

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-25-09-00003-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional Classification.

Purpose: To delete positions from the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Agriculture and Markets, by deleting therefrom the position of øDirector of Milk Control; in the Department of Audit and Control, by deleting therefrom the position of øKeyboard Specialist 3 (1); in the Education Department, by deleting therefrom the position of øEducation Services Administrative Coordinator (1); and, in the Executive Department under the subheading “Office of General Services,” by deleting therefrom the position of Empire State Plaza Technical Records Specialist (1).

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

Data, views or arguments may be submitted to: Judith I. Ratner, Deputy Commissioner and Counsel, NYS Department of Civil Service, AES-SOB, Albany, NY 12239, (518) 473-2624, email: judith.ratner@cs.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Department of Health

EMERGENCY RULE MAKING

Drinking Water State Revolving Fund

I.D. No. HLT-25-09-00002-E

Filing No. 640

Filing Date: 2009-06-05

Effective Date: 2009-06-05

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

Action taken: Amendment of Part 53 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 1161 and 1162

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: The American Recovery and Reinvestment Act of 2009 (ARRA) was signed into law by President Obama on February 17, 2009. The goals of the ARRA applicable to this rulemaking include job preservation and creation, infrastructure investment and energy efficiency. ARRA will provide over 86.8 million dollars from the federal government (via the Environmental Protection Agency (EPA)) to New York State for distribution to public drinking water improvement projects.

The Drinking Water State Revolving Fund (DWSRF) was created in 1996 as a result of State legislation and legislation enacted by the U.S. Congress. The DWSRF provides a significant financial incentive for municipally and privately owned drinking water systems to finance needed drinking water infrastructure improvements (e.g., treatment plants, distribution mains, storage facilities). The DWSRF is administered jointly by the Department and the New York State Environmental Facilities Corporation (EFC). The Bureau of Water Supply Protection represents the Department for the implementation of the DWSRF.

10 NYCRR Part 53, “Drinking Water State Revolving Fund,” contains

the Department rules implementing the DWSRF. Part 53 must be amended to accommodate new requirements from ARRA to distribute the funds allocated to the State. The amendments include eligible projects which address "green infrastructure" [see paragraph 53.5(c)(5) of the above Express Terms].

ARRA requires that project funding commence within 120 days from the date from enactment of the law (law enacted February 17, 2009; funding commences by June 7, 2009). For the State and Department to be granted the funds from the EPA, the present DWSRF program rules need to be amended to assure timely distribution of the funds to eligible local public water system DWSRF projects; consequently, an "emergency rulemaking" of Part 53 is required. An emergency rulemaking is also necessary for the preservation of public health in that projects for safe drinking water may be delayed or not built if this money is not available. A "regular rulemaking" is also being pursued at the same time to expedite the permanent amendment of Part 53.

Subject: Drinking Water State Revolving Fund.

Purpose: To accommodate new requirements from the Federal American Recovery and Reinvestment Act (ARRA) of 2009.

Text of emergency rule: Paragraph (1) of subdivision (a) of section 53.2 is amended to read as follows:

(1) Act means Title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act") 42 USC section 300-f et. seq[.]; and as supplemented by the American Recovery and Reinvestment Act of 2009 (ARRA).

A new Subdivision (e) is to be added to Section 53.4 and to read as follows:

(e) *Notwithstanding the foregoing, an eligible project or portion thereof listed in Category G, as identified in section 53.5(c)(5), shall be evaluated based upon criteria set forth in section 53.5(c)(5) of this part.*

Subdivision (a) of Section 53.5 is amended to read as follows:

(a) *With the exception of Category G projects, [All] all completed pre-applications received by the Department will be evaluated and assigned a score based on the priority ranking scoring system described in section 53.4 of this Part, provided, however, that:*

A new Paragraph (5) is to be added to Subdivision 53.5(c) and to read as follows:

(5) *Category G List: The Category G list shall include projects or portions thereof that address green infrastructure including, without limitation, water and energy efficiency improvements or other environmentally innovative activities or that qualify as a demonstration project of new green infrastructure technology as provided in the IUP. Such projects or portions thereof shall be determined based on an evaluation of benefits to the public and positive (or least negative) impacts on the environment and that shall include, without limitation: economic benefits generated; public health and safety; protection of water quality and the environment; demonstrated readiness; green energy production and/or reduction in energy consumption; regional distribution of projects, or water conservation as provided in the IUP.*

Paragraph (2) of Subdivision 53.5(e) is amended to read as follows:

(2) *No more than thirty percent (30%) of the annual federal capitalization funds shall be used to give loan subsidies to disadvantaged systems as determined by the Corporation[.], except a greater percent of the annual federal capitalization funds may be used to give additional subsidization to eligible recipients when required or authorized by federal laws or regulations. Such additional subsidization shall be provided in accordance with the Act and shall include forgiveness of principal, a negative interest loan or a grant.*

Paragraphs (2) and (3) of Subdivision 53.5(g) are amended to read as follows:

(2) *the applicant fails to fulfill expectations, perform duties, or conform to deadlines or conditions established in the project schedule or the applicant will not be able to satisfy any other conditions precedent to obtaining funding during the period specified in the IUP; [or]*

(3) *the applicant has reached the fifty percent (50%) annual Fund resources cap for fundable projects on the Project Readiness List. All projects of an applicant that would cause the applicant to exceed the fifty percent cap will be by-passed for that annual funding cycle[.]; or*

A new Paragraph (4) of Subdivision 53.5(g) is to be added and to read as follows:

(4) *the department determines that another project better addresses water savings/conservation, or energy efficiency improvements or other environmentally innovative activities that meet green infrastructure mandates of the ARRA.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 2, 2009.

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqa@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) Sections 1161 and 1162 authorize the Department of Health (Department) to revise 10 NYCRR Part 53 "Drinking Water State Revolving Fund (DWSRF)."

Legislative Objectives:

The legislative objective of PHL Sections 1161 and 1162 was to expand and enhance public drinking water supplies within New York State. This is in keeping with the objectives of the Public Health Law to protect public health.

The DWSRF was created in 1996 as a result of State legislation and legislation enacted by the U.S. Congress. The DWSRF provides a significant financial incentive for municipally and privately owned drinking water systems to finance needed drinking water infrastructure improvements. The DWSRF is administered jointly by the Department and the New York State Environmental Facilities Corporation (EFC). The Department's primary role is to provide technical review of proposed projects and to develop the "Readiness List" for the Intended Use Plan (IUP). The EFC administers the financial aspects of the DWSRF.

Projects eligible for DWSRF financing include investments to upgrade or replace infrastructure needed to achieve or maintain compliance with federal or state drinking water standards, prevent contamination, provide the public with safe affordable drinking water, etc. The American Recovery and Reinvestment Act of 2009 (ARRA) will provide additional funding to New York State via the DWSRF to finance drinking water infrastructure improvements.

ARRA was signed into law by President Obama on February 17, 2009. ARRA will provide over 86.8 million dollars from the federal government (via the Environmental Protection Agency (EPA)) to New York State for distribution to public drinking water improvement projects. ARRA also requires that fifty percent of the 86.8 million dollars be distributed as annual federal capitalization funds (e.g., grants) and that twenty percent be distributed for "green infrastructure" [see paragraph 53.5(c)(5) of the above Express Terms] projects.

Updating Part 53 to accommodate the receipt of additional funds from ARRA will significantly enhance the ability of New York State and the Department to protect public health and helps to assure that drinking water provided to the public meets Department drinking water standards.

Needs and Benefits:

Updating Part 53 to include ARRA funding is necessary for the Department to discharge its duties related to the fund and will significantly enhance and accelerate funding of projects on the Readiness List. (The Readiness List is developed by the Department. Staff experts review proposed projects based on eligibility criteria, scoring and ranking.)

COSTS:

Costs to Regulated Parties:

No new additional costs will be imposed by these amendments.

Costs to State Government:

There will be no additional costs to the Department. Existing staff and department resources will be used to implement the project (e.g., reviewing projects, administrative support) which would have been used eventually in any event for selected Readiness List projects. Receipt of ARRA funds accelerates the funding of projects that would have had to wait their turn for several months or years if such funding had not been available over the next two years.

Costs to Local Government:

The amendment does not mandate new costs. Participation in the DWSRF by local government is voluntary. Local governments choosing to participate in the ARRA enhanced DWSRF subsidized loan program would be required to comply with existing DWSRF loan repayment terms (interest rate proposed to be two-thirds of market rate). The Department determines if a proposed local government project is eligible to participate in the ARRA program based on project data submitted under the present DWSRF program. Consequently there are no new additional costs to local government. The Depart-

ment, and not a local government, evaluates whether a proposed project meets ARRA eligibility criteria. These criteria include that the project is “shovel ready” (i.e., projects to be funded must be under construction or contract according to the schedule in the Intended Use Plan and priority given to projects ready to start construction), reachable on the Readiness List and, in some circumstances, meet “green” standards.

Local Government Mandates:

Participation in the DWSRF by local government is voluntary. Local governments choosing to participate in the ARRA enhanced DWSRF program would be required to comply with existing DWSRF loan repayment terms. No new additional administrative requirements are mandated for local government. The proposed revisions to Part 53 do not impose new responsibilities on any county, city, town, village, school district, fire district or special district. Local governments choosing to participate will need to comply with additional federally mandated weekly EPA/ARRA reporting requirements, including construction progress reports, financial disbursements and contract statements.

Paperwork:

There are no new “paperwork” requirements imposed by these amendments. Participation in the DWSRF by local government is voluntary. Local governments choosing to participate in the ARRA enhanced DWSRF program would be required to comply with existing DWSRF reporting and record keeping requirements, such as regular construction inspection reports, submittal of payment records, change orders, etc. Participating local governments will also be required to comply with additional federally mandated weekly EPA/ARRA reporting requirements, including construction progress reports, financial disbursements and contract statements and also show that their project is shovel ready and, if applicable, “green.” It is anticipated that the EPA and the Department will be providing guidance to local governments on the frequency and extent of this reporting requirement.

Duplication:

This regulation does not duplicate any existing federal, state or local regulation.

Alternatives:

One alternative to the proposed revisions is to take no action. In that case, however, the State would not be eligible for ARRA funds under the requirements of the ARRA law and the funds targeted for New York State would be distributed to other participating states.

Federal Standards:

Existing federal standards for implementation of the State’s DWSRF program must be complied with by the Department. These standards include a capitalization grant agreement, Intended Use Plan, payment schedule, State environmental review process, etc. The capitalization grant agreement must define the types of performance measures, reporting requirements (annual), and oversight responsibilities. Local governments participating in the ARRA enhanced funding program will be required, according to March 2, 2009 guidance from the EPA, to comply with additional weekly reporting requirements, including more frequent construction progress reports, financial disbursements and contract statements. It is anticipated that the EPA and the Department will be providing guidance to local governments on the frequency and extent of this reporting requirement.

Compliance Schedule:

The emergency regulation will be effective upon filing with the Department of State. Local projects that are funded need to comply with federal standards by submitting federally mandated weekly reports as mentioned above.

Regulatory Flexibility Analysis

Effect of Rule:

ARRA will provide over 86.8 million dollars from the federal government to New York State for distribution to public drinking water improvement projects. At the present time it is estimated that 16 to 25 projects will be funded with the recipients being villages, towns and communities.

Compliance Requirements:

There are no new compliance requirements. Participation in the Drinking Water State Revolving Fund (DWSRF) by local government is voluntary. Local governments choosing to participate in the American Recovery and Reinvestment Act (ARRA) enhanced DWSRF program would be required to comply with existing DWSRF loan repayment terms and requirements. Participating local governments will also be required to comply with additional federally mandated weekly EPA/ARRA reporting requirements, including construction progress reports, financial disbursements and contract statements.

Professional Services:

No new professional services will be required by this rule. Existing needs, under the present DWSRF program for professional involvement, such as cost accounting and construction oversight, will remain unchanged.

Costs:

Costs to Regulated Parties:

No new additional costs will be imposed by these amendments.

Costs to Local Government:

The amendment does not mandate new costs. Participation in the DWSRF by local government is voluntary. Local governments choosing to participate in the ARRA enhanced DWSRF subsidized loan program would be required to comply with existing DWSRF loan repayment terms (interest rate proposed to be two-thirds of market rate). The Department determines if a proposed local government project is eligible to participate in the ARRA program based on project data submitted under the present DWSRF program. Consequently there are no new additional costs to local government. The Department, and not a local government, evaluates whether a proposed project meets ARRA eligibility criteria. These criteria include that the project is “shovel ready” (i.e., projects to be funded must be under construction or contract according to the schedule in the Intended Use Plan and priority given to projects ready to start construction), reachable on the Readiness List and, in some circumstances, meet “green” standards.

Costs to State Government:

There will be no additional costs to the Department. Existing staff and department resources will be used to implement the project (e.g., reviewing projects, administrative support) which would have been used eventually anyway for selected Readiness List projects. ARRA funding accelerates the funding of projects that would have had to wait their turn for several months or years if the ARRA funding had not been available over the next two years.

Economic and Technological Feasibility:

Since this rule relies on existing Part 53 program requirements local governments and small businesses should be able to comply with existing DWSRF requirements with existing equipment and staff.

Minimizing Adverse Impact:

Federal requirements imposed by this proposal do not differentiate between the size of the municipality. We have adopted design rather than performance standards so that municipalities wishing to participate may do so.

Small Business and Local Government Participation:

There has been significant media coverage and public comments on ARRA. In addition the Department staff has met with local and county officials (e.g. Conference of Environmental Health Directors), presented at conferences (e.g., American Waterworks Association) attended by local government and small businesses, and met with the AWWA Regulatory Committee. There has also been extensive outreach to small businesses and local government by the Governor’s Office, the Environmental Facilities Corporation (which co-administers the DWSRF with the Department), and the Environmental Protection Agency (EPA).

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

Many rural areas have access to public water and there are several hundred rural area water supplies on the New York State Drinking Water State Revolving Fund (DWSRF) Readiness List that would be

eligible under the American Recovery and Reinvestment Act (ARRA) enhanced DWSRF program. At the present time it is estimated that 16 to 25 projects will be funded in villages, towns, communities and hamlets that come under the definition of a rural area.

Reporting and Recordkeeping:

The proposed amendments do not mandate new reporting and record keeping requirements. However, if a local government wishes to participate in the "enhanced" funding offered by these amendments, they will be required to comply with additional federally mandated weekly EPA/ARRA reporting requirements, including construction progress reports, financial disbursements and contract statements. It is anticipated that the United States Environmental Protection Agency and the Department will be providing guidance to local governments on the frequency and extent of this reporting requirement.

Other Compliance Requirements:

There are no additional compliance requirements other than those described in the Reporting and Record Keeping section above.

Professional Services:

No new professional services will be required by this rule. Existing needs, under the present DWSRF program for professional involvement, such as cost accounting and construction oversight, will remain unchanged and should be able to be handled by existing staff located at the local level.

Costs:

Projected Costs of Compliance:

None

Costs to Regulated Parties:

No new additional costs will be imposed by these amendments.

Costs to Local Government:

The amendment does not mandate new costs. Participation in the DWSRF by local government is voluntary. Local governments choosing to participate in the ARRA enhanced DWSRF subsidized loan program would be required to comply with existing DWSRF loan repayment terms (interest rate proposed to be two-thirds of market rate). The Department determines if a proposed local government project is eligible to participate in the ARRA program based on project data submitted under the present DWSRF program. Consequently there are no new additional costs to local government. The Department, and not a local government, evaluates whether a proposed project meets ARRA eligibility criteria. These criteria include that the project is "shovel ready" (i.e., projects to be funded must be under construction or contract according to the schedule in the Intended Use Plan and priority given to projects ready to start construction), reachable on the Readiness List and, in some circumstances, meet "green" standards.

Costs to State Government:

There will be no additional costs to the Department. Existing staff and department resources will be used to implement the project (e.g., reviewing projects, administrative support) which would have been used eventually anyway for selected Readiness List projects. ARRA funding accelerates the funding of projects that would have had to wait their turn for several months or years if the ARRA funding had not been available over the next two years.

Minimizing Adverse Impact:

Federal requirements imposed by this proposal do not differentiate between the size of the municipality. We have adopted design rather than performance standards so that municipalities wishing to participate may do so.

Rural Area Participation:

There has been significant media coverage and public comments on ARRA. In addition the Department staff has met with local and county officials (e.g. Conference of Environmental Health Directors), presented at conferences (e.g., American Waterworks Association) attended by local government and small businesses, and met with the AWWA Regulatory Committee. There has also been extensive outreach to small businesses and local government by the Governor's Office, Environmental Facilities Corporation (which co-administers the DWSRF with the Department), and the Environmental Protection Agency (EPA).

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities. The significant additional funding for construction projects will in fact substantially increase employment opportunities, which is the prime objective of ARRA. It is believed that the infusion of several million dollars into the New York State Drinking Water State Revolving Fund (DWSRF) will preserve and create a significant number of jobs, primarily via funding for construction projects of public water supply improvement projects and the commensurate positive effect on preserving and creation of construction sector jobs. Small businesses comprise much of the water supply construction industry in New York State. These businesses include consultant/engineering firms, construction contractors, material and equipment suppliers, analytical laboratories, archaeology firms, etc. Until the number of projects to be funded has been determined it is not possible to precisely estimate the number of small businesses impacted or jobs created; however, at least a few hundred businesses will need to execute contracts to perform construction and affiliated activities necessary to assure completion of the projects. This will, in turn, provide an economic stimulus to localities, including creation and preservation of jobs, and additional tax revenues for local government.

Insurance Department

EMERGENCY RULE MAKING

Flexible Rating for Nonbusiness Automobile Insurance Policies

I.D. No. INS-25-09-00009-E

Filing No. 657

Filing Date: 2009-06-10

Effective Date: 2009-06-10

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

Action taken: Repeal of Part 163 and addition of new Part 163 (Regulation 153) to Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 2350 and art. 23

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

Specific reasons underlying the finding of necessity: This regulation was previously promulgated on an emergency basis on December 24, 2008 and March 16, 2009. The emergency regulation will expire on June 12, 2009. Regulation No. 153 needs to remain effective for the general welfare.

Chapter 136 of the Laws of 2008, which became effective on January 1, 2009, enacts a new Section 2350 of the Insurance Law, which replaces the prior approval system, in effect since 2001 for nonbusiness motor vehicle insurance rates, with a flexible rating (flex-rating) system. Section 2350 requires the superintendent to promulgate rules and regulations implementing the new flexible rating system. Since insurers are authorized to use the new flexible rating system as of the effective date of the new law, January 1, 2009, it is essential that this regulation be promulgated on an emergency basis in order to have procedures in place that implement the provisions of the law. It also is essential that insurers be made aware of the rules and standards governing the notice requirements as soon as possible.

For the reasons cited above, this regulation is being promulgated on an emergency basis for the preservation of the general welfare.

Subject: Flexible Rating for Nonbusiness Automobile Insurance Policies.

Purpose: This rule re-establishes flexible rating for nonbusiness automobile insurance policies required by section 2350 of the Insurance Law.

Text of emergency rule: A new Part 163 is added to read as follows:

§ 163.0 Preamble.

On June 30, 2008, the Governor signed Chapter 136 of the Laws of 2008 into law to enhance competition in the nonbusiness motor vehicle market, by adding a new Insurance Law section 2350. Chapter 136 replaces the prior approval system, in effect since 2001 for nonbusiness motor vehicle insurance rates, with a flexible rating (flex-rating) system. The new system, which takes effect on January 1, 2009, is a blend of prior approval and competitive rating. The system allows periodic overall average rate changes up to five percent on a file and use basis, and requires the

superintendent's prior approval of overall average rate increases above five percent in any twelve-month period. The new section 2350 requires the superintendent to promulgate rules and regulations implementing the new flex-rating system.

§ 163.1 Definitions.

For the purpose of this Part, the following definitions shall apply:

(a) Base rate means the dollar charge for a given coverage for one car year prior to the application of rating factors.

(b) Car year means insuring a motor vehicle for one year.

(c) Coverage means the following motor vehicle insurance coverages:

(1) no-fault (personal injury protection), residual bodily injury liability, property damage liability, statutory uninsured motorists, supplementary uninsured/underinsured motorists, comprehensive, and collision; and

(2) any other motor vehicle coverage.

(d) Current average rate for a given coverage means the weighted average of an insurer's latest filed base rates modified by the applicable rating factors for each motor vehicle for the given coverage with the weights proportional to the latest available number of car years associated with each rating factor, or any materially equivalent calculation.

(e) Current overall average rate means:

(1) the weighted average of the current average rate for:

(i) all coverages listed in paragraph (1) of subdivision (a) of this section; and

(ii) any other motor vehicle coverages not listed in paragraph (1) of subdivision (a) of this section, if the insurer proposes a change in the rate for that coverage, with the weights proportional to the latest available number of car years for the respective coverages; or

(2) any materially equivalent calculation.

(f) Effective date means the date a revised set of base rates or rating factors shall apply to all existing nonbusiness automobile insurance policies as such policies are renewed. If a filing only applies to new business, then the effective date means the date that an insurer may first write new business.

(g) File and use means the process by which an insurer files with the superintendent a proposed overall average rate change that is within the flex-band, and then uses the proposed overall average rate change without having to obtain the superintendent's prior approval.

(h) Flexibility band or flex-band means the range of overall average rate increase or decrease (up to +5%) within which an insurer may change its motor vehicle insurance rates without having to obtain the superintendent's prior approval.

(i) Motor vehicle has the meaning set forth in section 5102(f) of the Insurance Law.

(j) Nonbusiness automobile insurance policy means a contract of insurance covering losses or liabilities arising out of the ownership, operation or use of a motor vehicle that is predominately used for nonbusiness purposes, when a natural person is the named insured.

(k) Proposed average rate for a given coverage means the weighted average of an insurer's proposed base rates modified by the applicable rating factors for each motor vehicle for the given coverage with the weights proportional to the latest available number of car years associated with each rating factor, or any materially equivalent calculation.

(l) Proposed overall average rate means:

(1) the weighted average of the proposed average rate for:

(i) each coverage listed in paragraph (1) of subdivision (a) of this section regardless of whether the insurer is filing a change for that coverage; and

(ii) any other motor vehicle coverages not listed in paragraph (1) of subdivision (a) of this section if the insurer proposes a change in the rate for that coverage, with the weights proportional to the latest available number of car years for the respective coverages; or

(2) any materially equivalent calculation.

(m) Proposed overall average rate change means the percentage difference between the proposed overall average rate and the current overall average rate. For example, if the proposed overall average rate is \$1,200 and the current overall average rate is \$1,000, then the proposed overall average rate change is 20% $((1,200/1,000)-1) \times 100$.

(n) Rating factors means the various elements that are applied or added to the base rates to obtain the actual nonbusiness automobile insurance policy premiums. These include classification factors based on the age, sex, and marital status of the insured, territorial rating factors, merit rating factors based on the driving record of the insured, increased limit factors, motor vehicle symbol and model year rating factors, and multi-tier rating factors.

§ 163.2 Rules and standards governing proposed file and use overall average rate changes for nonbusiness automobile insurance policies.

(a) An insurer may implement a proposed overall average rate increase on a file and use basis provided that the change is within the five percent flex-band. If the proposed overall average rate increase exceeds the five

percent flex-band, then the insurer shall obtain the superintendent's prior approval before implementing the change.

(b) During any twelve-month period, an insurer may implement no more than two overall average rate increases on a file and use basis provided that the cumulative effect of the increases shall be within the five percent flex-band. If a proposed overall average rate increase combined with a prior rate increase implemented within a twelve-month period of the proposed effective date of the request exceeds the five percent flex-band, then the insurer shall obtain the superintendent's prior approval before implementing the change. The cumulative effect of two or more rate changes in a twelve-month period is derived in a multiplicative manner. For example, if an insurer implements on a file and use basis a +2.9% overall average rate increase effective February 1, 2009 and a +2% overall average rate increase effective August 1, 2009, then the insurer may not implement another file and use overall average rate increase before February 1, 2010. However, at such time, the insurer may implement an overall average rate increase up to a maximum of +2.9%.

(c) An insurer may implement an overall average rate decrease on a file and use basis up to a maximum of five percent at any one time from the overall average rate currently in effect.

(d) Notwithstanding any provision of this Part, an insurer shall not implement an overall average rate increase on a file and use basis subsequent to an overall average rate increase greater than the five percent flex-band that the superintendent has already prior approved in the twelve-month period immediately preceding the effective date of the proposed increase.

§ 163.3 Rules and standards governing changes in rating factors.

(a) An insurer may adjust its rating factors as part of a file and use change. The insurer shall incorporate the rate impact of these adjustments in the overall average rate change. These changes shall be consistent with the rate change limitations for individual insureds contained in section 163.4 of this Part.

(b) An insurer may adjust its rating factors in separate and distinct filings independent of an overall average rate change. If these filings have no overall average rate impact, then the insurer may implement them on a file and use basis and the insurer shall not be precluded from implementing a file and use change for an overall average rate increase within the time periods specified in section 163.2(b) of this Part. For example, the introduction of a physical damage coverage's model year rating factor for a new model year that is consistent with an existing model year rating rule is not subject to prior approval. These filings shall be consistent with the rate change limitations for individual insureds contained in section 163.4 of this Part.

§ 163.4 Rules and standards governing nonbusiness automobile insurance policy premium change limitations for individual insureds as a consequence of file and use filings.

(a) In any twelve-month period, the total premium on any nonbusiness automobile insurance policy shall not change by more than 30% as a consequence of file and use filings. An insurer shall meet this requirement by adjusting the base rates or rating factors in the file and use filing. An insurer shall not cap an individual insured's premium as a final step. If a filing produces an annual total premium change on an insurance policy that exceeds the 30% maximum, then the filing shall be subject to the superintendent's prior approval.

(b) Changes in the premium of a nonbusiness automobile insurance policy as a consequence of changes in an insured's rating characteristics or changes in the coverages or the amounts of coverage being purchased shall not be considered within the calculation of the individual insured premium limitation contained in subdivision (a) of this section. For example, if an insured has an accident during the prior year and incurs a 25% surcharge or uptier, then this 25% surcharge/uptier shall not be considered within the individual premium limitation. Similarly, if a change in the age of an insured results in the application of a different classification factor, the rate effect attributable to that classification change shall also not be considered within the individual premium limitation.

§ 163.5 Support for filings submitted on a file and use basis.

An insurer shall include support for all proposed changes specified in each filing submitted on a file and use basis. The support shall include the specific reasons for the proposed changes, and any other material information required by section 2304 of the Insurance Law (e.g., the underlying data upon which the change is based). Filings submitted on a file and use basis shall be subject to the superintendent's review in accordance with Article 23 of the Insurance Law.

§ 163.6 Support for filings subject to prior approval.

(a) An insurer shall include support for all proposed changes specified in each filing subject to the superintendent's prior approval. The support shall include the specific reasons for the proposed changes, and any other material information as required by section 2304 of the Insurance Law.

(b) Subject to all other requirements of this Part and article 23 of the Insurance Law, an insurer may adjust rating factors associated with ter-

ritories or classifications as part of its file and use filing, provided that there are no changes to the underlying definitions which remain subject to the superintendent's prior approval pursuant to article 23 of the Insurance Law. Examples of rating classifications include discounts, surcharges, merit rating plans or multi-tier programs.

(c) If any one element of a filing is subject to prior approval, then the entire filing shall be subject to prior approval.

§ 163.7 Notification to insureds of rate changes.

(a) An insurer shall mail or deliver to every named insured affected by a rate increase due to a flex-band rate filing, at least 30 but not more than 60 days in advance of the end of the policy period, a notice of its intention to change the insured's rate. The notice shall set forth the specific reason or reasons for the rate change.

(b) An insurer shall not implement a rate increase due to a flex-band rate filing unless the insurer has mailed or delivered to the named insured affected by the rate increase the notice required by subdivision (a) of this section.

(c) An insurer shall submit a flex-band rate filing to the superintendent in a timely manner. An insurer shall not submit a flex-band rate filing to the superintendent after insureds have received notification pursuant to subdivision (a) of this section.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 7, 2009.

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

Regulatory Impact Statement

1. Statutory authority: Sections 201, 301, and Article 23 of the Insurance Law (most specifically, section 2350).

These sections establish the superintendent's authority to promulgate regulations establishing standards for flexible rating systems providing nonbusiness automobile insurance policies. Sections 201 and 301 of the Insurance Law authorize the superintendent to effectuate any power accorded to him by the Insurance Law, and prescribe regulations interpreting the Insurance Law.

Article 23 promotes the public welfare by regulating insurance rates to the end that they not be excessive, inadequate or unfairly discriminatory, to promote price competition and competitive behavior among insurers.

Chapter 136 of the Laws of 2008 adds a new section 2350 to the Insurance Law, which reintroduces flexible rating for nonbusiness automobile insurance rates.

2. Legislative objectives: The stated purpose of Article 23 of the Insurance Law is to ensure the availability and reliability of insurance, and to promote public welfare, by regulating insurance rates to assure that they are not excessive, inadequate or unfairly discriminatory and are responsive to competitive market conditions. Chapter 136 of the Laws of 2008 reestablished flexible rating for nonbusiness automobile insurance. It should strengthen the high level of competition that already exists in this market. The nonbusiness automobile market can benefit from the additional competitive impetus of a flexible rating system.

3. Needs and benefits: Flexible rating, which is a hybrid system borrowing elements from open competition and prior approval, has been applicable to commercial risk, professional liability and public entity insurance since 1986. In those markets, flexible rating has proved successful in restoring stability, promoting fair competition, and providing a firm foundation for long-term thinking and strategic planning, not only on the part of the insurance industry, but for the benefit of businesses and consumers that must rely upon, and budget for, insurance protection.

The above benefits are pertinent to the application of flex rating for the nonbusiness automobile market. Competition and market forces have always been strong determinants of rates for nonbusiness automobile coverages, and flex rating should strengthen the high level of competition that already exists in this market.

Chapter 113 of the Laws of 1995 first introduced flex rating to nonbusiness automobile insurance effective July 1, 1995 until it expired on August 2, 2001 and was replaced by prior approval requirements. However, section 13 of Chapter 136 of the Laws of 2008 adds a new section 2350 to the Insurance Law, which reintroduces flexible rating for nonbusiness automobile insurance rates. It permits insurers to place nonbusiness automobile insurance rates in effect without the superintendent's prior approval, provided that the overall average rate level does not result in an increase above five percent from the insurer's prior rate level in effect during the preceding 12 months. Section 2350 also limits the overall average rate level decreases without prior approval up to five percent from the insurer's current rate level regardless of when it went into effect. The prior regulation, which implemented the former flex rating system, is hereby being repealed pursuant to this new Part 163 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 153). In accordance with section 2350(c), Insurance

Department Regulation No. 153 (11 NYCRR 163) is being promulgated to provide guidance to insurers in implementing the new law's requirements.

4. Costs: This rule imposes no compliance costs on state or local governments. There are no additional costs incurred by the Insurance Department. For regulated parties, the costs of submitting a flexible rate filing should be no different than the costs of submitting a rate filing under the prior law. Since insurers will be able to implement flexible rate changes without having to wait for the Insurance Department's formal approval, they will be able to respond more quickly to competitive forces in the marketplace. However, there is an additional requirement to provide notice to all policyholders affected by a rate increase due to a flexible rate filing. Compliance with this notice requirement of premium increases pursuant to the flexible rating regulation will have a minimal cost, since the notice language may be included along with the renewal policy information sent to insureds. In any event, the notice requirement is imposed by the statute, not the regulation.

5. Local government mandates: This amendment does not impose any program, service, duty or responsibility upon a city, town or village, or school or fire district.

6. Paperwork: While the paperwork associated with the submission and monitoring of a flexible rate filing is essentially the same as that associated with private passenger automobile insurance rate filings under the prior law, there is an additional requirement imposed by the statute to provide notice to all policyholders affected by a rate increase due to a flexible rate filing. This notice language may be included along with the renewal policy information sent to insureds.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Department performed outreach with three property/casualty insurer trade organizations (individually "insurer trade organization") and two property/casualty insurance agents and brokers trade organizations (individually "agents and brokers trade organization") and received comments from four out of the five organizations.

a. The legislative intent was for any rate change that results in an overall rate increase above 5% during a 12-month period to require prior approval. The alternative approach would be not to consider any rate increase that exceeds the 5% overall flex band limit that has been prior approved during the same 12-month period. While this approach would require newer data to support any flex rate filing made subsequent to a prior approved rate filing, it still seems to be clearly against the legislative intent to keep significant automobile rate increases occurring within a 12-month period to be subject to prior approval. For example, if an insurer received approval for a rate increase of 7% effective February 1, 2009, the insurer may not implement an additional increase to be effective before February 1, 2010 on a flexible rating basis.

b. The Department considered reducing the limitation from the prior regulation standard of a 30% maximum individual premium change as a consequence of file and use filings to 25%, with the understanding that such maximum policyholder change bears some relationship to the overall flex band (which has decreased from 7% in the prior flex rating statute to 5% in the new statute). However, in consideration of comments received, the Department agreed that the maximum individual premium change is not truly relevant to the overall average rate change resulting from a flexible rate filing made by an insurer. It is quite common for rate filings with little or no overall rate effect to still produce significant individual policyholder impacts.

c. An insurer trade organization objected to the provision of Section 163.4, which precludes an insurer from capping an individual insured's premium to comply with the maximum individual premium change provision. This organization asserted that "capping" is a method that is considered acceptable in other states to achieve that result as opposed to making adjustments to base rates and factors for an entire class of policyholders. However, it has long been the Department's view that the capping of individual policy premiums is unfairly discriminatory to new policyholders with the same characteristics as current policyholders whose rates have been capped and therefore contrary to Article 23.

d. An insurer trade organization inquired as to whether the cumulative effect of two flexible rate increases would be measured, by simple addition or by multiplication. In response to this comment, further clarification has been added to Section 163.2 of this regulation, stating that the cumulative effect is determined in a multiplicative manner and an example has been included.

e. Two insurer trade organizations commented that the regulation fails to specify the instances under which the superintendent may order an insurer to make a change in its rates filed under file and use basis. However, section 2320 of the Insurance Law provides procedures that must be followed by the superintendent and insurers in addressing issues related to rate filings that are not subject to prior approval. Thus, no change to the proposal was made in response to this comment.

f. An insurer trade organization and an agents and brokers trade organization suggested that the Department clarify that the maximum permitted increase for an individual insured's premium should be applied to the full coverage or total premium of a nonbusiness automobile insurance policy. Consequently, the Department modified section 163.4(a) of the regulation to clarify that the provision applies to an insured's total policy premium and not to a specific coverage.

g. Two insurer trade organizations and an agents and brokers trade organization requested a definition of the term "predominantly" with regard to the definition of "nonbusiness automobile insurance policy" and a revision to the definition of the term "effective date" with regard to new business and renewals. However, the term "predominantly" is not unique to the flexible rating statute, and is used elsewhere in the Insurance Law, such as section 3425. In addition, the term "predominantly" has been previously clarified through opinions of the Department's Office of General Counsel. Thus, the Department made no changes to the regulation in response to this comment. The Department considered the request for revision of the definition of the term "effective date" but determined that the current definition, contained in section 163.1 of the regulation, was appropriate.

h. An agents and brokers trade organization inquired if an insurer may increase the premium on a six month policy at each policy renewal. However, article 23 of the Insurance Law requires an insurer to use the rates in effect upon renewal of each policy, regardless of the rate filing system used to make the rate filing (i.e., regardless of whether the filing was made as file and use or in accordance with prior approval). Thus, the Department made no changes to the regulation in response to this comment.

i. An insurer trade organization commented on the fact that the regulation would allow an insurer to file multiple file and use rate reductions while being limited to only two file and use increases within any 12-month period. The flexible rating statute provides for a maximum of two file and use overall average rate increases within any 12-month period, up to an overall maximum increase of 5%. The statute does not, however, provide any restrictions on the number of file and use overall average rate decreases, provided that the overall average rate decrease does not exceed the 5% flex-band from the rate currently in effect. All rate filings must include support for the proposed changes as required by Article 23 of the Insurance Law, as the Department will monitor the cumulative effect of the decreases to ensure that the rates are not inadequate or otherwise in violation of the Insurance Law.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: Insurers should be able to comply with the requirements of this rule as soon as they are effective.

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 basis for this finding is that this rule is directed at property/casualty insurance companies licensed to do business in New York State, none of which falls within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Insurance Department has monitored Annual Statements and Reports on Examination of authorized property/casualty insurers subject to this rule, and believes that none of the insurers falls within the definition of "small business", because there are none that are both independently owned and have fewer than one hundred employees.

2. Local governments:

The rule does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at property/casualty insurance companies, none of which are local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This regulation applies to all property/casualty insurance companies licensed to write insurance in New York State (specifically, those writing automobile insurance). Property/casualty insurance companies do business throughout New York State, including rural areas as defined under State Administrative Procedure Act Section 102(10).

2. Reporting, recordkeeping and other compliance requirements, and professional services: This regulation is not expected to impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This regulation re-establishes flexible rating for nonbusiness automobile insurance policies, as required by section 2350 of the Insurance law. While the paperwork associated with the submission and monitoring of a flexible rate filing is essentially the same as that as-

sociated with private passenger automobile insurance rate filings under the prior law, there is an additional requirement imposed by the statute to provide notice to all policyholders affected by a rate increase due to a flexible rate filing. This notice language may be included together with the renewal policy information that is sent to insureds.

3. Costs: The costs to regulated parties of submitting a flexible rate filing should be no different than the costs for submitting a rate filing under the prior law. Since insurers will be able to implement flexible rate changes without having to wait for the Insurance Department's formal approval, they will be able to respond more quickly to competitive forces in the marketplace. However, there is an additional requirement to provide notice to all policyholders affected by a rate increase due to a flexible rate filing. Compliance with this notice requirement of premium increases pursuant to the flexible rating regulation will have a minimal cost, since the notice language may be included along with the renewal policy information sent to insureds. In any event, the notice requirement is imposed by the statute, not the regulation.

4. Minimizing adverse impact: The regulation does not impose any impact unique to rural areas.

5. Rural area participation: This regulation is required by statute.

Job Impact Statement

The Insurance Department finds that this rule will have no adverse impact on jobs and employment opportunities. It merely implements section 2350 of the Insurance Law, which directs the superintendent to establish standards for flexible rating systems providing nonbusiness automobile insurance policies. The number of insurance company personnel necessary to submit a flexible rating filing should be no different than submitting a rate filing under the prior law.

Office of Medicaid Inspector General

NOTICE OF ADOPTION

Compliance Programs for Medical Assistance Provider

I.D. No. MED-02-09-00004-A

Filing No. 655

Filing Date: 2009-06-09

Effective Date: 2009-07-01

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

Action taken: Addition of Part 521 to Title 18 NYCRR.

Statutory authority: Public Health Law, section 32; Social Services Law, section 363-d

Subject: Compliance programs for medical assistance providers.

Purpose: To set forth regulations governing compliance programs for medical assistance providers.

Text of final rule: A new Part 521, entitled "Provider Compliance Programs," is added to Title 18 of the Codes, Rules and Regulations of the State of New York to read as follows:

PART 521

PROVIDER COMPLIANCE PROGRAMS

§ 521.1 General requirements and scope.

To be eligible to receive medical assistance payments for care, services, or supplies, or to be eligible to submit claims for care, services, or supplies for or on behalf of another person, the following persons shall adopt and implement effective compliance programs:

(a) persons subject to the provisions of articles twenty-eight or thirty-six of the public health law;

(b) persons subject to the provisions of articles sixteen or thirty-one of the mental hygiene law; or

(c) other persons, providers or affiliates who provide care, services or supplies under the medical assistance program or persons who submit claims for care, services, or supplies for or on behalf of another person for which the medical assistance program is or should be reasonably expected by a provider to be a substantial portion of their business operations.

§ 521.2 Definitions.

For purposes of this Part, the definitions contained in Parts 504 and 515 of this Title shall apply. In addition, the following terms, as used in this Part, shall have the following meanings:

(a) "Required provider" means a provider meeting any of the criteria listed in subpart 521.1 of this Part.

(b) "Substantial portion" of business operations means any of the following:

(1) when a person, provider or affiliate claims or orders, or has claimed or has ordered, or should be reasonably expected to claim or order at least five hundred thousand dollars (\$500,000) in any consecutive twelve-month period from the medical assistance program;

(2) when a person, provider or affiliate receives or has received, or should be reasonably expected to receive at least five hundred thousand dollars (\$500,000) in any consecutive twelve-month period directly or indirectly from the medical assistance program; or

(3) when a person, provider or affiliate who submits or has submitted claims for care, services, or supplies to the medical assistance program on behalf of another person or persons in the aggregate of at least five hundred thousand dollars (\$500,000) in any consecutive twelve-month period.

§ 521.3 Compliance Program Required Provider Duties.

(a) Every required provider shall adopt and implement an effective compliance program. The compliance program may be a component of more comprehensive compliance activities by the required provider so long as the requirements of this Part are met. Required providers' compliance programs shall be applicable to:

(1) billings;

(2) payments;

(3) medical necessity and quality of care;

(4) governance;

(5) mandatory reporting;

(6) credentialing; and

(7) other risk areas that are or should with due diligence be identified by the provider.

(b) Upon applying for enrollment in the medical assistance program, and during the month of December each year thereafter, a required provider shall certify to the department, using a form provided by the Office of the Medicaid Inspector General on its website, that a compliance program meeting the requirements of this Part is in place. The Office of the Medicaid Inspector General will make available on its website compliance program guidelines for certain types of required providers.

(c) A required provider's compliance program shall include the following elements:

(1) written policies and procedures that describe compliance expectations as embodied in a code of conduct or code of ethics, implement the operation of the compliance program, provide guidance to employees and others on dealing with potential compliance issues, identify how to communicate compliance issues to appropriate compliance personnel and describe how potential compliance problems are investigated and resolved;

(2) designate an employee vested with responsibility for the day-to-day operation of the compliance program; such employee's duties may solely relate to compliance or may be combined with other duties so long as compliance responsibilities are satisfactorily carried out; such employee shall report directly to the entity's chief executive or other senior administrator designated by the chief executive and shall periodically report directly to the governing body on the activities of the compliance program;

(3) training and education of all affected employees and persons associated with the provider, including executives and governing body members, on compliance issues, expectations and the compliance program operation; such training shall occur periodically and shall be made a part of the orientation for a new employee, appointee or associate, executive and governing body member;

(4) communication lines to the responsible compliance position,

as described in paragraph (2) of this subdivision, that are accessible to all employees, persons associated with the provider, executives and governing body members, to allow compliance issues to be reported; such communication lines shall include a method for anonymous and confidential good faith reporting of potential compliance issues as they are identified;

(5) disciplinary policies to encourage good faith participation in the compliance program by all affected individuals, including policies that articulate expectations for reporting compliance issues and assist in their resolution and outline sanctions for:

(i) failing to report suspected problems;

(ii) participating in non-compliant behavior; or

(iii) encouraging, directing, facilitating or permitting either actively or passively non-compliant behavior;

such disciplinary policies shall be fairly and firmly enforced;

(6) a system for routine identification of compliance risk areas specific to the provider type, for self-evaluation of such risk areas, including but not limited to internal audits and as appropriate external audits, and for evaluation of potential or actual non-compliance as a result of such self-evaluations and audits, credentialing of providers and persons associated with providers, mandatory reporting, governance, and quality of care of medical assistance program beneficiaries;

(7) a system for responding to compliance issues as they are raised; for investigating potential compliance problems; responding to compliance problems as identified in the course of self-evaluations and audits; correcting such problems promptly and thoroughly and implementing procedures, policies and systems as necessary to reduce the potential for recurrence; identifying and reporting compliance issues to the department or the office of Medicaid inspector general; and refunding overpayments;

(8) a policy of non-intimidation and non-retaliation for good faith participation in the compliance program, including but not limited to reporting potential issues, investigating issues, self-evaluations, audits and remedial actions, and reporting to appropriate officials as provided in sections seven hundred forty and seven hundred forty-one of the labor law.

§ 521.4 Determination of Adequacy of Compliance Program.

(a) The commissioner of health and the Medicaid inspector general shall have the authority to determine at any time if a provider has a compliance program that is effective and appropriate to its characteristics and satisfactorily meets the requirements of this Part.

(b) A provider whose compliance program that is accepted by the federal department of health and human services office of inspector general and remains in compliance with the standards promulgated by such office shall be deemed in compliance with the provisions of this Part, so long as such plans adequately address medical assistance program risk areas and compliance issues.

(c) In the event that the commissioner of health or the Medicaid inspector general finds that the required provider does not have a satisfactory program, the provider may be subject to any sanctions or penalties permitted by federal or state laws and regulations, including revocation of the provider's agreement to participate in the medical assistance program.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 521.1, 521.2(b) and 521.3.

Text of rule and any required statements and analyses may be obtained from: Erin C. Morigerato, Esq., Office of the Medicaid Inspector General, 800 N. Pearl Street, Albany, New York 12204, (518) 408-0508, email: ecm03@omig.state.ny.us

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Changes made to the last published rule do not necessitate revision to the RIS, RFA, RAFA or JIS because they were non-substantial changes made for the purposes of clarity and consistency of the text of the regulation and do not require any changes to the RIS, RFA, RAFA, or JIS.

Assessment of Public Comment

The Office of the Medicaid Inspector General (OMIG) received 11 comments from providers, state agencies, health plans, advocacy

groups and other individuals in response to the January 14, 2009 proposed rulemaking. While some commenters expressed interest in supporting and working with the OMIG to implement provider compliance requirements pursuant to N.Y. Social Service Law 363-d, generally, other commenters expressed concerns related to various aspects of the proposed regulation for a variety of reasons.

After reviewing the comments received, the OMIG determined that nonsubstantive technical revisions to the text were necessary for purposes of clarity and consistency. Nonsubstantive technical revisions were made in sections 521.1, 521.2 (b), and 521.3. There are no changes to the Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, Rural Area Flexibility Analysis and Job Impact Statement which were previously submitted. Accordingly, the OMIG concludes that there are no issues which would impede the adoption of the regulation.

The comments have been summarized and the response to each comment appears below.

Comment:

The OMIG received comments suggesting technical changes to the text of the proposed regulation for purposes of clarity and consistency.

Response:

After considering those comments, the OMIG determined that nonsubstantive technical revisions to the text are necessary for purposes of clarity and consistency. Specifically, nonsubstantive technical changes were made in sections 521.1, 521.2 (b), and 521.3.

Comment:

Many commenters requested clarification on the applicability of the proposed regulation (i.e. which providers are required to comply).

Response:

Pursuant to N. Y. Social Services Law (SSL) § 363-d, those providers subject to this proposed regulation are: providers subject to Articles 28 and 36 of the N. Y. Public Health Law; Articles 16 and 31 of the N.Y. Mental Hygiene Law; and providers who provide care, services or supplies under the medical assistance (Medicaid) program for which the Medicaid program is a “substantial portion” of their business operations.

This regulation simply mirrors the statutory language and in addition, defines “substantial portion” by establishing a five hundred thousand dollars (\$500,000.00) threshold, calculated over any consecutive twelve month period, for previous, current or reasonably anticipated Medicaid claims or orders, direct or indirect receipts of Medicaid funds, or previous or current submissions of Medicaid claims on behalf of other parties. For purposes of determining whether a provider is subject to this rulemaking under Part 521.2 (b), amounts of Medicaid funds actually claimed, ordered, submitted or received in a fiscal year or reasonably expected to be claimed, ordered, submitted or received in a fiscal year should be counted when calculating the \$500,000.00 threshold.

Comment:

One commenter suggested that the proposed regulation does not apply to most Early Intervention service providers because such providers do not meet the requirements set forth in Part 521.1 even though Medicaid pays for a significant portion of the services they provide. The commenter indicated that Early Intervention service providers do not provide “care, services or supplies under the medical assistance program.” The commenter further indicated that Early Intervention service providers are not subject to the proposed regulation because the municipality where the child resides is deemed the provider of such services pursuant to Public Health Law s 2559(3)(a). Additionally, the commenter noted that few Early Intervention service providers reach the \$500,000.00 threshold established in Part 521.2(b).

Response:

Early Intervention service providers will be subject to the proposed regulation if they meet the requirements set forth in Parts 521.1(c) and 521.2(b). The OMIG disagrees with commenter’s suggestion that these providers are exempt from the proposed regulation because they do not provide care, services or supplies to enrollees; while they are not enrolled in Medicaid, they provide services under the Medicaid program.

Comment:

We received comments from a state agency requesting clarification as to whether the proposed regulation applies to providers who do not meet the requirements set forth in Part 521.1(b) but are nonetheless subject to Article 16 of the N. Y. Mental Hygiene Law pursuant to provider agreements.

Response:

SSL 363-d mandates that providers subject to Article 16 of the N. Y. Mental Hygiene Law to implement a compliance program. SSL 363-d does not provide any exceptions to this requirement. The proposed regulation simply mirrors the text of the underlying statute.

Comment:

Some commenters requested clarification on whether the proposed regulation will apply to managed care organizations. One commenter suggested that managed care organizations should be exempt from the proposed regulation because they do not provide care, services or supplies to enrollees.

Response:

Managed care organizations that meet the regulatory requirements set forth in Parts 521.1 and 521.2 will be subject to the proposed regulation. The OMIG disagrees with commenter’s suggestion that managed care organizations should be exempt from the proposed regulation. Managed care organizations certified under Article 44 of the New York State Public Health Law (PHL) who provide comprehensive health services under the medical assistance program to enrollees are directly compensated through a monthly capitation payment for each enrollee and provided supplemental capitation payments as described in the NYS Medicaid Managed Care and Family Health Plus Model Contract.

Comment:

Several commenters expressed concern with the inclusion of risk areas in the proposed regulation that traditionally have not been part of a compliance program and requested clarification on why the OMIG chose to incorporate certain risk areas in the proposed language of Parts 521.3(a) and 521.3(c)(6). Another commenter suggested that if an organization has structures in place to address additional risk areas and ensures effective communication between those responsible for the compliance program and the additional risk areas, the organization would “satisfactorily meet the OMIG’s requirements and thus, the additional risk areas need not be formally moved into the compliance domain”.

Response:

The OMIG has identified special areas of concern or risk areas in addition to billings to and payments from the Medicaid program as required by SSL 363-d. These include, but are not limited to, medical necessity and quality of care, governance, mandatory reporting and credentialing. The OMIG believes that these risk areas should be incorporated into an effective compliance program based upon reviews of audits and investigations. In addition, the OMIG recommends that providers incorporate into their compliance program other risk areas that are or should with due diligence be identified within the provider’s organization. The OMIG disagrees with those commenters who asserted that these additional risk areas need not be specifically identified in a compliance program. The Legislature in creating SSL 363-d found that Medicaid providers may be able to detect and correct payment and billing mistakes and fraud if required to develop and implement compliance programs. The Legislature also found that the purpose of a compliance program is to organize provider resources to resolve payment discrepancies and detect inaccurate billings, “among other things”, as quickly and efficiently as possible, and to impose systematic checks and balances to prevent future reoccurrences. The statute further provides that a compliance program shall at a minimum be applicable to billings to and payments from the Medicaid program but “need not be confined to such matters.”

Comment:

One commenter requested clarification regarding the OMIG’s issuance of provider specific compliance guidance. Another commenter seemed to be under the misconception that managed care organizations will be subject to a “separate and distinct” compliance directive from the OMIG.

Response:

SSL 363-d requires the OMIG to create and make available on its website guidelines, which reflect the requirements of the statute. The OMIG will be issuing provider specific compliance program guidance that will include recommendations and guidance on how specific segments of the provider industry can implement compliance programs. This compliance program guidance will be made available on the OMIG's internet website. While this proposed regulation mirrors the statutory requirements in SSL 363-d which requires certain providers to establish a compliance program, the OMIG's compliance program guidance is intended to provide assistance to providers in developing and implementing compliance programs.

Comment:

Specific questions were posed by a number of commenters relating to the eight elements required to be incorporated into a provider's compliance program pursuant to SSL 363-d.

Response:

The OMIG declines to further regulate the eight elements required by SSL 363-d to be included into a provider's compliance program. The text of the proposed regulation mirrors the elements required by SSL 363-d with some additions. Section 521.3(a) and 521.3(c)(6) include language requiring providers to include certain risk areas into their compliance program. Section 521.3(c)(2) adds that the entity's other senior administrator shall be designated by the entity's chief executive for purposes of direct reporting by the designated employee or compliance officer. Finally, Section 521.3(c)(5)(ii) clarifies that sanctions may be imposed for active or passive non-compliant behavior.

We believe the specific questions posed by commenters relating to the eight elements required to be incorporated into a provider's compliance program pursuant to SSL 363-d are more appropriately addressed in the provider specific compliance guidance. The OMIG has been and continues to work closely with specific segments of the provider community to develop industry specific provider compliance guidance to allow flexibility for a provider to develop a program appropriate to its characteristics.

Comment:

Some commenters requested clarification on the annual certification requirement.

Response:

SSL 363-d requires that a provider shall certify that the provider satisfactorily meets the requirements of the statute upon enrollment in the Medicaid program. This language mirrors the statutory requirements and in addition further requires providers to certify that they satisfactorily meet the requirements of the statute on an annual basis every December thereafter. Participating providers currently enrolled in the Medicaid program will be required to certify that they satisfactorily meet the requirements of the statute every December after the effective date of this regulation. Providers who apply for enrollment into the Medicaid program will be required to certify that they satisfactorily meet the requirements of the statute upon enrollment and every December after the effective date of this regulation. The OMIG is currently developing a certification form that will allow providers to certify that they have a compliance program that meets the statutory and regulatory requirements in place. The certification form and accompanying directions will be made available on the OMIG's internet website.

Comment:

One commenter suggested that there may be an administrative burden associated with the annual certification process. The commenter stated that for some health care providers, annual certification may require "extensive legal research and analysis because of the potential for complicated legal implications." The commenter asserts that the burden associated with annual certification is disproportionate to its utility.

Response:

The OMIG does not believe that the annual certification process will require the "extensive, legal research and analysis" as the commenter suggests. Annual certification will enable the OMIG to determine whether existing providers participating in the Medicaid

program have met the requirements of the statute and this regulation. The goal of annual certification is to ensure that providers participating in the Medicaid program have effective compliance programs in place that satisfactorily meets the requirements of the underlying statute.

Comment:

Some commenters requested clarification on the OMIG's determination of an "effective" compliance program.

Response:

In creating SSL 363-d, the Legislature recognized that in order for a compliance program to be effective it must be designed to be compatible with the provider's characteristics. SSL 363-d(1) requires providers to adopt effective compliance program elements, and to implement such a program appropriate to its characteristics. In addition, SSL 363-d(3) gives the Commissioner of the Department of Health and the Medicaid Inspector General the authority to determine at any time if a provider has a compliance program that satisfactorily meets the requirements of the statute. SSL 363-d(3)(b) provides that in the event that the Commissioner of Health or the Medicaid Inspector General finds that the provider does not have a satisfactory program within ninety days after the effective date of this regulation, the provider may be subject to any sanctions or penalties permitted by federal or state laws and regulations, including revocation of the provider's agreement to participate in the medical assistance program. The proposed regulation mirrors the language in the underlying statute.

Comment:

Some commenters requested clarification regarding the OMIG's acceptance of a federal compliance program that satisfactorily meets the requirements of SSL 363-d.

Response:

The proposed regulation mirrors the statutory language in SSL 363-d which mandates that if a provider's compliance program is accepted by the Federal Department of Health and Human Services Office of the Inspector General (OIG) and remains in compliance with the standards promulgated by such office, the provider's compliance program shall be deemed in compliance with the provisions of SSL 363-d, so long as such program adequately addresses medical assistance program risk areas and compliance. At the present time the OIG does not "accept" provider compliance programs as a general rule unless the provider has entered into a Corporate Integrity Agreement (CIA) with the OIG. If there is no existing CIA, providers have the option of voluntarily adopting a compliance program and the OIG has issued several industry specific compliance program guidance documents to help providers to establish such programs.

Thus, the OMIG intends to collaborate with the OIG to determine whether a compliance program required by a CIA is in compliance with the provisions of SSL 363-d for the small number of New York providers who are currently subject to a CIA with the OIG. The OMIG also intends to collaborate with the OIG if the possibility of federally accepted compliance programs arise in the future. The OMIG recognizes that a compliance program may be a part of more comprehensive compliance activities so long as the minimum requirements of the statute are met.

Comment:

Some commenters requested clarification on the effective date and time frame for implementation of the proposed regulation. Some commenters suggested that 90 days from the effective date of the proposed regulation as mandated by SSL 363-d is inadequate to make meaningful changes to an effective compliance program.

Response:

SSL 363-d mandates that providers who do not have a satisfactory program within 90 days after the effective date of this regulation may be subject to sanctions or penalties permitted by federal and state laws and regulations, including revocation of the provider's agreement to participate in the medical assistance program. In response to commenters' concerns regarding the time frame for implementing a compliance program, the OMIG will establish an effective date for the proposed regulation as July 1, 2009. Thus, this proposed regulation will be effective on July 1, 2009 and providers subject to the regula-

tion will be required to have a compliance program in place within 90 days of such date.

Comment:

One commenter suggested that upon OMIG's finding that a provider does not have a satisfactory compliance program in place, the OMIG should give the provider a limited period of time to submit a satisfactory compliance program for consideration prior to the imposition of sanctions or penalties.

Response:

We believe that such concerns are matters of OMIG policy and need not be specifically provided for in the text of the proposed regulation. We appreciate commenter's suggestion and will take such suggestion under consideration when developing internal policies and procedures with regard to enforcement of the proposed regulation.

Comment:

A number of commenters raised concerns regarding the fiscal impact on providers required to implement a compliance program.

Response:

The requirement that certain medical assistance providers prepare and adopt compliance programs is established by statute in SSL 363-d (2). Any costs that may be incurred by these providers would be a direct result of that statute and not this rulemaking. In creating SSL 363-d, the Legislature recognized that there are a wide variety of provider types participating in the Medicaid program and for a compliance program to be effective it must be designed to be compatible to reflect a provider's size, complexity, resources and culture. The costs incurred by regulated parties in order to comply with the proposed regulation will vary depending upon any existing compliance measures the provider has in place at the time the regulation takes effect. For those providers who already have an operating compliance program, potentially little or no costs may be incurred in order to establish a compliance program that satisfies the proposed regulation. However, for those providers who do not have a program in place that meets the requirements set forth in this proposed regulation and the underlying governing statute, some costs will be incurred in order to establish a compliance program. The extent of those costs will depend on the size and other attributes of the provider as well as the level of effort that is necessary for the provider to establish a compliance program that satisfies each of the eight mandatory elements.

In assessing the costs that may be incurred by a provider when it establishes a compliance program, pursuant to SSL section 363-d and the proposed regulations, OMIG also considered the cost savings that could result from the implementation of an effective compliance program. OMIG staff reviewed existing literature and studies for information concerning the issue of costs associated with compliance programs. During that research, only one report was identified: Impact of a Compliance Program for Billing on Internal Medicine Faculty's Documentation Practices and Productivity, ACADEMIC SCIENCE (March 2001). The results of this study, which focused on the implementation of a compliance program by the Saint Louis University Medical Group (UMG), suggest that compliance programs may provide certain financial benefits to the provider. For example, in the study of UMG, the gross collection rate for all services increased, staff productivity increased, unbillable services decreased, and the financial risks associated with an adverse audit decreased. These cost savings should diminish, if not completely offset, any costs incurred by providers in the development and implementation of a compliance program.

Thus, the OMIG tried to anticipate and address all circumstances regarding the costs and burdens associated with mandatory compliance programs. We believe we have created a set of requirements that appropriately meets the statutory provisions of SSL 363-d while at the same time provides the flexibility for providers to adopt an effective compliance program appropriate to its characteristics.

Department of Motor Vehicles

NOTICE OF ADOPTION

Traffic Violations Bureau Fines

I.D. No. MTV-16-09-00006-A

Filing No. 656

Filing Date: 2009-06-09

Effective Date: 2009-07-06

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

Action taken: Amendment of section 123.4 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 225(3) and 226(1)(b)

Subject: Traffic Violations Bureau fines.

Purpose: To revise Traffic Violations Bureau fines for guilty pleas by mail.

Text of final rule: 123.4 Fine schedule for guilty plea. (a) When a motorist pleads guilty by mail or in person at a bureau hearing office, he or she is required to pay the appropriate fine as follows:

(1) \$75 for a first red light violation *where such violation occurred on or after May 15, 2003, except that such fine shall be \$95 where such violation occurred on or after July 6, 2009; provided, however, such fine shall be \$150 in the City of New York where such violation occurred on or after May 15, 2003[;], except that such fine shall be \$190 in the City of New York where such violation occurred on or after July 6, 2009;*

(2) \$150 for a second red light violation committed within a period of 18 months *where such violation occurred on or after May 15, 2003, except that such fine shall be \$190 where such violation occurred on or after July 6, 2009; provided, however, such fine shall be \$300 in the City of New York where such violation occurred on or after May 15, 2003[;], except that such fine shall be \$375 in the City of New York where such violation occurred on or after July 6, 2009;*

(3) \$375 for a third red light violation committed within a period of 18 months, *where such violation occurred on or after May 15, 2003, except that such fine shall be \$470 where such violation occurred on or after July 6, 2009; provided, however, such fine shall be \$750 in the City of New York where such violation occurred on or after May 15, 2003[;], except that such fine shall be \$940 in the City of New York where such violation occurred on or after July 6, 2009;*

(4) [45] \$60 for all speed offenses where the charge is driving 10 miles per hour or less above the speed limit;

(5) [90] \$115 for all speeding offenses where the charge is driving at least 11 miles per hour but not more than 30 miles per hour above the speed limit;

(6) [50] \$65 for operating an uninspected vehicle, unless the violation is based upon a certificate of inspection which has been expired for 60 days or less, in which case the fine shall be [25] \$35;

(7) [30] \$40 for any equipment violation;

(8) [75] \$95 for operating an unregistered vehicle, or for unlicensed operation, unless the violation is based upon a registration or license which has been expired for 60 days or less, in which case the fine shall be \$40; or

(9) [40] \$50 for any other traffic infraction, except where otherwise specified by statute.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 123.4(a)(1), (2) and (3).

Text of rule and any required statements and analyses may be obtained from: Heidi A. Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.state.ny.us

Revised Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) Section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. Section 225(1) of the VTL provides that the Commissioner may promulgate such regulations as are necessary to effectuate the purposes of Article 2-A of the VTL. Section 225(3) of the VTL provides that the Commissioner may establish a schedule of penalties for violations of the VTL and that such schedule shall be printed on the summons that is issued to the motorist. The motorist may plead guilty, by mail or in person, and pay the fine set forth in such schedule.

2. Legislative objectives: Chapter 1074 of the Laws of 1969 created

Article 2-A of the Vehicle and Traffic Law establishing the Traffic Violation Bureau (TVB). TVBs, located in New York City, Rochester, Buffalo and part of Suffolk County, provide for the fair and efficient adjudication of traffic offenses, other than misdemeanors and felonies. Prior to the creation of the TVBs, the overburdened criminal courts heard such offenses. To enhance TVB efficiencies, the Legislature provided that the commissioner could establish a schedule of fines that would appear on the summons issued to the motorist. Thus, if a motorist chose to plead guilty, by mail or in person, he or she could do so by transmitting the appropriate fine by mail or in person (this process is not permitted outside of TVB courts where a fine cannot be imposed until after a guilty plea or finding). This proposed rule raises the fines paid by motorists who plead guilty, by mail or in person, by 25%, rounded up to the nearest 5 dollars. The Legislature afforded the Commissioner discretion in setting the fine schedule, acknowledging the need to take inflationary factors into account and to enhance highway safety by providing a strong monetary deterrent to the commission of further violations of the VTL.

3. Needs and benefits: The proposed regulation, which increases the fines for guilty pleas in TVBs, by mail or in person, by about 25%, is necessary to account for inflation, as well as to maintain a meaningful deterrent against violations of the Vehicle and Traffic Law. The fine schedule established in Part 123.4 reflects the statutory scheme in the VTL. Where a fine is established for a specific offense, such as for red light violations (VTL Section 1800(b)) or for speeding violations (VTL Section 1180), Part 123.4 assesses the minimum statutory fine when entering a guilty plea by mail or in person. Such fines have not been raised since 2003 when the statutory fines were increased. In addition, Part 123.4 provides for a \$40 fine for other traffic infractions (\$30 for equipment violations) for which a fine is not specified in the regulation, such as seat belt or cell phone violations. These fines were established in 1991 and clearly do not make any adjustments for inflation over the past 18 years. Seat belt and cell phone violations, which are assessed the \$40 fine, comprise a significant number of TVB violations, and an increase in the fine may serve as a deterrent to such offenses. In the 2007-08 fiscal year, there were about 253,000 seat belt violations and 210,000 cell phone violations returnable to all TVBs. In comparison, there were about 109,700 speeding violations and 89,000 unlicensed operation violations. In addition, during this period, there were about 97,000 window tinting violations, which currently is assessed only a \$30 fine. Clearly, the current fines for such violations have not served as adequate deterrents. All highway users will benefit from an increase in the fine schedule because it should provide a deterrent effect against future violations of the VTL.

4. Costs: a. To regulated parties: Motorists would be required to pay the increased fines if they chose to plead guilty by mail or in person.

b. Local governments: Vehicle and Traffic Law section 227(5) provides that fine revenue collected pursuant to Traffic Violation Bureau adjudications is returned to the locality where such offense occurred, i.e., to New York City, Buffalo, Rochester and part of Suffolk County. DMV is reimbursed for its administrative costs. DMV estimates that based upon a 25% fine increase, the localities will see an annual increase in fine revenue as follows:

NYC - \$14 million dollars;
Buffalo - \$460,000 dollars;
Rochester - \$840,000 dollars;
Suffolk County - \$2 million dollars;

Cost to DMV: DMV will need to revise the traffic ticket to reflect the revised fine schedule. This will cost the Department approximately \$60,000.

c. Source: DMV's Traffic Violation Division provided this information.

5. Local government mandates: This regulation does not impose any mandates upon local government.

6. Paperwork: DMV will need to revise the TVB traffic ticket to reflect the revised fine schedule.

7. Duplication: This regulation does not duplicate any State or Federal rules or laws.

8. Alternatives: DMV considered not raising the fines. However, DMV determined it was necessary to raise the fines by 25%, to accommodate both inflationary factors and the Department's commitment to highway safety.

9. Federal standards: This rule does not exceed any minimum standards of the Federal government.

10. Compliance schedule: Upon printing and distribution of the new ticket with the revised fine schedule. The regulation shall take effect on July 6, 2009, and shall apply to violations committed on or after that date.

Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Revised statements regarding the Rural Area Flexibility Analysis, Job Impact Statement and Regulatory Flexibility Analysis for Small Businesses and Local Governments are not submitted with this proposed rule

because no substantial changes were made to the proposed regulation that affect such statements.

Assessment of Public Comment

The agency received no public comment.

Division of Probation and Correctional Alternatives

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sex Offender Housing Procedural Guidelines

I.D. No. PRO-25-09-00004-P

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

Proposed Action: Addition of Part 365 to Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1) and (4)

Subject: Sex Offender Housing Procedural Guidelines.

Purpose: To provide guidance and instruction to probation departments when investigating/approving residence of certain sex offenders.

Text of proposed rule: A new Chapter III and Part 365 of Title 9 NYCRR are added to read as follows:

Chapter III. Sex Offender Management

Part 365. Sex Offender Housing Procedural Guidelines

Section 365.1 Objective.

This Part's objective is to establish procedural guidelines that delineate criteria and which promote consistent probation practices with respect to the residency of certain sex offenders under probation supervision.

Section 365.2 Applicability.

This Part is applicable to the supervision of any individual designated a Level 2 or 3 sex offender pursuant to the Sex Offender Registration Act (SORA) and sentenced to a period of probation.

Section 365.3 Statement of purpose.

(a) Chapter 568 of the laws of 2008 requires the Division of Parole (DOP), the Division of Probation and Correctional Alternatives (DPCA), and the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to provide guidance concerning the placement and/or approval of housing for certain sex offenders.

(b) The State has previously enacted laws concerning sex offenders, including the Sex Offender Registration Act, the Sex Offender Management and Treatment Act, the Electronic Security and Targeting of On-Line Predators Act (e-STOP) and laws restricting certain sex offenders who are under probation or parole supervision from entering school grounds. Chapter 568 of the laws of 2008 continues the State's efforts in the area of sex offender management and specifically in the area of the placement and housing of sex offenders. Sex offender management, and the placement and housing of sex offenders, are areas that have been, and will continue to be, matters addressed by the State. These regulations further the State's coordinated and comprehensive policies in these areas, and are intended to provide further guidance to relevant state and local agencies in applying the State's approach.

(c) Public safety is a primary concern and these regulations are intended to better protect children, vulnerable populations and the general public from sex offenders. The State's coordinated and comprehensive approach also recognizes the necessity to provide emergency shelter to individuals in need, including those who are sex offenders, and the importance of stable housing and support in allowing offenders to live in and re-enter the community and become law-abiding and productive citizens. These regulations are based upon, and are intended to further best practices and effective strategies to achieve these goals.

(d) In implementing this statute and the State's comprehensive approach, DOP, DPCA, OTDA and the Division of Criminal Justice Services' Office of Sex Offender Management (DCJS/ OSOM) recognize that:

(i) Not all sex offenders are equally dangerous. Some sex offenders may pose a high risk of committing a new sexual crime; others may pose only a low risk.

(ii) All reasonable efforts should be made in to avoid an ill-advised concentration of sex offenders in certain neighborhoods and localities. What constitutes such a concentration will depend on many factors, and may vary depending on housing availability and the locality and community. In addition, it is sometimes safer to house sex offenders

together. Law enforcement, probation, and parole officers may more effectively monitor offenders, and service providers may more easily offer transitional services to offenders in these congregate settings. Further, some social service officials and departments rely on congregate housing for sex offenders who seek emergency shelter because of the limited, or lack of other housing options available for this population. All public officials who are responsible for finding or approving housing for sex offenders should recognize that an over-concentration of sex offenders may create risks and burdens on the surrounding community, and that their responsibility is to make judgments that are reasonable under the circumstances.

(iii) All social service districts are required by statute, regulation and directive to arrange temporary housing assistance for eligible homeless individuals, including those who are sex offenders.

(iv) To reduce recidivism it is important that offenders be able to re-enter society and become productive and law-abiding citizens whenever possible. A stable living situation and access to employment and support services are important factors that can help offenders to successfully re-enter society.

(v) Maintaining and/or finding suitable housing for sex offenders is an enormous challenge that impacts all areas of the State. Offenders reside in all regions of the state and may have long-established residences in their respective communities. Even offenders who do not have such long-established relationships are often discharged from prison to the community where they previously lived. As a result, it is not appropriate for any one community or county to bear an inappropriate burden in housing sex offenders because another community has attempted to shift its responsibility for those offenders onto other areas of the State. The proliferation of local ordinances imposing residency restrictions upon sex offenders, while well-intentioned, have made it more challenging for the State and local authorities to address the difficulties in finding secure and appropriate housing for sex offenders.

(vi) Decisions as to the housing and supervision of sex offenders should take into account all relevant factors and no one factor will necessarily be dispositive. These factors should include, but not be limited to, the factors enumerated in the statute, the risk posed by the offender, the nature of the underlying offense, whether housing offenders together or apart is safer and more feasible, the most effective method to supervise and provide services to offenders, and the availability of appropriate housing, employment, treatment and support.

Section 365.4 Procedures.

1. When investigating and/or approving a residence of any such SORA Level 2 or 3 probationer, the probation department shall consider the following:

(a) the location of other sex offenders required to register under SORA, specifically whether there is a concentration of registered sex offenders in a certain residential area or municipality;

(b) the number of registered sex offenders residing at a particular property;

(c) the proximity of entities with vulnerable populations;

(d) accessibility to family members, friends, or other supportive services including, but not limited to, locally available sex offender treatment programs with preference for placement of such individuals into programs that have demonstrated effectiveness in reducing sex offender recidivism and increasing public safety; and

(e) the availability of permanent, stable housing in order to reduce the likelihood that any such probationer will be transient.

In addition, probation departments should consider the following factors when information is available to them:

a. known victim(s) address(es), age(s), and any relationship(s) to the probationer;

b. known existence of and adherence to any order of protection(s) against the probationer and restrictions as to residence/distance;

c. known presence of persons under the age of 18 in the residence or proposed residence;

2. The probation department should summarize its findings and make a recommendation to the court as to the appropriateness of the probationer's residence or proposed residence based on the aforementioned factors, the consideration of the probationer's legal history, adherence to any existing terms and conditions of probation supervision, and compliance with SORA, where applicable. In making a recommendation the probation department should consider all factors, and not consider any one factor as dispositive.

3. Whenever a probation department is supervising a SORA Level 2 or 3 probationer and the individual seeks to relocate to another residence, the department should conduct an investigation and consider the aforementioned factors. Where judicial approval is required or desired, the probation department should summarize its findings to the court of jurisdiction and make a recommendation to the court as to the appropriateness of the proposed residence based on the factors and consideration of his/

her legal history, adherence to terms and conditions of probation supervision, and compliance with SORA.

4. Where a probation department learns of a probationer's change of address and where this has occurred without prior notification, the department should conduct an investigation. It should evaluate the appropriateness of the new residence and whether a violation of probation should be considered. Where judicial approval and/or action is required or desired, the department should summarize its findings to the court of jurisdiction and make a recommendation to the court as to the appropriateness of the residence or proposed residence based on the factors and consideration of his/her legal history, adherence to terms and conditions of probation supervision, and compliance with SORA.

Text of proposed rule and any required statements and analyses may be obtained from: Linda J. Valenti, Counsel, NYS Division of Probation and Correctional Alternatives, 80 Wolf Road - Suite 501, Albany, New York 12205, (518) 485-2394, email: linda.valenti@dpc.a.state.ny.us

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

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority:

Executive Law Section 243(1) establishes that the State Director of Probation and Correctional Alternatives "shall endeavor to secure the effective application of the probation system and the enforcement of probation laws..." and authorizes the State Director to promulgate rules and regulations governing probation services.

Chapter 568 of the Laws of 2008, effective January 23, 2009, requires the agency heads of the Division of Probation and Correctional Alternatives (DPCA), the Division of Parole (DOP), and the Office of Temporary Disability Assistance (OTDA) to promulgate rules and regulations regarding housing for certain sex offenders.

Specifically, this aforementioned Chapter added Executive Law Section 243(4) to require the State Director of Probation and Correctional Alternatives to promulgate rules and regulations which shall include guidelines and procedures on the placement of probationers who are sex offenders designated as Level 2 or 3 sex offenders pursuant to Article 6-C of the Correction Law, commonly referred to as the Sex Offender Registration Act (SORA). This law further requires that such regulations shall instruct local probation departments to consider certain statutorily enumerated factors when investigating and approving the residence of such offenders during their respective periods of probation.

2. Legislative objectives:

It is the intent of the Legislature in enacting the above statutes that DPCA establish rules, regulations and policies so that probation departments consider certain factors when investigating and approving residences of Level 2 and 3 sex offenders under probation supervision within their jurisdictions.

This new regulatory guideline supports the Legislature's intent to address the challenges to probation departments considering the needs and concerns of the community with respect to investigating and approving housing of certain sex offenders released under probation supervision.

3. Needs and benefits:

At the present time, SORA requires anyone on parole or probation or imprisoned for a sex offense on or after January 21, 1996, to register and provide certain information including their residency location to the New York State Division of Criminal Justice Services (DCJS).

Chapter 568 of the Laws of 2008, in part, amends the Executive Law to set forth minimum factors that must be considered by probation departments when investigating and approving the residence of SORA Level 2 and 3 sex offenders who are under probation supervision within their respective jurisdictions. The statutory factors to be considered by probation departments must include the following:

(1) the location of other sex offenders required to register pursuant to the sex offender registration act, specifically whether there is a concentration of registered sex offenders in a certain residential area or municipality;

(2) the number of registered sex offenders residing at a particular property;

(3) the proximity of the entities with vulnerable populations;

(4) accessibility to family members, friends or other supportive services, including but not limited to locally available sex offender treatment programs with preference for placement of such individuals into programs that have demonstrated effectiveness in reducing sex offender recidivism and increasing public safety; and

(5) the availability of permanent, stable housing in order to reduce the likelihood that such offenders will be transient.

As a result of the new statute, DPCA is required to promulgate regulations setting forth at a minimum these new factors, and the probation departments are required to consider them when investigating and approving residence of SORA Level 2 and 3 probationers.

This new Part is being proposed in order to promote the safety of the public and to help address the unique housing needs of SORA Level 2 and 3 probationers. The general well-being of the public is best safeguarded if sex offenders are placed in appropriate available housing. Chapter 568 of the Laws of 2008 provides that probation departments need to consider concentrations of registered sex offenders and the proximity of available housing to entities with vulnerable populations when investigating and approving housing placements for these aforementioned sex offenders. Consideration of the individual's immediate housing needs and these factors are intended to protect the public. Meanwhile, consideration of factors such as the accessibility to family members, friends or other supportive services, including available sex offender treatment programs, is intended to prevent recidivism by providing sex offenders with suitable housing and support. Chapter 568 of the Laws of 2008 was designed to balance the safety interests of the public, the statutory obligations of probation departments in monitoring such individuals, and the housing needs of sex offenders. This Chapter was intended to lead to a comprehensive State approach that will protect the public and better ensure proper investigation and careful consideration and decision-making with respect to suitable housing for these SORA Level 2 and 3 offenders. Accordingly, it is appropriate that our proposed DPCA regulation in this area implementing Chapter 568 of the Laws of 2008 be effective immediately upon adoption.

4. Costs:

There may be some fiscal impact as a result of the proposed rule. However, any increase in administrative costs to probation departments is a result of Chapter 568 of the Laws of 2008 and not this proposed rule. This measure complies with the statutory requirements to identify factors which ought to be considered when investigating and approving residences of Level 2 and 3 sex offenders and is consistent with the new law's requirement that DPCA provide instruction in this area.

Probation departments routinely conduct pre-sentence investigations and reports for criminal courts as to certain defendant's who are before the court for sentencing, which include information as to residency and/or living arrangement. As part of their supervision function, case planning occurs on all probationers and monitoring of terms and conditions of release. When necessary, probation departments seek court direction as to allowable/permissible residence of a probationer and provide court documentation and pursue violations to address noncompliance. While the new law establishes that local probation departments must consider certain statutory factors when investigating and approving residence of SORA Level 2 and 3 probationers and that DPCA must promulgate regulatory guidelines and procedures in this area, our regulations parallel the law and while there is additional instruction and other factors which are recommended to be utilized, our expansion is viewed as consistent with the law's intent as to DPCA promulgating regulations in this area, good professional practice and there is considerable flexibility provided with respect to implementation. It is recognized that no single factor is dispositive. The usage of the word "should" with respect to certain actions in several provisions is meant to encourage and provide guidance or instruction as to good professional practice but not mandate its utilization. Many departments already take such factors into consideration and follow such recommended procedures. Overall, numerous probation departments have relayed that our proposed regulatory content include other factors which are manageable and not burdensome.

Noteworthy, as for considering certain statutory factors as to location, concentration, and number of other sex offenders, while there already exists a Sex Offender Registry which is accessible to all probation departments, a new technology, Critical Infrastructure Response Information System (CIRIS) mapping application provides a wealth of data including that of a geographic nature involving registered sex offenders and school data to support public safety efforts within New York State. CIRIS was developed by the NYS Office of Cyber Security and Critical Infrastructure Coordination (CSCIC). It is being made available, free of charge, to local probation departments via the Integrated Justice Portal and will provide probationer-specific GIS mapping capability. Utilization of CIRIS Mapping will provide greater operational efficiency to departments as a supervisory tool with respect to considering location and number of other SORA registered sex offenders when conducting investigations and approving residence of SORA Level 2 and 3 sex offenders under probation supervision. Free regional training in CIRIS mapping recently has been offered at three sites and already conducted in Albany and Onondaga Counties for interested probation departments. Currently, our agency is working with CSCIC and DCJS to provide appropriately trained probation officers access to CIRIS. Additional trainings are being scheduled for the month of March 2009 with the intent to have every department trained and given access to CIRIS. As of March 10, 2009, approximately 22 probation departments out of 58 have been trained. Although there may be some increased cost to localities as the result of the new law, such costs may be offset by the efficiency of using the CIRIS tool, rather than more labor intensive methods of determining the whereabouts of offenders.

5. Local government mandates:

This proposed rule codifies the specific factors that must be considered by probation departments when investigating and approving the residence of a SORA Level 2 or 3 probationer and adds pertinent other factors and instruction as authorized by Chapter 568 of the Laws of 2008 and specifically new Executive Law Section 243(4).

6. Paperwork:

This proposed rule does not specify any new form, but encourages probation departments to summarize their findings to the court with a recommendation. Flexibility is given as to how this is done. As probation departments typically submit relevant written documentation to courts as part of monitoring probationers, paperwork in this area ought to be part of regular business activities and minimal.

7. Duplication:

The proposed rule does not overlap, or conflict with any existing State or federal requirements. It duplicates, as necessary, certain required factors mentioned above that must be considered pursuant to Chapter 568 of the Laws of 2008.

8. Alternatives:

No significant alternatives were considered. Chapter 568 of the Laws of 2008 required that DPCA promulgate rules and regulations that include guidelines and procedures on placement of SORA Level 2 or 3 probationers and enumerated were specific minimum factors to be considered. DPCA earlier circulated two draft regulatory guidelines to all probation departments. The first draft was more detailed with respect to factors and procedures and the second version, reflected in this final proposed rule, incorporates changes requested from the probation field after DPCA reviewed comments from probation departments on the earlier draft and met with the Executive Committee of the Council of Probation Administrators.

9. Federal standards:

The proposed rule does not conflict with any federal standards.

10. Compliance schedule:

As probation departments routinely monitor those under their supervision and conduct investigations and notify courts as necessitated, it is believed that probation departments will be able to comply with the proposed rule in this area on its effective date.

As to determining concentration of sex offenders which is a statutory factor, probation departments have access to the Sex Offender Registry which contains reported addresses of all SORA registered sex offenders. Additionally, all probation departments have access to the Integrated Justice Portal which will in the imminent future lead to their ability to conduct mapping of probationers, including sex offenders through the aforementioned CIRIS mapping structure. Currently, law enforcement within the 17 Operation Impact counties has access to CIRIS mapping. DPCA has recently forwarded to DCJS, for CIRIS mapping access, the names of over 100 probation professionals which include probation administrators and staff who have been designated by their respective departments to DPCA as sex offender liaisons for address confirmation purposes and most of whom have sex offender caseloads. Additionally, DPCA and DCJS have worked towards establishing statewide web-based conferencing training with respect to CIRIS mapping for all probation departments. Recent communication has been disseminated to all probation departments as to regional training opportunities with specific dates and locations. Two regional trainings have already occurred in the counties of Albany and Onondaga and three more are in the planning stages. CIRIS Mapping will expedite their efforts as to determining location and number of other SORA registered sex offenders in proximity to a Level 2 or 3 sex offender under probation supervision.

Regulatory Flexibility Analysis

1. Effect of rule:

This new proposed rule of the Division of Probation and Correctional Alternatives (DPCA) will have no effect on small businesses. It will have an effect on local governments since probation departments will be required to consider certain factors when investigating and approving residence for sex offenders under probation supervision designated Level 2 or 3 sex offenders pursuant to the Sex Offender Registration Act (SORA). However, consideration of the factors and instruction in this area is required under Chapter 568 of the Laws of 2008.

2. Compliance requirements:

The proposed rule will not have any additional compliance requirements for small businesses. However, as noted above, to comply with Chapter 568 of the Laws of 2008, probation departments will be required to consider certain factors and be instructed with respect to investigating and approving residences of SORA Level 2 and 3 sex offenders under probation supervision of their respective probation departments. Compliance requirements with respect to probation departments are consistent with Chapter 568 of the Laws of 2008. As probation departments routinely monitor those under their supervision and conduct investigations and notify courts as necessitated, it is believed that probation departments will

be able to comply with the proposed rule in this area immediately upon adoption.

As to determining concentration of sex offenders which is a statutory factor, probation departments have access to the Sex Offender Registry maintained by the Division of Criminal Justice Services (DCJS) which contains reported addresses of all SORA registered sex offenders. Additionally, all probation departments have access to the Integrated Justice Portal which will in the imminent future lead to their ability to conduct mapping of probationers, including sex offenders through the Critical Infrastructure Response Information System (CIRIS) mapping structure. CIRIS was developed by the NYS Office of Cyber Security and Critical Infrastructure Coordination (CSCIC). Currently, law enforcement within the 17 Operation Impact counties has access to CIRIS mapping. DPCA has also forwarded to DCJS, for CIRIS mapping access, the names of over 100 probation professionals which include probation administrators and staff who have been designated by their respective departments to DPCA as sex offender liaisons for address confirmation purposes and most of whom have sex offender caseloads. Additionally DPCA and DCJS have worked towards establishing statewide web-based conferencing training with respect to CIRIS mapping for all probation departments. Recent communication has been disseminated to all probation departments as to regional training opportunities with specific dates and locations. Two regional trainings have already occurred in the counties of Albany and Onondaga and three more are in the planning stages. CIRIS Mapping will expedite their efforts as to determining location and number of other SORA registered sex offenders in proximity to a Level 2 or 3 sex offender under probation supervision.

3. Professional services:

The proposed rule will not require small businesses or local governments to hire additional professional services.

4. Compliance costs:

There may be some fiscal impact as a result of the proposed rule. However, any increase in administrative costs to probation departments is a result of Chapter 568 of the Laws of 2008 and not this proposed rule. This measure complies with the statutory requirements to identify factors which ought to be considered when investigating and approving residences of Level 2 and 3 sex offenders and is consistent with the new law's requirement that DPCA provide instruction in this area.

Probation departments routinely conduct pre-sentence investigations and reports for criminal courts as to certain defendant's who are before the court for sentencing, which include information as to residency and/or living arrangement. As part of their supervision function, case planning occurs on all probationers and monitoring of terms and conditions of release. When necessary, probation departments seek court direction as to allowable/permissible residence of a probationer and provide court documentation and pursue violations to address noncompliance. While the new law establishes that local probation departments must consider certain statutory factors when investigating and approving residence of SORA Level 2 and 3 probationers and that DPCA must promulgate regulatory guidelines and procedures in this area, our regulations parallel the law and while there is additional instruction and other factors which are recommended to be utilized, our expansion is viewed as consistent with the law's intent as to DPCA promulgating regulations in this area, good professional practice and there is considerable flexibility provided with respect to implementation. It is recognized that no single factor is dispositive. The usage of the word "should" with respect to certain actions in several provisions is meant to encourage and provide guidance or instruction as to good professional practice but not mandate its utilization. Many departments already take such factors into consideration and follow such recommended procedures. Overall, numerous probation departments have relayed that our proposed regulatory content include other factors which are manageable and not burdensome.

Noteworthy, as for considering certain statutory factors as to location, concentration, and number of other sex offenders, while there already exists a Sex Offender Registry which is accessible to all probation departments, the new CIRIS mapping technology and its application provides a wealth of data including that of a geographic nature involving registered sex offenders and school data to support public safety efforts within New York State. It is being made available, free of charge, to local probation departments via the Integrated Justice Portal and will provide probationer-specific GIS mapping capability. Utilization of CIRIS Mapping will provide greater operational efficiency to departments as a supervisory tool with respect to considering location and number of other SORA registered sex offenders when conducting investigations and approving residence of SORA Level 2 and 3 sex offenders under probation supervision. Free regional training in CIRIS mapping recently has been offered at three sites and already conducted in Albany and Onondaga Counties for interested probation departments. Currently, our agency is working with CSCIC and DCJS to provide appropriately trained probation officers access to CIRIS. Additional trainings are being scheduled for the month of March 2009

with the intent to have every department trained and given access to CIRIS. As of March 10, 2009, approximately 22 probation departments out of 58 have been trained. Although there may be some increased cost to localities as the result of the new law, such costs may be offset by the efficiency of using the CIRIS tool, rather than more labor intensive methods of determining the whereabouts of offenders.

5. Economic and technological feasibility:

All probation departments have the economic and technological ability to comply with these regulations.

6. Minimizing adverse impact:

There will be no adverse economic impact on small businesses, and while there may be some economic impact on the administrative costs of probation departments in carrying out new regulatory requirements in accordance with Chapter 568 of the Laws of 2008, DPCA sought and incorporated professional input from probation departments across the state in developing and finalizing a reasonable and workable regulatory guideline in this area which minimized adverse impact upon their probation operations and that could be implemented in a timely manner.

7. Small business and local government participation:

DPCA issued an October 2008 memorandum advising all probation departments of this new Chapter by summarizing the new statutory requirements and providing them advance notice of its scope and that DPCA had the responsibility to issue regulatory guidelines in this area and would be reaching out to probation professionals during this process. Subsequently, DPCA convened a meeting with a small working group of probation practitioners across the state to gather feedback on an internal preliminary draft. This culminated in a draft regulatory guideline which was circulated in November 2008 to all probation departments with a contact person to provide written comments. Thereafter, DPCA executive and program staff met with the Executive Committee of the Council of Probation Administrators (COPA) as to content which led to another revised draft which was again circulated in December 2008 to all probation departments for input. DPCA received favorable comments on this document which led to the document being incorporated in its entirety in this final version.

Lastly, as this proposed rule does not involve small business there has been no participation with small businesses.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This proposed rule will apply to all probation departments, including the 44 departments located within rural jurisdictions of New York State.

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

This new proposed rule of the Division of Probation and Correctional Alternatives (DPCA) does not impose specific recordkeeping or reporting requirements upon probation departments. However, to comply with Chapter 568 of the Laws of 2008, probation departments will be required to consider certain factors and be instructed with respect to investigating and approving residences of Sex Offender Registration Act (SORA) Level 2 and 3 sex offenders under probation supervision of their respective probation departments. Compliance requirements with respect to probation departments are consistent with Chapter 568 of the Laws of 2008. As probation departments routinely monitor those under their supervision and conduct investigations and notify courts as necessitated, it is believed that probation departments will be able to comply with the proposed rule in this area immediately upon adoption.

As to determining concentration of sex offenders which is a statutory factor, probation departments have access to the Sex Offender Registry maintained by the Division of Criminal Justice Services (DCJS) which contains reported addresses of all SORA registered sex offenders. Additionally, all probation departments have access to the Integrated Justice Portal which will in the imminent future lead to their ability to conduct mapping of probationers, including sex offenders through the Critical Infrastructure Response Information System (CIRIS) mapping structure. CIRIS was developed by the NYS Office of Cyber Security and Critical Infrastructure Coordination (CSCIC). Currently, law enforcement within the 17 Operation Impact counties has access to CIRIS mapping. DPCA has also forwarded to DCJS, for CIRIS mapping access, the names of over 100 probation professionals which include probation administrators and staff who have been designated by their respective departments to DPCA as sex offender liaisons for address confirmation purposes and most of whom have sex offender caseloads. Additionally DPCA and DCJS have worked towards establishing statewide web-based conferencing training with respect to CIRIS mapping for all probation departments. Recent communication has been disseminated to all probation departments as to regional training opportunities with specific dates and locations. Two regional trainings have already occurred in the counties of Albany and Onondaga and three more are in the planning stages. CIRIS Mapping will expedite their efforts as to determining location and number of other SORA registered sex offenders in proximity to a Level 2 or 3 sex offender under probation supervision.

Moreover, sufficient flexibility is provided to probation departments as to manner and detail when reporting any findings with respect to investigations of residences of SORA Level 2 and 3 probationers to the court where circumstances necessitate judicial action. Additionally, this proposed rule imposes no specific recordkeeping requirements. Lastly, this proposed rule will not require rural probation departments to hire additional professional services.

3. Costs:

There may be some fiscal impact as a result of the proposed rule. However, any increase in administrative costs to probation departments is a result of Chapter 568 of the Laws of 2008 and not this proposed rule. This measure complies with the statutory requirements to identify factors which ought to be considered when investigating and approving residences of Level 2 and 3 sex offenders and is consistent with the new law's requirement that DPCA provide instruction in this area.

Probation departments routinely conduct pre-sentence investigations and reports for criminal courts as to certain defendant's who are before the court for sentencing, which include information as to residency and/or living arrangement. As part of their supervision function, case planning occurs on all probationers and monitoring of terms and conditions of release. When necessary, probation departments seek court direction as to allowable/permissible residence of a probationer and provide court documentation and pursue violations to address noncompliance. While the new law establishes that local probation departments must consider certain statutory factors when investigating and approving residence of SORA Level 2 and 3 probationers and that DPCA must promulgate regulatory guidelines and procedures in this area, our regulations parallel the law and while there is additional instruction and other factors which are recommended to be utilized, our expansion is viewed as consistent with the law's intent as to DPCA promulgating regulations in this area, good professional practice and there is considerable flexibility provided with respect to implementation. It is recognized that no single factor is dispositive. The usage of the word "should" with respect to certain actions in several provisions is meant to encourage and provide guidance or instruction as to good professional practice but not mandate its utilization. Many departments already take such factors into consideration and follow such recommended procedures. Overall, numerous probation departments have relayed that our proposed regulatory content include other factors which are manageable and not burdensome.

Noteworthy, as for considering certain statutory factors as to location, concentration, and number of other sex offenders, while there already exists a Sex Offender Registry which is accessible to all probation departments, the new CIRIS mapping technology and its application provides a wealth of data including that of a geographic nature involving registered sex offenders and school data to support public safety efforts within New York State. It is being made available, free of charge, to local probation departments via the Integrated Justice Portal and will provide probationer-specific GIS mapping capability. Utilization of CIRIS Mapping will provide greater operational efficiency to departments as a supervisory tool with respect to considering location and number of other SORA registered sex offenders when conducting investigations and approving residence of SORA Level 2 and 3 sex offenders under probation supervision. Free regional training in CIRIS mapping recently has been offered at three sites and already conducted in Albany and Onondaga Counties for interested probation departments. Currently, our agency is working with CSCIC and DCJS to provide appropriately trained probation officers access to CIRIS. Additional trainings are being scheduled for the month of March 2009 with the intent to have every department trained and given access to CIRIS. As of March 10, 2009, approximately 22 probation departments out of 58 have been trained. Although there may be some increased cost to localities as the result of the new law, such costs may be offset by the efficiency of using the CIRIS tool, rather than more labor intensive methods of determining the whereabouts of offenders.

4. Minimizing adverse impact:

While there may be some economic impact on the administrative costs of probation departments in carrying out new regulatory requirements in accordance with Chapter 568 of the Laws of 2008, DPCA sought and incorporated professional input from probation departments across the state, including all rural probation departments, in developing and finalizing a reasonable and workable regulatory guideline in this area which minimized adverse impact upon their probation operations and that could be implemented in a timely manner.

5. Rural area participation:

DPCA issued an October 2008 memorandum advising all probation departments of this new Chapter by summarizing the new statutory requirements and providing them advance notice of its scope and that DPCA had the responsibility to issue regulatory guidelines in this area and would be reaching out to probation professionals during this process. Subsequently, DPCA convened a meeting with a small working group of probation practitioners across the state, inclusive a representative from a

rural jurisdiction, to gather feedback on an internal preliminary draft. This culminated in a draft regulatory guideline which was circulated in November 2008 to all probation departments with a contact person to provide written comments. Thereafter, DPCA executive and program staff met with the Executive Committee of the Council of Probation Administrators (COPA) whose members include several rural probation directors as to content which led to another revised draft which was again circulated in December 2008 to all probation departments for input. DPCA received favorable comments on this document, including written and verbal communication from several rural probation departments, which led to the document being incorporated in its entirety in this final version.

Job Impact Statement

A Job Impact Statement has not been prepared for this proposed rule. It is evident from the subject matter of the new Part that it will not materially change the job function of probation professionals. This proposed rule formalizes the placement factors which probation departments must consider when investigating and approving residence of SORA Level 2 or 3 probationers. Investigations as well as judicial notification activities are frequently undertaken as part of probation monitoring the terms and conditions of probationers, particularly registerable sex offenders. Thus the changes will not have any detrimental impact on jobs and employment opportunities of probation departments.

Public Service Commission

NOTICE OF ADOPTION

Expansion of Con Edison's ESCO Referral Program to Include New Customers

I.D. No. PSC-27-08-00007-A

Filing Date: 2009-06-03

Effective Date: 2009-06-03

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

Action taken: On 5/14/09, the PSC adopted an order approving Consolidated Edison Company of New York Inc.'s request to expand its ESCO referral program to new service initiation customers with modifications as proposed in its ESCO Referral Report.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1) and 66(1)

Subject: Expansion of Con Edison's ESCO referral program to include new customers.

Purpose: To approve the ESCO referral program to new service initiation customers with modifications.

Substance of final rule: The Commission, on May 14, 2009, adopted an order approving Consolidated Edison Company of New York Inc.'s request to expand its ESCO referral program to new service initiation customers with modifications as proposed in its ESCO Referral Report, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(07-E-0523SA3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Grant, Deny, or Modify, in Whole or in Part, the Petition

I.D. No. PSC-25-09-00005-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, a petition seeking, stay, investigation and remediation of noncompliance with prior Order, Vacatur or modification of the Order approving submetering.

Statutory authority: Public Service Law, sections 2, 4(1), 5, 22, 23, 26, 30, 32, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 51, 53, 65, 65(1), 66, 66(1), (2), (3), (4), (5), (12) and (14)

Subject: Whether to grant, deny, or modify, in whole or in part, the petition.

Purpose: Whether to grant, deny, or modify, in whole or in part, the petition.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny, or modify, in whole or in part, the petition of Hazel Towers Tenants Association seeking investigation and remediation of non-compliance with the Commission's Order in Case 00-E-1269 issued January 3, 2001 (Submetering Order) permitting submetering of electricity to the tenants of Hazel Towers, 1730-1740 Mulford Avenue, Bronx, New York. The petition also seeks stay, vacatur or modification of the Submetering Order.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brillling@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(00-E-1269SP2)

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

Electric Utility Implementation Plans for Proposed Web Based SIR Application Process and Project Status Database

I.D. No. PSC-25-09-00006-P

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

Proposed Action: The Commission is considering whether to approve, reject or modify, in whole or in part, the filings of several electric utilities for implementation of web based Standardized Interconnection Requirement (SIR) systems as ordered in Case 08-E-1018.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), 66(1), (2), (3), (4), (5), (9), (10) and (12)

Subject: Electric utility implementation plans for proposed web based SIR application process and project status database.

Purpose: To determine if the proposed web based SIR systems are adequate and meet requirements needed for implementation.

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to accept, reject or modify, in whole or in part, the filings of Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, Central Hudson Gas and Electric Corporation, New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, for implementation of the New York State Standardized Interconnection Requirements (SIR) web based systems providing interconnection customers access to projects status and the ability to file new applications via the internet, as ordered on February 13, 2009 in Case 08-E-1018. Among the issues to be considered are the minimum requirements for the systems; such as access, usability, security, and electronic signatures along with determining a final implementation date.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany,

New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brillling@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(08-E-1018SP2)

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

Electric Rates for Consolidated Edison Company of New York, Inc.

I.D. No. PSC-25-09-00007-P

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

Proposed Action: The Commission is considering what action to take concerning a May 26, 2009 Petition for Rehearing filed by Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 4(1), 65(1), 66(1) and (12)

Subject: Electric rates for Consolidated Edison Company of New York, Inc.

Purpose: Consider a Petition for Rehearing filed by Consolidated Edison Company of New York, Inc.

Substance of proposed rule: On April 24, 2009, the Commission issued an Order Setting Electric Rates for Consolidated Edison Company of New York, Inc. (the Company). In a petition for rehearing dated and filed May 26, 2009, the Company seeks rehearing regarding those aspects of the April 24, 2009 order concerning an austerity adjustment; 50/50 sharing of the costs of Directors and Officers Liability Insurance; Performance-Based Directors Compensation; the Company's cost of common equity; an incremental productivity adjustment one percentage point greater than the Company's proposal; and the treatment of certain energy efficiency costs.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brillling@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(08-E-0539SP3)

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

Inter-carrier Telephone Service Quality Standards and Metrics

I.D. No. PSC-25-09-00008-P

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

Proposed Action: The PSC is considering modifications to existing inter-carrier telephone service quality measures and standards as proposed by the Carrier Working Group and recommended by Staff.

Statutory authority: Public Service Law, section 94(2)

Subject: Inter-carrier telephone service quality standards and metrics.

Purpose: To review recommendations from the Carrier Working Group and incorporate appropriate modifications to the existing Guidelines.

Substance of proposed rule: The specific modifications to the Inter-Carrier Service Quality Guidelines being considered by the Commission in this action include: administrative changes (i.e., non-process changes of a clerical nature or that correct minor errors) and process changes (i.e., additions, deletions and consolidations for specific products offered) for the following metrics:

1) Pre-Ordering Performance (PO-1-07 metric measures the average response time for a rejected query; PO-3-02 metric measures the percent of calls answered within 30 seconds; PO-4-01, PO-4-02, and PO-4-03 metrics which measure the timeliness of change management notices; PO-7-02, PO-7-03, & PO-7-04 metrics which measure the delay hours for software resolutions and test decks transactions; PO-8-02 metric measures the response time for engineering records in the provision of loop qualification information).

2) Ordering Performance (OR-1-04, OR-1-06, OR-1-08, OR-1-10 and OR-2-06, metrics measure the amount of time elapsed between the receipt and confirmation of orders processed when no facility check is required and when a facility check is required; OR-2-08, OR-2-10, and OR-3-01 metric measures the percent of rejects due to an order entry, faxed or mailed errors; OR-6-01 metric measures the percent of orders completed as ordered; OR-7-01 metric measures the percent of orders confirmed or rejected within three business days; and OR-8-01 metric which measures timeliness of acknowledgements sent).

3) Provisioning Performance (PR-1-07, PR-1-08, PR-1-12, PR-1-13 metrics measure the average number of days between the order date and the committed due date for specific products; PR-4-01 and PR-4-08 metrics measure the percent of orders completed after the due date; PR-5-04 metric measures percent of orders held or cancelled due to facilities; PR-6-02 metric measures the percent of lines installed that a trouble was found within 7 days of order completion; PR-8-02 metric measures the percent of open orders in a hold status; and PR-9-01 and PR-9-04 metrics which measure the percent of UNE Hot Cut Loop orders completed within a specific interval.)

4) Maintenance and Repair Performance (MR-2-04 metric measures the percent of subsequent trouble calls; MR-4-01 metric measures the mean time to repair; MR-4-06 metric measures out of service greater than four hours.)

5) Network Performance (NP-2-02 and NP-2-06 metrics measure the percent of Virtual collocations completed within a specific interval; NP-2-03 and NP-2-04 metrics measure the average number of business days between the order application date and completion or response date; and NP-2-07 and NP-2-08 metrics measure the average number of days between the actual completion date and the committed due date for specific collocation arrangements.)

The most recent version of the C2C Guidelines is available at: <http://www.dps.state.ny.us/carrier.htm>.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brillling@dps.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(97-C-0139SP31)

Department of State

EMERGENCY RULE MAKING

Document Destruction Contractors

I.D. No. DOS-25-09-00001-E

Filing No. 639

Filing Date: 2009-06-04

Effective Date: 2009-06-04

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

Action taken: Addition of Part 199 to Title 19 NYCRR.

Statutory authority: General Business Law, art. 39-G, section 899-bbb(12)(a)

Finding of necessity for emergency rule: Preservation of public safety and general welfare.

Specific reasons underlying the finding of necessity: The Legislature enacted statutory authority, with an effective date of October 1, 2008, for a new licensing category regarding contractors engaged in the business of document destruction. This law requires businesses that offer document destruction services to register with the Department of State, and enables the Secretary of State to promulgate such rules and regulations as are deemed necessary to effectuate its purposes. This law is necessary for the protection of the public to prevent the unlawful taking of personal identification information from documents disposed of by the public. The law limits the amount of documents containing sensitive personal information subject to misappropriation by ensuring the availability of qualified and reputable document destruction contractors. The law will work in concert with recently implemented federal disposal rules (16 CFR Part 682), and New York's Disposal Law (Chapter 65 of the Laws of 2006) which require businesses to take appropriate steps when disposing of personal information. In order to comply with these mandates, many businesses hire contractors that specialize in the destruction of records containing personal information. The new licensing category enacted by the NYS Legislature will ensure that information required to be destroyed under the federal Disposal Rule and New York's Disposal Law pursuant to a document destructions contract is disposed of properly by a contractor registered with the State of New York.

Subject: Document destruction contractors.

Purpose: To provide guidance regarding the process of applying for, and registering as, a document destruction contractor.

Text of emergency rule: Part 199 is added to 19 NYCRR to be entitled and read as follows:

19 NYCRR PART 199 Document Destruction Contractors

Section 199.1 Fingerprinting: principals and officers

(a) Applicants for registration as document destruction contractors must be fingerprinted, and the fingerprints must be taken by one of the following:

(1) an employee of the Department of State, Division of Licensing Services at designated locations and at appointed times, or at such other location designated by the Division of Licensing Services;

(2) a local police officer, a State police officer, a sheriff or deputy sheriff;

(3) a principal or officer of a document destruction contractor business; or

(4) a previously fingerprinted employee of security guard training school approved by the Division of Criminal Justice Services (Division).

(b) Each fingerprint card shall be signed and authenticated by the individual who took the fingerprints and shall state the individual's name along with his/her title of office or employment status.

(c) All fingerprints shall be taken on a form and in a manner approved by the Division of Criminal Justice Services.

Section 199.2 Investigation

Within five business days after receipt of an application, the Department of State (Department) shall transmit to the Division two sets of fingerprints and the fees required pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law, and amendments thereto, for the cost of the Division's full search and retain procedures. The results will be used to ascertain whether or not the applicant has been charged with or convicted of a serious offense and may cause to be

conducted an investigation to verify the information contained in the application; provided, however, that the Department shall cause such investigation to be conducted for applicants whose application has not been submitted and verified pursuant to section eight hundred ninety-nine-bbb of General Business Law article 39-G. The Department, in consultation with the Division, may waive such background checks, investigations and fees if in its opinion, the applicant has been subject to previous background checks and investigation requirements which meet or exceed the requirements of this section. The Department, in consultation with the Division, may not be required to conduct background checks or investigations for applicants who are also employed as security guards or peace officers.

Section 199.3 Supervisory responsibility

A registrant/licensee has an affirmative duty to provide supervision of all employees and for all business activities. Such supervision shall consist of regular, frequent and consistent personal guidance, instruction, oversight and superintendence by the qualifying registration/license holder with respect to the general business conducted by the firm and all matters relating thereto.

Section 199.4 Business and employee records

(a) Each business licensed under this Part shall keep and maintain for a period of three years records of all transactions performed by the business.

(b) All records must be retained for longer periods, in the event there is any litigation pending concerning such records and/or employee. Litigation shall include investigation or administrative action by the Department of State, initiated by complaint from the general public or by the department.

(c) A business which is registered to conduct activities as a document destruction contractor must maintain employee and business records at a central location within New York State. This is applicable to all company and personnel records pertaining exclusively to the conduct of business in this State.

(d) Each registrant/licensee shall prepare and retain a statement of services and charges which has been agreed upon between the registrant/licensee and the consumer, a copy of which must be presented to the consumer. The consumer must be presented with a copy of any document signed by the registrant/licensee and consumer. Any agreement signed by a representative of the registrant/licensee and the consumer for services to be performed must be retained by the registrant/licensee in the business records of the firm.

(e) In conjunction with any transaction, each registrant/licensee shall identify any and all employees who conduct activities constituting document destruction services.

Section 199.5 Employee and employer responsibility

(a) Any person who is or has been an employee of a registered document destruction contractor shall not divulge to anyone other than his employer, except as may be required by law, any information acquired by him/her during such employment in respect to any of the work to which he/she shall have been assigned by such employer.

(b) It is the duty and obligation of an employer of any individual believed to have violated this section to divulge all known facts and circumstances to the Secretary of State or such person in the Department of State who may be designated.

Section 199.6 License revocation and suspension

Any person, firm, company, partnership, corporation or organization licensed under Article 39-G of the General Business Law which has its registration/license revoked or suspended by the Department of State shall be ineligible to employ other persons in any capacity to conduct document destruction services for the period of the revocation or suspension.

Section 199.7 Criminal convictions

Any applicant, principal or qualifier convicted of any felony or misdemeanor may be denied licensure or subjected to license revocation and suspension. Department of State discretion shall be exercised pursuant to the standards articulated in Article 23-A of the Correction Law.

Section 199.8 Notice of criminal conviction

Any registrant/licensee who is convicted of a crime as defined in the Penal Law in this State or an offense which would constitute a crime if committed in New York in any other state or Federal or foreign jurisdiction, shall give notice of such conviction to the Department of State, Division of Licensing Services, at its Albany Office, by certified mail, return receipt requested, within 10 days from date of conviction. Such notice shall be given notwithstanding pendency of appeal.

Section 199.9 Advertising

All advertising placed by an individual or a business registered/licensed under this article must contain the following statement: "Registered with the N.Y.S. Department of State."

Section 199.10 Statement of licensure

All documents or receipts issued by an individual or business licensed pursuant to this article must contain the unique identification number is-

sued to such individual or business and the phrase "Registered with the N.Y.S. Department of State."

Section 199.11 Contracts and agreements.

(a) Consumers conducting business with an individual or firm licensed under this article shall receive a copy of any signed contract and/or agreement.

(b) All contracts and agreements used by an individual or firm licensed under this article shall include the following statement under the name of the business: "This business is registered with the New York Department of State, Division of Licensing Services."

Section 199.12 Enforcement.

All principals, qualifiers and/or employees of the registered document destruction contractor shall be subject to the enforcement provisions contained in Article 39-G of the General Business Law. Service of process pursuant to said article, including but not limited to service of a notice of hearing to be conducted pursuant to the provisions of said article, shall be by certified mail sent to the last known registered or business address of the applicant or registered document destruction contractor.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 1, 2009.

Text of rule and any required statements and analyses may be obtained from: Linda D. Cleary, Department of State, Division of Licensing Services, 80 South Swan St., 10th Fl., Albany NY 12201, (518) 473-2728, email: linda.cleary@dos.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

General Business Law Article 39-G, section 899-bbb(12)(a) authorizes the Secretary of State to promulgate such rules and regulations as are deemed necessary to effectuate the purposes of the article, which article contains new licensing/registration requirements for the discipline entitled "document destruction contractors".

2. Legislative objectives:

General Business Law, Article 39-G, requires the Department of State to license and regulate document destruction contractors. The statute requires registrants/licenses to meet certain requirements in order to qualify and maintain registration as a document destruction contractor. The statutory intent behind Article 39-G is consumer protection.

3. Needs and benefits:

The proposed rule making will protect consumers and meet the legislative intent in enacting Article 39-G. By setting forth specific regulations clarifying the procedures to be followed in obtaining approval from the Department of State to register and maintain registration as a document destruction contractor, registrants/licenses and prospective employees, as well as the public will be protected by ensuring that licensed document destruction contractors conduct their business in accordance with the principles set forth in General Business Law Article 39-G.

4. Costs:

a. Costs to regulated parties:

The rule making will not impose any new costs on document destruction contractors, beyond those imposed with their compliance with the statutory requirements of General Business Law Article 39-G. It is believed that there will be costs to the regulated public associated with obtaining the requisite NYS background check, estimated to be \$75. Regarding costs for fingerprints of principals, officers, or employees of the document destruction contractor, these are estimated to be approximately \$12 to \$30 for each set of fingerprints prepared and obtained pursuant to these rules and the statute. The regulated public will likely incur costs associated with record retention for those licensees who do not possess sufficient on-site storage for records. The cost of storage facilities varies depending on various factors such as location and size. It is estimated that the starting price for an off-site storage unit is approximately \$40.00 per month. It is not anticipated that the regulated public will incur any other costs.

b. Costs to the Department of State:

The Department of State does not anticipate any additional costs to the agency to implement and continue to administer the rule's requirements. The Department of State currently licenses and regulates in excess of twenty-eight different occupations. The Department did not hire additional staff to assist with the implementation and administration of the new document destruction contractor licensing requirements. Existing staff will also absorb the functions necessary to support the program and the rule.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule clarifies the already mandated statutory requirement that all

applications for licensure be accompanied by two sets of fingerprint cards for all principals and officers; prospective registrants/licensees are already required to satisfactorily complete applications for registration, with accompanying documentation. The rule delineates and specifies the paperwork and record keeping requirements imposed on licensees by General Business Law Article 39-G. The statute mandates, in part, that document destruction contractors be subject to investigation and supply documentation upon request, and this rule clarifies the requirements for document retention. The rule also requires that advertisements and certain business records contain the license number and/or a statement that the licensee is licensed by the Department of State.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department of State considered not proposing any regulations, however, since subpart 12 of § 899-bbb requires that the Secretary of State shall promulgate such rules and regulations as are deemed necessary to effectuate the purposes of the legislation, it was deemed appropriate and necessary that the Department of State propose regulations to clarify the legislation. It was decided that not having any regulations would disadvantage both the regulated public and the Department of State insofar as certain vague statutory provisions would remain undefined and result in confusion and difficulties with enforcement. As a result, the Department of State is only proposing those regulations deemed necessary at this point in time, and has determined to hold in abeyance the possible need to file additional regulations to clarify and/or define other statutory issues.

9. Federal standards:

There are no federal standards regulating the registration of document destruction contractors, although there are federal standards regulating the disposal of personal information found in a federal Disposal Rule (16 CPF Part 682), and New York has a Disposal Law (Chapter 65 of the Laws of 2006), which comports with the federal requirements. The proposed rulemaking does not exceed any existing federal standard.

10. Compliance schedule:

The rule making will be effective as of the date of adoption. Prospective registrants/licensees are already required to register pursuant to the statutory provisions of Article 39-G, on or before October 1, 2008, and are on notice of the Secretary's power to enact regulations in concert therewith, and will therefore be able to comply with this rule as of its effective date.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed rulemaking creates a framework for the successful process of businesses registering for approval to act as document destruction contractors, and to employ qualified workers to conduct services related thereto, as well as to allow for the continued qualifications for renewal of same, and the responsibilities of these companies for document preparation and retention, for ensuring the qualifications of workers, and for the standards by which such businesses shall operate.

The rule does not apply to local governments.

2. Compliance requirements:

The business of document destruction is now being regulated under the auspices of the Department of State (DOS), and any companies or persons meeting the criteria for registration must do so. The proposed rules are intended to amplify the legislation, and to clarify specific requirements for registration. Further, pursuant to the statute, the Department is required to publish and make available a list of registered document destruction contractors who have properly qualified and registered with the Department. By statute, the list of registered document destruction contractors is to be made available to any interested party by way of online viewing on the Department's website, and also by permitting an interested party to obtain a copy thereof, at a cost to be determined by the Department, which the rules now clarify to be a minimal amount. The proposed rule provides the mechanism for compliance.

3. Professional services:

Small businesses will not need professional services in order to comply with this rule.

4. Compliance costs:

Registrant licensees will not incur any significant compliance costs associated with these rules, although there will be compliance costs associated with obtaining the requisite fingerprints of the principals, officers and/or qualifiers for the registrant contractors, and for producing the proper identification cards. The rules do not mandate that any businesses will incur significant expense beyond the expenses made necessary in order to comply with the statutory requirements.

5. Economic and technological feasibility:

Small businesses will not incur any additional costs or require technical expertise as a result of the implementation of these rules, beyond the requirements already placed upon small businesses which are required to comply with the statute.

6. Minimizing adverse impact:

DOS did not identify any alternatives which would provide relief for registrant contractors and at the same time be less restrictive and less burdensome on them in terms of compliance. This rule clarifies compliance requirements.

7. Small business and local government participation:

No comment has been received to the enacted legislation, and no comment has yet been received from the anticipated registrant pool, or the public. Simultaneously with the adopting of the rulemaking as an emergency adoption, the proposed rulemaking has been posted on the Department's website in an attempt to alert any interested parties and to seek public comment.

Rural Area Flexibility Analysis

This rule does not impose any adverse impact on rural areas. The rule complements the statutory adoption of the new licensing category of document destruction contractors, such that the procedures for obtaining and renewing registration in this area of business employment will be clear and readily apparent to the public. The Department of State has not received any objection to these procedures from approved providers.

Job Impact Statement

The proposed rule will not have a substantial adverse affect on jobs and employment opportunities for licensed document destruction contractors insofar as Article 39-G of the General Business Law already requires that such qualifying companies register with the Secretary of State. This rule making merely codifies the procedure to obtain Department of State approval to offer and provide services as a registered document destruction contractor.

Susquehanna River Basin Commission

INFORMATION NOTICE

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Approved Projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in "DATES."

DATE: May 1, 2009, through May 31, 2009.

ADDRESS: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR § 806.22(f) for the time period specified above:

Approvals By Rule Issued:

1. EOG Resources, Inc., Pad ID: PHC 4H, ABR-20090501, Lawrence Township, Clearfield County, Pa., Consumptive Use of Up to 0.999 mgd, Approval Date: May 7, 2009.
2. EOG Resources, Inc., Pad ID: PHC 5H, ABR-20090502, Lawrence Township, Clearfield County, Pa., Consumptive Use of Up to 0.999 mgd, Approval Date: May 7, 2009.
3. EOG Resources, Inc., Pad ID: PHC 9H, ABR-20090503, Lawrence Township, Clearfield County, Pa., Consumptive Use of Up to 0.999 mgd, Approval Date: May 7, 2009.
4. Seneca Resources Corporation, Pad ID: Signor Pad A, ABR-20090504, Charleston Township, Tioga County, Pa., Consumptive Use of Up to 2.000 mgd, Approval Date: May 11, 2009.
5. Seneca Resources Corporation, Pad ID: Wilcox Pad F, ABR-20090505, Covington Township, Tioga County, Pa., Consumptive Use of Up to 2.000 mgd, Approval Date: May 11, 2009.
6. Fortuna Energy, Inc., Cease, Pad ID: ABR-20090506, Troy Township, Bradford County, Pa., Consumptive Use of Up to 3.000 mgd, Approval Date: May 13, 2009.
7. Fortuna Energy, Inc., Pad ID: Shedden D 26/27, ABR-20090507, Troy Township, Bradford County, Pa., Consumptive Use of 3.000 mgd, Approval Date: May 13, 2009.

8. Fortuna Energy, Inc., Pad ID: Harris M, ABR-20090508, Armenia Township, Bradford County, Pa., Consumptive Use of Up to 3.000 mgd, Approval Date: May 13, 2009.
9. Fortuna Energy, Inc., Pad ID: Bense, ABR-20090509, Troy Township, Bradford County, Pa., Consumptive Use of Up to 3.000 mgd, Approval Date: May 13, 2009.
10. Fortuna Energy, Inc., Pad ID: Phinney, ABR-20090510, Troy Township, Bradford County, Pa., Consumptive Use of Up to 3.000 mgd, Approval Date: May 13, 2009.
11. Alta Operating Company, LLC, Pad ID: Powers Pad Site, ABR-20090511, Forest Lake Township, Susquehanna River, Pa., Consumptive Use of Up to 3.000 mgd, Approval Date: May 14, 2009.
12. Anadarko E&P Company, LP, Pad ID: COP Tract 259 #1000H, ABR-20090513, Burnside Township, Centre County, Pa., Consumptive Use of Up to 5.000 mgd, Approval Date: Mar 14, 2009.
13. Chief Oil & Gas, LLC, Pad ID: Barto Unit #1H, ABR-20090514, Penn Township, Lycoming County, Pa., Consumptive Use of Up to 5.000 mgd, Approval Date: May 14, 2009.
14. Chief Oil & Gas, LLC, Pad ID: Harper Unit #1H, ABR-20090515, West Burlington Township, Bradford County, Pa., Consumptive Use of Up to 5.000 mgd, Approval Date: May 14, 2009.
15. Chief Oil & Gas, LLC, Pad ID: Jennings Unit #1H, ABR-20090516, West Burlington Township, Bradford County, Pa., Consumptive Use of Up to 5.000 mgd, Approval Date: May 14, 2009.
16. Chief Oil & Gas, LLC, Pad ID: Black Unit #1, ABR-20090517, Burlington Township, Bradford County, Pa., Consumptive Use of Up to 5.000 mgd, Approval Date: May 14, 2009.
17. EXCO-North Coast Energy, Inc., Pad ID: Lopatofsky, ABR-20090512, Clifford Township, Susquehanna County, Pa., Consumptive Use of Up to 1.000 mgd, Approval Date: May 14, 2009.
18. Chief Oil & Gas, LLC, Pad ID: Hutton Unit #1H, ABR-20090518, Chest Township, Clearfield County, Pa., Consumptive Use of Up to 5.000 mgd, Approval Date: May 18, 2009.
19. Chesapeake Appalachia, LLC, Pad ID: Ward, ABR-20090519, Burlington Township, Bradford County, Pa., Consumptive Use of Up to 7.500 mgd, Approval Date: May 19, 2009.
20. Chesapeake Appalachia, LLC, Pad ID: Hannan, ABR-20090520, Troy Township, Bradford County, Pa., Consumptive Use of Up to 7.500 mgd, Approval Date: May 19, 2009.
21. Chesapeake Appalachia, LLC, Pad ID: Isbell, ABR-20090521, Burlington Township, Bradford County, Pa., Consumptive Use of Up to 7.500 mgd, Approval Date: May 19, 2009.
22. Fortuna Energy, Inc., Pad ID: Knights, ABR-20090522, Troy Township, Bradford County, Pa., Consumptive Use of Up to 3.000 mgd, Approval Date: May 19, 2009.
23. Fortuna Energy, Inc., Pad ID: Harris A, ABR-20090523, Troy Township, Bradford County, Pa., Consumptive Use of Up to 3.000 mgd, Approval Date: May 19, 2009.
24. Chesapeake Appalachia, LLC, Pad ID: White, ABR-20090525, Auburn Township, Susquehanna County, Pa., Consumptive Use of Up to 7.500 mgd, Approval Date: May 21, 2009.
25. Fortuna Energy, Inc., Pad ID: Thomas F 38, ABR-20090524, Troy Borough, Bradford County, Pa., Consumptive Use of Up to 3.000 mgd, Approval Date: May 21, 2009.
26. Chesapeake Appalachia, LLC, Pad ID: Otten, ABR-20090526, Asylum Township, Bradford County, Pa., Consumptive Use of Up to 7.500 mgd, Approval Date: May 22, 2009.
27. Chesapeake Appalachia, LLC, Pad ID: Mowry, ABR-20090527, Tuscarora Township, Bradford County, Pa., Consumptive Use of Up to 7.500 mgd, Approval Date: May 22, 2009.
28. Chesapeake Appalachia, LLC, Pad ID: May, ABR-20090528, Granville Township, Bradford County, Pa., Consumptive Use of Up to 7.500 mgd, Approval Date: May 22, 2009.
29. Chesapeake Appalachia, LLC, Pad ID: John Barrett, ABR-20090529, Asylum Township, Bradford County, Pa., Consumptive Use of Up to 7.500 mgd, Approval Date: May 22, 2009.
30. Chesapeake Appalachia, LLC, Pad ID: James Barrett, ABR-20090530, Asylum Township, Bradford County, Pa., Consumptive Use of Up to 7.500 mgd, Approval Date: May 22, 2009.
31. Chesapeake Appalachia, LLC, Pad ID: Redling, ABR-20090531, Thompson Township, Susquehanna County, Pa., Consumptive Use of Up to 7.500 mgd, Approval Date: May 22, 2009.
32. Chesapeake Appalachia, LLC, Pad ID: Chancellor, ABR-20090532, Asylum Township, Bradford County, Pa., Consumptive Use of Up to 7.500 mgd, Approval Date: May 22, 2009.
33. Chesapeake Appalachia, LLC, Pad ID: Clapper, ABR-20090533, Auburn Township, Susquehanna County, Pa., Consumptive Use of Up to 7.500 mgd, Approval Date: May 22, 2009.
34. Chesapeake Appalachia, LLC, Pad ID: Judd, ABR-20090534, Monroe Township, Bradford County, Pa., Consumptive Use of Up to 7.500 mgd, Approval Date: May 22, 2009.
35. Chesapeake Appalachia, LLC, Pad ID: VanNoy, ABR-20090535, Granville Township, Bradford County, Pa., Consumptive Use of Up to 7.500 mgd, Approval Date: May 22, 2009.
36. Cabot Oil and Gas Corporation, Pad ID: SevercoolB P1, ABR-20090536, Dimock Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
37. Cabot Oil and Gas Corporation, Pad ID: Heitsman P1, ABR-20090537, Dimock Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
38. Cabot Oil and Gas Corporation, Pad ID: Lathrop P1, ABR-20090538, Springville Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
39. Cabot Oil and Gas Corporation, Pad ID: Ratzel P1, ABR-20090539, Dimock Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
40. Cabot Oil and Gas Corporation, Pad ID: Smith P1, ABR-20090540, Springville Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
41. Cabot Oil and Gas Corporation, Pad ID: Teel P1, ABR-20090541, Springville Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
42. Cabot Oil and Gas Corporation, Pad ID: Teel P5, ABR-20090542, Springville Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
43. Cabot Oil and Gas Corporation, Pad ID: Teel P6, ABR-20090543, Springville Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
44. Cabot Oil and Gas Corporation, Pad ID: Hubbard P2, ABR-20090544, Dimock Township, Susquehanna County, Pa., Consumptive Use of Up to 3.5750 mgd, Approval Date: May 27, 2009.
45. Cabot Oil and Gas Corporation, Pad ID: Hubbard P1, ABR-20090545, Dimock Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
46. Cabot Oil and Gas Corporation, Pad ID: Ely P1, ABR-20090546, Dimock Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
47. Cabot Oil and Gas Corporation, Pad ID: Gesford P1, ABR-20090547, Dimock Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
48. Cabot Oil and Gas Corporation, Pad ID: Greenwood P1, ABR-20090548, Dimock Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
49. Cabot Oil and Gas Corporation, Pad ID: Gesford P3, ABR-20090549, Dimock Township, Susquehanna County, PA, Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
50. Cabot Oil and Gas Corporation, Pad ID: Gesford P4, ABR-20090550, Dimock Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
51. Cabot Oil and Gas Corporation, Pad ID: LaRue P2, ABR-20090551, Dimock Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
52. Cabot Oil and Gas Corporation, Pad ID: HeitsmanA P2, ABR-20090552, Dimock Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
53. Cabot Oil and Gas Corporation, Pad ID: Rozanski P1, ABR-20090553, Dimock Township, Susquehanna County, Pa.,

Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.

54. Cabot Oil and Gas Corporation, Pad ID: Smith P3, ABR-20090554, Dimock Township, Susquehanna County, Pa., Consumptive Use of Up to 3.575 mgd, Approval Date: May 27, 2009.
55. Chesapeake Appalachia, LLC, Pad ID: Przybyszewski, ABR-20090555, Auburn Township, Susquehanna County, Pa., Consumptive Use of Up to 7.500 mgd, Approval Date: May 29, 2009.
56. Chief Oil & Gas, LLC, Pad ID: Harris #1H, ABR-20090556, Burlington Township, Bradford County, Pa., Consumptive Use of Up to 5.000 mgd, Approval Date: May 29, 2009.

AUTHORITY: P.L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: June 9, 2009.

Thomas W. Beauduy

Deputy Director.