has proposed a new mechanism to be put into place effective January 1, 2012. A total pool of \$50 million (based on an average of 5 basis points per year for four years) would be divided into Step One (66% of the pool) and Step Two (33%). Any utility meeting 100% of its aggregate target over four years would earn its proportional share of Step One. If the Commission's statewide efficiency goal is met at the end of 2015, every utility will earn its proportional share of Step Two. Incentives will be positive only, and will require 100% achievement of targets.

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.

(07-M-0548SP45)

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

Petition for the Submetering of Electricity

I.D. No. PSC-47-11-00006-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 48-52 Franklin, LLC to submeter electricity at 50 Franklin Street, New York, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 48-52 Franklin, LLC to submeter electricity at 50 Franklin Street, New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 48-52 Franklin, LLC to submeter electricity at 50 Franklin Street, New York, New York located in the service territory of Consolidated Edison Company of New York, Inc.

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.

(11-E-0424SP1)

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

Remedying Miscalculations of Delivered Gas as Between Two Customer Classes

I.D. No. PSC-47-11-00007-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 the proposal of Consolidated Edison Company of New York, Inc. for an adjustment for under-deliveries of gas for certain customers for when Con Edison incorrectly calculated its Lost and Unaccounted For Gas.

Statutory authority: Public Service Law, sections 4(1), 65 and 66(1)

Subject: Remedying miscalculations of delivered gas as between two customer classes.

Purpose: Consideration of Con Edison's proposal to address inter-class delivery imbalances resulting from past Company miscalculations.

Substance of proposed rule: In an Order dated September 16, 2011, the Public Service Commission directed Consolidated Edison Company of New York, Inc. (Con Edison) to analyze and provide a proposal to remedy the impact of the company's miscalculation of its Lost and Unaccounted For Gas as related to inter-class deliveries of gas to certain customer groups.

In Con Edison's October 17, 2011, filing, the Company proposes that the Commission determine that there be no prospective adjustment for under-deliveries to transportation customers during the historic period; further, that if the Commission determines that an adjustment is necessary and appropriate, that the Commission determine \$1.6 million as the amount to be credited to full service customers and surcharged to transportation customers, over a prospective three-year period.

The Commission may adopt, reject or modify, in whole or in part, 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

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.

(10-G-0643SP2)

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

Providing a Waiver from Interruptible Gas Tariff Requirements Related to Back-Up Fuel

I.D. No. PSC-47-11-00008-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 the rehearing and clarification petition of E. Tetz and Sons, Inc. for a waiver from certain tariff provisions related to interruptible service.

Statutory authority: Public Service Law, sections 4(1), 65 and 66(1)

Subject: Providing a waiver from interruptible gas tariff requirements related to back-up fuel.

Purpose: Consideration of a rehearing and clarification petition from certain interruptible gas back-up fuel tariff requirements.

Substance of proposed rule: In an Order dated September 21, 2011, the Public Service Commission granted a limited waiver to petitioner E. Tetz & Sons, Inc. relieving petitioner of certain Orange and Rockland Utilities, Inc.'s tariff requirements for interruptible gas service relating to on-site back-up fuel requirements.

In an October 28, 2011, filing, petitioner filed for rehearing and clarification of the Commission's September 21, 2011 Order. Specifically petitioner requests that the Commission clarify that it did not intend to constrain petitioner's operations, that it did not intend to make a specific finding regarding petitioner's three-days fuel use requirement, and that petitioner's on-site, three-day supply of back-up fuel with an additional contract for additional supplies is sufficient to meet the tariff requirements. Petitioner requests rehearing on each point raised in the event the Commission fails to clarify each point as requested.

The Commission may adopt, reject or modify, in whole or in part, petitioner's clarification and rehearing proposals.

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.

(10-G-0482SP2)

Department of State

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Construction Standards for Summer Camp Cabins Located in Children's Overnight Camps

I.D. No. DOS-47-11-00003-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 repeal section 1228.2; and add new section 1228.2 to Title 19 NYCRR.

Statutory authority: Executive Law, section 377

Subject: Construction standards for summer camp cabins located in children's overnight camps.

Purpose: To clarify applicability of the Uniform Code and State Sanitary Code to summer camp cabins.

Public hearing(s) will be held at: 10:00 a.m., January 11, 2012 at Department of State, 99 Washington Ave., Conference Rm. 1135, 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.

Text of proposed rule: Section 1228.2 in Part 1228 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and a new section 1228.2 is added to read as follows:

Section 1228.2. Summer Camp Cabins.

(a) This section is intended to clarify the effect of section 378(1) of the Executive Law, as amended by Chapter 443 of the Laws of 2009, and the applicable provisions of the State Sanitary Code (10 NYCRR, Chapter 1), as amended effective July 6, 2011, on construction standards for summer camp cabins located in children's overnight camps.

(b) Pursuant to 10 NYCRR section 7-2.12(b)(2), summer camp cabins located in children's overnight camps are exempt from:

- (1) the Uniform Code's automatic sprinkler requirements and
- (2) the Uniform Code's minimum floor area per occupant requirements.

However, pursuant to 10 NYCRR section 7-2.12(b)(1), summer camp cabins located in children's overnight camps are subject to all other applicable requirements and provisions of the Uniform Code. In addition, pursuant to 10 NYCRR section 7-2.16(c), summer camp cabins located in children's overnight camps are subject to the following minimum floor area per occupant requirements: "In sleeping quarters housing more than four persons, 40 square feet of floor area per occupant shall be provided, when single beds are provided. When double deck bunk beds are provided, 30 square feet of floor area shall be provided for each occupant. Floor area includes space within the occupied structure to accommodate: the bed, storage for personal belongings, aisles and exitways, and associated assembly space. Space for toilets, lavatories and showers shall not be used to calculate a sleeping quarter's floor area. For structures built prior to 1975, the required minimum floor area for single beds is 36 square feet."

(c) For the purposes of this section, the term "summer camp cabin" shall mean a sleeping quarter which:

- (1) is located in a children's overnight camp;
- (2) has a sleeping capacity of fewer than twenty-five occupants, with a total combined sleeping room floor area of 1200 square feet or less for all sleeping rooms;
- (3) is one story;
- (4) is used and occupied only between June 1 and September 14;
- (5) has no cooking facilities, no heating systems, and no solid fuel heating or burning systems;
- (6) has only sleeping rooms (including the necessary area for storing occupant belongings) and bathrooms;
- (7) has no interior corridors or separate common area rooms;
- (8) has at least two exits per sleeping room which are remote from each other and which discharge directly to the building's exterior;
- (9) has exit doors that open in the direction of, and are non-locking against egress; and
- (10) has smoke alarms in each sleeping room that are interconnected such that the activation of one alarm will activate all of the alarms in the cabin.

An existing structure that is altered, enlarged or otherwise improved shall not be deemed to be a summer camp cabin unless such structure, as so altered, enlarged or otherwise improved, satisfies all of the criteria set forth in this subdivision.

(d) For the purposes of this section, the term "children's overnight camp" shall mean a property consisting of a tract of land and any tents, vehicles, buildings or other structures that may be pertinent to its use, any part of which may be occupied by persons under eighteen years of age under general supervision for the purpose of outdoor or indoor organized activities and on which provisions are made for overnight occupancy of children. However, the term "children's overnight camp" shall not include any place or facility which has been excepted from the State Sanitary Code by the Commissioner of the New York State Department of Health pursuant to section 1392(1) of the Public Health Law.

Text of proposed rule and any required statements and analyses may be obtained from: Raymond Andrews, Department of State, Division of Code Enforcement and Administration, 99 Washington Ave., Albany, NY 12231, (518) 474-6740, email: Raymond.Andrews@dos.state.ny.us

Data, views or arguments may be submitted to: Joseph Ball, Department of State, Office of Counsel, 99 Washington Ave., Albany, NY 12231, (518) 474-6740, email: Joseph.Ball@dos.state.ny.us

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

Consensus Rule Making Determination

Subdivision 11 of State Administrative Procedure Act § 102 provides that “consensus rule means a rule proposed by an agency for adoption on an expedited basis pursuant to the expectation that no person is likely to object to its adoption because it merely . . . makes technical changes or is otherwise non-controversial.” The Department of State has concluded that this rule making is non-controversial and therefore no person is likely to object to its adoption.

In general, the State Uniform Fire Prevention and Building Code (the Uniform Code) specifies the standards for construction for all classes of buildings. However, by reason of a recent amendment of section 378(1) of the Executive Law, construction standards for “sleeping quarters in children’s summer camps” are subject to the State Sanitary Code (10 NYCRR, Chapter 1). The State Sanitary Code was recently amended (effective July 6, 2011) to provide that, in general, all buildings on all children’s camps are subject to the Uniform Code, but that “summer camp cabins” (as defined in the Sanitary Code) are exempt from the Uniform Code’s automatic sprinkler requirements and minimum floor area per occupant requirement. (Summer camp cabins are subject to the minimum floor area per occupant requirements set forth in the State Sanitary Code).

This rule would add a new provision to the Uniform Code to reflect the impact of the recent amendment of the State Sanitary Code. This new provision would be added to Part 1228 of 19 NYCRR, a part reserved for “additional provisions” of the Uniform Code, i.e., for provisions not found in Parts 1220 to 1227 of 19 NYCRR.

The subject of this rule making makes it highly unlikely that any one will object to its adoption. This rule neither adds any new requirement nor repeals any existing requirement. Rather, this rule merely reflects the impact of the recent amendment on Executive Law section 378 (1) and the recent amendment of the State Sanitary Code. By adding this new provision to the Uniform Code, code enforcement officials throughout the State will be more likely to be aware of the new Sanitary Code provisions and the impact of those provisions on “summer camp cabins.”

Therefore, the Department of State has determined that no one is likely to object to the adoption of this rule, and that it is appropriate to characterize this rule making as a consensus rule.

Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the proposed rule that it will not have a substantial adverse impact on jobs and employment opportunities in New York.

This rule would add a new provision to the State Uniform Fire Prevention and Building Code (the Uniform Code) to reflect the impact of the recent amendment of section 378(1) of the Executive Law and the recent amendment of the State Sanitary Code (10 NYCRR, Chapter 1) on “summer camp cabins” (as that term is defined in the State Sanitary Code). By reason of the recent amendment of the Executive Law, construction standards for such “summer camp cabins” are subject to the State Sanitary Code. By reason of the recent amendment of the State Sanitary Code, such “summer camp cabins” are, in general, subject to the Uniform Code; however, such “summer camp cabins” are exempt from the Uniform Code’s automatic sprinkler requirements and minimum floor area per occupant requirements. (Summer camp cabins are, however, subject to the minimum floor area per occupant requirements set forth in the State Sanitary Code.)

This rule would neither add any new requirement nor repeal any existing requirement. Rather, this rule would merely add a provision to the Uniform Code that reflects the impact of the recent amendment of the State Sanitary Code on “summer camp cabins.” Adding this new provision to the Uniform Code will make it more likely that code enforcement officials throughout the State will become familiar with the provisions of the State Sanitary Code and its effect on summer camp cabins. The Department finds that it is evident from the subject matter of the rule that it will have no adverse impact on jobs and employment opportunities.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Carbon Monoxide Alarms in Bed and Breakfast Dwellings; Minimum Width of Concrete Footings; and Energy Efficiency Requirements in Connection with Additions to and Alterations of Existing One- and Two-Family Dwellings and Townhouses

I.D. No. DOS-47-11-00004-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 1220.1(c) of Title 19 NYCRR.

Statutory authority: Executive Law, section 377

Subject: Carbon monoxide alarms in bed and breakfast dwellings; minimum width of concrete footings; and energy efficiency requirements in connection with additions to and alterations of existing one- and two-family dwellings and townhouses.

Purpose: To make corrections to the 2010 Residential Code of New York State.

Public hearing(s) will be held at: 11:00 a.m., January 11, 2012 at Department of State, 99 Washington Ave., Conference Rm. 1135, 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.

Text of proposed rule: Subdivision (c) of section 1220.1 of 19 NYCRR is amended by adding new paragraphs (8), (9), (10), and (11) to read as follows:

(8) 2010 RCNYS Section R313.4.3 Exception 2. Exception 2 in Section R313.4.3 of the 2010 RCNYS, as amended and restated in paragraph (2) of this subdivision, is further amended and restated in its entirety to read as follows:

“2. In buildings other than bed and breakfast dwellings that undergo repair, alteration, change of occupancy, addition or relocation in accordance with Appendix J, carbon monoxide alarms may be battery operated, cord-type or direct plug.”

(9) 2010 RCNYS Table R403.1. The heading of the final column in Table R403.1 on the 2010 RCNYS shall be deemed to be amended to read as follows: “4,000 or more.”

(10) 2010 RCNYS Appendix J, Section J104. Section J104 in Appendix J of the 2010 RCNYS, which currently consists of Section J104.1 only, shall be deemed to be amended and restated in its entirety as a new Section J104, to include Section J104.1 and Section J104.2, to read as follows:

“SECTION J104

“ENERGY EFFICIENCY

“J104.1. Additions and Alterations. Additions and alterations shall comply with Sections N1101.3.1, N1101.3.2 and N1101.3.3.

“J104.2. Change of occupancy. Change of building occupancy shall comply with Section N1101.3.2.”

(11) 2010 RCNYS Appendix J, Section J501.2. Section J501.2 in Appendix J of the 2010 RCNYS shall be deemed to be amended and restated in its entirety to read as follows:

“J501.2 Conformance. An existing building or portion thereof shall not be altered such that the building becomes less safe than its existing condition.

“Exception. Where the current level of safety or sanitation is proposed to be reduced, the portion altered shall conform to the requirements of this code.”

Text of proposed rule and any required statements and analyses may be obtained from: Raymond Andrews, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Raymond.Andrews@dos.state.ny.us

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

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

Consensus Rule Making Determination

Subdivision 11 of State Administrative Procedure Act § 102 provides that “consensus rule means a rule proposed by an agency for adoption on an expedited basis pursuant to the expectation that no person is likely to object to its adoption because it merely . . . makes technical changes or is otherwise non-controversial.” The Department of State has concluded that no person is likely to object to the adoption of this rule because this rule merely makes technical, non-controversial changes to the State uniform fire prevention and building code (the “Uniform Code”).

The Uniform Code is a fire prevention and building code adopted pursuant to Article 18 of the Executive Law. The provisions of the Uniform Code are contained in publications that are incorporated by reference in Parts 1220 to 1227, inclusive, of Title 19 of the NYCRR. Those publications include the 2010 edition of the Residential Code of New York State (the “2010 RCNYS”), which is incorporated by reference in Part 1220 of Title 19 NYCRR.

The 2010 RCNYS was incorporated by reference in Part 1220 by a rule making that became effective on December 28, 2010. Since the 2010 RCNYS took effect, a number of technical issues in that publication have come to the attention of the Department of State. This proposed rule would address several of those issues by amending the following four items in the 2010 RCNYS: (1) Section 313.4.2, Exception 2; (2) Table 403.1; (3) Section J104 in Appendix J; and (4) Section J501.2 in Appendix J. The proposed changes are discussed in order:

Section 313.4.2. Currently, Section 313.4.2, Exception 2, of the 2010 RCNYS allows the use of battery operated carbon monoxide alarms in bed and breakfast dwellings. This contradicts another section in the 2010 RCNYS, viz., Section J703.2, which requires hard-wiring of carbon monoxide alarms in bed and breakfast dwellings. Historically, hard-wiring of carbon monoxide alarms has been required in bed and breakfast dwellings; therefore, this rule will resolve the conflict between Sections 313.4.2 and J702.3 of the 2010 RCNYS by amending Section 313.4.2 to require hard-wiring of carbon monoxide alarms in bed and breakfast dwellings.

Table 403.1. Table 403.1 in the 2010 RCNYS specifies the minimum width of concrete or masonry footings, based on the load bearing capacity of soil. The heading of the final column in Table 403.1 currently includes the mathematical symbol for “less than or equal to;” therefore, that column heading currently reads “less than or equal to 4,000,” indicating that the minimum footing widths specified in that final column apply when the load bearing capacity of soil is less than or equal 4,000 pounds per square foot. This is a typographical error. The final column in Table 403.1 should apply when the load bearing capacity of soil is equal to or greater than 4,000 pounds per square foot. This rule will correct this typographical error by changing the heading of the final column in Table 403.1 to “4,000 or more.”

Section J104. Section J104 in Appendix J of the 2010 RCNYS addresses energy efficiency requirements in connection with additions to and alterations of existing one- and two-family dwellings and townhouses.

Energy-related requirements for all buildings are set forth in the State Energy Conservation Construction Code (the “State Energy Code”) adopted pursuant to Article 11 of the Energy Law. Currently, the State Energy Code is set forth in the 2010 edition of the Energy Conservation Construction Code of New York State (the 2010 ECCCNY), a publication that is incorporated by reference in 19 NYCRR Part 1240. Section 101.4.3 of the 2010 ECCCNY specifies that the 2010 ECCCNY is intended to apply to additions, alterations, and renovations to existing residential buildings in all cases where the 2009 International Energy Conservation Code (the 2009 IECC) would apply. Section 101.4.6 of the 2010 ECCCNY specifies that the applicability of the 2010 ECCCNY to the alteration of a building would be subject such limitations as may be set forth in Chapter 11 of the State Energy Law, as in effect at the time of such alteration. At the time the 2010 ECCCNY was adopted as the State Energy Code, Section 11-103(b) of the State Energy Law provided that in the case of a renovation of an existing building, the State Energy Code would apply only if the renovation was “substantial.” However, section 11-103(b)

of the State Energy Law was amended shortly after the 2010 ECCCNY was adopted as the State Energy Code. By reason of the amendment of the State Energy Law, which took effect on January 1, 2011, the application of the State Energy Code to building renovations is no longer limited to “substantial” renovations. Therefore, effective January 1, 2011, the 2010 ECCCNY applies to all renovations of existing residential buildings, and not just to “substantial” renovations of such buildings.

It was intended that the 2010 ECCCNY provisions applicable to one- and two-family dwellings and townhouses would be repeated in the 2010 RCNYS as a convenience to builders, design professionals, and other regulated parties. The intent was to produce a single publication (the 2010 RCNYS) that would include all provisions applicable to one- and two-family dwellings and townhouses, i.e., both the Uniform Code provisions applicable to such structures and the State Energy Code provisions applicable to such structures. However, the concept reflected in Section 101.4.6 of the 2010 ECCCNY (i.e., that statutory limitations on applicability would be as provided in Article 11 of the State Energy Law, as amended from time to time) was not expressly repeated in the 2010 RCNYS.

Section J104 in Appendix J of the 2010 RCNYS reflects the statutory limitation on applicability set forth in section 11-103(b) of the Energy Law, as that statute was in effect prior to January 1, 2011. Specifically, Section J104 in Appendix J of the 2010 RCNYS addresses only energy efficiency requirements for additions and “substantial” (Level 2) alterations. However, as a result of the amendment of the State Energy Law, the application of the State Energy Code is no longer limited “substantial” renovations of existing buildings. This rule would amend Section J104 of the 2010 RCNYS to reflect the impact the amendment of the State Energy Law had on the 2010 ECCCNY, as contemplated by Section 101.4.6 of the 2010 ECCCNY. Specifically, this rule would amend Section J104.1 of the 2010 RCNYS to provide that all renovations (and not only “substantial” renovations) of one- and two-family dwellings and townhouses must comply with the energy efficiency requirements set forth in Sections N1101.3.1 through N1101.3.3 of the 2010 RCNYS.

This rule will also amend Section J104.2 in Appendix J of the 2010 RCNYS to provide that an existing building that undergoes a change of occupancy to a one- or two-family dwelling or townhouse must comply with the energy efficiency requirements set forth in Chapter 11 of the 2010 RCNYS. This change to Section J104.2 is required to make this section consistent with the corresponding provisions in the 2010 ECCCNY (see Section 101.4.4 of the 2010 ECCCNY).

Section J601.2. Finally, this rule will amend Section J501.2 in Appendix J of the 2010 RCNYS. Currently, this Section J501.2 simply repeats Section J501.1. It was intended that Section J501.2 in Appendix J of the 2010 RCNYS would be the same as Section J501.2 in Appendix J of the 2007 edition of the Residential Code of New York State (the “2007 RCNYS”), the publication that was incorporated by reference in Part 1220 of Title 19 NYCRR prior to the adoption of the 2010 RCNYS. This rule would amend Section J501.2 in Appendix J of the 2010 RCNYS to make that Section the same as Section J501.2 in the 2007 RCNYS.

The Department of State believes that the changes to be made by this rule are technical and non-controversial, and that it is unlikely that builders, architects, engineers, building owners, code enforcement officials, or other interested parties will object to the adoption of this rule. Therefore, the Department of State has concluded that it is appropriate to characterize this rule as a consensus rule.

Job Impact Statement

The Department of State has determined that it is apparent from the nature and purpose of the proposed rule making that it will not have a substantial adverse impact on jobs and employment opportunities.

This rule making would make three minor corrections to the text of the 2010 Residential Code of New York State (the 2010 RCNYS), a publication which is incorporated by reference in 19 NYCRR Part 1220 and which constitutes a portion of the State Uniform Fire Prevention and Building Code (the Uniform Code). The 2010 RCNYS specifies construction standards for one- and two-family dwellings and townhouses.

Specifically, this rule would:

(1) resolve a conflict between Section 313.4.2, Exception 2, of the 2010 RCNYS and Section J703.2 of the 2010 RCNYS by amending Section 313.4.2 to require hard-wiring of carbon monoxide alarms in bed and breakfast dwellings;

(2) correct a typographical error in the heading of the final column of Table 403.1 in the 2010 RCNYS by changing “less than or equal to 4,000” to “4,000 or more”; and

(3) amend the energy efficiency requirements in connection with additions to and alterations of existing one- and two-family dwellings and townhouses to reflect that the recent amendment of the State Energy Law had on the 2010 Energy Conservation Construction Code of New York State (the 2010 ECCCNS).

The Department of State concludes that these relatively minor corrections to the 2010 RCNYS will have a negligible impact on the construction and renovation of one- and two-family dwellings and townhouses and, therefore, that this rule making will not have a substantial adverse impact on jobs and employment opportunities within New York.

Workers' Compensation Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Diagnostic Testing Networks

I.D. No. WCB-47-11-00009-P

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

Proposed Action: Amendment of sections 325-1.5 and 325-2.1; and addition of Subpart 325-7 to Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 13-a and 117

Subject: Diagnostic Testing Networks.

Purpose: To provide for employer and workers' compensation carrier contracts with diagnostic testing networks.

Substance of proposed rule (Full text is posted at the following State website: www.wcb.state.ny.us): The proposed regulation amends Section 325-1.5 and 325-2.1 to provide for carrier contracts with a diagnostic testing network and adopts a new Subpart 325-7 setting forth the requirements for Diagnostic Testing Networks.

Subpart 325-7 is added regarding Diagnostic Testing Networks.

Section 325-7.1 defines terms used in the Subpart, such as “affiliated network provider,” “diagnostic examinations and tests” and “reasonable distance.”

Section 325-7.2 sets forth the requirements for insurance carriers to contract with a diagnostic testing network. The insurance carriers must file with the Chair a list of all diagnostic testing networks it has contracts with including the network's name and address, toll-free phone number, email address and website address, as well as contact name and information. The insurance carrier must notify the Chair within twenty days if there are any changes in the diagnostic testing network information and the Chair may request additional information and may inspect any diagnostic testing network facilities.

Section 325-7.3 sets forth the requirements to be authorized as a diagnostic testing network. These requirements include: status as a legal and proper business organization as defined in 325-7.1; filing with the Chair of the Board updated addresses, phone numbers, email and web addresses, and business locations; requiring affiliated network providers to obtain an injured workers consent and to be Board authorized to treat injured workers; prescribing the business hours of each affiliated network provider; and requiring that all tests be conducted within five (5) business days of the date requested or the date authorized by the carrier.

Section 325-7.4 describes the services that may be provided by diagnostic testing networks and affiliated network providers. These services include: scheduling of tests or examinations; providing notice to claimants; processing, paying and objecting to bills. This section also describes the procedure when a case is controverted and the carrier will not pay any medical bills until the controversy is resolved.

Section 325-7.5 sets forth the procedures that must be followed to

require a claimant to obtain a diagnostic test or examination from a network facility. The claimant does not need to use an affiliated network provider when: the network does not have an affiliated network facility within a reasonable distance from the claimant's home or work; the network is unable to schedule the diagnostic test or examination within five (5) business days; when the case is controverted; prior to receiving notice; and in the event of a medical emergency. This section also prescribes the notice that must be given to an injured worker and to the injured worker's treating medical provider. This section requires that reports of a diagnostic test or examination be filed with all parties on the same day, and within three (3) business days of most tests. This section permits the claimant to choose any affiliated network provider to perform the diagnostic test or examination and to choose in consultation with his or her treating medical provider.

Section 325-7.6 provides that any diagnostic testing network or affiliated network facility that alters a report so as to misrepresent the injured worker's condition shall be ineligible from contracting with an insurance carrier as a diagnostic testing network.

Section 325-7.7 provides that no person or entity may interfere with the injured worker's selection of an affiliated network provider, and bars the insurance carrier from participation in the diagnostic testing or examination or the resulting reports.

Text of proposed rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, Office of General Counsel, 20 Park Street, Albany, New York 12207, (518) 486-9564, email: regulations@wcb.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.

Regulatory Impact Statement

1. Statutory authority: The Workers' Compensation Board (hereinafter referred to as Board) is authorized to amend 12 NYCRR 325-1.5 and 325-2.1, and to add a new 12 NYCRR Subpart 325-7. Workers' Compensation Law (WCL) Sections 13-a (7) and 117(1) authorize the Board to adopt reasonable rules consistent with and supplemental to the provisions of the WCL.

2. Legislative objectives: WCL Section 13-a (7) permits the State Insurance Fund, insurance carriers and self-insured employers to contract with diagnostic networks and require injured workers to utilize the networks for diagnostic testing. The proposed amendments to 12 NYCRR Sections 325-1.5 and 325-2.1 and the addition of 12 NYCRR Subpart 325-7 are in accordance with the legislative purpose of permitting the State Insurance Fund, insurance carriers and self-insured employers to contract with diagnostic networks and requiring injured workers to utilize the networks for diagnostic testing.

The statutory provisions regarding diagnostic testing networks are set forth in four subparagraphs of subdivision (7) of section 13-a.

Subparagraph (a) provides that an employer or carrier may contract with a legally and properly organized network or networks for the performance of diagnostic tests, x-ray examinations, magnetic resonance imaging or other radiological examinations or tests. The employer or carrier may require that injured workers use these diagnostic testing networks. There are two exceptions under WCL § 13-a(7)(a) when a claimant may not be required to use a diagnostic testing network: 1) when a medical emergency occurs; and 2) when the diagnostic testing network does not have an affiliated provider or facility “within a reasonable distance from the claimant's residence or place of employment, as defined by regulation of the Board.”

Subparagraph (b) provides that when an employer or carrier requires use of a diagnostic testing network by a claimant, the claimant must be given notice of this requirement by the carrier or employer when it supplies the claimant with the written statement of claimant's rights.

Subparagraph (c) provides that when a carrier or employer approves a request for authorization for a diagnostic test costing \$1000 or more, the employer or carrier, or if so delegated the diagnostic testing network, shall notify the physician requesting the authorization of the requirement regarding use of a diagnostic testing network, including contact information for the network and a list of affiliated facilities and providers, as defined by regulation of the Board. The claimant, in consultation with his or her treating physician, will determine the provider within the network to perform the diagnostic test.

Subparagraph (d) provides that the result of the diagnostic test must be sent to the requesting physician “immediately upon completion of the report detailing the results.”

3. Needs and benefits: The purpose of the proposed rule is to 1) ensure that injured workers receive timely and proper notification that they will be required to utilize a network diagnostic provider; 2) ensure that injured workers receive diagnostic testing expeditiously; and 3) assist the State Insurance Fund, carriers and self-insured employers in reducing the cost of

diagnostic testing, subsequently reducing premium costs for all employers in New York State. In addition, the proposed regulation clarifies and defines aspects of the statute in order to assist in its successful implementation.

The regulations identify what constitutes a “legally and properly organized” network or networks. There are a wide variety of business organization structures that may identify themselves as a diagnostic testing network. Such organizations may be a professional corporation or may be an independent practice association that contracts directly with providers to supply the diagnostic services. In addition, this provision attempts to address concerns regarding the corporate practice of medicine issues that may develop when physicians refer to a network that may then refer to a particular provider.

The regulations require and describe the notice to the claimant and requesting physician. The statute requires that the claimant receive notice when the employer supplies him or her with a written statement of claimant rights. This occurs at the commencement of the claim when the employer reports the accident to the Board. The statute requires that the requesting physician be given notice whenever he or she has requested prior authorization from the carrier or employer due to the cost of the test. The proposed regulations prescribe when notice is given, how notice is provided and prescribes the contents of the notice.

In addition, there were terms in the statute that were undefined and subject to differing interpretations. The proposed regulations define terms contained in the statute and relevant to the implementation of this process in an attempt to reduce friction between the parties. Examples of terms that are defined or explained in the proposed regulations are: reasonable distance from a claimant’s house, medical emergency, and diagnostic examination and test.

In addition, the proposed regulations create an exception for use of a diagnostic testing network when a claim is controverted and the carrier is denying payment for medical treatment. The proposed regulations articulate that a claimant may not be required to use a diagnostic testing network when the carrier or employer controverts the claim.

4. Costs: There are no projected costs to regulated parties who may be affected by the proposed regulation. There are no projected costs to the Board, State and local governments.

However, there may be savings to regulated parties by controlling the cost of diagnostic testing. Diagnostic testing networks and SIF have advised that the contracts between them provide for a discount of up to 50% in the current Medical Fee Schedule price for the identified diagnostic examinations and tests. The steep discounts are made in exchange for a volume increase in the number of referrals the diagnostic testing networks receive.

The proposed regulations have reserved authority to the Chair to conduct audits to ensure that the savings are being passed to New York State employers.

5. Local government mandates: The proposed regulation does not impose any mandate, duty or responsibility upon any municipality or governmental entity. Self-insured municipalities may use a diagnostic testing network at their election to achieve cost savings.

6. Paperwork: The proposed regulations require workers’ compensation carriers who use diagnostic testing networks to make annual reports to the Chair. The proposed regulations require diagnostic testing networks performing examinations and tests on injured workers to report annually to the Chair. Notice must be provided to the injured worker and treating medical providers by the carrier or the diagnostic testing network. There are no reporting or documentation requirements on insured employers, injured workers, or workers’ compensation carriers electing not to use a diagnostic testing network.

7. Duplication: There is no duplication of State or federal regulations or standards.

8. Alternatives: There were no significant alternative proposals under consideration. However the Board considered alternative approaches and made changes based on comments received from stakeholder groups to various subdivisions of the proposed regulations.

The Board considered several different options for providing notice to injured workers of the requirement to use a diagnostic testing network. Also considered was requiring employers to send a general notice to all employees. This approach was thought to be expensive as only a small percentage of employees file workers’ compensation claims, and it was thought that employees may forget about the notice if it is received before they are actually injured.

The Board considered not requiring insurance carriers to notify medical providers who prescribe diagnostic examinations and tests. However, medical providers often have a better understand of insurance requirements regarding networks than their patients, and thus it was determined that notice to medical providers and to claimant would create better compliance with the requirement to use diagnostic testing networks and thus achieve more savings for employers. Medical providers may receive

notice in one of two ways: either when a bill for treatment of a particular claimant is received, or through general notification using carriers databases of medical providers who treat workers’ compensation claimants.

Based on comments from medical professionals and in consultation with its Medical Director’s Office, the Board added to the types of illness or injuries that may warrant in-office x-ray as part of the ongoing treatment. The Board declined add medical professionals, other than orthopedic specialists, to the medical providers who may perform the in-office x-ray.

With respect to EMG/NCS studies, the Board extended the time for production of the report from three to seven days, based on comments received from diagnostic testing networks. In consultation with its Medical Director’s Office, the Board elected to require that EMG and NCS studies be performed by neurologists, and did not include orthopedic specialists or physical therapists as suggested by some stakeholder groups.

9. Federal standards: There are no applicable federal standards which address the standards contained in the proposed regulation.

10. Compliance schedule: The proposed regulation requires that carriers electing to use a diagnostic testing network provide the Board with information concerning the network and notify the affected parties prior to requiring use of the diagnostic testing network. In addition, diagnostic testing networks must supply the Board with the prescribed information prior to performing diagnostic examination and tests of workers’ compensation claimants pursuant to an agreement with a workers’ compensation carrier.

The proposed regulations will require claimant’s who receive proper notification to obtain prescribed diagnostic examination and tests from an affiliated network provider. However the regulation requires that the affiliated network provider be located within a reasonable distance from the claimant’s home or workplace.

Regulatory Flexibility Analysis

1. Effect of rule: The proposed regulation will not affect employers, as defined in WCL § 2(3), including the State, municipal corporations, fire districts, public authorities and political subdivisions, who appear before the Board on matters relating to Workers’ Compensation claims. The rule doesn’t directly impact small businesses or local governments as employers, though it is intended to bring down the cost of workers’ compensation coverage by reducing diagnostic testing costs. It may also impact medical practices that are small businesses by directing diagnostic testing to established networks and precluding injured workers from going to providers who are not affiliated with the carrier’s network.

2. Compliance requirements: The proposed regulation does not require any action by small businesses or local governments. The proposed regulation does not impose or require any reporting requirements or additional paperwork on the part of small businesses or local government. Local governments that are self-insured may elect to use a diagnostic testing network to reduce workers’ compensation costs. Such local governments would need to comply with the filing requirements contained in subdivision 325-7.2 of 12 NYCRR.

3. Professional services: Small businesses and local governments will not have to engage any professional services as a result of the proposed regulation.

4. Compliance costs: Small businesses and local governments will not incur any compliance costs as a result of this proposed regulation. It is anticipated that small businesses and local governments will experience a decrease in the cost of their workers’ compensation insurance premiums.

5. Economic and technological feasibility: Small businesses and local governments will not incur any capital costs or annual operating costs or be required to purchase or update technological equipment as a result of the proposed regulation.

6. Minimizing adverse impact: The proposed regulation will have no adverse economic impact on small businesses or local governments.

7. Small business and local government participation: Although the proposed regulation does not adversely impact on public or private entities, the Board requested comment on the proposed regulation from the Business Council of New York State, as well as the City of New York’s workers’ compensation division.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The proposed regulation should not affect employers, as defined in WCL § 2(3), in rural areas, including municipal corporations, fire districts, public authorities and political subdivisions, who appear before the Board on matters relating to Workers’ Compensation claims.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The proposed regulation does not require any action whatsoever by small businesses or local governments in rural areas. The proposed regulation does not impose or require any reporting requirements or additional paperwork on the part of small businesses or local

governments in rural areas. Small businesses and local governments in rural areas will not have to engage any professional services as a result of the proposed regulation.

3. Costs: Small businesses and local governments in rural areas will not incur any capital costs, annual operating costs or any compliance costs as a result of the proposed regulation. It is anticipated that small businesses and local governments in rural areas will experience a decrease in the cost of their workers' compensation insurance premiums.

4. Minimizing adverse impact: The proposed regulation will have no adverse economic impact on small businesses or local governments in rural areas.

5. Rural area participation: Although the proposed regulation does not adversely impact on public or private entities in rural areas, the Board has requested comment from entities in rural areas on the proposed regulation.

Job Impact Statement

1. Nature of impact: The proposed regulation will not have an adverse impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of diagnostic testing. While the proposed regulation may impact where claimants have diagnostic examinations and tests performed, the proposed regulations should not impact the number of diagnostic examinations and testing performed overall, or the number of employees needed to conduct such examinations and tests.

2. Categories and numbers affected: The proposed regulation should have no affect on medical personnel currently employed in the diagnostic testing field. The Board is unable to determine what affect the proposed regulation may have on the employment of medical personnel in the future.

3. Regions of adverse impact: The proposed regulation does not have an adverse impact on jobs or employment opportunities anywhere in the State, therefore, no region is disproportionately affected by the proposed regulation.

4. Minimizing adverse impact: The proposed regulation will have no adverse impact on existing jobs or the development of new employment opportunities.