

RULE MAKING ACTIVITIES

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

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

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

Office of Alcoholism and Substance Abuse Services

NOTICE OF ADOPTION

Rates of Reimbursement—Alcoholism Facilities

I.D. No. ASA-33-18-00001-A

Filing No. 1019

Filing Date: 2018-10-18

Effective Date: 2018-11-07

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

Action taken: Repeal of Part 840 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(c), 19.09(b), 19.40, 32.02 and 32.07(a)

Subject: Rates of Reimbursement—Alcoholism Facilities.

Purpose: Repeal obsolete regulations.

Text or summary was published in the August 15, 2018 issue of the Register, I.D. No. ASA-33-18-00001-P.

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

Text of rule and any required statements and analyses may be obtained from: Sara Osborne, Associate Attorney, Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: Sara.Osborne@oasas.ny.gov

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Standards for Alcoholism Facilities to Participate in the Medicaid Program

I.D. No. ASA-33-18-00002-A

Filing No. 1020

Filing Date: 2018-10-18

Effective Date: 2018-11-07

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

Action taken: Repeal of Part 839 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(c), 19.09(b), 19.40, 32.02 and 32.07(a)

Subject: Standards for Alcoholism Facilities to Participate in the Medicaid Program.

Purpose: Repeal obsolete regulations.

Text or summary was published in the August 15, 2018 issue of the Register, I.D. No. ASA-33-18-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Sara Osborne, Associate Attorney, Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: Sara.Osborne@oasas.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-33-18-00006-A

Filing No. 1017

Filing Date: 2018-10-17

Effective Date: 2018-11-07

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

Action taken: Amendment of Appendix 3 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the labor class.

Text or summary was published in the August 15, 2018 issue of the Register, I.D. No. CVS-33-18-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov

Assessment of Public Comment

The agency received no public comment.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sale of Electronic Cigarette Flavored Liquids

I.D. No. HLT-45-18-00006-P

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

Proposed Action: Amendment of Part 9 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

Subject: Sale of Electronic Cigarette Flavored Liquids.

Purpose: To prohibit the sale of electronic cigarette flavored liquids.

Text of proposed rule: The title of Part 9 is amended to read as follows:

Part 9 [Synthetic Phenethylamines and Synthetic Cannabinoids Prohibited] *Prohibited Substances*

A new Subpart 9-1, titled "Synthetic Phenethylamines and Synthetic Cannabinoids Prohibited" is added and sections 9.1 through 9.6 are renumbered 9-1.1 through 9-1.6.

A new Subpart 9-2, titled "Prohibition on the Sale of Electronic Cigarette Liquids with Characterizing Flavors", is added to read as follows:

Section 9-2.1 Definitions.

As used in this Subpart, the following terms shall have the following meanings:

(a) *The terms "electronic cigarette" and "e-cigarette" mean an electronic device that delivers vapor which is inhaled by an individual user, and shall include any refill, cartridge and any other component of such a device.*

(b) *The terms "electronic liquid" and "e-liquid" means the solution, substance or material used in an e-cigarette and heated to produce an aerosol or emission to be inhaled by the user, whether the liquid contains nicotine or not.*

(c) *The term "flavored e-liquid" means any e-liquid with a distinguishable taste or aroma, other than the taste or aroma of tobacco or menthol, imparted either prior to or during consumption of an e-cigarette or a component part thereof, including but not limited to tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice, or any of a number of "concept flavors" that impart a taste or aroma that is distinguishable from tobacco flavor but may not relate to any particular known flavor. An e-liquid is presumed to be a flavored e-liquid if a tobacco retailer, manufacturer, or a manufacturer's agent or employee has made a statement or claim directed to consumers of the public, whether expressed or implied, that the product or device smells or tastes different from tobacco. This includes but is not limited to text and/or images on the products' labeling or packaging that is not clearly labeled as having flavors, products that are not clearly labeled as having no flavor or tobacco flavor only. Products manufactured and dispensed pursuant to Title V-A of Article 33 of the Public Health Law shall be exempt from this definition.*

(d) *Possession means to have physical possession or otherwise to exercise dominion or control over flavored e-liquids or a product containing the same. For purposes of this definition, among other circumstances not limited to these examples, the following individuals and/or entities shall be deemed to possess flavored e-liquids, a product containing the same or any component part that imparts flavor to an e-cigarette: (1) any individual or entity that has an ownership interest in a retail, distribution or manufacturing establishment that possesses, distributes, sells or offers for sale flavored e-liquids, or a product containing the same; and (2) any clerk, cashier or other employee or staff of a retail establishment, which establishment possesses, distributes, sells or offers for sale a flavored e-liquids or a product containing the same, who interacts with customers or other members of the public.*

Section 9-2.2 Possession, Manufacture, Distribution, Sale or Offer of Sale of Flavored E-Liquid Prohibited.

It shall be unlawful for any individual or entity to possess, manufacture, distribute, sell or offer for sale any flavored e-cigarette liquid or product containing the same.

Section 9-2.3 Penalties.

A violation of any provision of this Part is subject to all civil and criminal penalties as provided for by law. For purposes of civil penalties, each individual container or other separate unit of flavored e-liquid, product containing the same, or any component part that imparts flavor to an e-cigarette, that is possessed, manufactured, distributed, sold, or offered for sale, shall constitute a separate violation under this Part.

Section 9-2.4 Severability.

If any provisions of this Part or the application thereof to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons, entities, and circumstances.

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 Public Health and Health Planning Council (PHHPC) is authorized by Section 225 of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC) subject to the approval of the Commissioner of Health. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life and health of the people of the State of New York.

Legislative Objectives:

PHL Section 225(4) authorizes PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize health and safety. This proposed regulation furthers this legislative objective by prohibiting the possession, manufacture, distribution, sale or offer for sale of flavored electronic liquids (e-liquids) to discourage electronic cigarette (e-cigarette) use.

Needs and Benefits:

Regulations are necessary to address the alarming increase of e-cigarette use among New York's youth. New York State-specific surveillance data shows that youth e-cigarette use has risen at a dramatic rate over just the last four years, driven primarily by the abundance of e-liquid flavors. Swift interventions are needed to protect our youth from a lifetime addiction to nicotine. Therefore, restricting the availability of flavored e-liquids will deter youth from initiating e-cigarette use and reduce ongoing e-cigarette use.

According to the U.S. Food and Drug Administration (FDA), the use of e-cigarettes by youth has reached epidemic proportions nationally. Since the New York State Department of Health (Department) began tracking e-cigarette use in New York State (NYS) in 2014, use by youth in high school has increased 160 percent, from 10.5 percent in 2014, to 20.6 percent in 2016, to an astounding 27.4 percent in 2018. The rate for 2018 is equivalent to youth use of combustible cigarettes in 2000 prior to the dramatic decline in the use of combustible cigarettes among NYS youth. Currently, just 4.8 percent of NYS youth smoke a combustible cigarette, one of the lowest rates in the nation. However, the rate of smoking by youth is increasing, as the rate in 2016 was 4.3 percent.

The recently published National Academy of Science, Engineering, and Medicine (NASEM) report on the Public Health Consequences of E-Cigarettes concluded that there is:

- 1) "...substantial evidence that e-cigarette use increases risk of ever using combustible tobacco cigarettes among youth and young adults," and
- 2) "...moderate evidence that e-cigarette use increases the frequency and intensity of subsequent combustible tobacco cigarette smoking" among youth and young adults.

Given the recent rise in combustible cigarette use by youth and the fact that e-cigarettes are now the most commonly used tobacco product by youth in NYS, evidence exists that use of e-cigarettes could reverse the long-standing decline in combustible cigarette use and reverse the public health benefits that NYS has achieved.

The flavorant chemicals used in e-cigarettes have been approved by the FDA for ingestion only; however, these chemicals have not been approved for inhalation. Because inhalation and ingestion are very different processes, nothing about the approval for ingestion should be interpreted to suggest that these products are safe for inhalation. Food products, chemicals and flavorings that are ingested are detoxified through the liver before entering the circulatory system. Aerosols that are inhaled have a direct impact on lung tissue and directly enter the circulatory system, and are not detoxified through the liver.

Some of the over 15,000 flavors now available include fruit flavors (apple, cherry, peach, melon, strawberry), dessert flavors (vanilla custard, peanut butter cup, cream cookie, milk 'n honey), candy flavors (cinnablaste, bubblerazz, mango burst, caramel). More recently, manufacturers have developed "concept flavors" that may be difficult to perceive as a single distinctive flavor and the product names reflect that (e.g., Jazz, First Flight, and Unicorn Milk) and simple color names (such as Blue and Yel-

low) that substitute for the names of flavors (Vanilla and Banana respectively). The list of flavors continues to grow. The commonality of all these flavors is that they are distinct from plain tobacco flavor or unflavored tobacco.

The dramatic increase in use of e-cigarettes by youth is driven in large part by flavored e-liquids, and flavors are a principal reason that youth initiate and maintain e-cigarette use. In a recent survey of adolescent e-cigarette users in NYS, 46.3 percent preferred fruit flavors, followed by menthol (19.9%) and chocolate, candy or other sweets (18.2%). In that same survey, 27.3 percent of adolescent e-cigarette users say that flavors are the reason they currently use e-cigarettes, and for 19.3 percent of adolescent e-cigarette users, flavors were the primary reason for first use. Some flavors also confer misperceptions about the relative safety of e-cigarettes. The survey also found that adolescents are more likely to believe that fruit and chocolate or other sweet flavors are less harmful than flavors like alcohol, tobacco, and spice flavors.

There is also concern regarding human exposure to nicotine. Users are often unaware of how much nicotine they are consuming. The newest and most popular e-cigarettes deliver high levels of nicotine, the addictive component in all tobacco products.

Nicotine is not a benign chemical. Nicotine has deleterious effects on the developing human brain – a process that continues through the mid-twenties. According to the US Surgeon General, these deleterious effects from nicotine can lead to lower impulse control and mood disorders; disrupt attention and learning among youth and young adults; and prime the developing brain for addiction to alcohol and other drugs.

Adult use of e-cigarettes differs by age category. Adults over age 24 use e-cigarettes at very low rates; just 4.4 percent in 2017. The rate of e-cigarette use among young adults 18- to 24-year-olds is about 13 percent. The same proportion of young adults (13%) use combustible cigarettes. Almost 40 percent of the young adult smokers are concurrently using e-cigarettes, known as dual use. The same health concerns described above apply to the use of e-cigarettes by adults aged 18 to 24.

In addition, although it is too soon to understand the long-term health effects of a lifetime of e-cigarette use, research is beginning to accumulate about certain health effects related to cardiovascular conditions and respiratory conditions. The Department will continue to closely monitor the research literature for health impact related to e-cigarettes.

Since this restriction focuses only on flavored e-liquids, adult smokers who want to continue to use e-cigarettes will have the option of unflavored, menthol or tobacco flavored e-cigarettes.

Costs:

Costs to Private Regulated Parties:

The regulation will impose costs, in terms of lost sales, for private regulated parties whose primary product line focuses on the sale of e-cigarettes, flavored e-liquids, and related products.

Costs to State Government and Local Government:

State and local governments will incur costs for enforcement. Exact costs cannot be predicted at this time because the extent of the need for enforcement cannot be fully determined. Some of the cost however may be offset by fines and penalties imposed pursuant to the Public Health Law as well as through utilizing State Aid funding.

Local Government Mandates:

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with the SSC through a local sanitary code. Local governments have the power and duty to enforce the provisions of the State Sanitary Code, including 10 NYCRR Part 9, utilizing both civil and criminal options available.

Paperwork:

The regulation imposes an increase of administrative paperwork for program implementation in regard to developing adequate enforcement mechanisms, record-keeping of enforcement activities and compliance history, and complaint-driven enforcement actions.

Duplication:

There are currently no State or federal regulations regarding the possession, manufacture, distribution, sale or offer for sale of e-cigarettes with characterizing flavors.

Alternatives:

The alternative to the proposed regulation is to wait for the FDA to regulate in this area; however, due to the health concerns associated with increase e-cigarette use among youths, this alternative was rejected.

Federal Standards:

The FDA has not proposed any standards for e-cigarette devices or for the constituents used in the devices to create the aerosol, including characterizing flavors. FDA only requires that those purchasing e-cigarette products be at least 18 years old, that e-cigarette liquids carry a warning statement about the addictiveness of nicotine, and that e-cigarette liquids be in child-proof containers.

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect of Rule:

The amendment will affect the small businesses that are engaged in selling flavored e-cigarette liquids. The NYS Vapor Association (<http://nysva.org/>) claims there are at least 700 “vape shops” employing 2700 persons across the state, although the Department cannot confirm this information as no official registration mechanism for “vape shops” currently exists.

Compliance Requirements:

Small businesses must comply with the proposed regulation by not engaging in any possession, manufacturing, distribution, sale, or offer of sale of flavored e-liquids. Local governments must comply by enforcing the proposed regulations as they are part of the State Sanitary Code.

Professional Services:

Small businesses will need no additional professional services to comply.

Compliance Costs:

Costs to Private Regulated Parties:

The regulation will impose costs, in terms of lost sales, for private regulated parties whose primary product line focuses on the sale of e-cigarettes, flavored e-liquids, and related products.

Costs to State Government and Local Government:

State and local governments will incur costs for enforcement. Exact costs cannot be predicted at this time because the extent of the need for enforcement cannot be fully determined. Some of the cost however may be offset by fines and penalties imposed pursuant to the Public Health Law as well as through utilizing State Aid funding.

Economic and Technological Feasibility:

The rule does not impose any economic or technological compliance burdens.

Minimizing Adverse Impact:

The New York State Department of Health will assist local governments by providing consultation, coordination and information and updates on its website.

Small Business and Local Government Participation:

Small business and local governments were not consulted during the creation of this proposed rule; however, small businesses and local governments will be able to submit public comments during the public comment period.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a “cure period” or other opportunity for ameliorative action to prevent the imposition of penalties on a party subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one is not included. As this proposed regulation does not create a new penalty or sanction, no cure period is necessary.

Rural Area Flexibility Analysis

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas. The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

Nature of Impact:

E-cigarettes and e-liquids are sold in many types of retail outlets. The impact on businesses where e-cigarette sales is not the focus of the business (e.g., convenience store) will have no job impact from this regulation as e-cigarettes make up only a small percentage of their sales. Some e-cigarette retailers focus the bulk of their business on e-cigarettes and e-liquids and these outlets will be affected by this regulation. While they will still be able to sell e-cigarette devices and unflavored, menthol or tobacco flavored e-liquid, the prohibition on flavored e-liquids is likely to affect these businesses. We do not have an accurate estimate of the number of stores affected since there is no registration requirement for e-cigarette retailers.

Categories and Numbers Affected:

The main category affected by this regulation is the store that focuses its primary business on the sale of e-cigarette devices and e-liquids. The NYS Vapor Association (<http://nysva.org/>) claims there are at least 700 of such “vape shops” employing 2700 persons across the state, although the Department cannot confirm this information as no official registration mechanism for “vape shops” currently exists. Because of the lack of data about the number of these stores, it is not possible to accurately estimate the number of jobs affected.

Regions of Adverse Impact:

The Department anticipates any jobs or employment impacts will occur equally throughout the regions of the state.

Minimizing Adverse Impact:
The Department will consider different types/levels of enforcement while retailers adapt to the new regulation.

Office for People with Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Telehealth

I.D. No. PDD-45-18-00001-EP

Filing No. 1018

Filing Date: 2018-10-17

Effective Date: 2018-10-17

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

Proposed Action: Amendment of Subpart 635-13 and Part 679 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 16.00; Public Health Law, sections 2999-cc and 2999-dd

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

Specific reasons underlying the finding of necessity: The emergency adoption of regulations that authorizes telehealth as a new mechanism to deliver clinical services is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system. The proposed/emergency regulation will allow individuals to receive clinical services via telehealth, pursuant to recent legislative amendments to Public Health Law § 2999-cc and 2999-dd.

Telehealth will increase individuals access to care by allowing them to receive services remotely, rather than in the home or another costlier and more restrictive settings. The regulations must be filed on an emergency basis to ensure that OPWDD establishes telehealth regulations by July 11, 2018, the date prescribed by the amendments to Public Health Law § 2999-cc and 2999-dd. If the regulations are not adopted by July 11, 2018, OPWDD will not meet the amended statutory requirement and voluntary and state-operated facilities will not be able to deliver clinical services to individuals via telehealth on the effective date of the statute. The regulatory updates are minimal, and when weighed against the significant loss of the ability to provide clinical services via telehealth on the statutory start date, the limit of full public notice is less significant.

Subject: Telehealth.

Purpose: To authorize telehealth as a new modality for the delivery of clinical services.

Text of emergency/proposed rule: • New paragraph 679.1(c)(4) is added as follows, and all remaining paragraphs are renumbered accordingly:

(4) *Providing access to clinical services to a person located in his/her residence or other temporary location via telehealth (see glossary) while the provider is located either at a main clinic site certified by OPWDD or at a certified satellite site (see glossary).*

New subdivision 679.2(c) is added as follows, and all remaining paragraphs are renumbered accordingly:

(c) *Section 367-u of the Social Services Law provides that the commissioner shall not exclude from the payment of medical assistance funds the delivery of healthcare services through telehealth when the services are provided pursuant to section 2999-cc(3) of the Public Health Law and meet the requirements of federal law, rules and regulations.*

• New subdivision 679.2(f) is added as follows:

(f) *Section 2999-cc of the Public Health Law provides that health care services, which must include the assessment, diagnosis, consultation, treatment, education, care management, and/or self-management of a patient, may be provided via the use of electronic information and communication technologies between qualifying providers located at a distant site and a patient located at an originating site.*

• New subdivision 679.2(g) is added as follows:

(g) *Section 4406-g of the Public Health Law provides that a health maintenance organization shall not exclude from coverage a service that is covered under an enrollee contract of a health maintenance organization because the service is delivered via telehealth.*

• New subdivision 679.2(h) is added as follows:

(h) *Sections 3217-h and 4306-g of the Insurance Law provide that under an insurance policy that provides comprehensive coverage for hospital, medical or surgical care, said services shall not be excluded from coverage because the service is delivered via telehealth.*

• Existing subdivision 679.5(c) is amended as follows:

(c) A clinic visit may include face-to-face service as defined by allowable Current Procedural Terminology (CPT)/Healthcare Common Procedure Coding System (HCPCS) and/or Current Dental Terminology (CDT) codes, or such allowable services provided via telehealth.

• Existing subdivision 679.6(b) is amended as follows:

(b) Each agency that operates a clinic treatment facility shall provide OPWDD information it requests, including but not limited to the following: services provided by CPT/HCPCS and/or CDT codes, where such services were delivered, including the location of both the provider and the individual when services are delivered via telehealth, (i.e., on-site or at a certified satellite site, or, prior to April 1, 2016, off-site) and revenues by funding source or payee. These data shall correspond to the identical time period of the cost report.

• New subdivision 679.99(w) is added as follows, and all remaining subdivisions are renumbered accordingly:

(w) *Telehealth. The use of electronic information and communication technologies by a health care provider to deliver health care services to an individual while such individual is located at a site that is different from the site where the health care provider is located.*

• New subdivision 635-13.4(c) is added as follows, and all remaining subdivisions are renumbered accordingly:

(c) *IPSIDD services are prohibited from being delivered via telehealth.*

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire December 15, 2018.

Text of rule and any required statements and analyses may be obtained from: Office of Counsel, Bureau of Policy and Regulatory Affairs, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd Floor, 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.

Regulatory Impact Statement

1. Statutory Authority:

a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs, supports, and services in the areas of care, treatment, habilitation, rehabilitation, and other education and training of persons with developmental disabilities, as stated in the New York State (NYS) Mental Hygiene Law Section 13.07.

b. OPWDD has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the NYS Mental Hygiene Law Section 13.09(b).

c. OPWDD has the statutory authority to adopt regulations concerned with the operation of programs and the provision of services, as stated in the NYS Mental Hygiene Law Section 16.00.

d. OPWDD has the statutory authority to enact regulations relating to the use of telehealth, as stated in Public Health Law Sections 2999-cc and 2999-dd.

2. Legislative Objectives: The proposed regulations further legislative objectives embodied in sections 13.07, 13.09(b) and 16.00 of the Mental Hygiene Law and sections 2999-cc and 2999-dd of the Public Health Law. The regulations expand the way individuals can receive clinical services by authorizing telehealth as a new mechanism to deliver clinical services.

3. Needs and Benefits: The proposed regulations amend Title 14 NYCRR Part 679 and Subpart 635-13 to authorize telehealth as a new modality for the delivery of clinical services.

The proposed regulations are necessary to allow individuals to receive clinical services via telehealth pursuant to recent legislative amendments to the Public Health Law.

The proposed regulations are beneficial to individuals because they provide individuals with greater access to community providers which reduces the potential need for higher cost services, such as emergency room services.

The proposed regulations are beneficial to providers because individuals can receive services remotely, rather than costlier services in a more restrictive setting.

4. Costs:

a. Costs to the Agency and to the State and its local governments: There

is no anticipated impact on Medicaid expenditures as a result of these proposed regulations. Medicaid expenditures should go down over time because the regulation improves access to clinical services and reduces the need for costlier, higher levels of care.

These regulations will not have any fiscal impact on local governments, as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

There are no anticipated costs to OPWDD in its role as a provider of services to comply with the new requirements. These regulations will provide a new modality for the delivery of current OPWDD services.

b. Costs to private regulated parties: There are no anticipated costs to regulated providers to comply with the proposed regulations. The amendments merely authorize telehealth as a new mechanism to deliver clinical services.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: Providers will not experience an increase in paperwork as a result of the proposed regulations.

7. Duplication: The proposed regulations do not duplicate any existing State or Federal requirements on this topic.

8. Alternatives: OPWDD did not consider any other alternatives to the proposed regulations. The regulations are necessary to allow telehealth as a new modality to deliver clinical services pursuant to recent statutory amendments.

9. Federal Standards: The proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: OPWDD is planning to adopt the proposed amendments on an emergency basis, within the timeframes mandated by the State Administrative Procedure Act. The proposed regulations were discussed with and reviewed by representatives of providers in advance of this proposal.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses and local governments is not being submitted because these amendments will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses. There are no professional services, capital, or other compliance costs imposed on small businesses as a result of these amendments.

The proposed regulations amend Title 14 NYCRR Part 679 and Subpart 635-13 to authorize telehealth as a new modality for the delivery of clinical services. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers of small business and 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 amendments.

The proposed regulations amend Title 14 NYCRR Part 679 and Subpart 635-13 to authorize telehealth as a new modality for the delivery of clinical services. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers in rural areas and local governments.

Job Impact Statement

A Job Impact Statement for the proposed 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.

The proposed regulations amend Title 14 NYCRR Part 679 and Subpart 635-13 to authorize telehealth as a new mechanism to deliver clinical services. The amendments will not result in costs, including staffing costs, or new compliance requirements for providers and consequently, the amendments will not have a substantial impact on jobs or employment opportunities in New York State.

Public Service Commission

NOTICE OF ADOPTION

Proposal for an Electronic DPA Program

I.D. No. PSC-13-18-00016-A

Filing Date: 2018-10-18

Effective Date: 2018-10-18

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

Action taken: On 10/18/18, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) proposal to establish an electronic deferred payment agreement (DPAs) program.

Statutory authority: Public Service Law, sections 37 and 66(12)

Subject: Proposal for an electronic DPA program.

Purpose: To approve National Grid's proposal to establish an electronic DPA program.

Substance of final rule: The Commission, on October 18, 2018, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) proposal to establish an electronic deferred payment agreement (DPAs) program. National Grid is directed to file quarterly reports as described in the body of this Order. These reports shall be due, beginning with the first quarter in which National Grid offers customers the option of an electronic DPA, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(17-E-0238SA2)

NOTICE OF ADOPTION

Implementation of a Pilot Statewide Customer Satisfaction Survey

I.D. No. PSC-23-18-00013-A

Filing Date: 2018-10-18

Effective Date: 2018-10-18

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

Action taken: On 10/18/18, the PSC adopted an order authorizing the implementation of a Pilot Statewide Customer Satisfaction Survey.

Statutory authority: Public Service Law, sections 37, 66, 80, 89-c and 111

Subject: Implementation of a Pilot Statewide Customer Satisfaction Survey.

Purpose: To authorize the Implementation of a Pilot Statewide Customer Satisfaction Survey.

Substance of final rule: The Commission, on October 18, 2018, adopted an order authorizing the implementation of a Pilot Statewide Customer Satisfaction Survey. Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Brooklyn Union Gas Company d/b/a National Grid NY, KeySpan Gas East Corporation d/b/a National Grid, Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric and Gas, Rochester Gas and Electric Corporation, Orange and Rockland Utilities, Inc. and National Fuel Gas Distribution Corporation are directed to implement the pilot statewide customer satisfaction survey described in the body of this Order, commencing on January 1, 2019, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission,

sion, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(15-M-0566SA2)

NOTICE OF ADOPTION

Petition for Cost Calculation, Reimbursement and Cost Recovery Related to Gas Delivery

I.D. No. PSC-25-18-00007-A

Filing Date: 2018-10-18

Effective Date: 2018-10-18

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

Action taken: On 10/18/18, the PSC adopted an order approving, with modifications, the New York Facilities System's (NYFS) petition regarding NYFS' May 1, 2018 Replacement Agreement.

Statutory authority: Public Service Law, section 66

Subject: Petition for cost calculation, reimbursement and cost recovery related to gas delivery.

Purpose: To approve, with modifications, NYFS' petition regarding its May 1, 2018 Replacement Agreement.

Substance of final rule: The Commission, on October 18, 2018, adopted an order approving, with modifications, KeySpan Gas East Corporation d/b/a National Grid, The Brooklyn Union Gas Company d/b/a National Grid NY (collectively, National Grid) and Consolidated Edison Company of New York, Inc. (Con Edison) (all three Companies are collectively referred to as New York Facilities System (NYFS) Owners) petition regarding NYFS Owners' May 1, 2018 replacement New York Facilities Agreement. Article VI, regarding cost reimbursement through Exchange Payments, and Section 8.4, regarding line losses of the May 1, 2018 New York Facilities Agreement, as modified in the body of this Order, are approved. National Grid's request for the recovery and reconciliation of costs associated with the May 1, 2018 New York Facilities Agreement is approved. National Grid is directed to file tariff revisions to effectuate cost recovery and reconciliation costs and revenues related to the New York Facilities System, consistent with the discussion in the body of this Order, on not less than seven days' notice and to become effective November 1, 2018. Con Edison is authorized to reconcile the NYFS costs and revenues as discussed in the body of this Order and consistent with the provisions of its current gas rate plan, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-G-0318SA1)

NOTICE OF ADOPTION

New York State Standardized Interconnection Requirements

I.D. No. PSC-28-18-00008-A

Filing Date: 2018-10-18

Effective Date: 2018-10-18

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

Action taken: On 10/18/18, the PSC adopted an order modifying Standardized Interconnection Requirements (SIR) addressing the Interconnection Policy Working Group (IWGP) and Interconnection Technical Working Group's (ITWG) petition for clarification.

Statutory authority: Public Service Law, sections 65(1), (2), (3), 66(1), (2), (3), (5), (8) and (10)

Subject: New York State Standardized Interconnection Requirements.

Purpose: To adopt an order modifying the SIR.

Substance of final rule: The Commission, on October 18, 2018, adopted an order modifying Standardized Interconnection Requirements (SIR) addressing the Interconnection Policy Working Group (IWGP) and Interconnection Technical Working Group's (ITWG) petition for clarification of the Commission's Standardized Interconnection Requirements (SIR) Modification Order, issued on April 19, 2018. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation are directed to make tariff filings to incorporate into their electric tariffs the revised Standard Interconnection Requirements, as contained in Appendix A, and to remove any inconsistent tariff provisions. These tariff amendments shall become effective on not less than one day's notice, to take effect on or before November 2, 2018. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation are also directed to post Appendix B to their respective Distributed Generation websites no later than November 2, 2018, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-E-0018SA1)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-31-18-00009-A

Filing Date: 2018-10-22

Effective Date: 2018-10-22

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

Action taken: On 10/18/18, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Edison) tariff amendments to P.S.C. No. 10—Electricity, General Rule 20—Standby Service.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Tariff amendments.

Purpose: To approve Con Edison's tariff amendments to P.S.C. No. 10—Electricity, General Rule 20—Standby Service.

Substance of final rule: The Commission, on October 18, 2018, adopted an order approving Consolidated Edison Company of New York, Inc.'s tariff amendments to P.S.C. No. 10 – Electricity, General Rule 20 – Standby Service, to streamline the customer application process and provide clarity to the Standby Service tariff provisions, to become effective on November 1, 2018, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-E-0416SA1)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-31-18-00010-A

Filing Date: 2018-10-22

Effective Date: 2018-10-22

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

Action taken: On 10/18/18, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) tariff amendments to Service Classification (SC) No. 11 and No. 14, contained in P.S.C. No. 219—Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Tariff amendments.

Purpose: To approve National Grid's tariff amendments to SC No. 11 and No. 14, contained in P.S.C. No. 219—Gas.

Substance of final rule: The Commission, on October 18, 2018, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) tariff amendments to Service Classification (SC) No. 11 – Load Aggregation and No. 14 – Gas Transportation Service for Dual Fuel Electric Generators, contained in P.S.C. No. 219 – Gas, to establish a capacity release program that releases a pro-rata share of all National Grid's gas supply assets to energy service companies (ESCOs), to become effective on November 1, 2018, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-G-0436SA1)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-31-18-00014-A

Filing Date: 2018-10-22

Effective Date: 2018-10-22

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

Action taken: On 10/18/18, the PSC adopted an order approving Consolidated Edison Company of New York, Inc.'s (Con Edison) tariff amendments to P.S.C. No. 9—Gas.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Tariff amendments.

Purpose: To approve Con Edison's tariff amendments to P.S.C. No. 9—Gas.

Substance of final rule: The Commission, on October 18, 2018, adopted an order approving Consolidated Edison Company of New York, Inc.'s tariff amendments to P.S.C. No. 9 – Gas, to establish a Baseload Service under its Daily Delivery Service (DDS) Program, to become effective on November 1, 2018, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(18-G-0393SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Eliminating a Financial Incentive for Utility Performance, the Interconnection Earnings Adjustment Mechanism

I.D. No. PSC-45-18-00003-P

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

Proposed Action: The Commission is considering the Staff Proposal to eliminate the Interconnection Earnings Adjustment Mechanism.

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

Subject: Eliminating a financial incentive for utility performance, the interconnection earnings adjustment mechanism.

Purpose: To consider encouraging utility performance while creating customer savings.

Substance of proposed rule: The Commission is considering the Department of Public Service Staff (Staff) proposal to terminate the interconnection earnings adjustment mechanism (EAM), filed on October 24, 2018.

The interconnection EAM is an incentive that gives the state's investor owned utilities the opportunity to earn additional revenues for successfully interconnecting distributed energy resources with a high degree of customer satisfaction. Three utilities, Niagara Mohawk Power Corporation d/b/a National Grid, Central Hudson Gas & Electric Corporation, and Consolidated Edison Company of New York, Inc., have effective rate plans that allow an opportunity to earn an EAM for distributed energy resource interconnection. Staff is proposing discontinuing these opportunities, as the interconnection EAM is no longer necessary to incentivize utility performance.

The full text of the Staff proposal 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: Kathleen H. Burgess, 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.

(16-M-0429SP5)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proposed Transfer of Two Natural Gas Pipeline Operating Companies, and for Lightened and Incidental Regulation

I.D. No. PSC-45-18-00004-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 for approval to transfer ownership of Alliance Energy Transmissions LLC and Alliance Energy Transmissions-Syracuse LLC, and for incidental regulation of the transferred companies.

Statutory authority: Public Service Law, sections 2(10), (11), (12), (13), 5(1)(b), 5-b, 64, 65, 66, 68, 69 and 70

Subject: Proposed transfer of two natural gas pipeline operating companies, and for lightened and incidental regulation.

Purpose: To consider transfer if there is no market power or ratepayer harm, incidental regulation, and continuing lightened regulation.

Substance of proposed rule: The Commission is considering a petition filed by Alliance Energy Group, LLC (AEG), Alliance Energy Transmis-

sions LLC (AET), Alliance Energy Transmissions-Syracuse, LLC (AET-Syracuse), the Linger Trust, and AET Holdings LLC (AET Holdings) (collectively, the Petitioners) for the authority to transfer ownership of AET and AET-Syracuse from AEG to AET Holdings. Petitioners request that AET and AET-Syracuse be incidentally regulated as provided by Public Service Law Section 66(13), and for confirmation that the lightened ratemaking regulatory regimes previously granted to these companies will continue after the proposed transaction is effectuated.

Petitioners explain that AET owns and operates an approximately 11.2-mile intrastate natural gas pipeline that is used exclusively to transport gas to an approximately 67.3 MW electric generating facility located in Batavia, New York. AET-Syracuse owns and operates an approximately 9.5-mile intrastate natural gas pipeline that is used solely to provide natural gas transportation services to Syracuse University. As proposed, AET would transfer 100% of its membership interests in these companies to AET Holdings, a company formed for purposes of the proposed transaction.

Petitioners note that AET and AET-Syracuse operate under lightened ratemaking regulatory regimes previously approved by the Commission. Requesting confirmation that this regulatory treatment will continue after the proposed transaction is effectuated, Petitioners also request further relief from regulation that Public Service Law Section 66(13) makes available, under certain circumstances, to companies whose jurisdictional business is incidental to its primary, unregulated business.

The full text of the 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: Kathleen H. Burgess, 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.

(18-G-0615SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity and Waiver of Energy Audit

I.D. No. PSC-45-18-00005-P

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

Proposed Action: The Commission is considering the notice of intent of Comunilife Woodhull HDFC to submeter electricity at 179 Throop Avenue, Brooklyn, New York and request for a waiver of 16 NYCRR section 96.5(k)(3).

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

Subject: Notice of intent to submeter electricity and waiver of energy audit.

Purpose: To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place.

Substance of proposed rule: The Commission is considering the notice of intent, filed by Comunilife Woodhull HDFC on October 4, 2018, to submeter electricity at 179 Throop Avenue, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison).

By stating its intent to submeter electricity, Comunilife Woodhull HDFC requests authorization to take electric service from Con Edison and then distribute and meter that electricity to its tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96. The Commission is also considering the Owner's request

for waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent or more of the residents receive income-based housing assistance. The owner states that because the building is new construction, it must comply with the current New York State Energy Conservation Construction Code, which provides strict energy conservation requirements for new and renovated buildings, including the design and construction of energy-efficient building envelopes, mechanical, lighting and power systems and therefore, an energy audit is not appropriate in this case.

The full text of the notice of intent and waiver request 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: Kathleen H. Burgess, 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.

(18-E-0631SP1)

Urban Development Corporation

EMERGENCY RULE MAKING

Life Sciences Initiative Program

I.D. No. UDC-45-18-00002-E

Filing No. 1021

Filing Date: 2018-10-19

Effective Date: 2018-10-19

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

Action taken: Addition of Part 4255 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, sections 5(4), 9-c, 16-aa; L. 2017, ch. 58, part TT

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the statutory changes contained in Part TT of Chapter 58 of the Laws of 2017. The emergency rule implements the Capital Assistance component of the Life Sciences Initiative Program as well as the second component of the Program, the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program.

The Capital Assistance component is designed to attract new life sciences technologies to New York State, promote critical public and private sector investment in emerging life sciences fields in New York State and create and expand life sciences related businesses and employment. It also includes securing established accelerator firms to facilitate the creation and implementation of a statewide Bio-accelerator initiative. The Bio-accelerator will provide scientists with entrepreneurial training, access to venture capital and a network of mentors to help expedite the translation of their scientific insights into commercially viable products. In addition, the Capital Assistance program allows for the establishment of a collaboration among three upstate research institutions to accelerate the pathway from discovery research to commercialization.

NYFIRST is intended to encourage the recruitment and retention of exceptional life science researchers and world-class talent at the state's medical schools to accelerate translational research by supporting the establishment or upgrading of their laboratories.

The rule creates the administrative procedures of the program. It is critical to implement this program immediately because life science companies interested in locating or expanding their activities in New York State are approaching UDC in an effort to access funding for their proposed projects. By waiting for the standard rulemaking process to unfold, the State risks losing important economic development opportunities to states with competing life sciences incentive programs.

Subject: Life Sciences Initiative Program.

Purpose: Implement Capital Assistance and NYFIRST components of the Life Sciences Initiatives program.

Substance of emergency rule (Full text is posted at the following State website: www.esd.ny.gov): 21 NYCRR Part 4255 is hereby created and summarized as follows:

21 NYCRR Part 4255 begins by summarizing the purpose of the Life Sciences Initiative, namely to nurture, grow and retain new life sciences companies in New York State, attract existing companies from outside New York State, promote critical public and private sector investment in emerging life sciences fields in the State, and create and expand life sciences related businesses and employment.

Next, the regulation explains that the Initiative currently has two components – 1) the Capital Assistance component which endeavors to attract new life sciences technologies to the State, promote critical public and private sector investment in emerging life sciences fields in New York and create and expand life sciences related businesses and employment throughout the State; and 2) the New York Fund for Innovation in Research and Scientific Talent (“NYFIRST”) which is intended to encourage the recruitment and retention of exceptional life science researchers and world-class talent at the State’s medical schools to accelerate translational research by supporting the establishment or upgrading of their laboratories.

The regulation then (in 21 NYCRR 4255.2) begins by establishing relevant definitions for the first component, the Capital Assistance program. Key definitions include “life science entity” and “life science economic development benefits.”

The regulation next clarifies that the Capital Assistance component makes available financial assistance in the form of grants or loans, or a combination of such assistance, or contracts for services in the Corporation’s discretion, for use by life sciences entities for eligible uses.

Next, the application process is described in detail. Importantly, applications may include a request for funding for single or multiple life sciences projects or activities. The Corporation may issue a request for proposals for contracts for services in lieu of an application where it deems it appropriate.

Next, the Corporation’s evaluation process for the Capital Assistance component of the Program is described in detail. It includes a review (1) of the financial condition of the entity undertaking the project, including its profitability or potential to generate profits; liquidity; ability to service debt and its leverage ratio; (2) of the management experience, ability and relevant knowledge and the relevant entity’s general ability to carry out the project; (3) of satisfactory credit references; (4) of the absence of state or local tax judgments (5) of whether the applicant clearly demonstrates how the proposal will result in life sciences economic development benefits and the likelihood that the project will result in life sciences economic development benefits to the State; (6) of the availability of other sources of funding, including offers of assistance from locations outside of the State, including the federal government, and the amount of private financing leveraged by Program funds; and (7) whether there is any other economic development assistance available as an incentive for the location of the proposed project outside the State.

The regulation then covers eligible uses of the Capital Assistance Component which include: new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; working capital, including, without limitation, workforce development; feasibility or planning studies related to the development of commercial life sciences in the State; and contracts for services to support New York life sciences’ ecosystem.

In contrast, institutions that are exclusively health care providers and/or requests for the purchase of equipment associated with standard healthcare delivery are not eligible for Capital Assistance Program funding.

The first half of the regulation concludes by discussing the reporting requirements for applicants. It requires the submission of an annual report satisfactory to the Corporation on the operation and accomplishments of the project including, without limitation, a description of the activities undertaken, the economic impact of the project, the number and amount of other sources of funding for the project including federal funds, jobs employing full time permanent employees created and retained, and the average salary of such jobs.

21 NYCRR 4255.3 covers the second component of the Initiative, the newly created New York Fund for Innovation in Research and Scientific Talent (“NYFIRST”) Program. It begins by describing the purpose of this

component. It is intended to encourage the recruitment and retention of prominent life science researchers and world-class talent at the state’s medical schools to accelerate translational research by supporting the establishment or upgrading of their laboratories. Further, the Program is intended to: (1) increase the number of patent applications and patentable discoveries at medical schools; (2) increase the number of patents licensed from these schools; and (3) increase the recruitment/retention rate of medical school faculty focused on translational research.

Next, the regulation lays out key definitions of this component including “life sciences economic development benefits” and “translational research.”

The regulation then describes the core requirements of the program. It states that the NYFIRST Program is a grant program with a maximum grant amount for any eligible project of \$1 million. It requires grantees to provide \$2 of matching funds for every \$1 of NYFIRST Program assistance. The Match the grantee provides may be cash, including federal assistance, or in-kind services. Program grant funds will be disbursed on a semiannual reimbursement basis. Grantees shall submit quarterly invoices and supporting documentation satisfactory to the Corporation, as work is performed and costs incurred.

Next, the regulation discusses eligibility criteria for the NYFIRST program. Program grants may be awarded to create new laboratory space or to upgrade existing laboratory space at recipient institutions to attract and retain principal investigator(s) to head such laboratories and engage in translational research. The Corporation will make no more than one award per applicant per year. Next, the regulation identifies specific requirements that the scientific talent recruited or retained to head these laboratories must possess including, but not limited to, a demonstrable record of translational research with clear potential for commercialization and research focusing on the development of an innovative solution for an identified healthcare-related problem, with the potential to result in significant life sciences economic development benefits in New York State.

The regulation next covers specifics of the application and the evaluation process for NYFIRST grants. The specific selection criteria are delineated in the regulation. Importantly, the Corporation intends to make Program grant awards through a competitive grant solicitation to qualifying Applicants, once annually for up to three years or until the funds under this Program are fully committed.

Eligible uses for the funds are then discussed. Program grants must be used for capital expenses directly related to the project including, but not limited to, 1) costs relating to the design, acquisition, construction, reconstruction and rehabilitation of laboratory space; 2) the purchase of equipment; and 3) other capitalizable expenses.

The regulation concludes by reminding applicants that the Corporation will establish periodic reporting requirements for Program grantees to provide information to the Corporation so that the Corporation may accomplish its statutory reporting obligations. Failure by a grantee to provide the required information in a manner that is timely and otherwise satisfactory to the Corporation may subject the grantee to full or partial recapture of their grant.

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

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 16, 2019.

Text of rule and any required statements and analyses may be obtained from: Thomas P. Regan, Urban Development Corporation, 625 Broadway, Albany, NY 12245, (518) 292-5123, email: thomas.regan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Part TT of Chapter 58 of the Laws of 2017 requires the New York State Urban Development Corporation (“UDC”) to establish criteria for the Life Sciences Initiatives Program via rulemaking.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance since it implements both the Capital Assistance component of the Life Sciences Initiative Program as well as the second component of the Program, the New York Fund for Innovation in Research and Scientific Talent (“NYFIRST”) Program.

NEEDS AND BENEFITS:

The Capital Assistance component is designed to attract new life sciences technologies to New York State, promote critical public and private sector investment in emerging life sciences fields in New York State and create and expand life sciences related businesses and employment. It also includes securing established accelerator firms to facilitate the creation and implementation of a statewide Bio-accelerator initiative. The Bio-accelerator will provide scientists with entrepreneurial training, access to venture capital and a network of mentors to help expedite the translation of their scientific insights into commercially viable products. In addition,

the Capital Assistance program allows for the establishment of a collaboration among three upstate research institutions to accelerate the pathway from discovery research to commercialization.

In addition, NYFIRST is intended to encourage the recruitment and retention of exceptional life science researchers and world-class talent at the state's medical schools to accelerate translational research by supporting the establishment or upgrading of their laboratories.

The rule creates the administrative procedures of the Life Sciences Initiative program. It is critical to implement this program immediately because life science companies interested in locating or expanding their activities in New York state are approaching UDC in an effort to access funding for their proposed projects. By waiting for the standard rulemaking process to unfold, the State risks losing important economic development opportunities to states with competing life sciences incentive programs.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Life Sciences Initiative Program, only voluntary participants.

B. Costs to the agency, the state, and local governments: UDC does not anticipate substantial extra costs associated with running the program outlined in this rulemaking. The program appropriation makes funding available for the Corporation's administrative costs. There is no additional cost to local governments.

C. Costs to the State government: The money to fund this grant program is part of the Governor's \$320 million Life Sciences Initiative passed in FY 2018 budget. The Corporation believes the costs of this program will be offset by the positive economic impact of the program.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not eligible to participate in the Life Sciences Initiatives Program.

PAPERWORK:

The emergency rule will require applicants to fill out an application to participate in the Life Sciences Capital Assistance program and the NYFIRST program. These applications will require applicants to provide certain business financial information to the Corporation. In addition, the Capital Assistance component requires applicant to submit an annual report to the Corporation while the NYFIRST program requires periodic reporting as well. Under NYFIRST, quarterly invoices are required to be submitted prior to the Corporation disbursing grant payments on a semiannual basis.

DUPLICATION:

The emergency rule conforms to provisions of section 16-aa of the New York State Urban Development Corporation Act and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to implementing this rulemaking.

FEDERAL STANDARDS:

There are no federal standards with regard to the Life Sciences Initiatives Program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible.

Regulatory Flexibility Analysis

The Life Sciences Initiative is composed of the Capital Assistance Program and the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program which are both statewide grant programs. Although there are small businesses in New York State that are eligible to participate in the program, participation by the businesses is entirely at their discretion. The emergency rule will not have a substantial adverse economic impact on small businesses and local governments. On the contrary, because the rule creates a grant program designed to attract business and jobs to New York State, it will have a positive economic impact on the State. Accordingly, a regulatory flexibility analysis for small business and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

The Life Sciences Initiative is composed of the Capital Assistance Program and the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program, both of which are statewide programs. Although there are businesses in rural areas of New York State that are eligible to participate in the programs, participation by the businesses is entirely at their discretion. The emergency rule imposes no additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed rule relates to both the Capital Assistance component and the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") component of the Life Sciences Initiative Program. This Program will enable New York State to provide financial assistance to life sciences companies that commit to create or retain jobs and/or to make significant capital investment in the State. This Program, given its design and purpose, will have a substantial positive impact on job retention and creation, and employment opportunities. Because this rule will authorize the Corporation to immediately begin offering financial incentives to life sciences businesses that commit to creating or retaining jobs, it will only have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.