
NEW YORK STATE

REGISTER

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State agencies must specify in each notice which proposes a rule the last date on which they will accept public comment. Agencies must always accept public comment: for a minimum of 60 days following publication in the *Register* of a Notice of Proposed Rule Making, or a Notice of Emergency Adoption and Proposed Rule Making; and for 45 days after publication of a Notice of Revised Rule Making, or a Notice of Emergency Adoption and Revised Rule Making in the *Register*. When a public hearing is required by statute, the hearing cannot be held until 60 days after publication of the notice, and comments must be accepted for at least 5 days after the last required hearing. When the public comment period ends on a Saturday, Sunday or legal holiday, agencies must accept comment through the close of business on the next succeeding workday.

For notices published in this issue:

- the 60-day period expires on January 16, 2022
- the 45-day period expires on January 1, 2022
- the 30-day period expires on December 17, 2021

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GOVERNOR**

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NEW YORK STATE DEPARTMENT OF STATE

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NEW YORK STATE REGISTER

Be a part of the rule making process!

The public is encouraged to comment on any of the proposed rules appearing in this issue. Comments must be made in writing and must be submitted to the agency that is proposing the rule. Address your comments to the agency representative whose name and address are printed in the notice of rule making. No special form is required; a handwritten letter will do. Individuals who access the online *Register* (www.dos.ny.gov) may send public comment via electronic mail to those recipients who provide an e-mail address in Notices of Proposed Rule Making. This includes Proposed, Emergency Proposed, Revised Proposed and Emergency Revised Proposed rule makings.

To be considered, comments should reach the agency before expiration of the public comment period. The law provides for a minimum 60-day public comment period after publication in the *Register* of every Notice of Proposed Rule Making, and a 45-day public comment period for every Notice of Revised Rule Making. If a public hearing is required by statute, public comments are accepted for at least five days after the last such hearing. Agencies are also required to specify in each notice the last date on which they will accept public comment.

When a time frame calculation ends on a Saturday or Sunday, the agency accepts public comment through the following Monday; when calculation ends on a holiday, public comment will be accepted through the following workday. Agencies cannot take action to adopt until the day after expiration of the public comment period.

The Administrative Regulations Review Commission (ARRC) reviews newly proposed regulations to examine issues of compliance with legislative intent, impact on the economy, and impact on affected parties. In addition to sending comments or recommendations to the agency, please do not hesitate to transmit your views to ARRC:

Administrative Regulations Review Commission
State Capitol
Albany, NY 12247
Telephone: (518) 455-5091 or 455-2731

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KEY: (P) Proposal; (RP) Revised Proposal; (E) Emergency; (EP) Emergency and Proposal; (A) Adoption; (AA) Amended Adoption; (W) Withdrawal

Individuals may send public comment via electronic mail to those recipients who provided an e-mail address in Notices of Proposed Rule Making. This includes Proposed, Emergency Proposed, Revised Proposed and Emergency Revised Proposed rule makings. Choose pertinent issue of the *Register* and follow the procedures on the website (www.dos.ny.gov)

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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.

Office of Cannabis Management

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Part 115 - Personal Cultivation of Cannabis

I.D. No. OCM-46-21-00010-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 115 to Title 9 NYCRR.

Statutory authority: Cannabis Law, sections 13, 41 and 43; Penal Law, section 222.15

Subject: Part 115 - Personal Cultivation of Cannabis.

Purpose: Regulation to authorize the home cultivation of cannabis for certified medical cannabis patients.

Text of proposed rule: Pursuant to the authority vested in the Cannabis Control Board by sections 13, 41 and 43 of the Cannabis Law, Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, and a new Chapter II is added, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Chapter II – Rules of the Office of Cannabis Management

Part 115 – Personal Cultivation of Cannabis

Section 115.1 Definitions.

(a) For purposes of this section, the following definitions shall apply:

(1) “Cultivation” means growing, cloning, harvesting, drying, curing, grinding, and trimming of the cannabis plant.

(2) “Immature cannabis plant” means a non-flowering female cannabis plant or a cannabis plant which does not have buds that may be observed by visual examination.

(3) “Mature cannabis plant” means a female plant that has flowered and that has buds that may be observed by visual examination.

(4) “Person” means a person twenty-one years of age or older.

(5) “Private residence” means any building or part of a building, or structure designed and occupied exclusively for residential purposes, including but not limited to a private home; townhouse; condominium; apartment; or mobile home. For purposes of this Part, a hospital, hotel, motel, resort, or other similar public accommodation, shall not be considered a private residence, except as may be expressly allowed by the Board.

(6) “Process” or “Processing” means extracting, preparing, treating, modifying, compounding, manufacturing or otherwise manipulating cannabis for use to concentrate or extract its cannabinoids. For purposes of this section, processing does not include growing, cultivation, cloning, harvesting, drying, curing, grinding, or trimming.

Section 115.2 Personal cultivation of cannabis.

(a) The cultivation of cannabis for personal use may only occur in, or on the grounds of, a person’s private residence. No individual under the age of 21 may cultivate cannabis for personal use.

(b) No person shall plant, cultivate, harvest, dry, process or possess more than three mature cannabis plants and three immature cannabis plants at any one time.

(c) No more than six mature and six immature cannabis plants may be cultivated, harvested, dried, or possessed within any private residence, or on the grounds of a person’s private residence.

(d) No person shall sell or barter any cannabis seeds, immature cannabis plant, mature cannabis plant, or cannabis, produced by a plant cultivated pursuant to this Part, to any other person. This subdivision does not prohibit the transfer, without compensation, to a person twenty-one years of age or older, up to three ounces of cannabis and up to twenty-four grams of concentrated cannabis.

(e) Except as otherwise approved by the Office of Cannabis Management, no person shall process cannabis at home by means of any liquid or gas, other than alcohol, that has a flashpoint below 100 degrees Fahrenheit.

(f) Immature cannabis plants and mature cannabis plants must be stored in a secure location within a person’s private residence or on the grounds of such person’s private residence; and reasonable measures must be taken to ensure that such plants, and any cannabis cultivated from such plants, is not readily accessible to anyone under the age of 21. Such reasonable measures include but are not limited to:

(1) conducting cannabis cultivation in an enclosed area, which may not be plainly visible from public view, including from the street of the private residence or grounds of the person’s private residence, and in a reasonable manner that prioritizes attempts at mitigating cannabis odor;

(2) installing and maintaining reasonable security device(s); and

(3) locking and storing cannabis in a manner that prevents theft, loss, or access by an unauthorized person.

§ 115.3 Cultivation of medical cannabis by certified patients and designated caregivers.

(a) Certified patients twenty-one years of age or older may cultivate cannabis for personal use pursuant to Section 115.2 of this Part.

(b) Designated caregivers twenty-one years of age or older, caring for a certified patient either younger than twenty-one years of age or whose physical or cognitive impairments prevent them from cultivating cannabis, may cultivate cannabis for use by such patient, provided that no patient may have more than one designated caregiver grow on their behalf.

(c) Designated caregivers growing on behalf of a patient may grow up to six cannabis plants for one certified patient. Should a designated caregiver be designated to grow for more than one certified patient at a time, they may grow no more than one additional cannabis plant for each additional patient.

(d) In addition to the requirements in Section 115.2 of the Part, designated caregivers shall:

(1) keep any cannabis being cultivated for the designated caregiver’s certified patient separate from any other cannabis being cultivated, and in a manner that can readily determine to whom such cannabis plants belong;

(2) only receive reimbursement for the actual costs of goods, materials, or utilities for which they have incurred expenses directly related to the cultivation of cannabis for the certified patient, and not receive reimbursement or compensation for their time, knowledge, or expertise;

(3) not sell any cannabis produced by any immature cannabis plant or mature cannabis plant which is or was cultivated for a certified patient, even if the certified patient no longer needs or wants such cannabis; and

(4) only cultivate cannabis at, or on the grounds of, the designated caregiver's private residence or the certified patient's private residence.

(e) No landlord may refuse to lease, or otherwise penalize a certified patient or designated caregiver solely for engaging in medical cannabis activity as authorized by this Part and in accordance with Cannabis Law.

Text of proposed rule and any required statements and analyses may be obtained from: Blaise Gibson, Office of Cannabis Management, Building 9 Harriman Campus, 1220 Washington Ave., Albany, NY 12226, (888) 626-5151, email: regulations@ocm.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

Statutory Authority:

Pursuant to section 13 of the Cannabis Law, the Cannabis Control Board (Board) is vested with the authority to promulgate rules and regulations necessary to effectuate the provisions of the Cannabis Law. Section 41 of the Cannabis Law authorizes the home cultivation of medical cannabis pursuant to any regulations made by the Board and section 43 of the Cannabis Law explicitly empowers the Board to promulgate such regulations. Furthermore, section 222.15 of the Penal Law requires the Office of Cannabis Management (OCM) to issue regulations for home cultivation of cannabis by certified patients and cannabis consumers.

Legislative Objectives:

The Legislative objective of section 41 of the Cannabis Law and section 222.15 of the Penal Law is to expand patient access to cannabis by allowing for the personal cultivation of cannabis by certified medical patients. The proposed regulation will advance this objective by providing certified patients with a cost-effective means of obtaining cannabis through personal cultivation, while creating a set of standards governing the conduct and activities relating to the personal cultivation of cannabis.

Needs and Benefits:

The proposed regulations are necessary to allow certified patients to cultivate their own cannabis within their private residence. The regulations establish minimum standards for the personal cultivation of cannabis. To achieve this, the regulations require certified patients to conduct cannabis cultivation in a secure location at or on the grounds of a certified patient's private residence. The regulations would also impose a duty on patients to take reasonable measures to ensure that cannabis plants, and any cannabis cultivated from such plants, is not readily accessible to anyone under the age of twenty-one. In addition, the proposed regulation authorizes designated caregivers to grow cannabis on behalf of a certified patient that is under twenty-one years old or whose physical or cognitive impairments prevent them from cultivating cannabis. The proposed regulations are also necessary to restrict the processing of cannabis cultivated by certified patients and designated caregivers by prohibiting the use of any liquid or gas, other than alcohol, that has a flashpoint below 100 degrees Fahrenheit.

Costs:

Cost to the Regulated Entity:

The proposed regulations do not impose any new cost to any registered organization or other licensees or permittees operating in accordance with the Cannabis Law.

Costs to Local Government:

The proposed regulations do not require local governments to perform any additional tasks; therefore, it is not anticipated to have an adverse fiscal impact.

Costs to the OCM:

The proposed regulations will not result in any additional operational costs to the OCM.

Local Government Mandates:

The proposed regulations will not impose any new programs, services, duties, or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposed regulations will not create any additional paperwork.

Duplication:

Title V of Article 33 of the Public Health Law (Compassionate Care Act) and Part 1004 to Title 10 of the Codes, Rules, and Regulation of the State of New York (NYCRR) currently regulate the Medical Use of Marijuana. Pursuant to section 64 of Chapter 92 of the Laws of 2021, the Compassionate Care Act will be repealed on March 22, 2022, six months

after the full Board was created. Moreover, section 62-e of Chapter 92 of the Laws of 2021 sets out that 10 NYCRR Part 1004 shall continue in full force and effect until duly modified or abrogated by the Board.

Alternatives:

The Board is statutorily required to promulgate regulations pursuant to Sections 13,41 and 43 of the Cannabis Law, and Section 222.15 of the Penal Law. In drafting the proposed regulations, one alternative the Board considered was to take a more restrictive approach to the personal cultivation of cannabis and require certified patients and designated caregivers to maintain document of their grow and higher security requirements. However, the Board ultimately determined that such additional requirements would put an undue burden on certified patients and designated caregivers and were not necessary.

Federal Standards:

There are currently no federal standards for the home cultivation of cannabis for personal use.

Compliance Standards:

The regulations shall be effective upon publication of the Notice of Adoption in the State Register. However, cultivation of cannabis by any person other than a certified patient or designated caregiver is not authorized until adult-use licensees are authorized to begin selling adult-use cannabis in the State of New York.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose any significant reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

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 amendment, that it will not have an adverse impact on jobs and employment opportunities.

Delaware River Basin Commission

INFORMATION NOTICE

Notice of Proposed Rulemaking and Public Hearing

Importations of Water Into and Exportations of Water From the Delaware River Basin; Discharges of Wastewater from High Volume Hydraulic Fracturing and Related Activities

SUMMARY: The Commission proposes to amend its Comprehensive Plan and Water Code concerning importations of water into and exportations of water from the Delaware River Basin; to amend its Special Regulations – High Volume Hydraulic Fracturing to prohibit the discharge of wastewater from high volume hydraulic fracturing and related activities to waters or land within the Delaware River Basin; and to incorporate key elements of the latter proposed amendments into the Commission's Water Quality Regulations.

DATES: Written comments: Written comments will be accepted through 5 p.m. on January 28, 2022.

Public hearings: Public hearings will be held remotely via Zoom on the following dates at the noted times. Details about accessing the hearings are available on the Commission's website, www.drbc.gov.

1. December 8, 2021, 2:30 p.m. to no later than 4:30 p.m.
2. December 8, 2021, 6:30 p.m. to no later than 8:30 p.m.
3. December 15, 2021, 1 p.m. to no later than 3 p.m.
4. December 15, 2021, 4 p.m. to no later than 6 p.m.

On October 28, 2021, a notice including these public hearing dates, times and locations was posted on the Commission's website and circulated directly to Commission notice subscribers interested in this subject matter. Members of the public may sign up through the Commission's website to receive direct notice via email of additions or changes to the information provided above.

ADDRESSES: To submit written comments: Written comments will be accepted until 5 p.m. on January 28, 2022 through the Commission's online public comment collection system at: <https://dockets.drbc.commentinput.com/?id=x2K8A>. To request an exception from use of the online system based on lack of access to the Internet, please contact: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

To register to speak at public hearings: Although attendance at the hearings is not limited and requires no registration, those who wish to provide oral comment at a hearing must register in advance to do so. Registration will be through EventBrite. Links to EventBrite for each of the public hearing dates and times are posted at www.drbc.gov. Online registration will remain open until 5 p.m. on the day prior to the hearing date or until all available speaking slots have been filled, whichever is earlier. Each person who wishes to provide oral comment may do so at only one public hearing. Registrations will be monitored, and if capacity is not adequate to accommodate all who wish to speak, additional opportunities may be added.

See SUPPLEMENTARY INFORMATION for details regarding the substance of written comments.

FOR FURTHER INFORMATION CONTACT: For information regarding the public hearings and submission of written comments, contact Kate Schmidt, Communications Specialist, at kate.schmidt@drbc.gov (preferred) or 609-883-9500, ext. 205. For information concerning the proposed amendments, contact Pamela Bush, Commission Secretary and Assistant General Counsel, at pam.bush@drbc.gov (preferred) or 609-477-7203.

SUPPLEMENTARY INFORMATION: The Delaware River Basin Commission ("DRBC" or "Commission") is a regional interstate and federal agency formed by compact legislation of four states and the United States in 1961¹ to manage the water resources of the Delaware River Basin (the "Basin") without regard to political boundaries. Its members are, ex officio, the governors of the Basin states (Delaware, New Jersey, New York, and Pennsylvania) and the commander of the U.S. Army Corps of Engineers North Atlantic Division, who represents the United States.

Background

By Resolution No. 91-9 on June 19, 1991, the Commissioners amended the Commission's Comprehensive Plan by the addition of policies and regulations relating to transfers of water into and out of the Basin. These provisions were later codified in the Delaware River Basin Water Code.² The Commission on November 30, 2017 proposed regulations that, in part, concerned inter-Basin transfers of water and wastewater associated with high volume hydraulic fracturing ("HVHF") ("2017 draft rule") and that addressed the treatment and discharge of wastewater generated by HVHF. Concurrently with adoption of its final rule by Resolution No. 2021-01 on February 25, 2021, the Commission withdrew from consideration those provisions of the 2017 draft rule that concerned the exportation of water to support HVHF and the importation, treatment, and discharge of "produced water" and "CWT wastewater" as defined therein.³ By a Resolution for the Minutes on February 25, 2021, the Commissioners directed the Executive Director to prepare and publish for public comment a set of amendments to the Comprehensive Plan and implementing regulations to update the Commission's policies and provisions concerning importation and exportation of water and wastewater from and into the Basin and "to include such other proposed amendments ... as [the Executive Director, in consultation with the Commissioners] deem necessary or appropriate."

In accordance with the Commissioners' February 25, 2021 directive, the Commission is proposing amendments to its Comprehensive Plan and regulations to better provide for the planning, conservation, utilization, development, management and control of the Basin's water resources in connection with: the importation of water, including wastewater, into the Basin; the exportation of water, including wastewater, from the Basin; and the discharge of wastewater from HVHF and HVHF-related activities. The Commission proposes to amend the Water Code by clarifying the circumstances in which exportations of water, including wastewater, from the Basin and importations of water, including wastewater, into the Basin are considered by the Commission and the factors to be used in evaluating whether such proposed imports and exports of water may be approved. The proposed amendments will not apply to importations and exportations that existed prior to the effective date of any final rules, but are proposed to apply to increases in the rate or volume of existing importations and exportations. The Commission also proposes to amend its Special Regulations regarding HVHF by the addition of a finding that the discharge of wastewater from HVHF and HVHF-related activities poses significant, immediate, and long-term risks to the development, conservation, utilization, management, and preservation of the Basin's water resources, and that controlling future

pollution by prohibiting such discharge is required to effectuate the Comprehensive Plan, avoid injury to the waters of the Basin as contemplated by the Comprehensive Plan and protect the public health and preserve the waters of the Basin for uses in accordance with the Comprehensive Plan. The finding is accompanied by a provision prohibiting the discharge to waters of the Basin of wastewater from HVHF and HVHF-related activities.

Managing water quantity and quality through a basinwide Comprehensive Plan. The Delaware River Basin Compact directs the Commission to develop and adopt, and from time to time review and revise, a Comprehensive Plan "for the immediate and long range development and use of the water resources of the [Basin]" to which Federal, State and local agencies and private parties are bound.⁴ Through the adoption of a series of policies and regulations establishing and amending its Comprehensive Plan, the Commission over the past half-century has developed and implemented in-stream water quality standards throughout the Basin, prohibited degradation of groundwater, instituted reservoir drought operating plans, established protected areas to prevent the depletion of groundwater, and provided special protection to the non-tidal portion of the Delaware River to preserve its exceptionally high scenic, recreational, ecological and water supply values. As the agency through which the five signatory parties to the Compact—the States of Delaware, New Jersey and New York, the Commonwealth of Pennsylvania, and the United States—collectively manage the Basin's water resources on a regional basis, the Commission has taken these steps to, among other things, ensure an adequate supply of suitable quality water for domestic use, recreation, power generation, industrial activity and aquatic life, and to accommodate large out-of-Basin diversions by the City of New York and the State of New Jersey that are authorized by the 1954 decree of the U.S. Supreme Court in *New Jersey v. New York*, 347 U.S. 995 (the "Decree").

Water Exportation. Since June 19, 1991, the Commission's policy as articulated in the Comprehensive Plan and Water Code (incorporated by reference at 18 CFR part 410) has been to discourage the exportation of water from the Basin on grounds that the Basin's waters "are limited in quantity and the Basin is frequently subject to drought warnings and drought declarations due to limited water supply storage and streamflow during dry periods."⁵

In allocating the waters of the Basin under Section 3.3 of the Compact, the Commission is constrained by limited reservoir storage, particularly during periods of low flow.⁶ Droughts of varying intensity and length have impacted the Basin since the Commission was formed in October 1961.⁷ The Commission has implemented drought operations thirteen times over six decades, including during seven droughts so severe the Commission declared them to be drought emergencies.⁸

The Commission's current Comprehensive Plan includes three major types of exportations of water from the Basin, many of which have also been the subject of DRBC project approvals:

- Pre-Compact out-of-Basin diversions by New York City and the State of New Jersey authorized by the Decree; and with the unanimous consent of the parties to the Decree in accordance with Section 3.3 of the Compact, modifications of such diversions;

- Out-of-Basin transfers approved on a long-term basis pursuant to Section 3.8 and Article 11 of the Compact to meet the needs of public water systems with service areas straddling or adjacent to a Basin boundary; and

- Out-of-Basin transfers approved on a temporary or emergency basis pursuant to Section 3.8 of the Compact to ensure the public health and safety of communities adjacent to or straddling a Basin boundary.

The draft amendments establish the circumstances under which proposed exportations that meet the existing threshold for review established by the Commission's Rules of Practice and Procedure may be considered for approval. Under the proposed rule, the Commission may approve an exportation of water from the Basin if the export is needed to serve a straddled or adjacent public water system; if it is required on a temporary, short-term, or emergency basis to meet public health and safety needs; or if it comprises an exportation of wastewater. The proposed amendments provide that in reviewing proposed exportations, an analysis of alternatives to the proposed exportation will be considered, along with factors that include the effects of the proposal on public health and safety and effectuation of the Comprehensive Plan. The amended rules will further the Commission's objectives of conserving, utilizing, managing, and controlling the Basin's water resources by ensuring that the uses included within the Comprehensive Plan are protected, and will preserve the diversions, compensating releases, rights, conditions, and obligations of the parties to the U.S. Supreme Court Decree of 1954 in *New Jersey v. New York*, 347 U.S. 995 (1954).

Water Importation. At the time the Commission was created in 1961, the tidal Delaware River suffered from water quality impairments that

included severe hypoxia (lack of dissolved oxygen) annually from May through November, preventing the passage of fish species that migrate between marine and fresh waters to reproduce. A key step in the Estuary's restoration was the establishment of water quality uses and criteria by the Commission in 1967. Because even after treatment, wastewater typically contains oxygen-depleting substances, the Commission has for decades used wasteload allocations for carbonaceous oxygen demand to protect the uses it established, including by maintaining dissolved oxygen in the Estuary at levels sufficient to support aquatic life.⁹

The presence of persistent bioaccumulative toxic contaminants in sediment, the water column and fish tissue is a legacy of the Delaware River Estuary's nearly two centuries of industrial use. Although water quality improvements over the past fifty years have substantially increased the variety and abundance of Estuary fish, multiple species are contaminated with polychlorinated biphenyls ("PCBs"), dioxins and furans, mercury, and dieldrin at levels exceeding human health risk advisory limits for their consumption.¹⁰ By Resolution No. 2000-4 the Commission in 2000 determined that allocations of the waste assimilative capacity of the Estuary were necessary in Water Quality Zones 2 through 5 to maintain stream quality objectives for acute toxicity and chronic toxicity. The Commission and its members face new challenges in the emergence of previously unknown contaminants now understood to have adverse impacts on human health and aquatic life.

Although water quality management objectives in the Delaware River Estuary have of necessity prioritized restoration, the focus in the non-tidal Delaware River has been to prevent degradation of waters that are exceptionally clean. By resolutions in 1992, 2005 and 2008, the Commission designated the entire 197-mile reach of the non-tidal main stem Delaware River from Hancock, New York to Trenton, New Jersey as "Special Protection Waters," due to their exceptionally high scenic, recreational, ecological, and water supply values. The importance of these waters to the public is underscored by their national designation: the non-tidal main stem within and downstream of potential HVHF activity includes 147 river miles designated by Congress as parts of the National Wild and Scenic Rivers System, including 113 river miles that have also been designated as units of the National Park System.¹¹ New or expanded pollutant loadings to Special Protection Waters—whether from imported wastewater or wastewater generated within the Basin—are permitted only if they do not measurably change the defined, existing water quality.

For the foregoing reasons, since June 19, 1991, the Commission's policy as set forth in the Water Code and Comprehensive Plan is to discourage the importation of wastewater into the Basin on grounds that the Basin's waters "have limited assimilative capacity and limited capacity to accept conservative substances without significant impacts."¹² The Commission will continue to use its authority to preclude the discharge of wastewater that would impede the restoration of water quality and aquatic life in the tidal Delaware River or that would degrade the Basin's Special Protection Waters.

The proposed rules regarding importation clarify the factors the Commission will use in evaluating proposed importations that meet the existing thresholds for review established by the Commission's Rules of Practice and Procedure. Although importations of wastewater are "discouraged," they may be permitted after careful consideration to ensure that available alternatives have been evaluated, treatment is employed to ensure applicable water quality criteria are achieved, restoration efforts are not impeded, and uses incorporated in the Commission's Comprehensive Plan are protected. The amended rules will further the Commission's objectives of conserving, utilizing, managing, and controlling the Basin's water resources by ensuring continued protection of the uses included within the Comprehensive Plan.

Notably, to date, the Commission has not approved transfers into the Basin of wastewater associated with HVHF, and no applications for such transfers are under consideration. Additionally, in many instances, the Commission has conditioned its approvals of wastewater discharge projects on a requirement that no importation, treatment or discharge of HVHF wastewater may be undertaken by a docket holder without the Commission's prior review and approval. As discussed below, amendments to the Commission's Special Regulations at 18 CFR Part 440—High Volume Hydraulic Fracturing are being proposed that would prohibit the discharge of HVHF wastewater to water or land within the Basin.

Prohibition on Discharge of Wastewater from HVHF and HVHF-Related Activities. The Commission's Comprehensive Plan and Water Code provide in part that "[t]he quality of Basin [surface] waters, except intermittent streams, shall be maintained in a safe and satisfactory condition" for uses that include, "agricultural, industrial, and public water supplies after reasonable treatment, except where natural salinity precludes such uses; ... wildlife, fish and other aquatic life; recreation; navigation; [and] controlled and regulated waste assimilation to the extent

that such use is compatible with other uses."¹³ Similarly, the Comprehensive Plan and Water Code provide that the quality of ground waters of the Basin "shall be maintained in a safe and satisfactory condition, except where such uses are precluded by natural quality, for ... domestic, agricultural, industrial, and public water supplies; [and] ... a source of surface water suitable for recreation, wildlife, fish and other aquatic life."¹⁴

In its proposed and final rules prohibiting HVHF within the Basin in November 2017 and February 2021, respectively, the Commission recognized that the treatment and disposal of HVHF wastewater, among other activities associated with HVHF, posed risks, vulnerabilities and impacts to the Basin's water resources.¹⁵ The peer-reviewed science discussed in detail in the Comment and Response Document adopted concurrently with the Commission's final rule (hereinafter, the "CRD")¹⁶ demonstrates that for a variety of reasons, protecting public health and preserving the Basin's water resources for uses in accordance with the Comprehensive Plan require that discharges of HVHF wastewater to Basin waters or land be prohibited.

Hydraulic fracturing wastewater may contain a complex blend of constituents, including known carcinogens, neurotoxins, or endocrine disruptors, or are characterized by reproductive or developmental toxicity or adverse immune system effects.¹⁷ As discussed at length in the CRD, some of the chemicals used are not known because they are accorded protection as trade secrets.¹⁸ The U.S. Environmental Protection Agency (hereinafter, "EPA"), has reported that the majority of chemicals associated with hydraulic fracturing, both known and unknown, have not undergone significant toxicological assessment.¹⁹ The impacts from those chemicals to human health and aquatic life are thus undetermined.²⁰ In addition to the potential pollutants in fracturing fluid, the fluid returned from an oil or natural gas well after HVHF (typically called "produced water" and including "flowback water") is mixed with water from the target formation, which contains: salts, including chloride, bromide, sulfate sodium, magnesium, and calcium; metals, including barium, manganese, iron, and strontium; naturally-occurring organic compounds, including benzene, toluene, ethylbenzene, and xylenes; oil and grease; and radioactive materials, including radium, found in ancient sea water trapped within the oil- and gas-bearing shale formations.²¹

A report by the U.S. Geological Survey ("USGS") observed that the salts in shale waters (which are sometimes referred to as "total dissolved solids" or "TDS") reached extreme concentrations over millions of years, and their chemical interactions with surrounding rock can mobilize radionuclides.²² The USGS authors cite radioactivity as a key characteristic of the HVHF waste stream that potentially represents a substantial risk to water resources, aquatic ecosystems and biota, and public health, if released.²³

Wastes associated with oil and natural gas exploration, development and production, including oil and gas drilling fluids and produced waters, are exempt from federal regulations for the management of hazardous wastes.²⁴ But these wastes may cause harm to public health and the environment if they are not properly managed. The CRD references multiple studies documenting adverse impacts to water resources from HVHF wastewater after treatment, whether by municipal or industrial treatment facilities.²⁵ Because produced water contains high TDS and dissolved inorganic constituents that most publicly owned treatment works and other municipal wastewater treatment facilities are not designed to remove, EPA in 2016 issued a final rule banning the treatment and discharge of oil and gas extraction wastewater from publicly owned treatment works ("POTWs").²⁶ Privately owned treatment works that treat primarily domestic and commercial wastewater remain outside the scope of EPA's "zero discharge" rule.

The Commonwealth of Pennsylvania manages the risks associated with disposal of HVHF wastewater in part through a detailed statute and regulations focused on protecting water resources and public health while preserving commercial interests. Regulations adopted in 2010 pursuant to the Pennsylvania Clean Streams Law address risks associated with HVHF wastewater treatment and discharge by limiting new discharges of TDS, chlorides, barium and strontium in treated wastewater, regardless of the type of discharge – public, private, municipal or industrial.²⁷

Research has demonstrated that even with specialized treatment, however, the discharge of HVHF wastewater to surface waters can adversely impact downstream waters. The Commission's CRD contains an extensive discussion of the potential risks associated with the treatment and discharge of HVHF wastewater to Basin waters from CWTs.²⁸ The Commission concluded that treatment of HVHF wastewater at CWTs with subsequent discharge of effluent to the waters of the Basin would present significant risks to the receiving waters.²⁹

Growth in Marcellus shale gas production is anticipated,³⁰ and in the Marcellus production area immediately west of the Basin, recent data show increasing water use by the shale gas production industry, which

may result in increasing volumes of wastewater.³¹ Although additional factors may affect demand for HVHF wastewater treatment and discharge options, these shale gas production and water use trends create the potential for increased demand for CWT services in the region.³² To protect the public health and preserve the waters of the Basin for uses in accordance with the Comprehensive Plan, the Commission thus proposes to prohibit the discharge of treated or untreated HVHF wastewater to waters or land within the Basin.

Water Quality Regulations. To facilitate the alignment of certain Basin state discharge permits with the Commission’s proposed regulations regarding wastewater from high volume hydraulic fracturing, the Commission further proposes to amend its Water Quality Regulations, Article 4—Application of Standards. The proposed amendment would consist of a new section 4.50, captioned “Wastewater from High Volume Hydraulic Fracturing and Related Activities,” expressly incorporating into the Water Quality Regulations the determination and prohibition comprising § 440.4 of title 18 of the CFR, and the purpose and definitions encompassing sections 440.1 and 440.2. Existing section 4.50 of the Water Quality Regulations and its sub-paragraphs 4.50.1 through 4.50.6 are proposed to be redesignated as section 4.60 and 4.60.1 through 4.60.6.

Public Process

Substance of comments: The Commission expressly seeks comment on the effects the proposed rules may have within the Basin on: water availability, the control and abatement of water pollution, economic development, the conservation and protection of drinking water supplies, the conservation and protection of aquatic life, the conservation and protection of water quality in Special Protection Waters, and the protection, maintenance and improvement of water quantity and quality Basinwide. The Commission welcomes and will consider any other comments that concern the potential effects of the draft rules on the conservation, utilization, development, management and control of the water and related resources of the Basin. Comments on matters not within the scope of the proposed rules may not be considered.

Non-digitized, voluminous materials such as books, journals or collected letters and petitions will not be accepted. Digital submissions of articles and websites must be accompanied by a statement containing citations to the specific findings or conclusions the commenter wishes to reference.

Submission of written comments. Written comments along with any attachments should be submitted through the Commission’s web-based comment system (<https://dockets.drbc.commentinput.com/?id=x2K8A>) until 5 p.m. on January 28, 2022. All materials should be provided in searchable formats, preferably in.pdf searchable text. Notably, a picture scan of a document may not result in searchable text. Comments received through any method other than the designated on-line method, including via email, fax, postal/delivery services or hand delivery, will not be considered or included in the rulemaking record unless an express exception has been granted. Requests for exceptions from the web-based-submissions-only policy based on lack of access to the web-based comment system may be addressed to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628.

Public hearings. To provide for an orderly process and to support public and community health measures, the Commission is conducting its public hearings virtually. Attendance at the hearings is not limited and requires no registration. However, to eliminate uncertainty on the part of attendees about whether they will have an opportunity to provide oral comment, those who wish to speak at a hearing must register in advance to do so, using links on the Commission’s website. Registrations will be monitored, and if capacity is not adequate to accommodate all who wish to speak, additional opportunities may be added. Key elements of the procedure are as follows:

- Online registration to speak at a public hearing will remain open until 5 p.m. the day prior to each hearing.
- Each person who wishes to provide oral comment may do so at only one public hearing.
- Speaking time will be limited to approximately three minutes per speaker.
- Elected government officials and their staff will have the opportunity to identify themselves when registering to attend a hearing.
- Attendance at the public hearings is not limited and requires no advance registration.
- Written and oral comment will receive equal consideration.

The Commission appreciates the public’s participation and input on this important matter.

More Information. Detailed and up-to-date information about the public process, including all proposed rule text, related documents and links for online registration to speak at each of the scheduled public hearings, can be found on the DRBC website, www.drbc.gov.

For the reasons set forth in the preamble, the Delaware River Basin Commission proposes to amend its Water Code (21 NYCRR XVIII, E 890.35 – 890.43) Water Quality Regulations (21 NYCRR XVIII B 861.22, 861.28 – 861.33), and Special Regulations (18 CFR Part 440; 21 NYCRR XVIII F Part 900) as set forth below.

**DELAWARE RIVER BASIN WATER CODE
ARTICLE 2 – CONSERVATION, DEVELOPMENT AND
UTILIZATION OF
DELAWARE RIVER BASIN WATER RESOURCES**

[21 NYCRR CH. XVIII, SUBCH. E, Part 890, §§ 890.35-890.43]

[Editor’s note: Sections 890.35 through 890.43 are proposed to be replaced in their entirety with the text below (shown with DRBC Water Code numbering). Existing Section 2.30 of the Water Code is available on the Commission’s website at <https://www.state.nj.us/drbc/library/documents/watercode.pdf>.]

2.30 IMPORTATIONS AND EXPORTATIONS OF WATER, INCLUDING WASTEWATER

2.30.1 Definitions (Resolutions Nos. 91-9 and xxx). For purposes of this section 2.30:

A. “Adjacent public water system” means a public water system located outside of the Delaware River Basin that either: (1) is interconnected with a public water system located entirely inside the Basin or with a “straddled public water system” (as defined herein); or that (2) has a service area directly bordering the service area of a public water system located entirely within the Basin or that straddles the Basin boundary.

B. “Basin water” (also, “waters of the Basin”) means water in, on, under or above the ground within the Delaware River Basin. “Basin water” includes wastewater.

C. “Delaware River Basin” (or “Basin”) has the meaning assigned to it by Section 1.2(a) of the Delaware River Basin Compact – the area of drainage into the Delaware River and its tributaries, including Delaware Bay.

D. “Exportation” means the conveyance, transfer, or diversion of Basin water from a source within the Delaware River Basin to a location outside the Basin without return of such water to the Basin. Exportations from the Basin of consumer goods or foods that have been manufactured, bottled, packaged, or processed using Basin water are not considered “exportations” for purposes of this rule.

E. “Importation” means the conveyance, transfer, or diversion of water, including wastewater, into the Delaware River Basin from a source outside the Basin, resulting in a discharge of the imported water to land or water within the Basin, with or without prior treatment.

F. “Public water system” means a system primarily for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. A “public water system” may be publicly or privately owned.

G. “Straddled public water system” means a public water system that serves an area partially within and partially outside of the Delaware River Basin.

H. “Wastewater” means water that is stored, transported or discharged after use, including, but not limited to, any water for which a National Pollutant Discharge Elimination System (NPDES) permit under the federal Clean Water Act or any state or DRBC approval is required before the water can lawfully be discharged to waters or land within the Basin.

2.30.2 Protection and Preservation

A. The waters of the Delaware River Basin are limited in quantity, and the Basin is frequently subject to drought warnings, drought declarations, and drought operations due to limited water supply storage and streamflow during dry periods. In addition, portions of the Basin have been delineated by the Commission as groundwater protected areas due to water shortages. Therefore, it is the policy of the Commission to promote the conservation and preservation of water and related natural resources, including aquatic ecosystems, and effectuate the Comprehensive Plan and the uses of the water resources of the Basin identified therein, by discouraging, limiting, or placing conditions on the exportation of Basin water as may be required to protect the health and safety of Basin residents, aquatic ecosystems and the uses of water identified in the Compact and Comprehensive Plan.

B. The Commission shall review a proposed new exportation of Basin water, including any proposed increase in the rate or volume of an existing exportation, and may impose conditions, obligations and release requirements related thereto, pursuant to Sections 3.3, 3.8, 5.2, 10.3, 10.4 and Article 11 of the Compact and the regulations and docket approvals implementing these provisions.

C. A proposed new exportation of Basin water that is subject to review under the Compact and implementing regulations, including any proposed increase in the rate or volume of an existing exportation, may be approved

by the Commission after consideration of the factors set forth at Section 2.30.3 below, if:

1. the sponsor demonstrates that the exportation of Basin water is required to serve a straddled or adjacent public water system;
2. the sponsor demonstrates that the exportation of Basin water is required on a temporary, short-term, or emergency basis to meet public health and safety needs; or
3. the sponsor is proposing an exportation of wastewater.

D. Basin waters have limited capacity to assimilate pollutants without significant impacts to the health and safety of Basin residents, the health and functioning of aquatic ecosystems in the Basin, and the effectuation of the Comprehensive Plan. Accordingly, it is the policy of the Commission to discourage, limit, or condition the importation of wastewater into the Delaware River Basin as necessary to avoid impairment of Basin waters. A proposed new importation of water or wastewater, including any proposed increase in the rate or volume of an existing importation, shall be reviewed by the Commission consistent with the factors set forth at Section 2.30.3 below.

E. This Section 2.30 shall not apply to importations and exportations of water, including wastewater, that existed prior to enactment of the Compact or that were approved by the DRBC prior to [date of adoption of these amendments].

2.30.3 Commission Considerations (Resolutions Nos. 91-9 and xxx). In evaluating importations and exportations, the Commission’s review will include consideration of the following factors:

A. For exportations of Basin water:

1. the effect of the exportation on the health and safety of the Basin community;
2. the effect of the exportation on existing or future water availability or shortages, including, but not limited to, sources within areas designated by the Commission as protected areas pursuant to Section 10.2 of the Compact, sources within Delaware River reaches with flows that are frequently augmented by reservoir releases due to low flows, and sources in areas subject to DRBC drought operations or state drought declarations within the past five years;
3. the effect of the exportation on aquatic ecosystems;
4. the effect of the exportation on water quality and waste assimilation;
5. the effect of the exportation on salinity concentrations;
6. the effect of the exportation on the water uses protected by the Comprehensive Plan, DRBC regulations or DRBC docket approvals, or on the ability of DRBC to effectuate the Comprehensive Plan;
7. the effect of the exportation, including its volume, rate, timing and duration, on passby or instream flow requirements contained in DRBC regulations or project approvals;
8. the sponsor’s planned use for the water and any resulting public benefits;
9. the availability to the sponsor of alternatives to the exportation of Basin water and whether these alternatives have been diligently pursued, including without limitation a review of the sponsor’s uses of water outside the sponsor’s service area, if any; conservation measures undertaken by the sponsor or a public water system in the service area where the sponsor is located to forestall the need for a transfer of Basin water; and the results of a water audit (or audits) performed by the sponsor in accordance with Section 2.1.8 of the Delaware River Basin Water Code; and
10. whether the exportation would contravene sections 3.3 and 3.5(a) of the Compact by impeding or interfering with the rights, powers, privileges, conditions or obligations contained in the Supreme Court Decree in *New Jersey v. New York*, 347 U.S. 995 (1954), as modified by the Commission with the unanimous consent of the parties to the Decree.

B. For importations of water, including wastewater:

1. the effect of the importation on the health and safety of the Basin community with due consideration of the available alternatives to the importation;
2. the characterization and treatability of the wastewater;
3. the potential impacts on water resources of the Delaware River Basin of the proposed importation and of each available alternative, including alternatives that avoid an importation of water, including wastewater. The potential impacts considered will include the effects of the quality, volume, flow rate, timing and duration of the proposed importation in relation to:
 - a. flow objectives or passing or instream flow requirements contained in DRBC regulations or project approvals;
 - b. the record of hydrologic conditions in the proposed receiving region and the larger Delaware River Basin;
 - c. water uses as established by the Comprehensive Plan, including the DRBC Water Code;

- d. the effect of the importation on aquatic ecosystems;
- e. water quality and waste assimilation capacity in the affected receiving streams; and
- f. prior regulations or orders of the Commission which may be identified during the course of the Commission’s review.

2.30.4 Analyses by Applicant for Section 3.8 Approval. When an importation or exportation of water or wastewater is subject to review by the Commission, the applicant shall furnish the Commission with such analyses of the factors set forth in Sections 2.30.2 and 2.30.3 above and as the Commission may direct.

2.30.5 Water Charges (Resolutions Nos. 91-9 and xxx). Exportation of Basin water constitutes consumptive water use and will be subject to the water charges in effect at the time of transfer in accordance with the Commission’s Water Supply Charges regulations (18 CFR Part 420), as amended.

2.30.6 Wastewater Treatment Requirements (Resolution No. 91-9). It is the policy of the Commission to give no credit toward meeting wastewater treatment requirements for importations of wastewater. An effluent loading or concentration authorized in accordance with a water-quality-based effluent limit such as a wasteload allocation may not include loadings attributable to an importation of wastewater.

2.30.7 Existing Allocations (Resolution No. 91-9). It is the policy of the Commission to charge all exportations of Basin water against any special regional allocation or any depletive use allocation as may exist at the time of receipt of a completed application for exportation.

2.30.8 1954 Supreme Court Decree. This Section 2.30 is intended to preserve the diversions, compensating releases, rights, conditions, and obligations of the parties to the U.S. Supreme Court Decree of 1954 in *New Jersey v. New York*, 347 U.S. 995 (1954), as modified by the Commission with the unanimous consent of the parties to the Decree.

WATER QUALITY REGULATIONS
 ARTICLE 4 – APPLICATION OF STANDARDS
 [21 NYCRR CH. XVIII, SUBCH. B, Part 861, §§ 861.22, 861.28-861.33]

[Editor’s note: DRBC’s numbering system is shown for all amendments. New text appears in bold face and italics, and text to be deleted appears in bold face within brackets. Asterisks represent no change to the existing rule text.]

* * * * *
 Section 4.40 Ground Water Quality Requirements
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4.40.2 Enforcement Procedures. The enforcement procedure of Section [4.50] 4.60 with respect to effluent quality requirements for discharges shall be deemed applicable to the enforcement of this Section and Section 3.40. For the purposes thereof, the word “discharger” as used in Section [4.50] 4.60 includes any party affected by this Section.

Section 4.50 Wastewater from High Volume Hydraulic Fracturing and Related Activities. The provisions of 18 CFR 440.4 and the purpose and definitions applicable thereto, encompassing 18 CFR 440.1 and 18 CFR 440.2, are hereby incorporated into these Water Quality Regulations.

Section [4.50] 4.60 Enforcement Procedures.
 [4.50.1] 4.60.1 Scope. * * *
 [4.50.2] 4.60.2 Abatement Schedules and Permits.
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[4.50.3] 4.60.3 Waste Load Allocations. * * *
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[4.50.4] 4.60.4 Inspection and Surveillance.
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[4.50.5] 4.60.5 Noncompliance; Notice.
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[4.50.6] 4.60.6 Order of Abatement; Sanctions. * * *

DELAWARE RIVER BASIN COMMISSION
 18 C.F.R. CHAPTER III, SUBCHAPTER B – SPECIAL
 REGULATIONS
 PART 440 – HIGH VOLUME HYDRAULIC FRACTURING
 [21 NYCRR XVIII, SUBCH. F, PART 900]

[Editor’s note: DRBC’s numbering system is used below for all amendments. New text appears in bold face and italics, and text to be deleted appears in bold face within brackets. Asterisks represent no change to the existing rule text.]

440.1 Purpose, authority and relationship to other requirements.

(a) Purpose. The purpose of this part is to protect and conserve the water resources of the Delaware River Basin. To effectuate this purpose, this section establishes standards, requirements, conditions, and restrictions to

prevent or reduce depletion and degradation of surface and groundwater resources and to promote sound practices of water resource management.

(b) Authority. This part implements Sections 3.1, 3.2(a), 3.2 (b), 3.6(b), 3.6(h), 4.1, 5.2, 7.1, 13.1 and 14.2(a) of the Delaware River Basin Compact.

(c) Comprehensive Plan. The Commission has determined that the provisions of this part are required for the immediate and long range development and use of the water resources of the Basin and are therefore incorporated into the Commission’s Comprehensive Plan.

(d) Relationship to other Commission requirements. The provisions of this part are in addition to all applicable requirements in other Commission regulations [in this chapter], dockets [and], permits, and determinations.

(e) Severability. The provisions of this part are severable. If any provision of this part or its application to any person or circumstances is held invalid, the invalidity will not affect other provisions or applications of this part, which can be given effect without the invalid provision or application.

(f) Coordination and avoidance of duplication. In accordance with and pursuant to section 1.5 of the Delaware River Basin Compact, to the fullest extent it finds feasible and advantageous the Commission may enter into an Administrative Agreement (Agreement) with any Basin state or the Federal Government to coordinate functions and eliminate unnecessary duplication of effort. Such Agreements will be designed to: Effectuate intergovernmental cooperation, minimize the efforts and duplication of state and Commission staff resources wherever possible, ensure compliance with Commission-approved requirements, enhance early notification of the general public and other interested parties regarding proposed activities in the Basin, indicate where a host state’s requirements satisfy the Commission’s regulatory objectives, and clarify the relationship and project review decision making processes of the states and the Commission for projects subject to review by the states under their state authorities and by the Commission under Section 3.8 and Articles 6, 7, 10 and 11 of the Compact.

440.2 Definitions.

For purposes of this part, the following terms and phrases have the meanings provided. Some definitions differ from those provided in regulations of one or more agencies of the Commission’s member states and the Federal Government. Others are consistent with terms defined by the Delaware River Basin Compact.

Basin is the area of drainage into the Delaware River and its tributaries, including Delaware Bay.

Commission is the Delaware River Basin Commission (DRBC) created and constituted by the Delaware River Basin Compact.

Fracturing fluid(s) is a mixture of water (whether fresh or recycled) and/or other fluids and chemicals or other additives, which are injected into the subsurface and which may include chemicals used to reduce friction, minimize biofouling of fractures, prevent corrosion of metal pipes or remove drilling mud damage within a wellbore area, and propping agents such as silica sand, which are deposited in the induced fractures.

High volume hydraulic fracturing (HVHF) is hydraulic fracturing using a combined total of 300,000 or more gallons of water during all stages in a well completion, whether the well is vertical or directional, including horizontal, and whether the water is fresh or recycled and regardless of the chemicals or other additives mixed with the water.

HVHF-related activities are:

- (1) Construction of an oil or natural gas production well that is to be stimulated using HVHF as defined herein;
- (2) Chemical mixing or storage of proppant, chemicals and other additives to make fracturing fluid; and
- (3) Management of wastewater from hydraulic fracturing, including storage, disposal, treatment, or reuse in hydraulic fracturing operations or other uses.

Hydraulic fracturing is a technique used to stimulate the production of oil and natural gas from a well by injecting fracturing fluids down the wellbore under pressure to create and maintain induced fractures in the hydrocarbon-bearing rock of the target geologic formation.

Person is any natural person, corporation, partnership, association, company, trust, Federal, state, or local governmental unit, agency, or authority, or other entity, public or private.

Wastewater from high volume hydraulic fracturing is:

- (1) Any wastewater, brine, sludge, chemicals, naturally occurring radioactive materials, heavy metals or other contaminants that have been used for or generated by high volume hydraulic fracturing or HVHF-related activities;
- (2) Leachate from solid wastes associated with HVHF-related activities, except if the solid wastes were lawfully disposed of in a landfill within the Basin prior to the effective date of this rule; and

(3) Any products, co-products, byproducts or waste products resulting from the treatment, processing or modification of the wastewater described in paragraphs (1) and (2) of this same definition.

Water resource(s) is, in accordance with Section 1.2(i) of the Delaware River Basin Compact, “water and related natural resources in, on, under, or above the ground, including related uses of land, which are subject to beneficial use, ownership[,] or control” within the [hydrologic boundary of the] Delaware River Basin.

440.3 High volume hydraulic fracturing (HVHF)

(a) Determination. The Commission has determined that high volume hydraulic fracturing poses significant, immediate and long-term risks to the development, conservation, utilization, management, and preservation of the water resources of the Delaware River Basin and to Special Protection Waters of the Basin, considered by the Commission to have exceptionally high scenic, recreational, ecological, and/or water supply values. Controlling future pollution by prohibiting such activity in the Basin is required to effectuate the Comprehensive Plan, avoid injury to the waters of the Basin as contemplated by the Comprehensive Plan, and protect the public health and preserve the waters of the Basin for uses in accordance with the Comprehensive Plan.

(b) Prohibition. High volume hydraulic fracturing in hydrocarbon bearing rock formations is prohibited within the Delaware River Basin.

440.4 Wastewater from high volume hydraulic fracturing and related activities

(a) Determination. *The Commission has determined that the discharge of wastewater from high volume hydraulic fracturing and HVHF-related activities poses significant, immediate and long-term risks to the development, conservation, utilization, management, and preservation of the Basin’s water resources. Controlling future pollution by prohibiting such discharge is required to effectuate the Comprehensive Plan, avoid injury to the waters of the Basin as contemplated by the Comprehensive Plan and protect the public health and preserve the waters of the Basin for uses in accordance with the Comprehensive Plan.*

(b) Prohibition. *No person may discharge wastewater from high volume hydraulic fracturing or HVHF-related activities to waters or land within the Basin.*

¹ United States Public Law 87-328, Approved Sept. 27, 1961, 75 Statutes at Large 688; 53 Delaware Laws, Ch. 71, Approved May 26, 1961; New Jersey Laws of 1961, Ch. 13, Approved May 1, 1961; New York Laws of 1961, Ch. 148, Approved March 17, 1961; Pennsylvania Acts of 1961, Act. No. 268, Approved July 7, 1961.

² Delaware River Basin Water Code (hereinafter “Water Code”) (incorporated by reference at 18 CFR part 410), section 2.30.

³ 83 FR 1586, pp. 1589, 1591 (defining “produced water” as “any water or fluid returned to the surface through the production well as a waste product of hydraulic fracturing,” and defining “CWT wastewater” as “wastewater or effluent resulting from the treatment of produced water by a centralized waste treatment facility (‘CWT’)”).

⁴ Compact, supra note 1, sections 3.2 and 13.1.

⁵ See Water Code section 2.30.2.

⁶ See e.g., Water Code section 2.30.2; U.S. Department of the Interior U.S. Geological Survey Office of the Delaware River Master, History of the Reservoir Releases Program in the Upper Delaware River Basin, available at: <https://webapps.usgs.gov/odrm/about/history>

⁷ Delaware River Basin Commission, An Overview of Drought in the Delaware River Basin (Feb. 2019), Sec. “DRBC’s Basinwide Drought Actions,” par. 1, available at: https://www.state.nj.us/drbc/library/documents/drought/DRBdrought-overview_feb2019.pdf

⁸ Id., at Table 1: Basinwide Drought Actions (two of the emergency actions were conditional and did not go into effect).

⁹ See Delaware River Basin Water Code, sections 3.30.2 D.2, 3.30.3 D.2, 3.30.4 D.2, 3.30.5 D.2, 3.30.6 D.2.

¹⁰ See Delaware Department of Natural Resources and Environmental Control, Delaware Fish Consumption Advisories (Jan. 2018), available at: <https://documents.dnrec.delaware.gov/fw/Fisheries/Documents/2018-Delaware-Fish-Consumption-Advisory-Table.pdf>; New Jersey Department of Environmental Protection & New Jersey Department of Health, Fish Smart, Eat Smart: A guide to Health Advisories for Eating Fish and Crabs Caught in New Jersey Waters (Nov. 2020), available at: <https://www.nj.gov/dep/dsr/fish->

advisories.pdf; Pennsylvania Department of Environmental Protection, Commonwealth of Pennsylvania Public Health Advisory 2021 Fish Consumption (Feb. 2021), available at: <https://pfbc.pa.gov/fishpub/summaryad/sumconsumptionotepdf>

¹¹ See 16 U.S.C. 1274(a)(19)-(20) (Upper Delaware Scenic and Recreational River and Delaware Water Gap National Recreation Area), 16 U.S.C. 1274(a)(165) (Lower Delaware River and Associated Tributaries). Other Basin waters included in the Wild and Scenic Rivers System and protected by state antidegradation programs include: 190 miles of the White Clay Creek and its tributaries in Delaware and Pennsylvania, 35 miles of the Maurice River and its tributaries in New Jersey, and 25 miles of the Musconetcong River, also in New Jersey. See, 16 U.S.C. 1274(a)(163) (White Clay Creek and its tributaries); 16 U.S.C. 1274(a)(146)-(149) & 1274(a)(151)-(153) (Maurice River and its tributaries); 16 U.S.C. 1274(a)(169) (Musconetcong River).

¹² See Water Code section 2.30.2 (or “limited capacity to assimilate pollutants” as reflected in the proposed amendments).

¹³ Water Code, section 3.10.2. B.

¹⁴ *Id.*, section 3.40.3.

¹⁵ See, e.g., DRBC Resolution No. 2021-01, p. 4, par. 4. Available at: https://www.state.nj.us/drbc/library/documents/Res2021-01_HVHF.pdf. See generally, Delaware River Basin Commission, Comment and Response Document: Proposed Amendments to the Administrative Manual and Special Regulations Regarding High Volume Hydraulic Fracturing Activities; Additional Clarifying Amendments, Feb. 25, 2021 (hereinafter, “CRD”), at, e.g., pp. E-1, 65-66 (“Synthesis” of response to comments concerning spills); pp. 158-59 (water quality impacts from discharges of treated hydraulic fracturing wastewater). The CRD is available at: https://www.state.nj.us/drbc/library/documents/CRD_HVHFrulemaking.pdf

¹⁶ See CRD, supra note 15.

¹⁷ CRD, supra note 15, pp. 131, 161, and 255 (citing E.G. Elliott, et al., A systematic evaluation of chemicals in hydraulic-fracturing fluids and wastewater for reproductive and developmental toxicity, *J. Exposure Science & Environmental Epidemiology*, 27: 90-99 (2017)). See also, United States Environmental Protection Agency (“U.S. EPA”), Hydraulic fracturing for oil and gas: Impacts from the hydraulic fracturing water cycle on drinking water resources in the United States (final report) (EPA/600/R-16/236F) (2016) (hereinafter “U.S. EPA 2016 Assessment”), p. ES-20; U.S. EPA, Technical development document for the effluent limitations guidelines and standards for the oil and gas extraction point source category (EPA-820-R-16-003), 2016, pp. 43-47 (Sec. 1.2).

¹⁸ See CRD, supra note 15, pp. 259-264.

¹⁹ *Id.*, p. 132 (citing U.S. EPA 2016 Assessment, supra note 17, p. ES-42-45, 9-1).

²⁰ U.S. EPA, Detailed study of the centralized waste treatment point source category for facilities managing oil and gas extraction wastes. (EPA-821-R-18-004) (2018), p. 9-36. Available at: https://www.epa.gov/sites/default/files/2018-05/documents/cwt-study_may-2018.pdf

²¹ CRD, supra note 15, pp. E-6, 71.

²² CRD, supra note 15, p. 84 (citing E.L. Rowan, et al., Radium content of oil- and gas-field produced waters in the Northern Appalachian Basin (USA): Summary and discussion of data, U.S. Department of the Interior, U.S. Geological Survey: Scientific Investigations Report 2011-5135 (2011)).

²³ CRD, supra note 15, p. 86 (citing E.L. Rowan, et al., supra note 22) (also noting that chemically, radium behaves in a manner similar to calcium and is capable of bioaccumulation in plants and animals).

²⁴ See, e.g., U.S. Environmental Protection Agency, Office of Solid Waste, Exemption of Oil and Gas Exploration and Production Wastes from Federal Hazardous Waste Regulations, EPA530-K-01-004 (2002).

²⁵ See CRD, supra note 15, pp. 18-19, 128-143. See also U.S. EPA, *infra* note 26 (regarding impacts associated with discharges from mu-

nicipal wastewater treatment plants); U.S. EPA, supra note 20 (regarding impacts associated with discharges from the industrial wastewater treatment facilities known as “CWTs”).

²⁶ U.S. EPA, Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category, 81 FR 41845 (Aug. 29, 2016) (preamble). See also 81 FR 88126 (Dec. 7, 2016) (extending deadline for compliance); CRD, supra note 15, pp. 18-19, 128.

²⁷ 25 Pa. Code section 95.10. See also CRD, supra note 15, pp. 132, 178.

²⁸ See CRD, supra note 15, pp. 130-143, 178. See generally U.S. EPA, supra note 20.

²⁹ See CRD, supra note 15, p. 138.

³⁰ U.S. EPA, supra note 20, p. 8-6.

³¹ See CRD, supra note 15, p. 16 (reporting increased length of natural gas well laterals and increased use of water per foot of well fractured in the Susquehanna River Basin, which adjoins the Basin) (citing Susquehanna River Basin Commission, Water use associated with natural gas development in the Susquehanna River Basin: An update of activities through December 2018 (Publication No. 323) (2020)).

³² See U.S. EPA, supra note 20, pp. 8-4 – 8-6.

Dated: November 2, 2021.

Pamela M. Bush, Esquire

Commission Secretary and Assistant General Counsel.

Department of Economic Development

EMERGENCY RULE MAKING

Restaurant Return-to-Work Tax Credit Program

I.D. No. EDV-46-21-00008-E

Filing No. 1137

Filing Date: 2021-10-29

Effective Date: 2021-10-29

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

Action taken: Addition of Part 280 to Title 5 NYCRR.

Statutory authority: L. 2021, ch. 59, part PP, subpart A

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

Specific reasons underlying the finding of necessity: The Restaurant Return-To-Work Tax Credit Program was enacted in response to the acute, and devastating impact of the COVID-19 pandemic on the restaurant industry in New York City and in other specific areas of New York State that were subject to additional restrictions for on-premises dining for at least 30 consecutive days (defined as Orange or Red Zones), per guidance from the New York State Department of Health, pursuant to Executive Order 202.68 as amended. This new program provides financial incentives to COVID-impacted restaurants to expedite their hiring efforts and reduce the duration and severity of COVID-related economic impacts.

The restaurant industry is vital part of the economy in communities across the State of New York. Residents want to live in areas with active retail corridors that include a vibrant and diverse choice of restaurants, and visitors seek out the same vibrant places as travel destinations. In New York City alone, prior to the pandemic, the restaurant industry employed approximately 320,000 workers (2019 monthly average).¹ At the start of the pandemic, this total dipped to 87,100 in April 2020, and has rebounded to 200,100 (62.6 percent of the 2019 monthly average) as of May 2021. With respect to restaurant revenues, restaurants across the state experienced substantially lower revenues during the period of COVID restrictions. Such restrictions were particularly acute in New York City, and in Orange and Red Zones, who endured additional restrictions due to the public health outcomes in those specific geographies.

A healthy, vibrant restaurant industry is essential to the recovery of New York City’s tourism and hospitality industries, attracting millions of

visitors each year who spent a total of \$47.7 billion in 2019.² Restaurants are the second largest component of tourism spending, behind lodging.³

Outside of New York City, the pandemic hit certain areas of the State particularly hard with clusters of COVID-19 cases which required the New York State Department of Health to issue emergency orders to restrict on-premises dining, beyond the restrictions imposed throughout the State. Qualifying Orange or Red Zones were designated in Chemung, Erie, Monroe, Onondaga, Rockland and Westchester Counties.

These regulations must be promulgated immediately so that the Department of Economic Development can launch the Program and begin accepting applications in time for eligible restaurant owners to be reviewed, and issued certificates before the November 15, 2021 deadline when owners must submit proof of receipt to the Department of Taxation and Finance when requesting an advance payment of the amount of the tax credit.

Emergency adoption of these regulations will enable the State to act to provide relief to restaurants in eligible areas as they begin rehiring restaurant workers to help support the recovery of New York's tourism and hospitality industries. Pursuant to Chapter 59 of the Laws of 2021, the Commissioner of Economic Development is expressly authorized to promulgate regulations for this Program on an emergency basis.

¹ Source: New York State Department of Labor Current Employment Statistics survey; New York City Food Services and Drinking Places, Not Seasonally Adjusted.

² Source: Tourism economics, Economic Impact of Visitors in New York 2019.

³ Source: Tourism economics, Economic Impact of Visitors in New York 2019.

Subject: Restaurant Return-to-Work Tax Credit program.

Purpose: To create the administrative processes for the Restaurant Return-to-Work Tax Credit program.

Substance of emergency rule (Full text is posted at the following State website: www.esd.ny.gov): The regulation contained in 5 NYCRR Part 280 which governs the Restaurant Return-To-Work Tax Credit program is summarized as follows:

The regulation begins by defining a host of key terms necessary to implement the tax credit program. These include, but are not limited to, the following:

(1) "average full-time employment"; (2) "average starting full-time employment"; (3) "average ending full-time employment"; (4) "certificate of tax credit"; (5) "eligible industry"; (6) "net employee increase"; (7) "COVID-19 impacted food services sector"; (8) "independently owned" and (9) "independently owned establishments."

Next, the regulation sets forth the application process for the program. The Department's review of applications includes whether: (i) the application is complete; (ii) the applicant provided evidence of their business eligibility; (iii) the applicant agreed to allow the Department of taxation and finance to share the applicant's tax information with the Department; (iv) the applicant agreed to allow the Department of labor to share its tax and employer information with the Department; (v) the applicant allowed the Department and its agents access to any and all books and records the Department may require to monitor compliance; (vi) the applicant certified, under penalty of perjury, that it is in substantial compliance with all emergency orders or public health regulations currently required of such entity and local, and state tax laws; and (vii) the applicant agreed to provide any additional information required.

After reviewing an applicant's completed application and determining that the applicant meets the program's eligibility criteria set forth below, the Department may admit the applicant into the Program and issue them a certificate of tax credit.

The regulation next outlines eligibility for the program. To be eligible for the credit, an applicant must: (1) be a small business; (2) operate an independently owned and operated establishment or establishments as defined in this Part; (3) have experienced economic harm as a result of the COVID-19 emergency as evidenced by a year-to-year decrease of at least forty percent in New York State between the second quarter of 2019 and the second quarter of 2020 or the third quarter of 2019 and the third quarter of 2020 for one or both of: i) gross receipts or ii) average full-time employment; and (4) have demonstrated a net employee increase for the business entity.

A business entity must also: 1) be in substantial compliance with all emergency orders or public health regulations currently required of such entity and local, and state tax laws; 2) not owe past due state taxes or local property taxes.

The regulation outlines the calculation of the credit which is equal to \$5,000 per each full time equivalent net employee increase and is capped at fifty thousand dollars (\$50,000) per applicant.

The regulation contains a section on retention and reporting requirements as well as a section on removal from the program.

The regulation concludes with a description of the advance tax credit payment option and a notation of the overall cap on the tax credit program (\$35 million for one year).

For the advance option, applicants who choose to use August 31, 2021 as the last date to calculate their average ending full-time employment and have received their certificate of tax credit by November 15, 2021 will have the option to request an advance payment of the amount of tax credit they are allowed under this program.

For those applicants who have requested an advance payment and for whom the commissioner of taxation and finance has determined eligible for this credit, the commissioner of taxation and finance shall advance a payment of the tax credit allowed to the taxpayer. However, in the case of a taxpayer subject to article nine-a of the Tax Law, such payment shall be equal to the amount of credit allowed to the taxpayer less twenty-five dollars.

The text of the rulemaking is available at www.esd.ny.gov.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires January 26, 2022.

Text of rule and any required statements and analyses may be obtained from: Thomas Regan, Department of Economic Development, 625 Broadway, Albany NY 12245, (518) 292-5120, email: thomas.regan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Chapter 59 of the Laws of 2021 allow the Commissioner of the Department of Economic Development (the "Department") to promulgate regulations establishing the application process for the Restaurant Return-To-Work program. These procedures include the process for applying for tax credits under this program, standards for the assessment of applications, and other provisions deemed necessary and appropriate.

LEGISLATIVE OBJECTIVES:

The proposed/emergency rule gives effect to the intention of the legislature as it creates a new tax credit program which provides financial incentives to COVID-impacted restaurants to expedite their hiring efforts and reduce the duration and severity of COVID-related economic impacts.

NEEDS AND BENEFITS:

The proposed/emergency rule is necessary in order to create the administrative procedures for the new tax credit program further discussed below.

The Restaurant Return-To-Work Tax Credit Program was enacted in response to the acute, and devastating impact of the COVID-19 pandemic on the restaurant industry in New York City and in other specific areas of New York State that were subject to additional restrictions for on-premises dining for at least 30 consecutive days (defined as Orange or Red Zones), per guidance from the New York State Department of Health, pursuant to Executive Order 202.68 as amended.

The restaurant industry is vital part of the economy in communities across the State of New York. Residents want to live in areas with active retail corridors that include a vibrant and diverse choice of restaurants, and visitors seek out the same vibrant places as travel destinations. With respect to restaurant revenues, restaurants across the state experienced substantially lower revenues during the period of COVID restrictions. Such restrictions were particularly acute in New York City, and in Orange and Red Zones, who endured additional restrictions, due to the public health outcomes in those specific geographies.

A healthy, vibrant restaurant industry is essential to the recovery of New York's tourism and hospitality industries, attracting millions of visitors each year who spend a total of \$46 billion annually. Restaurants are the second largest component of tourism spending, behind lodging.

Outside of New York City, the pandemic hit certain areas of the State particularly hard with clusters of COVID-19 cases which required the New York State Department of Health to issue emergency orders to additionally restrict on-premises dining, beyond the restrictions imposed throughout the State. Qualifying Orange or Red Zones were designated in Chemung, Erie, Monroe, Onondaga, Rockland and Westchester Counties.

The emergency/proposed rule will create the administrative procedures for this \$35 million tax credit program which provides credits to independently owned restaurants qualifying as small businesses that increase their employment during 2021. The rule lays out the administrative process for the program, including eligibility criteria and key definitions.

COSTS:

I. Costs to private regulated parties (the business applicants): None. The proposed/emergency rule will not impose any additional costs to eligible business applicants.

II. Costs to the regulating agency for the implementation and continued administration of the rule: None.

III. Costs to the State government: The fast track portion of this tax credit program will lead to certain Agency administrative costs estimated at less than \$250,000.

IV. Costs to local governments: None. The proposed/emergency rule will not impose any costs on local governments.

LOCAL GOVERNMENT MANDATES:

None. There are no local government mandates associated with this program.

PAPERWORK:

The rule creates a new tax credit program. The rule entails certain paperwork burdens including materials to be submitted as part of applications for tax credits, additional documents the Commissioner may request from applicants as part of his evaluation of applications, and certain records that must be maintained by program participants for auditing purposes.

DUPLICATION:

The proposed rule creates a new tax credit program in Part 280 of 5 NYCRR. Accordingly, there is no risk of duplication in the adoption of the proposed rule.

ALTERNATIVES:

No alternatives were considered with regard to creating a new rule in response to the statutory requirement.

FEDERAL STANDARDS:

There are no federal standards applicable to this program; it is purely a state program that offers tax benefits to certain restaurants who have a demonstrated economic loss due to COVID-19. Therefore, the proposed/emergency rule does not exceed any federal standard.

COMPLIANCE SCHEDULE:

The affected agency (Department of Economic Development) and any applicants to restaurant return to work tax credit program will be able to achieve compliance with the regulation as soon as it is implemented.

Regulatory Flexibility Analysis

Participation in the Restaurant Return-To-Work Tax Credit program is entirely at the discretion of qualifying business entities. Neither statute nor the proposed/emergency rule impose any obligation on any local government or business entity to participate in the program. The proposed/emergency rule does not impose any adverse economic impact or compliance requirements on small businesses or local governments. In fact, the proposed/emergency rule may have a positive economic impact on small businesses.

Because it is evident from the nature of the proposed/emergency rule that it will have either no impact or a positive impact on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

Under the Restaurant Return-To-Work Tax Credit program, certain businesses in rural areas of New York State may be eligible to apply to participate in the program entirely at their discretion if they are independently owned establishments located outside of New York City in an area which has been and/or remains designated by the New York State Department of Health as either an orange zone or red zone pursuant to Executive Order 202.68 as amended, and for which such designation was or has been in effect and resulted in additional restrictions on indoor dining for at least thirty (30) consecutive days, and are primarily organized to prepare and provide meals, and/or beverages to customers for consumption, including for immediate indoor on-premises consumption.

Municipalities are not eligible to participate in the Program. The rule does not impose any special reporting, record keeping or other compliance requirements on private entities in rural areas. Therefore, the rule will not have a substantial adverse economic impact on rural areas nor on the reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed/emergency rule creates the administrative process for the Restaurant Return-To-Work Tax Credit program. The program aims to incentivize restaurants into hiring employees at this difficult economic time and will not have a substantial adverse impact on jobs and employment opportunities; rather, the program is intended to increase employment opportunities.

Because it is evident from the nature of the proposed/emergency rulemaking that it will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

State Board of Elections

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Campaign Finance Board's Enforcement Procedure

I.D. No. SBE-46-21-00001-P

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

Proposed Action: Addition of sections 6221.39-6221.46 to Title 9 NYCRR.

Statutory authority: Election Law, sections 14-207(1), (4) and 14-209(1)

Subject: Public Campaign Finance Board's Enforcement Procedure.

Purpose: Relates to how the Public Campaign Finance Board will enforce the public campaign finance provisions of the Election Law.

Substance of proposed rule (Full text is posted at the following State website: <https://www.elections.ny.gov/NYSBOE/download/law/Part622139-622145reEnforcementPenaltyRegs.pdf>):

The proposed rulemaking adds sections 6221.39-6221.46 to Subtitle V of Title 9 of the NYCRR. The new sections relate to how the Public Campaign Finance Board ("PCFB") will enforce the public campaign finance provisions of the Election Law and the PCFB's rules. Section 6221.39 provides how investigations are conducted by the PCFB. Section 6221.40 provides for a complaint procedure, where complaints alleging violations of Title 2 of Article 14 of the Election Law, or any provision of the PCFB's regulations, occurred. Section 6221.43 provides for hearing officers, including the manner of selection and the qualifications and obligations. Section 6221.44 provides for commencement of fair hearing proceedings and various requisites related thereto. Section 6221.45 outlines the process for the PCFB to determine fines and penalties for infractions. Section 6221.46 provides for a schedule of penalties and fines for infractions.

Text of proposed rule and any required statements and analyses may be obtained from: Nicholas R. Cartagena, State Board of Elections, Public Campaign Finance Board, 40 North Pearl Street, Suite 5, Albany, NY 12207, (518) 474-2063, email: nicholas.cartagena@elections.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory authority: Election Law § 14-207(1) provides that: "the PCFB shall promulgate such regulations as are needed no later than the first day of July, two thousand twenty-one." Election Law § 14-207(4) provides that the Public Campaign Finance Board "shall have the authority to promulgate such rules and regulations and provide such forms as it deems necessary for the administration of this title." Additionally, Election Law § 14-209(1) provides that the Public Campaign Finance Board shall "promulgate shall promulgate a regulation setting forth a schedule of fines for...infractions including those that it may assess directly on violators."

2. Legislative objectives: Per Election Law § 14-200, the legislature found that a public campaign finance system was crucial in improving public confidence in the state's democratic processes, to ensure a government that is accountable to all of the voters of the state regardless of wealth or position, and to reduce the potential for and the appearance of corruption. The legislature also found "that the high cost of running for office in New York discourages qualified candidates from running for office and creates an electoral system that encourages candidates to spend too much time raising money rather than attending to the duties of their office, representing the needs of their constituents, and communicating with voters." Accordingly, the state enacted a public campaign finance system, which, in addition to providing for qualifying public matching funds, also provides for enforcement mechanisms to ensure campaigns comply with the public campaign finance programs rules. The proposed rules provides for such an enforcement mechanism.

3. Needs and benefits: As stated in the section above, the legislature found that a public campaign finance program was crucial in reforming the state's electoral system. In addition to enacting a public matching program, the legislature provided for an enforcement mechanism to ensure campaigns comply with public campaign finance rules. This mechanism is

necessary to ensure that public money is being used in accordance with law. To that end, the proposed rule how the PCFB will enforce the public campaign finance provisions of the Election Law and the PCFB's rules. This rule deals with how investigations are conducted; provides for a complaint procedure; lays out the required fair hearing procedure; and establishes a schedule of fines and penalties.

4. Costs: The proposed rule requires a hearing process as an element of due process. It does not impose any additional costs on any definable, regulated class. The agency cost and state cost are provided for in existing appropriations, and there are no costs to local governments resulting from this rule. As a matter of law and not the subject of this rulemaking, the state will recover to a special fund settlements entered into as a result of the civil enforcement process. The rule implements a statutory requirement to provide campaigns a "right to be heard" for violations of Title 2 of the Election Law, and the cost of implementing the program depends on how many matters will be initiated by the PCFB's Enforcement Counsels. The cost to implement this rulemaking will be provided by existing appropriations for the State Board of Elections.

5. Local government mandates: The proposed rules do not impose any local government mandate.

6. Paperwork: This rule imposes no new reporting or regulatory filing requirements. The rules include requirements related to commencing adjudicatory proceedings, including, e.g., the filing of the report of the Counsel, a notice of hearing, and respondent's answer.

7. Duplication: There is no jurisdictional duplication created by this rulemaking.

8. Alternatives: The process provided by this rule directly implements the statutory requirement of Election Law § 14-209(1). Accordingly, there were no alternatives to the process considered.

9. Federal standards: There are no federal standards relative to this rule making.

10. Compliance schedule: The rule creates no new compliance obligations. The rule shall be effective upon Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

Under SAPA 202-b(3)(a), when a rule does not impose an adverse economic impact on small business or local government and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on such entities, the agency may file a Statement in Lieu of. This rule will not impact small business operations or local government functions. This rule relates to how the Public Campaign Finance Board ("PCFB") will enforce the public campaign finance provisions of the Election Law and the PCFB's rules. It imposes no additional compliance, regulatory or reporting requirements on local governments or small businesses.

Rural Area Flexibility Analysis

Under SAPA 202-bb(4)(a), when a rule does not impose an adverse economic impact on rural areas and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, the agency may file a Statement in Lieu of. This rule has statewide application and relates to how the Public Campaign Finance Board ("PCFB") will enforce the public campaign finance provisions of the Election Law and the PCFB's rules. The proposed rule does not create any materially new reporting, recordkeeping or other routine compliance requirements that will specifically impact rural areas. Accordingly, this rule has no adverse impact.

Job Impact Statement

Under SAPA 201-a(2)(a), when it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. This rule relates to how the Public Campaign Finance Board ("PCFB") will enforce the public campaign finance provisions of the Election Law and the PCFB's rules. This rulemaking imposes no regulatory burden on any facet of job creation or employment.

Department of Health

EMERGENCY RULE MAKING

Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements

I.D. No. HLT-46-21-00002-E

Filing No. 1134

Filing Date: 2021-10-28

Effective Date: 2021-10-28

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

Action taken: Amendment of sections 405.11 and 415.19 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803

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

Specific reasons underlying the finding of necessity: These regulations are needed on an emergency basis to ensure hospital and nursing home staff, as well as the patients and residents for whom they provide care, are adequately protected in the event of a resurgence of the 2019 Coronavirus (COVID-19) or another communicable disease outbreak. These regulations are specifically meant to address the lessons learned in New York State during the COVID-19 pandemic with respect to PPE.

Specifically, on January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

The federally-declared public health emergency was recently extended by the Secretary of Health and Human Services on July 19, 2021, and currently remains in effect.

New York State first identified cases on March 1, 2020 and thereafter became the national epicenter of the outbreak. However, as a result of global PPE shortages, many hospitals and nursing homes in New York State had difficulty obtaining adequate PPE necessary to care for their patients and residents. New York State provided general hospitals, nursing homes, and other medical facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak.

However, these regulations are needed on an emergency basis to ensure that hospitals and nursing homes Statewide do not again find themselves in need of PPE from the State's stockpile should another communicable disease outbreak occur, COVID-19 or otherwise. It is critically important that PPE, including masks, gloves, respirators, face shields and gowns, is readily available and used when needed, as hospital and nursing home staff must don all required PPE to safely provide care for patients and residents with communicable diseases, while ensuring that they themselves do not become infected with a communicable disease.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to ensure that all general hospitals and nursing homes maintain a 60-day supply of PPE to ensure that sufficient PPE is available in the event of a resurgence of COVID-19 or another communicable disease outbreak.

Subject: Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements.

Purpose: To ensure that all general hospitals and nursing homes maintain a 60-day supply of PPE during the COVID-19 emergency.

Text of emergency rule: Section 405.11 is amended by adding a new subdivision (g) as follows:

(g)(1) *The hospital shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with federal Centers for Disease Control and Prevention guidance, for at least 60 days, by August 31, 2021.*

(2) *The 60-day stockpile requirement set forth in paragraph (1) of this subdivision shall be determined by the Department as follows for each type of required PPE:*

(i) for single gloves, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 550;

(ii) for gowns, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 41;

(iii) for surgical masks, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 21; and

(iv) for N95 respirator masks, fifteen percent, multiplied by the number of the hospital's staffed beds as determined by the Department, multiplied by 9.6.

(3) The Commissioner shall have discretion to increase the stockpile requirement set forth in paragraph (1) of this subdivision from 60 days to 90 days where there is a State or local public health emergency declared pursuant to Section 24 or 28 of the Executive Law. Hospitals shall possess and maintain the necessary 90-day stockpile of PPE by the deadline set forth by the Commissioner.

(4) Failure to possess and maintain the required supply of PPE may result in the revocation, limitation, or suspension of the hospital's license; provided, however, that no such revocation, limitation, or suspension shall be ordered unless the Department has provided the hospital with a fourteen day grace period, solely for a hospital's first violation of this section, to achieve compliance with the requirement set forth herein.

Section 415.19 is amended by adding a new subdivision (f) as follows:

(f)(1) The nursing home shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with federal Centers for Disease Control and Prevention guidance, for at least 60 days, by August 31, 2021.

(2) The 60-day stockpile requirement set forth in paragraph (1) of this subdivision shall be determined by the Department as follows for each type of required PPE:

(i) for single gloves, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 24;

(ii) for gowns, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 3;

(iii) for surgical masks, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 1.5; and

(iv) for N95 respirator masks, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 1.4.

(v) For the purposes of this paragraph, the term "applicable positivity rate" shall mean the greater of the following positivity rates:

(a) The nursing home's average COVID-19 positivity rate, based on reports made to the Department, during the period April 26, 2020 through May 20, 2020; or

(b) The nursing home's average COVID-19 positivity rate, based on reports made to the Department, during the period January 3, 2021 through January 31, 2021; or

(c) 20.15 percent, representing the highest Regional Economic Development Council average COVID-19 positivity rate, as reported to the Department, during the periods April 26, 2020 through May 20, 2020 and January 3, 2021 through January 31, 2021.

(3) Failure to possess and maintain the required supply of PPE may result in the revocation, limitation, or suspension of the nursing home's license; provided, however, that no such revocation, limitation, or suspension shall be ordered unless the Department has provided the nursing home with a fourteen day grace period, solely for a nursing home's first violation of this section, to achieve compliance with the requirement set forth herein.

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 January 25, 2022.

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

Regulatory Impact Statement

Statutory Authority:

Section 2803 of the Public Health Law (PHL) authorizes the promulgation of such regulations as may be necessary to implement the purposes and provisions of PHL Article 28, including the establishment of minimum standards governing the operation of health care facilities, including hospitals and nursing homes.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection and

promotion of the health of the residents of the State by requiring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost.

Needs and Benefits:

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

New York State first identified cases on March 1, 2020 and thereafter became the national epicenter of the outbreak. On March 7, 2020, with widespread transmission rapidly increasing within certain areas of the state, Governor Andrew M. Cuomo issued an Executive Order declaring a state disaster emergency to aid in addressing the threat COVID-19 poses to the health and welfare of New York State residents and visitors. Given New York's dramatic progress against COVID-19, with the success in vaccination rates, and declining hospitalization and positivity statewide, the declared state disaster emergency expired on June 24, 2021. Nevertheless, this does not mean that COVID-19 is gone, as the threat of COVID-19 still remains.

In order for hospital and nursing home staff to safely provide care for COVID-19 positive patients and residents, or patients and residents infected with another communicable disease, while ensuring that they themselves do not become infected with COVID-19 or any other communicable disease, it is critically important that personal protective equipment (PPE), including masks, gloves, respirators, face shields and gowns, is readily available and are used. Therefore, as a result of global PPE shortages at the outset of the State of Emergency, New York State provided general hospitals, nursing homes, and other medical facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak. However, hospitals and nursing homes must ensure sufficient PPE stockpiles exist for any future communicable disease outbreaks to ensure each facility is adequately prepared to protect its staff and patients or residents, without needing to rely on the State's emergency stockpile.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to ensure that all general hospitals and nursing homes maintain a 60-day supply of PPE to ensure that sufficient PPE is available in the event of a continuation or resurgence of the COVID-19 outbreak or another communicable disease outbreak.

Costs:

Costs to Regulated Parties:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each facility. However, the Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are expected to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to balance facility expenditures over time. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). As such, this regulation imposes no long-term additional costs to regulated parties.

Costs to Local and State Governments:

This regulation will not impact local or State governments unless they operate a general hospital or nursing home, in which case costs will be the same as costs for private entities.

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health.

Paperwork:

This regulation imposes no addition paperwork.

Local Government Mandates:

General hospitals and nursing homes operated by local governments will be affected and will be subject to the same requirements as any other general hospital licensed under PHL Article 28.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

The Department believes that promulgation of this regulation is the most effective means of ensuring that general hospitals and nursing homes have adequate stockpiles of PPE necessary to protect hospital staff from communicable diseases, compared to any alternate course of action.

Federal Standards:

No federal standards apply to stockpiling of such equipment at hospitals.

Compliance Schedule:

The regulations will become effective upon filing with the Department of State. These regulations are expected to be proposed for permanent adoption at a future meeting of the Public Health and Health Planning Council.

Regulatory Flexibility Analysis

Effect of Rule:

This regulation will not impact local governments or small businesses unless they operate a general hospital or a nursing home. Currently there are five general hospitals in New York that employ less than 100 staff and qualify as small businesses, and there are 79 nursing homes in New York qualify as small businesses given that they employ less than 100 staff.

Compliance Requirements:

These regulations require all general hospitals and nursing homes to purchase and maintain adequate stockpiles of PPE, including but not limited to masks, respirators, face shields and gowns.

Professional Services:

It is not expected that any professional services will be needed to comply with this rule.

Compliance Costs:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each covered facility. However, the Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are expected to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to balance facility expenditures over time. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). As such, this regulation imposes no long-term additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

The Department anticipates that any adverse impacts will be minimal, as both hospitals and nursing homes have already mobilized their stockpiling efforts since early 2020, when the spread of the COVID-19 virus was first recognized in New York State, including through two surges of the COVID-19 pandemic. As such, the continuance of these stockpiling requirements is not expected to create any additional adverse impact on hospitals or nursing homes. Moreover, for nursing homes, these PPE regulations are consistent with the existing directive in Public Health Law section 2803(12) to maintain a two-month PPE supply.

Small Business and Local Government Participation:

Small business and local governments were not directly consulted given the urgent need to ensure hospital patients and nursing home residents are adequately protected in the event of a resurgence of COVID-19 or another communicable disease outbreak. However, the Department plans to issue an advisory to hospital CEOs and nursing home administrators alerting them to the anticipated proposed rulemaking on these regulations and opportunity to submit public comments.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), "rural area" means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the

municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population 'rural areas' means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein."

The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the United States Census estimated county populations for 2010:

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

There are 47 general hospitals located in rural areas as well as several licensed nursing homes.

Reporting, Recordkeeping, and Other Compliance Requirements; and Professional Services:

These regulations require all general hospitals and nursing homes, including those in rural areas, to purchase and maintain adequate stockpiles of PPE, including but not limited to masks, respirators, face shields and gowns.

Costs:

The purpose of this regulation is to require general hospitals and nursing homes to maintain adequate stockpiles of PPE. The initial cost to facilities as they establish stockpiles of PPE will vary depending on the number of staff working at each facility. However, the Department anticipates that hospitals and nursing homes will routinely use stockpiled PPE as part of their routine operations; while facilities must maintain the requisite stockpile at all times in the event of an emergency need, facilities are expected to rotate through their stockpiles routinely to ensure the PPE does not expire and is replaced with new PPE, thereby helping to balance facility expenditures over time. Further, in the event of an emergency need, hospitals and nursing homes are expected to tap into their stockpiles; as such, hospitals and nursing homes will ultimately use equipment which would have been purchased had a stockpile not existed, thereby mitigating overall costs. Moreover, nursing homes are statutorily obligated to maintain or contract to have at least a two-month supply of PPE pursuant to Public Health Law section 2803(12). Therefore, this regulation imposes no long-term additional costs to regulated parties.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

The Department anticipates that any adverse impacts will be minimal, as both hospitals and nursing homes have already mobilized their stockpiling efforts since early 2020, when the spread of the COVID-19 virus was first recognized in New York State, including through two surges of the COVID-19 pandemic. As such, the continuance of these stockpiling requirements is not expected to create any additional adverse impact on hospitals or nursing homes. Moreover, for nursing homes, these PPE regulations are consistent with the existing directive in Public Health Law section 2803(12) to maintain a two-month PPE supply.

Rural Area Participation:

Parties representing rural areas were not directly consulted given the urgent need to ensure hospital patients and nursing home residents are adequately protected in the event of a resurgence of COVID-19 or another communicable disease outbreak. However, the Department plans to issue an advisory to hospital CEOs and nursing home administrators alerting them to the anticipated proposed rulemaking and opportunity to submit public comments.

Job Impact Statement

A Job Impact Statement for these regulations is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

EMERGENCY RULE MAKING

Surge and Flex Health Coordination System**I.D. No.** HLT-46-21-00003-E**Filing No.** 1135**Filing Date:** 2021-10-28**Effective Date:** 2021-10-28

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

Action taken: Addition of sections 1.2, 700.5 and Part 360; amendment of sections 400.1, 405.24 and 1001.6 of Title 10 NYCRR; amendment of sections 487.3, 488.3 and 490.3 of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 225, 576, 2800, 2803, 4662; Social Services Law, section 461

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

Specific reasons underlying the finding of necessity: During a state disaster emergency with significant public health impact, and where compliance with certain regulations may prevent, hinder or delay action necessary to cope with the disaster, as is the case with COVID-19, these proposed regulations will ensure that the State has the most efficient regulatory tools to facilitate the State's and regulated parties' response efforts to Surge and Flex the healthcare system statewide. Additionally, this authority will also ensure that the Department has the flexibility to impose additional requirements, where necessary, to ensure effective response to a declared state disaster emergency. Accordingly, these tools will help ensure the health and safety of patients and residents in New York State.

Subject: Surge and Flex Health Coordination System.

Purpose: Provides authority to the Commissioner to direct certain actions and waive certain regulations in an emergency.

Substance of emergency rule (Full text is posted at the following State website: <https://regs.health.ny.gov/regulations/emergency>): Although the Governor retains authority to issue Executive Orders to temporarily suspend or modify regulations pursuant to the Executive Law, these proposed regulatory amendments would provide an expedient and coherent plan to implement quickly the relevant temporary suspensions or modifications. The proposed regulatory amendments would permit the State Commissioner of Health or designee to take specific actions, as well as to temporarily suspend or modify certain regulatory provisions (or parts thereof) in Titles 10 and 18 of the NYCRR during a state disaster emergency, where such provisions are not required by statute or federal law. These proposed amendments would also permit the Commissioner to take certain actions, where consistent with any Executive Order (EO) issued by the Governor during a declared state disaster emergency. Examples include issuing directives to authorize and require clinical laboratories or hospitals to take certain actions consistent with any such EOs, as well as the temporary suspension or modification of additional regulatory provisions when the Governor temporarily suspends or modifies a controlling state statute.

The proposed regulatory amendments would also require hospitals to: develop disaster emergency response plans; maintain a 60-day supply of personal protective equipment (PPE); ensure that staff capable of working remotely are equipped and trained to do so; and report data as requested by the Commissioner.

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 January 25, 2022.

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

Regulatory Impact Statement**Statutory Authority:**

The authority for the promulgation of these regulations with respect to facilities subject to Article 28 of the Public Health Law (PHL) is contained in PHL sections 2800 and 2803(2). PHL Article 28 (Hospitals), section 2800, specifies: "Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article." PHL section 2801 defines the term "hospital" as also including residential health care facilities (nursing homes) and diagnostic and treatment centers (D&TCs). PHL section 2803 (2) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of such health care facilities.

PHL section 4662 authorizes the Commissioner to issue regulations governing assisted living residences. Social Services Law (SSL) section 461(1) authorizes the Commissioner to promulgate regulations establishing standards applicable to adult care facilities. PHL section 576 authorizes the Commissioner to regulate clinical laboratories.

PHL section 225 authorizes the Public Health and Health Planning Council (PHHPC) and the Commissioner to establish and amend the State Sanitary Code (SSC) provisions related to any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York.

Upon the future declaration of any disaster emergency, any further authorization by the Governor pursuant to article 2-B of the Executive Law, if it should suspend any statutes which otherwise conflict with these regulations, will establish the immediate effectiveness of these provisions.

Legislative Objectives:

The objectives of PHL Article 28 include protecting the health of New York State residents by ensuring that they have access to safe, high-quality health services in medical facilities, while also protecting the health and safety of healthcare workers. Similarly, PHL Articles 36 and 40 ensure that the Department has the tools needed to achieve these goals in the home care and hospice spaces, and PHL section 4662 and SSL section 461 likewise ensure that the Department has appropriate regulatory authority with respect to assisted living residences and adult care facilities. PHL section 576 ensures that the Commissioner has appropriate regulatory authority over clinical laboratories. Finally, PHL section 225 ensures that the State Sanitary Code includes appropriate regulations in the areas of communicable disease control and environmental health, among others.

By permitting the Commissioner to temporarily suspend or modify regulatory provisions in each these areas, where not required by state statute or federal law, or where he is authorized by a gubernatorial Executive Order, these amendments provide crucial flexibility for this and future emergency response efforts.

Needs and Benefits:

During a state disaster emergency, Section 29-a of the Executive Law permits the Governor to, among other things, "temporarily suspend specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster."

Although the Governor retains authority to issue Executive Orders to temporarily suspend or modify regulations pursuant to the Executive Law, these proposed regulatory amendments would provide an expedient and coherent plan to implement quickly the relevant temporary suspensions or modifications. The proposed regulatory amendments would permit the State Commissioner of Health or designee to take specific actions, as well as to temporarily suspend or modify certain regulatory provisions (or parts thereof) in Titles 10 and 18 of the NYCRR during a state disaster emergency, where such provisions are not required by statute or federal law. These proposed amendments would also permit the Commissioner to take certain actions, where consistent with any Executive Order (EO) issued by the Governor during a declared state disaster emergency. Examples include issuing directives to authorize and require clinical laboratories or hospitals to take certain actions consistent with any such EOs, as well as the temporary suspension or modification of additional regulatory provisions when the Governor temporarily suspends or modifies a controlling state statute.

The proposed regulatory amendments would also require hospitals to: develop disaster emergency response plans; maintain a 60-day supply of personal protective equipment (PPE); ensure that staff capable of working remotely are equipped and trained to do so; and report data as requested by the Commissioner.

During a state disaster emergency with significant public health impact, and where compliance with certain regulations may prevent, hinder or delay action necessary to cope with the disaster, as is the case with COVID-19, this authority will ensure that the State has the most efficient regulatory tools to facilitate the State’s and regulated parties’ response efforts to Surge and Flex the healthcare system statewide. Additionally, this authority will also ensure that the Department has the flexibility to impose additional requirements, where necessary, to ensure effective response to a declared state disaster emergency. Accordingly, these tools will help ensure the health and safety of patients and residents in New York State.

Costs:

Costs to Regulated Parties:

As demonstrated during the COVID-19 pandemic emergency, significant provider costs, as well as local, regional and state costs, were incurred as a result of the need to respond to the demand for urgent healthcare and related services. These costs had significant impact throughout the state. It is anticipated there would be similar types of costs in a widespread emergency that would need to be addressed through both appropriate preparedness as well as within, and as part of, a coordinated response to a specific situation.

To the extent that additional requirements are imposed on regulated parties by these proposed regulatory amendments, most requirements would be in effect only for the duration of a declared state disaster emergency, with the hope of limiting costs to the extent possible.

Costs to Local Governments:

As demonstrated during the COVID-19 pandemic emergency, significant provider costs, as well as local, regional and state costs, were incurred as a result of the need to respond to the demand for urgent healthcare and related services. These costs had significant impact throughout the state. It is anticipated there would be similar types of costs in a widespread emergency that would need to be addressed through both appropriate preparedness as well as within and as part of a coordinated response to a specific situation.

To the extent additional requirements are imposed on local governments that operate facilities regulated by the Department, most requirements would be in effect only for the duration of a declared state disaster emergency, with the hope of limiting costs to the extent possible.

Cost to State Government:

The administration and oversight of these planning and response activities will be managed within the Department’s existing resources.

Paperwork:

It is not anticipated that the proposed regulatory amendments will impose any significant paperwork requirements. Although these proposed amendments require additional reporting, these reports can be submitted electronically using the current platforms that facilities are already using. Moreover, such reporting requirements would only be activated during a declared state disaster emergency, thereby limiting the burden.

Local Government Mandates:

Facilities operated by local governments will subject to the same requirements as any other regulated facility, as described above.

Duplication:

These proposed regulatory amendments do not duplicate state or federal rules.

Alternatives:

The alternative would be to not promulgate the regulation. However, this alternative was rejected, as the Department believes that these regulatory amendments are necessary to facilitate response to a state disaster emergency.

Federal Standards:

42 CFR 482.15 establishes emergency preparedness minimum standards in four core areas including emergency planning, development of applicable policies and procedures, communications plan, and training and testing. These proposed amendments would complement the federal regulation and further strengthen hospitals’ emergency preparedness and response programs.

Compliance Schedule:

These regulatory amendments will become effective upon filing with the Department of State.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed regulatory amendments would primarily affect health care professionals, licensed health care facilities, permitted clinical laboratories, emergency medical service personnel, providers, and agencies, and pharmacies.

Compliance Requirements:

A significant portion of these regulatory amendments are designed to provide regulatory relief during a declared state disaster emergency. Where the regulatory amendments would impose requirements, most of them would only be applicable when there is a declared state disaster emergency. An example of a requirement that may be implemented during a declared state disaster emergency is reporting of data and inventory as requested by the Commissioner (i.e. medical supplies and equipment, as well as hospital bed capacity, bed utilization, patient demographics, etc.). There are certain ongoing requirements proposed by this regulatory amendments, which would apply regardless of whether there is a declared state disaster emergency, in which hospitals would be required to: (1) maintain minimum levels of PPE; (2) ensure work from home capabilities; and (3) develop disaster emergency response plans.

Professional Services:

It is not expected that any professional services will be required to comply with the proposed regulatory amendments.

Compliance Costs:

As demonstrated during the COVID-19 pandemic emergency, significant provider costs, as well as local, regional and state costs, were incurred as a result of the need to respond to the demand for urgent healthcare and related services. These costs had significant impact throughout the state. It is anticipated there would be similar types of costs in a widespread emergency that would need to be addressed through both appropriate preparedness as well as within and as part of a coordinated response to a specific situation.

To the extent additional requirements are imposed on small businesses and local governments by these proposed regulatory amendments, most requirements would only be in effect for the duration of a declared state disaster emergency, with the hope of limiting costs to the extent possible. Ongoing costs requiring hospitals to maintain a minimum PPE supply and ensure work from home capabilities should have been addressed throughout the ongoing COVID-19 pandemic, thereby limiting costs of continued implementation. Ongoing costs related to hospital development of disaster emergency response plan will complement and build upon existing planning documents that hospitals are already required to have, which also limits costs.

Economic and Technological Feasibility:

There are no economic or technological impediments to the proposed regulatory amendments.

Minimizing Adverse Impact:

Although the proposed regulatory amendments impose some additional requirements on regulated parties, most of these requirements are only triggered during a declared state disaster emergency. Proposed amendments that would impose ongoing requirements would only apply to hospitals, and as noted above, will largely be a continuation of the efforts already being employed by these entities.

Small Business and Local Government Participation:

Due to the emergency nature of COVID-19, small businesses and local governments were not consulted.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.” The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County

Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Reporting, Recordkeeping, and Other Compliance Requirements; and Professional Services:

A significant portion of these regulatory amendments are designed to provide regulatory relief during a declared state disaster emergency. Where the regulatory amendments would impose requirements, most of them would only be applicable when there is a declared state disaster emergency. An example of a requirement that may be implemented during a declared state disaster emergency is reporting of data and inventory as requested by the Commissioner (i.e. medical supplies and equipment, hospital bed capacity, bed utilization, patient demographics, etc.). There are certain ongoing requirements proposed by this regulatory amendments, regardless of whether there is a declared state disaster emergency, in which hospitals would be required to: (1) maintain minimum levels of PPE; (2) ensure work from home capabilities; and (3) develop disaster emergency response plans. This regulation provides that the Commissioner’s directives shall be incremental and geographically tailored and targeted at the Statewide, regional, or community level, as dictated by infection rate data.

It is not expected that any professional services will be required to comply with the proposed regulatory amendments.

Costs:

As a large part of these regulatory amendments would give the State Commissioner of Health authority to temporarily suspend or modify certain regulations within Titles 10 and 18 during a state disaster emergency, these regulatory amendments are not expected to result in any significant costs to public and private entities in rural areas.

To the extent additional requirements are imposed on public and private entities in rural areas by these proposed regulatory amendments, such requirements would only be in effect for the duration of a declared state disaster emergency.

Lastly, per SAPA § 202-bb(3)(c), it is not anticipated that there will be any significant variation in cost for different types of public and private entities in rural areas.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

Although the proposed regulatory amendments impose additional requirements on regulated parties, including those in rural areas, most of these requirements are only triggered during a declared state disaster emergency. Proposed amendments that would require disaster emergency preparedness planning on the part of regulated parties will complement and build upon existing state and federal planning requirements.

Rural Area Participation:

Due to the emergency nature of COVID-19, parties representing rural areas were not consulted in the initial draft. However, parties representing rural may submit comments during the notice and comment period for the proposed regulations.

Job Impact Statement

The Department of Health has determined that these regulatory changes will not have a substantial adverse impact on jobs and employment, based upon its nature and purpose.

**EMERGENCY
RULE MAKING**

COVID-19 Vaccinations of Nursing Home and Adult Care Facility Residents and Personnel

I.D. No. HLT-46-21-00004-E

Filing No. 1136

Filing Date: 2021-10-28

Effective Date: 2021-10-28

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

Action taken: Addition of Subpart 66-4 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201, 206, 2803; Social Services Law, sections 461 and 461-e

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

Specific reasons underlying the finding of necessity: The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal. According to Johns Hopkins’ Coronavirus Resource Center, as of July 14, 2021, there have been over 188 million cases and over 4 million deaths worldwide, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

Given the disproportionate adverse health impacts of COVID-19 for older adults and those with comorbidities, many of whom reside in New York’s nursing homes and ACFs, it is imperative that nursing homes and ACFs facilitate the prompt vaccination of its residents. Moreover, in order to ensure that nursing home and ACF personnel can safely provide resident care, it is critically important that nursing homes offer continued COVID-19 vaccinations on-site for their current and new personnel and that ACFs arrange for their current and new personnel to receive the COVID-19 vaccine at an off-site location, such as a local pharmacy.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to best protect the residents of New York’s nursing homes and ACFs.

Subject: COVID-19 Vaccinations of Nursing Home and Adult Care Facility Residents and Personnel.

Purpose: To require nursing homes and adult care facilities to conduct ongoing COVID-19 vaccinations of their residents and personnel.

Text of emergency rule: A new Subpart 66-4, titled COVID-19 Nursing Home and Adult Care Facility Vaccination Program, is added to read as follows:

66-4.1. Requirements for Nursing Homes

(a) *Within fourteen days of the effective date of this regulation, every nursing home regulated pursuant to Part 415 of this Title shall offer all consenting, unvaccinated existing personnel and residents an opportunity to receive the first or any required next dose of the COVID-19 vaccine.*

(b) *The operator and administrator of every nursing home regulated pursuant to Part 415 of this Title must ensure that all new personnel, including employees and contract staff, and every new resident and resident readmitted to the facility has an opportunity to receive the first or any required next dose of the COVID-19 vaccine within fourteen days of having been hired by or admitted or readmitted to such facility, as applicable.*

(c) *The requirement to ensure that all new and current personnel and residents have an opportunity to receive the COVID-19 vaccination, as set forth in subdivisions (a) and (b) of this section, shall include, but not be limited to:*

(1) *Posting conspicuous signage throughout the facility, including at points of entry and exit and each residential hallway, reminding personnel and residents that the facility offers COVID-19 vaccination; and*

(2) *Providing all personnel and residents who decline to be vaccinated a written affirmation for their signature, which indicates that they were offered the opportunity for a COVID-19 vaccination but declined. Such affirmation must state that the signatory is aware that, if they later decide to be vaccinated for COVID-19, it is their responsibility to request vaccination from the facility. The facility shall maintain signed affirmations on file at the facility and make such forms available at the request of the Department.*

66-4.2. Requirements for Adult Care Facilities

(a) *Within seven days of the effective date of this regulation, the operator and administrator of every adult care facility regulated pursuant to Parts 487, 488 and 490 of Title 18 of the NYCRR and Part 1001 of this*

Title shall make diligent efforts to arrange for all consenting, unvaccinated existing personnel and residents to register for a vaccine appointment, and shall document attempts to schedule and methods used to schedule the vaccine in the individual's personnel file or case management notes, as applicable.

(b) The operator and administrator of every adult care facility regulated pursuant to Parts 487, 488 and 490 of Title 18 of the NYCRR and Part 1001 of this Title must arrange for the COVID-19 vaccination, including the first or any required next dose, of all new personnel, including employees and contract staff, and every new resident and resident readmitted to the facility. The requirement to arrange for COVID-19 vaccination of such personnel and residents shall include, but not be limited to:

(1) For residents:

(i) during the pre-admission screening process, and in no event after the first day of admission or readmission, the adult care facility shall screen the prospective or newly-admitted or readmitted resident for COVID-19 vaccine eligibility, including whether any first doses of the vaccine were previously administered, and whether the resident is interested in obtaining the COVID-19 vaccine. Such information shall be documented with the resident's pre-admission screening information and, if admitted, retained in the resident's case management records; and

(ii) within seven days of admission or readmission, the facility shall make diligent efforts to schedule all consenting and eligible new or readmitted residents for the COVID-19 vaccination. The facility must document attempts to schedule and methods used to schedule the vaccine appointment in the resident's case management notes.

(2) For personnel:

(i) during the pre-employment screening process, the facility shall solicit information from the prospective personnel regarding their vaccination status, including whether any first doses of the vaccine were previously administered, and whether the prospective personnel is interested in obtaining the COVID-19 vaccine. Such information must be documented with the personnel's pre-employment screening information and, if hired, retained in the personnel file; provided, however, that nothing in this paragraph shall be construed to require an adult care facility to make any hiring determination based upon the prospective personnel's COVID-19 vaccination status, history, or interest in COVID-19 vaccination; and

(ii) within seven days of hiring new personnel, the facility shall make diligent efforts to schedule all consenting and eligible new personnel for the COVID-19 vaccination. The facility must document attempts to schedule and methods used to schedule the vaccine appointment in the individual's personnel file.

(c) The facility shall further provide all current and new personnel and residents who decline to be vaccinated a written affirmation for their signature, which indicates that they were offered the opportunity for the facility to arrange for a COVID-19 vaccination, but declined. Such affirmation must state that the signatory is aware that, if they later decide to be vaccinated for COVID-19, it is their responsibility to request the facility arrange for their vaccination. The facility shall maintain signed affirmations on file at the facility and make such forms available at the request of the Department.

66-4.3. Penalties.

(a) A violation of any provision of this Subpart shall be subject to penalties in accordance with sections 12 and 12-b of the Public Health Law.

(b) For adult care facilities, failure to arrange for the vaccination of every facility resident and personnel as set forth in section 66-4.2 of this Part constitutes a "failure in systemic practices and procedures" under Social Services Law 460-d(7)(b)(2)(iii) and pursuant to 18 NYCRR 486.5(a)(4)(v).

(c) In addition to any monetary penalties or referral for criminal investigation to appropriate entities, the Department shall be empowered to immediately take custody and control of such vaccine at a nursing home and re-allocate to another provider.

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 January 25, 2022.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority is provided under sections 201, 206, and 2803 of the Public Health Law (PHL) and sections 461 and 461-e of the Social Services Law (SSL).

PHL § 201 authorizes the New York State Department of Health (Department) to control and promote the control of communicable diseases to reduce their spread. Likewise, PHL § 206 authorizes the Commissioner

of Health to take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law, including control of communicable diseases.

PHL § 2803 authorizes the promulgation of such regulations as may be necessary to implement the purposes and provisions of PHL Article 28, including the establishment of minimum standards governing the operation of health care facilities.

SSL § 461 requires the Department to promulgate regulations establishing general standards applicable to Adult Care Facilities (ACF). SSL § 461-e authorizes the Department to promulgate regulations to require adult care facilities to maintain certain records with respect to the facilities residents and the operation of the facility.

Legislative Objectives:

The legislative objectives of PHL §§ 201 and 206 are to protect the health and life of the people of the State of New York, including by controlling the spread of communicable diseases. The legislative objectives of PHL Article 28, including PHL § 2803, include the efficient provision and proper utilization of health services of the highest quality. The legislative objective of SSL § 461 is to promote the health and well-being of residents of adult care facilities. Collectively, the legislative purpose of these statutes is to protect the residents of New York's long-term care facilities by providing safe, efficient, and adequate care.

Needs and Benefits:

These regulations are necessary to prevent the spread of COVID-19 in nursing homes and adult care facilities and to help ensure the health and life of residents of nursing homes and ACFs by requiring such congregate care facilities to offer or arrange for consenting residents and personnel to receive the COVID-19 vaccine. This requirement will help ensure residents are less likely to suffer a COVID-related death or severe illness and that fewer staff test positive for COVID-19.

COVID-19 is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal. Given the disproportionate adverse health impacts of COVID-19 for older adults and those with comorbidities, many of whom reside in New York's nursing homes and ACFs, it is imperative that nursing homes and ACFs facilitate the prompt vaccination of its residents. Moreover, in order to ensure that nursing home and ACF personnel can safely provide resident care, it is critically important that nursing homes offer continued COVID-19 vaccinations on-site for their current and new personnel and that ACFs arrange for their current and new personnel to receive the COVID-19 vaccine at an off-site location, such as a pharmacy.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to best protect the residents of New York's nursing homes and ACFs.

Costs:

Costs to Regulated Parties:

The purpose of this regulation is to require nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. For nursing homes, costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled nursing homes cover administrative costs; specifically, pursuant to April 2, 2021 guidance from the Centers for Medicare & Medicaid Services (CMS), "starting on March 15, 2021, for single dose COVID-19 vaccines, Medicare pays approximately \$40 for its administration. Starting on March 15, 2021, for COVID-19 vaccines requiring multiple doses, Medicare pays approximately \$40 for each dose in the series."

For ACFs, costs to facilities are minimal to none, as ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. Many ACFs have vehicles which can be used for necessary transport, but there may be minimal costs associated with transportation, particularly if the distance to the vaccination site is great and/or if the ACF does not readily have access to a vehicle.

Costs to Local and State Governments:

This regulation will not impact local or State governments unless they operate a nursing home or ACF, in which case costs will be the same as costs for private entities. Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two adult care facilities operated by county governments.

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health.

Paperwork:

This regulation imposes no additional paperwork. Although the regulation requires recordkeeping by facilities, including documentation in

personnel files and resident clinical or case management records, these records must already be maintained by facilities.

Local Government Mandates:

Nursing homes and ACFs operated by local governments will be affected and will be subject to the same requirements as any other nursing home licensed under PHL Article 28 or ACF licensed under SSL Article 7, Title 2.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

The Department believes that promulgation of this regulation is the most effective means of ensuring that nursing homes and ACFs adequately ensure their residents and personnel are vaccinated against COVID-19. Accordingly, the alternative of not issuing these regulations was rejected.

Federal Standards:

No federal standards apply.

Compliance Schedule:

The regulations will become effective upon filing with the Department of State.

Regulatory Flexibility Analysis

Effect of Rule:

This regulation will not impact local governments or small businesses unless they operate a nursing home or ACF. Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two ACFs operated by county governments (Chenango and Warren Counties).

Additionally, to date, 79 nursing homes in New York qualify as small businesses given that they have 100 or fewer employees. There are also 483 ACFs that have 100 or fewer employees and therefore qualify as small businesses.

Compliance Requirements:

This regulation primarily requires nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. Specifically, nursing homes will be required to offer ongoing COVID-19 vaccinations at the facility, and ACFs will be responsible for arranging vaccinations at off-site locations, such as State-run vaccination sites or a local pharmacy. The regulation also requires facilities to provide all current and new personnel and residents who decline to be vaccinated a written affirmation for their signature, which indicates that they were offered the opportunity for the facility to arrange for or offer, as applicable, a COVID-19 vaccination, but they declined. Further, nursing homes are required to post conspicuous signage throughout the facility reminding personnel and residents that the facility offers COVID-19 vaccinations.

Professional Services:

No professional services are required by this regulation. However, nursing homes may choose to partner with a pharmacy to offer COVID-19 vaccinations for personnel and residents of the facility, rather than receiving and administering the vaccine directly.

Compliance Costs:

This regulation requires nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. Specifically, nursing homes will be required to offer ongoing COVID-19 vaccinations at the facility, and ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. For nursing homes, costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled nursing homes cover administrative costs; specifically, pursuant to April 2, 2021 guidance from the Centers for Medicare & Medicaid Services (CMS), "starting on March 15, 2021, for single dose COVID-19 vaccines, Medicare pays approximately \$40 for its administration. Starting on March 15, 2021, for COVID-19 vaccines requiring multiple doses, Medicare pays approximately \$40 for each dose in the series."

For ACFs, costs to facilities are minimal to none, as ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. Many ACFs have vehicles which can be used for necessary transport, but there may be minimal costs associated with transportation particularly if the distance to the vaccination site is great and/or if the ACF does not readily have access to a vehicle.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

This regulation is consistent with the existing responsibilities nursing homes and ACFs have to maintain the health and safety of residents, ensure sufficient staffing levels, and ensure staff are free from communicable diseases. Therefore, any adverse impacts are expected to be minimal and are outweighed by the regulation's health and safety benefits to residents and staff.

Small Business and Local Government Participation:

Due to the urgent need to ensure ACF and NH staff and residents are vaccinated as soon as possible given the seriousness of COVID-19 if contracted, particularly by older adults or persons with comorbidities, small business and local governments were not directly consulted. However, the Department will notify such entities of the existence of these regulations and the opportunity to submit comments or questions to the Department.

Cure Period:

This regulation does not include a cure period given the serious threat the COVID-19 virus causes to all New Yorkers, particularly those residing in nursing homes and adult care facilities, considering such residents' age and comorbidities. As detailed more fully within the regulations, nursing homes and adult care facilities will have 14 and 7 days, respectively, to offer vaccinations to residents and staff. The Department finds these 14- and 7-day periods to comply with the regulatory requirements are sufficient to ensure facilities can establish or revise their vaccination policies and procedures, while balancing the urgent need to protect facility residents and personnel from this dangerous disease.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), "rural area" means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population "rural areas" means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein."

The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuylers County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the United States Census estimated county populations for 2010:

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Both licensed nursing homes and ACFs are located in these identified rural areas.

Reporting, Recordkeeping, and Other Compliance Requirements; and Professional Services:

This regulation imposes no additional paperwork. Although the regulation requires recordkeeping by facilities, including documentation in personnel files and resident clinical or case management records, these records must already be maintained by facilities. Additionally, no professional services are required by this regulation. However, nursing homes may choose to partner with a pharmacy to offer COVID-19 vaccinations for personnel and residents of the facility, rather than receiving and administering the vaccine directly.

Costs:

This regulation requires nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. Specifically, nursing homes will be required to offer ongoing COVID-19 vaccinations at the facility, and ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. For nursing homes, costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled nursing homes cover administrative costs; specifically, pursuant to April 2, 2021 guidance from the Centers for Medicare & Medicaid Services (CMS), “starting on March 15, 2021, for single dose COVID-19 vaccines, Medicare pays approximately \$40 for its administration. Starting on March 15, 2021, for COVID-19 vaccines requiring multiple doses, Medicare pays approximately \$40 for each dose in the series.”

For ACFs, costs to facilities are minimal to none, as ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. Many ACFs have vehicles which can be used for necessary transport, but there may be minimal costs associated with transportation particularly if the distance to the vaccination site is great and/or if the ACF does not readily have access to a vehicle.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

This regulation is consistent with the existing responsibilities nursing homes and ACFs have to maintain the health and safety of residents, ensure sufficient staffing levels, and ensure staff are free from communicable diseases. Therefore, any adverse impacts are expected to be minimal and are outweighed by the regulation’s health and safety benefits to residents and staff.

Rural Area Participation:

Due to the urgent need to ensure ACF and NH staff and residents are vaccinated as soon as possible given the seriousness of the COVID-19 virus on this population, facilities located in rural areas were not directly consulted. However, the Department will notify covered entities located in rural areas of the existence of these regulations and the opportunity to submit comments or questions to the Department.

Job Impact Statement

A Job Impact Statement for these regulations is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

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

Nursing Home Minimum Direct Resident Care Spending

I.D. No. HLT-46-21-00005-P

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

Proposed Action: Addition of section 415.34 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2828

Subject: Nursing Home Minimum Direct Resident Care Spending.

Purpose: Every RHCF shall spend a minimum of 70 percent of revenue on direct resident care and 40% of revenue on resident-facing staffing.

Text of proposed rule: Pursuant to the authority vested in the Commissioner of Health by Section 2828 of the Public Health Law, Part 415 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is hereby amended by adding a new Section 415.34, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

415.34. Minimum Direct Resident Care Spending.

(a) *Purpose.* This Section sets forth the requirements of the minimum direct resident care spending law set forth in Section 2828 of the Public Health Law and applies to all residential health care facilities licensed pursuant to this Part, except as provided in subdivision (c) of this Section.

(b) *Definitions.* The definitions of this Section shall have the same meaning as those terms set forth in subdivision (2) of Section 2828 of the Public Health Law. Additionally, the following terms shall have the following meanings:

(1) “Contracted out” shall mean services provided by registered professional nurses, licensed practical nurses, or certified nurse aides who provide services in a residential health care facility through contractual or other employment agreement, whether such agreement is entered

into by the individual practitioner or by an employment agency on behalf of the individual practitioner. Such agreement may be oral or in writing.

(2) “Direct resident care” shall mean the following cost centers in the residential health care facility cost report: (i) Nonrevenue Support Services - Plant Operation & Maintenance, Laundry and Linen, House-keeping, Patient Food Service, Nursing Administration, Activities Program, Nonphysician Education, Medical Education, Medical Director’s Office, Housing, Social Service, Transportation; (ii) Ancillary Services - Laboratory Services, Electrocardiology, Electroencephalography, Radiology, Inhalation Therapy, Podiatry, Dental, Psychiatric, Physical Therapy, Occupational Therapy, Speech/Hearing Therapy, Pharmacy, Central Services Supply, Medical Staff Services provided by licensed or certified professionals including and without limitation Registered Nurses, Licensed Practical Nurses, and Certified Nursing Assistant; and (iii) Program Services - Residential Health Care Facility, Pediatric, Traumatic Brain Injury (TBI), Autoimmune Deficiency Syndrome (AIDS), Long Term Ventilator, Respite, Behavioral Intervention, Neurodegenerative, Adult Care Facility, Intermediate Care Facilities, Independent Living, Outpatient Clinics, Adult Day Health Care, Home Health Care, Meals on Wheels, Barber & Beauty Shop, and Other similar program services that directly address the physical conditions of residents. Direct resident care does not include, at a minimum and without limitation, administrative costs (other than nurse administration), capital costs, debt service, taxes (other than sales taxes or payroll taxes), capital depreciation, rent and leases, and fiscal services.

(3) “Resident-facing staffing” shall mean all staffing expenses in the ancillary and program services categories on Exhibit H of the residential health care facility cost reports.

(4) “Revenue” shall mean the total operating revenue from or on behalf of residents of the residential health care facility, government payers, or third-party payers, to pay for a resident’s occupancy of the residential health care facility, resident care, and the operation of the residential health care facility as reported in the residential health care facility cost reports submitted to the Department; provided, however, that revenue shall exclude the average increase in the capital portion of the Medicaid reimbursement rate from the prior three years.

(c) Applicability.

(1) For the purposes of this Section, residential health care facilities shall not include:

(i) facilities that are authorized by the Department to primarily care for medically fragile children or young adults, people with HIV/AIDS, persons requiring behavioral intervention, or persons requiring neurodegenerative services. For the purposes of this subparagraph, a facility shall be considered to primarily care for such specialized populations if at least 51 percent of certified beds are designated for persons with such specialty health care needs; or

(ii) continuing care retirement communities licensed pursuant to Article 46 or 46-A of the Public Health Law.

(iii) A facility may apply to the Commissioner for a waiver of applicability of this Section on the basis of providing specialty care services if such facility primarily provides care to a specialized population other than one listed in subparagraph (i) of this paragraph. Such application shall detail what specialty services the facility provides, the percentage of the resident population needing such specialty services, and whether any other residential health care facilities licensed by the Department provide such specialty services. The Commissioner shall have discretion to approve or reject applications submitted pursuant to this subparagraph, and shall provide the facility with the basis for the Commissioner’s determination within a reasonable timeframe upon receipt of a complete application. Factors the Commissioner will assess in determining whether to grant or deny a waiver application based on provision of services to a specialty population include, but are not limited to, the following:

(a) the number of other residential health care facilities licensed by the Department that provide the services identified by the facility as specialized services;

(b) whether a majority of current facility residents have special health care needs as identified by the facility; and

(c) the unique training or licensing required of facility staff to provide services to the identified specialized population.

(iv) In the event a facility no longer provides care for a specialty population, as identified under subparagraphs (i) and (iii) of this paragraph, the facility shall comply with this Section by January first of the first year following the date on which the facility ceased operating as a specialty residential health care facility, as determined by the Commissioner.

(2) Additional Waivers. A facility may apply to the Commissioner for a waiver of applicability of this Section on the basis of unexpected or exceptional circumstances that prevented compliance. Such application shall detail the specific unexpected or exceptional circumstance experienced by the facility; when the facility first learned of such circumstances;

why the facility could not have anticipated such circumstances arising; actions the facility took to address such circumstances; expenses incurred as a result of addressing such circumstances; when the facility expects such circumstances to be resolved; and what preventive steps the facility is taking to ensure that such circumstances do not unexpectedly arise in the future. The Commissioner shall have discretion to approve or reject applications submitted pursuant to this paragraph, and shall provide the facility with the basis for the Commissioner's determination within a reasonable timeframe upon receipt of a complete application. Factors the Commissioner will assess in determining whether to grant or deny a waiver application based on unexpected or exceptional circumstances include, but are not limited to, the following:

(i) whether the facility should have anticipated such events occurring;

(ii) whether any other residential health care facilities licensed by the Department experienced similar circumstances but have not applied for a waiver under this paragraph;

(iii) whether the facility has implemented sufficient policies and procedures to ensure such events do not recur.

(d) **Minimum Spending Requirements.** By January 1, 2022, residential health care facilities shall comply with the following minimum expenditures:

(1) 70 percent of revenue shall be spent on direct resident care; and

(2) 40 percent of revenue shall be spent on resident-facing staffing.

(i) All amounts spent on resident-facing staffing shall be included as a part of amounts spent on direct resident care; and

(ii) 15 percent of costs associated with resident-facing staffing that are contracted out by a facility for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides shall be deducted from the calculation of the amount spent on resident-facing staffing and direct resident care.

(3) For the purposes of assessing whether a facility has met the minimum spending requirements, a facility may apply to the Commissioner to have certain revenues and expenses excluded from the calculation of the facility's total revenue and total expenditures, where the facility has satisfactorily demonstrated to the Commissioner that such revenues and expenses were incurred due to the following circumstances:

(i) a natural disaster, where a federal, State, or local declaration of emergency has been issued; or

(ii) the facility has received extraordinary, non-recurring revenue which, in the discretion of the Commissioner, does not accurately reflect operating revenue for the purposes of this rule, including but not limited to revenue received through insurance or legal settlements.

(e) **Recoupment.**

(1) A residential health care facility shall be subject to recoupment for excessive total operating revenue if:

(i) the facility's total operating revenue exceeds total operating and non-operating expenses by more than five percent of total operating revenue; or

(ii) the facility fails to spend the minimum amount necessary to comply with the minimum spending standards for resident-facing staffing or direct resident care, as set forth in subdivision (d) of this Section, as calculated on an annual basis.

(2) **Remission of excess revenue.**

(i) The Department shall issue a notice of noncompliance to a facility subject to recoupment for excessive total operating revenue, which indicates the amount to be remitted based on the amount of excess revenue or the difference between the minimum spending requirement and the actual amount of spending on resident-facing staffing or direct care staffing, as applicable, as well as acceptable forms of payment.

(ii) Upon receipt of a notice of noncompliance pursuant to subparagraph (i), the facility shall remit the total amount indicated in the notice of noncompliance by November first in the year following the year in which the expenses are incurred.

(3) **Penalties.**

(i) Failure to remit the total required fee by the due date may result in adverse action by the Department, including but not limited to: bringing suit in a court of competent jurisdiction, taking deductions or offsets from payments made pursuant to the Medicaid program, and imposition of penalties pursuant to Section 12 of the Public Health Law.

(ii) Recouped funds shall be deposited by the Department into the Nursing Home Quality Pool, pursuant to Section 2808(2-c)(d) of the Public Health Law.

(f) **Residential Health Care Facility Cost Reports.**

(1) The Department shall, no less frequently than annually, audit the residential health care facilities' cost reports for compliance in accordance with this Section.

(2) If a facility did not report data in the 2019 residential health care facility cost report, they must promptly provide the Department with data on the facility's direct resident care and resident facing staffing expenses

in accordance with this Section and Section 2828 of the Public Health Law. This data must be submitted with a written certification by the operator, officer, or public official responsible for the operation of the facility, in a form and format determined acceptable by the Department, attesting that all data reported by the facility is complete and accurate. If the data is not submitted within a reasonable timeframe, as determined by the Department, the Department shall use the previous available cost report data applicable to such facility.

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

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

Public comment will be received until: 60 days after publication of this notice.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

Statutory Authority:

The statutory authority is provided under section 2828 of the Public Health Law (PHL), which directs the Department of Health (Department) to promulgate regulations governing the disposition of revenue in excess of expenses permitted under PHL § 2828 for residential health care facilities. Specifically, PHL § 2828 directs that, as of January 1, 2022, every residential health care facility shall spend a minimum of 70 percent of revenue on direct resident care and 40 percent of revenue on resident-facing staffing, wherein amounts spent on resident-facing staffing are included in the amount spent on direct resident care.

Legislative Objectives:

The legislative objective of PHL § 2828 is to ensure that residential health care facilities spend a majority of their revenue on direct resident care (70 percent), with 40 percent of such expenses focused on paying for resident-facing staffing. The goal of these minimum spending requirements is to help ensure a high quality of resident care.

Needs and Benefits:

These regulations are necessary to implement the statutory directive of PHL § 2828. Specifically, pursuant to the statute, the regulations (1) set forth how facilities that fail to meet the statutory minimum spending requirements must pay the State, (2) provide exceptions from the minimum spending requirements for residential health care facilities that serve certain specialized populations, (3) set forth factors the Department will use to determine whether to waive the spending requirements for facilities unable to comply due to "unexpected or exceptional circumstances that prevented compliance," and (4) provide factors the Department will use to determine whether to exclude extraordinary revenues and capital expenses from the calculations to determine whether a facility has met its minimum spending requirements.

Requiring nursing homes to spend an appropriate amount of revenue on the direct care of residents and resident-facing staffing will reduce errors, complications, and adverse resident care incidents. It will also improve the safety and quality of life for all long-term care residents in New York State.

Costs:

Costs to Regulated Parties:

The purpose of this regulation is to implement PHL § 2828, which requires residential health care facilities to spend a certain percentage of revenue (70 percent) on direct resident care, with 40 percent of such revenue focused on resident-facing staffing. Residential health care facilities are not necessarily required to expend additional resources to meet these minimum spending requirements, but rather may appropriately manage expenditures to balance overall expenditures to meet the minimum spending thresholds. While the Department anticipates that costs will be borne by residential health facilities, and that those costs may create financial challenges for some organizations, compliance with these minimum spending requirements is mandated by statute (PHL § 2828), and as such these regulatory amendments are necessary. Moreover, any recouped funds from residential health care facilities that fail to comply with PHL § 2828 will be deposited into the Nursing Home Quality Pool to benefit high-quality residential health care facilities, thereby helping to offset any costs for high-performing facilities while also encouraging the provision of quality resident care.

Costs to Local and State Governments:

This regulation will not impact local or State governments unless they operate a residential health care facility, in which case the costs will be the same as for privately-operated facilities. Currently, there are 21 residential health care facilities operated by local governments (counties and municipalities) and 6 residential health care facilities operated by the State.

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health.

Paperwork:

This regulation generally imposes no additional paperwork requirements. Although facilities will be required to submit revenue and expense information through an annual cost report submitted to the Department, such costs reports are current required pursuant to PHL §§ 2805-e and 2808-b. If a facility has not submitted a cost report for 2019, the regulation requires the expense and revenue data to instead be submitted with a written certification by the operator, officer, or public official responsible for the operation of the facility, in a form and format determined acceptable by the Department, attesting that all data reported by the facility is complete and accurate. Although this data form would be a new requirement, because it is merely a temporary measure to substitute for a missing 2019 cost report, the Department does not anticipate that this requirement will be unduly burdensome for the residential health care facilities subject to this new paperwork requirement.

Local Government Mandates:

Residential health care facilities operated by local governments will be affected and will be subject to the same requirements as any other residential health care facility licensed under PHL Article 28.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

These regulations are mandated pursuant to PHL § 2828. Accordingly, the alternative of not issuing these regulations was rejected.

Federal Standards:

No federal standards apply.

Compliance Schedule:

The regulations will become effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule:

This regulation will not impact local governments or small businesses unless they operate a residential health care facility. Currently, there are 21 residential health care facilities operated by local governments (counties and municipalities) and 6 residential health care facilities operated by the State. Additionally, to date, 79 residential health care facilities in New York qualify as small businesses given that they have 100 or fewer employees.

Compliance Requirements:

This regulation seeks to implement PHL § 2828, which requires residential health care facilities to spend a certain percentage of revenue (70 percent) on direct resident care, with 40 percent of such revenue focused on resident-facing staffing. In accordance with this statute, residential health care facilities will be required to meet these aforementioned minimum spending requirements, unless they meet certain exceptions as detailed in both PHL § 2828 and these regulations, including facilities that provide care to Commissioner-designated specialty populations and facilities that are unable to comply with the minimum spending requirements due to natural disaster or other “unexpected or exceptional circumstances that prevented compliance.”

Facilities that fail to meet the minimum spending requirements of PHL § 2828 and these regulations will be required to remit a penalty payment in the amount of the facility’s excessive total operating revenue, based on the amount of excess revenue or the difference between the minimum spending requirement and the actual amount of spending on resident-facing staffing or direct care staffing, as applicable.

Professional Services:

No professional services are required by this regulation.

Compliance Costs:

This regulation seeks to implement PHL § 2828, which requires residential health care facilities to spend a certain percentage of revenue (70 percent) on direct resident care, with 40 percent of such revenue focused on resident-facing staffing. Residential health care facilities are not necessarily required to expend additional resources to meet these minimum spending requirements, but rather may appropriately manage expenditures to balance overall expenditures to meet the minimum spending thresholds. While the Department anticipates that costs will be borne by residential health facilities, and that those costs may create financial challenges for some organizations, compliance with these minimum spending requirements is mandated by statute (PHL § 2828), and as such these regulatory amendments are necessary. Moreover, any recouped funds from residential health care facilities that fail to comply with PHL § 2828 will be deposited into the Nursing Home Quality Pool to benefit high-quality residential health care facilities, thereby helping to offset any costs for high-performing facilities while also encouraging the provision of quality resident care.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

This regulation is mandated pursuant to PHL § 2828 and necessary to ensure that direct resident care is prioritized by setting forth minimum spending requirements for such care. Therefore, any adverse impacts are outweighed by the regulation’s health and safety benefits to residents as well as the legal mandate for promulgation.

Small Business and Local Government Participation:

Health care provider organizations, individual institutions, local health departments and the public are invited to comment during the Codes and Regulations Committee of the Public Health and Health Planning Council (PHHPC). Interested parties and members of the general public will be notified and provided in advance of the PHHPC meeting the time and place of the meeting, the text of the regulation for their review and a chance to submit oral and written comments. All written comments will be sent to PHHPC members 72 hours in advance of the meeting.

Further, the Department will engage in active discussions and dialogue with all interested parties, including industry associations directly impacted by this regulation, to inform them of their need to comply, to answer questions and listen to comments they may have on this regulation. Specifically, the Department will issue a Dear Administrator Letter (DAL) to each effected nursing home, either operated by a local government, or privately, which will outline the date such regulation will go into effect, the specific requirements outlined in the regulation and the penalties for non-compliance. Further, the Department will formally solicit questions from each effected party and will prepare a Frequently Asked Questions, (FAQ) which will be updated regularly and publicly posted on the Department’s website for review and feedback.

Cure Period:

This regulation does not include a cure period given that compliance is required by January 1, 2022 per PHL § 2828.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.”

The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the United States Census estimated county populations for 2010:

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Licensed residential health care facilities are located in these identified rural areas.

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

This regulation generally imposes no additional paperwork requirements. Although facilities will be required to submit revenue and expense information through an annual cost report submitted to the Department, such costs reports are currently required pursuant to PHL §§ 2805-e and 2808-b. If a facility has not submitted a cost report for 2019, the regulation requires the expense and revenue data to instead be submitted with a written certification by the operator, officer, or public official responsible for the operation of the facility, in a form and format determined acceptable by the Department, attesting that all data reported by the facility is complete and accurate. Although this data form would be a new requirement, because it is merely a temporary measure to substitute for a missing 2019 cost report, the Department does not anticipate that this requirement will be unduly burdensome for the residential health care facilities subject to this new paperwork requirement.

Costs:

This regulation seeks to implement PHL § 2828, which requires residential health care facilities to spend a certain percentage of revenue (70 percent) on direct resident care, with 40 percent of such revenue focused on resident-facing staffing. Residential health care facilities are not necessarily required to expend additional resources to meet these minimum spending requirements, but rather may appropriately manage expenditures to balance overall expenditures to meet the minimum spending thresholds. While the Department anticipates that costs will be borne by residential health facilities, and that those costs may create financial challenges for some organizations, compliance with these minimum spending requirements is mandated by statute (PHL § 2828), and as such these regulatory amendments are necessary. Moreover, any recouped funds from residential health care facilities that fail to comply with PHL § 2828 will be deposited into the Nursing Home Quality Pool to benefit high-quality residential health care facilities, thereby helping to offset any costs for high-performing facilities while also encouraging the provision of quality resident care.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

This regulation is mandated pursuant to PHL § 2828 and necessary to ensure that direct resident care is prioritized by setting forth minimum spending requirements for such care. Therefore, any adverse impacts are outweighed by the regulation's health and safety benefits to residents as well as the legal mandate for promulgation.

Rural Area Participation:

The Department will notify all residential health care facilities, including those located in rural areas, of the existence of these regulations and the opportunity to submit public comments or questions to the Department.

Job Impact Statement

A Job Impact Statement for these regulations is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Article 28 Nursing Homes; Establishment; Notice and Character and Competence Requirements

I.D. No. HLT-46-21-00006-P

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

Proposed Action: Amendment of sections 600.1 and 600.2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803

Subject: Article 28 Nursing Homes; Establishment; Notice and Character and Competence Requirements.

Purpose: To strengthen the establishment application review process for all Article 28 facilities.

Substance of proposed rule (Full text is posted at the following State website: <https://regs.health.ny.gov/regulations/proposed-rule-making>): This regulation amends Title 10 NYCRR sections 600.1 and 600.2.

Subdivision (d) is added to section 600.1 to articulate notice requirements for nursing home establishment applications, as required by new Subdivision 2-b of Article 2801-a of the Public Health Law. The State Long-Term Care Ombudsman and residents, staff, and other parties affili-

ated with an existing nursing home, will be notified once a nursing home establishment application has been acknowledged by the Department and also, when a nursing home establishment application is placed on the Establishment and Project Review Committee agenda of the Public Health and Health Planning Council, for consideration.

Paragraph (2) of subdivision (b) of section 600.2 is amended to make the "character, competence, and standing in the community" review standard comparable for all applicants; and to include a limited liability company as an acceptable legal entity applicant, whose members are subject to the "character, competence, and standing in the community" review.

Paragraph (4) of subdivision (b) of section 600.2 is amended to include additional titles of applicant individuals, it removes a reference to outdated reporting requirements that no longer appear in statute, it clarifies establishment application review criteria, and defines the terms "recurrent" and "prompt correction" related to violations at article 28 facilities.

Paragraph (5) is added to subdivision (b) of section 600.2 to incorporate additional information the Public Health and Health Planning Council is required to consider when making a determination about a "consistently high level of care" rendered at a nursing home. This required information is found in the new Subdivision 3-b of Article 2801-a of the Public Health Law. In addition, the proposed regulation clearly sets forth five (5) occurrences that automatically render a determination that a consistently high level of care is not found, including determining the percentage of nursing homes in an applicant individual's portfolio with a CMS star rating of two stars or less. And finally, it also includes the amendments made to paragraph (4) of subdivision (b) of section 600.2, which applies to all article 28 facilities, generally.

Altogether, the proposed regulation in paragraph (5) of subdivision (b) of section 600.2 responds to legislative actions and recommendations and sets forth uniform, transparent, and outcome-based standards to determine when a "consistently high level of care" has been delivered by applicant operators in the nursing homes that they own or have owned over the last seven years.

Together the proposed regulations in Sections 600.1 and 600.2 of Title 10 NYCRR, strengthen the establishment application review process for all article 28 facilities, generally and nursing homes, specifically. They also provide the transparency and clarity necessary to determine when a nursing home establishment application (includes changes of ownership and transfers of ownership applications) will be considered by the Establishment and Project Review Committee of the Public Health and Health Planning Council.

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

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

Public comment will be received until: 60 days after publication of this notice.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

Statutory Authority:

Public Health Law (PHL) section 2803(2) authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, including the establishment or incorporation of health care facilities.

Legislative Objectives:

The legislative objective of PHL Article 2801-a is to provide a deliberate and reasonable application process for the establishment or incorporation of health care facilities in New York. The purpose of the establishment application process is to codify an application review process that includes an assessment of character and competence, quality of care metrics, financial feasibility, and other relevant factors, for the benefit of those who seek health care services at State-regulated facilities.

Needs and Benefits:

Rulemaking was necessitated by revisions to Public Health Law section 2801-a via Chapter 102 and 141 of the Laws of 2021. Regulations are being amended to codify the procedure for the notification to the Long-term care ombudsman (LTCO), Residents, staff, and others of an application for the establishment of a nursing home operator. Notification will occur when an application has been received and acknowledged by the State Department of Health (Department) and again when the application has been scheduled for consideration by a committee designated by the Public Health and Health Planning Council. Notification to those who may be impacted by a nursing home establishment application will allow a chance for public comment to be submitted for consideration by the Public Health and Health Planning Council (PHHPC) before PHHPC acts upon the

application. Regulations are being amended to add language for limited liability corporations for character and competence, consistent with other business types. Regulations are being amended for character and competence to require PHHPC to consider, in some cases, specified information and evaluate the gravity of any violation, the manner in which the applicant/operator exercised supervisory responsibility over the facility operation, and the remedial action, if any, taken after the violation was discovered before determining that a substantially consistent or a consistently high level of care has been rendered. New language has been added to codify standards of review for nursing home character and competence, using certain quality of care metrics when evaluating and making a determination that a consistently high level of care has or has not been rendered. The changes reflect the intent of the law to provide increased transparency to those with an interest in the establishment of a nursing home operator and to codify the metrics used for evaluating character and competency of proposed operators.

Costs:

Costs to Regulated Parties:

Nominal costs may be incurred by nursing home providers to adhere to the notification requirements when the establishment of a new operator is proposed. This cost will be incurred by the current operator of the facility and the applicant for establishment. The nominal costs will be related to postage, supplies, and staff time to prepare the notice and establish distribution lists for those to be notified. Labor, legal and consulting costs may be incurred by applicants who have previously filed an establishment application which is pending PHHPC consideration, should they feel the need to revise their application based on the rule changes.

Costs to State Government and the Department of Health:

The Office of the State Long-Term Care Ombudsman will incur costs related to the labor involved in reviewing notices filed on nursing home establishment applications and, thereafter, submitting a recommendation about the application to the Department. The Department will incur additional staff time required to re-review pending establishment applications and revise materials previously prepared during the review of such applications. Costs to the Department for notification requirements will be absorbed into current costs.

Costs to Local Governments:

There should be no local government costs unless a County operated facility is the subject of a new operator nursing home establishment application. Should this occur the County would incur the costs associated with the current operator outlined in the Cost to the Regulated Parties Section.

Local Government Mandates:

There are no local mandates in the amended regulations. However, County operated nursing homes will be required to meet the notification requirements under the amended regulations.

Paperwork:

Under the amended regulations, the current facility and the applicant for establishment will be required to prepare written notification to residents, staff and other impacted parties after a nursing home establishment application has been acknowledged by the Department. Distribution lists for notifications will be required. All other requirements are consistent with the paperwork currently required during the establishment application process.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

The Department considered current standards used in character and competence review and alternative metrics, ratings, and data available. The Department also considered the impact of the use of absolute thresholds to be achieved for determining that a consistently high level of care has been rendered. The Department found that currently published ratings, such as the CMS Star rating system, take into account many of the alternative factors and data being considered. To avoid duplication and promote transparency, the Department incorporated the CMS Star Ratings, surveillance findings and enforcements that are available to the public via the NYS Nursing Home Page of the Department's website, and CMS special focus facility designations available to the public – all information and data familiar to the health care industry, in general, and the nursing home industry, specifically, to make a determination about a consistently high level of care at facilities. This combination of information incorporates a cross section of factors relevant to assessing quality of care at nursing homes. The Department also included additional factors to supplement information that may not be apparent in the main evaluation criteria such as length of time a facility was owned, the overall number of facilities owned, revocation of a license, involuntary closure of a facility, and if severe deficiencies were recurrent or were not promptly corrected.

The amended regulations reflect a regulatory framework to evaluate the general quality of care rendered by a proposed operator historically and incentivizes improvement in quality as a condition to acquiring additional facilities in New York State.

Federal Standards:

The amended regulations do not exceed any minimum standards of the federal government.

Compliance Schedule:

The amended regulations will take effect upon a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule:

Local governments and small businesses will not be affected by this rule, unless they operate a nursing home and, in such cases, will be impacted by the new, statutory notification requirements defined in Section 600.1. The current number of local governments and identified-small businesses (employ less than 100 staff) that operate a nursing home are seventy-nine (79). The Department does not anticipate an increase in nursing home establishment applications by such applicants as a result of the proposed regulations.

Compliance Requirements:

Regulated parties are expected to be in compliance with the amended regulations upon adoption. The amended regulations will define new, statutory notice requirements when an application for the establishment of a nursing home has been acknowledged by the Department and when the application has been scheduled for consideration by a committee designated by the Public Health and Health Planning Council.

Professional Services:

These regulations are not expected to require any additional use of professional services.

Compliance Costs:

Nominal costs may be incurred by a nursing home operator and applicant to adhere to the notification requirements after a nursing home establishment application has been acknowledged by the Department. This cost will be incurred by the current operator of the facility and the applicant for establishment. The nominal costs will be related to postage, supplies, and staff time to prepare the notice and establish distribution lists for individuals to be notified.

Economic and Technological Feasibility:

The Department has considered feasibility and the amended regulations are economically and technically feasible.

Minimizing Adverse Impact:

Minimal flexibility exists to minimize impact since the new requirements are statutory and apply to all nursing home establishment applicants, however, an effort was made to broaden the method used for notice distribution.

Small Business and Local Government Participation:

Organizations who represent the affected parties will have several opportunities for participation. There are several opportunities to provide public comment, both written and orally, at the Public Health and Health Planning Council (PHHPC). Initially, the regulations will be presented twice in a public PHHPC meeting; first, for discussion and second, for final adoption. In both instances, the public, including any affected party, is invited to provide comments during the PHHPC Committee on Codes, Regulations and Legislation meeting.

Second, the affected parties have the opportunity via the 60-day State Register process to provide comments and suggestions to the regulation. If substantial and material changes are made as a result of the public comments, the amended regulation will be subject to an additional 45-day comment period.

Finally, before going to PHHPC, a call was held with industry representatives highlighting the proposed regulation and to answer any questions industry representatives had regarding the regulation and the process of regulation adoption.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>).

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County

Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following eleven counties have certain townships with population densities of 150 persons or less per square mile:

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Nursing home operators and applicants for establishment of new operators are expected to be in compliance with the amended regulations upon adoption. There are several licensed nursing homes in rural areas. The amended regulations will define new, statutory notice requirements when an application for the establishment of a nursing home has been acknowledged by the Department and when the application has been scheduled for consideration by a committee designated by the Public Health and Health Planning Council. There are no new reporting requirements, but record keeping will be required by nursing home operators and applicants for establishment of a new operator to ensure notification to required parties. No additional professional staff are expected to be needed as a result of the amended regulations.

Costs:

Nominal costs may be incurred by a nursing home operator and applicant to adhere to the notification requirements after a nursing home establishment application has been acknowledged by the Department. This cost will be incurred by the current operator of the facility and the applicant for establishment.

Minimizing Adverse Impact:

The amended regulations do not create any adverse effect on regulated parties.

Rural Area Participation:

Organizations who represent the affected parties and the public can obtain the agenda of the Codes and Regulations Committee of the Public Health and Health Planning Council and a copy of the proposed regulation on the Department's website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

Further, the new notification requirements in Section 600.1 will only impact an employer over a limited period and can be performed by existing staff resources. The amended regulations for Section 600.2 should not cause a change to the workload of applicants for establishment of new nursing home operators and will not increase nor decrease jobs and employment opportunities.

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

Minimum Staffing Requirements for Nursing Homes

I.D. No. HLT-46-21-00007-P

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

Proposed Action: Amendment of sections 415.2 and 415.13 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2803 and 2895-b

Subject: Minimum Staffing Requirements for Nursing Homes.

Purpose: Requiring minimum staffing levels for nursing homes.

Text of proposed rule: Subdivision (h) of Section 415.2 is amended to read as follows:

(h) Nurse aide (see section [415.13(c)(1)] 415.13(d)(1) of this Part). Section 415.13, and the title thereof, are amended to read as follows: Section 415.13 Nursing Services and Minimum Nursing Staff Requirements.

(a) *Staffing standards.* The facility shall have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. The facility shall further assure that *staffing levels enable* each resident to receive[s] treatments, medications, diets and other health services in accordance with individual care plans. *At a minimum, the facility shall ensure its daily nursing staff levels comply with paragraph (2) of subdivision (b) of this Section; provided, however, that compliance with paragraph (2) of subdivision (b) of this Section shall not serve as a defense where the facility has failed to provide sufficient nursing care to residents in accordance with their resident assessment and individual plans of care, or the facility failed to ensure residents received ordered treatments, medications, diets or other health services consistent with the residents' individual plans of care and in accordance with federal and State law and regulations.*

[(a)] (b) Sufficient staff.

(1) The facility shall provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

(i) registered professional nurses or licensed practical nurses;

(ii) certified nurse aides, *meaning any person included in the nursing home nurse aide registry pursuant to Section 2803-j of the Public Health Law; and*

(iii) other nursing personnel.

(2) *Minimum Nursing Staff Requirements.* *At a minimum, the facility shall employ certified nurse aides, registered professional nurses, licensed practical nurses, or nurse aides sufficient to maintain the following daily staffing hours per resident:*

(i) *From January first, two thousand twenty-two through December thirty-first, two thousand twenty-two, the facility shall maintain daily average staffing hours equal to 3.5 hours of care per resident per day by a certified nurse aide, registered professional nurse, licensed practical nurse, or nurse aide. Out of such 3.5 hours, no less than 2.2 hours of care per resident per day shall be provided by a certified nurse aide or a nurse aide, and no less than 1.1 hours of care per resident per day shall be provided by a registered professional nurse or licensed practical nurses.*

(ii) *Beginning January first, two thousand twenty-three and thereafter, every nursing home shall maintain daily average staffing hours equal to 3.5 hours of care per resident per day by a certified nurse aide, registered professional nurse, or licensed practical nurse. Out of such 3.5 hours, no less than 2.2 hours of care per resident per day shall be provided by a certified nurse aide, and no less than 1.1 hours of care per resident per day shall be provided by a registered professional nurse or licensed practical nurse.*

[(2)] (3) The facility shall designate a registered professional nurse or licensed practical nurse to serve as a charge nurse on each tour of duty who is responsible for the supervision of total nursing activities in the facility. Alternatively, as necessitated by resident care needs, the facility may designate one charge nurse for each tour of duty on each resident care unit or on proximate nursing care units in the facility provided that each nursing care unit in the facility is under the supervision of a charge nurse.

[(b)] (c) Registered professional nurse.

(1) The facility shall use the services of a registered professional nurse for at least 8 consecutive hours a day, 7 days a week, *or more often as necessary to comply with the minimum staffing requirements set forth in paragraph (2) of subdivision (b) of this Section.*

* * *

[(c)] (d) Nurse aide.

(1) For the purpose of this section and section 415.26(d) of this Part, nurse aide shall mean any person [who provides direct personal resident care and services including, but not limited to, safety, comfort, personal hygiene or resident protection services, for compensation, under the supervision of a registered professional nurse or licensed practical nurse in the facility] *who is included in the nurse aide hour component of the federal Centers for Medicare and Medicaid Services payroll based journal for long-term care facilities but has not yet been certified as a certified nurse aide, including individuals who are in the first four months of employment and who are receiving training in a Department-approved nurse aide training and competency evaluation program and are providing nursing or nursing-related services for which they have been trained and are under the supervision of a licensed or registered nurse, or individuals, other than a licensed professional, who have been approved by the Department to administer medications to residents. For the purposes of this section and section 415.26(d) of this Part, a nurse aide does not include volunteers or [except for] those individuals who furnish*

services to residents only as feeding assistants as defined in Section [415.13(d)] 415.13(e) of this Part. Certification of such nurse aide shall be in accordance with the provisions of section 415.26(d) of this Part.

* * *

[(d)] (e) Feeding Assistant.

* * *

(f) Non-Compliance with Staffing Standards.

(1) Compliance with the minimum nursing staff requirements set forth in paragraph (2) of subdivision (b) of this Section shall be determined on a quarterly basis, as determined by the Department, by comparing the daily average of the number of hours provided per resident, per day, using the most recent data available from the federal Centers for Medicare and Medicaid Services payroll based journal and the facility's average daily census on a daily basis.

(i) The Department shall initially determine whether a facility is compliant or non-compliant with the minimum nursing staff requirements by conducting the following three assessments:

(a) Assessing whether the total daily staffing hours provided per resident by nurse aides (only from January first, two thousand twenty-two through December thirty-first, two thousand twenty-two), certified nurse aides, licensed practical nurses, or registered nurses fell below 3.5 hours of care per resident on average over the course of the quarter; and

(b) Assessing whether at least 2.2 hours of care per resident per day was provided by a certified nurse aide or a nurse aide (only from January first, two thousand twenty-two through December thirty-first, two thousand twenty-two) on average over the course of the quarter; and

(c) Assessing whether at least 1.1 hours of care per resident per day was provided by a registered professional nurse or licensed practical nurse on average over the course of the quarter.

(ii) A facility that, on average over the course of the quarter, fell below the hourly requirements set forth in clauses (a) through (c) of subparagraph (i) will be considered non-compliant for the purposes of this Section. Any facility that the Department finds non-compliant shall have progressive penalties assessed based upon the number of days per quarter in which the daily staffing hours provided per resident fell below the minimum hourly requirements set forth in paragraph (2) of subdivision (b) of this Section.

(iii) For the purposes of determining compliance, an individual shall not be counted while performing administrative services, as defined in the Centers for Medicare and Medicaid Services payroll based journal for long-term care facilities. Further, individuals who are attending training, either onsite or offsite, and are not available to perform their primary job duties shall not be counted for purposes of determining compliance with the minimum daily staffing hours.

(2) Penalties.

(i) The Department shall impose a penalty of up to two thousand (2,000) dollars per day for each day in a quarter that a facility fails to comply with the minimum nursing staff requirements set forth in paragraph (2) of subdivision (b) of this Section, unless mitigating or aggravating factors exist.

(ii) Mitigating Factors. The Department may reduce penalties, to an amount no lower than three hundred (300) dollars per day in a quarter that a facility is non-compliant, if the Department determines, in its sole discretion, that any of the following mitigating circumstances existed during the period of non-compliance:

(a) Extraordinary circumstances faced the facility. For the purposes of this clause, extraordinary circumstances shall mean that the facility experienced a natural disaster; a national emergency affecting the facility has been officially declared; a State or municipal emergency affecting the facility has been declared pursuant to Article 2-B of the Executive Law; or the facility experienced a catastrophic event that caused physical damage to the facility or impaired the ability of facility personnel to access the facility. Provided, however, that the facility must first demonstrate, to the satisfaction of the Department, that such extraordinary circumstances could not have been prevented or mitigated through effective implementation of the facility's pandemic emergency plan, prepared pursuant to Section 2803(12) of the Public Health Law, and that the facility complied with the disaster and emergency preparedness requirements set forth in Section 415.26(f) of this Part; or

(b) An acute labor supply shortage of nurse aides, certified nurse aides, licensed practical nurses, or registered nurses exists in the Metropolitan and Nonmetropolitan Area in which the facility is located, as such areas are defined by the federal Bureau of Labor Statistics.

(1) For the purposes of determining whether a facility was located in an area experiencing an acute labor supply shortage during the

period of non-compliance, the Commissioner shall issue a determination on a quarterly basis as to whether an acute labor supply shortage of nurse aides, certified nurse aides, licensed practical nurses, or registered nurses exists in any Metropolitan or Nonmetropolitan Area of New York State. Such determination shall be made in consultation with the New York State Department of Labor and shall take into account job availability metrics developed by the New York State Department of Labor, which may include but is not limited to the list of job openings in New York State.

(2) The fact that the facility is located in an area experiencing an acute labor supply shortage pursuant to this clause shall not serve as a mitigating factor unless the facility has demonstrated, to the satisfaction of the Department, reasonable attempts to procure sufficient staffing during the period of non-compliance, notwithstanding the acute labor supply shortage. Reasonable attempts may include, but not be limited to, incentivizing new personnel through increased wage and benefit offers and searching for personnel outside of the Metropolitan and Nonmetropolitan Area in which the facility is located;

(3) The fact that the facility is located in an area experiencing an acute labor supply shortage pursuant to this clause shall not serve as a mitigating factor unless the facility has demonstrated, to the satisfaction of the Department, that it has taken steps over the course of the quarter to ensure resident health and safety notwithstanding any labor supply shortage, including but not limited to discontinuing admissions, closing units, or transferring residents to another appropriate facility; or

(c) A verifiable union dispute exists between the facility and nurse aides, certified nurse aides, licensed practical nurses, or registered nurses employed or contracted by such facility, resulting in a labor shortage at the facility.

(g) Eligibility for Funding to Comply with Minimum Nursing Staff Requirements.

The Department shall determine which nursing homes are anticipated to be in compliance with Section 2828 of the Public Health Law based on the most current, available Residential Health Care Facility cost report data, or such other source of cost information as the Department shall identify. Pursuant to methodology set forth in the current Medicaid State Plan Amendment, the Department shall determine whether such nursing homes must expend additional funds to comply with this Section, beyond any costs necessary to comply with Section 2828 of the Public Health Law. Any such nursing home that the Department finds will be required to expend additional funds to comply with this Section shall be eligible to receive from the Department additional funds, subject to availability from the New York State Division of the Budget, to hire nursing staff necessary to achieve the minimum nursing staff requirements set forth in paragraph (2) of subdivision (b) of this Section.

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

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

Public comment will be received until: 60 days after publication of this notice.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

Statutory Authority:

The statutory authority is provided under sections 2803 and 2895-b of the Public Health Law, which provides that the Commissioner of Health enact regulations establishing standard nursing home staffing levels.

Legislative Objectives:

The legislative objective of PHL section 2895-b is to ensure safe and appropriate levels of nurse staffing in nursing homes in order to improve the care for residents of nursing homes.

Needs and Benefits:

These regulations are necessary to implement the statutory directive of PHL section 2895-b. Specifically, pursuant to the statute, the regulations: (1) set forth minimum nurse staffing standards; (2) provide for the imposition of penalties for failure to meet minimum staffing standards; (3) provide for mitigating factors for failure to meet the minimum staffing requirements; and (4) set forth a process for the Department to determine facilities that are in need of assistance to meet the staffing requirements.

Research has demonstrated that as nurse turnover increases in nursing homes, the quality of resident care declines. Therefore, having adequate nurse staffing levels provides residents with the highest quality of care. Requiring these facilities to meet this minimum level of staffing will help ensure patient safety and improve the quality of care received by the residents of the nursing home.

Costs:

Costs for the Implementation of, and Continuing Compliance with the Regulation to the Regulated Entity:

This regulation seeks to implement standard minimum nursing home staffing levels. Residential health care facilities are not necessarily required to expend additional resources to meet these minimum staffing requirements, but rather may appropriately manage expenditures to balance overall expenditures to meet the minimum staffing thresholds. In any event, if costs are borne by residential health care facilities, compliance with these minimum staffing requirements is mandated by Public Health Law section 2895-b, and as such these regulatory amendments are necessary.

Costs to State and Local Governments:

This regulation will not impact local or State governments unless they operate a residential health care facility, in which case the costs will be the same as for privately-operated facilities. Currently, there are 21 residential health care facilities operated by local governments (counties and municipalities) and 6 residential health care facilities operated by the State.

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health.

Local Government Mandates:

Residential health care facilities operated by local governments will be affected and will be subject to the same requirements as any other residential health care facility licensed under PHL Article 28.

Paperwork:

This regulation generally imposes no additional paperwork requirements. Although facilities will be required to submit staffing and care information through the facility's average daily census on a daily basis, such reporting is already required. Therefore, the submission of this data does not create a new requirement, and the Department does not anticipate that this requirement will be unduly burdensome for the residential health care facilities.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

These regulations are mandated pursuant to PHL section 2895-b. Accordingly, the alternative of not issuing these regulations was rejected. The Department considered different alternatives for the imposition of civil penalties and determined that penalties need to be high enough to prevent facilities from simply paying the penalty as a cost of doing business rather than complying with the law.

Federal Standards:

No federal standards apply.

Compliance Schedule:

The regulations incorporate the compliance dates contained in the Public Health Law section 2895 b, which requires a certain level of staffing by January 1, 2022, and a certain level by January 1, 2023.

Regulatory Flexibility Analysis

Effect of Rule:

This regulation implements PHL Section 2895-b, which provides the Commissioner of Health authority to establish minimum staffing standards for nursing homes and impose civil penalties for nursing homes that fail to adhere to the minimum standards. These minimum standards, which take effect January 1, 2022, require every nursing home to maintain daily staffing hours equal to 3.5 hours of care per resident per day by a certified nurse aide (CNA), licensed practical nurse, or registered nurse with at least 2.2 hours of care per resident per day being provided by a CNA and at least 1.1 hours of care per resident per day provided by a licensed nurse. The nursing home must post information regarding nurse staffing at the facility.

Penalties may not be assessed against nursing homes until April 1, 2022, and the Commissioner may take into consideration several mitigating factors when issuing penalties including declared disaster emergencies, the frequency of non-compliance, and regional labor supply shortages.

Currently, there are 21 residential health care facilities operated by local governments (counties and municipalities) and there are 115 providers that reported 100 or fewer employees according to recently filed cost data reports.

Compliance Requirements:

This regulation generally imposes no additional paperwork requirements. Although facilities will be required to submit staffing and care information through the facility's average daily census on a daily basis, such reporting is already required. Therefore, the submission of this data does not create any new requirement, and the Department does not anticipate that this requirement will be unduly burdensome for the residential health care facilities.

Professional Services:

No professional services are required by this regulation.

Compliance Costs:

This regulation seeks to implementing standard minimum nursing home staffing levels. Residential health care facilities are not necessarily required to expend additional resources to meet these minimum staffing requirements, but rather may appropriately manage expenditures to balance overall expenditures to meet the minimum staffing thresholds. In any event, if costs are borne by residential health care facilities, compliance with these minimum staffing requirements is mandated by Public Health Law section 2895-b, and as such these regulatory amendments are necessary.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

This regulation is mandated pursuant to PHL section 2895-b and necessary to ensure that direct resident care is prioritized by setting forth minimum staffing requirements for such care. Therefore, any adverse impacts are outweighed by the regulation's health and safety benefits to residents as well as the legal mandate for promulgation.

Additionally, regulations provide that the Department shall determine whether nursing homes must expend additional funds to comply, and nursing homes that the Department finds will be required to expend additional funds to comply may be eligible to receive from the Department additional funds, subject to availability from the New York State Division of the Budget, to hire nursing staff necessary to achieve the minimum nursing staff requirements.

Further, regulations establishing the civil penalties include mitigating factors to account for: (1) extraordinary circumstances facing the facility such as officially declared emergencies or natural disasters; (2) the frequency of the violations of the facility; and (3) the existence of a nurse labor shortage in the area of the nursing home.

Small Business and Local Government Participation:

The Department will notify such entities of the existence of these regulations and the opportunity to submit comments or questions to the Department. The Department will engage in active discussions and dialogue with all interested parties, including industry associations directly impacted by this regulation, to inform them of their need to comply, to answer questions and listen to comments they may have on this regulation.

The Department has already taken several steps to notify the nursing home industry on the effects of this regulation and has provided the opportunity for public comment. On October 7, 2021, at the Public Health and Health Planning Council (PHHPC), the Department presented this regulation for information and discussion purposes. At that meeting the regulation was reviewed and discussed by PHHPC members. In addition, the public, including the effected parties to this regulation, were afforded and opportunity to ask questions and provide comments.

In addition, there were conference calls made to the various associations representing the nursing home industry to inform them of the regulation and to provide an opportunity to ask questions.

Further, the regulation will be filed in the State Register, providing another opportunity for public comments and review. Once completed, the regulation will again go to PHHPC where there will be another opportunity for public comment.

For Rules That Either Establish or Modify a Violation or Penalties Associated with a Violation:

The governing statute directs the Commissioner of Health to establish civil penalties for those facilities that fail to comply with the minimum staffing requirements. However, there are several mitigating factors set forth in the regulation to potentially reduce the fine amount; additionally, the regulation provides for a progressive system of penalties depending on the number of days per quarter the facility was out of compliance with the minimum staffing requirements.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<https://www.census.gov/quickfacts/>). Approximately 17% of small health care facilities are located in rural areas.

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County

Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

Licensed residential health care facilities are located in these identified rural areas.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

This regulation generally imposes no additional paperwork requirements. Although facilities will be required to submit staffing and care information through the facility’s average daily census on a daily basis, such reporting is already required. Therefore, the submission of this data does not form any new requirement, and the Department does not anticipate that this requirement will be unduly burdensome for the residential health care facilities.

Costs:

This regulation seeks to implementing standard minimum nursing home staffing levels. Residential health care facilities are not necessarily required to expend additional resources to meet these minimum staffing requirements, but rather may appropriately manage expenditures to balance overall expenditures to meet the minimum staffing thresholds. In any event, if costs are borne by residential health care facilities, compliance with these minimum staffing requirements is mandated by Public Health Law section 2895-b, and as such these regulatory amendments are necessary.

Minimizing Adverse Impact:

This regulation is mandated pursuant to PHL section 2895-b and necessary to ensure that direct resident care is prioritized by setting forth minimum staffing requirements for such care. Therefore, any adverse impacts are outweighed by the regulation’s health and safety benefits to residents as well as the legal mandate for promulgation.

Additionally, regulations provide that the Department shall determine whether nursing homes must expend additional funds to comply, and nursing home that the Department finds will be required to expend additional funds to comply may be eligible to receive from the Department additional funds, subject to availability from the New York State Division of the Budget, to hire nursing staff necessary to achieve the minimum nursing staff requirements.

Further, regulations establishing the civil penalties include mitigating factors to account for: (1) extraordinary circumstances facing the facility such as officially declared emergencies or natural disasters; (2) the frequency of the violations of the facility; and (3) the existence of a nurse labor shortage in the area of the nursing home.

Rural Area Participation:

The Department will notify all residential health care facilities, including those located in rural areas, of the existence of these regulations and the opportunity to submit public comments or questions to the Department. The Department will engage in active discussions and dialogue with all interested parties, including industry associations directly impacted by this regulation, to inform them of their need to comply, to answer questions and listen to comments they may have on this regulation.

Job Impact Statement

A Job Impact Statement for these regulations is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities. To the contrary, given the minimum requirements for

nursing staff, including nurse aides, certified nurse aides, licensed practical nurses, and registered nurses, the Department anticipates that these regulations will have a positive impact on nursing jobs throughout the State, to the extent these regulations will help incentivize hiring in these professions.

Department of Labor

**EMERGENCY
RULE MAKING**

New York Health and Essential Rights Act (NY HERO Act)

I.D. No. LAB-34-21-00002-E

Filing No. 1140

Filing Date: 2021-11-02

Effective Date: 2021-11-02

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

Action taken: Addition of section 840.1 to Title 12 NYCRR.

Statutory authority: State Administrative Procedure Act, section 202(6); Labor Law, sections 218-b and 21(11)

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

Specific reasons underlying the finding of necessity: This emergency regulation is necessary to implement the NY HERO Act and put necessary preparatory protections in place in the event of the NY Health Commissioner designation of an airborne infectious disease as a highly contagious communicable disease that presents a serious risk of harm to the public health. The Legislature, in adopting the HERO Act, required that the Department of Labor publish this standard in early July, and that employers adopt plans that comply with such requirements within 30 days of publication. To effectuate this legislative purpose, and to provide the protections of the HERO Act without delay, this emergency adoption is necessary to immediately enact these important rules and is necessary to public health, safety, and the general welfare, and provides protections to the employees in New York State and avoid future loss of life.

Subject: New York Health and Essential Rights Act (NY HERO Act).

Purpose: Airborne Infectious Disease Exposure Prevention Standard.

Substance of emergency rule (Full text is posted at the following State website: <https://dol.ny.gov/ny-hero-act>): The rule creates a new section of regulations designated as 12 NYCRR 840.1 entitled “Airborne Infectious Disease Exposure Prevention Standard”. This section is summarized as follows:

- Section 840.1(a), “General Provisions,” sets forth the general provisions including applicability of the regulation and definitions.
- Section 840.1(b), “Exposure Prevention Plan,” sets forth the requirements for an employer adopted Exposure Prevention Plan to eliminate or minimize employee exposure to airborne infectious disease agents designated by the Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health.
- Section 840.1(c), “Exposure Controls,” sets forth requirements for employers to select and obtain exposure controls appropriate for the exposure risks and requires that such controls be included in the employer’s Exposure Prevention Plan.
- Section 840.1(d), “Anti-Retaliation,” prohibits employers from retaliating against employees for exercising their rights under this regulation or an employer’s Exposure Prevention Plan.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. LAB-34-21-00002-EP, Issue of August 25, 2021. The emergency rule will expire December 31, 2021.

Text of rule and any required statements and analyses may be obtained from: Michael Paglialonga, Department of Labor, Building 12, State Office Campus, Room 509, Albany, NY 12240, (518) 485-2191, email: regulations@labor.ny.gov

Regulatory Impact Statement

Statutory Authority: State Administrative Procedure Act (SAPA) § 202(6); Labor Law §§ 218-b, and 21(11).

Legislative Objectives: On May 5, 2021, Governor Andrew Cuomo

signed the New York Health and Essential Rights Act (NY HERO Act) into law. The purpose of Section 1 of the NY HERO Act is to protect employees against exposure and disease during a future airborne infectious disease outbreak. The law mandates extensive new workplace health and safety protections in response to the COVID-19 pandemic, including the requirement that all private industry employers adopt an airborne infectious disease prevention plan, and to put such plans into effect if/when an airborne infectious disease is designated by the New York State Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health. The Act further directs the Department of Labor to develop, with the consultation of the Department of Health, a model standard for the prevention of airborne infectious diseases.

Needs and Benefits: This regulation is required by the NY HERO Act, and is both necessary and required for the implantation of that law. This regulation sets forth standards governing airborne infectious disease prevention plans, which employers are required to adopt. In addition to this regulation, in consultation with the NYS Department of Health, the Department has developed a new Model Airborne Infectious Disease Exposure Prevention Plan (template), and various industry-specific model plans (templates) for the prevention of airborne infectious disease. Employers can choose to adopt the applicable policy template/plan provided by NYS DOL or establish an alternative plan that meets or exceeds the standard's minimum requirements. Templates which meet the requirements of the standard/regulation were posted on the Department's website contemporaneously to the publication of the standard on July 6, 2021. While employers that choose to develop and adopt their own plan must closely review the Hero Act and the standard/regulation to ensure compliance with its requirements, employers may comply with these requirements through the adoption of a plan using a template developed by the Department of Labor.

Costs: While it is anticipated that employers may incur costs as a result of the requirements of the NY HERO Act, the present rulemaking does not impose any additional or further costs on the regulated community than those imposed by the HERO Act itself. The Department, in taking action in the manner described above, is affording employers the ability to comply through the adoption of a template published by the Department thereby minimizing or eliminating such costs. As no other affirmative actions are required unless and until the Commissioner of Health makes a designation under the HERO Act, the Department estimates that there will be no significant costs to the regulated community as a direct result of this regulation, to the Department of Labor, or to state and local governments to implement this regulation.

Local Government Mandates: This regulation does not apply to governmental entities.

Paperwork: This regulation is necessary to implement the NY HERO Act and does not impose any specific recordkeeping, reporting or other paperwork requirements beyond those inherent in the statute.

Duplication: This rulemaking does not duplicate, overlap, or conflict with any other state or federal requirements, and specifically exempts employment covered by a temporary or permanent standard adopted by the Occupational Safety and Health Administration setting forth applicable standards regarding COVID-19 and/or airborne infectious agents and diseases.

Alternatives: There were no significant alternatives considered.

Federal Standards: This rulemaking does not duplicate, overlap, or conflict with any other state or federal requirements, and specifically exempts employment covered by a temporary or permanent standard adopted by the Occupational Safety and Health Administration setting forth applicable standards regarding COVID-19 and/or airborne infectious agents and diseases.

Compliance Schedule: This emergency rulemaking shall become effective upon the date specified within the filing with the Department of State, and the rulemaking will be effective upon the publication of a notice of adoption in the State Register.

Regulatory Flexibility Analysis

Effect of Rule: The purpose and intent of this regulation is to implement Section 1 of the NY Hero Act through the adoption an Airborne Infectious Disease Prevention Standard.

Compliance Requirements: This regulation does not impose any requirements in addition to those imposed by the NY HERO Act, which requires employers to adopt an airborne infectious disease prevention plan. The regulation does not apply to governmental entities.

Professional Services: No professional services are required to effectuate the purposes of this regulation.

Compliance Costs: While it is anticipated that employers may incur costs as a result of the requirements of the NY HERO Act, the present rulemaking does not impose any additional or further costs on the regulated community than those imposed by the HERO Act itself. The Department, in taking action in the manner described above, is affording

employers the ability to comply through the adoption of a template published by the Department thereby minimizing or eliminating such costs. As no other affirmative actions are required unless and until the Commissioner of Health makes a designation under the HERO Act, the Department estimates that there will be no significant costs to the regulated community as a direct result of this regulation, to the Department of Labor, or to state and local governments to implement this regulation.

Economic and Technological Feasibility: The regulation does not require any use of technology to comply.

Minimizing Adverse Impact: The Department does not anticipate that this regulation will adversely impact small businesses or local governments. The Department, in taking action in the manner described above, is affording employers the ability to comply through the adoption of a template published by the Department thereby minimizing or eliminating such costs. As no other affirmative actions are required unless and until the Commissioner of Health makes a designation under the HERO Act, the Department estimates that there will be no significant costs to the regulated community as a direct result of this regulation, to the Department of Labor, or to state and local governments to implement this regulation.

Small Business and Local Government Participation: The Department has met with various stakeholders, including those representing small businesses, and has sought feedback to the regulation from stakeholders both on its website and through this rulemaking's comment period.

Initial review of the rule pursuant to SAPA § 207: Initial review of this regulation shall occur no later than the third calendar year in which it is adopted.

Rural Area Flexibility Analysis

Types and estimated numbers of rural areas: The Department anticipates that this regulation will have a positive or neutral impact upon all areas of the state; there is no adverse impact anticipated upon any rural area of the state resulting from adoption of this regulation.

Reporting, recordkeeping and other compliance requirements: The Department, in taking action in the manner described above, is affording employers the ability to comply through the adoption of a template published by the Department thereby minimizing or eliminating such costs. As no other affirmative actions are required unless and until the Commissioner of Health makes a designation under the HERO Act, the Department estimates that there will be no significant costs to the regulated community as a direct result of this regulation, to the Department of Labor, or to state and local governments to implement this regulation.

Professional services: No professional services will be required to comply with this regulation.

Costs: While it is anticipated that employers may incur costs as a result of the requirements of the NY HERO Act, the present rulemaking does not impose any additional or further costs on the regulated community than those imposed by the HERO Act itself. The Department, in taking action in the manner described above, is affording employers the ability to comply through the adoption of a template published by the Department thereby minimizing or eliminating such costs. As no other affirmative actions are required unless and until the Commissioner of Health makes a designation under the HERO Act, the Department estimates that there will be no significant costs to the regulated community as a direct result of this regulation, to the Department of Labor, or to state and local governments to implement this regulation.

Minimizing adverse impact: The Department does not anticipate that this regulation will adversely impact small businesses or local governments. The Department, in taking action in the manner described above, is affording employers the ability to comply through the adoption of a template published by the Department thereby minimizing or eliminating such costs. As no other affirmative actions are required unless and until the Commissioner of Health makes a designation under the HERO Act, the Department estimates that there will be no significant costs to the regulated community as a direct result of this regulation, to the Department of Labor, or to state and local governments to implement this regulation.

Rural area participation: The Department does not anticipate that the regulation will have an adverse economic impact upon rural areas nor will it impose new reporting, recordkeeping, or other compliance requirements.

Job Impact Statement

Nature of impact: The Department of Labor (hereinafter "Department") projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this regulation.

Categories and numbers affected: The Department does not anticipate that this regulation will have an adverse impact on jobs or employment opportunities in any category of employment.

Regions of adverse impact: The Department does not anticipate that this regulation will have an adverse impact upon jobs or employment opportunities statewide or in any particular region of the state.

Minimizing adverse impact: Since the Department does not anticipate any adverse impact upon jobs or employment opportunities resulting from this regulation, no measures to minimize any unnecessary adverse impact on existing jobs or to promote the development of new employment opportunities are required.

Self-employment opportunities: The Department does not foresee a measurable impact upon opportunities for self-employment resulting from adoption of this regulation.

Initial review of the rule pursuant to SAPA § 207: Initial review of this regulation shall occur no later than the third calendar year in which it is adopted.

Assessment of Public Comment

The Department received several comments following publication of the Department’s Notice of Proposed Rulemaking and Emergency Adoption in the August 25, 2021 edition of the NYS Register. The Department continues to accept comments on the Proposed Rule, and has a hearing scheduled for November 18, 2021 where testimony on the Proposed Rule will be received in accordance with Section 29 of the Labor Law. No comments were received by the Department that specifically comment on the Emergency Rule; rather the Department has received feedback on the proposed rule. In that regard, commenters noted concern with regard to the lack of specificity in relation to industry specific standards, the absence of mandatory air flow requirements, limited face covering requirements, and the lack of a mandatory reporting requirement. The Department has assessed these comments for any changes that are necessary and no changes are found to be appropriate for the Emergency Rule. The Department will continue to assess these issues/comments for the Permanent Rule, and looks forward to receiving additional comments in this regard.

Metropolitan Transportation Agency

EMERGENCY RULE MAKING

Requiring Mask Wearing When Using the Facilities and Conveyances of the MTA and its Operating Affiliates and Subsidiaries

I.D. No. MTA-16-21-00004-E

Filing No. 1139

Filing Date: 2021-11-02

Effective Date: 2021-11-02

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

Action taken: Amendment of Part 1030 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1266(4) and (5)

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

Specific reasons underlying the finding of necessity: The emergency rule, which complies with the Centers for Disease Control and Prevention’s Order effective February 1, 2021, and the Transportation Security Administration’s Security Directive (SD) 1582/84-21-01: Security Measures – Face Mask Requirements, effective at the same time, is necessary to safeguard public health and safety and to ensure through proper mask wearing that the public, health care providers, first responders, and other essential workers who rely on the Metropolitan Transportation Authority’s subways, buses, and commuter trains to get to and from work and also the Metropolitan Transportation Authority’s employees are protected during the COVID-19 outbreak.

Now that the New York City area has begun reopening and the Metropolitan Transportation Authority’s operating agencies are restoring service and anticipating increased ridership, it is imperative that all persons on all of the Metropolitan Transportation Authority’s subways, buses, and commuter trains fully comply with the Centers for Disease Control and Prevention’s Order requiring them to properly wear a safe mask covering their nose and mouth and maintain social distance as much as possible. Research has found that wearing a mask can reduce the rate of COVID-19 transmission significantly.

Subject: Requiring mask wearing when using the facilities and conveyances of the MTA and its operating affiliates and subsidiaries.

Purpose: To safeguard the public health and safety by adding a new all agency rule requiring the use of masks in facilities and conveyances.

Text of emergency rule:

Part 1030 Rules Governing the Conduct and Safety of the Public in the Use of the Terminals, Stations, Trains, Facilities, or Conveyance of the Metropolitan Transportation Authority

1030.1 Authorities covered by the rules of this Part

The rules set forth in this Part 1030 are established by the Metropolitan Transportation Authority (MTA) and applicable to it and to each of its affiliates and subsidiaries and each of their affiliates and subsidiaries including without limitation the New York City Transit Authority, the Manhattan and Bronx Surface Transit Operating Authority, the Staten Island Rapid Transit Operating Authority, the MTA Bus Company, the Long Island Rail Road Company, and Metro-North Commuter Railroad Company (each an “authority”).

1030.2 Requiring Persons to Wear Masks

(a) This Section subpart 1030.2 wholly supersedes the emergency mask rules adopted and readopted by the following authorities: Part 1050.6(d)(1) (adopted by the New York City Transit Authority and the Manhattan and Bronx Surface Transit Operating Authority); Part 1040.4(g) (adopted by the Staten Island Rapid Transit Operating Authority); Part 1044.4(f) (adopted by the MTA Bus Company); Part 1085.4(g) (adopted by the Metro-North Commuter Railroad Company); and, Part 1097.4(e) (adopted by the Long Island Rail Road Company).

(b) Every person on or in any terminal, station, train, facility, or conveyance (as those terms are defined in Parts 1040, 1044, 1050, 1085, and 1097 of this Subchapter) of any authority covered by this Part shall wear a mask that completely covers their mouth and nose. A mask should fit snugly but comfortably against the face and be secured to the head, with ties, ear loops, or elastic bands behind the head. A gaiter must have two layers of fabric or be folded to make two layers. Masks may be either manufactured or homemade and must be a solid piece of material without slits, exhalation valves, or punctures. Cloth masks should be made with two or more layers of breathable fabric that is tightly woven (i.e., fabrics that do not let light pass through when held up to a light source). Masks may be reusable or disposable. Medical masks and N-95 respirators fulfill this requirement.

The following do *not* meet this requirement:

- (1) masks worn in a way that does not cover the nose and mouth
 - (2) face shields or goggles (though face shields or goggles may be worn to supplement a mask that meets the above required attributes)
 - (3) scarves, ski masks, balaclavas, or bandannas
 - (4) shirt or sweater collars (i.e., turtleneck collars) pulled up over the mouth and nose
 - (5) masks made from loosely woven fabric or that are knitted (i.e., fabrics that let light pass through)
 - (6) masks made from material that is hard to breathe through (such as vinyl, plastic or leather)
 - (7) masks containing slits, exhalation valves or punctures.
- (c) The requirement to wear a mask shall not apply under the following circumstances:

- (1) while eating or drinking for brief periods, but only in locations where eating and drinking otherwise are permitted, or while taking medication; prolonged periods of mask removal are not permitted for eating or drinking, the mask must be worn between bites and sips
- (2) while communicating with a person who is hearing impaired when the ability to see the mouth is essential for communication
- (3) while a person is unconscious (for reasons other than sleeping), incapacitated, unable to be awakened, or otherwise unable to remove the mask without assistance
- (4) when necessary to temporarily remove the mask to verify one’s identity or when asked to do so by any police officer, peace officer, or authority employee.
- (d) The following categories of persons are not required to wear a mask:
 - (1) a child under the age of two years;
 - (2) a person with a disability who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act;
 - (3) a person for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by applicable workplace safety guidelines or federal regulations.

(e) Any person who does not comply with the requirement to wear a mask that completely covers their mouth and nose may be barred from entering or remaining on or in any terminal, station, train, facility, or conveyance of any authority covered by this Part and also may be fined \$50 per occurrence. This rule shall be enforced by each of the authorities on or in its terminals, stations, trains, facilities, or conveyances by any person authorized by such authority to enforce its own rules and pursuant to the procedures established by such authority for enforcing violations of its rules.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a

notice of proposed rule making, I.D. No. MTA-16-21-00004-EP, Issue of April 5, 2021. The emergency rule will expire December 31, 2021.

Text of rule and any required statements and analyses may be obtained from: Theresa Brennan Murphy, Metropolitan Transportation Authority, 130 Livingston Street, Brooklyn, NY 11201, (718) 694-3901, email: theresa.murphy@nyc.com

Regulatory Impact Statement

Statutory authority: Section 1266(4) of the Public Authorities Law provides that the Metropolitan Transportation Authority may adopt rules and regulations governing the conduct and safety of the public as it may deem necessary, convenient or desirable for the use of any transportation facility and related services operated by it or any of its operating agencies. The federal Centers for Disease Control and Prevention issued an Order, effective February 1, 2021, that requires that all persons must wear masks over the mouth and nose when traveling on conveyances into and within the United States and also at transportation hubs. The Order provides a detailed description of safe masks, how masks should be worn, the very limited circumstances in which the requirement to wear a mask does not apply and the few categories of persons who are exempted from the requirement to wear a mask. The Transportation Security Administration has also issued a Security Directive (SD) 1582/84-21-01: Security Measures – Face Mask Requirements, which is effective at the same time as the CDC Order, which supports enforcement of the CDC's Order.

Legislative objectives: The Legislature has conferred on the Metropolitan Transportation Authority and its operating agencies the authority to ensure the safety of their passengers and employees. They have previously exercised that authority to adopt emergency rules of conduct governing the conduct and safety of the public in the use of their facilities by requiring persons to wear masks. The Legislature also expects that the Metropolitan Transportation Authority and its operating agencies will comply with applicable federal law including the Centers for Disease Control and Prevention's Order, which this new emergency rule will ensure.

Needs and benefits: The proposed rule is necessary to safeguard public health and safety to ensure that persons who rely on the Metropolitan Transportation Authority's subways, buses, and commuter trains to get to and from work and to travel around the New York City metropolitan area fully comply with the new federal Order requiring that persons wear masks over the mouth and nose when traveling on conveyances and while at transportation hubs to try to limit the transmission of COVID-19.

Costs:

(a) Regulated parties. The proposed rule governing conduct and safety does not impose new costs on passengers or others.

(b) State and local government. The proposed rule governing conduct and safety will not impose any new costs on State or local governments.

Local government mandates: The proposed rule does not impose any new programs, services, duties or responsibilities on local government. The New York City Police Department's Transit Bureau is already responsible with others in enforcing the New York City Transit Authority's Rules Governing the Conduct and Safety of the Public, and the MTA Police Department is responsible for enforcing the comparable rules and regulations governing the conduct and safety of the public on trains and stations operated by the Metropolitan Transportation Authority's two commuter railroads.

Paperwork: The proposed rule does not impose any new reporting requirements.

Duplication: The proposed rule does not duplicate, overlap, or conflict with any State or Federal rule.

Alternatives: No significant alternatives to this rule was considered.

Federal standards: The proposed amended rule does not exceed any Federal minimum standards.

Compliance schedule: There is no compliance schedule imposed by these proposed amended rules. Once adopted, the emergency rule governing the conduct and safety of the public will be effective immediately.

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

A regulatory flexibility statement for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

Assessment of Public Comment

The agency received no public comment.

Office for People with Developmental Disabilities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Community Transition Services

I.D. No. PDD-46-21-00015-P

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

Proposed Action: This is a consensus rule making to amend section 635-10.5 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

Subject: Community Transition Services.

Purpose: To match Federal limitations and use gender neutral terminology.

Text of proposed rule: Amendment of existing subparagraph (i) to Subpart 635-10.5(ae)(3) to read as follows:

(i) the individual's choice of CTS must be documented in [his or her] *their* [Individualized Service Plan (ISP)] *Life Plan* in the format specified by OPWDD; and

Amendment of existing paragraph (6) to Subpart 635-10.5(ae) to read as follows:

(6) Effective [November 1, 2014] *August 1, 2017*, the CTS payment for each individual will be the lesser of:

(i) the total of CTS allowable expenses, rounded down to the nearest \$10; or

(ii) \$[3,000]5,000.

Text of proposed rule and any required statements and analyses may be obtained from: Mary Beth Babcock, Office for People With Developmental Disabilities, 44 Holland Avenue, Albany, NY 12229, (518) 474-7700, email: rau.unit@opwdd.ny.gov

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

Public comment will be received until: 60 days after publication of this notice.

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment and an E.I.S. is not needed.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Consensus Rule Making Determination

OPWDD is amending Title 14 NYCRR Subpart 635-10.5 to coincide with the Federal waiver (NY.0238.R06.06). This correction is necessary to comply with Federal law.

OPWDD has determined that due to the nature and purpose of the amendment, no person is likely to object to the rule as written.

Job Impact Statement

A Job Impact Statement for the proposed regulation is not being submitted because it is apparent from the nature and purpose of the regulation that it will not have a substantial adverse impact on jobs and/or employment opportunities.

The proposed regulation amends Title 14 NYCRR Subpart 635-10.5 to use gender neutral terminology and updated documentation terminology. The regulation also allows for an increase in the cap on community transition services reimbursement up to the federally-approved cap of \$5,000 per Waiver Amendment NY.0238.R06.06. The regulation will result in no new compliance requirements for providers. The regulation will not have a substantial impact on jobs or employment opportunities in New York State.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Street Lighting Facilities

I.D. No. PSC-46-21-00011-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 a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid seeking authorization to transfer certain street lighting facilities in the Village of Kenmore to the Village of Kenmore.

Statutory authority: Public Service Law, sections 5, 65, 66 and 70(1)

Subject: Transfer of street lighting facilities.

Purpose: To determine whether to authorize the transfer street of lighting facilities and the proper accounting for the transaction.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed on October 22, 2021 by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), requesting authorization to transfer certain street lighting facilities located in the Village of Kenmore (Village) to the Village.

The original cost of the facilities was approximately \$3,897,151 and the net book value of the assets was \$2,699,381 as of July 31, 2021. National Grid proposes to transfer the street lighting facilities to the Village for approximately \$2,729,537, which includes the net book value of the assets, as well as transition and transaction costs. National Grid explains that the agreement between it and the Village provides that the purchase price will be adjusted (up or down) to reflect the actual net book value at the date of the closing.

The full text of the petition and the full record of the proceeding may be viewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

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.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Michelle L. Phillips, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 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.

(21-E-0530SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Street Lighting Facilities

I.D. No. PSC-46-21-00012-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 a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid seeking authorization to transfer certain street lighting facilities in the Village of New York Mills to the Village of New York Mills.

Statutory authority: Public Service Law, sections 5, 65, 66 and 70(1)

Subject: Transfer of street lighting facilities.

Purpose: To determine whether to authorize the transfer street of lighting facilities and the proper accounting for the transaction.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed on October 22, 2021 by Niagara

Mohawk Power Corporation d/b/a National Grid (National Grid), requesting authorization to transfer certain street lighting facilities located in the Village of New York Mills (Village) to the Village.

The original cost of the facilities was approximately \$151,637 and the net book value of the assets was approximately \$62,093, as of July 31, 2021. National Grid proposes to transfer the street lighting facilities to the Village for approximately \$68,314, which reflects the net book value of the assets, as well as transition and transaction costs. National Grid explains that the agreement between it and the Village provides that the purchase price will be adjusted (up or down) to reflect the actual net book value at the date of the closing.

The full text of the petition and the full record of the proceeding may be viewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

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.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Michelle L. Phillips, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 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.

(21-E-0531SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

ESCO Eligibility

I.D. No. PSC-46-21-00013-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 Astral Energy, LLC's (Astral), an energy services company (ESCO), petition to reinstate Astral's ability to market to and enroll residential customers.

Statutory authority: Public Service Law, sections 4, 5(1), 22, 23, 65(1), (2), (3), 66(2), (3), (5), (8), (9) and (12)

Subject: ESCO Eligibility.

Purpose: To consider whether Astral should be allowed to market to and enroll residential customers following a suspension.

Substance of proposed rule: The Public Service Commission (Commission) is considering the petition filed by Astral Energy, LLC (Astral), an energy services company (ESCO), on October 15, 2021, seeking the reinstatement of its eligibility to market to and enroll residential customers. ESCO's may provide electricity and natural gas commodity to customers in a manner consistent with the Public Service Law, the Commission's regulations and orders, and the Uniform Business Practices (UBP). If an ESCO fails to comply with the Public Service Law, Commission regulations and orders, and the UBP, it may be subject to consequences, including the suspension of the ESCO's ability to market to and enroll new customers.

On November 6, 2015 the Commission issued an Order suspending Astral's eligibility to market to and enroll residential and non-residential customers as the result of Astral's failure to comply with Commission requirements. On December 16, 2016, the Commission issued an Order reinstating Astral's eligibility to market to and enroll non-residential customers after Astral revised its processes and procedures to ensure that its practices comply with the requirements. Following the December 16, 2016 Order, Astral was still not eligible to serve residential customers.

In its October 15, 2021 petition, Astral states that its strong customer service record and dedication to continued compliance with the UBP warrant reinstatement of its eligibility to serve residential customers. Astral asserts that it has worked with outside counsel to restructure its internal compliance program, resolve customer complaints, and remain in compliance with the Commission's regulations, orders, and the UBP. According to Astral, it has made changes to its residential marketing and enrollment procedures to ensure compliance with Commission rules. Astral notes that it will not market to residential customers through outbound telemarketing

or door-to-door marketing, instead only enrolling such customer online. Astral's petition includes a proposed online marketing and online enrollment process that would rely on Astral's in-house team, not outside brokers, to market to residential customers. Finally, Astral commits to only offer products that are specifically permitted and identified in any future Letter of Eligibility, and to strictly adhere to the marketing practices authorized under the UBP.

The full text of petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

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.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Michelle L. Phillips, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 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.

(15-E-0556SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of Tariff Rules and a Related Commission Regulation

I.D. No. PSC-46-21-00014-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 a petition by Barbera Homes, Inc. for waiver of Niagara Mohawk Power Corporation d/b/a National Grid tariff rules regarding the extension of electric and gas lines.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Waiver of tariff rules and a related Commission regulation.

Purpose: To consider whether a waiver of tariff rules and a Commission regulation are just and reasonable and in the public interest.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed on October 14, 2021 by Barbera Homes, Inc. (Petitioner), requesting a 150-day extension of the time allowed by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid)'s tariff to energize additional lots of the Petitioner's Park Ridge Estates subdivision (Development).

The Commission's regulations at 16 NYCRR § 100.3 provide that a non-residing applicant for electric service must provide a deposit to the utility equal to the estimated cost of construction. The deposit is returned to the applicant, on a pro rata basis, as each new customer takes service from the utility. Part 100.3(b) provides that any portion of the deposit remaining unrefunded five years after the date the utility is first ready to render service shall be retained by the utility. National Grid's electric tariff, PSC 220 Rule 16.6, incorporates the Commission's regulation. National Grid's gas tariff, PSC 219, Rule 10.4 provides substantially similar requirements for non-residing applicants requesting the extension of gas facilities.

The Development is located in Niskayuna, New York. National Grid has been ready to supply the Development with electric and gas service since October 2016. The Petitioner provided National Grid with a letter of credit for the refundable portion of the contribution. The five-year development period expired on October 25, 2021, at which point National Grid would be entitled to call upon the remaining value of the letter of credit, approximately \$4,460. Petitioner requests a waiver of National Grid's tariff rule to allow a 150-day extension of the development period. Petitioner states it has experience delays as a result of labor shortages and supply chain disruptions.

The full text of the petition and the full record of the proceeding may be viewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject, or modify, in whole or in part, the action proposed and may resolve related matters.

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.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Michelle L. Phillips, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 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.

(21-M-0523SP1)

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-34-21-00003-A

Filing No. 1138

Filing Date: 2021-11-01

Effective Date: 2021-11-01

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period October 1, 2021 through December 31, 2021.

Text or summary was published in the August 25, 2021 issue of the Register, I.D. No. TAF-34-21-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. Chase, Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: kathleen.chase@tax.ny.gov

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-46-21-00009-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First; 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period January 1, 2022 through March 31, 2021.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (cv) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(civ) Oct. – Dec. 2021					
16.0	24.0	40.6	16.0	24.0	38.85
(cv) Jan. – March 2022					
16.0	24.0	41.3	16.0	24.0	39.55

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen D. Chase, Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: kathleen.chase@tax.ny.gov

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

Public comment will be received until: 60 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.

**HEARINGS SCHEDULED
FOR PROPOSED RULE MAKINGS**

Agency I.D. No.	Subject Matter	Location—Date—Time
Labor, Department of		
LAB-34-21-00002-EP	New York Health and Essential Rights Act (NY HERO Act)	Location to be announced on Department of Labor website—November 17, 2021, 10:00 a.m.
Long Island Power Authority		
LPA-38-21-00008-P	Authority’s Annual Budget, as Reflected in the Rates and Charges in the Tariff for Electric Service	Virtual Public Meeting—November 29, 2021, 10:00 a.m. and 2:00 p.m.
LPA-38-21-00009-P	Community Distributed Generation and Remote Crediting Tariffs	Virtual Public Meeting—November 29, 2021, 10:00 a.m. and 2:00 p.m.
LPA-38-21-00010-P	Customer Benefit Contribution (CBC) Charge for New Mass Market Net Metering Customers	Virtual Public Meeting—November 29, 2021, 10:00 a.m. and 2:00 p.m.
LPA-38-21-00011-P	Conform Long Island Choice Program Rules and Requirements with Final DPS Recommendations from Collaborative Proceeding	Virtual Public Meeting—November 29, 2021, 10:00 a.m. and 2:00 p.m.
LPA-38-21-00012-P	Miscellaneous Clean-Up of Tariff for Electric Service	Virtual Public Meeting—November 29, 2021, 10:00 a.m. and 2:00 p.m.
LPA-38-21-00013-P	Daily Service Charges During Prolonged Outages	Virtual Public Meeting—November 29, 2021, 10:00 a.m. and 2:00 p.m.
LPA-39-21-00014-P	Access to Records and Fees Collected Under the Freedom of Information Law	Virtual Public Meeting—November 29, 2021, 10:00 a.m. and 2:00 p.m.
Power Authority of the State of New York		
PAS-44-21-00016-P	Rates for the Sale of Power and Energy	Video Conference—December 9, 2021, 11:00 a.m.
Public Service Commission		
PSC-40-21-00019-P	Disposition of a New York State Tax Refund	Teleconference—November 23, 2021, 10:00 a.m. (Public Statement Hearing)* *On occasion, there are requests to reschedule or postpone hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 21-W-0356.
PSC-44-21-00012-P	Disposition of a New York State Tax Refund	Teleconference—January 4, 2022, 10:00 a.m. (Public Statement Hearing)* *On occasion, there are requests to reschedule or postpone hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 21-W-0356.

ACTION PENDING INDEX

The action pending index is a list of all proposed rules which are currently being considered for adoption. A proposed rule is added to the index when the notice of proposed rule making is first published in the *Register*. A proposed rule is removed from the index when any of the following occur: (1) the proposal is adopted as a permanent rule; (2) the proposal is rejected and withdrawn from consideration; or (3) the proposal's notice expires.

Most notices expire in approximately 12 months if the agency does not adopt or reject the proposal within that time. The expiration date is printed in the second column of the action pending index. Some notices, however, never expire. Those notices are identified by the word "exempt" in the second column. Actions pending for one year or more are preceded by an asterisk(*).

For additional information concerning any of the proposals

listed in the action pending index, use the identification number to locate the text of the original notice of proposed rule making. The identification number contains a code which identifies the agency, the issue of the *Register* in which the notice was printed, the year in which the notice was printed and the notice's serial number. The following diagram shows how to read identification number codes.

Agency code	Issue number	Year published	Serial number	Action Code
AAM	01	12	0001	P

Action codes: P — proposed rule making; EP — emergency and proposed rule making (expiration date refers to proposed rule); RP — revised rule making

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
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AGRICULTURE AND MARKETS, DEPARTMENT OF

AAM-23-21-00001-P 07/07/22	Regulated commodity labeling, packaging and method of sale requirements	Amend packaging, labeling & method of sale requirements for various commodities to align with industry & federal standards
AAM-31-21-00014-P	..... 09/15/22	Regulated commodity labeling, packaging and method of sale requirements	Amend packaging, labeling & method of sale requirements for various commodities to align with industry & federal standards

ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, OFFICE OF

ASA-27-21-00009-P	..... 07/07/22	General provisions applicable to all OASAS programs	To identify those provisions that are required of all OASAS certified, funded or otherwise authorized programs
ASA-42-21-00008-P	..... 10/20/22	Children and Family Treatment Support Services	Identify services and designation process for children and family treatment and support services
ASA-42-21-00009-P	..... 10/20/22	Incident Reporting in OASAS certified, licensed, funded, or Operated Services	To update and clarify existing language.
ASA-42-21-00010-P	..... 10/20/22	Provision of problem gambling treatment and recovery services.	Identify the requirements for provision of problem gambling services.
ASA-42-21-00012-P	..... 10/20/22	Tobacco-Limited Services	The purpose of the rule is to change the requirement from tobacco "free" services to tobacco "limited" services.
ASA-43-21-00001-P	..... 10/27/22	This part establishes standards for the reimbursement and participation in the Medical Assistance Program	Update language and conform to current State Plan Amendment

CANNABIS MANAGEMENT, OFFICE OF

OCM-46-21-00010-P 11/17/22	Part 115 - Personal Cultivation of Cannabis	Regulation to authorize the home cultivation of cannabis for certified medical cannabis patients
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Action Pending Index

NYS Register/November 17, 2021

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
CHILDREN AND FAMILY SERVICES, OFFICE OF			
*CFS-04-20-00009-RP	12/13/21	Host Family Homes	The proposed regulations would establish standards for the approval and administration of host family homes.
CFS-49-20-00006-EP	12/09/21	Maintenance reimbursement for residential CSE programs when a student has been absent from the program for more than 15 days.	Remove an existing regulatory barrier that precludes maintenance reimbursement for residential CSE programs.
CFS-31-21-00013-P	08/04/22	Implements statutory requirements pursuant to the Federal Child Care & Development Block Grant Act of 2014 & the NYS 2022 Budget	Implements statutory requirements pursuant to the Federal Child Care & Development Block Grant Act of 2014 & the NYS 2022 Budget
CFS-36-21-00010-EP	09/08/22	Adopt provisions & standards to operationalize compliance with the federal Family First Prevention Services Act	Adopt provisions & standards to operationalize compliance with the federal Family First Prevention Services Act
CIVIL SERVICE, DEPARTMENT OF			
CVS-23-21-00006-P	06/09/22	Jurisdictional Classification	To classify positions in the exempt class
CVS-23-21-00007-P	06/09/22	Jurisdictional Classification	To classify a position in the exempt class
CVS-23-21-00008-P	06/09/22	Jurisdictional Classification	To delete positions from the exempt class
CVS-23-21-00009-P	06/09/22	Jurisdictional Classification	To classify a subheading and positions in the exempt class
CVS-27-21-00004-P	07/07/22	Jurisdictional Classification	To classify positions in the exempt class
CVS-27-21-00005-P	07/07/22	Jurisdictional Classification	To classify a position in the exempt class
CVS-27-21-00006-P	07/07/22	Jurisdictional Classification	To delete a position from and classify a position in the exempt class
CVS-27-21-00007-P	07/07/22	Jurisdictional Classification	To classify positions in the non-competitive class
CVS-27-21-00008-P	07/07/22	Jurisdictional Classification	To classify positions in the non-competitive class
CVS-31-21-00002-P	08/04/22	Jurisdictional Classification	To classify positions in the non-competitive class
CVS-31-21-00003-P	08/04/22	Jurisdictional Classification	To classify positions in the non-competitive class
CVS-31-21-00004-P	08/04/22	Jurisdictional Classification	To classify a position in the non-competitive class
CVS-31-21-00005-P	08/04/22	Jurisdictional Classification	To classify a position in the non-competitive class
CVS-31-21-00006-P	08/04/22	Jurisdictional Classification	To classify positions in the non-competitive class
CVS-31-21-00007-P	08/04/22	Jurisdictional Classification	To classify positions in the non-competitive class

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CIVIL SERVICE, DEPARTMENT OF			
CVS-40-21-00008-P	10/06/22	Jurisdictional Classification	To classify a position in the exempt class.
CVS-40-21-00009-P	10/06/22	Jurisdictional Classification	To delete positions from and classify positions in the exempt class.
CVS-40-21-00010-P	10/06/22	Jurisdictional Classification	To delete positions from and classify a position in the exempt class and to classify a position in the non-competitive class
CVS-40-21-00011-P	10/06/22	Jurisdictional Classification	To classify positions in the exempt class.
CVS-40-21-00012-P	10/06/22	Jurisdictional Classification	To delete positions from and classify positions in the non-competitive class
CVS-40-21-00013-P	10/06/22	Jurisdictional Classification	To classify positions in the exempt class.
CVS-40-21-00014-P	10/06/22	Jurisdictional Classification	To classify a position in the non-competitive class
CVS-40-21-00015-P	10/06/22	Jurisdictional Classification	To classify a position in the non-competitive class
CVS-40-21-00016-P	10/06/22	Jurisdictional Classification	To delete a position from and classify a position in the non-competitive class
CVS-44-21-00003-P	11/03/22	Jurisdictional Classification	To delete a position and to classify a position in the exempt class and to classify a position in the non-competitive class
CVS-44-21-00004-P	11/03/22	Jurisdictional Classification	To classify a position in the exempt class.
CVS-44-21-00005-P	11/03/22	Jurisdictional Classification	To classify a position in the non-competitive class
CVS-44-21-00006-P	11/03/22	Jurisdictional Classification	To delete a position in the exempt class.
CVS-44-21-00007-P	11/03/22	Jurisdictional Classification	To classify a position in the non-competitive class
CORRECTION, STATE COMMISSION OF			
CMC-34-21-00001-P	08/25/22	Jail staffing requirements	To provide county governments and the City of New York an increased role and flexibility in determining officer staffing levels
CRIMINAL JUSTICE SERVICES, DIVISION OF			
CJS-42-21-00004-EP	10/20/22	Professional Policing Standards	Implementation of the "New York State Professional Policing Act of 2021"
ECONOMIC DEVELOPMENT, DEPARTMENT OF			
EDV-48-20-00001-RP	12/02/21	Employee Training Incentive Program	To update the administrative processes for the ETIP program
EDV-30-21-00002-EP	07/28/22	New York City Musical and Theatrical Production Tax Credit program	To create the administrative processes for the New York City Musical and Theatrical Production Tax Credit program

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ECONOMIC DEVELOPMENT, DEPARTMENT OF			
EDV-32-21-00004-EP	08/11/22	Restaurant Return-to-Work Tax Credit program	To create the administrative processes for the Restaurant Return-to-Work Tax Credit program
EDV-36-21-00001-P	09/08/22	Excelsior Jobs program	Update regulations to include newly enhanced tax credits for projects including child care services
EDV-44-21-00001-P	11/03/22	Music and Theatrical Tax Credit program	Update regulations to include a third party verification process for application
EDV-45-21-00001-P	11/10/22	Commercial Production Credit Program	Update regulations to include a third party verification process for application submissions.
EDUCATION DEPARTMENT			
*EDU-20-20-00008-ERP	02/14/22	Addressing the COVID-19 Crisis	To provide flexibility for certain regulatory requirements in response to the COVID-19 crisis
EDU-08-21-00002-RP	02/24/22	The Definition of the Term "University"	To clarify and broaden the definition of the term "university"
EDU-17-21-00011-RP	04/28/22	Education Law 310 Appeals to the Commissioner and Initiation Conduct of Proceedings for the Removal of School Officers	To make technical changes and other clarifying amendments to section 310 appeal procedures and requirements
EDU-21-21-00009-RP	05/26/22	School Counselor Bilingual & Supplementary Bilingual Education Extension & Registration Requirements	To create the bilingual education extension, supplementary bilingual education extension, and registration requirements for programs leading to the bilingual education extension for initial and professional school counselor certificates
EDU-39-21-00001-EP	09/29/22	Technical amendments relating to the School Safety and Educational Climate (SSEC) reporting system.	To make technical corrections rrelating to the SSEC reporting system.
EDU-39-21-00008-EP	09/29/22	Flexibility for accountability requirements in response to the COVID-19 crisis.	To provide flexibility for accountability requirements in response to the COVID-19 crisis.
EDU-39-21-00009-P	09/29/22	General Unprofessional Conduct Provisions for the Design Professions and Continuing Education Requirements for the Profession.	To conform regulations with the requirements of Chapter 160 of the Laws of 2020 and to make technical corrections.
EDU-39-21-00010-P	09/29/22	Licensure Examination, Licensure by Endorsement and Continuing Education Requirements in the Profession of Pharmacy	To provide flexibility in determining acceptable licensure examinations and to add compounding continuing education requirements
EDU-39-21-00011-P	09/29/22	Removing References to Regional Accreditation.	To remove references to "regional accreditation" in the Rules of the Board of Regents and Commissioner's regulations.
EDU-39-21-00012-P	09/29/22	Prohibits schools from filing a law suit against parents or guardians for unpaid meal fees.	To implement and conform Commissioner's Regulations according to Chapter 315 of the Laws of 2021.
EDU-44-21-00008-EP	11/03/22	Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer COVID-19 Immunizations	To ensure greater access to immunizations against COVID-19, as permitted by Education Law § 6909.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
EDUCATION DEPARTMENT			
EDU-44-21-00009-P	11/03/22	Removing face-to-face instruction requirement for the Dignity For All Students Act (DASA) Training.	To remove the face-to-face instruction requirement for DASA training.
ELECTIONS, STATE BOARD OF			
SBE-33-21-00010-P	08/18/22	Public Campaign Finance Program	Implementation of the Public Campaign Finance Program
SBE-39-21-00002-P	09/29/22	County Voter Registration Systems Requirements	Requirements County Voter Registration Systems Must Meet in Order to Connect to the Statewide Voter Registration System
SBE-39-21-00003-P	09/29/22	Required Debates for Statewide Candidates Participating in the Public Campaign Finance Program	Outlines Debate Requirements for Statewide Candidates Participating in the Public Campaign Finance Program
SBE-46-21-00001-P	11/17/22	Public Campaign Finance Board's Enforcement Procedure	Relates to how the Public Campaign Finance Board will enforce the public campaign finance provisions of the Election Law
ENVIRONMENTAL CONSERVATION, DEPARTMENT OF			
ENV-16-21-00012-P	04/21/22	Regulations governing whelk management	To protect immature whelk from harvest and establish gear and reporting rules for marine resource protection and public safety
ENV-19-21-00001-P	07/20/22	Set monitoring, operational and reporting requirements for the oil and natural gas sector	Reduce emissions of methane and volatile organic compounds from the oil and natural gas sector
ENV-22-21-00001-EP	06/02/22	Peekamoose Valley Riparian Corridor	Protect public health, safety, general welfare and natural resources on the Peekamoose Valley Riparian Corridor
ENV-24-21-00008-P	08/17/22	Petroleum Bulk Storage (PBS)	To amend the PBS regulations, 6 NYCRR Part 613
ENV-24-21-00009-P	08/17/22	Chemical Bulk Storage (CBS)	To repeal existing 6 NYCRR Parts 596, 598, 599 and replace with new Part 598; and amend existing Part 597; for the CBS program
ENV-26-21-00003-P	09/08/22	Product Stewardship and Product Labeling	Expand, strengthen and clarify existing regulations to establish consistency with federal and state requirements
ENV-31-21-00001-EP	08/04/22	Zoar Valley Multiple Use Area including Zoar Valley Unique Area and Onondaga Escarpment Unique Area	To protect public health, safety, general welfare and natural resources on the Zoar Valley MUA/UA and the Onondaga Escarpment UA
ENV-33-21-00004-P	08/18/22	Amendments to permit requirements for trapping fisher and marten in New York State.	To remove the requirement for a special fisher trapping permit, and to simplify marten trapping requirements.
ENV-36-21-00003-P	11/15/22	Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Reduction	Implementation of the expanded polystyrene foam container and loose fill packaging ban in ECL Art. 27, Title 30
ENV-36-21-00004-P	11/09/22	Medium- and heavy-duty (MHD) zero emission truck annual sales requirements and large entity reporting	Annual zero emission MHD truck sales requirements for model years 2025-2035. Report MHD volumes, operations, and locations

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ENVIRONMENTAL CONSERVATION, DEPARTMENT OF			
ENV-37-21-00004-P	09/15/22	Deer Hunting	This rulemaking will allow counties to annually, by county law, "opt-out" of the late bow and/or muzzleloader deer seasons
ENV-43-21-00010-P	10/27/22	Sunfish and crappie fishing regulations	To revise sunfish and crappie fishing regulations
FINANCIAL SERVICES, DEPARTMENT OF			
*DFS-17-16-00003-P	exempt	Plan of Conversion by Commercial Travelers Mutual Insurance Company	To convert a mutual accident and health insurance company to a stock accident and health insurance company
*DFS-25-18-00006-P	exempt	Plan of Conversion by Medical Liability Mutual Insurance Company	To convert a mutual property and casualty insurance company to a stock property and casualty insurance company
DFS-38-21-00003-P	09/22/22	Risk-Based Capital; Financial Statement Filings and Accounting Practices and Procedures	To set forth rules regarding the treatment of exchange-traded funds; adopt the 2021 Accounting Practices and Procedures Manual.
DFS-38-21-00004-P	09/22/22	Minimum Standards for Form, Content, and Sale of Health Insurance, Including Standards of Full and Fair Disclosure	To clarify application of Insurance Law Sections 3217-h and 4306-g.
DFS-40-21-00001-P	10/06/22	Principle-Based Reserving	To update citation to the Valuation Manual to 2021 (instead of 2020) in Footnote 1 to Section 103.3(b)
DFS-42-21-00011-P	10/20/22	DISCLOSURE REQUIREMENTS FOR CERTAIN PROVIDERS OF COMMERCIAL FINANCING TRANSACTIONS	To provide new disclosure rules for small business financings
DFS-44-21-00015-P	11/03/22	Compliance With Community Reinvestment Act Requirements	To provide new rules concerning data collection on extension of credit to women-owned and minority-owned businesses.
GAMING COMMISSION, NEW YORK STATE			
SGC-29-21-00010-P	07/21/22	Amendment of video lottery gaming regulations	To amend the video lottery gaming regulations to reflect amendments to Tax Law 1612
SGC-35-21-00010-P	09/01/22	Mobile sports wagering and sports wagering at gaming facilities	To regulate and control mobile sports wagering and sports wagering as directed by statute
SGC-37-21-00017-P	09/15/22	Discretion to require a Thoroughbred jockey to serve a suspension for a riding violation at track where the violation occurred	To enhance the integrity and safety of thoroughbred horse racing
HEALTH, DEPARTMENT OF			
*HLT-14-94-00006-P	exempt	Payment methodology for HIV/AIDS outpatient services	To expand the current payment to incorporate pricing for services
*HLT-46-19-00003-RP	12/21/21	Tanning Facilities	To prohibit the use of indoor tanning facilities by individuals less than 18 years of age
*HLT-31-20-00012-EP	exempt	Hospital Non-comparable Ambulance Acute Rate Add-on	Prevents duplicate claiming by Article 28 hospitals for the ambulance add-on regarding participation in the program

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HEALTH, DEPARTMENT OF			
*HLT-38-20-00006-RP	12/22/21	Medicaid Transportation Program	Medicaid payment standards for emergency ambulance providers participating in an Emergency Triage, Treat & Transport (ET3) model
*HLT-45-20-00002-RP	11/10/21	Cannabinoid Hemp	To create a licensing framework for cannabinoid hemp processors and cannabinoid hemp retailers
HLT-05-21-00011-P	02/03/22	Ingredient Disclosures for Vapor Products and E-Cigarettes	To provide for enhanced public awareness of the chemicals used in vapor products and electronic cigarettes
HLT-22-21-00003-P	06/02/22	Reducing Biannual Testing of Adult Care Facility Staff	To remove the requirement for biannual testing of adult care workers
HLT-22-21-00004-P	06/02/22	Hospice Residence Rates	To authorize Medicaid rate of payment to increase the Hospice Residence reimbursement rates by 10 percent
HLT-22-21-00005-P	06/02/22	Stroke Services	Amend transition period for existing stroke centers to allow the Dept. to extend the three year transition period, if necessary
HLT-22-21-00009-P	06/02/22	Managed Care Organizations (MCOs)	To maintain the contingent reserve requirement at 7.25% through 2022 applied to Medicaid Managed Care, HIV SNP & HARP programs
HLT-22-21-00010-P	06/02/22	Labeling Requirements Concerning Vent-Free Gas Space Heating Appliances	To adjust the current labeling requirements for unvented gas space heating appliances
HLT-28-21-00018-P	07/14/22	Public Water Systems	To correct typographic & minor technical errors to obtain primacy for the implementation of federal drinking water regulations
HLT-32-21-00001-P	08/11/22	Abortion Services	To protect and promote the health of New Yorkers seeking to access abortion services
HLT-46-21-00005-P	11/17/22	Nursing Home Minimum Direct Resident Care Spending	Every RHCf shall spend a minimum of 70% of revenue on direct resident care and 40% of revenue on resident-facing staffing.
HLT-46-21-00006-P	11/17/22	Article 28 Nursing Homes; Establishment; Notice and Character and Competence Requirements	To strengthen the establishment application review process for all Article 28 facilities
HLT-46-21-00007-P	11/17/22	Minimum Staffing Requirements for Nursing Homes	Requiring minimum staffing levels for nursing homes
HUMAN RIGHTS, DIVISION OF			
HRT-15-21-00005-P	04/14/22	Notice of tenants' rights to reasonable modifications and accommodations for persons with disabilities	To comply with the requirements of Executive Law section 170-d
INDUSTRIAL BOARD OF APPEALS			
IBA-45-21-00003-P	11/10/22	Rules of Procedure and Practice for administrative hearings; Freedom of Information Law	To update the Rules of Procedure and Practice for administrative review and to correct address for Freedom of Information Law.

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LABOR, DEPARTMENT OF			
LAB-49-20-00012-P	12/09/21	Sick Leave Requirements	To provide definitions and standards for the sick leave requirements contained in Section 196-b of the Labor Law
LAB-05-21-00003-EP	02/03/22	Unemployment Insurance (UI) definition of "day of total unemployment"	To prevent an additional financial burden on UI claimants seeking part-time work opportunities and help employers obtain talent
LAB-34-21-00002-EP	11/17/22	New York Health and Essential Rights Act (NY HERO Act)	Airborne Infectious Disease Exposure Prevention Standard
LAB-39-21-00015-P	09/29/22	Minimum Wage	To comply with Labor Law 652(6) that increased the minimum wage, and implement wage determined by Labor Law 652(1)(c)
LAB-39-21-00016-P	11/10/22	Minimum Wage for Farmworkers	To comply with Sections 652 and 673 of the Labor Law, by adopting minimum wage increases for farmworkers
LIQUOR AUTHORITY, STATE			
LQR-36-21-00002-P	11/10/22	Commencement of administrative disciplinary proceedings via electronic means	To modernize outdated administrative disciplinary procedures to provide for service of pleadings via electronic means
LONG ISLAND POWER AUTHORITY			
*LPA-08-01-00003-P	exempt	Pole attachments and related matters	To approve revisions to the authority's tariff
*LPA-41-02-00005-P	exempt	Tariff for electric service	To revise the tariff for electric service
*LPA-04-06-00007-P	exempt	Tariff for electric service	To adopt provisions of a ratepayer protection plan
*LPA-03-10-00004-P	exempt	Residential late payment charges	To extend the application of late payment charges to residential customers
*LPA-15-18-00013-P	exempt	Outdoor area lighting	To add an option and pricing for efficient LED lamps to the Authority's outdoor area lighting
*LPA-37-18-00013-P	exempt	The net energy metering provisions of the Authority's Tariff for Electric Service	To implement PSC guidance increasing eligibility for value stack compensation to larger projects
*LPA-37-18-00017-P	exempt	The treatment of electric vehicle charging in the Authority's Tariff for Electric Service.	To effectuate the outcome of the Public Service Commission's proceeding on electric vehicle supply equipment.
*LPA-37-18-00018-P	exempt	The treatment of energy storage in the Authority's Tariff for Electric Service.	To effectuate the outcome of the Public Service Commission's proceeding on the NY Energy Storage Roadmap.
*LPA-09-20-00010-P	exempt	To update and implement latest requirements for ESCOs proposing to do business within the Authority's service territory.	To strengthen customer protections and be consistent with Public Service Commission orders on retail energy markets.
*LPA-28-20-00033-EP	exempt	LIPA's late payment charges, reconnection charges, and low-income customer discount enrollment	To allow waiver of late payment and reconnection charges and extend the grace period for re-enrolling in customer bill discounts

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
LONG ISLAND POWER AUTHORITY			
*LPA-37-20-00013-EP	..... exempt	The terms of deferred payment agreements available to LIPA's commercial customers	To expand eligibility for and ease the terms of deferred payment agreements for LIPA's commercial customers
LPA-12-21-00011-P	..... exempt	LIPA's Long Island Choice (retail choice) tariff	To simplify and improve Long Island Choice based on stakeholder collaborative input
LPA-38-21-00008-P	..... exempt	The Authority's annual budget, as reflected in the rates and charges in the Tariff for Electric Service.	To update the Tariff to implement the Authority's annual budget and corresponding rate adjustments.
LPA-38-21-00009-P	..... exempt	Community distributed generation and remote crediting tariffs.	To conform LIPA's community distributed generation and remote crediting tariffs with recent PSC orders.
LPA-38-21-00010-P	..... exempt	A Customer Benefit Contribution (CBC) Charge for new mass market net metering customers.	To ensure adequate contribution to LIPA's customer benefits programs.
LPA-38-21-00011-P	..... exempt	Conform Long Island Choice program rules and requirements with final DPS recommendations from collaborative proceeding.	To conform with Statewide retail choice policy and eliminate program inefficiencies.
LPA-38-21-00012-P	..... exempt	Miscellaneous clean-up of Tariff for Electric Service.	To clarify potential ambiguity and make other minor Tariff updates.
LPA-38-21-00013-P	..... exempt	Daily service charges during prolonged outages.	To conform with statewide policy.
LPA-39-21-00014-P	..... 11/29/22	Access to records and fees collected under the Freedom of Information Law.	To make necessary technical updates and to conform with FOIL regarding collection of fees.

MENTAL HEALTH, OFFICE OF

OMH-09-21-00001-EP	..... 03/03/22	Redesigning Residential Treatment Facilities (RTF)	To provide clarity and provide uniformity relating to RTF's and to implement Chapter 58 of the Laws of 2020
OMH-20-21-00006-P	..... 05/19/22	Establishment of Youth Assertive Community Treatment (ACT)	To include children in the populations eligible to receive ACT and other conforming changes
OMH-33-21-00005-P	..... 08/18/22	Establishes Crisis Stabilization Centers.	To establish standards for a Crisis Stabilization Center which provides a full range of psychiatric and substance use services.
OMH-40-21-00007-EP	..... 10/06/22	COVID-19 Masking Program	To implement a COVID-19 mask program
OMH-43-21-00002-EP	..... 10/27/22	COVID-19 Vaccination Program	To implement a COVID-19 vaccination program in OMH Operated or Licensed Hospitals

METROPOLITAN TRANSPORTATION AGENCY

MTA-16-21-00004-EP 04/21/22	Requiring mask wearing when using the facilities and conveyances of the MTA and its operating affiliates and subsidiaries	To safeguard the public health and safety by adding a new all-agency rule requiring the use of masks in facilities and conveyances
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Agency I.D. No.	Expires	Subject Matter	Purpose of Action
MOTOR VEHICLES, DEPARTMENT OF			
MTV-43-21-00004-P	10/27/22	Motor Vehicle Accident Prevention Course by Internet or other Technologies (Alternate Delivery Methods)	Conforms regulation with statute
NIAGARA FALLS WATER BOARD			
*NFW-04-13-00004-EP	exempt	Adoption of Rates, Fees and Charges	To pay for the increased costs necessary to operate, maintain and manage the system, and to achieve covenants with bondholders
*NFW-13-14-00006-EP	exempt	Adoption of Rates, Fees and Charges	To pay for increased costs necessary to operate, maintain and manage the system and to achieve covenants with the bondholders
NIAGARA FRONTIER TRANSPORTATION AUTHORITY			
NFT-31-21-00012-P	08/04/22	Procurement Guidelines of the Niagara Frontier Transportation Authority and Niagara Frontier Transit Metro System, Inc.	To amend Procurement Guidelines to reflect changes in law, clarifying provisions and change in signing authority level
OGDENSBURG BRIDGE AND PORT AUTHORITY			
*OBA-33-18-00019-P	exempt	Increase in Bridge Toll Structure	To increase bridge toll revenue in order to become financially self-supporting. Our bridge operations are resulting in deficit.
*OBA-07-19-00019-P	exempt	Increase in Bridge Toll Structure	To increase bridge toll revenue in order to become financially self-supporting. Our bridge operations are resulting in deficit
PEOPLE WITH DEVELOPMENTAL DISABILITIES, OFFICE FOR			
PDD-37-21-00001-P	09/15/22	Certified Residential Opportunities	To provide equity in opportunities for certified residential opportunities
PDD-40-21-00002-EP	10/06/22	Mandatory Face Coverings in OPWDD Certified Services	To protect public health
PDD-43-21-00003-EP	10/27/22	COVID-19 vaccines	To require vaccinations in certain OPWDD settings
PDD-46-21-00015-P	11/17/22	Community Transition Services	To match federal limitations and use gender neutral terminology
POWER AUTHORITY OF THE STATE OF NEW YORK			
*PAS-01-10-00010-P	exempt	Rates for the sale of power and energy	Update ECSB Programs customers' service tariffs to streamline them/include additional required information
PAS-44-21-00016-P	exempt	Rates for the Sale of Power and Energy	To align rates and costs
PUBLIC SERVICE COMMISSION			
*PSC-09-99-00012-P	exempt	Transfer of books and records by Citizens Utilities Company	To relocate Ogden Telephone Company's books and records out-of-state

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-15-99-00011-P	..... exempt	Electronic tariff by Woodcliff Park Corp.	To replace the company's current tariff with an electronic tariff
*PSC-12-00-00001-P	..... exempt	Winter bundled sales service election date by Central Hudson Gas & Electric Corporation	To revise the date
*PSC-44-01-00005-P	..... exempt	Annual reconciliation of gas costs by Corning Natural Gas Corporation	To authorize the company to include certain gas costs
*PSC-07-02-00032-P	..... exempt	Uniform business practices	To consider modification
*PSC-36-03-00010-P	..... exempt	Performance assurance plan by Verizon New York	To consider changes
*PSC-40-03-00015-P	..... exempt	Receipt of payment of bills by St. Lawrence Gas Company	To revise the process
*PSC-41-03-00010-P	..... exempt	Annual reconciliation of gas expenses and gas cost recoveries	To consider filings of various LDCs and municipalities
*PSC-41-03-00011-P	..... exempt	Annual reconciliation of gas expenses and gas cost recoveries	To consider filings of various LDCs and municipalities
*PSC-44-03-00009-P	..... exempt	Retail access data between jurisdictional utilities	To accommodate changes in retail access market structure or commission mandates
*PSC-02-04-00008-P	..... exempt	Delivery rates for Con Edison's customers in New York City and Westchester County by the City of New York	To rehear the Nov. 25, 2003 order
*PSC-06-04-00009-P	..... exempt	Transfer of ownership interest by SCS Energy LLC and AE Investors LLC	To transfer interest in Steinway Creek Electric Generating Company LLC to AE Investors LLC
*PSC-10-04-00005-P	..... exempt	Temporary protective order	To consider adopting a protective order
*PSC-10-04-00008-P	..... exempt	Interconnection agreement between Verizon New York Inc. and VIC-RMTS-DC, L.L.C. d/b/a Verizon Avenue	To amend the agreement
*PSC-14-04-00008-P	..... exempt	Submetering of natural gas service to industrial and commercial customers by Hamburg Fairgrounds	To submeter gas service to commercial customers located at the Buffalo Speedway
*PSC-15-04-00022-P	..... exempt	Submetering of electricity by Glenn Gardens Associates, L.P.	To permit submetering at 175 W. 87th St., New York, NY
*PSC-21-04-00013-P	..... exempt	Verizon performance assurance plan by Metropolitan Telecommunications	To clarify the appropriate performance level
*PSC-22-04-00010-P	..... exempt	Approval of new types of electricity meters by Powell Power Electric Company	To permit the use of the PE-1250 electronic meter
*PSC-22-04-00013-P	..... exempt	Major gas rate increase by Consolidated Edison Company of New York, Inc.	To increase annual gas revenues
*PSC-22-04-00016-P	..... exempt	Master metering of water by South Liberty Corporation	To waive the requirement for installation of separate water meters

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-25-04-00012-P	..... exempt	Interconnection agreement between Frontier Communications of Ausable Valley, Inc., et al. and Sprint Communications Company, L.P.	To amend the agreement
*PSC-27-04-00008-P	..... exempt	Interconnection agreement between Verizon New York Inc. and various Verizon wireless affiliates	To amend the agreement
*PSC-27-04-00009-P	..... exempt	Interconnection agreement between Verizon New York Inc. and various Verizon wireless affiliates	To amend the agreement
*PSC-28-04-00006-P	..... exempt	Approval of loans by Dunkirk & Fredonia Telephone Company and Cassadaga Telephone Corporation	To authorize participation in the parent corporation's line of credit
*PSC-31-04-00023-P	..... exempt	Distributed generation service by Consolidated Edison Company of New York, Inc.	To provide an application form
*PSC-34-04-00031-P	..... exempt	Flat rate residential service by Emerald Green Lake Louise Marie Water Company, Inc.	To set appropriate level of permanent rates
*PSC-35-04-00017-P	..... exempt	Application form for distributed generation by Orange and Rockland Utilities, Inc.	To establish a new supplementary application form for customers
*PSC-43-04-00016-P	..... exempt	Accounts recievable by Rochester Gas and Electric Corporation	To include in its tariff provisions for the purchase of ESCO accounts recievable
*PSC-46-04-00012-P	..... exempt	Service application form by Consolidated Edison Company of New York, Inc.	To revise the form and make housekeeping changes
*PSC-46-04-00013-P	..... exempt	Rules and guidelines governing installation of metering equipment	To establish uniform statewide business practices
*PSC-02-05-00006-P	..... exempt	Violation of the July 22, 2004 order by Dutchess Estates Water Company, Inc.	To consider imposing remedial actions against the company and its owners, officers and directors
*PSC-09-05-00009-P	..... exempt	Submetering of natural gas service by Hamlet on Olde Oyster Bay	To consider submetering of natural gas to a commercial customer
*PSC-14-05-00006-P	..... exempt	Request for deferred accounting authorization by Freeport Electric Inc.	To defer expenses beyond the end of the fiscal year
*PSC-18-05-00009-P	..... exempt	Marketer Assignment Program by Consolidated Edison Company of New York, Inc.	To implement the program
*PSC-20-05-00028-P	..... exempt	Delivery point aggregation fee by Allied Frozen Storage, Inc.	To review the calculation of the fee
*PSC-25-05-00011-P	..... exempt	Metering, balancing and cashout provisions by Central Hudson Gas & Electric Corporation	To establish provisions for gas customers taking service under Service Classification Nos. 8, 9 and 11
*PSC-27-05-00018-P	..... exempt	Annual reconciliation of gas costs by New York State Electric & Gas Corporation	To consider the manner in which the gas cost incentive mechanism has been applied

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-41-05-00013-P	..... exempt	Annual reconciliation of gas expenses and gas cost recoveries by local distribution companies and municipalities	To consider the filings
*PSC-45-05-00011-P	..... exempt	Treatment of lost and unaccounted gas costs by Corning Natural Gas Corporation	To defer certain costs
*PSC-46-05-00015-P	..... exempt	Sale of real and personal property by the Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and Steel Arrow, LLC	To consider the sale
*PSC-47-05-00009-P	..... exempt	Transferral of gas supplies by Corning Natural Gas Corporation	To approve the transfer
*PSC-50-05-00008-P	..... exempt	Long-term debt by Saratoga Glen Hollow Water Supply Corp.	To obtain long-term debt
*PSC-04-06-00024-P	..... exempt	Transfer of ownership interests by Mirant NY-Gen LLC and Orange and Rockland Utilities, Inc.	To approve of the transfer
*PSC-06-06-00015-P	..... exempt	Gas curtailment policies and procedures	To examine the manner and extent to which gas curtailment policies and procedures should be modified and/or established
*PSC-07-06-00009-P	..... exempt	Modification of the current Environmental Disclosure Program	To include an attributes accounting system
*PSC-22-06-00019-P	..... exempt	Hourly pricing by National Grid	To assess the impacts
*PSC-22-06-00020-P	..... exempt	Hourly pricing by New York State Electric & Gas Corporation	To assess the impacts
*PSC-22-06-00021-P	..... exempt	Hourly pricing by Rochester Gas & Electric Corporation	To assess the impacts
*PSC-22-06-00022-P	..... exempt	Hourly pricing by Consolidated Edison Company of New York, Inc.	To assess the impacts
*PSC-22-06-00023-P	..... exempt	Hourly pricing by Orange and Rockland Utilities, Inc.	To assess the impacts
*PSC-24-06-00005-EP	..... exempt	Supplemental home energy assistance benefits	To extend the deadline to Central Hudson's low-income customers
*PSC-25-06-00017-P	..... exempt	Purchased power adjustment by Massena Electric Department	To revise the method of calculating the purchased power adjustment and update the factor of adjustment
*PSC-34-06-00009-P	..... exempt	Inter-carrier telephone service quality standards and metrics by the Carrier Working Group	To incorporate appropriate modifications
*PSC-37-06-00015-P	..... exempt	Procedures for estimation of customer bills by Rochester Gas and Electric Corporation	To consider estimation procedures
*PSC-37-06-00017-P	..... exempt	Procedures for estimation of customer bills by Rochester Gas and Electric Corporation	To consider estimation procedures

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-43-06-00014-P	..... exempt	Electric delivery services by Strategic Power Management, Inc.	To determine the proper mechanism for the rate-recovery of costs
*PSC-04-07-00012-P	..... exempt	Petition for rehearing by Orange and Rockland Utilities, Inc.	To clarify the order
*PSC-06-07-00015-P	..... exempt	Meter reading and billing practices by Central Hudson Gas & Electric Corporation	To continue current meter reading and billing practices for electric service
*PSC-06-07-00020-P	..... exempt	Meter reading and billing practices by Central Hudson Gas & Electric Corporation	To continue current meter reading and billing practices for gas service
*PSC-11-07-00010-P	..... exempt	Investigation of the electric power outages by the Consolidated Edison Company of New York, Inc.	To implement the recommendations in the staff's investigation
*PSC-11-07-00011-P	..... exempt	Storm-related power outages by Consolidated Edison Company of New York, Inc.	To modify the company's response to power outages, the timing for any such changes and other related matters
*PSC-17-07-00008-P	..... exempt	Interconnection agreement between Verizon New York Inc. and BridgeCom International, Inc.	To amend the agreement
*PSC-18-07-00010-P	..... exempt	Existing electric generating stations by Independent Power Producers of New York, Inc.	To repower and upgrade existing electric generating stations owned by Rochester Gas and Electric Corporation
*PSC-20-07-00016-P	..... exempt	Tariff revisions and making rates permanent by New York State Electric & Gas Corporation	To seek rehearing
*PSC-21-07-00007-P	..... exempt	Natural Gas Supply and Acquisition Plan by Corning Natural Gas Corporation	To revise the rates, charges, rules and regulations for gas service
*PSC-22-07-00015-P	..... exempt	Demand Side Management Program by Consolidated Edison Company of New York, Inc.	To recover incremental program costs and lost revenue
*PSC-23-07-00022-P	..... exempt	Supplier, transportation, balancing and aggregation service by National Fuel Gas Distribution Corporation	To explicitly state in the company's tariff that the threshold level of elective upstream transmission capacity is a maximum of 112,600 Dth/day of marketer-provided upstream capacity
*PSC-24-07-00012-P	..... exempt	Gas Efficiency Program by the City of New York	To consider rehearing a decision establishing a Gas Efficiency Program
*PSC-39-07-00017-P	..... exempt	Gas bill issuance charge by New York State Electric & Gas Corporation	To create a gas bill issuance charge unbundled from delivery rates
*PSC-41-07-00009-P	..... exempt	Submetering of electricity rehearing	To seek reversal
*PSC-42-07-00012-P	..... exempt	Energy efficiency program by Orange and Rockland Utilities, Inc.	To consider any energy efficiency program for Orange and Rockland Utilities, Inc.'s electric service
*PSC-42-07-00013-P	..... exempt	Revenue decoupling by Orange and Rockland Utilities, Inc.	To consider a revenue decoupling mechanism for Orange and Rockland Utilities, Inc.
*PSC-45-07-00005-P	..... exempt	Customer incentive programs by Orange and Rockland Utilities, Inc.	To establish a tariff provision

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-02-08-00006-P	..... exempt	Additional central office codes in the 315 area code region	To consider options for making additional codes
*PSC-03-08-00006-P	..... exempt	Rehearing of the accounting determinations	To grant or deny a petition for rehearing of the accounting determinations
*PSC-04-08-00010-P	..... exempt	Granting of easement rights on utility property by Central Hudson Gas & Electric Corporation	To grant easement rights to Millennium Pipeline Company, L.L.C.
*PSC-04-08-00012-P	..... exempt	Marketing practices of energy service companies by the Consumer Protection Board and New York City Department of Consumer Affairs	To consider modifying the commission's regulation over marketing practices of energy service companies
*PSC-08-08-00016-P	..... exempt	Transfer of ownership by Entergy Nuclear Fitzpatrick LLC, et al.	To consider the transfer
*PSC-12-08-00019-P	..... exempt	Extend the provisions of the existing electric rate plan by Rochester Gas and Electric Corporation	To consider the request
*PSC-12-08-00021-P	..... exempt	Extend the provisions of the existing gas rate plan by Rochester Gas and Electric Corporation	To consider the request
*PSC-13-08-00011-P	..... exempt	Waiver of commission policy and NYSEG tariff by Turner Engineering, PC	To grant or deny Turner's petition
*PSC-13-08-00012-P	..... exempt	Voltage drops by New York State Electric & Gas Corporation	To grant or deny the petition
*PSC-23-08-00008-P	..... exempt	Petition requesting rehearing and clarification of the commission's April 25, 2008 order denying petition of public utility law project	To consider whether to grant or deny, in whole or in part, the May 7, 2008 Public Utility Law Project (PULP) petition for rehearing and clarification of the commission's April 25, 2008 order denying petition of Public Utility Law Project
*PSC-25-08-00007-P	..... exempt	Policies and procedures regarding the selection of regulatory proposals to meet reliability needs	To establish policies and procedures regarding the selection of regulatory proposals to meet reliability needs
*PSC-25-08-00008-P	..... exempt	Report on Callable Load Opportunities	Rider U report assessing callable load opportunities in New York City and Westchester County during the next 10 years
*PSC-28-08-00004-P	..... exempt	Con Edison's procedure for providing customers access to their account information	To consider Con Edison's implementation plan and timetable for providing customers access to their account information
*PSC-31-08-00025-P	..... exempt	Recovery of reasonable DRS costs from the cost mitigation reserve (CMR)	To authorize recovery of the DRS costs from the CMR
*PSC-32-08-00009-P	..... exempt	The ESCO referral program for KEDNY to be implemented by October 1, 2008	To approve, reject or modify, in whole or in part, KEDNY's recommended ESCO referral program
*PSC-33-08-00008-P	..... exempt	Noble Allegany's request for lightened regulation	To consider Noble Allegany's request for lightened regulation as an electric corporation
*PSC-36-08-00019-P	..... exempt	Land Transfer in the Borough of Manhattan, New York	To consider petition for transfer of real property to NYPH

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-39-08-00010-P	..... exempt	RG&E's economic development plan and tariffs	Consideration of the approval of RG&E's economic development plan and tariffs
*PSC-40-08-00010-P	..... exempt	Loans from regulated company to its parent	To determine if the cash management program resulting in loans to the parent should be approved
*PSC-41-08-00009-P	..... exempt	Transfer of control of cable TV franchise	To determine if the transfer of control of Margaretville's cable TV subsidiary should be approved
*PSC-43-08-00014-P	..... exempt	Annual Reconciliation of Gas Expenses and Gas Cost Recoveries	The filings of various LDCs and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries
*PSC-46-08-00008-P	..... exempt	Property transfer in the Village of Avon, New York	To consider a petition for the transfer of street lighting and attached equipment to the Village of Avon, New York
*PSC-46-08-00010-P	..... exempt	A transfer of indirect ownership interests in nuclear generation facilities	Consideration of approval of a transfer of indirect ownership interests in nuclear generation facilities
*PSC-46-08-00014-P	..... exempt	The attachment of cellular antennae to an electric transmission tower	To approve, reject or modify the request for permission to attach cellular antennae to an electric transmission tower
*PSC-48-08-00005-P	..... exempt	A National Grid high efficiency gas heating equipment rebate program	To expand eligibility to customers converting from oil to natural gas
*PSC-48-08-00008-P	..... exempt	Petition for the master metering and submetering of electricity	To consider the request of Bay City Metering, to master meter & submeter electricity at 345 E. 81st St., New York, New York
*PSC-48-08-00009-P	..... exempt	Petition for the submetering of electricity	To consider the request of PCV/ST to submeter electricity at Peter Cooper Village & Stuyvesant Town, New York, New York
*PSC-50-08-00018-P	..... exempt	Market Supply Charge	A study on the implementation of a revised Market Supply Charge
*PSC-51-08-00006-P	..... exempt	Commission's October 27, 2008 Order on Future of Retail Access Programs in Case 07-M-0458	To consider a Petition for rehearing of the Commission's October 27, 2008 Order in Case 07-M-0458
*PSC-51-08-00007-P	..... exempt	Commission's October 27, 2008 Order in Cases 98-M-1343, 07-M-1514 and 08-G-0078	To consider Petitions for rehearing of the Commission's October 27, 2008 Order in Cases 98-M-1343, 07-M-1514 and 08-G-0078
*PSC-53-08-00011-P	..... exempt	Use of deferred Rural Telephone Bank funds	To determine if the purchase of a softswitch by Hancock is an appropriate use of deferred Rural Telephone Bank funds
*PSC-53-08-00012-P	..... exempt	Transfer of permanent and temporary easements at 549-555 North Little Tor Road, New City, NY	Transfer of permanent and temporary easements at 549-555 North Little Tor Road, New City, NY
*PSC-53-08-00013-P	..... exempt	To transfer common stock and ownership	To consider transfer of common stock and ownership
*PSC-01-09-00015-P	..... exempt	FCC decision to redefine service area of Citizens/Frontier	Review and consider FCC proposed redefinition of Citizens/Frontier service area

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-02-09-00010-P	..... exempt	Competitive classification of independent local exchange company, and regulatory relief appropriate thereto	To determine if Chazy & Westport Telephone Corporation more appropriately belongs in scenario 1 rather than scenario 2
*PSC-05-09-00008-P	..... exempt	Revenue allocation, rate design, performance metrics, and other non-revenue requirement issues	To consider any remaining non-revenue requirement issues related to the Company's May 9, 2008 tariff filing
*PSC-05-09-00009-P	..... exempt	Numerous decisions involving the steam system including cost allocation, energy efficiency and capital projects	To consider the long term impacts on steam rates and on public policy of various options concerning the steam system
*PSC-06-09-00007-P	..... exempt	Interconnection of the networks between Frontier Comm. and WVT Communications for local exchange service and exchange access	To review the terms and conditions of the negotiated agreement between Frontier Comm. and WVT Comm.
*PSC-07-09-00015-P	..... exempt	Transfer certain utility assets located in the Town of Montgomery from plant held for future use to non-utility property	To consider the request to transfer certain utility assets located in the Town of Montgomery to non-utility assets
*PSC-07-09-00017-P	..... exempt	Request for authorization to defer the incremental costs incurred in the restoration work resulting from the ice storm	To allow the company to defer the incremental costs incurred in the restoration work resulting from the ice storm
*PSC-07-09-00018-P	..... exempt	Whether to permit the submetering of natural gas service to an industrial and commercial customer at Cooper Union, New York, NY	To consider the request of Cooper Union, to submeter natural gas at 41 Cooper Square, New York, New York
*PSC-12-09-00010-P	..... exempt	Charges for commodity	To charge customers for commodity costs
*PSC-12-09-00012-P	..... exempt	Charges for commodity	To charge customers for commodity costs
*PSC-13-09-00008-P	..... exempt	Options for making additional central office codes available in the 718/347 numbering plan area	To consider options for making additional central office codes available in the 718/347 numbering plan area
*PSC-14-09-00014-P	..... exempt	The regulation of revenue requirements for municipal utilities by the Public Service Commission	To determine whether the regulation of revenue requirements for municipal utilities should be modified
*PSC-16-09-00010-P	..... exempt	Petition for the submetering of electricity	To consider the request of AMPS on behalf of Park Imperial to submeter electricity at 230 W. 56th Street, in New York, New York
*PSC-16-09-00020-P	..... exempt	Whether SUNY's core accounts should be exempt from the mandatory assignment of local distribution company (LDC) capacity	Whether SUNY's core accounts should be exempt from the mandatory assignment of local distribution company (LDC) capacity
*PSC-17-09-00010-P	..... exempt	Whether to permit the use of Elster REX2 solid state electric meter for use in residential and commercial accounts	To permit electric utilities in New York State to use the Elster REX2
*PSC-17-09-00011-P	..... exempt	Whether Brooklyn Navy Yard Cogeneration Partners, L.P. should be reimbursed by Con Edison for past and future use taxes	Whether Brooklyn Navy Yard Cogeneration Partners, L.P. should be reimbursed by Con Edison for past and future use taxes
*PSC-17-09-00012-P	..... exempt	Petition for the submetering of gas at commercial property	To consider the request of Turner Construction, to submeter natural gas at 550 Short Ave., & 10 South St., Governors Island, NY

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-17-09-00014-P	..... exempt	Benefit-cost framework for evaluating AMI programs prepared by the DPS Staff	To consider a benefit-cost framework for evaluating AMI programs prepared by the DPS Staff
*PSC-17-09-00015-P	..... exempt	The construction of a tower for wireless antennas on land owned by National Grid	To approve, reject or modify the petition to build a tower for wireless antennas in the Town of Onondaga
*PSC-18-09-00012-P	..... exempt	Petition for rehearing of Order approving the submetering of electricity	To consider the request of Frank Signore to rehear petition to submeter electricity at One City Place in White Plains, New York
*PSC-18-09-00013-P	..... exempt	Petition for the submetering of electricity	To consider the request of Living Opportunities of DePaul to submeter electricity at E. Main St. located in Batavia, New York
*PSC-18-09-00017-P	..... exempt	Approval of an arrangement for attachment of wireless antennas to the utility's transmission facilities in the City of Yonkers	To approve, reject or modify the petition for the existing wireless antenna attachment to the utility's transmission tower
*PSC-20-09-00016-P	..... exempt	The recovery of, and accounting for, costs associated with the Companies' advanced metering infrastructure (AMI) pilots etc	To consider a filing of the Companies as to the recovery of, and accounting for, costs associated with it's AMI pilots etc
*PSC-20-09-00017-P	..... exempt	The recovery of, and accounting for, costs associated with CHG&E's AMI pilot program	To consider a filing of CHG&E as to the recovery of, and accounting for, costs associated with it's AMI pilot program
*PSC-22-09-00011-P	..... exempt	Cost allocation for Consolidated Edison's East River Repowering Project	To determine whether any changes are warranted in the cost allocation of Consolidated Edison's East River Repowering Project
*PSC-25-09-00005-P	..... exempt	Whether to grant, deny, or modify, in whole or in part, the petition	Whether to grant, deny, or modify, in whole or in part, the petition
*PSC-25-09-00006-P	..... exempt	Electric utility implementation plans for proposed web based SIR application process and project status database	To determine if the proposed web based SIR systems are adequate and meet requirements needed for implementation
*PSC-25-09-00007-P	..... exempt	Electric rates for Consolidated Edison Company of New York, Inc	Consider a Petition for Rehearing filed by Consolidated Edison Company of New York, Inc
*PSC-27-09-00011-P	..... exempt	Interconnection of the networks between Vernon and tw telecom of new york l.p. for local exchange service and exchange access.	To review the terms and conditions of the negotiated agreement between Vernon and tw telecom of new york l.p.
*PSC-27-09-00014-P	..... exempt	Billing and payment for energy efficiency measures through utility bill	To promote energy conservation
*PSC-27-09-00015-P	..... exempt	Interconnection of the networks between Oriskany and tw telecom of new york l.p. for local exchange service and exchange access	To review the terms and conditions of the negotiated agreement between Oriskany and tw telecom of new york l.p.
*PSC-29-09-00011-P	..... exempt	Consideration of utility compliance filings	Consideration of utility compliance filings
*PSC-32-09-00009-P	..... exempt	Cost allocation for Consolidated Edison's East River Repowering Project	To determine whether any changes are warranted in the cost allocation of Consolidated Edison's East River Repowering Project

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-34-09-00016-P	..... exempt	Recommendations made in the Management Audit Final Report	To consider whether to take action or recommendations contained in the Management Audit Final Report
*PSC-34-09-00017-P	..... exempt	To consider the transfer of control of Plattsburgh Cablevision, Inc. d/b/a Charter Communications to CH Communications, LLC	To allow the Plattsburgh Cablevision, Inc. to distribute its equity interest in CH Communications, LLC
*PSC-36-09-00008-P	..... exempt	The increase in the non-bypassable charge implemented by RG&E on June 1, 2009	Considering exemptions from the increase in the non-bypassable charge implemented by RG&E on June 1, 2009
*PSC-37-09-00015-P	..... exempt	Sale of customer-generated steam to the Con Edison steam system	To establish a mechanism for sale of customer-generated steam to the Con Edison steam system
*PSC-37-09-00016-P	..... exempt	Applicability of electronic signatures to Deferred Payment Agreements	To determine whether electronic signatures can be accepted for Deferred Payment Agreements
*PSC-39-09-00015-P	..... exempt	Modifications to the \$5 Bill Credit Program	Consideration of petition of National Grid to modify the Low Income \$5 Bill Credit Program
*PSC-39-09-00018-P	..... exempt	The offset of deferral balances with Positive Benefit Adjustments	To consider a petition to offset deferral balances with Positive Benefit Adjustments
*PSC-40-09-00013-P	..... exempt	Uniform System of Accounts - request for deferral and amortization of costs	To consider a petition to defer and amortize costs
*PSC-51-09-00029-P	..... exempt	Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible ESCOs	To revise the uniform Electronic Data Interchange Standards and business practices to incorporate a contest period
*PSC-51-09-00030-P	..... exempt	Waiver or modification of Capital Expenditure condition of merger	To allow the companies to expend less funds for capital improvement than required by the merger
*PSC-52-09-00006-P	..... exempt	ACE's petition for rehearing for an order regarding generator-specific energy deliverability study methodology	To consider whether to change the Order Prescribing Study Methodology
*PSC-52-09-00008-P	..... exempt	Approval for the New York Independent System Operator, Inc. to incur indebtedness and borrow up to \$50,000,000	To finance the renovation and construction of the New York Independent System Operator, Inc.'s power control center facilities
*PSC-05-10-00008-P	..... exempt	Petition for the submetering of electricity	To consider the request of University Residences - Rochester, LLC to submeter electricity at 220 John Street, Henrietta, NY
*PSC-05-10-00015-P	..... exempt	Petition for the submetering of electricity	To consider the request of 243 West End Avenue Owners Corp. to submeter electricity at 243 West End Avenue, New York, NY
*PSC-06-10-00022-P	..... exempt	The Commission's Order of December 17, 2009 related to redevelopment of Consolidated Edison's Hudson Avenue generating facility	To reconsider the Commission's Order of December 17, 2009 related to redevelopment of the Hudson Avenue generating facility
*PSC-07-10-00009-P	..... exempt	Petition to revise the Uniform Business Practices	To consider the RESA petition to allow rescission of a customer request to return to full utility service

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-08-10-00007-P	..... exempt	Whether to grant, deny, or modify , in whole or in part, the rehearing petition filed in Case 06-E-0847	Whether to grant, deny, or modify , in whole or in part, the rehearing petition filed in Case 06-E-0847
*PSC-08-10-00009-P	..... exempt	Consolidated Edison of New York, Inc. energy efficiency programs	To modify approved energy efficiency programs
*PSC-12-10-00015-P	..... exempt	Recommendations made by Staff intended to enhance the safety of Con Edison's gas operations	To require that Con Edison implement the Staff recommendations intended to enhance the safety of Con Edison's gas operations
*PSC-14-10-00010-P	..... exempt	Petition for the submetering of electricity	To consider the request of 61 Jane Street Owners Corporation to submeter Electricity at 61 Jane Street, Manhattan, NY
*PSC-16-10-00005-P	..... exempt	To consider adopting and expanding mobile stray voltage testing requirements	Adopt additional mobile stray voltage testing requirements
*PSC-16-10-00007-P	..... exempt	Interconnection of the networks between TDS Telecom and PAETEC Communications for local exchange service and exchange access	To review the terms and conditions of the negotiated agreement between TDS Telecom and PAETEC Communications
*PSC-16-10-00015-P	..... exempt	Interconnection of the networks between Frontier and Choice One Communications for local exchange service and exchange access	To review the terms and conditions of the negotiated agreement between Frontier and Choice One Communications
*PSC-18-10-00009-P	..... exempt	Electric utility transmission right-of-way management practices	To consider electric utility transmission right-of-way management practices
*PSC-19-10-00022-P	..... exempt	Whether National Grid should be permitted to transfer a parcel of property located at 1 Eddy Street, Fort Edward, New York	To decide whether to approve National Grid's request to transfer a parcel of vacant property in Fort Edward, New York
*PSC-22-10-00006-P	..... exempt	Requirement that Noble demonstrate that its affiliated electric corporations operating in New York are providing safe service	Consider requiring that Noble demonstrate that its affiliated electric corporations in New York are providing safe service
*PSC-22-10-00008-P	..... exempt	Petition for the submetering of electricity	To consider the request of 48-52 Franklin Street to submeter electricity at 50 Franklin Street, New York, New York
*PSC-24-10-00009-P	..... exempt	Verizon New York Inc. tariff regulations relating to voice messaging service	To remove tariff regulations relating to retail voice messaging service from Verizon New York Inc.'s tariff
*PSC-25-10-00012-P	..... exempt	Reassignment of the 2-1-1 abbreviated dialing code	Consideration of petition to reassign the 2-1-1 abbreviated dialing code
*PSC-27-10-00016-P	..... exempt	Petition for the submetering of electricity	To consider the request of 9271 Group, LLC to submeter electricity at 960 Busti Avenue, Buffalo, New York
*PSC-34-10-00003-P	..... exempt	The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program	The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program
*PSC-34-10-00005-P	..... exempt	Approval of a contract for \$250,000 in tank repairs that may be a financing	To decide whether to approve a contract between the parties that may be a financing of \$250,000 for tank repairs

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-34-10-00006-P	..... exempt	The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program	The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program
*PSC-36-10-00010-P	..... exempt	Central Hudson's procedures, terms and conditions for an economic development plan	Consideration of Central Hudson's procedures, terms and conditions for an economic development plan
*PSC-40-10-00014-P	..... exempt	Disposition of a state sales tax refund	To determine how much of a state sales tax refund should be retained by National Grid
*PSC-40-10-00021-P	..... exempt	Whether to permit the submetering of natural gas service to a commercial customer at Quaker Crossing Mall	To permit the submetering of natural gas service to a commercial customer at Quaker Crossing Mall
*PSC-41-10-00018-P	..... exempt	Amount of hourly interval data provided to Hourly Pricing customers who have not installed a phone line to read meter	Allow Central Hudson to provide less than a years worth of interval data and charge for manual meter reading for some customers
*PSC-41-10-00022-P	..... exempt	Request for waiver of the individual living unit metering requirements at 5742 Route 5, Vernon, NY	Request for waiver of the individual living unit metering requirements at 5742 Route 5, Vernon, NY
*PSC-42-10-00011-P	..... exempt	Petition for the submetering of electricity	To consider the request of 4858 Group, LLC to submeter electricity at 456 Main Street, Buffalo, New York
*PSC-43-10-00016-P	..... exempt	Utility Access to Ducts, Conduit Facilities and Utility Poles	To review the complaint from Optical Communications Group
*PSC-44-10-00003-P	..... exempt	Third and fourth stage gas rate increase by Corning Natural Gas Corporation	To consider Corning Natural Gas Corporation's request for a third and fourth stage gas rate increase
*PSC-51-10-00018-P	..... exempt	Commission proceeding concerning three-phase electric service by all major electric utilities	Investigate the consistency of the tariff provisions for three-phase electric service for all major electric utilities
*PSC-11-11-00003-P	..... exempt	The proposed transfer of 55.42 acres of land and \$1.4 million of revenues derived from the rendition of public service	The proposed transfer of 55.42 acres of land and \$1.4 million of revenues derived from the rendition of public service
*PSC-13-11-00005-P	..... exempt	Exclude the minimum monthly bill component from the earnings test calculation	Exclude the minimum monthly bill component from the earnings test calculation
*PSC-14-11-00009-P	..... exempt	Petition for the submetering of electricity	To consider the request of 83-30 118th Street to submeter electricity at 83-30 118th Street, Kew Gardens, New York
*PSC-19-11-00007-P	..... exempt	Utility price reporting requirements related to the Commission's "Power to Choose" website	Modify the Commission's utility electric commodity price reporting requirements related to the "Power to Choose" website
*PSC-20-11-00012-P	..... exempt	Petition for the submetering of electricity	To consider the request of KMW Group LLC to submeter electricity at 122 West Street, Brooklyn, New York
*PSC-20-11-00013-P	..... exempt	Determining the reasonableness of Niagara Mohawk Power Corporation d/b/a National Grid 's make ready charges	To determine if the make ready charges of Niagara Mohawk Power Corporation d/b/a National Grid are reasonable

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-22-11-00004-P	..... exempt	Whether to permit the use of the Sensus accWAVE for use in residential gas meter applications	To permit gas utilities in New York State to use the Sensus accWAVE diaphragm gas meter
*PSC-26-11-00007-P	..... exempt	Water rates and charges	To approve an increase in annual revenues by about \$25,266 or 50%
*PSC-26-11-00009-P	..... exempt	Petition for the submetering of electricity at commercial property	To consider the request of by Hoosick River Hardwoods, LLC to submeter electricity at 28 Taylor Avenue, in Berlin, New York
*PSC-26-11-00012-P	..... exempt	Waiver of generation retirement notice requirements	Consideration of waiver of generation retirement notice requirements
*PSC-29-11-00011-P	..... exempt	Petition requesting the Commission reconsider its May 19, 2011 Order and conduct a hearing, and petition to stay said Order.	To consider whether to grant or deny, in whole or in part, Windstream New York's Petition For Reconsideration and Rehearing.
*PSC-35-11-00011-P	..... exempt	Whether to permit Consolidated Edison a waiver to commission regulations Part 226.8	Permit Consolidated Edison to conduct a inspection program in lieu of testing the accuracy of Category C meters
*PSC-36-11-00006-P	..... exempt	To consider expanding mobile stray voltage testing requirements	Adopt additional mobile stray voltage testing requirements
*PSC-38-11-00002-P	..... exempt	Operation and maintenance procedures pertaining to steam trap caps	Adopt modified steam operation and maintenance procedures
*PSC-38-11-00003-P	..... exempt	Waiver of certain provisions of the electric service tariffs of Con Edison	Consideration of waiver of certain provisions of the electric service tariffs of Con Edison
*PSC-40-11-00010-P	..... exempt	Participation of regulated local exchange carriers in the New York Data Exchange, Inc. (NYDE)	Whether to partially modify its order requiring regulated local exchange carriers' participation NYDE
*PSC-40-11-00012-P	..... exempt	Granting of transfer of plant in-service to a regulatory asset	To approve transfer and recovery of unamortized plant investment
*PSC-42-11-00018-P	..... exempt	Availability of telecommunications services in New York State at just and reasonable rates	Providing funding support to help ensure availability of affordable telecommunications service throughout New York
*PSC-43-11-00012-P	..... exempt	Transfer of outstanding shares of stock	Transfer the issued outstanding shares of stock of The Meadows at Hyde Park Water-Works Corporation to HPWS, LLC
*PSC-47-11-00007-P	..... exempt	Remedying miscalculations of delivered gas as between two customer classes	Consideration of Con Edison's proposal to address inter-class delivery imbalances resulting from past Company miscalculations
*PSC-48-11-00007-P	..... exempt	Transfer of controlling interests in generation facilities from Dynegey to PSEG	Consideration of the transfer of controlling interests in electric generation facilities from Dynegey to PSEG
*PSC-48-11-00008-P	..... exempt	Petition for the submetering of electricity	To consider the request of To Better Days, LLC to submeter electricity at 37 East 4th Street, New York, New York
*PSC-01-12-00007-P	..... exempt	The New York State Reliability Council's revisions to its rules and measurements	To adopt revisions to various rules and measurements of the New York State Reliability Council

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-01-12-00008-P	..... exempt	Transfer of real property and easements from NMPNS to NMP3	Consideration of the transfer of real property and easements from NMPNS to NMP3
*PSC-01-12-00009-P	..... exempt	Recovery of expenses related to the expansion of Con Edison's ESCO referral program, PowerMove	To determine how and to what extent expenses related to the Expansion of Con Edison's ESCO referral program should be recovered
*PSC-11-12-00002-P	..... exempt	Whether to grant, deny or modify, in whole or part, Hegeman's petition for a waiver of Commission policy and Con Edison tariff	Whether to grant, deny or modify, in whole or part, Hegeman's petition for a waiver of Commission policy and Con Edison tariff
*PSC-11-12-00005-P	..... exempt	Transfer of land and water supply assets	Transfer the land and associated water supply assets of Groman Shores, LLC to Robert Groman
*PSC-13-12-00005-P	..... exempt	Authorization to transfer certain real property	To decide whether to approve the transfer of certain real property
*PSC-19-12-00023-P	..... exempt	Petition for approval pursuant to Section 70 for the sale of goods with an original cost of less than \$100,000	To consider whether to grant, deny or modify, in whole or in part, the petition filed by Orange and Rockland Utilities, Inc.
*PSC-21-12-00006-P	..... exempt	Tariff filing requirements and refunds	To determine if certain agreements should be filed pursuant to the Public Service Law and if refunds are warranted
*PSC-21-12-00011-P	..... exempt	Whether to grant, deny or modify, in whole or part, the petition for waiver of tariff Rules 8.6 and 47	Whether to grant, deny or modify, in whole or part, the petition for waiver of tariff Rules 8.6 and 47
*PSC-23-12-00007-P	..... exempt	The approval of a financing upon a transfer to Alliance of upstream ownership interests in a generation facility	To consider the approval of a financing upon a transfer to Alliance of upstream ownership interests in a generation facility
*PSC-23-12-00009-P	..... exempt	Over earnings sharing between rate payers and shareholders	To establish an Earnings Sharing Mechanism to be applied following the conclusion of Corning's rate plan
*PSC-27-12-00012-P	..... exempt	Implementation of recommendations made in a Management Audit Report	To consider implementation of recommendations made in a Management Audit Report
*PSC-28-12-00013-P	..... exempt	Exemption of reliability reporting statistics for the purpose of the 2012 Reliability Performance Mechanism	Consideration of Orange and Rockland Utilities request for exemption of the 2012 reliability reporting statistics
*PSC-29-12-00019-P	..... exempt	Waiver of 16 NYCRR 894.1 through 894.4	To allow the Town of Hamden to waive certain preliminary franchising procedures to expedite the franchising process.
*PSC-30-12-00010-P	..... exempt	Waiver of 16 NYCRR 894.1 through 894.4	To allow the Town of Andes to waive certain preliminary franchising procedures to expedite the franchising process
*PSC-33-12-00009-P	..... exempt	Telecommunications companies ability to attach to utility company poles	Consideration of Tech Valley's ability to attach to Central Hudson poles
*PSC-37-12-00009-P	..... exempt	Proposed modification by Con Edison of its procedures to calculate estimated bills to its customers	Proposed modification by Con Edison of its procedures to calculate estimated bills to its customers

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-42-12-00009-P	..... exempt	Regulation of Gipsy Trail Club, Inc.'s long-term financing agreements	To exempt Gipsy Trail Club, Inc. from Commission regulation of its financing agreements
*PSC-45-12-00008-P	..... exempt	Whether to grant, deny or modify, in whole or part, ESHG's petition for a waiver of Commission policy and RG&E tariff	Whether to grant, deny or modify, in whole or part, ESHG's petition for a waiver of Commission policy and RG&E tariff
*PSC-45-12-00010-P	..... exempt	Whether to grant, deny or modify, in whole or in part the petition of Con Edison to grant easements to Millwood Fire District	Whether to grant, deny or modify, in whole or in part the petition of Con Edison to grant easements to Millwood Fire District
*PSC-50-12-00003-P	..... exempt	Affiliate standards for Corning Natural Gas Corporation	To resolve issues raised by Corning Natural Gas Corporation in its petition for rehearing
*PSC-04-13-00006-P	..... exempt	Expansion of mandatory day ahead hourly pricing for customers of Orange and Rockland Utilities with demands above 100 kW	To consider the expansion of mandatory day ahead hourly pricing for customers with demands above 100 kW
*PSC-04-13-00007-P	..... exempt	Authorization to transfer certain real property.	To decide whether to approve the transfer of certain real property.
*PSC-06-13-00008-P	..... exempt	Verizon New York Inc.'s retail service quality	To investigate Verizon New York Inc.'s retail service quality
*PSC-08-13-00012-P	..... exempt	Filing requirements for certain Article VII electric facilities	To ensure that applications for certain electric transmission facilities contain pertinent information
*PSC-08-13-00014-P	..... exempt	Uniform System of Accounts - Request for Accounting Authorization	To allow the company to defer an item of expense or capital beyond the end of the year in which it was incurred
*PSC-12-13-00007-P	..... exempt	Protecting company water mains	To allow the company to require certain customers to make changes to the electrical grounding system at their homes
*PSC-13-13-00008-P	..... exempt	The potential waiver of 16 NYCRR 255.9221(d) completion of integrity assessments for certain gas transmission lines.	To determine whether a waiver of the timely completion of certain gas transmission line integrity assessments should be granted.
*PSC-18-13-00007-P	..... exempt	Whether Demand Energy Networks energy storage systems should be designated technologies for standby rate eligibility purposes	Whether Demand Energy Networks energy storage systems should be designated technologies for standby rate eligibility purposes
*PSC-21-13-00003-P	..... exempt	To consider policies that may impact consumer acceptance and use of electric vehicles	To consider and further develop policies that may impact consumer acceptance and use of electric vehicles
*PSC-21-13-00005-P	..... exempt	To implement an abandonment of Windover's water system	To approve the implementation of abandonment of Windover's water system
*PSC-21-13-00008-P	..... exempt	Rates of National Fuel Gas Distribution Corporation	To make the rates of National Fuel Gas Distribution Corporation temporary, subject to refund, if they are found to be excessive
*PSC-21-13-00009-P	..... exempt	Reporting requirements for natural gas local distribution companies	To help ensure efficient and economic expansion of the natural gas system as appropriate

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-22-13-00009-P	..... exempt	On remand from New York State court litigation, determine the recovery of certain deferred amounts owed NFG by ratepayers	On remand, to determine the recovery of certain deferral amounts owed NFG from ratepayers
*PSC-23-13-00005-P	..... exempt	Waiver of partial payment, directory database distribution, service quality reporting, and service termination regulations	Equalize regulatory treatment based on level of competition and practical considerations
*PSC-25-13-00008-P	..... exempt	To deny, grant or modify, in whole or in part, Central Hudson's rehearing request.	To deny, grant or modify, in whole or in part, Central Hudson's rehearing request.
*PSC-25-13-00009-P	..... exempt	Provision by utilities of natural gas main and service lines.	To help ensure efficient and economic expansion of the natural gas system as appropriate.
*PSC-25-13-00012-P	..... exempt	To deny, grant or modify, in whole or in part, Central Hudson's rehearing request.	To deny, grant or modify, in whole or in part, Central Hudson's rehearing request.
*PSC-27-13-00014-P	..... exempt	Columbia Gas Transmission Corporation Cost Refund	For approval for temporary waiver of tariff provisions regarding its Columbia Gas Transmission Corporation cost refund.
*PSC-28-13-00014-P	..... exempt	Provision for the recovery and allocation of costs of transmission projects that reduce congestion on certain interfaces	To consider the recovery and allocation of costs of transmission projects that reduce congestion on certain interfaces
*PSC-28-13-00016-P	..... exempt	The request of NGT for lightened regulation as a gas corporation.	To consider whether to approve, reject, or modify the request of Niagara gas transport of Lockport, NY LLC.
*PSC-28-13-00017-P	..... exempt	The request by TE for waiver of regulations requiring that natural gas be odorized in certain gathering line segments	Consider the request by TE for waiver of regulations that gas be odorized in certain lines
*PSC-32-13-00009-P	..... exempt	To consider the definition of "misleading or deceptive conduct" in the Commission's Uniform Business Practices	To consider the definition of "misleading or deceptive conduct" in the Commission's Uniform Business Practices
*PSC-32-13-00012-P	..... exempt	To consider whether NYSEG should be required to undertake actions to protect its name and to minimize customer confusion	To consider whether NYSEG should be required to undertake actions to protect its name and to minimize customer confusion
*PSC-33-13-00027-P	..... exempt	Waive underground facility requirements for new construction in residential subdivisions to allow for overhead electric lines.	Determine whether Chapin Lumberland, LLC subdivision will be allowed overhead electric distribution and service lines.
*PSC-33-13-00029-P	..... exempt	Deferral of incremental costs associated with the restoration of steam service following Superstorm Sandy.	To consider a petition by Con Edison to defer certain incremental steam system restoration costs relating to Superstorm Sandy.
*PSC-34-13-00004-P	..... exempt	Escrow account and surcharge to fund extraordinary repairs	To approve the establishment of an escrow account and surcharge
*PSC-42-13-00013-P	..... exempt	Failure to Provide Escrow Information	The closure of the Escrow Account
*PSC-42-13-00015-P	..... exempt	Failure to Provide Escrow Information	The closure of the Escrow Account
*PSC-43-13-00015-P	..... exempt	Petition for submetering of electricity	To consider the request of 2701 Kingsbridge Terrace L.P. to submeter electricity at 2701 Kingsbridge Terrace, Bronx, N.Y.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-45-13-00021-P	..... exempt	Investigation into effect of bifurcation of gas and electric utility service on Long Island.	To consider a Petition for an investigation into effect of bifurcation of gas and electric utility service on Long Island.
*PSC-45-13-00022-P	..... exempt	Waiver of PSC regulations, 16 NYCRR section 88.4(a)(4)	To consider a waiver of certain regulations relating to the content of an application for transmission line siting
*PSC-45-13-00023-P	..... exempt	Waiver of PSC regulations, 16 NYCRR section 88.4(a)(4).	To consider a waiver of certain regulations relating to the content of an application for transmission line siting
*PSC-45-13-00024-P	..... exempt	Waiver of PSC regulations, 16 NYCRR section 88.4(a)(4); waiver of filing deadlines.	To consider a waiver of certain regulations relating to the content of an application for transmission line siting
*PSC-45-13-00025-P	..... exempt	Waiver of PSC regulations, 16 NYCRR section 88.4(a)(4).	To consider a waiver of certain regulations relating to the content of an application for transmission line siting
*PSC-47-13-00009-P	..... exempt	Petition for submetering of electricity.	To consider the request of Hegeman Avenue Housing L.P. to submeter electricity at 39 Hegeman Avenue, Brooklyn, N.Y.
*PSC-47-13-00012-P	..... exempt	Conditioning,restricting or prohibiting the purchase of services by NYSEG and RG&E from certain affiliates.	Consideration of conditioning,restricting or prohibiting the purchase of services by NYSEG and RG&E from certain affiliates.
*PSC-49-13-00008-P	..... exempt	Authorization to transfer all of Crystal Water Supply Company, Inc. stocks to Essel Infra West Inc.	To allow Crystal Water Supply Company, Inc to transfer all of its issued and outstanding stocks to Essel Infra West Inc.
*PSC-51-13-00009-P	..... exempt	Consolidated Edison proposing to use data from a test period ending September 30, 2013 to support its next rate filing.	To ensure there is a reasonable basis for data submitted in support of a request for a change in rates.
*PSC-51-13-00010-P	..... exempt	Consolidated Edison proposing to use data from a test period ending September 30, 2013 to support its next rate filing.	To ensure there is a reasonable basis for data submitted in support of a request for a change in rates.
*PSC-51-13-00011-P	..... exempt	Consolidated Edison proposing to use data from a test period ending September 30, 2013 to support its next rate filing.	To ensure there is a reasonable basis for data submitted in support of a request for a change in rates.
*PSC-52-13-00012-P	..... exempt	The development of reliability contingency plan(s) to address the potential retirement of Indian Point Energy Center (IPEC).	To address the petition for rehearing and reconsideration/motion for clarification of the IPEC reliability contingency plan(s).
*PSC-52-13-00015-P	..... exempt	To enter into a loan agreement with the banks for up to an amount of \$94,000.	To consider allowing Knolls Water Company to enter into a long-term loan agreement.
*PSC-05-14-00010-P	..... exempt	The New York State Reliability Council's revisions to its rules and measurements	To adopt revisions to various rules and measurements of the New York State Reliability Council
*PSC-07-14-00008-P	..... exempt	Petition for submetering of electricity	To consider the request of Greater Centennial Homes HDFC, Inc. to submeter electricity at 102, 103 and 106 W 5th Street, et al.
*PSC-07-14-00012-P	..... exempt	Water rates and charges	Implementation of Long-Term Water Supply Surcharge to recover costs associated with the Haverstraw Water Supply Project

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-08-14-00015-P	..... exempt	Verizon New York Inc.'s service quality and Customer Trouble Report Rate (CTRR) levels at certain central office entities	To improve Verizon New York Inc.'s service quality and the Customer Trouble Report Rate levels at certain central office entities
*PSC-10-14-00006-P	..... exempt	Actions to facilitate the availability of ESCO value-added offerings, ESCO eligibility and ESCO compliance	To facilitate ESCO value-added offerings and to make changes to ESCO eligibility and to ensure ESCO compliance
*PSC-11-14-00003-P	..... exempt	Provision for the recovery and allocation of costs of transmission projects that reduce congestion on certain interfaces	To consider the recovery and allocation of costs of transmission projects that reduce congestion on certain interfaces
*PSC-16-14-00014-P	..... exempt	Whether to order NYSEG to provide gas service to customers when an expanded CPCN is approved and impose PSL 25-a penalties.	To order gas service to customers in the Town of Plattsburgh after approval of a town wide CPCN and to impose penalties.
*PSC-16-14-00015-P	..... exempt	Whether Central Hudson should be permitted to defer obligations of the Order issued on October 18, 2013 in Case 13-G-0336.	Consideration of the petition by Central Hudson to defer reporting obligations of the October 18, 2013 Order in Case 13-G-0336
*PSC-17-14-00003-P	..... exempt	Con Edison's Report on its 2013 performance under the Electric Service Reliability Performance Mechanism	Con Edison's Report on its 2013 performance under the Electric Service Reliability Performance Mechanism
*PSC-17-14-00004-P	..... exempt	To consider certain portions of petitions for rehearing, reconsideration and/or clarification	To consider certain portions of petitions for rehearing, reconsideration and/or clarification
*PSC-17-14-00007-P	..... exempt	To consider petitions for rehearing, reconsideration and/or clarification	To consider petitions for rehearing, reconsideration and/or clarification
*PSC-17-14-00008-P	..... exempt	To consider certain portions of petitions for rehearing, reconsideration and/or clarification	To consider certain portions of petitions for rehearing, reconsideration and/or clarification
*PSC-19-14-00014-P	..... exempt	Market Supply Charge	To make tariff revisions to the Market Supply Charge for capacity related costs
*PSC-19-14-00015-P	..... exempt	Whether to permit the use of the Sensus accuWAVE for use in residential and commercial gas meter applications	To permit gas utilities in New York State to use the Sensus accuWAVE 415TC gas meter
*PSC-22-14-00013-P	..... exempt	Petition to transfer and merge systems, franchises and assets.	To consider the Comcast and Time Warner Cable merger and transfer of systems, franchises and assets.
*PSC-23-14-00010-P	..... exempt	Whether to permit the use of the GE Dresser Series B3-HPC 11M-1480 rotary gas meter for use in industrial gas meter applications	To permit gas utilities in New York State to use the GE Dresser Series B3-HPC 11M-1480 rotary gas meter
*PSC-23-14-00014-P	..... exempt	Waiver of the negative revenue adjustment associated with KEDLI's 2013 Customer Satisfaction Performance Metric	Consideration of KEDLI's waiver request pertaining to its 2013 performance under its Customer Satisfaction Metric
*PSC-24-14-00005-P	..... exempt	To examine LDC's performance and performance measures.	To improve gas safety performance.
*PSC-26-14-00013-P	..... exempt	Waiver of RG&E's tariffed definition of emergency generator.	To consider waiver of RG&E's tariffed definition of emergency generator.
*PSC-26-14-00020-P	..... exempt	New electric utility backup service tariffs and standards for interconnection may be adopted.	To encourage development of microgrids that enhance the efficiency, safety, reliability and resiliency of the electric grid.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-26-14-00021-P	..... exempt	Consumer protections, standards and protocols pertaining to access to customer data may be established.	To balance the need for the information necessary to support a robust market with customer privacy concerns.
*PSC-28-14-00014-P	..... exempt	Petition to transfer systems, franchises and assets.	To consider the Comcast and Charter transfer of systems, franchise and assets.
*PSC-30-14-00023-P	..... exempt	Whether to permit the use of the Sensus iPERL Fire Flow Meter.	Pursuant to 16 NYCRR Part 500.3 , it is necessary to permit the use of the Sensus iPERL Fire Flow Meter.
*PSC-30-14-00026-P	..... exempt	Petition for a waiver to master meter electricity.	Considering the request of Renaissance Corporation of to master meter electricity at 100 Union Drive,Albany, NY.
*PSC-31-14-00004-P	..... exempt	To transfer 100% of the issued and outstanding stock from Vincent Cross to Bonnie and Michael Cross	To transfer 100% of the issued and outstanding stock from Vincent Cross to Bonnie and Michael Cross
*PSC-32-14-00012-P	..... exempt	Whether to grant or deny, in whole or in part, the Connect New York Coalition’s petition	To consider the Connect New York Coalition’s petition seeking a formal investigation and hearings
*PSC-35-14-00004-P	..... exempt	Regulation of a proposed electricity generation facility located in the Town of Brookhaven, NY	To consider regulation of a proposed electricity generation facility located in the Town of Brookhaven, NY
*PSC-35-14-00005-P	..... exempt	Whether to permit the use of the Sensus iConA electric meter	Pursuant to 16 NYCRR Parts 92 and 93, Commission approval is necessary to permit the use of the Sensus iConA electric meter
*PSC-36-14-00009-P	..... exempt	Modification to the Commission’s Electric Safety Standards.	To consider revisions to the Commission’s Electric Safety Standards.
*PSC-38-14-00003-P	..... exempt	Whether to approve, reject or modify, in whole or in part a time-sensitive rate pilot program.	Whether to approve, reject or modify, in whole or in part a time-sensitive rate pilot program.
*PSC-38-14-00004-P	..... exempt	The study and petition of Con Edison regarding use, accounting and ratemaking treatment for 11-23 and 2-28 Hudson Ave. Brooklyn.	The study and petition of Con Edison regarding use, accounting and ratemaking treatment for 11-23 and 2-28 Hudson Ave. Brooklyn.
*PSC-38-14-00005-P	..... exempt	Action on the report and petition of Con Edison regarding the Storm Hardening and Resiliency Collaborative, Phase 2.	Action on the report and petition of Con Edison regarding the Storm Hardening and Resiliency Collaborative, Phase 2.
*PSC-38-14-00007-P	..... exempt	Whether to expand Con Edison’s low income program to include Medicaid recipients.	Whether to expand Con Edison’s low income program to include Medicaid recipients.
*PSC-38-14-00008-P	..... exempt	The study and petition of Con Edison regarding use, accounting and ratemaking treatment for 11-23 and 2-28 Hudson Ave. Brooklyn.	The study and petition of Con Edison regarding use, accounting and ratemaking treatment for 11-23 and 2-28 Hudson Ave. Brooklyn.
*PSC-38-14-00010-P	..... exempt	Inter-carrier telephone service quality standard and metrics and administrative changes.	To review recommendations from the Carrier Working Group and incorporate appropriate modifications to the existing Guidelines.
*PSC-38-14-00012-P	..... exempt	Action on the report and petition of Con Edison regarding the Storm Hardening and Resiliency Collaborative, Phase 2.	Action on the report and petition of Con Edison regarding the Storm Hardening and Resiliency Collaborative, Phase 2.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-39-14-00020-P	..... exempt	Whether to permit the use of the Mueller Systems 400 Series and 500 Series of water meters	Pursuant to 16 NYCRR section 500.3, whether to permit the use of the Mueller Systems 400, and 500 Series of water meters
*PSC-40-14-00008-P	..... exempt	To consider granting authorization for Buy Energy Direct to resume marketing to residential customers.	To consider granting authorization for Buy Energy Direct to resume marketing to residential customers.
*PSC-40-14-00009-P	..... exempt	Whether to permit the use of the Itron Open Way Centron Meter with Hardware 3.1 for AMR and AMI functionality.	Pursuant to 16 NYCRR Parts 93, is necessary to permit the use of the Itron Open Way Centron Meter with Hardware 3.1.
*PSC-40-14-00011-P	..... exempt	Late Payment Charge.	To modify Section 7.6 - Late Payment Charge to designate a specific time for when a late payment charge is due.
*PSC-40-14-00013-P	..... exempt	Regulation of a proposed natural gas pipeline and related facilities located in the Town of Ticonderoga, NY.	To consider regulation of a proposed natural gas pipeline and related facilities located in the Town of Ticonderoga, NY.
*PSC-40-14-00014-P	..... exempt	Waiver of 16 NYCRR Sections 894.1 through 894.4(b)(2)	To allow the Town of Goshen, NY, to waive certain preliminary franchising procedures to expedite the franchising process.
*PSC-40-14-00015-P	..... exempt	Late Payment Charge.	To modify Section 6.6 - Late Payment Charge to designate a specific time for when a late payment charge is due.
*PSC-42-14-00003-P	..... exempt	Annual Reconciliation of Gas Expenses and Gas Cost Recoveries	The filings of various LDCs and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries
*PSC-42-14-00004-P	..... exempt	Winter Bundled Sales Service Option	To modify SC-11 to remove language relating to fixed storage charges in the determination of the Winter Bundled Sales charge
*PSC-48-14-00014-P	..... exempt	Considering the recommendations contained in Staff's electric outage investigation report for MNRR, New Haven Line.	To consider the recommendations contained in Staff's electric outage investigation report for MNRR, New Haven Line.
*PSC-52-14-00019-P	..... exempt	Petition for a waiver to master meter electricity.	Considering the request of 614 South Crouse Avenue, LLC to master meter electricity at 614 South Crouse Avenue, Syracuse, NY..
*PSC-01-15-00014-P	..... exempt	State Universal Service Fund Disbursements	To consider Edwards Telephone Company's request for State Universal Service Fund disbursements
*PSC-08-15-00010-P	..... exempt	Request pertaining to the lawfulness of National Grid USA continuing its summary billing program.	To grant, deny, or modify URAC Rate Consultants' request that National Grid cease its summary billing program.
*PSC-10-15-00007-P	..... exempt	Notification concerning tax refunds	To consider Verizon New York Inc.'s partial rehearing or reconsideration request regarding retention of property tax refunds
*PSC-10-15-00008-P exempt	Whether to waive Policy on Test Periods in Major Rate Proceedings and provide authority to file tariff changes	Whether to waive Policy on Test Periods in Major Rate Proceedings and provide authority to file tariff changes

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Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-13-15-00024-P	..... exempt	Whether Leatherstocking should be permitted to recover a shortfall in earnings	To decide whether to approve Leatherstocking's request to recover a shortfall in earnings
*PSC-13-15-00026-P	..... exempt	Whether to permit the use of the Sensus Smart Point Gas AMR/AMI product	To permit the use of the Sensus Smart Point Gas AMR/AMI product
*PSC-13-15-00027-P	..... exempt	Whether to permit the use of the Measurlogic DTS 310 electric submeter	To permit the use of the Measurlogic DTS 310 submeter
*PSC-13-15-00028-P	..... exempt	Whether to permit the use of the SATEC EM920 electric meter	To permit necessary to permit the use of the SATEC EM920 electric meter
*PSC-13-15-00029-P	..... exempt	Whether to permit the use the Triacta Power Technologies 6103, 6112, 6303, and 6312 electric submeters	To permit the use of the Triacta submeters
*PSC-17-15-00007-P	..... exempt	To consider the petition of Leatherstocking Gas Company, LLC seeking authority to issue long-term debt of \$2.75 million	To consider the petition of Leatherstocking Gas Company, LLC seeking authority to issue long-term debt of \$2.75 million
*PSC-18-15-00005-P	..... exempt	Con Edison's Report on its 2014 performance under the Electric Service Reliability Performance Mechanism	Con Edison's Report on its 2014 performance under the Electric Service Reliability Performance Mechanism
*PSC-19-15-00011-P	..... exempt	Gas Safety Performance Measures and associated negative revenue adjustments	To update the performance measures applicable to KeySpan Gas East Corporation d/b/a National Grid
*PSC-22-15-00015-P	..... exempt	To consider the request for waiver of the individual residential unit meter requirements and 16 NYCRR 96.1(a)	To consider the request for waiver of the individual residential unit meter requirements and 16 NYCRR 96.1(a)
*PSC-23-15-00005-P	..... exempt	The modification of New York American Water's current rate plan	Whether to adopt the terms of the Joint Proposal submitted by NYAW and DPS Staff
*PSC-23-15-00006-P	..... exempt	The modification of New York American Water's current rate plan	Whether to adopt the terms of the Joint Proposal submitted by NYAW and DPS Staff
*PSC-25-15-00008-P	..... exempt	Notice of Intent to Submeter electricity.	To consider the request of 165 E 66 Residences, LLC to submeter electricity at 165 East 66th Street, New York, New York.
*PSC-29-15-00025-P	..... exempt	Joint Petition for authority to transfer real property located at 624 West 132nd Street, New York, NY	Whether to authorize the proposed transfer of real property located at 624 West 132nd Street, New York, NY
*PSC-32-15-00006-P	..... exempt	Development of a Community Solar Demonstration Project.	To approve the development of a Community Solar Demonstration Project.
*PSC-33-15-00009-P	..... exempt	Remote net metering of a demonstration community net metering program.	To consider approval of remote net metering of a demonstration community net metering program.
*PSC-33-15-00012-P	..... exempt	Remote net metering of a Community Solar Demonstration Project.	To consider approval of remote net metering of a Community Solar Demonstration Project.
*PSC-34-15-00021-P	..... exempt	Petition by NYCOM requesting assistance with obtaining information on CLECs and ESCOs	To consider the petition by NYCOM requesting assistance with obtaining information on CLECs and ESCOs

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-35-15-00014-P	..... exempt	Consideration of consequences against Light Power & Gas, LLC for violations of the UBP	To consider consequences against Light Power & Gas, LLC for violations of the UBP
*PSC-37-15-00007-P	..... exempt	Submetered electricity	To consider the request of 89 Murray Street Ass. LLC, for clarification of the submetering order issued December 20, 2007
*PSC-40-15-00014-P	..... exempt	Whether to permit the use of the Open Way 3.5 with cellular communications	To consider the use of the Open Way 3.5 electric meter, pursuant to 16 NYCRR Parts 92 and 93
*PSC-42-15-00006-P	..... exempt	Deferral of incremental expenses associated with NERC's new Bulk Electric System (BES) compliance requirements approved by FERC.	Consideration of Central Hudson's request to defer incremental expenses associated with new BES compliance requirements.
*PSC-44-15-00028-P	..... exempt	Deferral of incremental expenses associated with new compliance requirements	Consideration of Central Hudson's request to defer incremental expenses associated with new compliance requirements
*PSC-47-15-00013-P	..... exempt	Whitepaper on Implementing Lightened Ratemaking Regulation.	Consider Whitepaper on Implementing Lightened Ratemaking Regulation.
*PSC-48-15-00011-P	..... exempt	Proposal to retire Huntley Units 67 and 68 on March 1, 2016.	Consider the proposed retirement of Huntley Units 67 and 68.
*PSC-50-15-00006-P	..... exempt	The reduction of rates.	To consider the reduction of rates charged by Independent Water Works, Inc.
*PSC-50-15-00009-P	..... exempt	Notice of Intent to submeter electricity.	To consider the request to submeter electricity at 31-33 Lincoln Road and 510 Flatbush Avenue, Brooklyn, New York.
*PSC-51-15-00010-P	..... exempt	Modification of the EDP	To consider modifying the EDP
*PSC-01-16-00005-P	..... exempt	Proposed amendment to Section 5, Attachment 1.A of the Uniform Business Practices	To consider amendment to Section 5, Attachment 1.A of the Uniform Business Practices
*PSC-04-16-00007-P	..... exempt	Whether Hamilton Municipal Utilities should be permitted to construct and operate a municipal gas distribution facility.	Consideration of the petition by Hamilton Municipal Utilities to construct and operate a municipal gas distribution facility.
*PSC-04-16-00012-P	..... exempt	Proposal to mothball three gas turbines located at the Astoria Gas Turbine Generating Station.	Consider the proposed mothball of three gas turbines located at the Astoria Gas Turbine Generating Station.
*PSC-04-16-00013-P	..... exempt	Proposal to find that three gas turbines located at the Astoria Gas Turbine Generating Station are uneconomic.	Consider whether three gas turbines located at the Astoria Gas Turbine Generating Station are uneconomic.
*PSC-06-16-00013-P	..... exempt	Continued deferral of approximately \$16,000,000 in site investigation and remediation costs.	To consider the continued deferral of approximately \$16,000,000 in site investigation and remediation costs.
*PSC-06-16-00014-P	..... exempt	MEGA's proposed demonstration CCA program.	To consider MEGA's proposed demonstration CCA program.
*PSC-14-16-00008-P	..... exempt	Resetting retail markets for ESCO mass market customers.	To ensure consumer protections with respect to residential and small non-residential ESCO customers.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-18-16-00013-P	..... exempt	Amendments to the Uniform Business Practices of ESCOs.	To ensure consumer protection for ESCO customers.
*PSC-18-16-00014-P	..... exempt	Amendments to the Uniform Business Practices of ESCOs.	To ensure consumer protection for ESCO customers.
*PSC-18-16-00015-P	..... exempt	Petitions for rehearing of the Order Resetting Retail Energy Markets and Establishing Further Process.	To ensure consumer protections for ESCO customers.
*PSC-18-16-00016-P	..... exempt	Amendments to the Uniform Business Practices of ESCOs.	To ensure consumer protection for ESCO customers.
*PSC-18-16-00018-P	..... exempt	Amendments to the Uniform Business Practices of ESCOs.	To ensure consumer protection for ESCO customers.
*PSC-20-16-00008-P	..... exempt	Consideration of consequences against Global Energy Group, LLC for violations of the Uniform Business Practices (UBP).	To consider consequences against Global Energy Group, LLC for violations of the Uniform Business Practices (UBP).
*PSC-20-16-00010-P	..... exempt	Deferral and recovery of incremental expense.	To consider deferring costs of conducting leak survey and repairs for subsequent recovery.
*PSC-20-16-00011-P	..... exempt	Enetics LD-1120 Non-Intrusive Load Monitoring Device in the Statewide Residential Appliance Metering Study.	To consider the use of the Enetics LD-1120 Non-Intrusive Load Monitoring Device.
*PSC-24-16-00009-P	..... exempt	Petition to submeter gas service.	To consider the Petition of New York City Economic Development Corp. to submeter gas at Pier 17, 89 South Street, New York, NY.
*PSC-25-16-00009-P	..... exempt	To delay Companies' third-party assessments of customer personally identifiable information until 2018.	To extend the time period between the Companies' third-party assessments of customer personally identifiable information.
*PSC-25-16-00025-P	..... exempt	Acquisition of all water supply assets of Woodbury Heights Estates Water Co., Inc. by the Village of Kiryas Joel.	To consider acquisition of all water supply assets of Woodbury Heights Estates Water Co., Inc. by the Village of Kiryas Joel.
*PSC-25-16-00026-P	..... exempt	Use of the Badger E Series Ultrasonic Cold Water Stainless Steel Meter, in residential fire service applications.	To consider the use of the Badger E Series Ultrasonic Cold Water Stainless Steel Meter in fire service applications.
*PSC-28-16-00017-P	..... exempt	A petition for rehearing of the Order Adopting a Ratemaking and Utility Revenue Model Policy Framework.	To determine appropriate rules for and calculation of the distributed generation reliability credit.
*PSC-29-16-00024-P	..... exempt	Participation of NYPA customers in surcharge-funded clean energy programs.	To consider participation of NYPA customers in surcharge-funded clean energy programs.
*PSC-32-16-00012-P	..... exempt	Benefit-Cost Analysis Handbooks.	To evaluate proposed methodologies of benefit-cost evaluation.
*PSC-33-16-00001-EP	..... exempt	Use of escrow funds for repairs.	To authorize the use of escrow account funds for repairs.
*PSC-33-16-00005-P	..... exempt	Exemption from certain charges for delivery of electricity to its Niagara Falls, New York facility.	Application of System Benefits Charges, Renewable Portfolio Standard charges and Clean Energy Fund surcharges.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-35-16-00015-P	..... exempt	NYSRC's revisions to its rules and measurements	To consider revisions to various rules and measurements of the NYSRC
*PSC-36-16-00004-P	..... exempt	Recovery of costs for installation of electric service.	To consider the recovery of costs for installation of electric service.
*PSC-40-16-00025-P	..... exempt	Consequences pursuant to the Commission's Uniform Business Practices (UBP).	To consider whether to impose consequences on Smart One for its apparent non-compliance with Commission requirements.
*PSC-47-16-00009-P	..... exempt	Petition to use commercial electric meters	To consider the petition of Itron, Inc. to use the Itron CP2SO and CP2SOA in commercial electric meter applications
*PSC-47-16-00010-P	..... exempt	Standby Service rate design	To consider the report filed and the recommendations therein
*PSC-47-16-00013-P	..... exempt	Standby Service rate design	To consider the report filed and the recommendations therein
*PSC-47-16-00014-P	..... exempt	Standby Service rate design	To consider the report filed and the recommendations therein
*PSC-47-16-00016-P	..... exempt	Standby Service rate design	To consider the report filed and the recommendations therein
*PSC-02-17-00010-P	..... exempt	Implementation of the four EAMs.	To consider the implementation of EAMs for RG&E.
*PSC-02-17-00012-P	..... exempt	Implementation of the four EAMs.	To consider the implementation of EAMs for NYSEG.
*PSC-18-17-00024-P	..... exempt	A petition for rehearing or reconsideration of the Order Addressing Public Policy Transmission Need for AC Transmission Upgrades	To determine whether Public Policy Transmission Need/Public Policy Requirements continue to exist.
*PSC-18-17-00026-P	..... exempt	Revisions to the Dynamic Load Management surcharge.	To consider revisions to the Dynamic Load Management surcharge.
*PSC-19-17-00004-P	..... exempt	NYAW's request to defer and amortize, for future rate recognition, pension settlement payout losses incurred in 2016.	Consideration of NYAW's petition to defer and amortize, for future rate recognition, pension payout losses incurred in 2016.
*PSC-20-17-00008-P	..... exempt	Compressed natural gas as a motor fuel for diesel fueled vehicles.	To consider a report filed by National Grid NY regarding the potential for adoption of compressed natural gas as a motor fuel.
*PSC-20-17-00010-P	..... exempt	Compressed natural gas as a motor fuel for diesel fueled vehicles.	To consider a report filed by National Grid regarding the potential for adoption of compressed natural gas as a motor fuel.
*PSC-21-17-00013-P	..... exempt	The establishment and implementation of Earnings Adjustment Mechanisms.	To consider the establishment and implementation of Earnings Adjustment Mechanisms.
*PSC-21-17-00018-P	..... exempt	Proposed agreement for the provision of water service by Saratoga Water Services, Inc.	To consider a waiver and approval of terms of a service agreement.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-22-17-00004-P	..... exempt	Financial incentives to create customer savings and develop market-enabling tools, with a focus on outcomes and incentives	To consider the proposed Interconnection Survey Process and Earnings Adjustment Mechanisms
*PSC-24-17-00006-P	..... exempt	Development of the Utility Energy Registry.	Improved data access.
*PSC-26-17-00005-P	..... exempt	Notice of Intent to submeter electricity.	To consider the Notice of Intent to submeter electricity at 125 Waverly Street, Yonkers, New York.
*PSC-34-17-00011-P	..... exempt	Waiver to permit Energy Cooperative of America to serve low-income customers	To consider the petition for a waiver
*PSC-37-17-00005-P	..... exempt	Financial incentives to create customer savings and develop market-enabling tools, with a focus on outcomes and incentives.	To consider the revised Interconnection Survey Process and Earnings Adjustment Mechanisms.
*PSC-39-17-00011-P	..... exempt	Whether to direct New York State Electric & Gas to complete electric facility upgrades at no charge to Hanehan.	To determine financial responsibility between NYSEG and Hanehan for the electric service upgrades to Hanehan.
*PSC-42-17-00010-P	..... exempt	Petition for rehearing of negative revenue adjustment and contents of annual Performance Report.	To consider NFGD's petition for rehearing.
*PSC-48-17-00015-P	..... exempt	Low Income customer options for affordable water bills.	To consider the Low Income Bill Discount and/or Energy Efficiency Rebate Programs.
*PSC-50-17-00017-P	..... exempt	New Wave Energy Corp.'s petition for rehearing.	To consider the petition for rehearing filed by New Wave Energy Corp.
*PSC-50-17-00018-P	..... exempt	Application of the Public Service Law to DER suppliers.	To determine the appropriate regulatory framework for DER suppliers.
*PSC-50-17-00019-P	..... exempt	Transfer of utility property.	To consider the transfer of utility property.
*PSC-50-17-00021-P	..... exempt	Disposition of tax refunds and other related matters.	To consider the disposition of tax refunds and other related matters.
*PSC-51-17-00011-P	..... exempt	Petition for recovery of certain costs related to the implementation of a Non-Wires Alternative Project.	To consider Con Edison's petition for the recovery of costs for implementing the JFK Project.
*PSC-04-18-00005-P	..... exempt	Notice of intent to submeter electricity.	To consider the notice of intent of Montante/ Morgan Gates Circle LLC to submeter electricity.
*PSC-05-18-00004-P	..... exempt	Lexington Power's ZEC compliance obligation.	To promote and maintain renewable and zero-emission electric energy resources.
*PSC-06-18-00012-P	..... exempt	To consider further proposed amendments to the original criteria to grandfathering established in the Transition Plan	To modify grandfathering criteria
*PSC-06-18-00017-P	..... exempt	Merger of NYAW and Whitlock Farms Water Corp.	To consider the merger of NYAW and Whitlock Farms Water Company into a single corporate entity
*PSC-07-18-00015-P	..... exempt	The accuracy and reasonableness of National Grid's billing for certain interconnection upgrades.	To consider AEC's petition requesting resolution of their billing dispute with National Grid.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-11-18-00004-P	..... exempt	New York State Lifeline Program.	To consider TracFone's petition seeking approval to participate in Lifeline.
*PSC-13-18-00015-P	..... exempt	Eligibility of an ESCO to market to and enroll residential customers.	To consider whether Astral should be allowed to market to and enroll residential customers following a suspension.
*PSC-13-18-00023-P	..... exempt	Reconciliation of property taxes.	To consider NYAW's request to reconcile property taxes.
*PSC-14-18-00006-P	..... exempt	Petition for abandonment	To consider the abandonment of Willsboro Bay Water Company's water system
*PSC-17-18-00010-P	..... exempt	Petition for use of gas metering equipment.	To ensure that consumer bills are based on accurate measurements of gas usage.
*PSC-18-18-00009-P	..... exempt	Transfer of control of Keene Valley Video Inc.	To ensure performance in accordance with applicable cable laws, regulations and standards and the public interest
*PSC-23-18-00006-P	..... exempt	Whether to impose consequences on Aspurity for its non-compliance with Commission requirements.	To ensure the provision of safe and adequate energy service at just and reasonable rates.
*PSC-24-18-00013-P	..... exempt	Implementation of program rules for Renewable Energy Standard and ZEC requirements.	To promote and maintain renewable and zero-emission electric energy resources.
*PSC-28-18-00011-P	..... exempt	Storm Hardening Collaborative Report.	To ensure safe and adequate gas service.
*PSC-29-18-00008-P	..... exempt	Participation in Targeted Accessibility Fund	To encourage enhanced services for low-income consumers
*PSC-29-18-00009-P	..... exempt	Overvaluing real property tax expense recovery in water rates	To prevent unjust and unreasonable water rates
*PSC-34-18-00015-P	..... exempt	Petition to submeter electricity.	To ensure adequate submetering equipment and energy efficiency protections are in place.
*PSC-34-18-00016-P	..... exempt	Deferral of pre-staging and mobilization storm costs.	To ensure just and reasonable rates for ratepayers and utility recovery of unexpected, prudently incurred costs.
*PSC-35-18-00003-P	..... exempt	Con Edison's 2018 DSIP and BCA Handbook Update.	To continue Con Edison's transition to a modern utility serving as a Distributed System Platform Provider.
*PSC-35-18-00005-P	..... exempt	NYSEG and RG&E's 2018 DSIP and BCA Handbook Update.	To continue NYSEG and RG&E's transition to modern utilities acting as Distributed System Platform Providers.
*PSC-35-18-00006-P	..... exempt	National Grid's 2018 DSIP and BCA Handbook Update.	To continue National Grid's transition to a modern utility serving as a Distributed System Platform Provider.
*PSC-35-18-00008-P	..... exempt	Central Hudson's 2018 DSIP and BCA Handbook Update.	To continue Central Hudson's transition to a modern utility serving as a Distributed System Platform Provider.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-35-18-00010-P	..... exempt	O&R's 2018 DSIP and BCA Handbook Update.	To continue O&R's transition to a modern utility acting as a Distributed System Platform Provider.
*PSC-39-18-00005-P	..... exempt	Participation in New York State Lifeline Program.	To encourage enhanced services for low-income customers.
*PSC-40-18-00014-P	..... exempt	Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.	To review the gas utilities' reconciliation of Gas Expenses and Gas Cost Recoveries for 2018.
*PSC-42-18-00011-P	..... exempt	Voluntary residential beneficial electrification rate design.	To provide efficient rate design for beneficial technologies in New York State that is equitable for all residential customers.
*PSC-42-18-00013-P	..... exempt	Petition for clarification and rehearing of the Smart Solutions Program Order.	To address the increased demand for natural gas in the Con Edison's service territory and the limited pipeline capacity.
*PSC-44-18-00016-P	..... exempt	Petition for approval of gas metering equipment.	To ensure that customer bills are based on accurate measurements of gas usage.
*PSC-45-18-00005-P	..... exempt	Notice of intent to submeter electricity and waiver of energy audit	To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place
*PSC-01-19-00013-P	..... exempt	Order of the Commission related to caller ID unblocking.	To require telephone companies to unblock caller ID on calls placed to the 311 municipal call center in Suffolk County.
*PSC-03-19-00002-P	..... exempt	DPS Staff White Paper for who must be trained in 16 NYCRR Part 753 requirements and how the Commission will approve trainings.	To reduce damage to underground utility facilities by requiring certain training and approving training curricula.
*PSC-04-19-00004-P	..... exempt	Con Edison's petition for the Gas Innovation Program and associated budget.	To pursue programs that continue service reliability and meet customer energy needs while aiding greenhouse gas reduction goals.
*PSC-04-19-00011-P	..... exempt	Update of revenue targets.	To ensure NYAW's rates are just and reasonable and accurately reflect the needed revenues.
*PSC-06-19-00005-P	..... exempt	Consideration of the Joint Utilities' proposed BDP Program.	To to expand opportunities for low-income households to participate in Community Distributed Generation (CDG) projects.
*PSC-07-19-00009-P	..... exempt	Whether to impose consequences on AAA for its non-compliance with Commission requirements.	To insure the provision of safe and adequate energy service at just and reasonable rates.
*PSC-07-19-00016-P	..... exempt	Participation in New York State Lifeline Program.	To encourage enhanced services for low-income customers.
*PSC-09-19-00010-P	..... exempt	Non-pipeline alternatives report recommendations.	To consider the terms and conditions applicable to gas service.
*PSC-12-19-00004-P	..... exempt	To test innovative pricing proposals on an opt-out basis.	To provide pricing structures that deliver benefits to customers and promote beneficial electrification technologies.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-13-19-00010-P	..... exempt	New Commission requirements for gas company operator qualification programs.	To make pipelines safer with improved training of workers who perform construction and repairs on natural gas facilities.
*PSC-19-19-00013-P	..... exempt	Proposed merger of three water utilities into one corporation.	To determine if the proposed merger is in the public interest.
*PSC-20-19-00008-P	..... exempt	Reporting on energy sources	To ensure accurate reporting and encourage clean energy purchases
*PSC-20-19-00010-P	..... exempt	Compensation policies for certain CHP projects	To consider appropriate rules for compensation of certain CHP resources
*PSC-31-19-00013-P	..... exempt	Implementation of Statewide Energy Benchmarking.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
*PSC-32-19-00012-P	..... exempt	Standby Service Rates and Buyback Service Rates	To ensure just and reasonable rates, including compensation, for distributed energy resources
*PSC-38-19-00002-P	..... exempt	Petition to submeter electricity	To ensure adequate submetering equipment and consumer protections are in place
*PSC-39-19-00018-P	..... exempt	Petition to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
*PSC-41-19-00003-P	..... exempt	A voluntary residential three-part rate that would include fixed, usage and demand charges.	To provide qualifying residential customers with an optional three-part rate.
*PSC-44-19-00003-P	..... exempt	Proposed revisions to Standby Service Rates and Buyback Service Rates.	To ensure just and reasonable rates, including compensation, for distributed energy resources.
*PSC-44-19-00005-P	..... exempt	Proposed revisions to Standby Service Rates and Buyback Service Rates.	To ensure just and reasonable rates, including compensation, for distributed energy resources.
*PSC-44-19-00006-P	..... exempt	Proposed revisions to Standby Service Rates and Buyback Service Rates.	To ensure just and reasonable rates, including compensation, for distributed energy resources.
*PSC-44-19-00007-P	..... exempt	Proposed revisions to Standby Service Rates and Buyback Service Rates.	To ensure just and reasonable rates, including compensation, for distributed energy resources.
*PSC-44-19-00009-P	..... exempt	Proposed revisions to Standby Service Rates and Buyback Service Rates.	To ensure just and reasonable rates, including compensation, for distributed energy resources.
*PSC-46-19-00008-P	..... exempt	Wappingers Falls Hydroelectric LLC's facility located in Wappingers Falls, New York.	To promote and maintain renewable electric energy resources.
*PSC-46-19-00010-P	..... exempt	To test innovative rate designs on an opt-out basis.	To implement alternative innovative rate designs intended to assess customer behaviors in response to price signals
*PSC-52-19-00006-P	..... exempt	Authorization to defer pension settlement losses.	To address the ratemaking related to the pension settlement losses.
*PSC-08-20-00003-P	..... exempt	PSC regulation 16 NYCRR § 86.3(a)(2) and 86.3(b)(2).	To consider a waiver of certain regulations relating to the content of an application for transmission line siting.
*PSC-10-20-00003-P	..... exempt	The Commission's statewide low-income discount policy.	To consider modifications to certain conditions regarding utility low-income discount programs.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-12-20-00008-P	..... exempt	Delivery rates of Corning Natural Gas Corporation.	Whether to postpone the implementation of a change in rates that would otherwise become effective on June 1, 2020.
*PSC-15-20-00011-P	..... exempt	To modify the terms and conditions under which gas utilities provide service to electric generators.	To provide clarity and uniformity to the provision of gas service to electric generators.
*PSC-15-20-00013-P	..... exempt	Ownership of New York American Water Company, Inc.	To consider whether a proposed transfer of ownership of New York American Water Company, Inc. is in the public interest.
*PSC-16-20-00004-P	..... exempt	Disposition of a state sales tax refund.	To determine how much of a state sales tax refund should be retained by Central Hudson.
*PSC-18-20-00012-P	..... exempt	The purchase price of electric energy and capacity from customers with qualifying on-site generation facilities.	To revise the price to be paid by the Company under Service Classification No. 10. for qualifying purchases of unforced capacity
*PSC-18-20-00015-P	..... exempt	Participation of Eligible Telecommunications Carriers (ETCs) in New York State Lifeline Program.	Commission will consider each petition filed by an ETCs seeking approval to participate in the NYS Lifeline program.
*PSC-19-20-00004-P	..... exempt	Clarification of the Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process.	To consider whether energy service companies should be permitted to bank RECs to satisfy their renewable energy requirements.
*PSC-19-20-00005-P	..... exempt	Cost recovery associated with Day-Ahead-DLM and Auto-DLM programs, and elimination of double compensation.	To provide cost recovery for new DLM programs and prevent double compensation to participating customers.
*PSC-19-20-00009-P	..... exempt	Cost recovery associated with Day-Ahead-DLM and Auto-DLM programs, and elimination of double compensation.	To consider revisions to P.S.C. No. 10 - Electricity, and P.S.C. No. 12 - Electricity.
*PSC-23-20-00008-P	..... exempt	Disposition of sales tax refund and other related matters.	To consider the appropriate allocation of the sales tax refund proceeds while balancing ratepayer and shareholder interests.
*PSC-25-20-00010-P	..... exempt	Whitepaper regarding energy service company financial assurance requirements.	To consider the form and amount of financial assurances to be included in the eligibility criteria for energy service companies.
*PSC-25-20-00016-P	..... exempt	Modifications to the Low-Income Affordability program.	To address the economic impacts of the COVID-19 pandemic.
*PSC-27-20-00003-P	..... exempt	To make the uniform statewide customer satisfaction survey permanent.	To encourage consumer protections and safe and adequate service.
*PSC-28-20-00022-P	..... exempt	Compensation of distributed energy resources.	To ensure just and reasonable rates, including compensation, for distributed energy resources.
*PSC-28-20-00034-P	..... exempt	Petition to implement Section 7(5) of the Accelerated Renewable Energy Growth and Community Benefit Act	To develop the bulk transmission investments necessary to achieve the Climate Leadership and Community Protection Act goals
*PSC-34-20-00005-P	..... exempt	Petition to provide a renewable, carbon-free energy option to residential and small commercial full-service customers.	To increase customer access to renewable energy in the Consolidated Edison Company of New York, Inc. service territory.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
*PSC-38-20-00004-P	..... exempt	The annual Reconciliation of Gas Expenses and Gas Cost Recoveries.	To consider filings of LDCs and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.
*PSC-40-20-00004-P	..... exempt	Minor rate filing.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
*PSC-42-20-00006-P	..... exempt	Proposed major rate increase in National Grid's delivery revenues of approximately \$41.8 million (or 9.8% in total revenues).	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
*PSC-42-20-00008-P	..... exempt	Availability of gas leak information to the public safety officials.	Facilitate availability of gas leak information to public safety officials by gas corporations.
*PSC-42-20-00009-P	..... exempt	Proposed major rate increase in National Grid's delivery revenues of approximately \$100.4 million (or 3.2% in total revenues).	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
*PSC-43-20-00003-P	..... exempt	The use of \$50 million to support residential and commercial customers experiencing financial hardship	To consider whether the proposed support of ratepayers is in the public interest
*PSC-45-20-00003-P	..... exempt	Petition to submeter electricity	To ensure adequate submetering equipment and consumer protections are in place
*PSC-45-20-00004-P	..... exempt	Major gas rate filing	To consider an increase in Central Hudson's gas delivery revenues
*PSC-45-20-00005-P	..... exempt	Major electric rate filing	To consider an increase in Central Hudson's electric delivery revenues
PSC-46-20-00005-P	..... exempt	The recommendations of the DPS Staff report to improve Hudson Valley Water's service.	To determine if approving the DPS Staff's recommendations is in the public interest.
PSC-48-20-00005-P	..... exempt	Partial waiver of the Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process.	To consider whether Chief Energy Power, LLC should be permitted to offer green gas products to mass market customers.
PSC-48-20-00007-P	..... exempt	Tariff modifications to change National Fuel Gas Distribution Corporation's Monthly Gas Supply Charge provisions.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
PSC-51-20-00007-P	..... exempt	Whitepaper on the ACOS method used by utilities in developing Standby and Buyback Service rates.	To standardize the utility ACOS methods and resulting rates, and to enable stand-alone energy storage systems.
PSC-51-20-00009-P	..... exempt	Partial waiver of the Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process.	To consider whether petitioner should be permitted to offer its "Energy Savings Program" to mass market customers.
PSC-51-20-00014-P	..... exempt	Electric system needs and compensation for distributed energy resources.	To ensure safe and adequate service and just and reasonable rates, including compensation, for distributed energy resources.
PSC-01-21-00004-P	..... exempt	Partial waiver of the Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process.	To consider whether petitioner should be permitted to offer its Home Warranty product to mass market customers.
PSC-01-21-00006-P	..... exempt	A debt financing arrangement with respect to an electric transmission line under development.	To review the proposed financing and consider whether it is within the public interest.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
PSC-02-21-00006-P	..... exempt	Disposition of a sales tax refund received by New York American Water, Inc.	To determine the disposition of tax refunds and other related matters.
PSC-03-21-00006-P	..... exempt	Comprehensive study to identify distribution and transmission investments in accordance with the AREGCB Act.	To support distribution and local transmission investments necessary to achieve the State's climate goals.
PSC-04-21-00016-P	..... exempt	Request for a waiver.	To consider whether good cause exists to support a waiver of the Commission's Test Period Policy Statement.
PSC-05-21-00005-P	..... exempt	The applicable regulatory regime under the Public Service Law for the owner of a merchant electric generating facility.	Consideration of a lightened regulatory regime for the owner of an approximately 100 MW electric generating facility.
PSC-06-21-00009-P	..... exempt	Disposition of a property tax refund received by New York American Water, Inc.	To determine the disposition of tax refunds and other related matters.
PSC-07-21-00007-P	..... exempt	Conditioned pre-approval of stock transactions of regulated entities.	To consider allowing stock transactions within statutory parameters without Commission approval for individual transactions.
PSC-09-21-00002-P	..... exempt	Gas moratorium procedures	To consider procedures and criteria to minimize customer hardships in the unlikely event of a future gas moratorium
PSC-09-21-00005-P	..... exempt	Utility capital expenditure proposal.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
PSC-09-21-00006-P	..... exempt	Long-term gas system planning.	To consider a process to review gas distribution utilities' long-term system planning.
PSC-12-21-00008-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-12-21-00009-P	..... exempt	Transfer of ownership interests and facilities associated with three nuclear generating units, funds, and storage facilities.	To ensure appropriate regulatory review, oversight, and action concerning the proposed transfer to serve the public interest.
PSC-13-21-00016-P	..... exempt	Revised distribution strategies and reallocation of remaining funding.	To ensure the appropriate use of funding reserved for gas safety programs.
PSC-13-21-00023-P	..... exempt	Petition for the use of steam metering equipment.	To ensure that consumer bills are based on accurate measurements of steam usage.
PSC-14-21-00003-RP	..... 04/07/22	More specific requirements for Operator Qualification to work on pipelines. Allows applications for "special permits."	To make the provision of natural gas service safer in New York State with better qualified pipeline workers.
PSC-15-21-00007-P	..... exempt	The applicable regulatory regime under the Public Service Law for the owner of a merchant electric generating facility.	Consideration of a lightened regulatory regime.
PSC-16-21-00006-P	..... exempt	The appropriate level of community credit capacity for distributed energy generation projects in the territory.	Consideration of an increase in the community credit capacity for distributed generation projects in the territory.
PSC-16-21-00007-P	..... exempt	Accounting-related rules for utilities implementing the Integrated Energy Data Resource.	To consider cost recovery of capital expenditures and budget allocations of costs between affiliated companies.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
PSC-17-21-00005-P	..... exempt	Submetering equipment.	To consider use of submetering equipment and if it is in the public interest.
PSC-17-21-00006-P	..... exempt	Community Choice Aggregation and Community Distributed Generation.	To consider permitting opt-out Community Distributed Generation to be offered as the sole product in an aggregation.
PSC-17-21-00007-P	..... exempt	Utility studies of climate change vulnerabilities.	To assess the need for utilities to conduct distinct studies of their climate change vulnerabilities.
PSC-18-21-00004-P	..... exempt	Community Choice Aggregation programs.	To modify and improve Community Choice Aggregation programs in New York State.
PSC-18-21-00005-P	..... exempt	Proposed transfer of the Company's capital stock to the Purchaser.	To determine if transfer of the Company's capital stock to the Purchaser is in the public interest.
PSC-18-21-00006-P	..... exempt	Community Choice Aggregation renewable products.	To consider waiving the locational and delivery requirements for RECs purchased to support renewable CCA products.
PSC-18-21-00008-P	..... exempt	RG&E's Economic Development Programs and exemption from funding limits.	To consider RG&E to grant up to \$5.25 million in ED funding to Project Block to the benefit of ratepayers.
PSC-19-21-00008-P	..... exempt	Community Choice Aggregation (CCA) and Community Distributed Generation (CDG).	To consider permitting Upstate Power, LLC to serve as a CCA administrator offering an opt-out CDG focused program.
PSC-19-21-00009-P	..... exempt	Major electric rate filing.	To consider an increase in O&R's electric delivery revenues.
PSC-19-21-00012-P	..... exempt	Major gas rate filing.	To consider an increase in O&R's gas delivery revenues.
PSC-19-21-00013-P	..... exempt	The proposed transfer of ownership interests and debt financing arrangement related to certain electric generating facilities.	To determine whether the proposed transfer of ownership interests and financing arrangement are in the public interest.
PSC-20-21-00004-P	..... exempt	Regulatory approvals in connection with a 437 MW electric generating facility.	To ensure appropriate regulatory review, oversight, and action, consistent with the public interest.
PSC-21-21-00012-P	..... exempt	Petition for the use of gas metering equipment.	To ensure that consumer bills are based on accurate measurements of gas usage.
PSC-21-21-00015-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-21-21-00016-P	..... exempt	Petition to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-21-21-00017-P	..... exempt	Petition to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-21-21-00019-P	..... exempt	Utility capital expenditure proposal.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
PSC-22-21-00006-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-22-21-00007-P	..... exempt	The applicable regulatory regime under the Public Service Law for the owner of a merchant electric generating facility.	Consideration of a lightened regulatory regime for the owner of an approximately 7.6 mile, 13 kV AC electric cable.
PSC-22-21-00008-P	..... exempt	Cost allocation for project(s) to meet a Public Policy Transmission Need/Public Policy Requirement.	To address the cost allocation methodology for use by the New York Independent System Operator, Inc. (NYISO).
PSC-23-21-00002-P	..... exempt	Waiver for allocation of natural gas to commercial and industrial economic development customers.	To provide commercial and industrial economic development customers access to natural gas.
PSC-23-21-00003-P	..... exempt	Petitions for rehearing of the Order Adopting a Data Access Framework and Establishing Further Process.	To consider modifications and/or clarifications to the Order Adopting a Data Access Framework and Establishing Further Process.
PSC-23-21-00004-P	..... exempt	Establishing an alternative recovery mechanism for certain types of fees.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
PSC-25-21-00005-P	..... exempt	Transfer of Penelec assets and franchise rights.	To consider the transfer of utility assets and franchise to be in Waverly ratepayer and public interest.
PSC-25-21-00008-P	..... exempt	NYSERDA and National Grid's proposed Expanded Solar For All Program for low-income customers.	To consider the authorization and appropriate design of an opt-out community solar program for low-income customers.
PSC-25-21-00013-P	..... exempt	Negative revenue adjustments for gas main replacements targets in 2020.	To promote and ensure safety and reliability enhancements for utility infrastructure replacement.
PSC-26-21-00007-P	..... exempt	Petition to submeter electricity and request for waiver.	To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place.
PSC-26-21-00010-P	..... exempt	Proposed acquisition of all shares of common stock of Corning Natural Gas Holding Corporation by ACP Crotona Corp.	To consider whether the acquisition of all shares of common stock of CNGH by ACP Crotona Corp. is in the public interest.
PSC-26-21-00011-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-27-21-00011-P	..... exempt	The prohibition on ESCO service to low-income customers.	To consider whether NOCO Electric, LLC and NOCO Natural Gas, LLC should be granted a waiver to serve low-income customers.
PSC-28-21-00012-P	..... exempt	Transfer of ownership interests in a 55 megawatt natural gas-fired cogeneration facility located in North Tonawanda, NY.	To address the proposed transfer and any matters within the public interest.
PSC-28-21-00013-P	..... exempt	Elimination of internal audits of wholesale performance metrics.	To consider Verizon New York Inc.'s petition to eliminate requirements for certain internal audits.
PSC-28-21-00015-P	..... exempt	Proposals for active and passive managed charging programs for mass market EV customers.	To shift EV charging to moderate grid impacts and customer costs.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
PSC-28-21-00016-P	..... exempt	Transfer of Suez Water New York Inc.'s parent company to Veolia Environment S.A.	To determine if the proposed transfer is the public interest.
PSC-29-21-00004-P	..... exempt	Exemptions from utility standby rates for efficient combined heat and power projects.	To determine whether utility standby rate exemptions should be continued.
PSC-29-21-00009-P	..... exempt	Proposed pilot program to use AMI to disconnect electric service to customers during gas system emergencies.	To study the efficacy of using AMI to disconnect electric service during gas system emergencies.
PSC-30-21-00006-P	..... exempt	NYSERDA proposal regarding Clean Energy Standard backstop collection processes.	To ensure that NYSERDA has sufficient funds to make timely payments to generators pursuant to the Clean Energy Standard.
PSC-30-21-00007-P	..... exempt	Submetering of electricity and waiver requests.	To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place.
PSC-30-21-00009-P	..... exempt	Submetering of electricity and waiver request.	To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place.
PSC-31-21-00008-P	..... exempt	Issuance of securities and other forms of indebtedness.	To consider Central Hudson's request to issue and sell unsecured debt obligations
PSC-31-21-00009-P	..... exempt	Waiver of certain rules, i.e., cable television advisory committee, public notice of request for proposals.	To determine whether to waive any rules and regulations.
PSC-31-21-00010-P	..... exempt	Establishment of the regulatory regime applicable to a solar electric generating facility and energy storage.	To ensure appropriate regulation of a new electric corporation.
PSC-31-21-00011-P	..... exempt	Establishment of the regulatory regime applicable to a solar electric generating facility.	To ensure appropriate regulation of a new electric corporation.
PSC-32-21-00002-P	..... exempt	The prohibition on ESCO service to low-income customers.	To consider whether Icon Energy, LLC d/b/a Source Power Company should be granted a waiver to serve low-income customers.
PSC-32-21-00003-P	..... exempt	Exemptions from utility standby rates for certain designated or environmentally advantageous technologies.	To harmonize standby rate exemptions statewide.
PSC-33-21-00006-P	..... exempt	Proposed rate increase.	To ensure safe and adequate service at just and reasonable rates.
PSC-33-21-00007-P	..... exempt	Acquisition of cable television facilities and franchises of two municipalities.	To ensure performance in accordance with applicable cable laws, regulations and standards and the public interest.
PSC-33-21-00008-P	..... exempt	Establishment of a Tapping and Connection Fee.	To consider whether the proposed fees are in the public interest.
PSC-33-21-00009-P	..... exempt	Banking of credits and switching between Community Distributed Generation and Remote Crediting projects.	To ensure just and reasonable rates charged to customers.
PSC-34-21-00004-P	..... exempt	CDG subscriber eligibility requirements.	To consider modifications to the CDG program eligibility requirements for certain Standby Service customers.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
PSC-34-21-00005-P	..... exempt	Notice of intent to submeter electricity and request for waiver.	To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place.
PSC-34-21-00006-P	..... exempt	Staff recommendations to address the financial impacts of the COVID-19 pandemic.	To consider measures to provide relief to those financially impacted by the COVID-19 pandemic.
PSC-34-21-00007-P	..... exempt	Authorization to extend the maturity date of certain short-term indebtedness and total debt.	To consider the request for authorization to enter into indebtedness.
PSC-34-21-00008-P	..... exempt	Issuance of securities and other forms of indebtedness.	To consider the Con Edison's request to issue and sell unsecured debt obligations.
PSC-34-21-00009-P	..... exempt	Authorization to continue the PRIME-WNY.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
PSC-34-21-00010-P	..... exempt	Clean Energy Standard Programs.	Continued implementation of the Clean Energy Standard and the Zero Energy Credit Requirements Programs.
PSC-35-21-00002-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-35-21-00003-P	..... exempt	PSC regulations 16 NYCRR 86.3(a)(2); 86.3(b)(2).	To consider a waiver of certain regulations relating to the content of an application for transmission line siting.
PSC-35-21-00004-P	..... exempt	Major gas rate filing.	To consider a proposed increase in Conring's gas delivery revenues of approximately \$5.8 million (20.4% in total revenues).
PSC-35-21-00005-P	..... exempt	Transfer of street lighting facilities.	To determine whether to authorize the transfer street of lighting facilities and the proper accounting for the transaction.
PSC-35-21-00006-P	..... exempt	Proposed rate increase.	To ensure safe and adequate service at just and reasonable rates.
PSC-35-21-00007-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-35-21-00008-P	..... exempt	Tariff filing to allow eligible CHP Customers to provide export support to their other service connections.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
PSC-35-21-00009-P	..... exempt	To modify the terms and conditions under which gas utilities provide service to electric generators.	To provide clarity and uniformity to the provision of gas service to electric generators in New York State.
PSC-36-21-00005-P	..... exempt	Transfer of real property.	To determine whether to authorize the transfer of real property and the proper accounting for the transaction.
PSC-36-21-00006-P	..... exempt	The Westchester Power Program.	To consider integration of Opt-out Community Distributed Generation into the Westchester Power program.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
PSC-36-21-00007-P	..... exempt	Pension settlement payout losses incurred in 2020.	Consideration of NYAW's petition to defer and amortize, for future rate recognition, pension payout losses incurred in 2020.
PSC-36-21-00008-P	..... exempt	Transfer of real property.	To determine whether to authorize the transfer of real property and the proper accounting for the transaction.
PSC-36-21-00009-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-37-21-00007-P	..... exempt	Waiver of tariff rules and a related Commission regulation.	To consider whether a waiver of tariff rules and a Commission regulation are just and reasonable and in the public interest.
PSC-37-21-00008-P	..... exempt	Transfer of street lighting facilities.	To determine whether to authorize the transfer street of lighting facilities and the proper accounting for the transaction.
PSC-37-21-00009-P	..... exempt	Procedures necessary to implement Tax Law Section 187-q.	To establish procedures by which eligible utility-taxpayers can have the amounts of certain waived customer arrears certified.
PSC-37-21-00010-P	..... exempt	Zero emitting electric generating facilities that are not renewable energy systems.	To consider modifications to the Clean Energy Standard.
PSC-37-21-00011-P	..... exempt	Green Button Connect implementation.	To consider the proposed Green Button Connect User Agreement and Green Button Connect Onboarding Process document.
PSC-37-21-00012-P	..... exempt	Partial waiver of the Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process.	To consider whether Catalyst should be permitted to offer its Community Distributed Generation product to mass market customers.
PSC-37-21-00013-P	..... exempt	Tariff revisions to SUEZ Water New York Inc.'s tariff P.S.C. No. 2 - Water.	To consider whether proposed tariff revisions are in the public interest.
PSC-37-21-00014-P	..... exempt	Consideration of Time Warner Cable Information Services (New York)'s Revised Implementation Plan and audit recommendations.	To ensure that recommendations issued in a management and operations audit are appropriately addressed and implemented.
PSC-37-21-00015-P	..... exempt	Rehearing and/or reconsideration of the Commission's determination related to ITIA's non-pipe alternative project.	To determine whether the Commission made an error of fact related to ITIA's non-pipe alternative project.
PSC-37-21-00016-P	..... exempt	Customer Consent to Contact.	To include a new provision establishing customer consent for the utilities to contact them electronically about utility service.
PSC-38-21-00006-P	..... exempt	Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.	To consider filings of LDCs and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.
PSC-38-21-00007-P	..... exempt	Electric metering equipment.	To consider use of electric submeter and ensure that consumer bills will be based on accurate measurements of electric usage.
PSC-39-21-00005-P	..... exempt	Establishment of the regulatory regime applicable to a electric transmission facility.	To ensure appropriate regulation of a new electric corporation.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
PSC-39-21-00006-P	..... exempt	Minor electric rate filing to increase annual electric revenues.	To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.
PSC-39-21-00007-P	..... exempt	The proposed alternative method of account identification.	To facilitate secure customer data exchanges between the utility or provider and energy service entities.
PSC-40-21-00017-P	..... exempt	The Commission's Order Adopting Utility Energy Registry Modifications	To determine if the Commission committed errors of law or fact in its Order, or if new facts warrant a different result.
PSC-40-21-00018-P	..... exempt	Notice of intent to submeter electricity and request for waiver.	To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place.
PSC-40-21-00020-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-40-21-00021-P	..... exempt	Notice of intent to submeter electricity.	To ensure adequate submetering equipment and consumer protections are in place.
PSC-41-21-00005-P	..... exempt	Area code overlay as relief of the exhausting 516 area code (Long Island).	To ensure performance in accordance with applicable telecommunications laws, regulations and standards and the public interest.
PSC-41-21-00006-P	..... exempt	The proposed transfer of ownership interests and debt financing arrangement related to an electric generating facility.	To determine whether the proposed transfer of ownership interests and financing arrangement are in the public interest.
PSC-41-21-00007-P	..... exempt	Waiver of certain Commission requirements related to the distribution of telephone directories.	To ensure performance in accordance with applicable telecommunications laws, regulations and standards and the public interest.
PSC-41-21-00008-P	..... exempt	Waiver of the prohibition on service to low-income customers by ESCOs.	To consider the petition for an extension of the waiver of the prohibition on service to low-income customers by ESCOs.
PSC-41-21-00009-P	..... exempt	Waiver of the prohibition on service to low-income customers by ESCOs.	To consider the petition for an extension of the waiver of the prohibition on service to low-income customers by ESCOs.
PSC-41-21-00010-P	..... exempt	Waiver of the prohibition on service to low-income customers by ESCOs.	To consider the petition for an extension of the waiver of the prohibition on service to low-income customers by ESCOs.
PSC-41-21-00011-P	..... exempt	Notice of intent to submeter electricity and request for waiver of 16 NYCRR § 96.5(k)(3).	To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place.
PSC-42-21-00005-P	..... exempt	Electric metering equipment.	To ensure that consumer bills are based on accurate measurements of electric usage.
PSC-42-21-00006-P	..... exempt	Waiver of tariff rules and a related Commission regulation.	To consider whether a waiver of tariff rules and a Commission regulation are just and reasonable and in the public interest.
PSC-42-21-00007-P	..... exempt	Waiver of tariff rules and a related Commission regulation.	To consider whether a waiver of tariff rules and a Commission regulation are just and reasonable and in the public interest.

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
PUBLIC SERVICE COMMISSION			
PSC-43-21-00007-P	..... exempt	Minor rate filing.	To ensure safe and adequate service at just and reasonable rates.
PSC-43-21-00008-P	..... exempt	Incremental demand side management programs.	To consider proposed demand side management programs and cost recovery.
PSC-44-21-00010-P	..... exempt	Petition to enter a long term loan agreement and to institute a surcharge for recovery.	To determine if the issuance of long term debt and a surcharge mechanism for recovery is in the public interest.
PSC-44-21-00011-P	..... exempt	The amount electric, gas, and steam corporations can charge for security deposits, and the acceptable forms of payment.	To establish security deposit requirements.
PSC-44-21-00012-P	..... exempt	Disposition of a New York State tax refund.	To determine the disposition of a tax refund obtained by New York American Water Company, Inc.
PSC-44-21-00013-P	..... exempt	Transfer of street lighting facilities.	To determine whether to authorize the transfer street of lighting facilities and the proper accounting for the transaction.
PSC-44-21-00014-P	..... exempt	Development of distribution and local transmission in accordance with the AREGCB Act.	To support distribution and local transmission investments necessary to achieve the the State's climate goals.
PSC-45-21-00004-P	..... exempt	The SIR and Application Process for New DG and ESS 5 MW or Less Connected in Parallel with Utility Distribution Systems.	To accommodate federal government agencies that wish to install distributed generation or energy storage systems 5 MW or Less.
PSC-46-21-00011-P	..... exempt	Transfer of street lighting facilities.	To determine whether to authorize the transfer street of lighting facilities and the proper accounting for the transaction.
PSC-46-21-00012-P	..... exempt	Transfer of street lighting facilities.	To determine whether to authorize the transfer street of lighting facilities and the proper accounting for the transaction.
PSC-46-21-00013-P	..... exempt	ESCO Eligibility	To consider whether Astral should be allowed to market to and enroll residential customers following a suspension.
PSC-46-21-00014-P	..... exempt	Waiver of tariff rules and a related Commission regulation.	To consider whether a waiver of tariff rules and a Commission regulation are just and reasonable and in the public interest.

STATE, DEPARTMENT OF

DOS-05-21-00013-RP	..... 02/03/22	Requirements and procedures related to filing, review and publication of financial reports filed with the Department of State	To provide procedures related to the filing, review and publication of financial reports filed with the Department of State
DOS-19-21-00014-P	..... 07/15/22	Minimum standards for administration and enforcement of the Uniform Code and Energy Code	To revise the minimum standards applicable to a program for administration and enforcement of the Uniform Code and Energy Code
DOS-39-21-00013-P	..... 09/29/22	Procedures to help avoid abandonment of cemeteries and determine when a cemetery has become abandoned.	To provide procedures to help avoid abandonment of cemeteries and determine when a cemetery has become abandoned.

Action Pending Index**NYS Register/November 17, 2021**

Agency I.D. No.	Expires	Subject Matter	Purpose of Action
STATE, DEPARTMENT OF			
DOS-42-21-00003-EP	10/20/22	Ventilation Requirements	To provide an additional 6 months for appearance enhancement businesses to comply with existing ventilation standards
STATE UNIVERSITY OF NEW YORK			
SUN-24-21-00002-EP	06/16/22	Gender Neutral Bathrooms	To conform with legislation requiring SUNY state-operated campuses to designate all single occupancy bathrooms as gender neutral
TAXATION AND FINANCE, DEPARTMENT OF			
TAF-46-20-00003-P	exempt	Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith	To set the sales tax component and the composite rate per gallon for the period January 1, 2021 through March 31, 2021
TAF-41-21-00003-P	10/13/22	New York State and City of Yonkers withholding tables and other methods.	To provide current New York State and City of Yonkers withholding tables and other methods.
TAF-46-21-00009-P	exempt	Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith	To set the sales tax component and the composite rate per gallon for the period January 1, 2022 through March 31, 2021
TEMPORARY AND DISABILITY ASSISTANCE, OFFICE OF			
TDA-39-21-00004-EP	09/29/22	Standard Utility Allowances (SUAs) for the Supplemental Nutrition Assistance Program (SNAP)	These regulatory amendments set forth the federally-approved SUAs as of 10/1/21
TDA-43-21-00006-EP	10/27/22	Public Assistance (PA) eligibility interviews by phone or other digital means at PA applicant's or recipient's request	See attached addendum
URBAN DEVELOPMENT CORPORATION			
UDC-38-21-00001-EP	09/22/22	Biodefense Commercialization Fund program	To create the administrative processes for the Biodefense Commercialization Fund program
WORKERS' COMPENSATION BOARD			
WCB-28-21-00008-P	07/14/22	DME Fee Schedule	To correct codes and update DME fee schedule
WCB-28-21-00009-P	07/14/22	Telehealth	Provides the option for telehealth visits in some circumstances
WCB-37-21-00018-P	09/15/22	NY Workers' Compensation Drug Formulary	Update the Formulary (technical and clarifying changes)
WCB-41-21-00012-P	10/13/22	Medical Treatment Guidelines	To add Eye Disorders, Traumatic Brain Injury, and Complex Regional Pain Syndrome MTGs

RULE REVIEW

New York State Gaming Commission

As required by section 207(4) of the State Administrative Procedure Act, the New York State Gaming Commission (“Commission”) gives notice of the following:

As part of the Commission’s 2021 review of regulations that were adopted during 2001, 2006, 2011 and 2016, the Commission has reviewed several amendments that were made to the rules of the Commission (including rulemaking of its legacy agencies, the Division of Lottery and the Racing and Wagering Board) in these calendar years. The following amendments were reviewed:

2016

Horse Racing

SGC-39-15-00005. Thoroughbred Restricted Time Periods for DMSO and Diclofenac. Amendment to 9 NYCRR § 4043.2(e).

SGC-44-15-00019. Report Required for Gelded Horses. Addition of 9 NYCRR §§ 4007.7 and 4106.10.

SGC-46-15-00004. Drug Testing of Claimed Horses. Amendment of 9 NYCRR §§ 4038.5(a), 4038.17, 4109.3(a) and 4109.5.

SGC-46-15-00007. Multiple Medication Violation Penalties. Addition of 9 NYCRR Part 4045.

SGC-48-15-00006. Per Se Thresholds for Four Substances; Special Penalty Provisions. Amendment of 9 NYCRR §§ 4043.3 and 4120.3.

SGC-52-15-00007. Prohibiting the Administration of Stanazolol. Amendment of 9 NYCRR §§ 4043.15 and 4120.12.

SGC-01-16-00006. Commission Authority to Implement Jockey Injury Compensation Fund Plan. Addition of 9 NYCRR Part 4046.

SGC-07-16-00001. Cellular Phones Permitted in Harness Paddock. Amendment of 9 NYCRR § 4101.14.

SGC-07-16-00011. Thoroughbred Pick-Four, -Five and -Six Wagers. Addition of 9 NYCRR § 4011.25, amendment of 9 NYCRR §§ 4011.23 and 4011.26 and renumbering of the pick-n (including WIN-3) wagers in serial order at §§ 4011.23 to 4011.26.

SGC-22-16-00004. Altering the Use of Hopples. Amendment of 9 NYCRR §§ 4413.5 and 4117.3.

SGC-22-16-00005. Decoupling Harness Horses in Major Races. Amendment of 9 NYCRR § 4111.15.

SGC-37-16-00007. Continuing Education for Thoroughbred Trainers. Amendment of 9 NYCRR § 4002.8.

Horse Racing, Charitable Gaming and Lottery

SGC-12-16-00009. Sanctions for Underage Wagering. Amendment of 9 NYCRR §§ 4003.39, 4122.6, 4404.10, 4602.1, 4622.2, 4622.3, 5001.27, 5007.5, 5007.13, 5013.3 and 5117.1.

Lottery

SGC-52-15-00005. Updates to Lottery Subscription Program. Amendment of 9 NYCRR §§ 5005.1 through 5005.8.

SGC-52-15-00006. Manner of Paying Lottery Prizes. Amendment of 9 NYCRR § 5002.5.

SGC-52-15-00008. Suspension and Revocation of Lottery Agent License. Amendment of 9 NYCRR § 5001.19.

Lottery and Casino Gaming

SGC-23-16-00014. Independent Testing of Gaming Equipment. Addition of 9 NYCRR Part 5318.

Casino Gaming

SGC-12-16-00002. Problem Gambling and Patron Self-Exclusion. Addition of 9 NYCRR Parts 5325 and 5326.

SGC-19-16-00013. Surveillance Standards for Gaming Facilities. Addition of 9 NYCRR Part 5314.

SGC-28-16-00006. Patron Exclusion by Commission from Gaming Facilities. Addition of 9 NYCRR Part 5327.

SGC-28-16-00007. Definition of Terms for Casino Gaming. Amendment of 9 NYCRR § 5300.1.

SGC-28-16-00008. Regulation of Table Game Equipment. Addition of 9 NYCRR Part 5322.

SGC-28-16-00009. Regulation of Junkets. Addition of 9 NYCRR Part 5308.

SGC-28-16-00010. Registration of Casino Labor Organizations. Addition of 9 NYCRR Part 5310.

SGC-28-16-00011. Conduct of Casino Table Games. Addition of 9 NYCRR Part 5323.

SGC-28-16-00012. Registration of Casino Lobbyists. Addition of 9 NYCRR Part 5309.

SGC-32-16-00001. Casino License and Registration Applications. Amendment of 9 NYCRR Parts 5303 through 5307.

SGC-37-16-00016. Accounting Standards for Casinos. Addition of 9 NYCRR Part 5315.

SGC-37-16-00017. Conduct of Casino Electronic Games and Devices. Addition of 9 NYCRR Part 5321.

SGC-37-16-00018. Regulation of Slot Tournaments and Progressive Games. Addition of 9 NYCRR Part 5320.

SGC-37-16-00019. Rules for Casino Table Games. Addition of 9 NYCRR Part 5324.

SGC-37-16-00020. Standards for Casino Monitoring, Control and Validation Systems. Addition of 9 NYCRR Part 5317.

SGC-37-16-00021. Standards for Casino Gaming Devices. Addition of 9 NYCRR Part 5319.

SGC-37-16-00022. Practices and Procedures for Casino Cages and Counts. Addition of 9 NYCRR Part 5316.

SGC-42-16-00002. Casino Alcoholic Beverage Licenses. Addition of 9 NYCRR Part 5328.

SGC-42-16-00003. Confidentiality of Information and Restrictions on Employee Wagering. Amendment of 9 NYCRR Part 5300.

SGC-42-16-00004. Casino Electronic Table Games Systems. Addition of 9 NYCRR §§ 5317.41 and 5319.60.

2011

Horse Racing

RWB-35-11-00002. Inspection of Harness Sulkies. Amendment of 9 NYCRR § 4116.10.

RWB-35-11-00006. Financial Reporting for Thoroughbred Horsepersons' Organization. Amendment of 9 NYCRR § 4003.51.

RWB-35-11-00008. Advanced Deposit Wagering Accounts. Amendment of 9 NYCRR § 5300.4.

Charitable Gaming

RWB-35-22-00003. Conduct of Games of Chance by Non-Domiciliary. Amendment of 9 NYCRR § 5306.11.

Lottery

LTR-43-10-00008. Lotto. Repeal of 21 NYCRR §§ 2804.14 and 2804.15 and 21 NYCRR Part 2817 and amendment of 9 NYCRR §§ 5008.5(e) and (f) and 5008.12(e). (Sections 2804.14 and 2804.15 have been renumbered 9 NYCRR §§ 5008.14 and 5008.15. 21 NYCRR Part 2817 has been renumbered 9 NYCRR Part 5008.)

LTR-42-11-00010. Jackpot Prizes for Multi-Jurisdictional and Lotto Games. Amendment of 21 NYCRR §§ 2806.2, 2806.4, 2806.7, 2806.13, 2817.2 and 2817.10. (21 NYCRR §§ 2806.2, 2806.4, 2806.7, 2806.13, 2817.2 and 2817.10 have been renumbered 9 NYCRR §§ 5006.2, 5006.4, 5006.7, 5006.13, 5008.2 and 5008.10.)

LTR-42-11-00011. Powerball Game Design and Quick Draw Definition. Amendment of 21 NYCRR §§ 2806.13 and 2835.1. (21 NYCRR §§ 2806.13 and 2835.1 have been renumbered 9 NYCRR §§ 5007.13 and 5013.1.)

2006

Horse Racing

RWB-40-05-00001. Adjustments to Restricted Time Periods. Amendment of 9 NYCRR §§ 4043.2 and 4120.2.

RWB-03-06-00007. Paying Wager When Horse Obstructed in Gate Wins. Amendment of 9 NYCRR §§ 4009.21 and 4115.10.

RWB-06-06-00008. Increasing the Number of Races in Parlay Wagers. Amendment of 9 NYCRR §§ 4010.6 and 4122.28.

RWB-23-06-00007. Horsepersons' Contract Required for Track License. Amendment of 9 NYCRR §§ 4003.13 and 4101.8.

RWB-23-06-00008. Claiming of Horses. Amendment of 9 NYCRR §§ 4038.1, 4038.4, 4038.6, 4038.17, 4038.19 and 4038.19. Other amendments made by this rulemaking to Part 4038 of 9 NYCRR were subsequently amended or repealed.

Lottery

LTR-08-06-00001. Mega Millions Lottery Game. Amendment of 21 NYCRR Part 2806. (Part 2806 has been renumbered 9 NYCRR Part 5007.)

2001

Horse Racing

RWB-34-01-00004. Decoupling Thoroughbred Horses in Major Races Amendment of 9 NYCRR § 4025.10.

Lottery

LTR-34-01-00003. Modification of Lotto Games Amendment of 21 NYCRR §§ 2817.1, 2317.2, 2817.6, 2817.9 and 2817.10. The Lotto game has since been amended in some ways. (21 NYCRR §§ 2817.1, 2317.2, 2817.6, 2817.9 and 2817.10 have been renumbered 9 NYCRR §§ 5008.1, 5008.2, 5008.6, 5008.9 and 5008.10.)

A summary of the foregoing regulations was published in the Rule Review section of the January 20, 2021 issue of the State Register. The Commission did not receive any public comment regarding these regulations.

The Commission has determined that these regulations should be continued without modification because there have been no changes in public policy or regulatory circumstances that would warrant modification to these rules.

For further information contact: Kristen M. Buckley, Acting Secretary of the Gaming Commission, One Broadway Center, Suite 500, Schenectady, NY 12301-7500

GUIDANCE DOCUMENTS

Not less than once each year, every agency shall submit to the Secretary of State for publication in the *State Register* a list of all Guidance Documents on which the agency currently relies [SAPA, section 202-e(1)]. However, an agency may be exempted from compliance with the requirements of SAPA section 202-e(1) if the agency has published on its website the full text of all Guidance Documents on which it currently relies [SAPA, section 202-e(2)].

Department of Taxation and Finance

The Department of Taxation and Finance has published the full text of all guidance documents on which said agency currently relies on at the following website: <http://www.tax.ny.gov>

ADVERTISEMENTS FOR BIDDERS/CONTRACTORS

SEALED BIDS

CONSTRUCT BUILDING ADDITION Department of Transportation Region 5 Mayville, Chautauqua County

Sealed bids for Project Nos. 45488-C, 45488-H, 45488-P and 45488-E, comprising separate contracts for Construction Work, HVAC Work, Plumbing Work, and Electrical Work, Construct Building Addition Maintenance Headquarters, DOT Region 5, Chautauqua County, 109 E Chautauqua Street, Mayville (Chautauqua County), NY will be received by the Office of General Services (OGS), Design & Construction Group (D&C), Division of Contract Management, 35th Fl., Corning Tower, Empire State Plaza, Albany, NY 12242, on behalf of the Department of Transportation, until 2:00 p.m. on Wednesday, December 1, 2021 when they will be publicly opened and read. Each bid must be prepared and submitted in accordance with the Instructions to Bidders and must be accompanied by a bid security (i.e. certified check, bank check, or bid bond in the amount of \$91,600 for C, \$23,400 for H, \$22,300 for P, and \$23,300 for E).

All successful bidders will be required to furnish a Performance Bond and a Labor and Material Bond pursuant to Sections 136 and 137 of the State Finance Law, each for 100% of the amount of the Contract estimated to be between \$3,000,000 and \$4,000,000 for C, between \$250,000 and \$500,000 for H, between \$250,000 and \$500,000 for P, and between \$250,000 and \$500,000 for E.

Pursuant to State Finance Law §§ 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OGS D&C and a bidder during the procurement process. A bidder is restricted from making contacts from the earliest posting on the OGS website, in a newspaper of general circulation, or in the Contract Reporter, of written notice, advertisement or solicitation of offers, through final award and approval of the contract by OGS D&C and the Office of the State Comptroller ("Restricted Period") to other than designated staff, unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff are John Pupons, Jessica Hoffman, and Pierre Alric in the Division of Contract Management, telephone (518) 474-0203, fax (518) 473-7862. OGS D&C employees are also required to obtain certain information when contacted during the restricted period and to make a determination of the responsibility of the bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the bidder is debarred from obtaining governmental Procurement Contracts. Bidders responding to this Advertisement must familiarize themselves with the State Finance Law requirements and will be expected to affirm that they understand and agree to comply on the bid form. Further information about these requirements can be found within the project manual or at: <https://ogs.ny.gov/ACPL/>

Pursuant to Public Buildings Law § 8(6), effective January 11, 2020, for any projects where the project design commenced on or after January 1, 2020 and for any contracts over \$5,000 for the work of construction, reconstruction, alteration, repair, or improvement of any State building, a responsible and reliable NYS-certified Minority or Women-Owned Business Enterprise that submits a bid within ten

percent of the lowest bid will be deemed the apparent low bidder provided that the bid is \$1,400,000 or less, as adjusted annually for inflation beginning January 1, 2020. If more than one responsible and reliable MWBE firm meets these requirements, the MWBE firm with the lowest bid will be deemed the apparent low bidder.

Project commenced design before January 1, 2020. Not subject to provision.

Project commenced design on or after January 1, 2020. Subject to provision.

The substantial completion date for this project is 687 days after the Agreement is approved by the Comptroller.

As a condition of award, within 48 hours of receipt of the proposed Contract Agreement from the State, the apparent low bidder shall return the Contract Agreement to the State, properly executed, along with the Bonds if required by said Agreement. Low bidders who cannot meet these provisions may be subject to disqualification and forfeiture of the bid security.

Pursuant to New York State Executive Law Article 15-A and the rules and regulations promulgated thereunder, OGS is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of OGS contracts. All bidders are expected to cooperate in implementing this policy. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs) for Construction Work, an overall goal of 18% for MWBE participation, 9% for Minority-Owned Business Enterprises ("MBE") participation and 9% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs) for HVAC Work, an overall goal of 16% for MWBE participation, 8% for Minority-Owned Business Enterprises ("MBE") participation and 8% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs) for Plumbing Work, and an overall goal of 14% for MWBE participation, 7% for Minority-Owned Business Enterprises ("MBE") participation and 7% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs) for Electrical Work. The total contract goal can be obtained by utilizing any combination of MBE and/or WBE participation for subcontracting and supplies acquired under this Contract. Trades with 0% goals are encouraged to make "good faith efforts" to promote and assist in the participation of MWBEs on the Contract for the provision of services and materials.

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"). Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles. OGS hereby establishes overall goals for SDVOBs' participation under this contract as follows: 6% for the C trade contractor, 0% for the E trade contractor, 0% for the H trade contractor, and 0% for the P trade contractor, based on the current availability of qualified SDVOBs. Trades with 0% goals are encouraged to make "good faith efforts" to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials.

The Office of General Services reserves the right to reject any or all bids.

The Bidding and Contract Documents for this Project are available for viewing and downloading from OGS Design & Construction's plan room hosting service, Bid Express. Vendors wishing to view and/or download bid documents must complete a one-time registration for the Bid Express service. There is no cost to register for Bid Express. Registration along with viewing and downloading of documents can be accessed at the following link: <http://www.bidexpress.com>

For questions about downloading of bid documents, please send an e-mail to support@bidexpress.com, or call the Bid Express toll-free number at (888) 352-2439.

For all other questions, please send an email to DCPlans@ogs.ny.gov, or call (518) 474-0203.

For additional information on this project, please use the link below and then click on the project number: <https://online.ogs.ny.gov/dnc/contractorConsultant/esb/ESBPlansAvailableIndex.asp>

By OGS - Design & Construction Group

MISCELLANEOUS NOTICES/HEARINGS

Notice of Abandoned Property Received by the State Comptroller

Pursuant to provisions of the Abandoned Property Law and related laws, the Office of the State Comptroller receives unclaimed monies and other property deemed abandoned. A list of the names and last known addresses of the entitled owners of this abandoned property is maintained by the office in accordance with Section 1401 of the Abandoned Property Law. Interested parties may inquire if they appear on the Abandoned Property Listing by contacting the Office of Unclaimed Funds, Monday through Friday from 8:00 a.m. to 4:30 p.m., at:

1-800-221-9311
or visit our web site at:
www.osc.state.ny.us

Claims for abandoned property must be filed with the New York State Comptroller's Office of Unclaimed Funds as provided in Section 1406 of the Abandoned Property Law. For further information contact: Office of the State Comptroller, Office of Unclaimed Funds, 110 State St., Albany, NY 12236.

PUBLIC NOTICE Village of Lynbrook

Request for Proposals for Municipal Solid Waste Disposal Services

The Village of Lynbrook is seeking Proposals from private or public sector entities to provide Waste Disposal Services by means of providing one or more Transfer Stations, or a Designated Disposal Facility. Proposals are due at One Columbus Drive, Lynbrook, NY by 11:00 a.m. on September 30, 2021. The successful Proposer(s) shall commence services on November 1, 2021. The Village generates approximately 9,000 Tons of Trash per calendar year; however, the Village does not provide any commitments regarding quantities to be delivered in the future.

The Village will consider all optional Proposals in the best interests of the Village.

PUBLIC NOTICE Department of State

A virtual board meeting of the NYS Hearing Aid Dispensing Advisory Board will be held on Monday, December 6, 2021, at 1:00 p.m.

The public may attend the live meeting remotely using the following link:
<https://meetny-broadcast-pilot.webex.com/meetny-broadcast-pilot/j.php?MTID=md2a5975f537cfb3778dfc87e4d8468f0>

For additional WebEx conferencing instructions and meeting information, please visit the NYS Department of State's website at www.dos.ny.gov. (Note: An agenda and meeting information will be posted one week prior to the meeting on the Department of State's Events webpage at <https://dos.ny.gov/events>.)

Should you require further information, please contact: Denise Tidings at Denise.Tidings@dos.ny.gov or (518) 402-4921

PUBLIC NOTICE

Department of State
F-2021-0843

Date of Issuance – November 17, 2021

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program.

In F-2021-0843, The Town of Lyme is proposing to install a 5 foot wide by 60 long aluminum ramp/gangway leading to a new 80 foot long by 10 foot wide floating dock. Attached to the floating dock would be a new 40' long by 4' 10" wide kayak launch. The docking structure would be supported by four (4) concrete anchor blocks that are up to 6' x 6' x 1' (1.33cy each). Additional upland improvements are proposed for the park.

The proposal is for the Town of Lyme Veterans Memorial Public Park on Sawmill Bay/Lake Ontario located on NYS Route 12E in the Village of Chaumont, Jefferson County.

The stated purpose of the proposed action is to create a new park that will provide a public gathering space and public docks for The Town of Lyme with resilient facilities.

This proposal is part of the New York State Lake Ontario Resiliency & Economic Development Initiative (REDI). REDI is a program created to increase the resilience of shoreline communities and bolster economic development throughout the Lake Ontario and St. Lawrence River regions of New York State. Additional information about the REDI program including project profiles can be found at: <https://www.governor.ny.gov/programs/lake-ontario-resiliency-and-economic-development-initiative-redi>

The applicant's consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2021/11/f-2021-0843publicnotice.pdf>

Original copies of public information and data submitted by the applicant are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 15 days from the date of publication of this notice, or December 2, 2021.

Comments should be addressed to: Consistency Review Unit, Department of State, Office of Planning, Development and Community Infrastructure, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6000, Fax (518) 473-2464. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of State
F-2021-0878

Date of Issuance – November 17, 2021

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program.

In F-2021-0878, Boathouse Marine LLC, is proposing to install a new “L” shaped pile supported floating docking structure. The new docking structure would include: a 20’ x 3’ ramp attached to an existing seawall leading to a 105’ x 6’ and 211’ x 6’ main dock and eleven (11) 20’ x 3’ finger docks, six (6) 24’ x 3’ finger docks and three (3) 3’ x 3’ finger docks. The docking structure would be supported by ten (10) 6” diameter piles.

The proposal is for the Boathouse Marine located at 39718 Pier 65 in the Town of Clayton on Carrier Bay/St. Lawrence River.

The stated purpose of the proposed action is to “Expand docking for customer.”

The applicant’s consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2021/11/f-2021-087publicnotice.pdf>

Original copies of public information and data submitted by the applicant are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice, or December 17, 2021.

Comments should be addressed to: Consistency Review Unit, Department of State, Office of Planning, Development and Community Infrastructure, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6000, Fax (518) 473-2464. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of State
F-2021-0891

Date of Issuance – November 17, 2021

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program.

In F-2021-0891, TI Pier 225, is proposing to extend an existing floating dock by installing a new 48’ x 10’ floating dock section. Additionally, the applicant proposes to install four new finger docks include two 30’ x 4’ and two 36’ x 4’ fingers. The proposal is for TI Pier 225 located at French Creek Bay/St. Lawrence River at 835 Rees Street in the Village of Clayton, Jefferson County.

The stated purpose of the proposed action is “To expand the existing dock slips at the marina due to demand for more boat slips.”

The applicant’s consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2021/11/f-2021-0891publicnotice>

Original copies of public information and data submitted by the applicant are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice, or December 17, 2021.

Comments should be addressed to: Consistency Review Unit, Department of State, Office of Planning, Development and Community Infrastructure, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6000, Fax (518) 473-2464. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of State
F-2021-0956

Date of Issuance – November 17, 2021

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act (CZMA) of 1972, as amended.

The applicant has certified that the proposed activities comply with and will be conducted in a manner consistent with the federally approved New York State Coastal Management Program (NYSCMP). The applicant’s consistency certification and accompanying public information and data are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

In F-2021-0956, LPK Island Real Estate is proposing to construct a new fixed pile supported dock at 20 Cricket Path, Remsenberg, NY 11960 on Moriches Bay. The 4’ x 70’ dock is to be constructed of thru flow decking and have two 6’ x 6’ lifts at the seaward terminus of the dock.

The applicant’s consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2021/11/F-2021-0956lpkislandrealestate.pdf>

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice or December 17, 2021.

Comments should be addressed to: Department of State, Office of Planning and Development and Community Infrastructure, Consistency Review Unit, One Commerce Plaza, Suite 1010, 99 Washington Ave., Albany, NY 12231, (518) 474-6000. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of State
Uniform Code Variance/Appeal Petitions

Pursuant to 19 NYCRR Part 1205, the variance and appeal petitions below have been received by the Department of State. Unless otherwise indicated, they involve requests for relief from provisions of the New York State Uniform Fire Prevention and Building Code. Persons wishing to review any petitions, provide comments, or receive actual notices of any subsequent proceeding may contact Brian Tollisen or Neil Collier, Building Standards and Codes, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-4073 to make appropriate arrangements.

2021-0526 Matter of Leonard Maniscalgo, 26 Coe Place, Huntington Station, NY 11746, for a variance concerning safety requirements, including the height under a girder/soffit. Involved is an existing one-family dwelling located at 26 Coe Place, Town of Huntington, NY 11746, County of Suffolk, State of New York.

2021-0528 Matter of Damaris Diaz, 19 Violet Avenue, Floral Park, NY 11001, for a variance concerning safety requirements, including

the height under a girder/soffit. Involved is an existing one-family dwelling located at 19 Violet Avenue, Village of Floral Park, NY 11001, County of Nassau, State of New York.

2021-0529 Matter of June Chicorelli, 56 Kalmia Street, East Northport, NY 11731, for a variance concerning safety requirements, including the height under a girder/soffit. Involved is an existing one-family dwelling located at 56 Kalmia Street, East Northport; Town of Huntington, NY 11731, County of Suffolk, State of New York.

2021-0530 Matter of Victory Expediting, Maria Hickey, 606 Johnson Ave Suite 25, Bohemia, NY 11716, for a variance concerning safety requirements, including the ceiling height. Involved is an existing one-family dwelling located at 11 Ardmore Drive, Brentwood; Town of Islip, NY 11717, County of Suffolk, State of New York.

PUBLIC NOTICE

**Department of Taxation and Finance
Interest Rates**

The Acting Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner of Taxation and Finance, hereby sets the interest rates for the months of January, February, March 2022 pursuant to Tax Law sections 697(j) and 1096(e), as follows:

For purposes of section 697(j) the overpayment rate of interest is set at 2 percent per annum, and the underpayment rate of interest is set at 7.5 percent per annum. For purposes of section 1096(e), the overpayment rate of interest is set at 2 percent per annum, and the underpayment rate of interest is set at 7.5 percent per annum. (The underpayment rates set pursuant to sections 697(j) and 1096(e) may not be less than 7.5 percent per annum.) Pursuant to section 1145(a)(1) of the Tax Law, the underpayment rate for State and local sales and use taxes administered by the Commissioner of Taxation and Finance is 14.5 percent per annum. The underpayment rate for the special assessments on hazardous waste imposed by section 27-0923 of the Environmental Conservation Law is 15 percent.

For the interest rates applicable to overpayments (refunds) and underpayments (late payments and assessments) of the following taxes administered by the Commissioner of Taxation and Finance for the period January 1, 2022 through March 31, 2022, see the table below:

1/1/22 - 3/31/22
Interest Rate Per Annum
Compounded Daily

Commonly viewed tax types	Refunds	Late Payments & Assessments
Income **	2%	7.5%
Sales and use	2%	14.5% *
Withholding	2%	7.5%
Corporation **	2%	7.5%
All other tax types	Refunds	Late Payments & Assessments
Alcoholic Beverage	2%	7.5%
Authorized Combative Sports	2%	7.5%
Beverage Container Deposits	2%	7.5%
Cigarette	NA	7.5%
Congestion Surcharge	2%	7.5%
Diesel Motor Fuel	2%	7.5%
Estate	2%	7.5%
Fuel Use Tax	***	***
Generation-Skipping Transfer	2%	7.5%
Hazardous Waste	2%	15%
Highway Use	2%	7.5%
Medical Cannabis	2%	7.5%
Metropolitan Commuter Transportation Mobility Tax	2%	7.5%
Mortgage Recording	2%	7.5%

Motor Fuel	2%	7.5%
Opioid Excise Tax	2%	7.5%
Paper Carryout Bag Reduction Fee	2%	14.5%*
New York City Taxicab and Hail Vehicle Trip Tax	2%	7.5%
Petroleum Business	2%	7.5%
Real Estate Transfer	2%	7.5%
Tobacco Products	NA	7.5%
Transportation Network Company Assessment	2%	7.5%
Waste Tire Fee	2%	7.5%
Wireless Communications Surcharge	2%	14.5%*

* The Tax Law requires the interest rate on sales tax assessments or late payments to be set at 14.5% for this quarter. However, if the Commissioner determines that the failure to pay or the delay in payment is due to reasonable cause and not willful neglect, the Commissioner may impose interest at the corporation tax late payment and assessment rate. That rate is 7.5% for this quarter.

** There are a number of state and local governmental bodies that have interest rates tied to the overpayment and underpayment rates contained in either section 697(j) (Income Tax) or section 1096(e) (Corporation Tax) of the Tax Law. For purposes of section 697(j) and section 1096(e) of the Tax Law, the overpayment rate for this period is 2%. For purposes of section 697(j) of the Tax Law, the underpayment rate for this period is 7.5%. For purposes of section 1096(e) of the Tax Law, the underpayment rate for this period is 7.5%.

*** Under section 527(f) of the Tax Law, the interest rates relating to the Fuel Use tax are set pursuant to the International Fuel Tax Agreement (IFTA). For more information regarding IFTA interest rates, see www.iftach.org.

For further information contact: Kathleen Chase, Office of Counsel, Department of Taxation and Finance, W. A. Harriman Campus, Albany, NY 12227, (518) 530-4153

For rates for previous periods, visit the Department of Taxation and Finance website: <https://www.tax.ny.gov/pay/interest/>

PUBLIC NOTICE

**Department of Taxation and Finance
Tax Law Article 13-A Rates**

Pursuant to the provisions of Tax Law sections 301-a(e), (f), (g) and (h), 301-d(b), 301-e(b) and (c), 301-j(a) and (c) and 308(a), the Commissioner of Taxation and Finance hereby gives public notice regarding the petroleum business tax (Tax Law, Article 13-A) rate adjustment calculation and the resulting rates effective January 1, 2022 (effective March 1, 2022 for quarterly filers), as follows: The motor fuel and highway diesel motor fuel rate is adjusted from \$.099 to \$.103; the non-highway diesel motor fuel rate is adjusted from \$.091 to \$.095; the residual petroleum product rate is adjusted from \$.070 to \$.073; the kero-jet fuel rate is adjusted from \$.067 to \$.070; the aviation gasoline rate is adjusted from \$.099 to \$.103; the rate of the supplemental tax on aviation gasoline is adjusted from \$.067 to \$.070; and the rate of the supplemental petroleum business tax is adjusted from \$.067 to \$.070. The separate rate of supplemental petroleum business tax with respect to highway diesel motor fuel is adjusted from \$.0495 to \$.0525; it is computed by subtracting one and three-quarters cents from the adjusted rate of the supplemental petroleum business tax. The railroad diesel rate is adjusted from \$.086 to \$.090; it is computed by subtracting one and three-tenths cents from the motor fuel and highway diesel motor fuel rate.

The basic utility credit (or reimbursement) rate with respect to residual petroleum product is adjusted from \$.0556 to \$.0583 and the basic utility credit (or reimbursement) rate with respect to non-highway diesel motor fuel product is adjusted from \$.0559 to \$.0586. The basic utility credit (or reimbursement) rates are further adjusted

by adding one-half of one cent to the adjusted basic rates of the utility credits (or reimbursements); as a result, the utility credit (or reimbursement) rate with respect to residual petroleum product is adjusted from \$.0606 to \$.0633, and the utility credit (or reimbursement) rate with respect to non-highway diesel motor fuel product is adjusted from \$.0609 to \$.0636.

The adjusted petroleum business tax rates are obtained by multiplying the existing rates by a fraction, the numerator of which is the sum of the monthly producer price indices (unadjusted) for refined petroleum products for the twelve consecutive months ending with the month of August 2021, and the denominator of which is the sum of the monthly producer price indices (unadjusted) for refined petroleum products for the twelve consecutive months ending with the month of August 2020. Such monthly producer price indices for the twelve consecutive months ending with the month of August 2021, are 144.4, 146.6, 148.9, 164.6, 178.4, 196.8, 225.2, 222.2, 242.1, 241.9, 256.7, and 251.3, which total 2419.1. Such monthly producer price indices for the twelve consecutive months ending with the month of August 2020, are 190.3, 195.6, 192.1, 191.3, 190.3, 175.8, 147.8, 90.3, 105.5, 127.2, 149.1, and 149.1, which total 1904.4. The producer price index for the category of commodities designated as refined petroleum products is published monthly by the Bureau of Labor Statistics of the U.S. Department of Labor. As required by law, the adjusted rates, except the utility credit (or reimbursement) rates and the rate of supplemental petroleum business tax with respect to highway diesel motor fuel, have been rounded to the nearest tenth of one cent. The utility credit (or reimbursement) rates and the rate of supplemental petroleum business tax with respect to highway diesel motor fuel have been rounded to the nearest hundredth of one cent. Section 301-a of the Tax Law does not allow the rates to change by more than 5 percent of the rates in effect on December 31. The computed rate change would be an increase of 27.0 percent; therefore, all of the above rates were subject to the 5 percent limitation.

For further information contact: David Shanley, Department of Taxation and Finance, Taxpayer Guidance Division, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4116, e-mail: David.Shanley@tax.ny.gov

EXECUTIVE ORDERS

Executive Order No. 3.1: Continuing the Declarations of Disaster Emergencies.

WHEREAS, pursuant to Executive Order 198, issued November 20, 2019, a disaster was declared within the counties of Cayuga, Jefferson, Monroe, Niagara, Orleans, Oswego, St. Lawrence, and Wayne due to extensive flooding, widespread erosion, and water damage that caused significant damage to homes and other residential structures, businesses, and public infrastructure;

WHEREAS, pursuant to Executive Order 211, issued July 6, 2021, a statewide disaster was declared across the State due to gun violence;

NOW, THEREFORE, I, KATHY HOCHUL, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby extend the state disaster emergencies as set forth in Executive Orders 198 and 211, and continue the terms, conditions, and suspensions contained in Executive Orders 198 through 198.19, 211, 211.1, until November 22, 2021.

(L.S.)

GIVEN under my hand and the Privy Seal of the State in the City of Albany this twenty-third day of October in the year two thousand twenty-one.

BY THE GOVERNOR

/S/ Kathy Hochul

/s/ Karen Persichilli Keogh

Secretary to the Governor

Executive Order No. 4.1: Continuing the Declaration of a State-wide Disaster Emergency Due to Healthcare Staffing Shortages in the State of New York.

WHEREAS, there are staffing shortages in hospital and other healthcare facilities and they are expected continue;

WHEREAS, severe understaffing in hospitals and other healthcare facilities is expected to continue to effect the ability to provide critical care and to adequately serve vulnerable populations;

WHEREAS, there is an immediate and critical need to supplement staffing to assure healthcare facilities can provide care;

NOW, THEREFORE, I, Kathy Hochul, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, do hereby find, pursuant to Section 28 of Article 2-B of the Executive Law do hereby extend the state disaster emergency as set forth in Executive Order 4, and continue the terms, conditions, and suspensions contained in Executive Order 4, until November 26, 2021;

IN ADDITION, by virtue of the authority vested in me by Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any statute, local law, ordinance, order, rule, or regulation, or parts thereof, of any agency during a State disaster emergency, if compliance with such statute, local law, ordinance, order, rule, or regulation would prevent, hinder, or delay action necessary to cope with the disaster emergency, I hereby temporarily suspend or modify, for the period from the date of this Executive Order through November 26, 2021 the following:

- The temporary modification of Sections 8602 and 8603 of the Education Law, and section 58-1.5 of Title 10 of the NYCRR, contained in Executive Order 4, insofar as such modification

authorized individuals to perform testing for the detection of SARS-CoV-2, or its antibodies, is modified only to the extent necessary to further allow such individuals to perform any clinical laboratory test on any specimen, including for the detection of SARS-CoV-2 and influenza, provided such individual is under appropriate supervision and meets the federal requirements for testing personnel appropriate to the assay or device authorized by the FDA or the New York State Department of Health;

- Subdivision a of section 763.5 of Title 10 of the NYCRR, only to the extent necessary to permit initial patient visits for certified home health agencies, long term home health care programs and AIDS home care programs to be made within 48 hours of receipt and acceptance of a community referral or return home from institutional placement;
- Paragraph 2 of subdivision g of section 763.4; paragraphs 7 and 8 of subdivision h of section 763.4; paragraph 2 of subdivision a of section 766.5; and subdivision d of section 766.5 of Title 10 of the NYCRR, to the extent necessary to permit certified home health agencies, long term home health care programs, AIDS home care programs, and licensed home care services agencies to conduct in-home supervision of home health aides and personal care aides as soon as practicable after the initial service visit, or to permit in-person and in-home supervision to be conducted through indirect means, including by telephone or video communication;
- Paragraph 3 of subdivision f of section 505.14 of Title 18 of the NYCRR, to the extent necessary to permit nursing supervision visits for personal care services to be made as soon as practicable;
- The suspension contained in Executive Order 4 of Article 30 of the Public Health Law is modified and clarified only to the extent necessary to allow EMTs and Advanced EMS providers, at the discretion of the Commissioner of Health, to provide emergent and non-emergency services in non-traditional EMS environments, such as hospitals, provided, however, that only services within such providers' level of certification may be performed;
- The suspension contained in Executive Order 4 of subdivision 7 of Public Health Law section 3001, subdivision (p) of section 800.3 is further modified to suspend subdivisions (6) and (7) of Public Health Law section 3001, subdivisions (o) and (p) of section 800.3, and section 800.15 of Title 10 of the NYCRR, only to the extent necessary to allow certified EMTs and advanced EMS providers, to administer vaccinations against influenza and COVID-19 pursuant to a non-patient specific order, including in non-emergency environments and locations, provided that EMTs and advanced EMS providers must first meet conditions set by the Commissioner of Health;
- The suspension contained in Executive Order 4 of Article 139 of the Education Law, Section 576-b of the Public Health Law and Section 58-1.7 of Title 10 of the NYCRR is further modified only to the extent necessary to permit registered nurses to also order the collection of saliva and nasal tests, in addition to throat and nasopharyngeal swab specimens from individuals, for purposes of COVID-19 testing;
- The suspension contained in Executive Order 4 of subdivi-

sion 1 of section 6902, Subdivision 4, 5 and 7 of section 6909 of the Education Law, subdivision 6 and 7 of section 6527 of the Education Law, and section 63.9 and 64.7 of Title 8 of the NYCRR to allow testing for COVID-19, is further modified only to add influenza testing, subject to the same terms and conditions; and

- The suspension contained in Executive Order 4 of sections 6521 and 6902 of the Education Law, subdivisions 4, 5, and 7 of section 6909 of the Education Law, subdivisions 6 and 7 of section 6527 of the Education Law, and sections 63.9 and 64.7 of Title 8 of the NYCRR insofar as they limit the execution of medical regimens prescribed by a licensed physician or other licensed and legally authorized health care providers to registered nurses licensed pursuant to Article 139 of the Education Law, is further modified to the extent necessary to permit non-nursing staff, upon completion of training deemed adequate by the Commissioner of Health, to: (1) collect throat, saliva, nasal, or nasopharyngeal swab specimens, as applicable and appropriate, for purposes of COVID-19 or influenza testing; (2) collect blood specimens for the diagnosis of acute or past COVID-19 disease; (3) administer vaccinations against influenza or COVID-19 pursuant to the most recent recommendations by the Advisory Committee for Immunization Practices (ACIP) and/or an applicable United States Food and Drug Administration approval or Emergency Use Authorization (EUA), subject to any other conditions set forth in this Order, including but not limited to conditions related to training and supervision, where applicable; and (4) where applicable and to the extent necessary, to perform tasks, under the supervision of a nurse, otherwise limited to the scope of practice of a licensed or registered nurse to provide care for individuals.

(L.S.) GIVEN under my hand and the Privy Seal of the State in the City of Albany this twenty-seventh day of October in the year two thousand twenty-one.

BY THE GOVERNOR

/S/ Kathy Hochul

/s/ Karen Persichilli Keogh

Secretary to the Governor

Executive Order No. 9: Declaring a Disaster in the Counties of Bronx, Broome, Chenango, Delaware, Greene, Kings, Montgomery, Nassau, New York, Orange, Otsego, Putnam, Queens, Richmond, Rockland, Schenectady, Schoharie, Suffolk, Sullivan, Tioga, Ulster, Westchester, and Contiguous Counties.

WHEREAS, on October 25, 2021 and continuing thereafter, prolonged heavy rainfall is expected to create hazardous conditions in New York State posing an imminent danger to public transportation, utility service, public health, and public safety systems within the counties of Bronx, Broome, Chenango, Delaware, Greene, Kings, Montgomery, Nassau, New York, Orange, Otsego, Putnam, Queens, Richmond, Rockland, Schenectady, Schoharie, Suffolk, Sullivan, Tioga, Ulster, Westchester, and contiguous counties.

WHEREAS, the storm is anticipated to produce heavy rainfall and high winds causing power outages, downed trees, localized flash flooding, road closures, travel disruptions, and damage to public and private property throughout the impacted areas, which pose a threat to the public health and safety.

NOW, THEREFORE, I, KATHY HOCHUL, Governor of the State of New York, by virtue of the authority vested in me by the Constitution of the State of New York and Section 28 of Article 2-B of the Executive Law, do hereby find that a disaster is imminent for which the affected local governments are unable to respond adequately. Therefore, I hereby declare a State Disaster Emergency effective October 25, 2021 within the territorial boundaries of the counties of Bronx, Broome, Chenango, Delaware, Greene, Kings, Montgomery, Nassau, New York, Orange, Otsego, Putnam, Queens, Richmond, Rockland,

Schenectady, Schoharie, Suffolk, Sullivan, Tioga, Ulster, Westchester, and contiguous counties. This Executive Order shall be in effect through November 24, 2021; and

FURTHER, pursuant to Section 29 of Article 2-B of the Executive Law, I direct the implementation of the State Comprehensive Emergency Management Plan and authorize, effective October 25, 2021, State agencies as necessary, and the American Red Cross, to take appropriate action to protect State property and to assist affected local governments and individuals in responding to and recovering from this disaster, and to provide such other assistance as necessary to protect the public health and safety.

IN ADDITION, this declaration satisfies the requirements of 49 C.F.R. 390.23(a)(1)(A), which provides relief from Parts 390 through 399 of the Federal Motor Carrier Safety Regulations (FMCSR). Such relief from the FMCSR is necessary to ensure that crews can clear vital roadways and hasten the movement of utility power restoration crews into New York State.

(L.S.)

GIVEN under my hand and the Privy Seal of the State in the City of Albany this 25th day of October in the year two thousand twenty-one.

BY THE GOVERNOR

/S/ Kathy Hochul

/s/ Karen Persichilli Keogh

Secretary to the Governor

Executive Order No. 10: Updating the State's Ethics Training Requirements.

WHEREAS, Executive Order 3 issued January 2nd, 2011 required officers and employees of the Executive Chamber, commissioners of New York State agencies, counsel to New York State agencies and ethics officers of New York State agencies to participate in ethics training;

WHEREAS, because the residents of New York State have the right to an ethical, professional, and transparent government, this Administration is committed to upholding the highest levels of ethical standards in its governance;

WHEREAS, to ensure public trust in government it is necessary that all State officers and employees develop and maintain an understanding of the ethical standards with which they are expected to comply;

NOW, THEREFORE, I, KATHY HOCHUL, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and laws of the State of New York, do hereby revoke Executive Order 3, issued January 2nd, 2011, and order as follows:

A. Definitions

1. "State Agency" shall have the same meaning as that term in Section 74 of Public Officers Law.
2. "State officers and employees" shall have the meaning given to "officer or employee of a state agency" in Section 74 of the Public Officers Law.

B. Ethics Training

1. All officers and employees of a state agency who are new to state service shall participate in a live ethics training within sixty days of commencing their employment.
2. Such training shall include a discussion of the provisions of Sections 73, 73-A, and 74 of the Public Officers Law and Sections 75-b and 107 of the Civil Service Law.
3. Every officer and employee of a state agency shall participate in a live ethics training every three years following their initial training session pursuant to this order, however, officers and employees of a state agency who work in the Executive Chamber shall participate in a live ethics training every two years following their initial training session pursuant to this order.
4. Each officer and employee of a state agency shall submit a signed statement from them or their trainer certifying their

participation in each live training session pursuant to this order, which statements shall be placed in their personnel files.

5. The Executive Chamber and Ethics Officers at each state agency shall coordinate with each other and the Joint Commission on Public Ethics, to establish regular training sessions sufficient to allow affected individuals to comply with this order.

C. Penalties

Any violation of this order may result in dismissal or other appropriate sanction as determined by the appointing officer of the individual committing such violation.

(L.S.) GIVEN under my hand and the Privy Seal of the State in the City of Albany this twenty-seventh day of October in the year two thousand twenty-one.

BY THE GOVERNOR
/S/ Kathy Hochul
/s/ Karen Persichilli Keogh
Secretary to the Governor

COURT NOTICES

AMENDMENT OF RULE

Uniform Rules for the Supreme and County Courts

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby amend Rule 3(a) of section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division), effective December 20, 2021, to read as follows:

Rule 3. Alternative Dispute Resolution (ADR); Settlement Conference Before a Justice Other Than the Justice Assigned to the Case.

(a) At any stage of the matter, the court may direct or counsel may seek the appointment of an uncompensated mediator *or neutral evaluator* for the purpose of [mediating] *helping to achieve* a resolution of all or some of the issues presented in the litigation. Counsel are encouraged to work together to select a mediator *or neutral evaluator* that is mutually acceptable and may wish to consult any list of approved neutrals in the county where the case is pending. Additionally, counsel for all parties may stipulate to having the case determined by a summary jury trial pursuant to any applicable local rules or, in the absence of a controlling local rule, with permission of the court.

AMENDMENT OF RULE

Uniform Rules for the Supreme and County Courts

Pursuant to the authority vested in me, and with the advice and consent of the Administrative Board of the Courts, I hereby promulgate Rule 36 of section 202.70(g) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division), effective December 13, 2021, to read as follows:

Rule 36. Virtual Evidentiary Hearing or Non-Jury Trial.

(a) *If the requirements of paragraph (c) of this Rule are met, the court may, with the consent of the parties, conduct an evidentiary hearing or a non-jury trial utilizing video technology.*

(b) *If the requirements of paragraph (c) of this Rule are met, the court may, with the consent of the parties, permit a witness or party to participate in an evidentiary hearing or a non-jury trial utilizing video technology.*

(c) *The video technology used must enable:*

- i. a party and the party's counsel to communicate confidentially;*
- ii. documents, photos, and other things that are delivered to the court to be delivered to the remote participants;*
- iii. interpretation for a person of limited English proficiency;*
- iv. a verbatim record of the trial; and*
- v. public access to remote proceedings.*

(d) *This Rule does not address the issue of when all parties do not consent.*

