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.

State Commission of Correction

NOTICE OF ADOPTION

Inmate Confinement and Deprivation

I.D. No. CMC-05-19-00004-A
Filing No. 516
Filing Date: 2019-05-21
Effective Date: 2019-06-05

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

Action taken: Addition of Part 7075, sections 7004.7, 7005.12, 7006.9(d), 7025.5, 7028.6(c), 7040.4(f), (g), 7040.5(e), (f); amendment of sections 7003.3(j)(6), 7006.7(c), 7006.9(a)(5), 7006.11(a), 7013.10(c), 7022.2(a), 7024.11, 7026.3, 7028.2(d), 7070.7(h) and (j) of Title 9 NYCRR.

Statutory authority: Correction Law, section 45(6) and (15)

Subject: Inmate confinement and deprivation.

Purpose: Require local correctional facilities to record, review and report inmate cell confinement and essential service deprivation.

Text or summary was published in the January 30, 2019 issue of the Register, I.D. No. CMC-05-19-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Deborah Slack-Bean, Associate Attorney, New York State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210, (518) 485-2346, email: Deborah.Slack-Bean@scoc.ny.gov

Initial Review of Rule
As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2024, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment
The New York State Commission of Correction (hereinafter "Commission") received formal comments from both advocacy groups and representatives of local correctional facility officers and supervisors.

Received comments expressed that the proposed regulations are inadequate in that no duration limitations were set for inmate punitive or administrative segregation. Likewise, it was opined that the proposed regulations provide correctional facility administrators "excessive discretion" in imposing punitive or administrative segregation, and that there was no outright restriction on the segregation of "vulnerable" inmate populations (e.g., adolescents, mentally ill, disabled).

Correction Law section 137(6), applicable to local correctional facilities by means of Correction Law section 500-k, permits correction officials to "keep any inmate confined in a cell or room … for such period as may be necessary for maintenance of order or discipline." The New York State Court of Appeals has held that the Correction Law thus gives correction officials "broad discretion in the formulation and implementation of policies relating to security and to the disciplining of inmates [emphasis added]." Arteaga v. State, 72 N.Y.2d 212, 217 (1988); see also Allah v. Coughlin, 190 A.D.2d 233, 236 (3d. Dept. 1993). Administrative state agencies, such as the Commission, "can only promulgate rules to further the implementation of the law as it exists; they have no authority to create a rule out of harmony with the statute" being implemented. Jones v. Berman, 37 N.Y.2d 42, 53 (1975); see also McNulty v. Chinlund, 62 A.D.2d 682, 688 (3d Dept. 1978). Consequently, it has historically been the Commission's position that the promulgation of regulations that otherwise limit the statutory authority granted exclusively to correction officials would exceed its enabling powers. Nonetheless, it is the Commission's intention, by adopting the regulations, to ensure that determinations to confine inmates to a cell, or deprive inmates of essential services, are justified and documented, reviewed on a timely basis to assess if continuation is warranted, and reported to the Commission. Thereafter, the Commission's ability to monitor and oversee such confinement, and the deprivations of essential inmate services, will be sufficient to identify and investigate potential abuses.

Similarly, received comments suggested regulation to provide for required programming of confined inmates during their "out-of-cell" time. It must be noted that this body of regulations applies equally to all local correctional facilities throughout the State, of various resources, from the 6-bed jail in Hamilton County to the expansive facilities of the New York City Department of Correction on Rikers Island. This, coupled with the transient inmate populations and more frequent court appearances and visitation experienced by local correctional facilities, as compared to state prisons, makes such a requirement currently impractical.

One received comment recommended careful monitoring and assessment of all segregated inmates with serious mental illness, or physical or mental disability, who are denied the presumptive four hours out-of-cell time pursuant to section 7075.4(c). The Commission is confident that the proposed requirements of 7075.4(d), that any such denial be reviewed at intervals not to exceed seven (7) days, that such review include consultation with appropriate health services staff, and that such determinations be sufficiently documented and reported to the Commission, will result in a system of appropriate monitoring and assessment.

Comment was received recommending further revision of sections 7006.7(c) and 7013.10(c) to require consultation with facility health and mental health staff upon review of an inmate's administrative segregation pending a disciplinary hearing, and to include specific reference to a facility mental health director as a party who may disclose information to the chief administrative officer for the purpose of reviewing classification, transport and segregation decisions. The Commission finds such suggested

revisions to be unnecessary, as the administrative segregation of an inmate pending a disciplinary hearing is subject to all determination, consultation and review requirements of Part 7075. Further, as currently constructed, Correction Law section 501 requires the county's appointment of a single physician as the principal health care provider to the jail's inmate population. Consequently, the disclosure of any inmate health information should emanate from such sole appointee's authority.

Lastly, received comments objected that the Commission should not prohibit the use of inmate segregation, as it is a useful and necessary correctional tool to ensure the safety of the inmate population and facility staff. To this end, the commenters requested a postponement of adoption until the Commission had an opportunity to consult with various correctional officials and labor organizations. As set forth above, the regulations do not prohibit correctional officials from utilizing inmate segregation. Rather, the regulations require that such determinations to confine inmates to a cell, or deprive inmates of essential services, are made, justified and documented by the facility's highest authority, reviewed on a timely basis to assess if continuation is warranted, and reported timely to the Commission. Since the initial regulatory proposal, members of the Commission's administration met with officials from the New York State Sheriffs' Association, as well as a number of county sheriffs, at which time a productive discussion of the proposed regulations, and the potential impact on facilities, was had. As a result, the Commission is confident that local correctional facility officials have had a sufficient period of time to review and assess the regulations, and Commission staff have answered, and will continue to answer, any questions and concerns.

Department of Environmental Conservation

NOTICE OF ADOPTION

Jonah Crab Management

I.D. No. ENV-48-18-00002-A
Filing No. 517
Filing Date: 2019-05-21
Effective Date: 2019-06-05

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

Action taken: Amendment of Part 44 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, section 13-0331

Subject: Jonah crab management.

Purpose: To implement required management measures of the Atlantic States Marine Fisheries Commission Jonah Crab Fishery Management Plan.

Text or summary was published in the November 28, 2018 issue of the Register, I.D. No. ENV-48-18-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Kim McKown, New York State Department of Environmental Conservation, 205 Belle Mead Road, Suite 1, East Setauket, NY 11733, (631) 444-0454, email: kim.mckown@dec.ny.gov

Additional matter required by statute: Pursuant to Article 8 of the ECL, the State Environmental Quality Review Act, a Coastal Assessment Form and a Short Environmental Assessment Form with a negative declaration have been prepared, and are on file with the Department.

Initial Review of Rule
As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Governor Mario M. Cuomo Bridge

I.D. No. ENV-08-19-00004-A
Filing No. 512
Filing Date: 2019-05-20
Effective Date: 2019-06-05

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

Action taken: Amendment of Parts 10, 11, 35, 42, 43, 45, 47, 576 and 591 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 13-0103 and 13-0307

Subject: Governor Mario M. Cuomo Bridge.

Purpose: Replacing references to the Governor Malcolm Wilson Tappan Zee Bridge with references to the Governor Mario M. Cuomo Bridge.

Text or summary was published in the February 20, 2019 issue of the Register, I.D. No. ENV-08-19-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Tyler Hepner, Department of Environmental Conservation, Office of General Counsel, 625 Broadway, Albany, NY 12233, (518) 402-9530, email: tyler.hepner@dec.ny.gov

Additional matter required by statute: Pursuant to Article 8 of the Environmental Conservation Law, the State Environmental Quality Review Act and 6 NYCRR 617.5(c) (25) and (33) the Department has determined that this rule making is a Type II action and no further review is required.

Assessment of Public Comment
The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Body Scanners in Local Correctional Facilities

I.D. No. HLT-10-19-00004-E
Filing No. 509
Filing Date: 2019-05-16
Effective Date: 2019-05-16

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

Action taken: Addition of section 16.70; amendment of Part 89 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201, 225 and 3502

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

Specific reasons underlying the finding of necessity: Compliance with the requirements of the State Administrative Procedure Act for filing of a regulation on a non-emergency basis including the requirement for a period of time for public comment cannot be met because to do so would be detrimental to the health and safety of inmates in local correctional facilities.

Effective January 30, 2019, Public Health Law § 3502(6) permits unlicensed personnel working at local correctional facilities to utilize body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening inmates committed to such facility, in connection with the implementation of such facility's security program. Such equipment is intended to be used as an efficient method of detecting contraband, such as knives and other weapons, as well as illegal drugs including heroin and opioids, and will enhance the safety of both inmates and correction officers.

The regulations provide protections to the inmates and staff by establishing requirements and controls to ensure appropriate operation of the body scanning imaging equipment. These include testing of the equipment by a licensed medical physicist prior to use and annually thereafter;

annual training for operators of the equipment to ensure proper operation and application; establishment of policies and procedures to guide use of the equipment; and documentation and inspection requirements to monitor and ensure that inmates are not overexposed to radiation based on the dose limits in the law.

Delaying these regulations would prevent local correctional facilities from enhancing security programs through the use of body imaging scanning equipment while minimizing the risks posed to inmates by exposure to ionization.

Subject: Body Scanners in Local Correctional Facilities.

Purpose: Establish operational requirements for local correctional facilities that use body scanning imaging equipment for security purposes.

Text of emergency rule: New section 16.70 is added to Part 16 to read as follows:

16.70 Use of Body Scanning.

(a) This section shall not apply in cities having a population of two million or more.

(b) Practitioners licensed under Article 35 of the Public Health Law and unlicensed personnel employed at a local correctional facility may utilize body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening inmates committed to such facility, solely in connection with the implementation of such facility's security program and in accordance with the provisions of this Part.

(c) Definitions

(1) "Body imaging scanning equipment" or "equipment" means equipment that is specifically manufactured for security screening purposes and utilizes a low dose of ionizing radiation, with a maximum exposure per scan equal to or less than 10 μSv (1 mrem), to produce an anatomical image capable of detecting objects placed on, attached to or secreted within a person's body. The utilization of body imaging scanning equipment is for purposes of screening inmates committed to such facility, in connection with the implementation of such facility's security program.

(2) "Local correctional facility" shall mean a local correctional facility as defined in Correction Law section 2(16).

(3) "Equipment operator" or "operator" means personnel employed at the local correctional facilities that have successfully completed a training course approved by the Department.

(4) "Screening" means the sum of radiation exposures or scans necessary to image objects concealed on all sides of the body as intended by the system design under normal conditions.

(d) Equipment use and installation requirements

(1) Prior to the equipment's first use on humans at a specific physical location or upon any major repairs that could influence image quality or exposure:

(i) body imaging scanning equipment purchased or installed at a local correctional facility must be registered with the Department, in accordance with § 16.50 of this Part; and

(ii) radiation protection survey, shielding evaluation and verification of image usefulness for detecting foreign objects must be completed by a licensed medical physicist.

(2) Equipment must have a clearly marked restricted area and one or more indicators when a scan is in process that is clearly visible to all security screening system operators and anyone approaching the restricted area.

(3) Equipment must be periodically inspected by the Department as described in § 16.10 of this Part.

(4) Equipment must be tested by a licensed medical physicist annually to verify the equipment is operating as designed.

(5) The facility must maintain a policy and procedure manual describing equipment operations, body scanning procedures, records and associated facility policies shall be maintained and available upon request by the Department. The policy and procedure manual must include the following items:

(i) operating procedures appropriate for the specific equipment and intended scan types;

(ii) policy prohibiting the use of the equipment on individuals who are not inmates;

(iii) policy regarding the determination of pregnancy that has been approved by the jail physician;

(iv) emergency contact information in the event the equipment overexposes any individual or there is equipment related failure that potentially requires service prior to scanning other inmates;

(v) requirements for exposure records to be provided to an inmate upon release or transfer to another facility; and

(vi) exposure per scan for each scan protocol used.

(6) Records and documentation of the program operation shall be maintained in accordance with § 16.14 of this Part and shall include, at a minimum, the following:

(i) the number of times the equipment was used on inmates upon intake, after visits, and upon the suspicion of contraband, as well as any other event that triggers the use of such equipment;

(ii) the average, median, and highest number of times the equipment was used on any inmate, with corresponding exposure levels;

(iii) the number of times the use of the equipment detected the presence of drug contraband, weapon contraband, and any other illegal or impermissible object or substance; and

(iv) the number of times an inmate has been scanned.

(e) Exposure limits and reporting requirements

(1) No person other than an inmate of a local correctional facility shall be exposed to the useful beam and then only by an individual that has met the provisions of subdivision (f) of this section.

(2) Limits on the use of equipment and exposure to inmates are:

(i) no more than fifty percent of the annual exposure limits for non-radiation workers as specified by applicable regulations, not to exceed 0.5 mSv (50 mrem);

(ii) inmates under the age of eighteen shall not be subject to more than five percent of such annual exposure limits, not to exceed 0.05 mSv (5 mrem); and

(iii) pregnant women shall not be subject to scanning at any time.

(3) The following events shall be reported to the Department in writing within 30 days:

(i) incidents or any injuries or illness resulting from the use of such equipment or reported by persons scanned by such equipment; and

(ii) exposure that exceeds the limits set forth in this Part.

(f) Training Requirements

(1) Every equipment operator shall receive initial operator training, to be provided by the equipment manufacturer or their approved representative, or another source approved by the Department.

(2) The contents of the initial operator training must include radiation safety, equipment operations, exposure and exposure limits for occupational exposed staff and inmates; applicable regulations; and facility policies and procedures.

(3) Initial operator training must be documented and available for review by the Department upon request. Such documentation must include the names of the presenter or sources, attendees, dates and contents of the training.

(4) Every equipment operator shall receive refresher training, to be provided by the equipment manufacturer or their approved representative, or another source approved by the Department. Such training shall meet the requirements listed in paragraphs (1), (2) and (3) of this subdivision and include any changes to the policies and procedures manual or updates to the regulations.

Section 89.30 is amended by adding a new subdivision (c) to read as follows:

(c) A person employed at a local correctional facility, as defined by Correction Law section 2(16), is exempt from licensure as a radiologic technologist when operating body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening inmates committed to such facility, in connection with the implementation of such facility's security program.

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. HLT-10-19-00004-P, Issue of March 6, 2019. The emergency rule will expire July 14, 2019.

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 Department of Health (Department) is required by Public Health Law (PHL) § 201(1)(r) to supervise and regulate the public health aspects of ionizing radiation. PHL § 225(4) authorizes the Public Health and Health Planning Council (PHHPC) to establish, amend and repeal provisions of the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. PHL §§ 225(5)(p) and (q) and 201(1)(r) authorize PHHPC to establish regulations in the SSC to protect the public from the adverse effects of ionizing radiation.

PHL § 3502 authorizes personnel employed at local correctional facilities to utilize body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening inmates as part of the facilities' screening program, provided that the use of such equipment is in accordance with regulations promulgated by the Department.

Legislative Objectives:

The legislative intent of PHL §§ 201(1)(r) and 225(5)(p) and (q) is to protect the public from the adverse effects of ionizing radiation. Establishing regulations to ensure safe and effective use of radiation producing equipment is consistent with this legislative objective.

The legislative intent of Article 35 of the PHL is to ensure that when radiation is applied to a human being it is being done appropriately and by a qualified individual. Although in general radiation should only be applied to humans for medical reasons, PHL § 3502 allows correctional facilities to utilize very low dose x-ray equipment for security screening of inmates, while protecting the health of screened inmates.

Needs and Benefits:

Effective January 30, 2019, PHL § 3502(6) permits unlicensed personnel working at local correctional facilities to utilize body imaging scanning equipment that applies ionizing radiation to humans, for purposes of screening inmates committed to such facilities, in connection with the implementation of a facility's security program. Such equipment can be an efficient method of detecting contraband, such as knives, other weapons, and illegal drugs including heroin and opioids, and will enhance the safety of both inmates and correction officers.

These regulations provide protections to the inmates and staff by establishing requirements and controls to ensure appropriate operation of the body scanning imaging equipment. These include testing of the equipment by a licensed medical physicist prior to use and annually thereafter; annual training for equipment operators to ensure proper operation and application; establishment of policies and procedures for use of the equipment; and documentation and inspection requirements to monitor and ensure that inmates are not overexposed to radiation based on the dose limits set forth in the law. The regulations will permit local correctional facilities to take advantage of the enhanced security that body imaging scanning equipment can provide, while minimizing the risk to inmates posed by exposure to ionizing radiation.

Costs:

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

The regulations will impose little or no cost to regulated entities. The regulations would only apply to local correctional facilities that voluntarily choose to use body imaging scanning equipment as part of the facility's security program. Local correctional facilities that choose to utilize body imaging scanning equipment will be subject to equipment purchase costs; costs to hire a licensed medical physicist to test the body scanning imaging equipment annually, at a cost of approximately $500 per test; administrative costs associated with maintaining records of the use of the equipment; and annual staff training costs. County facilities must register their new x-ray equipment, but they are fee-exempt and will not be charged by the Department for registration or inspections.

Costs to State and Local Governments:

These regulations apply only to local correctional facilities operated by county governments that voluntarily choose to use body imaging scanning equipment as part of the facility's security program. Such facilities will be subject to the costs described above.

Costs to the Department of Health:

This regulation will require an increase in inspections of no more than 60 additional facilities out of a total of approximately 11,000 currently registered facilities that are inspected by the Department's Bureau of Environmental Radiation Protection. The Department will incur costs through preparing and disseminating guidance to the New York State Commission of Correction (NYSCOC) and the NYS Sheriffs Association as well as any local correctional facilities that wish to utilize body imaging scanning equipment. Staff time for registering, inspecting and providing guidance is expected to be handled using existing resources and staff.

Local Government Mandates:

The regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district. The regulations apply only to local correctional facilities that voluntarily choose to use body imaging scanning equipment as part of the facility's security program. Such facilities will be subject to the costs described above.

Paperwork:

Local correctional facilities that voluntarily choose to use body imaging scanning equipment as part of the facility's security program will be required to register the equipment and maintain records related to the policies, procedures and utilization of the equipment.

Duplication:

The regulations do not duplicate, overlap or conflict with any existing federal or state rules or regulations.

Alternatives:

There are no suitable alternatives to the regulations that would meet the requirements of PHL § 3502 while adequately protecting the health of inmates.

Federal Standards:

Not applicable. The operation of radiation producing equipment is regulated by the State only.

Compliance Schedule:

There is no compliance schedule imposed by these regulations, which shall be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule:

The regulation will only apply to local correctional facilities, operated by county governments, that voluntarily choose to use body imaging scanning equipment as part of the facility's security program. This regulation will not impact local governments unless they operate such facilities. The regulation will have no impact on small businesses.

Compliance Requirements:

A local correctional facility that chooses to use body imaging scanning equipment as part of the facility's security program will need to ensure that equipment is installed properly and is operating as designed through licensed medical physicist verification. In addition, the local correctional facility must develop and maintain policies and a procedure manual; provide all personnel who will utilize the equipment with required training; and maintain records of the utilization.

Professional Services:

A local correctional facility that chooses to use body imaging scanning equipment as part of the facility's security program will be required to have equipment installed by qualified installers for the specific brand of body imaging scanning equipment being used. At facilities with female inmates, the jail physician will be required to develop policies regarding the determination of pregnancy and to update those policies over time as needed. Body scanning imaging equipment will require annual testing by a licensed medical physicist with an estimated cost of approximately $500; such testing is also required prior to use of the equipment.

Compliance Costs:

A local correctional facility that chooses to use body imaging scanning equipment as part of the facility's security program will acquire the equipment based on their own requirements. Annual compliance costs are expected to be minimal, and will consist of the costs of refresher training, annual testing by a licensed medical physicist, and recordkeeping of the inmates scanned.

Economic and Technological Feasibility:

This regulation is economically and technically feasible, as these regulations only impose requirements on local correctional facilities that choose to use body imaging scanning equipment as part of the facility's security program. Such facilities will acquire equipment based on their own requirements and, as described above, ongoing compliance costs are minimal.

Minimizing Adverse Impact:

The impact of this regulation is expected to be minimal as these regulations only impose requirements on local correctional facility that choose to use body imaging scanning equipment as part of the facility's security program. To assist such facilities in minimizing any adverse impact, the Department will provide guidance to NYSCOC and the NYS Sheriffs Association as well as any local correctional facilities that wish to utilize body imaging scanning equipment.

Small Business and Local Government Participation:

The Department has consulted with the NYS Sheriffs' Association and the New York City Department of Health and Mental Hygiene during the development of the regulations.

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 the party or parties subject to enforcement under the proposed regulation. This regulatory amendment governing the utilization of body imaging scanning equipment by local correctional facilities does not mandate that local correctional facilities use such equipment. Hence, no cure period is necessary.

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 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	

Every county in NYS operates a local corrections facility, except Greene and Schoharie counties where the local corrections facilities are currently out of commission. They anticipate eventually being back in operational status. Approximately 77% of local correctional facilities are in rural areas.

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

A local correctional facility that chooses to use body imaging scanning equipment as part of the facility's security program will need to ensure that equipment is installed properly and is operating as designed through licensed medical physicist verification. In addition, the local correctional facility must develop and maintain policies and a procedure manual; provide all personnel who will utilize the equipment with required training; and maintain records of the utilization.

Costs:

A local correctional facility that chooses to use body imaging scanning equipment as part of the facility's security program will acquire the equipment based on their own requirements. Annual compliance costs are expected to be minimal, and will consist of the costs of refresher training and record keeping of the inmates scanned.

Minimizing Adverse Impact:

The impact of this regulation is expected to be minimal as these regulations only impose requirements on local correctional facility that choose to use body imaging scanning equipment as part of the facility's security program. To assist such facilities in minimizing any adverse impact, the Department will provide guidance to NYSCOC and the NYS Sheriffs association as well as any local correctional facilities that wish to utilize body imaging scanning equipment.

Rural Area Participation:

The Department consulted with the NYS Sheriffs' Association during the development of the regulation. Sheriff's operate all the local correctional facilities in NYS except for Westchester County and New York City. They indicated that there were no specific issues in this rule that would impact the use body scanning equipment at rural facilities.

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.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

New York State Medicaid Infertility Treatment

I.D. No. HLT-34-18-00007-A
Filing No. 519
Filing Date: 2019-05-21
Effective Date: 2019-06-05

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

Action taken: Amendment of sections 505.1 and 505.3 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 365-a(2)(ee)

Subject: New York State Medicaid Infertility Treatment.

Purpose: To authorize Medicaid coverage of infertility benefits.

Text or summary was published in the August 22, 2018 issue of the Register, I.D. No. HLT-34-18-00007-P.

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

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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2024, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Public comments were submitted to the NYS Department of Health (DOH) in response to the regulation. The public comment period for this regulation ended on October 22, 2018. The Department received a total of four comments from representatives of the provider community, including The American College of Obstetrics and Gynecology (ACOG), The American Society for Reproductive Medicine, from legal advisors on behalf of managed care insurance plans and Medicaid members. The comments resonated with positive enthusiasm and requests for coverage of assisted reproductive technology.

Three of the four comments were similar and positive, stating that the adoption of these regulations is an obvious benefit to the patients. Two of the four comments requested that the Department define infertility and suggest coverage is expanded to include assisted reproductive technology (ART) such as artificial insemination and in vitro fertilization.

Summarized below is the Department of Health's response to the comments:

COMMENT: A comment received inquired if transmasculine individuals will be able to utilize the infertility services coverage.

RESPONSE: Medicaid infertility benefits will be available to transmasculine individuals between the ages of 21 through 44.

COMMENT: Two comments were requests that infertility be defined.

RESPONSE: The Department will define infertility and include that definition in Medicaid program policy documents, including but not limited to the NYS Medicaid Update.

COMMENT: One comment expressed concern that assisted reproductive technology (ART) such as in vitro fertilization (IVF) and infertility evaluation or treatment for males (testis biopsies and semen analysis) will not be covered by Medicaid.

RESPONSE: Subparagraph (ee) of Section 365-a of Social Services Law as written only authorizes Medicaid coverage of ovulation enhancing drugs and appropriate monitoring of the women who receive ovulation enhancing drugs.

COMMENT: One comment expressed concern about limited formulary (only 4 drugs will be covered to promote fertility) and that the coverage does not include drugs for men.

RESPONSE: Subparagraph (ee) of Section 365-a of Social Services Law as written only authorizes Medicaid coverage of ovulation enhancing drugs and appropriate monitoring of the women who receive ovulation enhancing drugs. The listed drugs have FDA approval and compendia support for use in enhancing ovulation.

COMMENT: One comment expressed concern about excluding coverage for woman ages 45 and older experiencing infertility.

RESPONSE: The approved Medicaid State Plan Amendment limits this coverage to women ages 21 through age 44.

Metropolitan Transportation Agency

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Debarment of Contractors

I.D. No. MTA-23-19-00006-EP
Filing No. 520
Filing Date: 2019-05-22
Effective Date: 2019-05-22

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

Proposed Action: Addition of Part 1004 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, sections 1266(4) and 1279-h

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

Specific reasons underlying the finding of necessity: The emergency rule is necessary to immediately implement the recent amendment to the Public Authorities Law, enacted as part of the 2020 Budget, which added a new Section 1279-h. That new statutory provision, effective immediately on enactment on April 12, 2019 and applicable to all contracts in effect on or entered into after that date, requires the Metropolitan Transportation Authority to establish "pursuant to regulation" a process for debarment of contractors under certain circumstances specified in the statute.

Subject: Debarment of contractors.

Purpose: To comply with Public Authorities Law, section 1279-h, which requires the MTA to establish a debarment process for contractors.

Text of emergency/proposed rule: A new Part 1004 is added to read as follows:

Section 1004.1 Purpose

(a) This Part establishes rules and regulations governing the debarment of contractors by the Metropolitan Transportation Authority and its subsidiaries and affiliates, as required by Section 1279-h of the Public Authorities Law, which was enacted on and made effective immediately as of April 12, 2019. Once adopted, it shall apply to all contracts that were in effect on, or entered into after, April 12, 2019.

(b) Nothing in this Part shall preclude or otherwise limit the Authority, as defined below, from assessing the responsibility of any bidder, contractor, subcontractor, or supplier pursuant to its All-Agency Responsibility Guidelines or from prohibiting any bidder, contractor, subcontractor, or supplier found to be not responsible from responding to new and future contract solicitations or from being awarded new and future contracts or subcontracts.

Section 1004.2 Definitions

As used in this Part, the following terms shall have the following meanings unless otherwise specified:

(a) Authority means the Metropolitan Transportation Authority, the Long Island Rail Road Company, the Metro-North Commuter Railroad Company, the Staten Island Rapid Transit Operating Authority, MTA Bus Company, MTA Capital Construction Company, the New York City Transit Authority, the Manhattan and Bronx Surface Transit Operating Authority, or the Triborough Bridge and Tunnel Authority, or any combination thereof, as the case may be.

(b) Contract means an enforceable agreement including a task order entered into by a contractor and the Authority for goods or services, including without limitation construction services.

(c) Contractor means any person, partnership, firm, corporation, or association, including any consultant, supplier or vendor, with whom the Authority has entered into a construction, consultant, equipment, supply, or services contract, but shall not include the federal government, a state agency, any public authority or public benefit corporation, or any unit of local government.

(d) Debar or debarment means the prohibition of a contractor from responding to any contract solicitation of or entering into any contract with the Authority for five years from a final debarment determination as provided in section 1004.6 of this Part.

(e) Contract Modification means amendments, change orders, additional work orders, or modifications with respect to a contract that are executed in accordance with the terms and conditions of such contract.

(f) Substantially Complete, unless otherwise defined in the contract at issue, means the contractor's completion of the work as necessary for the Authority's beneficial use of the applicable project or improvements or the Authority's acceptance of those goods or services required to be delivered by a deadline.

(g) Total adjusted time frame means (1) with respect to all work under a contract, the period of time that a contract provides for a contractor to substantially complete the work, as may have been extended or reduced by one or more contract modifications, and (2) with respect to contracts for goods or services, as to any portion of the goods or services that must be delivered by a deadline, the period of time that the contract provides for such delivery, as may have been extended or reduced by one or more contract modifications.

(h) Total adjusted contract value means the original awarded amount of the contract plus or minus the aggregate net amount of all contract modifications.

Section 1004.3 Grounds for Debarment

(a) The Authority, including all contracting personnel therein, must debar a contractor if it makes a final determination that the contractor has:

(1)(i) failed to substantially complete all the work within the total adjusted time frame by more than ten percent of the total adjusted time frame, or (ii) failed to progress the work in a manner so that it will be substantially complete within ten percent of the total adjusted time frame and has refused or in the opinion of the Authority is unable to accelerate the work so that it will be substantially complete within ten percent of the total adjusted time frame, and such refusal or failure is an event of default under the contract; or (iii) with respect to contracts for goods or services, as to any portion of the goods or services that must be delivered by a deadline, materially failed to deliver such goods or services by more than ten percent of the total adjusted time frame.

(2) asserted a claim or claims for payment of additional amounts beyond the total adjusted contract value and one or more of such claims are determined to be invalid under the contract's dispute resolution process or if no such process is specified in the contract in a final determination made by the chief engineer or otherwise by the Authority, and together the sum of any such invalid claims exceeds by ten percent or more the total adjusted contract value.

(3) The Authority, including all contracting personnel therein, must commence a debarment procedure where there is any evidence that any specific provision referenced in provision (a)(1) and (a)(2) have been violated, and the Authority and its contracting personnel have no discretion to excuse or justify violations of any provision referenced in provision (a)(1) and (a)(2).

Section 1004.4 Notice of Intent to Debar and Written Response

(a) Upon the occurrence of one or both of the circumstances set forth in section 1004.3 of this Part, the Authority shall provide a written notice of intent to debar to the contractor, advising the contractor that it will hold a hearing to make a final determination as to whether a ground for debarment exists. At a minimum, the notice of intent to debar shall:

(1) state the facts upon which the Authority made its preliminary finding that one or both statutory grounds for debarment exists, including the basis for determining as provided in section 1004.4 of this Part that the contractor failed to timely Substantially Complete or the Authority's calculation of costs arising from claims determined to be invalid, and

(2) provide the contractor 30 calendar days after the date of the notice of intent to debar to respond.

(b) A contractor's written response must address each of the factual statements made by the Authority in its notice of intent to debar and state in detail any defenses including but not limited to force majeure.

(c) After submission by the contractor of a written response within the time permitted, or after the failure by the contractor to submit a written response within such time, a debarment hearing will be held, as provided in section 1004.5 of this Part.

(d) Subject to section 1004.1(b) of this Part, a contractor who has received a notice of intent to debar may respond to other contract solicitations issued by the Authority pending the hearing and a final debarment determination, if any; provided, however, that if the Authority awards such contractor a new contract or contracts after having provided the contractor a notice of intent to debar, and such contractor is later debarred by the Authority pursuant to such notice, the Authority must view such debarment as cause for termination under such new contract or contracts and thereupon terminate any such new contracts for cause.

Section 1004.5 Debarment Hearing

(a) A debarment hearing shall be conducted within:

(1) 21 calendar days from the Authority's receipt of a contractor's written response to a notice of intent to debar or within such further reasonable time that the authority shall proscribe; or

(2) 14 calendar days after the date the contractor's response was due, if no response is received from the contractor within the deadline.

(b) A recording or transcript of the debarment hearing shall be made.

(c) The debarment hearing shall be conducted by a panel of at least three managerial level employees of the MTA designated by majority vote of the Authority's board; provided that no employee who has taken part in the award of any Authority contract to such contractor or overseen such contractor's performance on any Authority contract may serve on a panel considering the debarment of such contractor.

(d) A contractor shall have the right to appear by and be represented by counsel at the debarment hearing and any hearings in connection with other proceedings conducted pursuant to this Part.

(e) A contractor at the debarment hearing may assert any and all defenses to debarment including without limitation force majeure.

(f) If a contractor fails to appear at a debarment hearing, the panel may proceed with the hearing on the basis of the record before it and reach a final determination without providing for any further appearance or submission by the contractor.

Section 1004.6 Final Debarment Determination

(a) After the hearing is completed, the panel shall determine if one or both of the grounds for debarment as set forth in section 1004.3 of this Part exists.

(b) The panel's determination shall be set forth in writing. If the final debarment determination is that one or both of the grounds for debarment exist, the contractor shall be debarred for five years from the date of the

final debarment determination. The panel may, in its discretion, also debar any of (1) the contractor's parent(s), subsidiaries and affiliates; (2) any joint venture (including its individual members) and any other form of partnership (including its individual members) that includes a contractor or a contractor's parent(s), subsidiaries, or affiliates of a contractor, (3) a contractor's directors, officers, principals, managerial employees, and any person or entity with a ten percent or more interest in a contractor; (4) any legal entity controlled, or ten percent or more of which is owned or controlled, by a contractor, or by any director, officer, principal, managerial employee of contractor, or by any person or entity with a 10 percent or greater interest in contractor, including without limitation any new entity created after the date of the notice of intent to debar.

(c) The panel's determination shall be timely submitted to the board of the Authority for ratification. The board of the Authority shall review such determination and either: (i) ratify the determination or, (ii) remit the determination to the panel for further consideration of facts or circumstances identified in the remission. The facts or circumstances identified in the remission shall be reviewed by the panel who shall then, after reconsideration, make a determination. Such determination shall then be resubmitted to the Authority board for ratification or nullification. Upon initial Authority board ratification of a panel determination, or Authority board ratification or nullification of a panel determination made after reconsideration, such determination shall be deemed final.

(d) Timely and complete compliance with each and all of the requirements of this Part shall be a precondition to any legal challenge that the contractor may be permitted to bring arising out f its debarment pursuant to Section 1279-h of the Public Authorities Law.

(e) Pursuant to Executive Order 192, the Authority shall notify the New York State Office of General Services of any final debarment determination within five days of the date thereof.

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 August 19, 2019.

Text of rule and any required statements and analyses may be obtained from: Peter Sistrom, Metropolitan Transportation Authority, 2 Broadway, 4th Floor, New York, NY 10004, (212) 878-7176, email: psistrom@mtahq.org

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:

Section 1266(4) of the Public Authorities Law provides that the Metropolitan Transportation Authority (MTA) may establish rules and regulations as it may deem necessary, convenient, or desirable for the use and operation of any transportation facility and related services operated by the MTA. Newly enacted Section 1279-h of the Public Authorities Law, enacted on April 12, 2019 and effective immediately, directs the MTA to establish pursuant to regulation a debarment process for its contractors.

Legislative Objectives:

The Legislature enacted the new Section 1279-h of the Public Authorities Law as part of the 2020 Budget. It requires the MTA to establish a process that will debar for five years any contractor who either fails to substantially complete the work within the time frame set by the contract, or in any subsequent change order, by more than ten percent of the contract term, or whose disputed work exceeds ten percent or more of the total contract cost where claimed costs are deemed to be invalid pursuant to the contractual dispute resolution process. The statute requires that the debarment process ensures that contractors have notice and an opportunity to be heard including the opportunity to present as a defense acts such as force majeure. The proposed rule accords with this legislative objective by establishing a process for debarment of contractors.

Needs and Benefits:

The proposed rule is necessary to implement the newly enacted Section 1279-h of the Public Authorities, which expressly requires the MTA to establish a debarment process and specifies the circumstances under which MTA must debar a contractor. Contractors who are significantly late in performing their contractual work or in meeting contractual delivery dates or who assert substantial and unjustified claims for payment should not be allowed to compete to be awarded new contracts.

Costs:

(a) Regulated parties: This proposal does not impose new costs on contractors. It provides a process for determining whether factual circumstances exist, which the Legislature has determined require debarment. The proposed rule establishes a process to ensure that contractors are provided notice and an opportunity to be heard.

(b) Local government: The proposed rule will impose no costs on local governments.

(c) MTA: The MTA will use existing resources including its existing procurement and legal staff to undertake debarments of contractors.

Paperwork:

The proposed rule will require the MTA to develop a notice to inform contractors that they might be debarred.

Local Government Mandates:

The proposed rule does not impose any new programs, services, duties, or responsibilities on local government.

Duplication:

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

Alternatives:

The Legislature has expressly directed the MTA to establish by regulation a debarment process for its contractors, so MTA has not considered not doing so.

Federal Standards:

The proposed rule does not exceed any Federal minimum standards.

Compliance Schedule:

There is no compliance schedule imposed by this proposed rule. Once adopted, it will be effective immediately and will apply to contracts in effect on, or entered into after, the effective date of Section 1279-h of the Public Authorities Law, which was April 12, 2019.

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

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

This proposed rule making will allow the Metropolitan Transportation Authority to debar a contractor under specified statutorily proscribed circumstances after giving such contractor notice and opportunity to be heard. Due to its narrow focus, this proposed rule will not impose an adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses or local governments in rural or urban areas or on jobs and employment opportunities.

Office for People with Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Enrollment in Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for IDD

I.D. No. PDD-23-19-00002-EP

Filing No. 515

Filing Date: 2019-05-21

Effective Date: 2019-05-21

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

Proposed Action: Amendment of Subpart 635-11 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 13.15(a) and 16.00

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 amendments that allow individuals to be enrolled into the Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD) plan, through certain parties, in situations where there is no other person to make that election for them, is necessary to protect the health, safety, and welfare of individuals who are eligible to receive enhanced care coordination services in the OPWDD system. FIDA-IDD plans provide enhanced care coordination for individuals who need coordination of both Medicare health benefits and developmental disability services funded by Medicaid. Persons who are unable to enroll themselves in a FIDA-IDD plan will be unfairly precluded from participation in this dual care coordination program.

The emergency amendments amend Title 14 NYCRR Subpart 635-11 to allow individuals, who lack capacity and a guardian, the ability to be enrolled in FIDA-IDD plans. The regulations must be filed on an emer-

gency basis to ensure that individuals eligible for FIDA-IDD plans are not unfairly precluded from participation in cross-system care coordination that will meet their needs.

Subject: Enrollment in Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for IDD.

Purpose: To allow individuals to be enrolled in a FIDA-IDD plan when individuals are unable to enroll themselves.

Substance of emergency/proposed rule (Full text is posted at the following State website:https://opwdd.ny.gov/sites/default/files/documents/FIDA_Text__final.pdf): OPWDD's emergency/proposed regulations allow individuals to be enrolled into the Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD) plan, through certain parties, in situations where there is no other person to make that election for them, is necessary to protect the health, safety, and welfare of individuals who are eligible to receive enhanced care coordination services in the OPWDD system.

The regulations specify rules concerning who can enroll beneficiaries or individuals in a Medicare Part D prescription drug plan or in a Medicare Advantage plan with prescription drug coverage and who can pursue grievances, complaints, exceptions and appeals in such plans.

The regulations specify that a complaint can be submitted to the quality improvement organization or to federal or state government regulatory agencies.

The regulations specify the definition of "act in the FIDA-IDD plan review process."

The regulations add the definitions of enroll and enrollment, FIDA-IDD and FIDA-IDD plan, party, and PDP.

The regulations specify that for the purposes of this section only, if the person's residential facility is operated by OPWDD, the CEO of the agency is the director of the DDSOO that operates the residential facility.

The regulations specify that if a CEO or designee enrolls a person into a PDP, he or she shall give written notice to, among others, the person's Medicaid service coordinator or other person identified as that person's care coordinator.

The regulations specify that if the agency or sponsoring agency does not agree with the request for a different PDP, the agency or sponsoring agency shall, among other things, inform the advocate or correspondent that he or she may appeal in writing to the DDRO director for the region within which the person's residential facility is located if the residential facility is not operated by OPWDD. The regulations also specify that if the person's residential facility is operated by OPWDD, then the notice shall inform the advocate or correspondent that he or she may appeal in writing to the director of the DDSOO that operates that residential facility.

The regulations create a new Section that deals with the FIDA-IDD enrollment and reviews for persons residing in a residential facility operated or certified by OPWDD or a family care home and a new section that deals with FIDA-IDD Plan enrollment and reviews for persons not residing in a residential facility or family care home.

The regulations specify that a person may enroll himself or herself into a FIDA-IDD Plan or appoint another party to enroll him or her. A person may act in the FIDA-IDD review process for himself or herself or appoint another party to act in the FIDA-IDD review process for him or her.

The regulations specify that if a person lacks the ability to choose a FIDA-IDD plan or act in the FIDA-IDD review process, a guardian lawfully empowered to enroll a person in a FIDA-IDD plan may enroll the person in a FIDA-IDD Plan or appoint another party to enroll the person.

The regulations specify that if an appointed party or guardian is unwilling or unavailable to enroll the person or act in the FIDA-IDD review process then an actively involved spouse, an actively involved parent, an actively involved adult child, an actively involved adult sibling, an actively involved adult family member, or the Consumer Advisory Board for the Willowbrook Class (only for class members it fully represents) may act in the FIDA-IDD review process or appoint another party to act in the FIDA-IDD review process.

The regulations specify that if the person resides in a residential facility the chief executive officer (CEO) of the agency operating the person's residential facility or sponsoring the family care home, or designee of the CEO, may enroll the person or act in the FIDA-IDD review process. If the person does not reside in a residential facility, the CEO (or designee) of the agency providing service coordination for the person, may enroll the person or act in the FIDA-IDD review process. If the CEO enrolls the person in the FIDA-IDD plan or acts in the FIDA-IDD review process, he or she shall give written notice of such enrollment to the person's correspondent or advocate, the person's Medicaid service coordinator, or other person identified as that person's care coordinator, or the director for the region encompassing the person's residence.

The regulations create a new Section that deals with other responsibilities and rights of agencies and sponsoring agencies regarding PDP enrollment and reviews.

The regulations specify that no CEO, officer, designee, or employee of an agency or sponsoring agency shall solicit, accept or receive from a PDP, pharmacy or contractor of a PDP or pharmacy, for personal use or benefit any payment, discount, or other remuneration in consideration of, or as a result of, enrolling the person in a PDP.

The regulations specify that no CEO, officer, designee, or employee of an agency or sponsoring agency shall charge, accept or receive payment from the person, family, or anyone else for enrolling the person in a PDP, providing advice and assistance in choosing a PDP or for acting for the person in the Part D review process.

The regulations specify that when a CEO or designee is acting in the Part D review process, the CEO or designee may appoint a party outside of the agency to act in the Part D review process for the person.

The regulations specify that when a CEO or designee enrolls a person he or she shall choose a PDP based on the best interests of the person.

The regulations create a new Section that deals with other responsibilities and rights of CEOs and DDSOO and DDRO directors or designees regarding FIDA-IDD plan enrollment and reviews.

The regulations specify that no CEO, DDRO or DDSOO director or designee shall solicit, accept or receive from a FIDA-IDD plan operator, or an agent of the plan, for person use or benefit any payment, discount or other remuneration in consideration of, or as a result of, enrolling the person in a FIDA-IDD plan.

The regulations specify that no CEO, DDRO or DDSOO director or designee shall charge, accept or receive payment from the person, family or anyone else for enrolling the person in a FIDA-IDD plan, for providing advice, and assistance in choosing a FIDA-IDD plan or for acting for the person in the FIDA-IDD review process.

The regulations specify that when a CEO, or DDRO or DDSOO director is acting in the FIDA-IDD review process for a person, the director or designee may appoint a party outside of the agency to act in the FIDA-IDD review process for the person.

The regulations specify that when a CEO, or DDRO or DDSOO director or designee enrolls a person in a FIDA-IDD plan or acts in the FIDA-IDD review process for a person he or she shall act based on the best interests of the person.

The regulations specify nothing in this Subpart shall diminish or remove the authority of a physician to request a coverage determination or an expedited redetermination on behalf of a beneficiary.

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 July 19, 2019.

Text of rule and any required statements and analyses may be obtained from: Bureau of Policy and Regulatory Affairs, Office for People With Developmental Disabilities, 44 Holland Ave, 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.

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

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 authority to plan, promote, establish, develop, coordinate, evaluate, and conduct programs and services for prevention, diagnosis, examination, care treatment, rehabilitation, training, and research for the benefit of individuals with developmental disabilities and has the authority to take all actions necessary, desirable, or proper to implement the purposes of the Mental Hygiene Law and to carry out the purposes and objectives of OPWDD within available funding, as stated in the NYS Mental Hygiene Law Section 13.15(a).

d. 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.

2. Legislative Objectives: The emergency/proposed regulations further legislative objectives embodied in sections 13.07, 13.09(b), 13.15(a) and

16.00 of the Mental Hygiene Law. The regulations authorize certain parties to enroll individuals in the Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD) when the individuals lack capacity to enroll themselves. FIDA-IDD plans provide enhanced care coordination for individuals who need coordination of both Medicare health benefits and Medicaid developmental disability services.

3. Needs and Benefits: The emergency/proposed regulations amend Title 14 NYCRR Part 635-11 to allow individuals to be enrolled in a FIDA-IDD plan, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity. Without such action, individuals would not have the opportunity to enroll in this program

The emergency/proposed regulations also make ministerial amendments to the Part D enrollment and review process to capture OPWDD's current organizational structure.

The emergency/proposed regulations in 635-11.4 pertain to individuals who reside in a residential facility operated or certified by OPWDD, or a family care home. That section would allow a surrogate to enroll an individual in a FIDA-IDD plan or to participate in the FIDA-IDD plan review process, if that individual did not have the capacity to enroll himself or herself. The section sets forth a hierarchy of individuals that may serve as a surrogate for these purposes, which includes an actively involved spouse, parent, adult child, adult sibling, adult family member or the Consumer Advisory Board for the Willowbrook Class (for class members only). In all other situations, the CEO of the agency that operates the individual's residence may enroll an individual and act on their behalf in the FIDA-IDD plan review process. For individuals residing in a facility operated by OPWDD, the CEO of the agency is deemed to be the director of the Developmental Disabilities State Operations Office that encompasses the location of the residence. This section also places notification requirements on a CEO that enrolls an individual in a FIDA-IDD plan.

The emergency/proposed regulations in 635-11.5 pertains to those individuals not residing in an OPWDD-certified or operated residential facility or family care home. That section would also allow a surrogate to enroll an individual in a FIDA-IDD plan or to participate in the FIDA-IDD plan review process, if that individual did not have the capacity to enroll himself or herself. The section sets forth a hierarchy of individuals that may serve as a surrogate for these purposes, which includes an actively involved spouse, parent, adult child, adult sibling, adult family member, or the Consumer Advisory Board for the Willowbrook Class (for Class members only). In all other situations, the CEO of the agency that provides service coordination for the individual may enroll an individual and act on their behalf in the FIDA-IDD plan review process. This section would also impose notification requirements when a CEO enrolled an individual in a FIDA-IDD plan.

The emergency/proposed regulations in 635-11.7 adds rights and responsibilities of CEOs, DDSOO and DDRO directors and designees regarding FIDA-IDD plan enrollment and reviews.

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 the emergency/proposed regulations. The regulations merely allow individuals to be enrolled in a FIDA-IDD plan, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

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. The emergency/proposed regulations may result in cost savings because individuals affected by the regulations will not have to seek guardianship to participate in the FIDA-IDD plan.

b. Costs to private regulated parties: There are no anticipated costs to regulated providers to comply with the emergency/proposed regulations. The amendments merely allow individuals to be enrolled in a FIDA plan, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

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 emergency/proposed regulations.

7. Duplication: The emergency/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 emergency/proposed regulations. The regulations are necessary to allow individuals to be enrolled in a FIDA plan, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

9. Federal Standards: The emergency/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 emergency/proposed amendments as soon as possible 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. OPWDD expects that providers will be in compliance with the emergency/proposed requirements at the time of their effective date.

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 emergency/proposed regulations amend Title 14 NYCRR Subpart 635-11 to allow individuals to be enrolled in a FIDA-IDD plan, through certain parties, in situations where there is no other person to make that election for them, such as lack of a guardian or incapacity. 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 emergency/proposed regulations amend Title 14 NYCRR Subpart 635-11 to allow individuals to be enrolled in a FIDA-IDD plan, through certain parties, in situations where there is no other person to make that election for them, such as lack of a guardian or incapacity. OPWDD expects that providers will be in compliance with the emergency/proposed requirements at the time of their effective date. 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 emergency/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 emergency/proposed regulations amend Title 14 NYCRR Subpart 635-11 to allow individuals to be enrolled in a FIDA-IDD plan, through certain parties, in situations where there is no other person to make that election for them, such as lack of a guardian or incapacity. 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

Transfer of Street Lighting Facilities

I.D. No. PSC-28-18-00012-A

Filing Date: 2019-05-17

Effective Date: 2019-05-17

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

Action taken: On 5/16/19, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's (Central Hudson) petition to transfer the street lighting facilities in the Town of Red Hook (Red Hook) to Red Hook.

Statutory authority: Public Service Law, section 70

Subject: Transfer of street lighting facilities.

Purpose: To approve Central Hudson's petition to transfer street lighting facilities to Red Hook.

Substance of final rule: The Commission, on May 16, 2019, adopted an order approving Central Hudson Gas & Electric Corporation's petition to transfer the street lighting facilities in the Town of Red Hook (Red Hook) to Red Hook, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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-0326SA1)

NOTICE OF ADOPTION

Water Metering Equipment

I.D. No. PSC-51-18-00012-A

Filing Date: 2019-05-16

Effective Date: 2019-05-16

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

Action taken: On 5/16/19, the PSC adopted an order approving SUEZ Water Westchester Inc.'s (SUEZ) request to use the Neptune Six-Inch High Performance Protectus III Fire Service Meter for use in domestic and fire service water metering applications in New York State.

Statutory authority: Public Service Law, section 89-d(1)

Subject: Water metering equipment.

Purpose: To approve SUEZ's request to use the HP Protectus III for water metering applications in New York State.

Substance of final rule: The Commission, on May 16, 2019, adopted an order approving SUEZ Water Westchester Inc.'s request to use the Neptune Six-Inch High Performance Protectus III Fire Service Meter (HP Protectus III) for use in domestic and fire service water metering applications in New York State. The HP Protectus III shall be equipped with the Sensus FlexNet 510M or 520M FlexNet radio transceivers to monitor water flow, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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-W-0669SA1)

NOTICE OF ADOPTION

Whitepaper on Standby and Buyback Service Rates

I.D. No. PSC-52-18-00006-A

Filing Date: 2019-05-16

Effective Date: 2019-05-16

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

Action taken: On 5/16/19, the PSC adopted an order on Standby and Buyback Service Rate Design and established optional demand-based rates.

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

Subject: Whitepaper on Standby and Buyback Service Rates.

Purpose: To adopt an order on Standby and Buyback Service Rate Design and establish optional demand-based rates.

Substance of final rule: The Commission, on May 16, 2019, adopted an order on Standby and Buyback Service Rate Design and established optional demand-based rates. 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 & Rockland Utilities, Inc., and Rochester Gas & Electric Corporation are directed to file tariff leaves in conformance with the modifications to Standby Service and Buyback Service rates, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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-E-0751SA18)

NOTICE OF ADOPTION

Minor Rate Filing

I.D. No. PSC-04-19-00007-A

Filing Date: 2019-05-20

Effective Date: 2019-05-20

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

Action taken: On 5/16/19, the PSC adopted an order authorizing Penn Yan Municipal Utilities Board (Penn Yan) to increase its annual electric revenues by $310,022, effective June 1, 2019.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Minor rate filing.

Purpose: To authorize Penn Yan to increase its annual electric revenues.

Substance of final rule: The Commission, on May 16, 2019, adopted an order authorizing Penn Yan Municipal Utilities Board (Penn Yan) to increase its annual electric revenues by $310,022, effective June 1, 2019. Penn Yan is directed to file a cancellation supplement, effective on not less than one day's notice, on or before May 28, 2019, cancelling the tariff amendments listed in Appendix A. Penn Yan is directed to file, on not less than three days' notice, to become effective on June 1, 2019, further tariff revisions establishing the approved rates as shown in Appendix D and any other tariff changes, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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-0782SA1)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-04-19-00025-A

Filing Date: 2019-05-20

Effective Date: 2019-05-20

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

Action taken: On 5/16/19, the PSC adopted an order approving, with modifications, KeySpan Gas East Corporation d/b/a National Grid's (KEDLI) tariff amendments to P.S.C. No. 1—Gas, effective June 1, 2019.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Tariff amendments.

Purpose: To approve, with modifications, KEDLI's tariff amendments to P.S.C. No. 1—Gas.

Substance of final rule: The Commission, on May 16, 2019, adopted an order approving, with modifications, KeySpan Gas East Corporation d/b/a National Grid's (KEDLI) tariff amendments to P.S.C. No. 1 – Gas, to establish a new provision setting forth the customer's consent to contact, where upon receiving utility service from National Grid, customers would receive autodialed and prerecorded/automated calls and texts that are closely related to their utility service. The tariff amendments listed in Appendix A shall become effective on June 1, 2019, provided that KEDLI files further revisions as discussed in the body of the Order, and as shown in Appendix B, on not less than one day's notice to become effective on June 1, 2019. KEDLI is also directed to file, within 60 days of the date of issuance of the Order, with the Secretary to the Commission, proof of customer communications, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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-M-0756SA1)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-04-19-00026-A

Filing Date: 2019-05-20

Effective Date: 2019-05-20

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

Action taken: On 5/16/19, the PSC adopted an order approving, with modifications, Niagara Mohawk Power Corporation d/b/a National Grid's (NMPC) tariff amendments to P.S.C. No. 220—Electricity, effective June 1, 2019.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Tariff amendments.

Purpose: To approve, with modifications, NMPC's tariff amendments to P.S.C. No. 220—Electricity.

Substance of final rule: The Commission, on May 16, 2019, adopted an order approving, with modifications, Niagara Mohawk Power Corporation d/b/a National Grid's (NMPC) petition to P.S.C. No. 220 – Electricity, to establish a new provision setting forth the customer's consent to contact, where upon receiving utility service from National Grid, customers would receive autodialed and prerecorded/automated calls and texts that are closely related to their utility service. The tariff amendments listed in Appendix A shall become effective on June 1, 2019, provided that NMPC files further revisions as discussed in the body of the Order, and as shown in Appendix B, on not less than one day's notice to become effective on June 1, 2019. NMPC is also directed to file, within 60 days of the date of issuance of the Order, with the Secretary to the Commission, proof of customer communications, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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-M-0756SA2)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-04-19-00027-A

Filing Date: 2019-05-20

Effective Date: 2019-05-20

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

Action taken: On 5/16/19, the PSC adopted an order approving, with modifications, The Brooklyn Union Gas Company d/b/a National Grid's (KEDNY) tariff amendments to P.S.C. No. 12—Gas, effective June 1, 2019.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Tariff amendments.

Purpose: To approve, with modifications, KEDNY's tariff amendments to P.S.C. No. 12—Gas.

Substance of final rule: The Commission, on May 16, 2019, adopted an order approving, with modifications, The Brooklyn Union Gas Company d/b/a National Grid's (KEDNY) tariff amendments to P.S.C. No. 12 – Gas, to establish a new provision setting forth the customer's consent to contact, where upon receiving utility service from National Grid, customers would receive autodialed and prerecorded/automated calls and texts that are closely related to their utility service. The tariff amendments listed in Appendix A shall become effective on June 1, 2019, provided that KEDNY files further revisions as discussed in the body of the Order, and as shown in Appendix B, on not less than one day's notice to become effective on June 1, 2019. KEDNY is also directed to file, within 60 days of the date of issuance of the Order, with the Secretary to the Commission, proof of customer communications, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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-M-0756SA4)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-04-19-00028-A

Filing Date: 2019-05-20

Effective Date: 2019-05-20

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

Action taken: On 5/16/19, the PSC adopted an order approving, with modifications, Niagara Mohawk Power Corporation d/b/a National Grid's (NMPC) tariff amendments to P.S.C. No. 219—Gas, effective June 1, 2019.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Tariff amendments.

Purpose: To approve, with modifications, NMPC's tariff amendments to P.S.C. No. 219—Gas.

Substance of final rule: The Commission, on May 16, 2019, adopted an order approving, with modifications, Niagara Mohawk Power Corporation d/b/a National Grid's (NMPC) tariff amendments to P.S.C. No. 219 – Gas, to establish a new provision setting forth the customer's consent to contact, where upon receiving utility service from National Grid, customers would receive autodialed and prerecorded/automated calls and texts that are closely related to their utility service. The tariff amendments listed in Appendix A shall become effective on June 1, 2019, provided that NMPC files further revisions as discussed in the body of the Order, and as shown in Appendix B, on not less than one day's notice to become effective on June 1, 2019. NMPC is also directed to file, within 60 days of the date of issuance of the Order, with the Secretary to the Commission, proof of customer communications, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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-M-0756SA3)

NOTICE OF ADOPTION

Motion for Waiver of Article VII Application Requirements

I.D. No. PSC-06-19-00006-A

Filing Date: 2019-05-17

Effective Date: 2019-05-17

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

Action taken: On 5/16/19, the PSC adopted an order approving Canisteo Wind Energy, LLC's (Canisteo) motion for a waiver of certain requirements in the Commission's regulations relating to Public Service Law article VII applications.

Statutory authority: Public Service Law, sections 4, 5 and 122

Subject: Motion for waiver of article VII application requirements.

Purpose: To approve Canisteo's motion for a waiver of article VII application requirements.

Substance of final rule: The Commission, on May 16, 2019, adopted an order approving Canisteo Wind Energy, LLC's motion for a waiver of certain requirements in the Commission's regulations relating to Public Service Law article VII applications, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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.

(19-T-0041SA1)

NOTICE OF ADOPTION

Transfer of Street Lighting Facilities

I.D. No. PSC-07-19-00013-A

Filing Date: 2019-05-17

Effective Date: 2019-05-17

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

Action taken: On 5/16/19, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) petition to transfer the street lighting facilities within the Town of Skaneateles (Skaneateles) to Skaneateles.

Statutory authority: Public Service Law, section 70(1)

Subject: Transfer of street lighting facilities.

Purpose: To approve National Grid's petition to transfer street lighting facilities to Skaneateles.

Substance of final rule: The Commission, on May 16, 2019, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's petition to transfer the street lighting facilities within the Town of Skaneateles (Skaneateles) to Skaneateles, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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.

(19-E-0043SA1)

NOTICE OF ADOPTION

Property Tax Refund Retention

I.D. No. PSC-08-19-00008-A

Filing Date: 2019-05-17

Effective Date: 2019-05-17

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

Action taken: On 5/16/19, the PSC adopted an order approving, subject to conditions, Verizon New York Inc.'s (Verizon) petition to retain $2,066,319, the regulated intrastate portion of property tax refunds it received from the City of New York for the 2017-18 tax year.

Statutory authority: Public Service Law, section 113(2)

Subject: Property tax refund retention.

Purpose: To approve, subject to conditions, Verizon's petition for retention of property tax refunds.

Substance of final rule: The Commission, on May 16, 2019, adopted an order adopted an order approving, subject to conditions, Verizon New York Inc.'s (Verizon) petition to retain $2,066,319, the regulated intrastate portion of property tax refunds it received from the City of New York for the 2017-18 tax year. Verizon shall, within 60 days of the effective date of this Order, file with the Secretary a detailed description of the extent to which the proceeds from the intrastate portion of the tax refund were used to increase support for its intrastate service quality and network reliability, and shall specify the extent to which those proceeds increased its capital or expense associated with its physical plant in New York State above what they would otherwise have been in the absence of the retained refunds, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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.

(19-C-0011SA1)

NOTICE OF ADOPTION

Transfer of Street Lighting Facilities

I.D. No. PSC-08-19-00009-A

Filing Date: 2019-05-17

Effective Date: 2019-05-17

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

Action taken: On 5/16/19, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's (Central Hudson) petition to transfer the street lighting facilities in the Town of Rosendale (Rosendale) to Rosendale.

Statutory authority: Public Service Law, section 70(1)

Subject: Transfer of street lighting facilities.

Purpose: To approve Central Hudson's petition to transfer street lighting facilities to Rosendale.

Substance of final rule: The Commission, on May 16, 2019, adopted an order approving Central Hudson Gas & Electric Corporation's petition to transfer the street lighting facilities in the Town of Rosendale (Rosendale) to Rosendale, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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.

(19-E-0064SA1)

NOTICE OF ADOPTION

Standby Rate Exemptions

I.D. No. PSC-09-19-00008-A

Filing Date: 2019-05-16

Effective Date: 2019-05-16

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

Action taken: On 5/16/19, the PSC adopted an order directing the major utilities to file tariff amendments implementing the continued Standby Rate Exemptions, effective June 1, 2019.

Statutory authority: Public Service Law, sections 64, 65(1), (2), (3), (5), 66(1), (2), (5), (8), (9), (10) and (12)

Subject: Standby Rate Exemptions.

Purpose: To direct major utilities to file tariff amendments implementing the continuation of Standby Rate Exemptions.

Substance of final rule: The Commission, on May 16, 2019, adopted an order directing 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 & Rockland Utilities, Inc., and Rochester Gas & Electric Corporation (Major Utilities) to file tariff amendments implementing the continuation of Standby Rates Exemptions, on not less than one day's notice to become effective June 1, 2019. The major utilities are also directed to file annual reports on customers receiving the standby exemption in Case 19-E-0079, as previously required in Case 14-E-0488, 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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.

(19-E-0079SA1)

NOTICE OF ADOPTION

Tariff Amendments

I.D. No. PSC-09-19-00011-A

Filing Date: 2019-05-20

Effective Date: 2019-05-20

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

Action taken: On 5/16/19, the PSC adopted an order approving Central Hudson Gas & Electric Corporation's (Central Hudson) tariff amendments to P.S.C. No. 15—Electricity, to become effective June 1, 2019.

Statutory authority: Public Service Law, sections 65, 66 and 66-j(4)(c)

Subject: Tariff amendments.

Purpose: To approve Central Hudson's tariff amendments to P.S.C. No. 15—Electricity.

Substance of final rule: The Commission, on May 16, 2019, adopted an order approving Central Hudson Gas & Electric Corporation's tariff amendments to P.S.C. No. 15 – Electricity, to modify the issued payment for certain net metering customers, to become effective June 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, 3 Empire State Plaza, Albany, New York 12223-1350, (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.

(19-E-0057SA1)

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Proposed Major Rate Increase in SWNY's Annual Base Revenues of Approximately $31.5 Million (or 19.8% in Total Revenues)

I.D. No. PSC-23-19-00005-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 a proposal filed by SUEZ Water New York Inc., et al. (SWNY) to make various changes in the rates, charges, rules and regulations contained in its Schedule P.S.C. No. 1 — Water.

Statutory authority: Public Service Law, section 89-c

Subject: Proposed major rate increase in SWNY's annual base revenues of approximately $31.5 million (or 19.8% in total revenues).

Purpose: To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.

Public hearing(s) will be held at: 10:30 a.m., August 7, 2019 and continuing daily as needed at Department of Public Service, Agency Bldg. 3, 3rd Fl. Hearing Rm., Albany, NY. (Evidentiary 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 19-W-0168.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule: The Commission is considering a proposal filed by SUEZ Water New York Inc. (SWNY), SUEZ Water Westchester Inc. (SWWC), and SUEZ Water-Owego-Nichols Inc. (SWON and collectively, the Companies) on March 4, 2019, the Companies are requesting an annual base revenue increase of $31.5 million or 19.8% for the rate year ending January 31, 2021.

The proposed rates will result in varying bill impacts to customers depending on which jurisdiction the customers are served. The Companies' proposed rates will increase the approximately average residential monthly water bill by $10.50 or 18.6% in Rockland County; $540 or 11.5% in the City of Rye and the villages of Rye Brook and Port Chester in Westchester County; and $2.70 or 5.6% in Forest Park. Customers in other parts of Westchester will see a reduction in their monthly bill of $4.20 or 7.5% per month and customers in Owego and Nichols will see no change in their monthly bills. The major drivers of the revenue increase include increased plant investment, higher property taxes and income taxes, and a reduced sales forecast. The initial suspension period for the proposed filing runs through July 31, 2019.

The full text of the 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: Five days after the last scheduled public hearing.

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.
(19-W-0168SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Ownership Interest in Poles

I.D. No. PSC-23-19-00003-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 a petition filed by New York State Electric & Gas Corporation (NYSEG) to sell an interest in poles consistent with a Settlement Agreement and Release between NYSEG and Verizon New York Inc.

Statutory authority: Public Service Law, section 70

Subject: Ownership interest in poles.

Purpose: To consider the transfer of ownership interest in certain poles from NYSEG to Verizon.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed by New York State Electric & Gas Corporation (NYSEG or the Company) on April 25, 2019, requesting approval to sell an interest in poles consistent with a Settlement Agreement and Release between the Company and Verizon New York Inc. (Verizon), dated December 14, 2018.

Verizon agrees to pay NYSEG for joint interest in 76,086 poles. NYSEG will continue to be entitled to all rental payments due from third-parties which have attached lines or equipment to the 76,086 poles, including but not limited to fiber optic, cable television or other communications or telecommunications lines and equipment. Verizon ceased paying pole attachment fees on the poles as of December 31, 2018, coincident with Verizon's payment to NYSEG. NYSEG and Verizon agree to have a joint attachment survey that they will accept as an accurate accounting of all poles in NYSEG's and Verizon's overlapping service territories, and a sound and bore and ground line inspection of the 76,086 poles.

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.
(19-E-0302SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Individually Negotiated Contracts

I.D. No. PSC-23-19-00004-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 proposal filed by Central Hudson Gas & Electric Corporation to modify its gas tariff schedule, P.S.C. No. 12, to add a provision for individually negotiated contracts to SC 9 — Interruptible Transportation Rate.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Individually negotiated contracts.

Purpose: To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences.

Substance of proposed rule: The Commission is considering a proposal filed by Central Hudson Gas & Electric Corporation (Central Hudson) on May 10, 2019, to modify its gas tariff schedule, P.S.C. No. 12, to add a special provision for individually negotiated contracts under Service Classification (SC) No. 9 – Interruptible Transportation Rate.

Central Hudson proposes to add a special provision to SC 9 to allow for individually negotiated contracts. The special provision will be available to customers that exhibit the ability to consume at least 400,000 Mcf on an annual basis at one service point. Participating customers must also exhibit operational flexibility, such as temporal load diversity, and are located in areas where Central Hudson has existing facilities with adequate capacity to meet a customer's requirements. The terms and conditions of individually negotiated contracts would be filed with the Commission as tariff addenda. The proposed amendment has an effective date of October 1, 2019.

The full text of the 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.
(19-G-0365SP1)

Department of State

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Prospective Licensee Requirements

I.D. No. DOS-23-19-00001-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 1103.2(a) of Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d

Subject: Prospective licensee requirements.

Purpose: To conform current NYS standards to existing applicable Federal requirements for licensure.

Text of proposed rule: Paragraph (a) of 19 NYCRR § 1103.2 is amended as follows:

(a) Education requirements for New York State appraiser assistants. An applicant must satisfactorily complete the following courses within the five year period prior to the date of submission of an appraiser assistant application:

(1) Residential 5 (R-5) - Basic Appraisal Principles 30 hours
(2) Residential 6 (R-6) - Basic Appraisal Procedures 30 hours
(3) USPAP or its equivalent, as further defined in 15 hours section 1103.7 of this Part
[(4) Residential 7 (R-7) - Residential Market Analysis 15 hours and Highest and Best Use
(5) Residential 8 (R-8) - Residential Appraisal Site 15 hours Valuation and Cost Approach
(6) Residential 9 (R-9) - Residential Sales Comparison 30 hours and Income Approach
(7) Residential 10 (R-10) - Residential Report 15 hours

Writing and Case Studies
(8)] *(4)* Supervisory Appraiser/Trainee Appraiser Course 4 hours
Total [154] *79* hours

Text of proposed rule and any required statements and analyses may be obtained from: David A. Mossberg, Esq., Department of State, 123 William St., 20th FL., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.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.

Consensus Rule Making Determination

This statement is being submitted pursuant to subparagraph (i) of paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of the State Board of Real Estate Appraisal's ("Board") Notice of Proposed Rule Making to amend Paragraph (a) of Section 1103.2 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR").

It is apparent from the nature and purpose of this rule that no person is likely to object to the adoption of the rule as written.

The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to, inter alia, Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes minimum qualification standards for licensed real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB.

The instant proposal seeks to decrease current educational standards to conform to lower standards established by the AQB. By proposing this rule making, the Board seeks to make obtaining the entry level license (i.e., an appraiser assistant) easier by removing additional New York State educational standards that exceed applicable federal guidelines. In preparing this proposal, the Department of State (the "Department") has found that other states already adhere to the AQB standards without imposing additional requirements. Based on the foregoing, the Board and the Department have determined that this proposal, which seeks to amend existing regulations to conform to existing lower federal standards, is noncontroversial, is applicable in other jurisdictions and, therefore no person is likely to object to its adoption.

Job Impact Statement

A Job Impact Statement is not required for the proposed regulatory amendments. It is apparent from the nature and the purpose of the proposed regulatory amendments that they will not have a substantial adverse impact on jobs and employment opportunities in either the public or private sectors. The proposed amendments will have a positive effect on employment opportunities by decreasing, consistent with existing federal guidelines, the education requirements to obtain an entry level license as an appraisal assistant.

Workers' Compensation Board

NOTICE OF ADOPTION

Establishment of Prescription Drug Formulary

I.D. No. WCB-52-17-00021-A
Filing No. 518
Filing Date: 2019-05-21
Effective Date: 2019-06-05

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

Action taken: Addition of Part 441 to Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 13-p, 117 and 142

Subject: Establishment of Prescription Drug Formulary.

Purpose: Establishment of a drug formulary that includes high-quality and cost-effective pre-authorized medication.

Substance of final rule: Subchapter M of Chapter V of Title 12 of NYCRR is amended to add a new Part 441 as follows:

441 Formulary

441.1 Definitions. Contains definitions of the following terms: Compound drug, Disability event, Dispense, FDA-approved drug, FDA OTC Monograph, Generic drug, Carrier's Physician, Formulary, Unlisted Drug, Perioperative Formulary drug, Phase A Drug, Phase B drug, Prior Authorization process, Prior Authorization and URAC.

441.2 New York Workers' Compensation Formulary. Incorporates the three lists of the Formulary by reference into this Part and describes the lists: Phase A lists Formulary drugs that may be prescribed during the first 30 days; Phase B lists Formulary drugs that may be prescribed after the 30th day or when accepted by the insurance carrier. This section also describes how to obtain copies of the Formulary lists.

441.3 Effective Dates and Notice. Sets forth that new prescriptions must be prescribed pursuant to the Formulary within 6 months of the effective date of the Formulary; that refills and renewals must be prescribed pursuant to the Formulary within 12 months of the effective date of the Formulary; that Notice must be given to claimants on non-Formulary agents and their providers within 6 months of the effective date of the Formulary.

441.4 Application of Formulary. This section describes in detail how drugs may be prescribed consistent with Phase A, B or the Perioperative Formulary. This section also identifies when Prior Authorization may be required.

441.5 Prior Authorization Process. This section details when Prior Authorization is required. It details the process for requesting Prior Authorization from the Carrier and describes the rules governing the insurance carrier's review of such requests.

441.6 Review by the Board of a Prior Authorization Denial. This section sets forth the process for review by the Board's Medical Director's Office of a carrier denial of a Prior Authorization request.

441.7 Changes to the Formulary. This section describes the process for requesting changes to the drugs listed in the Formulary and the timing thereof.

441.8 Medical Treatment Guidelines and Formulary. This sections states that should there be an inconsistency or conflict between the Formulary and the Medical Treatment Guidelines (MTG), the MTG shall govern.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 441.5(c) and (f).

Revised rule making(s) were previously published in the State Register on October 17, 2018 and January 23, 2019.

Text of rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, 328 State Street, Office of General Counsel, Schenectady, New York 12305-2318, (518) 486-9564, email: regulations@wcb.ny.gov

Additional matter required by statute: The proposed Phase A, Phase B, and Perioperative Formulary are published at www.wcb.ny.gov.

Revised Regulatory Impact Statement

A revised Regulatory Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text still seek to adopt a comprehensive drug formulary in a way that accomplishes the goals highlighted in the Regulatory Impact Statement. These changes, while some of them are substantial, do not affect the meaning of any statements in the document.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text still seek to adopt a comprehensive drug formulary in a way that accomplishes the goals highlighted in the Regulatory Flexibility Analysis. These changes, while some of them are substantial, do not affect the meaning of any statements in the document.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text still seek to adopt a comprehensive drug formulary in a way that accomplishes the goals highlighted in the Rural Area Flexibility Analysis. These changes, while some of them are substantial, do not affect the meaning of any statements in the document.

Revised Job Impact Statement

A revised Job Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text still seek to adopt a comprehensive drug formulary in a way that accomplishes the goals highlighted in the Job Impact Statement. These changes, while some of them are substantial, do not affect the meaning of any statements in the document.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The Chair and the Board received approximately 16 unique written comments in response to the revised proposed adoption of Part 441 of 12 NYCRR and the Formulary incorporated by reference therein. The public comment period remained open through May 17, 2019.

Multiple commenters commended the Board on the proposed Formulary.

One medical provider was generally opposed to the implementation of the Formulary. In response, the Board notes that it is statutorily required to implement a comprehensive drug formulary, pursuant to Workers' Compensation Law section 13-p.

441.3 Applicability, Effective Dates and Notice

One claims management group requested that the Board avoid mandating disclosure of any unnecessary protected health information under section 441.3(f), specifically when the information relates to medications prescribed and conditions treated, to protect a claimant's privacy. Notifications pursuant to this section are only sent to parties who are legally entitled to this information, the claimant and the prescribing medical provider. Accordingly, no change shave been made as a result of this comment.

One TPA requested that the Formulary apply to medications that are not dispensed by a pharmacy. The regulations set forth specific rules regarding physician and hospital dispensing (see section 441.3[d]). Accordingly, no changes are made due to this comment.

441.4 Application of Formulary

One medical provider argued that Phases A, B, and the Perioperative Formulary are arbitrary and impractical. In comparison, several commenters commended the Board on this and the prior draft of the Formulary, both of which incorporated a three-phase approach. Therefore, on balance, the Board declines to make changes because of this comment.

One medical provider and one claimant opposed the seven-day supply limit for controlled substances and muscle relaxants on the Formulary. The Board declines to make changes pursuant to these comments, as it finds that the 7-day supply limit best protects a claimant's health, and the Prior Authorization process set forth in section 441.5 exists where a greater supply is medically necessary.

One medical provider asked that a seven-day supply of opioids be pre-authorized in both Phase A and Phase B when medically necessary. In response, the Board notes that section 441.4 specifies that controlled substances may not exceed a single seven-day supply; such medications are indicated on Phase A of the Formulary as "1" in the "Special Considerations" column. Pursuant to section 441.5, if the treating medical provider believes that medication that is not pre-authorized in the Formulary is medically necessary, he or she may submit a request for Prior Authorization. As such, the Board declines to make changes as a result of this comment.

441.5 Prior Authorization Process

One claims management group commended the Board's treatment of compound medications.

One claimant requested that language be added to the regulations expressing that use beyond the maximum period is acceptable in some cases. As set forth in section 441.5, if a claimant's medical provider believes that medication that is not pre-authorized in the Formulary is medically necessary, he or she may submit a request for Prior Authorization. As such, the Board declines to make changes as a result of this comment.

One medical provider disagreed with the multiple review levels set forth in the Prior Authorization process. However, several other commenters commended the Board on this draft of the Formulary, which included the Prior Authorization process. Therefore, on balance, the Board declines to make changes because of this comment.

One medical provider opined that the regulations should require claimants or a claimant's representative to seek Prior Authorization, not only medical providers. The Board declines to make the requested change, as it finds that requiring medical providers to initiate first- and second-level Prior Authorization requests best protects claimants, as medical providers are in the best position to supply evidence in support of the Prior Authorization request.

One claims management group asked that nurse practitioners also be permitted to review Prior Authorization requests relating to schedule II, III, IV, and V controlled substances, as nurse practitioners are authorized to prescribe such medications. The Board declines to make this change, as it finds that requiring licensed physicians to review second-level Prior Authorization requests best protects claimants.

One claims management group suggested amending section 441.5(b) such that Prior Authorization need not be obtained prior to prescribing, only requested beforehand, in order to prevent delays. The Board declines to make the requested change. Prior authorization must be both sought and obtained before prescribing and dispensing. The Formulary contains drugs from all therapeutic categories; therefore, there should be medications that can be used until a Prior Authorization is reviewed. Additionally, Prior Authorization would not necessitate another visit to the doctor; after the Prior Authorization is obtained, the provider can electronically prescribe the medication and the claimant would then collect it from his or her pharmacy.

One commenter asked that the regulations include specific provisions prohibiting retrospective review of medications. Nothing in the regulations, particularly in sections 441.5 or 441.6, permits retrospective review of medications. Accordingly, the Board does not believe that a change to the regulations is necessary.

One insurance carrier requested that the regulations specifically state that Prior Authorization is required for brand name versions of time-released drugs where a generic drug with the same active ingredient and therapeutic efficacy is available. The regulations specify rules for generic drugs, as set forth in sections 441.1 and 441.5; as such, no change has been made as a result of this comment.

One insurance carrier asked that carriers be permitted to list a general designated phone number and email address for the regulation's designated contact requirement. The Board believes the proposed regulations provide a sufficient process to ensure that drugs are prescribed and dispensed correctly, and as such has not made any changes as a result of this comment. However, the Board has made a clarifying change to section 441.5(c) to clarify that the names and contact information of designated contacts will not be posted on the Board's website. Instead, medical providers requesting Prior Authorization electronically will be automatically directed to the carrier's designated contact.

One insurance carrier opined that reviewing Prior Authorization requests in 4 calendar days is too burdensome. The Board consulted with stakeholders in drafting the proposed regulation and finds that 4 calendar days is an appropriate amount of time to decide Prior Authorization requests. Accordingly, no changes are made as a result of this comment.

One third-party administrator (TPA) asked that the regulations clarify whether TPAs are included when the terms "carrier and self-insured employer" are used in the regulation. Pursuant to section 441.5, Prior Authorization shall be submitted in the manner prescribed by the Chair. When the Chair designates the form and manner by which to request Prior Authorization, he or she may, at that time, permit the carrier's agent, including a TPA, to view Prior Authorization requests. Therefore, no changes will be made to the regulation as a result of this comment.

Several commenters opined that the Prior Authorization process is unclear. Because these commenters have not expressed specific changes to sections 441.5 or 441.6, and a number of other commenters commended the Board on this version of the Formulary regulation, including the Prior Authorization process prescribed therein, the Board declines to make changes to these sections as a result of these comments. It should be noted that the Board is developing the electronic process and solution for the Prior Authorization process and will make this solution available to stakeholders available in the process. Additionally, the Board is available as a resource should stakeholders have specific questions, and the Board may develop Frequently Asked Questions on its website should repeat questions arise.

One law firm asked that section 441.5(d)(3)(ii) impose a 30-day deadline for issuing an Order of the Chair. The Board expects any Orders of the Chair to be issued in a timely manner.

441.6 Review by the Board of a Prior Authorization Denial

Several commenters expressed confusion as to whether the electronic delivery provisions set forth in section 441.6(g) apply to all Prior Authorization requests, or only Board-level review of Prior Authorization requests. As a result, the Board has clarified that former section 441.6(g), now section 441.5(f), applies to all levels of Prior Authorization review. Additionally, the Board has amended this provision to clarify that, in the event a prescribing medical provider is not equipped to send or receive Prior Authorization requests by electronic means, he or she must send a certification to the Board's Medical Director's Office in accordance with 12 NYCRR 324.3(a)(3).

One insurance carrier asked that medical providers be required to appeal a Prior Authorization denial or partial approval in 4 days, rather than 10 days. The commenter contended that a 4-day appeal timeline is more equitable because the carrier must review a Prior Authorization request within 4 calendar days under section 441.5. The Board declines to make the requested change, as a carrier's decision timeline differs in purpose from the timeframe by which to appeal a decision.

One insurance carrier opined that claimants should not be permitted to appeal a decision by the Medical Director's Office because the decision is binding on all other parties. The Board declines to make any changes as a

result of this comment, as it finds that the currently-drafted regulation is necessary to best protect a claimant's due process interests.

441.8 Medical Treatment Guidelines and Formulary

One medical provider requested that the regulations clearly state that the Medical Treatment Guidelines are controlling in the event of a contradiction with the Formulary. In response, the Board notes that section 441.8 clearly sets forth when the Medical Treatment Guidelines control in the event of a conflict.

Formulary

One commenter expressed that the "2nd" category on the Formulary is confusing. As is described in the Formulary, medications may only be prescribed for the body parts identified with a Yes or as a 2nd line prescription when indicated by a 2nd. When there is no such indicator for the body party, the drug may not be prescribed without prior authorization.

One commenter recommended that the Formulary and instructions that accompany it be updated to include the specific NCCI or ICD128;10 codes associated with each of the diagnosis categories listed on the formulary table. This suggestion is beyond the scope of the Formulary. Accordingly, no changes have been made to the revised proposed regulations as a result of this comment.

One pharmacy asked whether all formulations of a given medication are included when the drug formulation is not specified, or whether the PBM may determine an appropriate formulation. The Board is unclear on this commenter's question, and therefore no changes have been made to the Formulary as a result of this comment. However, all stakeholders are welcome to contact the Board directly for clarifying questions such as these, and the Board may develop Frequently Asked Questions on its website should repeat questions arise.

Many stakeholders requested that specific drugs be included in the Formulary. The Board is interested in adopting the final Formulary regulations as soon as possible, in order to bring clarity to all stakeholders and begin the educational and implementation process. Therefore, no changes have been made to the Formulary at this time to incorporate the suggested drugs. However, to the extent that these drugs have been requested for inclusion for the first time, the Board will review them for inclusion at a later date. To the extent that several of these drugs have been requested for inclusion in past versions of the Formulary regulation, the Board previously reviewed these drugs and declined to include them, and no new evidence has been provided regarding the drugs' efficacy. Stakeholders should also be mindful that the Formulary is intended to be dynamic, and the Board will continue to monitor requests for additions to or deletions from the Formulary pursuant to section 441.7.