

Express Terms

Part 325

Glyphosate prohibition and exemption on state property

6 NYCRR Part 325 is amended to read as follows:

Section 325.1 through Section 325.41 remain unchanged.

A new section 325.42 is added to read as follow:

Section 325.42-Glyphosate use on state property

(a) Definitions. As used in this section, the following terms have the following meanings:

(1) “Contractor” means any person that agrees to conduct work under the terms of a contract with a state department, state agency, or public benefit corporation.

(2) “Critical infrastructure” means systems, assets, places, environmental resources, or things so vital to the State that the disruption, incapacitation or destruction of such systems, assets, places, or environmental resources, could jeopardize the health, safety, welfare, or security of the State, its residents, its environment, or its economy.

(3) “Critical native plant species” means any plant species identified by the New York State Natural Heritage Program under Environmental Conservation Law Section 11-0539 with a subnational ranking as critically imperiled, imperiled, or vulnerable; or any plant species identified as endangered, threatened, or rare in 6 NYCRR Section 193.3 under Environmental Conservation Law Section 09-1503; or as identified by the Department.

(4) "Ecosystem" means a dynamic complex of plant, animal, and microorganism communities and the nonliving environment, interacting as a functional unit.

(5) "Ecosystem health" means the ability of the ecosystem to be stable or resilient to stress primarily caused by human activities.

(6) "Habitat" means the environment in which a plant, animal, or other organism lives and grows.

(7) "Invasive species" means any species identified under Environmental Conservation Law Section 9-1709 or as identified by the Department.

(8) "Location" means the physical address of the property on which the pesticide is applied or, if a specific physical address does not exist a description of the application area including street names, county, municipality, zip code, and other identifying features.

(9) "Noxious plant" means any plant that can directly or indirectly injure or cause damage to natural resources or the environment.

(10) "Pests of significant public health importance" means any pest recognized as a pest of concern to a local, state, or federal public health program or the Department; for example, Giant Hogweed, Poison Ivy, and ticks.

(11) "Public benefit corporation" means a corporation organized to construct or operate a public improvement wholly or partly within the state, the profits from which inure to the benefit of this or other states, or to the people thereof.

(12) "State agency" means any executive or regulatory body of New York State designated as an agency.

(13) "State department" means any state agency designated as a "department" by name.

(14) "State property" means any New York State-owned real property operated by a state department, state agency, or public benefit corporation, including only surface waters of the State that are fully contained within

the boundaries of New York State-owned real property operated by a state department, state agency, or public benefit corporation.

(15) “Subcontractor” means any person that agrees to conduct work under the terms of a contract for a contractor hired by a state department, state agency, or public benefit corporation.

(b) Requirements: As provided in subdivision 12 of Environmental Conservation Law Section 33-1301, any state department, state agency, public benefit corporation, contractor, or subcontractor may only apply glyphosate on state property if the state department, state agency or public benefit corporation demonstrates that all of the conditions in paragraphs one through five of this subdivision are met prior to such application.

(1) The state department, state agency or public benefit corporation must document that the application is necessary for one of the uses listed in subparagraphs 325.42(b)(1)(i) through (iv) below:

(i) to maintain critical infrastructure;

(ii) to maintain roadside vegetation to ensure public safety;

(iii) to manage habitat for one of the following purposes listed in clauses 325.42(b)(1)(iii)‘a’ through ‘d’ below:

(‘a’) control invasive species:

(‘b’) control pests of significant public health importance;

(‘c’) control noxious plants injurious to ecosystem health; or

(‘d’) protect critical native plant species; or

(iv) conduct research into the environmental motility of glyphosate or to develop suitable alternatives to glyphosate for agricultural and environmental uses.

(2) The state department, state agency, or public benefit corporation must develop a human exposure assessment documenting that there will be no actual or significant threat of direct human exposure to glyphosate. This human exposure assessment must address:

(i) Potential settings and pathways of exposure to glyphosate for pesticide applicators, on-site workers, and the public;

(ii) Procedures used to prevent direct human exposures to glyphosate including:

(‘a’) Following precautionary statements contained in the pesticide label directions; and

(‘b’) Implementing site-specific human exposure precautions warranted for the specific application. Site specific human exposure precautions may include the use of visual markers, barriers, or other means to prevent human exposure to glyphosate; and

(iii) An update to the human exposure assessment, prior to the application of glyphosate, if any conditions of the human exposure assessment are modified.

(3) Any person that applies glyphosate on state property for or on behalf of a state department, state agency, or public benefit corporation must apply glyphosate in accordance with the procedures described in the human exposure assessment developed by the state department, state agency, or public benefit corporation for which or on whose behalf glyphosate is being applied.

(4) The state department, state agency or public benefit corporation must develop a glyphosate alternatives analysis demonstrating that there are no effective and practicable alternatives to the use of glyphosate. This glyphosate alternatives analysis must address, at a minimum, the following factors related to using glyphosate and its alternatives:

(i) a description of costs;

- (ii) resource requirements for pest control;
- (iii) availability of pesticide products;
- (iv) toxicity to humans and non-target organisms;
- (v) environmental effects; and
- (vi) an update to the glyphosate alternatives analysis, prior to the application of glyphosate, when any of the conditions of the glyphosate alternative assessment are modified.

(5) Any person that applies glyphosate on state property for or on behalf of a state department, state agency, or public benefit corporation must apply glyphosate in accordance with the glyphosate alternative analysis developed by the state department, state agency, or public benefit corporation for which or on whose behalf glyphosate is being applied.

(c) Documentation. A state department, state agency, or public benefit corporation seeking to apply or hire a contractor or subcontractor to apply glyphosate on state property, must document prior to the application that all the conditions in subdivision 325.42(b) are met.

(1) This documentation must include the following information:

- (i) the planned date(s) or date range of the application(s);
- (ii) the justification(s) for the application as required by paragraph 325.42(b)(1);
- (iii) the application location(s);
- (iv) the target pest(s);
- (v) the human exposure assessment as required by paragraph 325.42(b)(2); and
- (vi) the glyphosate alternatives analysis as required by paragraph 325.42(b)(4).

(2) This documentation must be kept for a minimum of three years following the date(s) of the application(s) and must be available for inspection upon request by the department.

(d) Reporting. When glyphosate is applied to state property, the state department, state agency, or public benefit corporation must send an annual glyphosate use report to the department by January 15 for the prior calendar year.

(1) This report must be in a digital or electronic format established or accepted by the department and include the following information:

(i) official name of the state department, state agency, or public benefit corporation;

(ii) pesticide agency or pesticide business registration number, if applicable;

(iii) pesticide product name;

(iv) the United States Environmental Protection Agency registration number of the pesticide product;

(v) amount of pesticide product applied; and

(vi) location of application.

(2) A copy of this report must be kept for a minimum of three years following the date(s) of the application(s) and must be available for inspection upon request by the department.

SUMMARY REGULATORY IMPACT STATEMENT

This proposed rulemaking is required by subdivision 12 of Section 33-1301 of the Environmental Conservation Law (ECL) and will revise 6 NYCRR Part 325 by adding Section 325.42 to address the prohibition and exemptions from prohibition of glyphosate use by state departments, state agencies, public benefit corporations, or any pesticide applicator hired as a contractor or subcontractor on state property.

1. LEGISLATIVE OBJECTIVES

The New York State Legislature developed this legislation to protect the health, safety, and wellbeing of the residents of the state from the potential impacts of the pesticide glyphosate, while permitting its application under certain defined circumstances for critical uses.

3. NEEDS AND BENEFITS

Glyphosate is a broad-spectrum herbicide active ingredient with approximately 200 products registered in New York State. Glyphosate is commonly used by state departments, state agencies, and public benefit corporations for various vegetation control projects.

There has been discussion and debate over the last several years regarding glyphosate being a possible human carcinogen and potentially contributing to Non-Hodgkin's Lymphoma or Chronic Lymphocytic Leukemia. The World Health Organization's International Agency for Research on Cancer described glyphosate as a probable human carcinogen. However, the United States Environmental Protection Agency (USEPA) released the

glyphosate interim decision affirming that glyphosate is unlikely to be a human carcinogen and did not identify risks or concerns to human health when glyphosate products are used according to the label directions.

To address the potential health impacts and the public perception associated with glyphosate use the New York State Legislature deemed it in the public interest to prohibit the use of glyphosate on state properties. To achieve this, they passed legislation in 2020 creating chapter 378 of the laws of 2020, which established a new subdivision 12 of Section 33-1301 of the ECL that completely prohibited the application of glyphosate by state departments, state agencies, public benefit corporations, their contractors, or their subcontractors on state property. However, there was a recognition that there were uses of glyphosate that were necessary and through a 2021 chapter amendment, specifically chapter 19 of the laws of 2021, exemptions to this prohibition were added to subdivision 12. As required by the ECL the proposed addition of Section 325.42 to 6 NYCRR Part 325 will address the parameters in which glyphosate use on state property can be applied under subdivision 12 of Section 33-1301 of the ECL.

In addition to the requirements for the use of glyphosate on state properties the statute also requires the Department to post information on its website regarding glyphosate use on state properties, including amount and location, by April first of each year. To accomplish this objective state departments, state agencies, and public benefit corporations will be required to report their use of glyphosate.

4. COSTS

Costs to Industry:

This proposed rule is expected to have little cost impacts to industry since it only relates to state departments, state agencies, public benefit corporations, their contractors, or their subcontractors on state property. In the case of contractors or subcontractors working on state properties, it is likely that herbicide applications will be made with a glyphosate alternative or under an exemption to the glyphosate prohibition in the statute and regulations. Therefore, the impact on these contractors or subcontractors should be minimal.

Costs to Department and the State:

The Department is responsible for the implementation and administration of this proposed regulation. It is anticipated that the proposed regulation will increase costs through staff time associated with outreach, compliance, and reporting efforts, as well as the development of a new reporting and data management system. Furthermore, reporting, documentation, and research costs by state departments, state agencies, and public benefit corporations may also increase slightly if they choose to use glyphosate under an exemption.

State departments, state agencies, and public benefit corporations that are no longer permitted to apply glyphosate may experience added costs to achieve similar vegetation control. In some instances, programs at the Department have estimated that the use of alternative pesticides to glyphosate may be two to three-times the cost to achieve the same level of vegetation control and mechanical vegetation control has proven to be costly, time consuming, and may require specialized equipment.

Costs to Local Governments:

There are no anticipated costs to local governments.

5. LOCAL GOVERNMENT MANDATES

The proposed rulemaking does not directly mandate the expenditure of funds by local government agencies because it does not apply to local governments.

6. PAPERWORK

The proposed rulemaking will require additional paperwork for state departments, state agencies, and public benefit corporations that choose to apply glyphosate under an exemption. The additional paperwork required by this proposed regulation will be a written assessment to document the exemption to the prohibition of the use of glyphosate, a human exposure assessment, a glyphosate alternative analysis, and the reporting of glyphosate use.

7. DUPLICATION

The proposed regulation does not duplicate any federal or state regulations or statutes.

8. ALTERNATIVE APPROACHES

The no action alternative was not considered during the development of this proposed regulation given that the statute requires the Department to develop regulations regarding the use of glyphosate by state departments,

state agencies, and public benefit corporations. However, the Department did consider the alternative of not requiring a written assessment for glyphosate use under the exemptions for state departments, state agencies, and public benefit corporations. It was determined that this option would not provide an adequate level of oversight and information required to ensure that the Department meets its statutory responsibilities. Therefore, this alternative was rejected.

9. FEDERAL STANDARDS

Under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA), specifically 7 U.S.C. 136v, a State may regulate the sale or use of any federally registered pesticide in the State but only if, and to the extent that, the regulation does not permit any sale or use prohibited by FIFRA. Currently, glyphosate is registered with USEPA and it is allowed to be sold and used in New York State. This proposed rulemaking exceeds the federal minimum standards in that it limits the use of glyphosate by state departments, state agencies, and public benefit corporations, an action that is not prohibited by FIFRA.

10. COMPLIANCE SCHEDULE

Compliance with this proposed rulemaking will be required upon adoption of the final regulation.

11. INITIAL REVIEW OF RULE

DEC will conduct an initial review of the rule within three years as required by SAPA § 207.

REGULATORY IMPACT STATEMENT

INTRODUCTION

This proposed rulemaking is required by subdivision 12 of Section 33-1301 of the Environmental Conservation Law (ECL) and will revise 6 NYCRR Part 325 by adding Section 325.42 to address the prohibition and exemptions from prohibition of glyphosate use by state departments, state agencies, public benefit corporations, or any pesticide applicator hired as a contractor or subcontractor on state property. This proposed regulation will also require state departments, state agencies, and public benefit corporations to report their glyphosate use on state properties to the New York State Department of Environmental Conservation (Department). In addition, the Department is required to post information on its website regarding glyphosate usage by state departments, state agencies, public benefit corporations, their contractors or subcontractors on state property by April first of each year.

The Department's statutory authority associated with the proposed regulations is outlined in Section 1 below. Section 2 summarizes relevant legislative objectives, and Section 3 discusses the needs and benefits of the proposed regulations. An assessment of the potential costs associated with the proposed regulations is found in Section 4. Mandates on local government are described in Section 5, while sections 6 through 8 address the paperwork requirements, whether the regulations duplicate other federal and state programs, and alternatives to the proposed rules. Sections 9 and 10 describe the applicability of any federal programs to the activities covered by the proposed regulations and the compliance schedule of the proposed rules for the regulated community. Section 11 describes the review of the rule.

1. STATUTORY AUTHORITY

The Department's statutory authority to promulgate regulations related to the sale, possession, and use of pesticides is found in:

- ECL Section 1-0101 declares a policy of the State to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution in order to enhance the health, safety and welfare of the people of the State and their overall economic and social wellbeing.
- ECL Section 3-0301 empowers the Commissioner to adopt rules and regulations as may be necessary to carry out the environmental policy of the State set forth in Section 1-0101.
- ECL Article 33, Pesticides.
 - Section 33-0301 declares it to be in the public interest of the State to regulate the registration, commercial use, purchase and custom application of pesticides to ensure the protection of public health, property and wildlife and require persons to register or obtain permits before engaging in activities involving pesticides.
 - Section 33-0303 authorizes the Commissioner to promulgate regulations to implement and give full force and effect of the provisions of Article 33.
 - Section 33-1301 authorizes the Department to promulgate regulations to carry out the prohibition and exemptions from prohibition of glyphosate use by state

departments, state agencies, public benefit corporations, or any pesticide applicator hired as a contractor or subcontractor on state property as set forth as follows in subdivision 12:

33-1301. Unlawful Acts

It shall be unlawful:

12. For any state department, agency, public benefit corporation or any pesticide applicator employed thereby as a contractor or subcontractor to apply glyphosate on state property, provided that the application of glyphosate on state property is permitted only for (a) direct application in circumstances when there is no actual or significant threat of direct human exposure and no effective and practicable alternative, and (b) for the following uses, pursuant to regulations promulgated by the department:

(i) to maintain critical infrastructure;

(ii) to manage roadside vegetation to ensure public safety;

(iii) habitat management for the control of invasive species identified pursuant to title seventeen of article nine of this chapter, pests of significant public health importance, noxious weeds designated by the department as injurious to ecosystem health, and the protection of critical native plant species; and

(iv) for research purposes to develop sustainable alternatives for agricultural and environmental usages, as well as research regarding the environmental motility of glyphosate.

The department shall post information on its website regarding glyphosate usage pursuant to this section, including amount and location, by April first of each year.

2. LEGISLATIVE OBJECTIVES

The New York State Legislature developed this legislation to protect the health, safety, and wellbeing of the residents of the state from the potential impacts of the pesticide glyphosate, while permitting its application under certain defined circumstances for critical uses.

3. NEEDS AND BENEFITS

Glyphosate is a broad-spectrum herbicide active ingredient with approximately 200 pesticide products registered in New York State. Glyphosate is commonly used by state departments, state agencies, and public benefit corporations for various vegetation control projects. These projects include the following: rights-of-way vegetation control for natural gas and power lines; the control of invasive and noxious plants; the control of vegetation at dams; wetland restoration; and general vegetation control for maintenance of parking lots, sidewalks, landscapes, and roadways for both safety and appearances.

Discussions over the last several years regarding glyphosate being a possible human carcinogen and potentially contributing to Non-Hodgkin's Lymphoma or Chronic Lymphocytic Leukemia has led to several lawsuits associated with this pesticide. These cases have been settled mostly in the favor of the plaintiffs and against the registrants, which has created a public perception that glyphosate may cause significant health impacts when used. The World Health Organization's International Agency for Research on Cancer (IARC) described glyphosate as a probable human carcinogen. Whereas, in January 2020, the United States Environmental Protection Agency (USEPA) released the glyphosate interim decision as part of their registration review process.

This interim decision affirmed that glyphosate is unlikely to be a human carcinogen and did not identify risks or concerns to human health when glyphosate products are used according to the label directions. This interim decision is consistent with the earlier decisions USEPA issued associated with glyphosate and was subject to public comment. The USEPA's website mentions that IARC's assessment was not as comprehensive as USEPA's assessment. Furthermore, USEPA mentioned on their website that they considered a more extensive and relevant dataset than IARC as part of their assessment and that they did not agree with IARC's conclusion.

Due to the concern and public perception associated with the potential health impact of glyphosate the New York State Legislature deemed it in the public interest to prohibit the use of glyphosate on state properties. To prohibit the use of glyphosate, the New York State Legislature passed legislation in 2020 creating chapter 378 of the laws of 2020, which established a new subdivision 12 of Section 33-1301 of the ECL that completely prohibited the application of glyphosate by state departments, state agencies, public benefit corporations, their contractors, or their subcontractors on state property. However, there was a recognition that there were uses of glyphosate that were necessary for state departments, state agencies, and public benefit corporations to provide public safety and environmental protections and through a 2021 chapter amendment, specifically chapter 19 of the laws of 2021, exemptions to this prohibition were added to subdivision 12. These exemptions allowed for the application of glyphosate on state properties to maintain critical infrastructure, manage roadside vegetation, manage invasive species, control pests of significant public health importance, control noxious weeds, protect critical native plant species, and conduct research to develop sustainable alternatives to the use of glyphosate or study the motility of glyphosate. These uses are only permitted if there are no effective and practicable alternatives to glyphosate and there is no actual or significant threat of direct human exposure.

The Legislature agreed that the need to maintain critical infrastructure such as utility rights of way, dams, structures, and environmental resources is essential to New York State. The use of glyphosate can provide an economical and effective option for state departments, state agencies, and public benefit corporations to maintain this critical infrastructure to assure uninterrupted power distribution, to keep dams and other structures free of vegetation which could compromise their integrity, and to protect critical environmental resources. They also agreed that the control of roadside vegetation around signs, guiderails, shoulders, traffic signals, and intersections provides a visual margin of safety for motorists, commercial drivers, bicyclists, and pedestrians, which is essential for public safety. The use of glyphosate under the appropriate circumstances and conditions can be highly effective in meeting these control needs.

In addition, the Legislature agreed with the need to control invasive species and noxious weeds to protect native plants and ecosystem health, which is a mission of several state agencies and state departments. Glyphosate in many cases may be the only pesticide labeled for invasive species control needed for habitat management. Completely prohibiting its use would leave few, if any, options for such control efforts. Lastly, the Legislature agreed that there may be a need for state departments, state agencies, and public benefit corporations to conduct research on state properties to study the alternatives and the environmental motility of glyphosate.

Furthermore, the Legislature required the Department to post information on its website regarding glyphosate use by state departments, state agencies, public benefit corporations, their contractors, or their subcontractors on state property, including amount and location, by April first of each year.

The proposed addition of Section 325.42 to 6 NYCRR Part 325 will address the parameters in which state departments, state agencies, public benefit corporations, their contractors or their subcontractors can apply glyphosate on state property as permitted under subdivision 12 of Section 33-1301 of the ECL. Whereas the Legislature already outlined the circumstances in which glyphosate is permitted for use on state properties, the Legislature required the Department to

develop regulations to clarify the glyphosate use requirements for state departments, state agencies, public benefit corporations, their contractors, or their subcontractors while still ensuring the statutory intent of protecting the public and the environment. This proposed rulemaking will establish regulations for the use of glyphosate on state properties and the collection of glyphosate application information from state departments, state agencies, and public benefit corporations for applications on state property.

The statutory subdivision requires the Department to specify when it will be appropriate for state departments, state agencies, and public benefit corporations to apply glyphosate, but the limits set by the statutory subdivision to allow glyphosate use are broad. In order to further delineate the statutory parameters, the proposed regulation defines several terms. Among the terms defined are “critical infrastructure” and “state property”. The “critical infrastructure” definition was derived from the definition used in the Public Officers Law. However, the Public Officers Law definition was amended to reflect the Department’s mission to protect environmental resources; therefore, “environmental resources” were added to the list of terms describing critical infrastructure. The definition of “state property” reflects New York State owned-in-fee real property that is operated by a state department, state agency, or a public benefit corporation. The Department considers state owned in fee rights-of-way and easements to be state property under this definition. In addition, the proposed regulations will require state departments, state agencies, and public benefit corporations to develop written assessments documenting their need to use glyphosate and how they meet the exemption from prohibition for use of glyphosate on critical infrastructure, roadways, for invasive species and noxious plant control, or for research into glyphosate alternatives. This assessment must also include a discussion regarding alternatives to the use of glyphosate and why the alternatives are not effective and practicable.

In addition, the statutory subdivision and the proposed regulation require glyphosate to be used only when there is no actual or significant threat of direct human exposure. The pesticide label approved by the USEPA and the Department is designed to protect individuals and environmental resources from exposure to the pesticide. Following label directions will alleviate direct human exposure. Although ECL Section 33-0725 and Section 325.2 of 6 NYCRR Part 325 already require pesticides to be used according to their label directions, this proposed regulation will supplement these protections by requiring that the written assessment describe how human exposure will be prevented, which may include additional precautions beyond label directions. The proposed regulation also requires the written assessments to be made available to the Department for inspection.

The proposed regulation contains enforcement provisions to require the state department, state agency, public benefit corporation, their contractors or their subcontractors to adhere to the exemption criteria, the parameters of the human exposure assessment, and the glyphosate alternatives analysis.

In addition to the requirements for the use of glyphosate on state properties, the statutory subdivision also requires the Department to post information on its website regarding glyphosate use on state properties. The required use information, including amount and location, is required to be posted on the Department’s website by April first of each year. The only way to accomplish this goal will be to require reporting to the Department of glyphosate use by state departments, state agencies, and public benefit corporations. The proposed regulations will define the reporting requirements specifically for these glyphosate uses that will be separate and distinct from other pesticide use reporting requirements.

4. COSTS

Costs to Industry:

This proposed rulemaking prohibits the application of glyphosate by state departments, state agencies, public benefit corporations, their contractors, or their subcontractors on state property. This proposed rule is expected to have little cost impacts to industry, since it only relates to state departments, state agencies, public benefit corporations, their contractors, or their subcontractors on state property. In the case of contractors or subcontractors working on state properties, it is likely that herbicide applications will be made with a glyphosate alternative or under an exemption to the glyphosate prohibition in the statute and regulations. Therefore, the impact on these contractors or subcontractors should be minimal.

Costs to the Department and the State:

The Department is responsible for the implementation and administration of this proposed regulation. It is anticipated that the proposed regulation will increase costs through staff time associated with outreach, compliance, and reporting efforts, as well as the development of a new reporting and data management system. This data management system may become a component of Department's existing New York State Pesticide Administration Database (NYSPAD). NYSPAD has been utilized for several years associated with pesticide product registration, pesticide applicator certification, business registration, and pesticide courses. It is anticipated that the next stage of NYSPAD development will capture and store information associated with the pesticide reporting law. The reporting of glyphosate use by state departments, state agencies, and public benefit corporations is not a component of the pesticide reporting law. It is likely that these new reporting requirements will be incorporated into NYSPAD as a separate reporting component. The total cost for the development of the NYSPAD system is estimated to be about three million dollars; however, the reporting component of this regulation is expected to be a small percentage of this total.

Reporting costs by state departments, state agencies, and public benefit corporations may also increase slightly. Although the current statutorily required pesticide records can be utilized for reporting glyphosate use to the Department, the required reports under this proposed rulemaking will differ in format and timeframe. Each individual state department, state agency, or public benefit corporation will have different costs based upon the amount of glyphosate used and the complexity of their reporting system.

State departments, state agencies, and public benefit corporations that are no longer permitted to apply glyphosate may experience added costs to achieve similar vegetation control. In some instances, programs at the Department have estimated that the use of alternative pesticides to glyphosate may be two to three-times the cost to achieve the same level of vegetation control.

The use of mechanical vegetation control as an alternative to glyphosate has proven to be time consuming and may require specialized equipment. The costs associated with mechanical control for state departments, state agencies, and public benefit corporations will be in staff costs, contractor costs, and possibly the purchase and upkeep of equipment. These costs are expected to be significantly higher than the use of glyphosate to control a similar area of vegetation.

In situations where it is permissible for state departments, state agencies, and public benefit corporations to apply glyphosate on state properties, as allowed by the statutory exemptions, there still may be increased costs as well. These costs will be associated with the additional documentation, research, and reporting required for those state departments, state agencies, and public benefit corporations that choose to pursue the use of glyphosate.

Costs to Local Governments:

The proposed rulemaking does not apply to local governments; therefore, there are no anticipated costs to local governments.

5. LOCAL GOVERNMENT MANDATES

The proposed rulemaking does not directly mandate the expenditure of funds by local government agencies because it does not apply to local governments.

6. PAPERWORK

The proposed rulemaking will require additional paperwork for state departments, state agencies, and public benefit corporations that choose to apply glyphosate under an exemption to maintain critical infrastructure, manage roadside vegetation, manage invasive species, control pests of significant public health importance, control noxious weeds, protect critical native plant species, or conduct research to develop sustainable alternatives to the use of glyphosate or study the motility of glyphosate. The additional paperwork required by this proposed regulation will be a written assessment to document the exemption to the prohibition of the use of glyphosate, a human exposure assessment, a glyphosate alternative analysis, and the reporting of glyphosate use.

7. DUPLICATION

The proposed regulation does not duplicate any federal or state regulations or statutes.

8. ALTERNATIVE APPROACHES

The no action alternative was not considered during the development of this proposed regulation given that the statute requires the Department to develop regulations regarding the use of glyphosate by state departments, state agencies, and public benefit corporations. However, the Department did consider the alternative of not requiring a written assessment for glyphosate use under the exemptions for state departments, state agencies, and public benefit corporations. It was determined that this option would not provide the level of oversight and information required to ensure that the Department meets its statutory responsibilities. Therefore, this alternative was rejected.

9. FEDERAL STANDARDS

Under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA), specifically 7 U.S.C. 136v, a State may regulate the sale or use of any federally registered pesticide in the State but only if, and to the extent that, the regulation does not permit any sale or use prohibited by FIFRA. Currently, glyphosate is registered with USEPA and it is allowed to be sold and used in New York. This proposed rulemaking exceeds the federal minimum standards in that it limits the use of glyphosate by state departments, state agencies, and public benefit corporations, an action that is not prohibited by FIFRA.

10. COMPLIANCE SCHEDULE

Compliance with this proposed rulemaking will be required upon adoption of the final regulation.

11. INITIAL REVIEW OF RULE

DEC will conduct an initial review of the rule within three years as required by SAPA § 207.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES
AND LOCAL GOVERNMENTS

The New York State Environmental Conservation Law (ECL) was amended to add subdivision 12 to Section 33-1301 to prohibit the use of glyphosate by state departments, state agencies, public benefit corporations, or any pesticide applicator hired as a contractor or subcontractor on state property. Even though this subdivision prohibits the use of glyphosate the Legislature provided exemptions to this prohibition for critical uses of this pesticide. In this amendment the Legislature also required the New York State Department of Environmental Conservation (Department) to promulgate regulations describing the circumstances and conditions in which these critical uses are permitted and to post information on its website regarding glyphosate use by state departments, state agencies, public benefit corporations, their contractors, or their subcontractors on state property. To achieve this statutory directive the Department's proposed rulemaking will revise 6 NYCRR Part 325 by adding section 325.42 to describe the parameters for glyphosate use by state departments, state agencies, public benefit corporations, their contractors, or their subcontractors on state property. This proposed rulemaking will also require state departments, state agencies, and public benefit corporations to report their glyphosate use on state properties to the Department.

1. EFFECT OF RULE

Subdivision 12 of ECL Section 33-1301 prohibits the use of glyphosate by state departments, state agencies, public benefit corporations, or any pesticide applicator hired as a contractor or subcontractor on state property to provide public safety and environment protections. This subdivision also provides exemptions to the prohibition for critical uses of glyphosate. Moreover, this subdivision requires the Department to promulgate

regulations describing the circumstances and conditions in which these critical uses are permitted and to post information on its website regarding glyphosate use by state departments, state agencies, public benefit corporations, or any pesticide applicator hired as a contractor or subcontractor on state property.

The critical uses identified by the Legislature were to maintain critical infrastructure, control roadside vegetation to ensure public safety, control invasive species, control noxious weeds injurious to ecosystem health, protect native plants, and conduct research on state properties to study the alternatives and the environmental motility of glyphosate. The option to use glyphosate under an exemption in the statute only applies if there is no actual or significant threat of direct human exposure and there are no effective and practicable alternatives to glyphosate use.

The proposed rulemaking is not expected to have an impact on local governments or small businesses as it only applies to state departments, state agencies, public benefit corporations, their contractors, or their subcontractors on state property. The limited scope of this proposed rulemaking will allow small businesses that may contract or subcontract with state departments, state agencies, or public benefit corporations to use alternative pesticides or practices instead of glyphosate to control vegetation. Furthermore, the exemption for critical uses in the proposed rulemaking will allow them to use glyphosate when it is appropriate. Based upon these alternatives and exemptions it is expected that small businesses, employing certified pesticide applicators, will be able to continue to contract with state departments, state agencies, or public benefit corporations. Therefore, there should be no impacts to small businesses. Likewise, this proposed rulemaking should not result in impacts to local governments since it does not apply to them.

2. COMPLIANCE REQUIREMENTS

Small businesses will be required to adhere to the contracting requirements with state departments, state agencies, or public benefit corporations associated with the use of glyphosate or glyphosate alternatives on state properties. In addition, they may only apply glyphosate on state property when permitted by an exemption identified in the statute and proposed rulemaking. The additional paperwork required by this proposed regulation does not apply to small businesses but instead applies to the state departments, state agencies, and public benefit corporations that choose to apply glyphosate under an exemption and either apply themselves or hire a contractor or subcontractor. Local governments do not have any compliance requirements since this proposed rulemaking does not apply to them.

3. PROFESSIONAL SERVICES

There is no anticipated need for additional professional services for local governments or small businesses associated with this proposed rulemaking.

4. COMPLIANCE COSTS

It is anticipated that there should not be compliance costs for local governments since they do not have any compliance requirements associated with this proposed rulemaking. The compliance costs to small businesses should be minimal since the proposed rulemaking focuses on state departments, state agencies, public benefit corporations, or any pesticide applicator hired as a contractor or subcontractor on state property. Although small businesses will be required to adhere to their contracting requirements with state departments, state agencies, or public benefit corporations associated with the use of glyphosate and glyphosate alternatives on

state properties it is not anticipated that this will increase costs for these small businesses. Small businesses that do not contract with state departments, state agencies, or public benefit corporations will not be impacted by this rulemaking.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The Department has focused on proposing this rulemaking in a manner that is technically sound and economical. To minimize the technological and economic impacts associated with this proposed rulemaking research was conducted into the availability of glyphosate alternatives to allow state departments, state agencies, public benefit corporations, or any pesticide applicator hired as a contractor or subcontractor on state property to continue their operations without interruption. There are several alternative pesticide products, similar to glyphosate, that can be used when this regulation goes into effect allowing for a smooth transition period.

6. MINIMIZING ADVERSE IMPACTS

The proposed regulation is not expected to have an adverse impact on jobs and employment opportunities. The Department already regulates pesticide use and there are several alternatives to glyphosate available. The proposed regulation provides exemptions for essential uses as well. Therefore, the statute and this proposed rulemaking have minimized adverse impacts.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

In addition to comprehensive internal review, the Department has conducted a stakeholder meeting, informal meetings, and calls with interested parties associated with this proposed rulemaking.

8. CURE PERIOD OR OTHER OPPORTUNITY FOR AMELIORATIVE ACTION

Compliance with this proposed rulemaking will be required upon the effective date of the final rule.

9. INITIAL REVIEW OF RULE

The Department will conduct an initial review of the rule within three years as required by SAPA § 207.

RURAL AREA FLEXIBILITY ANALYSIS

The New York State Environmental Conservation Law (ECL) was amended to add subdivision 12 to Section 33-1301 to prohibit the use of glyphosate by state departments, state agencies, public benefit corporations, or any pesticide applicator hired as a contractor or subcontractor on state property. Even though this subdivision prohibits the use of glyphosate the Legislature provided exemptions to this prohibition for critical uses of this pesticide. The Legislature also required the New York State Department of Environmental Conservation (Department) to promulgate regulations describing the circumstances and conditions in which these critical uses are permitted and to post information on its website regarding glyphosate use by state departments, state agencies, public benefit corporations, their contractors, or their subcontractors on state property. To achieve this statutory directive the Department's proposed rulemaking will revise 6 NYCRR Part 325 by adding section 325.42 to describe the parameters for glyphosate use by state departments, state agencies, public benefit corporations, their contractors, or their subcontractors on state property. This proposed rulemaking will also require state departments, state agencies, and public benefit corporations to report their glyphosate use on state properties to the Department.

The Department does not expect the proposed rulemaking to have a significant negative impact on rural areas.

1. TYPES AND NUMBERS OF RURAL AREAS AFFECTED

The proposed rulemaking applies statewide to all state departments, state agencies, public benefit corporations, or any pesticide applicator hired as a contractor or subcontractor on state property. As the proposed rulemaking only applies to state departments, state agencies, public benefit corporations, their contractors, or their

subcontractors on state property the Department does not anticipate rural areas being significantly affected, either directly or indirectly, by this proposed rulemaking.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS

The proposed rulemaking is intended to prohibit the use of glyphosate by state departments, state agencies, public benefit corporations, or any pesticide applicator hired as a contractor or subcontractor on state property. There are exemptions to this prohibition that allow critical uses of glyphosate under certain circumstances. For state departments, state agencies, or public benefit corporations to take advantage of these exemptions they must prepare a written assessment of how they meet the exemption, how it has been determined that there is no direct human exposure, and how they have determined that there are no effective and practicable glyphosate alternatives. In addition, state departments, state agencies, and public benefit corporations must also annually report the use of glyphosate to the Department.

3. COSTS

All costs associated with this proposed regulation will be on state departments, state agencies, and public benefit corporations. This proposed rulemaking does not directly mandate the expenditure of funds by any sector of local government and will not directly impose any significant service, duty or responsibility upon any county, city, town, village, school district, or fire district in a rural area.

4. MINIMIZING ADVERSE IMPACTS

The proposed regulation is not expected to have significant rural area adverse impacts in New York State since it only applies to glyphosate applications on state property by state departments, state agencies, public benefit corporations, or any pesticide applicator hired as a contractor or subcontractor. In addition, there are several alternatives to glyphosate available for use by state departments, state agencies, public benefit corporations, or any pesticide applicator hired as a contractor or subcontractor. Furthermore, the proposed regulation provides exemptions for critical uses as well. Therefore, adverse impacts to rural areas have been minimized through the proposed rulemaking and statutory requirements.

5. RURAL AREA PARTICIPATION

The Department conducted a stakeholder meeting, informal meetings, and calls with state departments, state agencies, public benefit corporations, and interested parties associated with this proposed rulemaking, including those located in rural areas.

6. INITIAL REVIEW OF RULE

DEC will conduct an initial review of the rule within three years as required by SAPA § 207.

JOB IMPACT STATEMENT

The New York State Environmental Conservation Law (ECL) was amended to add subdivision 12 to Section 33-1301 to prohibit the use of glyphosate by state departments, state agencies, public benefit corporations, or any pesticide applicator hired as a contractor or subcontractor on state property. Even though this subdivision prohibits the use of glyphosate the Legislature provided exemptions to this prohibition for critical uses of this pesticide. The Legislature also required the New York State Department of Environmental Conservation (Department) to promulgate regulations describing the circumstances and conditions in which these critical uses are permitted and to post information on its website regarding glyphosate use by state departments, state agencies, public benefit corporations, their contractors, or their subcontractors on state property. To achieve this statutory directive the Department's proposed rulemaking will revise 6 NYCRR Part 325 by adding section 325.42 to describe the parameters for glyphosate use by state departments, state agencies, public benefit corporations, their contractors, or their subcontractors on state property. This proposed rulemaking will also require state departments, state agencies, and public benefit corporations to report their glyphosate use on state properties to the Department.

This proposed rulemaking should not impact jobs within the regulated sectors and the Department does not expect the proposed regulations to have a negative impact on jobs and employment opportunities in the State.

1. NATURE OF IMPACT

The proposed rulemaking only applies to state departments, state agencies, public benefit corporations, their contractors or subcontractors applying glyphosate on state properties; therefore, the limited scope of this

proposed rulemaking will limit impacts to jobs and employment opportunities across the State. In many cases there are alternative pesticides or practices to the use of glyphosate to control vegetation. Furthermore, the exemption for critical uses in the proposed rulemaking will permit glyphosate use. With these alternatives and exemptions, certified pesticide applicators and those working under their supervision employed by state departments, state agencies, public benefit corporations, their contractors or subcontractors will be able to maintain their employment status. In addition, this proposed rulemaking should not inhibit the growth of or employment in any of the other sectors of the pesticide application industry.

2. CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED

The implementation of the proposed rulemaking is not expected to have an adverse impact on jobs or employment opportunities. The proposed rulemaking only applies to state departments, state agencies, public benefit corporations, their contractors or subcontractors applying glyphosate on state properties. The limited scope of this proposed rulemaking will limit impacts to jobs and employment opportunities across the State. In many cases there are alternative pesticides or practices to the use of glyphosate to control vegetation and exemptions in the statute and proposed rulemaking will continue to allow the use of glyphosate for critical uses. Nothing being proposed is expected to result in diminished economic activity and accordingly should not cause adverse impacts on employment opportunities or jobs.

3. REGIONS OF ADVERSE IMPACT

There is no region of the State expected to be adversely impacted from this proposed rulemaking. All state departments, state agencies, public benefit corporations, or any pesticide applicator hired as a contractor or subcontractor on state property must adhere to the same requirements regardless of where they are located.

4. MINIMIZING ADVERSE IMPACT

The proposed regulations are not expected to have an adverse impact on jobs and employment opportunities. The Department already regulates pesticide use and there are several alternatives to glyphosate available. The proposed regulation provides exemptions for critical uses as well. Therefore, the statute and this proposed rulemaking have already minimized adverse impacts.

5. SELF-EMPLOYMENT OPPORTUNITIES

The proposed regulations are not expected to negatively impact self-employment opportunities.

6. INITIAL REVIEW OF RULE

The Department will conduct an initial review of the rule within three years as required by SAPA § 207.