missioner is authorized to make grants to the regional poison control centers to assist them with meeting operational costs related to providing poison control consultation to health care professionals and the public. Pursuant to the PHL section 2807-l(1)(c)(iv), the commissioner is further authorized to make distributions from the HCI pool to the poison control centers up to the amounts specified for the given calendar year. Under the current regulation set forth in 68.6(e), any funds allocated to the regional poison control centers for a given calendar year that remain unexpended are to be rolled over to next subsequent calendar year to be made available for distribution in accordance with the methodology defined in subdivision (a) of section 68.6.

However, Chapter 58 of the Laws of 2005 amended SFL by adding a new section 92-dd to Article 6 that established a fund in the joint custody of the comptroller and the Department known as the Health Care Reform Act (HCRA) Resources Fund. This HCRA Resources Fund is composed of, in part, the HCRA program account which includes the HCI Pool. Effective on and after April 1, 2005, section 92-dd requires that disbursements from the HCRA Resources Fund to any HCRA program must be made in accordance with appropriations enacted by the legislature. Accordingly, the HCI Pool grant distributions to the poison control centers must be made in accordance with SFL section 40(2)(a), which outlines the period for which appropriations are to be made, and section 40(3)(b), which provides a lapse date for use of all aid to localities appropriations including special revenue funds such as the HCRA Resources Fund.

Accordingly, the rollover of unexpended HCRA funds allocated to the poison control centers for a given calendar year to the next subsequent calendar year, as currently provided for in 68.6(e), is no longer permitted. Such unused funds must lapse at the end of each fiscal year as provided for in SFL section 40(2)(a) and section 40(3)(b).

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedures act since it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation serves only to eliminate the rollover of poison control center HCRA program funds allocated for a given calendar year to the funds available for disbursement for the subsequent calendar year. State Finance Law as amended by Chapter 58 of the Laws of 2005 requires such unexpended funds to lapse at the end of each fiscal year.

Insurance Department

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Workplace Safety and Loss Prevention Incentive Program

I.D. No. INS-20-09-00011-P

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

Proposed Action: Amendment of Subpart 151-3 (Regulation 119) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301 and 308; and L. 2007, ch. 6

Subject: Workplace Safety and Loss Prevention Incentive Program.

Purpose: To establish Workers' Compensation premium credits for certain employers that implement safety and loss prevention programs.

Text of proposed rule: A new subpart 151-3 is added to read as follows:

Section 151-3.1 Preamble.

(a) In March 2007, the Legislature enacted Chapter 6 of the Laws of 2007, which reformed New York's workers' compensation system. Chapter 6 amended Workers Compensation Law § 134(6), to state that employers insured through the state insurance fund (except those who are current policy holders in a recognized safety group) or any other insurer that issues policies of workers' compensation insurance, shall be eligible for a credit in workers' compensation insurance premiums if the employer implements any of the following:

(1) a safety incentive program that conforms to regulations promulgated by the Commissioner of Labor;

(2) a drug and alcohol prevention program that conforms to regulations issued by the Commissioner of Labor, in consultation with the office of alcoholism and substance abuse services; or

(3) a return to work program that conforms to regulations issued by the Commissioner of Labor.

(b) Pursuant to the statute, the Commissioner of Labor promulgated 12 NYCRR 60 ("Industrial Code Rule 60"). Industrial Code Rule 60 sets forth the minimum requirements for an acceptable safety incentive program, drug and alcohol prevention program, and a return to work program. Workers Compensation Law § 134(6)(c) requires the superintendent to promulgate regulations establishing the premium credit for those programs, and include provisions for recertification on an annual basis.

(c) The superintendent will review the information submitted by insurers pursuant to this Part to evaluate whether the credit amounts specified in this Part continue to be appropriate and reflective of actual loss and experience and expenses.

Section 151-3.2 Definitions.

In this Part:

(a) Credit means credit in workers' compensation insurance premium provided to an insured employer that implements an approved WSLPIP.

(b) Industrial Code Rule 60 means the rule promulgated by the Commissioner of Labor as 12 NYCRR 60.

(c) Renewal year means the year in which an insured employer renews the credit pursuant to 12 NYCRR 60-1.7.

(d) Workplace safety and loss prevention incentive program or WSLPIP means, pursuant to 12 NYCRR 60, a qualifying:

(1) safety incentive program;

(2) drug and alcohol prevention program; or

(3) return to work program.

Section 151-3.3 Employer safety incentive program credit for first three consecutive years.

For each policy of workers' compensation insurance issued or renewed in the state, an insurer shall provide credit to an insured employer that implements and maintains a safety incentive program, which meets the requirements of Industrial Code Rule 60. The credit shall be:

(a) four percent in the first full year in which the insured is entitled to a credit;

(b) two percent in the second consecutive full year for which the insured is entitled to a credit; and

(c) one percent in the third consecutive full year for which the insured is entitled to a credit.

Section 151-3.4 Employer drug and alcohol prevention program credit for first three consecutive years.

For each policy of workers' compensation insurance issued or renewed in the state, an insurer shall provide credit to an insured employer that implements and maintains a drug and alcohol prevention program, which meets the requirements of Industrial Code Rule 60. The credit shall be:

(a) two percent in the first full year for which the insured is entitled to a credit;

(b) one and one-half percent in the second consecutive full year for which the insured is entitled to a credit; and

(c) one percent in the third consecutive full year for which the insured is entitled to a credit.

Section 151-3.5 Employer return to work program credit for first three consecutive years.

For each policy of workers' compensation insurance issued or renewed in the state, an insurer shall provide credit to an insured employer that implements and maintains a return to work program, which meets the requirements of Industrial Code Rule 60:

(a) four percent in the first full year for which the insured is entitled to a credit;

(b) two percent in the second consecutive full year for which the insured is entitled to a credit; and

(c) one percent in the third consecutive full year for which the insured is entitled to a credit.

Section 151-3.6 WSLPIP credit in a renewal year.

For each policy of workers' compensation insurance issued or renewed in the state, an insurer shall provide a two-percent credit in each renewal year for any WSLPIP approval that an insured has obtained pursuant to 12 NYCRR 60-1.7.

Section 151-3.7 Credit for years other than the first, second, and third consecutive years, or renewal year.

For each policy of workers' compensation insurance issued or renewed in the state, an insurer shall provide a one-percent credit in any year other than the first, second, or third consecutive years or a renewal year in which the insured employer is entitled to a credit.

Section 151-3.8 Deviation from premium credit amount.

An insurer, upon written application to the superintendent, may deviate from the credit, provided that the superintendent approves the deviation in accordance with, and pursuant to, the standards set forth in Insurance Law Article 23.

Section 151-3.9 Credit for Employers with more than one WSLPIP.

For each insured with more than one WSLPIP, an insurer shall add all credits to which the insured is entitled for a total combined credit amount.

Section 151-3.10 Amount of credit for a WSLPIP when not implemented for consecutive years.

(a) An insured that ceases to maintain a previously approved WSLPIP for less than four years shall, upon application pursuant to 12 NYCRR 60-1.6, be eligible for a credit in an amount equal to the amount that the insured would have been entitled to as if the insured had continuously maintained the WSLPIP.

(b) An insured that ceases to maintain a previously approved WSLPIP for four or more years shall, upon application pursuant to 12 NYCRR 60-1.6, be eligible for a credit in an amount equal to the amount that the insured would have been entitled to as if the insured were a new entrant into the WSLPIP.

Section 151-3.11 Provision of Initial Approval Certificate and Annual Credit Recertification

(a) An insurer shall require an insured that receives a credit pursuant to Industrial Code Rule 60 and this Part to provide the insurer with the certificate of approval issued pursuant to 12 60-1.6(e) of Industrial Code Rule 60.

(b) An insurer shall require an insured that receives a credit pursuant to Industrial Code Rule 60 and this Part to recertify the credit by annually submitting to the insurer the verification submitted to the Department of Labor pursuant to 12 NYCRR 60-1.8.

Section 151-3.12 Reporting Requirements

An insurer providing a credit pursuant to this Part shall report annually to the superintendent and the Commissioner of Labor, in a form prescribed by the superintendent, the total number of employers insured during the prior year that received a premium credit for each WSLPIP program, and the total amount of the credit provided by the insurer.

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

Data, views or arguments may be submitted to: Michael Rasnick, New York State Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-7474, email: mrasnick@ins.state.ny.us

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: The Superintendent's authority for the promulgation of Part 151-3 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Second Amendment to Regulation No. 119) derives from Sections 201 and 301 of the Insurance Law, and Chapter 6 of the Laws of 2007. These provisions establish the Superintendent's authority to regulate workers' compensation premium rates.

Workers' Compensation Law § 134(6) directs the Superintendent to establish premium credits for certain employers insured through the State Insurance Fund (SIF) or any other insurer that issues policies of workers' compensation insurance if the employers implement a safety incentive plan, drug and alcohol prevention program, or a return to work program.

2. Legislative objectives: In March 2007, the Legislature enacted Chapter 6 of the Laws of 2007, which reformed the New York workers' compensation system. Chapter 6 amended Workers Compensation Law § 134(6), to state that employers insured through SIF (except those who are current policy holders in a recognized safety group) or any other insurer that issues policies of workers' compensation insurance, shall be eligible for a credit in workers' compensation insurance premiums if the employer implements any of the following: (1) a safety incentive plan, that has been recommended by a safety and loss management specialist after such specialist has been certified by the Commissioner of Labor, or if such plan otherwise conforms to regulations promulgated by the Commissioner of Labor; (2) a drug and alcohol prevention program that conforms to regulations issued by the commissioner of labor, in consultation with the office of alcoholism and substance abuse services; and (3) a return to work program that conforms to regulations issued by the commissioner of labor.

Pursuant to Workers Compensation Law § 134(6), the Commissioner of Labor promulgated 12 NYCRR 60 ("Industrial Code Rule 60"). Industrial Code Rule 60 sets forth the minimum requirements for an acceptable Safety Incentive Program, Drug and Alcohol Prevention Program, and a Return to Work Program. In conjunction therewith, Workers Compensation Law § 134(6)(c) requires the Superintendent to promulgate regulations establishing the premium credit for those programs, and include provisions for recertification on an annual basis.

3. Needs and benefits: Workers Compensation Law § 134(6)(c) requires the Superintendent to promulgate regulations establishing the premium credits for a safety incentive program, drug and alcohol prevention program, and a return to work program, and to include provision for recertification on an annual basis. This regulation is necessary to establish the premium credit amount, and to require insureds to recertify their eligibility under the programs.

4. Costs: To insurers: Workers Compensation Law § 134(6)(c) requires the Superintendent to promulgate regulations establishing the premium credits for a safety incentive program, drug and alcohol prevention program, and a return to work program. The cost to insurers is determined by the size of the credits, the level of participation by policy holders in the workplace programs, and the effectiveness of the individual programs at reducing eliminating and mitigating workplace injuries and the cost of workplace injuries. If an employer's program or programs lead to a lower number of injuries or a reduction in the severity of injuries, the credit or credits provided by the insurer will be offset by a reduction in workers' compensation costs. On the other hand, if an employer's program or programs fail to result in a lower number of injuries or a reduction in the severity of injuries, the credit or credits provided by the insurer will not be offset by any savings in workers' compensation costs. The Department exercised its judgment to arrive at a credit amount that was both conservative yet meaningful enough to provide employers an incentive to implement the voluntary programs.

The regulation requires workers' compensation insurers to file reports with both the Superintendent of Insurance and the Commissioner of Labor, setting forth the number of employers insured in the previous year that received a credit, and the total credit amount the insurer granted. The costs to most insurers to make such a filing will be minimal, since they must report the same information to the DOL. The DOL and the Department each needs to collect the data so that each agency can assess the efficacy of the programs in terms of level of participation in the programs, as well as in reducing worker's compensation costs, respectively. Furthermore, the Workers' Compensation Rating Board will file the credit with the Insurance Department on behalf of all workers' compensation insurers. Therefore, the cost to each insurer will be minimal.

To employers: The program is a voluntary program; therefore, an employer's costs associated with implementing the program, and any fees that an employer must pay to the Department of Labor ("DOL") in order to receive certification, are discretionary. However, because the regulation mandates all workers' compensation insurers to require insureds to submit to the insurer documents for certification and re-certification, an employer may incur minimal filing costs, though the savings received through the premium credits would more than offset such minimal costs.

There are a variety of ways an employer may choose to implement any of the programs in this legislation. The employer has the option to: 1) use its own resources to establish a WSLPIP; 2) establish a program with the assistance of its insurer; 3) adopt a model program deemed by the DOL to comply with this Industrial Rule 60; or 4) use a specialist or the DOL's trained personnel to assist in establishing a WSLPIP. Unionized employers may operate a WSLPIP in conjunction with the union that represents their employees. Preexisting programs that meet the criteria established in Industrial Code Rule 60 are eligible for the incentive.

An employer must implement a program, and the program must undergo a consultation and evaluation by a specialist or DOL staff, before the employer applies to the DOL for approval. Employers have several options for conducting the consultation and evaluation, including: 1) seeking their own DOL certification to implement and verify the appropriate program, 2) contracting with a specialist in the appropriate safety or loss prevention field, 3) consulting with a specialist employed by the employer's insurance carrier or a representative of the bargaining unit who can evaluate the program, or 4) requesting DOL staff to conduct an evaluation. In most cases, the cost of the consultation and evaluation will be determined by supply and demand.

The DOL proposes to charge $100 per hour for consultation and evaluation services for each of the three WSLPIPs. The DOL estimates that the review of the safety incentive programs will require several hours of staff time. Consultation and evaluation costs of the drug and alcohol abuse program and return to work programs and the credits given for such programs are expected to be lower and, therefore, the DOL capped those charges at $300 for employers with less than $50,000 in annual premiums. The DOL believes that its fee schedule is lower than what is charged by specialists/consultants in the private sector.

As an additional incentive for employers to apply for these credits, the DOL proposed an application fee of $100, which is discounted to $50 for employers with annual policy premiums of $10,000.00 or less. The discount particularly will help small businesses, as defined by the New York State Administrative Procedure Act (SAPA). The fee is waived if the employer chooses to use DOL staff for the consultation and evaluation. The renewal application fee is set at $100, and small employers are charged a discounted fee of $50 for renewals. These application fees are below the expected cost of administering this program. These fees, are not imposed pursuant to this regulation but are established under Industrial Code Rule 60.

5. Local government mandates: This regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district. However, local governments that are not self-insured may elect to participate in the program to reduce their workers' compensation premiums.

6. Paperwork: This regulation requires workers' compensation insurers to file reports with both the Superintendent of Insurance and the Commissioner of Labor, setting forth the number of employers insured in the previous year that received a credit, and the total credit amount the insurer granted. In addition, the regulation mandates all workers' compensation insurers to require insureds to submit to the insurer documents for certification and re-certification.

7. Duplication: This regulation does not duplicate any existing law or regulations but complements DOL's Industrial Code Rule 60 (11 NYCRR 60).

8. Alternatives: The Department does not have any statistical data to determine the credit percentages. However, because the Workers' Compensation Law mandates the Superintendent to grant a credit, the Department exercised its judgment to arrive at a credit amount that was both conservative yet meaningful enough to provide employers an incentive to implement the voluntary programs. When employers implement effective loss control programs--such as the safety incentive plan, drug and alcohol prevention program, or the return to work program--the programs may result in lower loss experience, and thereby lower workers' compensation insurance premiums for employers. If an employer implements the three programs together, then the employer will receive a combined premium credit of 10% in the first year—a significant reduction in workers' compensation premiums.

The Department believes that the safety incentive and return to work programs have a greater possibility of reducing workers' compensation costs than drug and alcohol prevention program. Therefore, the up-front premium credits for these two programs are greater than the up-front premium credit for the drug and alcohol prevention program. In addition, some insurers are already authorized to offer a five percent premium credit under their drug free workplace rating plans.

The credits for the safety incentive program, the drug and alcohol prevention program, and the return to work program decrease over the first three consecutive years of a program's existence because the experience rating plan will incorporate the employer's actual loss experience into the premium separate and apart from the credits authorized by this regulation. Indeed, the experience rating plan provides a powerful economic incentive for employers for reduce the number and severity of workplace injuries.

The Department considered phasing the credits down to zero by the fourth consecutive year of a program's existence because of the experience rating plan but concluded that the programs, if implemented correctly, could continue to drive down worker's compensation costs beyond three years so that a smaller credit or credits should continue so long as the programs remain in effect. The Department also recognizes the possibility that an employer's program, although implemented correctly and followed in the outmost good faith, may not prevent that employer from experiencing higher than expected workers compensation injuries.

The Department also exercised its judgment to provide an additional 1% credit in the renewal year as a further incentive to employers to continue participating in one or more of the programs and to help offset any additional costs associated with renewing the program or programs with the Department of Labor.

The Workers' Compensation Rating Board will be collecting the data on the WSLPIP to facilitate the analysis of the credit experience. The Superintendent also will review the information submitted by insurers pursuant to the regulation in order to evaluate the appropriateness of the credits and make any necessary modifications.

9. Federal standards: There are no applicable federal standards.

10. Compliance schedule: WSLPIP is a voluntary program. Employers that choose to participate can be expected to act in an expeditious manner to qualify for premium discounts. However, insurer participation is not voluntary. Therefore, the Workers' Compensation Rating Board must file the credit with the Insurance Department on behalf of all workers compensation insurers recognizing the credits for the programs. Because the Workers' Compensation Rating Board files on behalf of all insurers doing a workers compensation business in this state, compliance will be expeditious. Nevertheless, an insurer voluntarily may file deviations from the filed rates.

Regulatory Flexibility Analysis

1. Small businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses.

The rule is directed at workers' compensation insurers authorized to do business in New York State, none of which fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of workers' compensation insurers, and believes that none of them falls within the definition of "small business", because there are none that are both independently owned and have less than one hundred employees. Nor does the New York Compensation Insurance Rating Board ("CIRB"), which is also effected by the regulation, come within the definition of "small business" found in section 102(8) of the State Administrative Procedure Act.

The rule requires a mandatory credit in workers' compensation premiums for those employers insured through the State Insurance Fund (except for those who are current policyholders in a recognized safety group), or any other insurer, if they voluntarily implement any of the following: a safety incentive plan, drug and alcohol prevention program, and a return to work program. Some of the employers are small businesses.

The program is a voluntary program; therefore, a small business employer's costs associated with implementing the program, and any fees that an employer must pay to the Department of Labor ("DOL") in order to receive certification, are discretionary. However, because the regulation mandates all workers' compensation insurers to require insureds to submit to the insurer documents for certification and re-certification, an employer may incur minimal filing costs, though the savings received through the premium credits would more than offset such minimal costs.

If the employer uses an independent specialist for consultation and evaluation, the cost will be determined by supply and demand. Nevertheless, the DOL will: 1) lower its fees for consultation and evaluation services, 2) waive its application fees for employers who use the DOL for consultation and evaluation, and 3) set DOL application fees below its administrative costs in order to make WSLPIP a cost effective alternative for employers. To lower the cost for small employers, the cost of the consultation and evaluation services provided by the DOL for the return to work program and the drug and alcohol prevention program will be no more than $300 for employers with annual premium payments of less than $50,000. The DOL anticipates that consultation and evaluation for the safety incentive program requires additional hours of work by the DOL staff, and, therefore, the DOL did not cap the evaluation and consultation fees for that program. An employer that seeks an incentive for more than one program can lower costs by implementing all three programs together and thereby save on consultation and evaluation fees. Application fees per program are only $100 with a discount of $50 for employers with annual premiums of less than $10,000. The discount particularly will help small businesses, as defined by the State Administrative Procedure Act. These fees are not imposed pursuant to this regulation but are established under Industrial Code Rule 60.

2. Local governments:

The regulation does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments. However, local governments that are not self-insured may elect to participate in the program to reduce their workers' compensation premiums.

Rural Area Flexibility Analysis

The entities covered by this regulation - workers' compensation insurers authorized to do business in New York State - do business in every county in this state, including rural areas as defined under SAPA 102(10). This regulation requires a credit in workers' compensation premiums for those employers insured through the State Insurance Fund (except for those who are current policyholders in a recognized safety group), or any other insurer, if the employer voluntarily implements any of the following: a safety incentive plan, drug and alcohol prevention program, and a return to work program. Workers Compensation Law § 134(6)(c) requires the Superintendent to promulgate regulations establishing the premium credit for those programs, and include provisions for recertification on an annual basis.

The regulation effects all employers required to maintain workers' compensation insurance in the state, including those doing business in rural areas.

The program is a voluntary program; therefore, a small business employer's costs associated with implementing the program, and any fees that an employer must pay to the Department of Labor ("DOL") in order to receive certification, are discretionary. However, because the regulation mandates all workers' compensation insurers to require insureds to submit to the insurer documents for certification and re-certification, an employer may incur minimal filing costs, though the savings received through the premium credits would more than offset such minimal costs If the employer uses a specialist for consultation and evaluation, the cost will be determined by supply and demand. Nevertheless, the DOL will: 1) lower its fees for consultation and evaluation services, 2) waive its application fees for employers who use the DOL for consultation and evaluation, and 3) set DOL application fees below its administrative costs in order to make

WSLPIP a cost effective alternative for employers. To lower the cost for small employers, the cost of the consultation and evaluation services provided by the DOL for the return to work program and the drug and alcohol prevention program is limited to $300 for employers with annual premium payments of less than $50,000. The DOL anticipates that consultation and evaluation for the safety incentive program requires additional hours of work by the DOL staff, and, therefore, the DOL did not cap the evaluation and consultation fees for that program. An employer that seeks an incentive for more than one program can lower costs by implementing all three programs together and thereby save on consultation and evaluation fees. Application fees per program are only $100 with a discount of $50 for employers with annual premiums of less than $10,000. The discount particularly will help small businesses, as defined by the State Administrative Procedure Act. These fees, are not imposed pursuant to this regulation but are established under 12 NYCRR Pt. 60 ("Industrial Code Rule 60").

The regulation contains no provisions that create impacts unique to rural areas of the state.

Job Impact Statement

This rule will not adversely impact job or employment opportunities in New York. It requires a mandatory credit in workers' compensation premiums for those employers insured through the State Insurance Fund (except for those who are current policyholders in a recognized safety group), or any other insurer, if the employers, among other things, implement a safety incentive plan, drug and alcohol prevention program, and a return to work program.

If there is any impact on jobs and employment opportunities in this state, it should be a positive one, since it enhances the health and safety of workers in the State of New York and provides lower workers' compensation insurance premiums for employers who qualify for a premium credit or credits.

Department of Labor

EMERGENCY RULE MAKING

New York State Worker Adjustment and Retraining Notification Act (WARN)

I.D. No. LAB-07-09-00013-E

Filing No. 446

Filing Date: 2009-04-29

Effective Date: 2009-04-29

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

Action taken: Addition of Part 921 to Title 12 NYCRR.

Statutory authority: Labor Law, section 860-f

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

Specific reasons underlying the finding of necessity: The effective date of the regulations coincides with the effective date of their authorizing legislation, the New York Worker Adjustment and Retraining Notification (WARN) Act, a new law that becomes effective February 1, 2009. The Act governs the provision of notice to certain employees who will lose employment through plant closings, mass layoffs, or reductions in work hours. The purpose of the authorizing statute is to ensure that the employees are aware of future actions that will affect their employment so that they can take steps to secure new employment, be retrained for more readily available work, and otherwise make arrangements to provide for their needs and those of their families when their employment ends. The law is also intended to ensure the ability of the Department of Labor and its partner, the Workforce Investment Board, to provide Rapid Response services to the affected employees prior to their employment loss. These services include providing employees with information regarding unemployment insurance, job training, and reemployment services. These regulations fill in gaps found in the law in order to more fully inform employees of their obligations and workers of their rights under the law.

The emergency promulgation of these regulations is necessitated by the dramatic job losses currently being suffered within the state, the need to ensure that the notice requirements detailed in the regulation are available to protect workers affected by such job losses, and the needs to provide reemployment services to these workers in order to return them quickly to work. In the last quarter of 2008, New York State lost 102,900 private sector jobs, including 49,300 in December alone. This is the steepest one-month drop since October 2001 in the aftermath of the World Trade Center attacks. Since the beginning of the national recession in December 2007, the number of unemployed in the state has increased by more than 50% and is at its highest level since October 1993. New York State's unemployment rate, after seasonal adjustment, increased from 6.0 percent in November 2008 to 7.0 percent in December 2008 -- its highest level since June 1994.

The impact of these job losses on workers, their families, and their communities can be staggering, more so if workers are unaware that plant closings and layoffs are coming. The state WARN Act is designed to give workers time to avoid long periods of unemployment by affording them time to search for new work, retrain for more secure long-term employment, and take advantage of reemployment services which will ensure a quick return to work after their former employment ends. The proposed rules will ensure timely notice to the Department and early intervention of Rapid Response teams in situations involving employment losses so that workers can quickly transition into new employment or retraining following the loss of their jobs. Such activities also avoid or shorten periods of unemployment, thereby reducing employer charges associated with the receipt of unemployment insurance by their former employees. On the other hand, employees need to know of the availability of unemployment insurance benefits following these employment losses since the program is designed to provide an economic safety net to the workers and their families. All efforts that will quickly transition workers into new employment when their former jobs end, or that ensure some continued income during unemployment, will allow workers to continue to make needed purchases such as housing, food, heat and other utilities and to maintain the payment of school and property taxes that support their local community.

Enacting emergency regulations, which will immediately clarify the scope, timing, and content of the notice requirements, supports the goals set forth above and protects the general welfare of the state.

Subject: New York State Worker Adjustment and Retraining Notification Act (WARN).

Purpose: To provide government enforcement and more advance notice to a larger number of workers than under the federal WARN law.

Substance of emergency rule: The proposed rule creates a new section of regulations designated as 12 NYCRR Part 921 entitled ''New York State Worker Adjustment and Retraining Notification Act'' created under Chapter 475 of the Laws of 2008. This Act requires employers of fifty (50) or more employees to provide at least ninety (90) days notice to affected employees and representatives of affected employees, the New York State Department of Labor, and local workforce partners before ordering a plant closing, mass layoff, or reduction in work hours that falls within the employment losses covered by the law. At least twenty-five (25) employees must be affected for the notice requirement to be triggered. The rule contains exceptions to the notice requirement for certain employers who are making good faith efforts to avoid employment losses and have reasonable expectation that these efforts will successfully forestall the plant closing, mass layoff, or reduction in work hours.

Many employers in the State are already subject to the federal WARN Act (29 USC §§ 2101 - 2109 and 20 CFR 639.3). The State WARN Act expands the notice requirements to a larger group of employers and, concomitantly, extends its protections to more employees. The State Act also gives the Commissioner of Labor the authority to enforce the law on behalf of affected employees who did not receive appropriate notice of a plant closing, mass layoff, or covered reduction in work hours from their employer in violation of the law. Labor Law § 860-f(1) states that the Commissioner of Labor ''shall prescribe such rules as may be necessary to carry out this article.''

Subpart 921-1, entitled ''Purpose and Definitions'' sets forth the purpose and defines the terms used in the part. Section 921-1.1(d) defines ''employer'' as ''any business enterprise, whether for-profit or not-for-profit, that employs fifty (50) or more employees within New York State, excluding part-time employees, or fifty (50) or more employees within the state that work in aggregate at least 2,000 hours per week.'' Section 92 1-1.1(a) defines ''affected employee'' as ''an employee who may reasonably be expected to experience an employment loss as the result of a proposed plant closing, mass layoff, relocation, or covered reduction in hours by the employer.''

Subpart 921-2, entitled ''Notice,'' requires covered employers to provide notice to affected employees at least 90 calendar days prior to an event that triggers the notice requirement. This section enumerates the factors that trigger the notice requirement. It further spells out the contents of the notice, how notice is to be served and who must receive notice.

Subpart 921-3, entitled ''Extension or Postponement of Mass Layoff Period'' requires an employer to give additional notice if the triggering