

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

MICHAEL DEMETRIOU as p/n/g of C.D.
and on behalf of himself and all other
persons similarly situated, et al.

Docket No. 2022- 00532

Nassau County
Index No. 616124/2021

Petitioners-Respondents,

Order to Show Cause

– against –

NEW YORK STATE DEPARTMENT OF
HEALTH, et al.,

Respondents-Appellants.

Upon the annexed affirmation of JUDITH N. VALE, dated
January 25, 2022, and the ^{papers} ~~exhibits~~ annexed thereto,

LET respondents show cause before this Court at the
Courthouse, 45 Monroe Place, Brooklyn, New York, 11201, on January
o'clock in the forenoon of that date
28, 2022, at 10 ^a~~p~~.m., or as soon thereafter as counsel may be heard, why
and entered:
an Order should not be made staying the appealed from January 24,
2022, Order and Decision of Supreme Court, Nassau County, and
during the pendency of such motion for a stay.

SUFFICIENT CAUSE THEREFOR APPEARING, it is

RSM
—
ORDERED, that pending the hearing and determination of this motion,

RSM
the appealed from January 24, 2022, Order and Decision of Supreme Court, Nassau County is stayed; and it is further

to show cause

ORDERED that service of a copy of this Order, and the
was made
papers upon which it is based, by electronic mail upon Chad Jackson
Laveglia, Law Office of Chad J. LaVeglia PLLC, New York, 350 Motor
and filing on NYSCEF
Pkwy Ste 308, Hauppauge, NY 11788; email: claveglia@cjllaw.org or
before January 25, 2022, shall be deemed sufficient service thereof.

Dated: Brooklyn, New York
January 25, 2022



Associate Justice
Appellate Division, Second
Department
Hon. Robert J. Miller

SUPREME COURT OF THE STATE OF NEW YORK
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**Affirmation in Support
of Motion for Stay
Pending Appeal**

Judith N. Vale, an attorney duly admitted to the bar of this State,
affirms the truth of the following under penalty of perjury:

1. I am an Assistant Deputy Solicitor General in the Office of
Letitia James, Attorney General of the State of New York. This Office
represents appellants, the New York State Department of Health (DOH);
the Public Health and Health Planning Council (Council); Mary T.
Bassett, the Commissioner of Health for New York (Commissioner); and
Kathleen C. Hochul, the Governor of New York. I make this affirmation
based on my review of the State's files in this matter and conversations
with attorneys in the Attorney General's Office and other state officials.

2. The State appeals from a Decision and Order of Supreme Court, Nassau County (Rademaker, J.), dated January 24, 2022 and entered on January 25, 2022. *See* Exh. A (Decision & Order). The State filed a timely notice of appeal on January 24, 2022. *See* Exh. B (Notice of Appeal). The Order declares unlawful and permanently enjoins enforcement of a regulation issued by DOH and a related determination issued by the Commissioner regarding requirements for wearing face masks in certain public places, including schools where children are attending in-person learning, to prevent the further spread of the dangerous virus that causes COVID-19.

3. The Court should stay the Order pending appeal. The Order, if not stayed, will allow individuals to refuse to wear face coverings in indoor public settings where the risk of COVID-19 spread is high, including in schools where many children remain unvaccinated against COVID-19. The irreparable harms to public health that would result demonstrate that the balance of equities and public interest alone warrant a stay—particularly when petitioners will not suffer *any* irreparable harm from continuing to abide by face-covering requirements that have largely been in place for four months before petitioners filed

their lawsuit. Moreover, appellants are likely to prevail on the merits of their appeal because, contrary to Supreme Court's Order, DOH, the Commissioner, and the Council have ample statutory authority to issue the regulation and related Commissioner Determination challenged here.

4. Last night, I advised Chad Jackson Laveglia, counsel for petitioners-appellees, via email that appellants will be making this application today. This morning, I emailed Mr. Laveglia the Order to Show Cause, this affirmation in support of the Order to Show Cause, and the exhibits accompanying this affirmation.

Statutory and Factual Background

5. The COVID-19 pandemic continues to present the greatest public health crisis in a century. The pandemic has caused more than 51,000 deaths in New York State alone. *See* New York Department of Health, *COVID-19 Data in New York* (internet).¹ And hospitalizations caused by COVID-19 remain high, with nearly 10,000 patients hospitalized in New York as of January 23, 2022. *See* New York

¹ <https://coronavirus.health.ny.gov/covid-19-data-new-york>

Department of Health, *Daily Hospitalization Summary* (internet).² Although state officials, including appellants here, have taken urgent actions to slow the spread of the virus and protect the public health of New York residents, the grave dangers of the pandemic remain. For example, the Delta variant of SARS-CoV-2, a virus strain that is twice as transmissible as the original strain, quickly became the dominant cause of COVID-19 in New York after it emerged in June 2021. *See* New York Department of Health, *Covid-19 Variant Data* (internet).³ And the Omicron variant has been shown to be even more transmissible, causing increased rates of infection, hospitalization, and death. *See id.* (See Aff. of Johanne Morne, *Demetriou v. New York State Dep't of Health*, (Supreme Court Nassau County, Jan. 20, 2022), No. 616124/2021, NYSCEF # 62 (attached to this affirmation as Exh. E.) ¶¶ 29-32, 63-66.)⁴

6. Well before the COVID-19 pandemic began, the Legislature enacted various statutes delegating to DOH broad authority to issue

² <https://coronavirus.health.ny.gov/daily-hospitalization-summary>

³ <https://coronavirus.health.ny.gov/covid-19-variant-data>

⁴ The Morne affirmation is attached to this affirmation as Exhibit E. The many exhibits attached to this affirmation are available on the Supreme Court NYSEF docket for this case. Appellants are also able to provide these exhibits at the Court's request.

regulations addressing public health in New York, including to address the dangerous spread of highly contagious and often life-threatening diseases like COVID-19. For example, Public Health Law (PHL) § 225 imbues the Council—which is part of DOH—with the authority to establish regulations, known as the sanitary code, that address “any matters affecting the security of life or health or the preservation and improvement of public health in the state of New York, and with any matters as to which the jurisdiction is conferred upon the public health and health planning council.” PHL § 225(5).

7. Through Public Health Law § 201, the Legislature also delegated to DOH extensive powers to “supervise the reporting and control of diseases,” “supervise and regulate the sanitary aspects of . . . businesses and activities affecting public health,” and “exercise control over and supervise the abatement of nuisances likely to affect public health,” including diseases like COVID-19. *See id.* § 201(c), (m), (n). And the Legislature delegated to the Commissioner the power to, among other things, “exercise the functions, powers and duties of the department prescribed by law,” and “enforce the public health law [and] sanitary code. *Id.* §§ 206 (1)(a), (f).

8. DOH, the Commissioner, and the Council have repeatedly exercised these statutorily delegated authorities to issue regulations and directives to control the continued spread of COVID-19 and its devastating public-health consequences. At issue in this case is an emergency regulation issued by DOH on August 27, 2021, entitled “Face Coverings for COVID-19 Prevention” and codified at 10 N.Y.C.R.R. § 2.60. The regulation was considered, voted on, and approved by the Council. The regulation allows the Commissioner to require face coverings in certain situations and settings “[a]s determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread” pursuant to issued “findings regarding the necessity of face-covering requirements.”

9. The regulation at issue was updated on November 24, 2021, through a new notice of emergency rulemaking. The new rulemaking left the text of 10 N.Y.C.R.R. § 2.60 unchanged and updated the documents and findings supporting the regulation. For example, the November 2021 update provided further information on the spread of the dangerous Delta variant that had emerged.

10. Pursuant to the discretion given by 10 N.Y.C.R.R. § 2.60, the Commissioner has periodically issued determinations regarding indoor masking to prevent the further spread of COVID-19. On August 27, 2021, the Commissioner issued one such determination (“August 27th Determination”), requiring individuals, regardless of their vaccination status, to wear masks in certain indoor settings, including, inter alia, school settings, healthcare settings, adult care facilities, correctional facilities, homeless shelters, and public transportation.

11. On December 10, 2021, the Commissioner issued a determination pursuant to 10 N.Y.C.R.R. § 2.60 (“December 10th Determination”) to address the winter surge of the Delta and Omicron variants, particularly during the holiday season. The December 10th Determination left the masking requirements from the August 27th Determination unchanged, and added a requirement for masking in all other indoor public places, regardless of vaccination status, unless the indoor public place requires proof of vaccination as a condition of entry. The portion of the December 10th Determination regarding other indoor places was set to expire on January 15, 2022, but on January 13, 2022, the Commissioner extended that portion of the determination for an

additional two weeks, until February 1, 2022. The sections of the December 10th Determination regarding specified indoor locations, including schools, do not have a set expiration date and remain in effect until modified or rescinded.

12. In late December 2021, approximately four months after DOH first promulgated 10 N.Y.C.R.R. § 2.60 and the Commissioner issued the August 27th Determination requiring masking in schools, petitioners filed this lawsuit in Supreme Court, Nassau County. Petitioners—fourteen individuals who purported to bring claims on behalf of their minor school-aged children—challenged 10 N.Y.C.R.R. § 2.60 and the December 10th Determination. They asserted, among other things, that DOH’s regulation and the Commissioner’s Determination lacked statutory authority, violated principles of separation of powers, and constituted an unlawful delegation of authority. They sought, *inter alia*, an order declaring 10 N.Y.C.R.R. § 2.60 and the December 10th Determination unlawful and both preliminary and permanent injunctive relief enjoining appellants from enforcing the challenged regulation or determination.

13. On January 24, 2022, Supreme Court, Nassau County (Rademaker, J.) issued the decision and order appealed from here. The Order declared 10 N.Y.C.R.R. § 2.60 and the December 10th Determination to be unconstitutional and unlawful, and permanently enjoined enforcement of both provisions. The court reasoned that DOH, the Commissioner, and the Council lacked statutory authority to issue the regulation and determination because no statute specifically authorized them to issue rules regarding COVID-19 mask mandates. The court also ruled that 10 N.Y.C.R.R. § 2.60 violated the State Administrative Procedure Act (SAPA), reasoning that DOH had not provided sufficient justifications for issuing the regulation on an emergency basis.

14. On January 24, 2022, appellants filed a timely notice of appeal from the Order.

ARGUMENT

15. To obtain a stay pending appeal, the applicant must demonstrate: (1) irreparable injury in the absence of a preliminary injunction; (2) a favorable tipping of the balance of equities; and (3) a likelihood of success on the merits of the appeal. *See W.T. Grant Co. v.*

Srogi, 52 N.Y.2d 496, 517 (1981); *see also Da Silva v. Musso*, 76 N.Y.2d 436, 443 n.4 (1990). Here, each of these factors weighs heavily in favor of a stay pending appeal.

**The Balance of Equities and Public Interest Weigh
Decisively in Favor of a Stay Pending Appeal.**

16. First, a stay pending appeal is warranted here because “the balance of equities and consideration of the overall public interest in this case,” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 26 (2008), tip decisively in favor of a stay—particularly given the serious harms that could follow from Supreme Court’s injunction against an important public-health measure that DOH issued to stymie the further spread of COVID-19.

17. A stay will prevent significant irreparable harm to the health and safety of New York’s residents. Scientific studies confirm that “airborne transmission . . . represents the dominant route to spread” the COVID-19 virus. (Morne Aff. Ex. O, NYSCEF # 77.) The virus can be emitted from “an infected person’s mouth or nose in small liquid particles when the person coughs, sneezes, sings, breathes heavily or talks.” (*Id.* ¶ 23.) A nearby person can then be infected by inhaling these particles or

by touching their mucous membranes with hands that have been covered by these particles. (*Id.* ¶ 26.)

18. Masks directly address this path of transmission: they both “reduce the emission of virus-laden droplets by the wearer” and “help reduce inhalation of these droplets by the wearer.” (*Id.* Ex. R, NYSCEF # 80.) For this reason, masks have been deemed by the CDC and other public-health authorities to be “a critical public health tool for preventing spread of COVID-19.” (*Id.* Ex. M, NYSCEF # 75.) Indeed, some studies have concluded that the “wearing of face masks in public corresponds to the most effective means to prevent interhuman transmission” short of universal vaccination. (*Id.* Ex. O, NYSCEF # 77.)

19. Numerous empirical studies have confirmed the significant benefit of widespread masking in enclosed areas. (*Id.* ¶¶ 43-48.) Of particular relevance here, a study of K-12 schools in Arizona found that “the odds of a school-associated COVID-19 outbreak in schools without a mask requirement were 3.5 times higher than those in schools with an early mask requirement.” (*Id.* Ex. U, NYSCEF # 83.) A different study similarly found that schools that did not require masks “experienced larger increases in pediatric COVID-19 case rates” compared to schools

that did. (*Id.* Ex. II, NYSCEF # 97.) And masking remains beneficial despite the availability and adoption of vaccines. Although vaccination is also a critical tool to address the COVID-19 pandemic, the CDC has recommended “universal indoor masking by all students . . . regardless of vaccination status” as an important plank of a multilayered prevention strategy. (*Id.* Ex. UU, NYSCEF # 109.)

20. “Stemming the spread of COVID-19 is unquestionably a compelling interest.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020). The order below undermines this compelling interest by impeding DOH’s efforts to promote widespread adoption of a highly effective means of preventing COVID-19 transmission, whether in schools or elsewhere. And it does so at a time when the new and highly transmissible Omicron variant threatens to reverse New York’s steady progress at reducing the positivity rate as well as hospitalization and ICU admissions from COVID-19. (Morne Aff. ¶¶ 29-32, 63-66.)

21. Preventing masking requirements at schools is particularly dangerous. COVID-19 cases in children have grown alarmingly in just the last few weeks. (*Id.* ¶ 77 & Ex. XX, NYSCEF # 112.) Although children are generally less likely to develop severe illness or die from

COVID-19, there has also been a distressing increase in pediatric hospitalizations associated with COVID-19, with a more than seven-fold increase from December 5, 2021, to January 2, 2022. (*Id.* ¶¶ 76, 78.) COVID-19 spread in schools also threatens to result in school closures—interruptions that are “extremely disruptive to children’s education and well-being.” (*Id.* ¶ 81.) Masking in schools thus both protects the health of students and ensures that they can be properly educated. The order below threatens serious harm to the public interest by undermining these important objectives.

22. On the other side of the coin, petitioners will not suffer any significant irreparable harm from a stay pending appeal that maintains the status quo masking requirements that existed for many months before they filed this lawsuit. For example, there is no evidence that wearing masks has any significant adverse health effects on adults or children. Masks do not impede oxygen intake or carbon-dioxide exhalation, and do not lead to any respiratory distress, including for individuals with conditions such as asthma. (*Id.* ¶¶ 49-57.) And there is no evidence that masks impede children’s academic, emotional, or behavioral development. (*Id.* Ex. W, NYSCEF # 85.)

23. In short, the balance of the equities weighs heavily in favor of a stay of the order below pending appeal. Absent a stay, the order below will impede the widespread adoption of a highly effective method of preventing COVID-19 transmission and thus reducing the spread of the virus, including the highly transmissible Omicron variant. And the order below threatens this significant and irreparable injury without any countervailing public interest on the other side. The equities alone thus support the issuance of a stay pending appeal here. *See Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017) (stay is “often dependent as much on the equities of a given case as the substance of the legal issues it presents”).

Appellants are Likely to Succeed on the Merits of Their Underlying Appeal

24. Second, the Court should issue a stay pending appeal because appellants are likely to succeed on the merits of their appeal.

25. Supreme Court erred in concluding that DOH, the Commissioner, and the Council lacked statutory authority to issue the challenged regulation and directive and that the challenged provisions thus violated separation of powers principles. That decision conflicts with the rulings of multiple other courts that have squarely upheld the same regulation and directive at issue here and correctly affirmed appellants' authority to issue these administrative actions. *See Massapequa Union Free School District v. Hochul*, No. 907979-21 (Sup. Ct. Albany County Nov. 23, 2021); *Christian Central Academy v. Hochul*, No. 812301/2021 (Sup. Ct. Erie County Oct. 18, 2021); *Doe v. Franklin Square Union Free Sch. Dist.*, 2021 U.S. Dist. LEXIS 206450, *38 n.21, (E.D.N.Y. Oct. 26, 2021).

26. “The cornerstone of administrative law is derived from the principle that the Legislature may declare its will, and after fixing a primary standard, endow administrative agencies with the power to fill in the interstices in the legislative product by prescribing rules and

regulations consistent with the enabling legislation.” *Nicholas v. Kahn*, 47 N.Y.2d 24, 31 (1979). As multiple state and federal courts have already correctly determined, the Legislature imbued DOH, the Commissioner, and the Council with statutorily delegated authority to address the grave public-health consequences that arise from the rapid spread of contagious diseases like COVID-19. DOH, the Commissioner, and the Council properly exercised that statutorily delegated authority here.

27. For example, through PHL § 225, the Legislature authorized the Council to establish sanitary-code regulations that address “any matters affecting the security of life or health or the preservation and improvement of public health in the state of New York” and “any matters as to which the jurisdiction is conferred upon the public health and health planning council.” PHL § 225(5). The Legislature also delegated to the Commissioner the power to “enforce the public health law [and] sanitary code.” *Id.* §§ 206 (f). And further confirming DOH’s broad authority, the Legislature delegated to DOH the powers to “supervise the reporting and control of diseases,” “supervise and regulate the sanitary aspects of . . . businesses and activities affecting public health,” and “exercise control

over and supervise the abatement of nuisances likely to affect public health,” including diseases like COVID-19. *See id.* § 201(c), (m), (n).

28. The challenged regulation and the Commissioner’s December 10th Determination issued under the regulation fall squarely within the heartland of these express statutory delegations of authority. The face-covering regulation was considered, voted on, and approved by the Council—the entity within DOH statutorily tasked with establishing the sanitary code regulations. And the regulation plainly addressed urgent matters “affecting the security of life or health or the preservation and improvement of public health.” PHL § 225(5). As DOH explained, the continuing spread of COVID-19 continues to present a grave public-health danger—with new variants such as the Delta and Omicron variants again causing increased rates of infection. (Riegert Aff. Ex. F.) And substantial scientific evidence establishes that wearing face masks in indoor public spaces is highly effective at preventing the spread of COVID-19 and thus mitigating the devastating public-health consequences of the pandemic. *See supra* ¶¶ 17-22.

29. Moreover, the regulation properly provided the Commissioner—to whom the Legislature has delegated authority to

enforce the sanitary code—discretion to issue determinations regarding face-mask requirements based on the current incidence and prevalence of COVID-19 and other public health and clinical risk factors. As the emergence of new COVID-19 variants demonstrates, the pandemic continues to present rapidly changing circumstances that may result in sudden increases in infection rates, hospitalizations, and deaths. The regulation properly allows the Commissioner to exercise flexibility in examining the most up-to-date circumstances and issuing face-masking requirements that address the current public-health risks.

30. Supreme Court missed the mark in asserting that DOH, the Commissioner, and the Council lacked the requisite statutory authority because the Legislature had not issued a statute specifically delegating the authority to issue regulations regarding face-covering requirements during the COVID-19 pandemic. “[I]t is not necessary that the Legislature supply administrative officials with rigid formulas in fields where flexibility in the adaptation of the legislative policy to infinitely variable conditions constitute the very essence of the programs.” *Nicholas*, 47 N.Y.2d at 31. Accordingly, the “enabling legislation need not

detail an agency's role." *Matter of LeadingAge N.Y., Inc. v. Shah*, 32 N.Y.3d 249, 263 (2018).

31. Here, the Legislature provided DOH, the Commissioner, and the Council with ample authority to protect public health against communicable diseases like COVID-19; it was not further required to detail each specific action that the agency is allowed to undertake. *See Serafin v. NYS Dept. of Health*, No. 908296-21 (Sup. Ct. Albany County Dec. 9, 2021) (upholding DOH's regulation requiring COVID-19 vaccination for health-care workers as statutorily authorized under PHL § 225(5)). Indeed, requiring the Legislature to enact such detailed enabling legislation to allow DOH to issue public-health regulations would unduly undermine DOH's ability to respond quickly and appropriately to public-health emergencies. *See Suffolk County Builders Asso. v. County of Suffolk*, 46 N.Y.2d 613, 620 (1979) (explaining that delegation is a necessity for the orderly functioning of an administrative body).

32. Because DOH, the Commissioner, and the Council acted well within their delegated statutory authority, there is also no merit to petitioners' challenge based on the separation-of-powers doctrine set

forth in *Boreali v. Axelrod*, 71 N.Y.2d 1 (1987). The four “coalescing circumstances” that this Court evaluates in applying the *Boreali* doctrine confirm this conclusion. See *Massapequa*, No. 907979-21 (evaluating *Boreali* factors in upholding 10 N.Y.C.R.R. § 2.60).

33. First, the regulation and December 10th Determination did not attempt to weigh competing interests or make complex value judgments unrelated to DOH’s core statutorily delegated authorities regarding public health. To the contrary, 10 N.Y.C.R.R. § 2.60 and the December 10th Determination are designed to further the public-health goals that the Legislature sought to pursue in delegating authority to DOH, the Commissioner, and the Council. See, e.g., *Matter of LeadingAge N.Y., Inc. v. Shah*, 32 N.Y.3d 249, 265 (2018); *Garcia v. New York City Dept of Health & Mental Hygiene*, 31 N.Y.3d 601, 612-13 (2018).

34. Second, DOH, the Commissioner, and Council did not “write on a clean slate,” see *Garcia*, 31 N.Y.3d at 609, and instead exercised their long-standing authority to fill in the details of the Legislature’s broad grants of statutory authority to promote public health in the face of known health risks from a highly infectious disease. Indeed, relying on the same sources of statutory authority as the regulation did here, DOH,

the Commissioner, and the Council have repeatedly promulgated similar public-health regulations, such as regulations requiring vaccinations for infectious diseases like measles and rubella. *See* 10 N.Y.C.R.R. § 405.3(b)(10)(i)-(iii).

35. Third, the Legislature has not “unsuccessfully tried to reach agreement on the issue, which would indicate that the matter is a policy consideration for the elected body to resolve.” *Matter of NYC C.L.A.S.H., Inc. v. New York State Off. of Parks, Recreation & Historic Preserv.*, 27 N.Y.3d 174, 183 (2016). In their motion papers below, petitioners pointed to several irrelevant proposed bills that have not moved beyond committee and that do not address requirements to wear face coverings. And Supreme Court misplaced its reliance on a statute, Executive Law § 29-a, that imposes some limits on the Governor’s power to unilaterally issue executive orders during a state of emergency. This statute addressing the *Governor’s* authority during a state of emergency has no bearing on the *agency’s* preexisting and long-standing statutory authority to issue regulations addressing public-health dangers—authority that the Legislature gave to DOH because of its extensive expertise in matters of public health.

36. Finally, DOH’s public-health expertise also establishes that the fourth *Boreali* factor plainly weighs in favor of the regulation and December 10th Determination. DOH, the Commissioner, and the Council have “special expertise and competence in the field” of public-health measures used to contain the spread of a contagious disease like COVID-19. *See Greater N.Y. Taxi Assn. v. New York City Taxi & Limousine Comm.*, 25 N.Y.3d 600, 612 (2015).

37. Supreme Court was also wrong to find that 10 N.Y.C.R.R. § 2.60 was promulgated “without any substantive justification for [its] emergency adoption” under SAPA. (p. 5.) DOH promulgated the emergency rule “in substantial compliance” with SAPA’s requirements. *Matter of Industrial Liaison Committee v. Williams*, 72 N.Y.2d 137, 144 (1988).

38. To support emergency rulemaking, an agency need only find that “the immediate adoption of a rule is necessary for the preservation of the public health, safety or general welfare,” and that deferring the rule until after completion of the full notice-and-comment process “would be contrary to the public interest.” SAPA § 202(6). DOH made these findings here. The agency found that “immediate action” was required

because of the ongoing spread of COVID-19 and evidence that masking was effective at preventing transmission, and that delaying issuance of the emergency rule “would be contrary to the public interest” because it would delay broader adoption of this important public-health practice. (Riegert Aff. Ex. F.)

39. Supreme Court criticized this justification because it found that “the COVID-19 pandemic has been ongoing” and that there was thus no true “emergency” here. (p. 5.) But SAPA § 202(6) is not limited to situations where there is a sudden or unexpected occurrence. Rather, the purpose of the emergency-rulemaking process is to allow an agency to immediately bring a rule into effect, without awaiting the outcome of the normal notice-and-comment process. And giving a rule immediate effect is warranted if the rule is needed right away for “public health, safety or general welfare,” and delay would harm the public interest. SAPA § 202(6). The emergency rule here satisfied these requirements: giving DOH authority to impose masking requirements was urgently needed so that the agency would immediately be able to promote this highly effective method of preventing COVID-19 transmission, and the public interest would be harmed by withholding this important and well-

established public-health measure for the weeks or months that the normal SAPA process would take to run. *See Matter of Korean Am. Nail Salon Ass’n of New York, Inc. v. Cuomo*, 50 Misc. 3d 731, 735 (Sup. Ct., Albany County 2015).

40. Supreme Court separately criticized the Commissioner’s December 10, 2021, determination as violating SAPA. But that determination was not subject to SAPA at all. “[O]nly a fixed, general principle to be applied by an administrative agency without regard to other facts and circumstances relevant to the regulatory scheme of the statute it administers constitutes a rule or regulation that must be promulgated” in substantial compliance with SAPA. *Med. Soc’y v. Serio*, 100 N.Y.2d 854, 868 (2003). The December 10 determination, by contrast, was the type of discretionary and flexible exercise of authority under a formal rule, 10 N.Y.C.R.R. § 2.60, that is not independently subject to SAPA’s requirements. *See New York City Transit Auth. v. New York State Dep’t of Lab.*, 88 N.Y.2d 225, 229 (1996).

41. In any event, the December 10th determination provided adequate grounds for its immediate implementation, if such grounds were required. The Commissioner specifically identified the recent,

alarming spread of “a new variant of concern, Omicron”; the risks posed by the upcoming “winter holiday season” as people congregated in indoor areas; and the growth in case rates and hospitalization since Thanksgiving. (Riegert Aff. Ex. H.) The Commissioner further noted recent “‘real-world’ studies” confirming the significant benefits of masking in preventing COVID-19 transmission, and the absence of any “significant health effects” from masking. (*Id.*) These findings, based on recent evidence, thus amplified the justification for the original emergency rule: the spread of Omicron and the imminent holiday season required immediate action to halt further COVID-19 spread, and recent studies on the effectiveness of masks confirmed the public interest in ensuring prompt, widespread adoption of this important health measure.

42. This Court should issue a stay pending the appeal from Supreme Court’s erroneous Order.

Dated: January 25, 2022
New York, New York



JUDITH N. VALE
Deputy Assistant Solicitor General

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAUIndex No. 616124/2021
DECISION AND ORDER

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MICHAEL DEMETRIOU as p/n/g of C.D. and on behalf of himself and all other persons similarly situated; ADRIANNA ALBRITTON as p/n/g/ of C.M., BRENDAN CURLEY as p/n/g/ of M.C., KAREN FERRARO as p/n/g/ of H.L., CATHERINE GRIMES as p/n/g/ of C. G., CHRISTINE BOCHAT-SMITH as p/n/g/ of G. S., CHRISTINE ENGLISH as p/n/g/ of R.E., DANIELE SHIPANO as p/n/g/ of J. S., ELIZABETH CUTLER as p/n/g/ of C.S.C., JENNIFER SAIA as p/n/g/ of V.S., KRISTEN DOUKAS as p/n/g/ of D.D., MARIA VASSEL as p/n/g/ of N.P., MYSTIE MCNEILL as p/n/g/ of A.B., KATHY TELEC as p/n/g/ of L.T., all on behalf of persons similarly situated.

Petitioners,

v.

NEW YORK STATE DEPARTMENT OF HEALTH, PUBLIC HEALTH AND HEALTH PLANNING COUNCIL, MARY T. BASSETT in her official capacity as the Commissioner of Health for the State of New York, KATHLEEN C. HOCHUL, in her official capacity as the Governor of the State of New York,

Respondents

-----X

There can be no doubt of the good intentions behind 10 NYCRR §§ 2.60; 2.60(a). To be sure, every resident of New York wants to put this pandemic behind them and wishes to participate in ending the abnormality of the last couple of years. To that end, the prior Governor of this State issued Executive Orders under the general umbrella of public health and safety.

Former Governor Cuomo executed more than several Executive Orders under the rubric of a declared state emergency, which established and then continued a myriad of policies and

mandates to deal with the spread of COVID-19. Among some of the requirements, mandates, and policy initiatives were procedures and rules concerning social distancing, masking, contact tracing, and vaccination.

Eventually, in March 2021, the New York State Legislature curbed former Governor Cuomo's authority as well as any future Governor, to issue Executive Orders during a state disaster emergency. See Executive Law § 29-A. Essentially, Executive Law § 29-A prevents the type of mandates and directives that former Governor Cuomo included in his various COVID-19 related Executive Orders.

The issue presented here does not include a challenge to any Executive Order issued by Governor Hochul, but rather a challenge to the enactment of a "rule" promulgated on December 10, 2021, by an administrative official of an Executive branch agency; to wit, the Commissioner of Health for the State of New York, Mary T. Bassett, M.D. The subject "rule" has been endorsed and enforced publicly by Governor Hochul. Notably, in her Executive Order of November 26, 2021, Governor Hochul declared a disaster emergency in the State of New York; however, Respondents admit in their Answer that currently there is no state disaster emergency. (See Respondents Answer Paragraph 12). Ideally, the respondents would have the declaration of November 26, 2021, alone suffice to legally support the promulgation and enactment of 10 NYCRR §§ 2.60; 2.60(a) the "mask mandate" as well as the Commissioner's determination. It does not, particularly in view of the amendment of Executive Law § 29-A by the New York State Legislature as well as the Respondent's admission.

The subject rule, 10 NYCRR §§ 2.60; 2.60(a) requires, *inter alia*, all state residents to wear a face-covering (mask) if above the age of 2 and able to medically tolerate same while in a public place and not able to maintain social distancing. This has been decided and determined by Commissioner Bassett to include in part, schools and school children.

The petitioners herein bring this action on behalf of all minor school children and persons similarly situated within the State of New York alleging, *inter alia*, that 10 NYCRR §§ 2.60; 2.60(a) is a law and not a permissibly enacted rule, null and void as a matter of law, improperly enacted, constitutionally impermissible, violative of their constitutional rights, and unenforceable. Petitioners seek a judgment declaring 10 NYCRR §§ 2.60; 2.60(a) null and void, to permanently enjoin the respondents, including the Governor and Commissioner from enforcing 10 NYCRR §§ 2.60; 2.60(a), as well as a permanent injunction preventing the respondents from re-adopting same without specific legislative authority.

To be clear, this Court does not intend this decision in any way to question or otherwise opine on the efficacy, need, or requirement of masks as a means or tool in dealing with the COVID-19 virus. This Court decides only the issues of whether the subject rule was properly enacted and if so whether same can be enforced.

For the reasons stated herein, the Court holds that 10 NYCRR §§ 2.60; 2.60(a) is a law that was promulgated and enacted unlawfully by an Executive branch state agency, and therefore void and unenforceable as a matter of law.

To begin, had the Governor been able to enact a "mask mandate" such as 10 NYCRR §§ 2.60; 2.60(a), then same would have been included in the Executive Order of November 26, 2021, or it could have been included in another Executive Order subsequently, for example, on December 10, 2021, the date of the Commissioner's determination. This did not occur. What did occur was that, being unable to include such a mandate in an Executive Order due to the State Legislature's proscription against such broad ranging Executive branch law making powers (Executive Law § 29-A), the Governor utilized the New York State Department of Health to issue this "emergency" "rule".

It is evident that the Legislature of the State of New York is the branch of government charged with enacting laws and the Executive branch is charged with enforcing the law. To some extent this clear division of authority and responsibility is blurred and difficult to define in many instances particularly when a state agency enacts administrative rules that relate to a law. But where the line of authority begins and ends lies at the core of our constitutionally established form of representative government. "At the heart of the present case is the question whether this broad grant of authority contravened the oft-recited principle that the legislative branch of government cannot cede its fundamental policy-making responsibility to an administrative agency. As a related matter, we must also inquire whether, assuming the propriety of the Legislature's grant of authority, the agency exceeded the permissible scope of its mandate by using it as a basis for engaging in inherently legislative activities." (*Boreali v Axelrod*, 71 NY2d 1, 9 [1987])

In the Matter of New York Statewide Coalition of Hispanic Chambers of Commerce v. New York City Dept. of Health and Mental Hygiene, 23 NY3d 681 [2014], the Court of Appeals held that *Boreali* sets out four "coalescing circumstances" present in that case that convinced the Court "that the difficult-to-define line between administrative rule-making and legislative policy-making ha[d] been transgressed," and explained that "[w]hile none of these circumstances, standing alone, is sufficient to warrant the conclusion that the [Public Health Council] has usurped the Legislature's prerogative, all of these circumstances, when viewed in combination, paint a portrait of an agency that has improperly assumed for itself the open-ended discretion to choose ends" that is the "prerogative[] of [a] Legislature" (*id.*, at 11, 18 [internal quotation marks and square brackets omitted]). (*Matter of NY Statewide Coalition of Hispanic Chambers of Commerce v NY City Dept. of Health & Mental Hygiene*, 23 NY3d 681, 696 [2014]).

In the instant matter, an important issue is whether 10 NYCRR §§ 2.60; 2.60(a) is a rule that gives more definition and guidance as it relates to a law enacted by the State Legislature or can it be considered a law enacted by an official of government other than the State Legislature. The former is permissible in many instances and well settled in New York jurisprudence. The latter is impermissible without question. Since on its face, 10 NYCRR §§ 2.60; 2.60(a) is called a rule, enacted by an Executive branch official, this Court turns to the laws upon which the legal existence of 10 NYCRR §§ 2.60; 2.60(a) relies upon and is purportedly derived from; to wit, the Public Health Law and the State Administrative Procedure Act.

The Court cannot find any law enacted by the State Legislature that specifically gives the Department of Health and its Commissioner the authority to enact a law. Further, the Court can find no law to which the respondents point that would serve as the "host law" for and from which

10 NYCRR §§ 2.60; 2.60(a) is enacted and intended to supplement (*Matter of General Electric Capital Corp. v. New York State Division of Tax Appeals*, 2 NY3d 249 (2004)). In fact, the only law enacted by the State Legislature regarding COVID-19 and related to the issue at bar is Title 8 of the Public Health Law which concerns contact tracing and not face coverings.

The legislative response to COVID-19 is contained in Title 8 of Article 21 of the Public Health Law. (Public Health Law §§ 2180 - 2182). This provision allows “contact tracers” and “contact tracing [entities]” to investigate, identify, and contact individuals for the purposes of containing the novel coronavirus. Title 8 limits contract tracing to efforts necessary to protect public health, and the legislature provided significant protection of personal and information privacy. (Public Health Law § 2181 [contact tracing; confidentiality]). Article 8 does not address the use of face masks to prevent COVID-19, and there are no specific statutory mandates contained in the Public Health Law to require or prescribe the use of facial coverings as a means to contain the spread of COVID-19.

In both *Boreali* and in the *Matter of New York State Coalition of Hispanic Chambers of Commerce*, the Court of Appeals considered public health initiatives which addressed second-hand cigarette smoke and the prohibition against food service establishments from selling sugary drinks in containers larger than 16 fluid ounces, respectively. Much like COVID-19, lung cancer, obesity, and diabetes present significant challenges to public health systems, and yet even in these instances, the Executive Branch was proscribed from engaging in overreach without a statutory grant of authority. Furthermore, the Legislature amended the Executive Law to limit the Governor’s ability to utilize her emergency power to issue “any directive during a state disaster emergency,” and added a provision to the Executive Law which allows the legislature to terminate by concurrent resolution executive orders issued [under Executive Law 29-a] at any time.” (Executive Law 29-a [4])

Public Health Law §§ 201; 206; and, 225 delineate the scope of authority of the Department of Health and concomitantly, the Commissioner. Surely the Commissioner has the authority to implement and apply rules concerning public health. However, nowhere in the Public Health Law is the Commissioner bestowed with the authority to make a law. While the Commissioner may enact rules that appear to have the full force, effect, and weight of a law, those rules must be tailored, necessarily related, and attached to a law that the State Legislature has passed lest the State Legislature become completely superfluous. Suffice it to state that there are too many examples of instances to mention wherein tolerating laws cloaked as agency rules that are not related to laws passed by the State Legislature would result in the demise of that co-equal branch of government. This Court does not need to contort the bounds of reality to imagine chaos in this State wherein laws were rules made from Executive branch appointees such as the Commissioner of the Department of Motor Vehicles issuing annually new and differing speed limits or other rules of the road.

Recent times further somewhat illustrate the requirement of and adherence to the separation of powers when one looks at recent bail reform. The issue of bail reform was one of many agendas for former Governor Cuomo. The issue was resolved in the form of an overhaul of criminal statutes

by the State Legislature. Most certainly, bail reform was not done by rules enacted by the Department of Corrections and Community Supervision Commissioners.

To allow such agency law making would result in laws being changed at the whim of every new Commissioner who could then be said to be beholden to their appointor but also it would surely result in a lack of representative government wherein only a select few appointees of the Governor make the laws. This is the very antithesis of constitutionally established representative government.

The Petitioners further argue that the Commissioner passed 10 NYCRR §§ 2.60; 2.60(a) in contravention of the State Administrative Procedure Act. 10 NYCRR §§ 2.60; 2.60(a) was promulgated as an emergency "regulation" however, respondents cannot support the "emergency" classification other than to say the Commissioner chose to call it an emergency.

It is clear that 10 NYCRR §§ 2.60; 2.60(a) was promulgated without any substantive justification for the emergency adoption as required by State Administrative Procedure Act §§ 202.6(d); 202.6(e) as the only justification the respondents offered for emergency adoption was entirely conclusory and in their answer to the instant matter the Respondents simply cite to the Commissioner's determination of December 10, 2021, alleging same was merely a re-adoption of a prior determination of August 27, 2021, except that the new rule included "peer reviewed research." As research is continuing daily, it is difficult to comprehend how the mere inclusion of "peer reviewed research" could not be used as a launching pad to continuously adopt the same rule every time the current rule expires *ad infinitum*. One could argue that the COVID-19 pandemic had been ongoing and therefore the need to explain the entire justification or rationale for emergency adoption of a rule was unnecessary. Perhaps a reasonable argument; however, it is one that is legally insufficient in this instance as it ignores the requirements and maybe more importantly, the purpose and spirit of the State Administrative Procedure Act which at its very core ensures against administrative law making. In this regard, the argument that the Commissioner's determination of December 10, 2021, complied with the minimum requirements contained in the State Administrative Procedure Act §§ 202.6(d); 202.6(e) is unsupported. As a result, the "emergency" "rule" that was declared by the Commissioner on December 10, 2021, as well as 10 NYCRR §§ 2.60; 2.60(a) must fail as violative of the State Administrative Procedure Act.

Lastly, inasmuch as petitioners have been and continue to be subject to an improperly enacted law that is void *ab initio*, as well as there being a violation of New York State constitutional principles, the irreparable harm suffered is patent and therefore, an injunction is warranted. See *Buffalo v. Mangan*, 49 AD2d 697 (4th Dept 1975); *Tucker v. Toia*, 54 AD2d 322 (4th Dept 1976).

As stated previously, there can be no doubt that every person in this State wishes, wants, and prays that this era of COVID ends soon and they will surely do their part to see that is accomplished. However, enacting any laws to this end is entrusted solely to the State Legislature. While the intentions of Commissioner Bassett and Governor Hochul appear to be well aimed squarely at doing what they believe is right to protect the citizens of New York State, they must

take their case to the State Legislature. Should the State Legislature, representative of and voted into office by the citizens of New York, after publicly informed debate, decide to enact laws requiring face coverings in schools and other public places then the Commissioner would likely be well grounded in properly promulgated and enacted rules to supplement such laws.

Until the New York State Legislature acts; based upon the arguments of counsel, a careful review of the moving papers and opposition thereto, and considering the equities, it is

ORDERED and ADJUDGED that 10 NYCRR §§2.60; 2.60(a) are violative of the New York State Constitution as promulgated and enacted and therefore null, void and unenforceable as a matter of law; and it is further,

ORDERED and ADJUDGED that 10 NYCRR §§2.60; 2.60(a) are violative of the State Administrative Procedure Act as promulgated and enacted and therefore null, void, and unenforceable as a matter of law; and it is further,

ORDERED and ADJUDGED that 10 NYCRR §§2.60, 2.60(a) are violative of the Public Health Law as promulgated and enacted and therefore null, void, and unenforceable as a matter of law; and it is further,

ORDERED and ADJUDGED that the directive of the Respondent, Commissioner Mary T. Bassets M.D., dated December 10, 2021, is null, void, and unenforceable as a matter of law, and it is further,

ORDERED and ADJUDGED that the Respondents are hereby permanently enjoined from enforcing 10 NYCRR §§2.60; 2.60(a), and it is further

ORDERED and ADJUDGED that the Respondents are hereby permanently enjoined from enforcing the directive of the Respondent, Commissioner Mary T. Bassets M.D., dated December 10, 2021, and it is further,

ORDERED and ADJUDGED that the Respondents are hereby permanently enjoined from re-adopting 10 NYCRR §§2.60, 2.60(a), and it is further,

ORDERED that all other relief requested herein is DENIED.

This constitutes the Decision, Order, and Judgment of the Court.

Dated: Mineola, New York

January 24, 2022



HON. THOMAS RADEMAKER, J.S.C

ENTERED

Jan 25 2022

NASSAU COUNTY
COUNTY CLERK'S OFFICE

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
MICHAEL DEMETRIOU as p/n/g of C.D. and on behalf of himself and all other persons similarly situated, ADRIANNA ALBRITTON as p/n/g of C.M., BRENDAN CURLEY as p/n/g of M.C., KAREN FERRARO as p/n/g of H.L., CATHERINE GRIMES as p/n/g of C.G., CHRISTINE BOCHAT-SMITH as p/n/g of G.S., CHRISTINE ENGLISH as p/n/g of R.E., DANIELLE SHIPANO as p/n/g of J.S., ELIZABETH CUTLER as p/n/g of C.S.C., JENNIFER SAIA as p/n/g of V.S., KRISTEN DOUKAS as p/n/g of D.D., MARIA VASSEL as p/n/g of N.P., MYSTIE MCNEIL as p/n/g of A.B., KATHY TELEC as p/n/g of L.T., all on behalf of persons similarly situated,

Hon. Thomas Rademaker

Index No. 616124/2021

NOTICE OF APPEAL

Petitioners,

-against-

NEW YORK STATE DEPARTMENT OF HEALTH, PUBLIC HEALTH AND HEALTH PLANNING COUNCIL, MARY T. BASSETT in her official capacity as the Commissioner of Health for the State of New York, KATHLEEN C. HOCHUL, in her official capacity as the Governor of the State of New York,

Respondents.

-----X
PLEASE TAKE NOTICE that Respondents NEW YORK STATE DEPARTMENT OF HEALTH, PUBLIC HEALTH AND HEALTH PLANNING COUNCIL, MARY T. BASSETT in her official capacity as the Commissioner of Health for the State of New York, and KATHLEEN C. HOCHUL, in her official capacity as the Governor of the State of New York hereby appeal to the Appellate Division, Second Judicial Department, of the Supreme Court of the State of New York, from the Decision, Order and Judgment, dated January 24, 2022 (copies of which are annexed hereto) of the Supreme Court, Nassau County, Hon. Thomas Rademaker presiding. The appeal is taken from the Decision, Order and Judgment as a whole, and each and every part

thereof.

Dated: Mineola, New York
January 24, 2022

LETITIA JAMES
Attorney General of the State of New York
Attorney for Respondents
200 Old Country Road, Suite 240
Mineola, NY 11501
(516) 248-3302

Richard H. Yorke

Richard Yorke
Assistant Attorney General
Of Counsel

TO: Law Office of Chad J. LaVeglia PLLC
Attorney for Petitioners
350 Motor Parkway, Suite 308
Hauppauge, New York 11788
631-450-2468
Pursuant to NYSCEF

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Index No. 616124/2021
DECISION AND ORDER

-----X

MICHAEL DEMETRIOU as p/n/g of C.D. and on behalf of himself and all other persons similarly situated; ADRIANNA ALBRITTON as p/n/g/ of C.M., BRENDAN CURLEY as p/n/g/ of M.C., KAREN FERRARO as p/n/g/ of H.L., CATHERINE GRIMES as p/n/g/ of C. G., CHRISTINE BOCHAT-SMITH as p/n/g/ of G. S., CHRISTINE ENGLISH as p/n/g/ of R.E., DANIELE SHIPANO as p/n/g/ of J. S., ELIZABETH CUTLER as p/n/g/ of C.S.C., JENNIFER SAIA as p/n/g/ of V.S., KRISTEN DOUKAS as p/n/g/ of D.D., MARIA VASSEL as p/n/g/ of N.P., MYSTIE MCNEILL as p/n/g/ of A.B., KATHY TELEC as p/n/g/ of L.T., all on behalf of persons similarly situated.

Petitioners,

v.

NEW YORK STATE DEPARTMENT OF HEALTH, PUBLIC HEALTH AND HEALTH PLANNING COUNCIL, MARY T. BASSETT in her official capacity as the Commissioner of Health for the State of New York, KATHLEEN C. HOCHUL, in her official capacity as the Governor of the State of New York,

Respondents

-----X

There can be no doubt of the good intentions behind 10 NYCRR §§ 2.60; 2.60(a). To be sure, every resident of New York wants to put this pandemic behind them and wishes to participate in ending the abnormality of the last couple of years. To that end, the prior Governor of this State issued Executive Orders under the general umbrella of public health and safety.

Former Governor Cuomo executed more than several Executive Orders under the rubric of a declared state emergency, which established and then continued a myriad of policies and

mandates to deal with the spread of COVID-19. Among some of the requirements, mandates, and policy initiatives were procedures and rules concerning social distancing, masking, contact tracing, and vaccination.

Eventually, in March 2021, the New York State Legislature curbed former Governor Cuomo's authority as well as any future Governor, to issue Executive Orders during a state disaster emergency. See Executive Law § 29-A. Essentially, Executive Law § 29-A prevents the type of mandates and directives that former Governor Cuomo included in his various COVID-19 related Executive Orders.

The issue presented here does not include a challenge to any Executive Order issued by Governor Hochul, but rather a challenge to the enactment of a "rule" promulgated on December 10, 2021, by an administrative official of an Executive branch agency; to wit, the Commissioner of Health for the State of New York, Mary T. Bassett, M.D. The subject "rule" has been endorsed and enforced publicly by Governor Hochul. Notably, in her Executive Order of November 26, 2021, Governor Hochul declared a disaster emergency in the State of New York; however, Respondents admit in their Answer that currently there is no state disaster emergency. (See Respondents Answer Paragraph 12). Ideally, the respondents would have the declaration of November 26, 2021, alone suffice to legally support the promulgation and enactment of 10 NYCRR §§ 2.60; 2.60(a) the "mask mandate" as well as the Commissioner's determination. It does not, particularly in view of the amendment of Executive Law § 29-A by the New York State Legislature as well as the Respondent's admission.

The subject rule, 10 NYCRR §§ 2.60; 2.60(a) requires, *inter alia*, all state residents to wear a face-covering (mask) if above the age of 2 and able to medically tolerate same while in a public place and not able to maintain social distancing. This has been decided and determined by Commissioner Bassett to include in part, schools and school children.

The petitioners herein bring this action on behalf of all minor school children and persons similarly situated within the State of New York alleging, *inter alia*, that 10 NYCRR §§ 2.60; 2.60(a) is a law and not a permissibly enacted rule, null and void as a matter of law, improperly enacted, constitutionally impermissible, violative of their constitutional rights, and unenforceable. Petitioners seek a judgment declaring 10 NYCRR §§ 2.60; 2.60(a) null and void, to permanently enjoin the respondents, including the Governor and Commissioner from enforcing 10 NYCRR §§ 2.60; 2.60(a), as well as a permanent injunction preventing the respondents from re-adopting same without specific legislative authority.

To be clear, this Court does not intend this decision in any way to question or otherwise opine on the efficacy, need, or requirement of masks as a means or tool in dealing with the COVID-19 virus. This Court decides only the issues of whether the subject rule was properly enacted and if so whether same can be enforced.

For the reasons stated herein, the Court holds that 10 NYCRR §§ 2.60; 2.60(a) is a law that was promulgated and enacted unlawfully by an Executive branch state agency, and therefore void and unenforceable as a matter of law.

To begin, had the Governor been able to enact a “mask mandate” such as 10 NYCRR §§ 2.60; 2.60(a), then same would have been included in the Executive Order of November 26, 2021, or it could have been included in another Executive Order subsequently, for example, on December 10, 2021, the date of the Commissioner’s determination. This did not occur. What did occur was that, being unable to include such a mandate in an Executive Order due to the State Legislature’s proscription against such broad ranging Executive branch law making powers (Executive Law § 29-A), the Governor utilized the New York State Department of Health to issue this “emergency” “rule”.

It is evident that the Legislature of the State of New York is the branch of government charged with enacting laws and the Executive branch is charged with enforcing the law. To some extent this clear division of authority and responsibility is blurred and difficult to define in many instances particularly when a state agency enacts administrative rules that relate to a law. But where the line of authority begins and ends lies at the core of our constitutionally established form of representative government. “At the heart of the present case is the question whether this broad grant of authority contravened the oft-recited principle that the legislative branch of government cannot cede its fundamental policy-making responsibility to an administrative agency. As a related matter, we must also inquire whether, assuming the propriety of the Legislature’s grant of authority, the agency exceeded the permissible scope of its mandate by using it as a basis for engaging in inherently legislative activities.” (*Boreali v Axelrod*, 71 NY2d 1, 9 [1987])

In the Matter of New York Statewide Coalition of Hispanic Chambers of Commerce v. New York City Dept. of Health and Mental Hygiene, 23 NY3d 681 [2014], the Court of Appeals held that *Boreali* sets out four “coalescing circumstances” present in that case that convinced the Court “that the difficult-to-define line between administrative rule-making and legislative policy-making ha[d] been transgressed,” and explained that “[w]hile none of these circumstances, standing alone, is sufficient to warrant the conclusion that the [Public Health Council] has usurped the Legislature’s prerogative, all of these circumstances, when viewed in combination, paint a portrait of an agency that has improperly assumed for itself the open-ended discretion to choose ends” that is the “prerogative[] of [a] Legislature” (*id.*, at 11, 18 [internal quotation marks and square brackets omitted]). (*Matter of NY Statewide Coalition of Hispanic Chambers of Commerce v NY City Dept. of Health & Mental Hygiene*, 23 NY3d 681, 696 [2014]).

In the instant matter, an important issue is whether 10 NYCRR §§ 2.60; 2.60(a) is a rule that gives more definition and guidance as it relates to a law enacted by the State Legislature or can it be considered a law enacted by an official of government other than the State Legislature. The former is permissible in many instances and well settled in New York jurisprudence. The latter is impermissible without question. Since on its face, 10 NYCRR §§ 2.60; 2.60(a) is called a rule, enacted by an Executive branch official, this Court turns to the laws upon which the legal existence of 10 NYCRR §§ 2.60; 2.60(a) relies upon and is purportedly derived from; to wit, the Public Health Law and the State Administrative Procedure Act.

The Court cannot find any law enacted by the State Legislature that specifically gives the Department of Health and its Commissioner the authority to enact a law. Further, the Court can find no law to which the respondents point that would serve as the “host law” for and from which

10 NYCRR §§ 2.60; 2.60(a) is enacted and intended to supplement (*Matter of General Electric Capital Corp. v. New York State Division of Tax Appeals*, 2 NY3d 249 (2004)). In fact, the only law enacted by the State Legislature regarding COVID-19 and related to the issue at bar is Title 8 of the Public Health Law which concerns contact tracing and not face coverings.

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In both *Boreali* and in the *Matter of New York State Coalition of Hispanic Chambers of Commerce*, the Court of Appeals considered public health initiatives which addressed second-hand cigarette smoke and the prohibition against food service establishments from selling sugary drinks in containers larger than 16 fluid ounces, respectively. Much like COVID-19, lung cancer, obesity, and diabetes present significant challenges to public health systems, and yet even in these instances, the Executive Branch was proscribed from engaging in overreach without a statutory grant of authority. Furthermore, the Legislature amended the Executive Law to limit the Governor’s ability to utilize her emergency power to issue “any directive during a state disaster emergency,” and added a provision to the Executive Law which allows the legislature to terminate by concurrent resolution executive orders issued [under Executive Law 29-a] at any time.” (Executive Law 29-a [4])

Public Health Law §§ 201; 206; and, 225 delineate the scope of authority of the Department of Health and concomitantly, the Commissioner. Surely the Commissioner has the authority to implement and apply rules concerning public health. However, nowhere in the Public Health Law is the Commissioner bestowed with the authority to make a law. While the Commissioner may enact rules that appear to have the full force, effect, and weight of a law, those rules must be tailored, necessarily related, and attached to a law that the State Legislature has passed lest the State Legislature become completely superfluous. Suffice it to state that there are too many examples of instances to mention wherein tolerating laws cloaked as agency rules that are not related to laws passed by the State Legislature would result in the demise of that co-equal branch of government. This Court does not need to contort the bounds of reality to imagine chaos in this State wherein laws were rules made from Executive branch appointees such as the Commissioner of the Department of Motor Vehicles issuing annually new and differing speed limits or other rules of the road.

Recent times further somewhat illustrate the requirement of and adherence to the separation of powers when one looks at recent bail reform. The issue of bail reform was one of many agendas for former Governor Cuomo. The issue was resolved in the form of an overhaul of criminal statutes

by the State Legislature. Most certainly, bail reform was not done by rules enacted by the Department of Corrections and Community Supervision Commissioners.

To allow such agency law making would result in laws being changed at the whim of every new Commissioner who could then be said to be beholden to their appointor but also it would surely result in a lack of representative government wherein only a select few appointees of the Governor make the laws. This is the very antithesis of constitutionally established representative government.

The Petitioners further argue that the Commissioner passed 10 NYCRR §§ 2.60; 2.60(a) in contravention of the State Administrative Procedure Act. 10 NYCRR §§ 2.60; 2.60(a) was promulgated as an emergency “regulation” however, respondents cannot support the “emergency” classification other than to say the Commissioner chose to call it an emergency.

It is clear that 10 NYCRR §§ 2.60; 2.60(a) was promulgated without any substantive justification for the emergency adoption as required by State Administrative Procedure Act §§ 202.6(d); 202.6(e) as the only justification the respondents offered for emergency adoption was entirely conclusory and in their answer to the instant matter the Respondents simply cite to the Commissioner’s determination of December 10, 2021, alleging same was merely a re-adoption of a prior determination of August 27, 2021, except that the new rule included “peer reviewed research.” As research is continuing daily, it is difficult to comprehend how the mere inclusion of “peer reviewed research” could not be used as a launching pad to continuously adopt the same rule every time the current rule expires *ad infinitum*. One could argue that the COVID-19 pandemic had been ongoing and therefore the need to explain the entire justification or rationale for emergency adoption of a rule was unnecessary. Perhaps a reasonable argument; however, it is one that is legally insufficient in this instance as it ignores the requirements and maybe more importantly, the purpose and spirit of the State Administrative Procedure Act which at its very core ensures against administrative law making. In this regard, the argument that the Commissioner’s determination of December 10, 2021, complied with the minimum requirements contained in the State Administrative Procedure Act §§ 202.6(d); 202.6(e) is unsupported. As a result, the “emergency” “rule” that was declared by the Commissioner on December 10, 2021, as well as 10 NYCRR §§ 2.60; 2.60(a) must fail as violative of the State Administrative Procedure Act.

Lastly, inasmuch as petitioners have been and continue to be subject to an improperly enacted law that is void *ab initio*, as well as there being a violation of New York State constitutional principles, the irreparable harm suffered is patent and therefore, an injunction is warranted. See *Buffalo v. Mangan*, 49 AD2d 697 (4th Dept 1975); *Tucker v. Toia*, 54 AD2d 322 (4th Dept 1976).

As stated previously, there can be no doubt that every person in this State wishes, wants, and prays that this era of COVID ends soon and they will surely do their part to see that is accomplished. However, enacting any laws to this end is entrusted solely to the State Legislature. While the intentions of Commissioner Bassett and Governor Hochul appear to be well aimed squarely at doing what they believe is right to protect the citizens of New York State, they must

take their case to the State Legislature. Should the State Legislature, representative of and voted into office by the citizens of New York, after publicly informed debate, decide to enact laws requiring face coverings in schools and other public places then the Commissioner would likely be well grounded in properly promulgated and enacted rules to supplement such laws.

Until the New York State Legislature acts; based upon the arguments of counsel, a careful review of the moving papers and opposition thereto, and considering the equities, it is

ORDERED and ADJUDGED that 10 NYCRR §§2.60; 2.60(a) are violative of the New York State Constitution as promulgated and enacted and therefore null, void and unenforceable as a matter of law; and it is further,

ORDERED and ADJUDGED that 10 NYCRR §§2.60; 2.60(a) are violative of the State Administrative Procedure Act as promulgated and enacted and therefore null, void, and unenforceable as a matter of law; and it is further,

ORDERED and ADJUDGED that 10 NYCRR §§2.60, 2.60(a) are violative of the Public Health Law as promulgated and enacted and therefore null, void, and unenforceable as a matter of law; and it is further,

ORDERED and ADJUDGED that the directive of the Respondent, Commissioner Mary T. Bassets M.D., dated December 10, 2021, is null, void, and unenforceable as a matter of law, and it is further,

ORDERED and ADJUDGED that the Respondents are hereby permanently enjoined from enforcing 10 NYCRR §§2.60; 2.60(a), and it is further

ORDERED and ADJUDGED that the Respondents are hereby permanently enjoined from enforcing the directive of the Respondent, Commissioner Mary T. Bassets M.D., dated December 10, 2021, and it is further,

ORDERED and ADJUDGED that the Respondents are hereby permanently enjoined from re-adopting 10 NYCRR §§2.60, 2.60(a), and it is further,

ORDERED that all other relief requested herein is DENIED.

This constitutes the Decision, Order, and Judgment of the Court.

Dated: Mineola, New York
January 24, 2022



HON. THOMAS RADEMAKER, J.S.C

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
MICHAEL DEMETRIOU as p/n/g of C.D. and on behalf of himself and all other persons similarly situated, ADRIANNA ALBRITTON as p/n/g of C.M., BRENDAN CURLEY as p/n/g of M.C., KAREN FERRARO as p/n/g of H.L., CATHERINE GRIMES as p/n/g of C.G., CHRISTINE BOCHAT-SMITH as p/n/g of G.S., CHRISTINE ENGLISH as p/n/g of R.E., DANIELLE SHIPANO as p/n/g of J.S., ELIZABETH CUTLER as p/n/g of C.S.C., JENNIFER SAIA as p/n/g of V.S., KRISTEN DOUKAS as p/n/g of D.D., MARIA VASSEL as p/n/g of N.P., MYSTIE MCNEIL as p/n/g of A.B., KATHY TELEC as p/n/g of L.T., all on behalf of persons similarly situated,

Hon. Thomas Rademaker

Index No. 616124/2021

Return Date: Jan. 21, 2022

Petitioners,

-against-

NEW YORK STATE DEPARTMENT OF HEALTH, PUBLIC HEALTH AND HEALTH PLANNING COUNCIL, MARY T. BASSETT in her official capacity as the Commissioner of Health for the State of New York, KATHLEEN C. HOCHUL, in her official capacity as the Governor of the State of New York,

Respondents.

-----X
AFFIRMATION IN SUPPORT OF RESPONDENTS' ANSWER, IN OPPOSITION TO THE VERIFIED PETITION, AND IN OPPOSITION TO PETITIONERS' MOTION FOR PRELIMINARY INJUNCTIVE RELIEF

Richard Hunter Yorke, an attorney at law duly admitted to practice before the courts of the State of New York, affirms the truth of the following under penalty of perjury pursuant to CPLR § 2106:

1. I am an Assistant Attorney General with the Office of Letitia James, Attorney General of the State of New York, and am assigned to represent Respondents, NEW YORK STATE DEPARTMENT OF HEALTH ("DOH" or the "Department"), PUBLIC HEALTH AND HEALTH PLANNING COUNCIL ("PHHPC"), MARY T. BASSETT in her official capacity as the Commissioner of Health for the State of New York (the "Commissioner"), and KATHLEEN

C. HOCHUL, in her official capacity as the Governor of the State of New York, in this matter and am fully familiar with the facts and circumstances set forth herein, based upon my review of the public court docket, and review of the file maintained by my office. I hereby appear on behalf of Respondents and submit this Affirmation in Support of Respondents' Answer, in Opposition to The Verified Petition, and in Opposition to Petitioners' Motion For Preliminary Injunctive Relief.

2. I submit this Affirmation, as well as the accompanying Memorandum of Law dated January 20, 2022, whose arguments are incorporated in their entirety by reference in this Affirmation, in support of Respondents' Answer and Objections in Point of Law, in opposition to the Verified Petition, and in opposition to Petitioners' motion for a preliminary injunction.

3. Annexed hereto are the following Exhibits:

- a. A true and accurate copy of *Massapequa Union Free School District, et al v. Hochul, et al.*, Index No. 907979-21 (Sup. Ct. Albany Cty. November 23, 2021), as Exhibit A;
- b. A true and accurate copy of *Christian Central Academy v. Hochul, et al.* Index No. 812301/2021 (Sup. Ct. Erie Cty October 18, 2021), as Exhibit B;
- c. A true and accurate copy of *Serafin, et al. v. NYS Dept. of Health, et al.*, Index. No. 908296-21 (Sup. Ct. Albany Cty. Dec. 9, 2021), as Exhibit C;
- d. A true and accurate copy of *Borello, et al. v. NYSDOH, et al.*, Index No. 908134-21 (Sup. Ct. Albany Cty. Nov. 18, 2021), as Exhibit D;
- e. A true and accurate copy of the State Register, Vol. XLIII, December 15, 2021, as Exhibit E.

WHEREFORE, for the reasons set forth herein, Respondents respectfully request that the Court deny Petitioner's motion for a preliminary injunction, deny the Verified Petition in its entirety, dismiss the Verified Petition and this proceeding with prejudice, and grant such other and further relief as the Court deems just and proper..

Dated: Mineola, New York
January 20, 2022

LETITIA JAMES
Attorney General of the State of New York

By: s/ Richard Yorke
RICHARD HUNTER YORKE
Assistant Attorney General, Of Counsel
Attorney for Respondents
200 Old Country Road, Suite 240
Mineola, New York 11501

To: Chad J. Laveglia, Esq.
LAW OFFICE OF CHAD J. LAVEGLIA, PLLC
Attorneys for Petitioners
350 Motor Parkway, Suite 308
Hauppauge, NY 11788
(by NYSECF)

CERTIFICATION

In accordance with Rule 202.8-b of the Uniform Rules of Supreme and County Courts, the undersigned certifies that the word count in this memorandum of law as established using the word count on the word-processing system used to prepare it, excluding caption page and signature block, is 427 words, which falls within the permission granted by the Court to expand the word count in this document.

Dated: January 20, 2022
Mineola, NY

/s/ Richard Yorke

By: Richard Yorke
Assistant Attorney General

STATE OF NEW YORK

SUPREME COURT COUNTY OF ALBANY

In the Matter of the Application of

MASSAPEQUA UNION FREE SCHOOL DISTRICT,
LOCUST VALLEY CENTRAL SCHOOL DISTRICT,
JEANINE M. CARAMORE, individually and on
behalf of her minor child, M.C.,

Petitioners,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

KATHY HOCHUL, in her official capacity as
Governor of the State of New York, NEW YORK
STATE DEPARTMENT OF HEALTH, HOWARD
ZUCKER, M.D., in his official capacity as
Commissioner of the Department of Health, and
the PUBLIC HEALTH PLANNING COUNCIL,

Respondents.

Special Purpose Term
Hon. Henry F. Zwack, Acting Supreme Court Justice Presiding
Index No. 907979-21

Appearances: Hamburger, Maxon, Yaffe & Martingale, LLP
Attorneys for the Petitioners
Andrew K. Martingale, Esq., of counsel
225 Broadhollow Road, Suite 301E
Melville, New York 11747

Hon. Letitia James
New York State Attorney General
Attorneys for Respondents
Michael G. McCartin, Esq., of counsel
The Capitol
Albany, New York 12224-0341

DECISION/ORDER

Zwack, J.:

Petitioners are two school districts, Massapequa Union Free School District and Locust Valley Central School, as well as Jeanine M. Caramore, individually and on behalf of her minor child, M.C., and they bring this Article 78 seeking a declaratory judgment. They argue that the Statewide Mask Mandate Policy, 10 NYCRR 2.60 ("the Emergency Rule") was made in excess of Respondents' constitutional, statutory, and administrative authority, and that it is arbitrary and capricious.

In their petition, Petitioners specifically argue, as their first cause for the proceeding, that it is the Legislature, not the State, which should determine the policy regarding masking school-age children, as it is in the best position to do so. To this end, Petitioners argue that with the State mask policy, Respondents have usurped the legislative role and violated the doctrine of separation of powers. They argue that the State Legislature has demonstrated that it is the authority to issue further mandates, when it revoked the broad power it gave to the Governor under Executive Law 29 on March 3, 2020 to "issue any directive necessary to respond to a state disaster emergency." On March 2, 2021 the Legislature amended Executive Law 29, allowing the Governor to only

“temporarily suspend certain laws and rules during a state disaster emergency.”

Petitioners further note that the Legislature evinced its intent to enact its own mask laws in what is known as the “HERO Act”, Labor Law 218-b(1)(d), requiring employers to establish protocols to prevent the airborne spread of disease; Education Law 2801-a, requiring each school board of education to adopt a district-wide school and building safety plan; and Education Law 2801-a(2)(m), directing Boards of Education to comply with the provisions of Labor Law 27-[c].

As the second cause for this proceeding, Petitioners argue the Mask Mandate Regulation for schools is arbitrary and capricious, made without a rational basis. Petitioners assert that the efficacy of masking children is inconclusive, the mask mandate regulations only apply to certain locations, and the determination to require masks in school is one of “the most debated decisions on the world.”

Respondents, New York State Governor Kathy Hochul, New York State Department of Health Commissioner Howard Zucker, MD, and the Public Health Planning Counsel, oppose the motion, and their legal arguments, beyond the proven efficacy of masking in preventing the spread of COVID-19, include that the school districts lack the capacity to sue the State Respondents; that none of the Petitioners have standing because they have not demonstrated any injury apart from the public at large; that Respondents have constitutional, statutory,

and administrative authority to enact the mask mandate; and that the emergency rule has a rational basis and its enactment was not arbitrary or capricious.

For the reasons that follow, this Article 78 petition is denied.

First, the petitioners do not have the capacity to sue. The capacity to sue or be sued concerns a litigant's power to bring a grievance to the court, while standing involves whether the litigant has suffered an injury and thus has an actual legal stake in the matter (*Silver v Pataki*, 96 NY2d 532 [2001]). “ ‘Board of Education’ is an agency to which the state delegates power and duties controlling schools in school district” and therefore a municipal corporation (*Matter of Koch v Webster Cent. School Dist. Bd. of Educ.*, 112 Misc2d 10 [Sup Ct. Monroe County 1981]). Municipal entities — counties, towns and school districts — do not have the inherent power to sue the State itself, as they “are merely subdivisions of the State, created by the State for the convenient carrying out of State’s governmental powers and responsibilities as its agents” (*City of New York v State of New York*, 86 NY2d 286 [1995]). A municipality lacks the capacity to challenge a state agency’s interpretation of statutes and regulations where “the result impacts the municipality in its governmental capacity” (*Bethpage Water Dist. v Daines*, 67 AD3d 1088 [3d Dept 2009], citing *City of Utica v Daines*, 53 AD2d 922 [3d Dept 2008]).

Petitioners have likewise failed to establish injury in fact, which would have given them standing if they had capacity to sue in the first instance, and certainly have alleged no injury, much less one that is different from the public at large. “[I]n the absence of injury, there is no standing to bring an Article 78 proceeding” (*Matter of East Rampapo Cent. Sch. Dist. v King*, 29 NY3d 938, 940 [2017]).

If the petitioners had capacity and standing, their petition would fail because the Mask Mandate does not violate the doctrine of the separation of powers. As a general rule, the “Legislature may declare its will, and after fixing a primary standard, endow administrative agencies with the power to fill in legislative product by prescribing rules and regulations consistent with the enabling legislation” (*Matter of Nicholas v Kahn*, 47 NY 2d 24, 31 [1970]). Public Health Law 225 imbues respondent Public Health Planning Council with the authority to “deal with matters affecting the life or health or the preservation of public health in the State of New York.” Public Health Law 201 authorizes the Department of Health to supervise, report on, and control disease, promote education as to prevention and control of disease, and to exercise control over the abatement of nuisances likely to affect public health, such as COVID-19. The Commissioner of Health is granted the power by Public Health Law 206 to “investigate the causes of disease, epidemics...enforce the public health law [and]

sanitary code, annul, modify and order” or regulate.

Application of the four *Boreali* factors is used to determine if an agency has usurped the duties of the Legislature (*Boreali v Axelrod*, 71 NY2d 1, 11 [1987]) — which include: (1) whether the agency balanced costs and benefits according to pre-existing guidelines, or instead made complex value judgments entailing difficult and complex choices between broad policy goals to resolve social problems; (2) whether the agency merely filled in details of a broad policy, or if it wrote on a clean slate, creating its own comprehensive set of rules with legislative guidance; (3) whether the legislature had unsuccessfully attempted to enact laws pertaining to the issue; and (4) whether the agency used special technical expertise in the applicable field.

Here, the application of the *Boreali* factors shows that the respondents have not overstepped their bounds and waded into legislative territory. The Emergency Rule does not attempt to weigh competing interests unrelated to the public health goal. The respondents did not “write on a clean slate” — in fact, they merely filled in details of a broad policy of promoting public health in times of known health risks (*Garcia v New York City Dept. of Health and Mental Hygiene*, 31 NY3d 601, 609 [2018]). While it is true that the Legislature attempted, unsuccessfully, to pass bills regarding similar issues during the pandemic, not all factors are entitled to equal weight, and “[l]egislative inaction,

because of its inherent ambiguity, affords the most dubious foundation for drawing inferences (*Matter of NYC C.L.A.S.H., Inc. v New York State Off. of Parks, Recreation and Historic Preserv.*, 27 NY3d 174, 184 [2016], quotation and citation omitted). The fourth *Boreali* factor mitigates in favor of the respondents, who have “special expertise or competence in the field that developed the regulations” (*Greater N.Y. Taxi Assn. v New York City Taxi and Limousine Commn.*, 25 NY3d 600 [2015]).

While Petitioners suggest that they, and their respective Boards of Education, have made concerted efforts to alleviate the spread of the COVID virus in their schools, and their schools should be exempt from the broadly based mask mandate, their arguments are simply insufficient to establish that the New York State Health Department and the Board of Health arrived at the mask policy in an arbitrary and capricious manner. On review, courts must uphold the administrative exercise of discretion “unless it has no rational basis” or the action is “arbitrary and capricious” (*Matter of Pell v Board of Educ. Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230-231 [1974]). Arbitrary action is without sound basis in reason and taken without regard to the facts (*Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400 [1986]). “Where such administrative determinations are made by the agency responsible for the administration of the law, the court is not to

substitute its judgment for that of the agency. Even though the court might have decided differently..(and) the court may not upset the agency's determination in the absence of a finding ...supported by (the) record, that the determination had no rational basis" (*Matter of Mid-State Mgt. Corp. v New York City Conciliation & Appeals Bd.*, 112 AD2d 72, 76 [1st Dept 1985]), citations omitted).

Petitioners rely heavily on the voluminous materials they have annexed to their petition to support their argument that the mask mandate is arbitrary and capricious. On review of an Article 78, the court's role is limited, and it may not substitute its judgment for that of respondents, which have clearly relied on the recommendations from the Centers for Disease Control and the American Academy of Pediatrics.

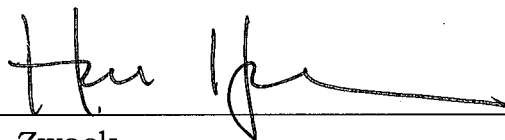
No matter how the legal argument is couched, the result of lawsuits challenging the State's public health protection measures during this worldwide pandemic have all reached the same result, namely that mandatory health requirements do not violate substantive rights and properly fall within the state's police powers (*New York Municipal Labor Committee v City of New York*, 2021 WL 4484753 (Sup Ct, New York County 2021); *Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO v. New York State UCS*, WL 4929983 [Sup Ct Albany County 2021]).

Accordingly, it is

ORDERED, that the Article 78 petition is denied.

This constitutes the Decision and Order of the Court. This original Decision and Order is filed by the Court with NYSCEF. The signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel for the respondents is not relieved from the applicable provisions of this rule with regard to filing, entry and Notice of Entry.

Dated: November 23, 2021
Troy, New York



Henry F. Zwack
Acting Supreme Court Justice

Papers Considered, as filed with NYSCEF:

1. Documents No. 1 through No. 50;
2. Documents No. 51 through 54;
3. Documents No. 57 through 61.

At a Special Term of the Supreme Court, Part 35,
held in and for the County of Erie via virtual
appearance of the Court and counsel in the City of
Buffalo, New York on the 1st day of October, 2021.

HON. E. JEANNETTE OGDEN, J.S.C.

Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

CHRISTIAN CENTRAL ACADEMY,

Petitioner/Plaintiff,

v.

ORDER

KATHLEEN HOCHUL, Governor of the State of New
York,
NEW YORK STATE DEPARTMENT OF HEALTH,
NEW YORK STATE PUBLIC HEALTH AND
HEALTH PLANNING COUNCIL,
HOWARD ZUCKER, NEW YORK STATE
COMMISSIONER OF HEALTH,
MARK POLONCARZ, COUNTY EXECUTIVE OF
ERIE COUNTY,
GALE BURSTEIN, ERIE COUNTY COMMISSIONER
OF HEALTH,
ERIE COUNTY DEPARTMENT OF HEALTH,

Index No. 812301/2021

Respondents/Defendants.

WHEREAS, Petitioner/Plaintiff ("Petitioner") having filed a Petition with this Court by
Order to Show Cause;

NOW, upon reading and filing of Petitioner's Verified Petition and Complaint, with
Exhibits, dated September 3, 2021; Petitioner's Memorandum of Law in Support of Petition and
in Support of Motion for Temporary Restraining Order and Preliminary Injunction, dated

September 6, 2021; the Affidavit of Kristen N. Guerin, dated September 3, 2021; the Affidavit of Lucian D. Visone, dated September 3, 2021; and the Affidavit of Nicole M. Opfer, dated September 3, 2021, all in support of Petitioner's Order to Show Cause; and

NOW, upon further reading and filing of New York State Respondents' Memorandum of Law in Opposition to Petitioner's Motion for a Preliminary Injunction, with Exhibits attached thereto, dated September 13, 2021; the Affidavit of Johanne E. Morne, dated September 13, 2021; and the Affirmation of Ryan L. Belka, Esq., with Exhibits attached thereto, dated September 21, 2021, all in opposition to Petitioner's Order to Show Cause; and

NOW, upon further reading and filing of the Affirmation of First Assistant County Attorney Jeremy C. Toth, Esq., with Exhibits attached thereto, dated September 13, 2021; and the Memorandum of Law of County Respondents in Opposition to Petitioner's Order to Show Cause; and

NOW, upon further reading and filing of Petitioner's Reply Memorandum of Law in Support of Motion for Preliminary Injunction, with exhibits, dated September 13, 2021; and

NOW, upon further reading County Respondents' Verified Answer, dated September 21, 2021, with attached Exhibits; and

NOW, upon further reading of the State Respondents' Verified Answer, dated September 21, 2021, with attached Exhibits; and

NOW, upon further reason Petitioner's Memorandum of Law in Reply, dated September 27, 2021, with attached Exhibits; and

NOW, upon all parties having appeared before this Court, with Petitioners represented by Todd J. Aldinger, Esq., State Respondents represented by the Attorney General of the State of New York (Ryan Belka, Esq., of Counsel) and County Respondents represented by the County

Attorney for the County of Erie (Jeremy C. Toth, Esq., First Assistant County Attorney, of Counsel); all parties being given an opportunity to be heard; this Court giving due consideration to the Petition; it is hereby

ORDERED, that the relief sought in the first cause of action is denied as the Erie County Respondents have the authority to issue mask requirements in schools pursuant to section 308(d) of the New York Public Health Law; and it is further

ORDERED, that the relief sought in the second cause of action is denied and 10 NYCRR 2.60 and the Commissioner's Guidance are authorized under section 308 of the New York Public Health Law and New York Public Health Law section 228; and it is further

ORDERED, that the relief sought in the third cause of action is denied in that the enactment of section 10 NYCRR 2.60 and the Commissioner's Guidance is not an unconstitutional delegation of legislative authority; and it further

ORDERED, that the relief sought in the fourth cause of action is denied in that the fines contained in 10 NYCRR 2.60 are authorized by statute; and it is further

ORDERED, that the relief sought in the fifth cause of action is denied in that the Erie County health order requiring masks in schools is authorized by sections 228 and 308(d) of the New York Public Health Law; and it is further

ORDERED, that the relief sought in the sixth cause of action is denied because Petitioner, as a private school, is not exempt from public health regulations and orders; and it is further

ORDERED, that the relief sought in the seventh cause of action is denied in that the Court finds a rational basis for the Respondents' actions; and it is further

ORDERED, that the relief sought in the eighth cause of action is denied because the Petitioner has failed to demonstrate irreparable harm as well as failing to show an adequate remedy at law; and it is further

ORDERED, the Petition is dismissed in its entirety on the merits with prejudice.

Dated: October 18, 2021



HON. E. JEANNETTE OGDEN, J.S.C.

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF ALBANY

GREGORY SERAFIN, on behalf of himself and on behalf of all others similarly situated; AZIMA RASIWALA, D.O., on behalf of herself and on behalf of all others similarly situated; KATHLEEN MCGOWAN, on behalf of herself and on behalf of all others similarly situated; DEBORAH CONRAD, on behalf of herself and on behalf of all others similarly situated; RENEE ROGERS, on behalf of herself and on behalf of all others similarly situated; and DAVID DIPIETRO, MEMBER OF THE ASSEMBLY FOR NEW YORK'S 147TH ASSEMBLY DISTRICT, on his own behalf in his official capacity and on behalf of similarly situated members of the New York State Legislature,

Petitioners/Plaintiffs,

**DECISION, ORDER and
JUDGMENT**

For Judgment Pursuant to Article 78 of the CPLR
And the New York State Constitution, Art. I, § 6

Index No. 908296-21
RJI No. 01-21-ST1949

-against-

NEW YORK STATE DEPARTMENT OF HEALTH; NEW YORK
STATE PUBLIC HEALTH AND HEALTH PLANNING COUNCIL;
HOWARD ZUCKER, NEW YORK STATE COMMISSIONER OF
HEALTH,

Respondents/Defendants.

(Supreme Court, Albany County Article 78 Term)

Appearances:

TODD J. ALDINGER, ESQ.
Attorney for Petitioners/Plaintiffs ("Petitioners")
441 Potomac Avenue Lower
Buffalo, New York 14213

LETITIA JAMES

Attorney General of the State of New York

Attorney for Respondents/Defendants ("Respondents")

(Keith J. Starlin and Jonathan Reiner, Esqs., A.A.Gs., of counsel)

The Capitol

Albany, New York 12224

Roger D. McDonough, J.:

This proceeding is hybrid in nature, seeking relief under Article 78 and/or declaratory relief. In their petition and complaint ("petition"), petitioners seek, *inter alia*, an Order and Judgment: (1) declaring that 10 NYCRR § 2.61 ("§ 2.61") is void and a legal nullity not authorized by statute; (2) declaring that § 2.61 is unconstitutional because it violates the separation of powers inherent in the State Constitution; (3) declaring that § 2.61 violates petitioners' substantive due process rights; and (4) declaring that § 2.61 violates petitioners' procedural due process rights. Respondents have moved for partial dismissal and served their answer. In their answer they seek complete dismissal of the petition and the relief requested therein. Petitioners have cross-moved for leave to file an amended petition and complaint ("amended petition"). Petitioners' cross-motion papers included the proposed amended petition. Respondents oppose the cross-motion and again stress that they are entitled to outright dismissal of the proceeding.

Procedural Background

Petitioners, via Order to Show Cause, sought a temporary restraining order ("TRO") restraining respondents from applying or enforcing the vaccination requirement in § 2.61 and staying the effective dates of the requirements. This Court (Justice Ryba) partially denied the TRO request, but did restrain respondents from enforcing any requirement preventing the covered entities from considering or granting an application for a religious exemption from § 2.61's vaccination mandate. This Court heard oral argument as to the preliminary injunction on September 30, 2021. Thereafter, the Court denied the request for preliminary injunctive relief and lifted Judge Ryba's TRO. There is no record of petitioners appealing this Court's decision.

Background/Party Submissions

Petitioner Serafin is a registered nurse employed by the Erie County Medical Center. Petitioner Rasiwala, D.O., is an emergency room physician who works as an independent contractor at Sisters of Charity Hospital. Petitioner McGowan is a physician practice coordinator employed by the Erie County Medical Center. Petitioner Rogers is a Licensed Nursing Home Administrator employed by Absolut Care nursing home. Petitioner DiPietro is a Member of the Assembly for New York's 147th Assembly District.

Respondent New York State Department of Health ("NYSDOH") is a state agency responsible for, *inter alia*, public health. Respondent New York State Public Health and Health Planning Council ("Council") is an entity within NYSDOH that is tasked with advising respondent Commissioner on issues related to the preservation and improvement of public health. The Council's functions also include the approval of regulations related to health codes.

Respondents adopted § 2.61 in late August of 2021. As an emergency rule, § 2.61 went into effect immediately and is effective for 90 days.¹ § 2.61 applies to "covered entities" including the hospitals and nursing homes where the petitioners work. The rule required certain personnel to be fully vaccinated against COVID-19. § 2.61 further required that the first dose be received by September 27, 2021 for general hospitals and nursing homes, and by October 7, 2021 for all other covered entities.

The rule was promulgated under § 202.6 of the New York State Administrative Procedure Act ("SAPA"). Said section constitutes the emergency rule procedures for SAPA. The notice accompanying the rule cites the following statutes as authority: Public Health Law §§ 225(5), 2800, 2803(2), 3612 and 4010(4), and Social Services Law §§ 461 and 461-e.

Several of the petitioners have submitted affidavits in support of the petition. Petitioner Serafin states that he worked in the COVID ICU during the pandemic and tested positive for COVID-19. He notes that after quarantine he returned to working with COVID-19 positive patients, but has not had COVID-19 again. Petitioner Serafin believes that this is due to his

¹ By the Court's calculations, the 90 day period expired on or about November 24, 2021. The Court has not been provided with any information as to any steps respondents have taken regarding the apparent expiration.

natural immunity. Based on this belief he does not believe receiving the vaccine will provide him with any meaningful health benefits. Conversely, he believes there are serious risks to vaccinations. In support he cites personal knowledge of patients who had adverse reactions. Petitioner Serafin indicates that he is unwilling to get the vaccination due to the adverse vaccination reactions. He indicates that because of the vaccine mandate and his position on compliance, he will: (1) be terminated without the possibility of collecting unemployment; and (2) be precluded from working in his chosen profession where he has developed experience and technical competence.

Petitioner Rasiwala is of Islamic faith and would pursue a religious exemption if one was offered. Dr. Rasiwala also faces termination as well as a gap in medical employment that will need to be explained in future pursuits for medical employment. Additionally, Dr. Rasiwala's allergist has recommended against vaccination.

Petitioner Conrad indicates that she worked the front lines at the beginning of the pandemic and often worked with insufficient personal protective equipment. She notes that she personally reported 125 possible adverse vaccine reaction to the Vaccine Adverse Event Reporting System (VAERS)² concerning hospitalized patients. She further notes that she is working on approximately 20 more reports to VAERS. Petitioner Conrad also describes approximately 100 additional incidents of possible adverse reactions that went unreported to VAERS from her place of employment. Due to the adverse vaccine reactions, she expresses an unwillingness to get vaccinated and speaks of being terrified of the unknown side-effects of vaccination. She indicates that the vaccine mandate will cause her to: (1) be terminated without the possibility of collecting unemployment; and (2) be precluded from working in her chosen profession where she has developed experience and technical competence; and (3) be a major interruption of her medical professional career.

Petitioner McGowan states that she is unwilling to be vaccinated for both religious and

² VAERS is a national early warning system for the detection of possible safety problems in U.S. - licensed vaccines. The system is co-managed by the Centers for Disease Control and Prevention and the U.S. Food and Drug Administration ([www://vaers.hhs.gov/about.html](http://www.vaers.hhs.gov/about.html)).

medical reasons. She expresses her concern with the U.S. Food and Drug Administration's ("FDA") "rushed" approval process for the COVID-19 vaccines. She also notes that she worked throughout the height of the pandemic without being vaccinated. Petitioner McGowan indicates that the vaccine mandate will cause her to: (1) be terminated without the possibility of collecting unemployment; and (2) be precluded from working in her chosen profession where she has developed experience and technical competence; and (3) be a major interruption of her medical professional career.

Petitioner Rogers indicates that she was an essential worker when the pandemic started and worked the front lines. She further indicates that she had COVID-19 in April of 2020 and that she believes her natural immunity is, at a minimum, just as good as the vaccine. Her primary care physician agrees and apparently advised her that she would not benefit from vaccination. Accordingly, she has made the medical decision to not get vaccinated. Petitioner Rogers also cites her concern about the unstudied potential long-term side effects of vaccination. She concludes that the vaccine mandate will cause her to: (1) be terminated without the possibility of collecting unemployment; and (2) be precluded from working in her chosen profession where she has developed experience and technical competence; and (3) be a major interruption of her nursing home administration career.

Respondents provided an initial affidavit from NYSDOH's Medical Director of the Bureau of Immunization. Dr. Rausch-Phung indicates that her affidavit was based on her medical expertise, personal experience, review of NYSDOH's records, guidance from the Centers for Disease Control & Prevention ("CDC"), the executive orders issued by New York's Governor, and studies and publications related to COVID-19. She indicates that § 2.61 was adopted based on rational determinations from respondents that the mandate was necessary to immediately address an ongoing and rapidly worsening public health crisis. In particular, she notes the Delta variant's impact in terms of significantly increased transmissibility and the 10-fold increase in COVID-19 cases. Dr. Rausch-Phung also cites to CDC findings that the Delta variant may cause more severe illnesses than previous variants in unvaccinated individuals. She maintains that the Delta variant led respondents to act to avoid a return to the heights of the pandemic when hospitals were overwhelmed.

She contends that § 2.61 is necessary to protect New York's frontline healthcare workers and the vulnerable patient populations in certain healthcare sectors like nursing homes. Dr. Rausch-Phung also asserts that the regulation is tailored to focus on healthcare facilities that pose a unique risk of COVID-19 transmission. She cites statistical findings that patient facing healthcare professionals and their household members have threefold and twofold increased risks, respectively, of contracting COVID-19. The Doctor also notes that these types of healthcare workers tend to care for vulnerable individuals who are elderly, sick, possibly immunocompromised, etc. She cites the significant support for vaccine mandates for health care employees from such medical organizations as the American Medical Association, the American Nurses Association, the American Academy of Pediatrics and the Association of American Medical Colleges. In addition to certain federal vaccine mandates related to healthcare, she notes that the CDC has recommended that healthcare personnel all receive COVID-19 vaccination, particularly in vulnerable healthcare settings.

She opines that any staffing shortages attributable to resignations over the vaccine mandates pales in comparison to the potential staffing shortages that could be caused by a deadly outbreak among unvaccinated healthcare personnel. Dr. Rausch-Phung also notes that New York's Governor has put measures in place to address potential healthcare worker staffing shortages. She also notes that § 2.61 has already been successful, in terms of increasing vaccination rates, as nursing home staff vaccination levels had risen to 92% (for at least one dose) as of September 27th as compared to 71% as of August 24th (prior to the emergency rule). For adult care facilities the numbers were 89% as of September 27th as compared to 77% as of August 24th. Finally, the level for fully vaccinated hospital staff has risen to 85% as of September 27th as compared to 77% as of August 24th. She also advises that, based on preliminary self-reported data, the percentage of hospital staff receiving at least one dose as of September 27th is 92%. The Doctor stresses that time was and is of the essence in terms of the fall and winter weather and the holiday seasons. Additionally, she notes the importance of vaccination during the flu and cold season when similar Covid-19 symptoms could be mistaken for cold and flu.

Dr. Rausch-Phung also points to CDC and FDA findings that serious side effects from

the vaccinations have been extremely rare despite the administration of nearly 380 million doses. Similarly, she points to CDC's findings regarding vaccine effectiveness in protecting vaccinated individuals against severe disease and death from the Delta variant and the other known variants. In her affidavit she also focuses and discusses the rarity of specific side effects including: (1) anaphylaxis; (2) vaccine induced thrombosis; and (3) Guillain-Barre Syndrome. Her affidavit also addresses the consideration and rejection of alternatives to the mandate including: (1) acceptable face coverings; and (2) constant testing.

As to religious/philosophical objections, she relies on the AMA's position that such nonmedical exemptions endanger the health of the unvaccinated medical care worker and those with whom the medical care worker comes in contact. Dr. Rausch-Phung also notes that existing regulations for hospitals, nursing homes and other medical entities already require that persons working therein be immune to measles and rubella. Said regulations contain no religious exemption. Additionally, she points to the absence of any religious exemptions from school vaccination requirements.

Dr. Rausch-Phung also stresses that § 2.61 is specifically limited to only those medical and healthcare personnel who have direct contact with other covered personnel, patients and residents. Finally, she cites multiple medical studies that she claims refute the proposition that natural immunity is equal to or greater than the immunity afforded by the vaccines.

After the Court issued its decision and order on the preliminary injunctive relief, the parties agreed to a briefing schedule. Respondents have provided the Court with four new affidavits.

Emily Lutterloh, MD, MPH is NYSDOH's Director of the Division of Epidemiology. Dr. Lutterloh's responsibilities include coordinating NYSDOH's "efforts to investigate, reduce and prevent outbreaks and transmission of infectious diseases." She maintains that § 2.61 was adopted based on determinations by respondents that it was necessary to immediately address a rapidly worsening public health crisis. Dr. Lutterloh further asserts that § 2.61 was created after considering data and research regarding COVID-19, the impact of the Delta variant and the effectiveness of existing mitigation strategies. In support she cites a number of the statistics, data findings and research relied upon by Dr. Rausch-Phung in her earlier affidavit. In sum, Dr.

Lutterloh contends that the various considerations provided a rational basis for the promulgation of § 2.61 on an emergency basis.

Additionally, respondents provided a second affidavit from Dr. Rausch-Phung. The second affidavit is predominantly repetitive of her first affidavit. However, updated and new information was provided, including the following: (1) for the four-week period ending on September 25, 2021, 99.4% of New York's COVID-19 cases were Delta; (2) as of October 18, 2021, New York's positivity rate was at 2.43% as compared to 1.22% on October 18, 2020; (3) as of October 17, 2021, respondents are aware of confirmed breakthrough cases in New York State in .9% of the fully-vaccinated population; (4) as of October 17, 2021, respondents are aware of confirmed breakthrough cases in New York State resulting in hospitalizations in .06% of the fully-vaccinated population; (5) as of September 27, 2021, fully-vaccinated New Yorkers had 77.9% lower chance of becoming a COVID-19 case and between a 89.7-95.2% lower chance of becoming hospitalized, as compared to unvaccinated New Yorkers. Finally, Dr. Rausch-Phung discussed medical exemptions to the vaccine mandate and stressed that the narrow breath of currently known limited contraindications and precautions in this area. She also noted that, statewide, only .5% of staff for hospitals, .4% of staff for nursing homes, and only .6% of staff for adult care facilities were considered medically ineligible.

Respondents submitted an affidavit from Valerie A. Deetz, the Deputy Director of the Center for Health Care Provider Services and Oversight, Office of Primary Care and Health Systems Management at NYSDOH. The Deputy Director provided the following statistics for nursing homes statewide as of October 19, 2021 – 88.7% of healthcare workers had completed the vaccine series, an additional 8.7% had received their first dose, .4% were reported as medically ineligible, and 1.9% were reported in “other” exemption status. Finally, respondents supplied an affidavit from Dorothy Persico, the Deputy Director of the Divisions of Hospitals and Diagnostic and Treatment Centers, Office of Primary Care and Health Systems Management at NYSDOH. Deputy Director Persico provided the following statistics for hospitals statewide as of October 19, 2021 – 91% of healthcare workers had completed the vaccine series, an additional 5% had received their first dose, .5% were reported as medically ineligible, and 1.3% were listed as having another exemption. Statistics broken down specifically for Erie County and Monroe

County were similar although the numbers reported for other exemptions were higher, at 3% and 4% respectively.

In reply, petitioners submitted an affidavit from Dr. Paul Elias Alexander, PHD. Doctor Alexander's PhD is in Evidence-Based Medicine, Research Methods, and Clinical Epidemiology. He has a Master's in Epidemiology as well as a Master's in Evidence-Based Medicine. Dr. Alexander's extensive professional history included time as a COVID-Pandemic evidence-synthesis consultant advisor to the World Health Organization. He also works for the U.S. Government as an advisor to the Assistant Secretary of Health and Human Services. Specifically, his title is Senior Advisor for COVID Pandemic response. Dr. Alexander stresses that his affidavit is specifically made in response and opposition to Dr. Rausch-Phung's assertions that: (1) vaccine immunity is superior to natural immunity; and (2) that natural immunity is not a proper basis for a medical exemption to the vaccine mandate. He opines that there is no sound scientific basis for requiring vaccinations of individuals who have previously recovered from COVID-19 and have acquired natural immunity through such recovery. In support he cites his own published article wherein he compiled, analyzed and reviewed 91 studies, articles and other forms of evidence. Dr. Alexander's article concluded that natural immunity is equal to or more robust and superior to existing vaccines. He also argues that the vaccine is less effective against Delta than natural immunity. Additionally, Dr. Alexander argues that individuals with natural immunity should not be forced to deal with the potential harms and adverse effects of vaccination since vaccination will not provide them with any meaningful health benefit.

Further, Dr. Alexander describes the severely compressed schedule vaccine makers utilized in developing the vaccine and evaluating adverse effects. He also appears to accuse the CDC of grossly misleading the nation by undercounting the number of individuals who have died of COVID-19 despite being vaccinated. Finally, he notes that individuals who'd been previously infected with measles, mumps and rubella do not require the measles, mumps and rubella vaccination. Dr. Alexander maintains that the same standard should be applied to the COVID-19 vaccine for individuals who'd been previously infected with COVID-19.

Discussion

The petition sets forth four causes of action. The first seeks a declaratory judgment holding that § 2.61 is void because it lacks a statutory basis. Specifically, petitioners are arguing that § 2.61 was illegally adopted as an emergency rule because it lacked the requisite statutory authority. The second seeks a declaratory judgment holding that § 2.61 is unconstitutional because it violates the separation of powers inherent in the New York State Constitution. Petitioners maintain that respondents have usurped the Legislature's powers to make critical policy decisions and/or engage in legislative enactments. The third cause of action seeks a declaratory judgment holding that the vaccination requirement violates petitioners' substantive due process rights. Specifically, they argue that § 2.61 unconstitutionally interferes with their property rights in their employment as well as their liberty rights to practice in their chosen profession. The fourth seeks a declaratory judgment holding that the vaccination requirement violates petitioners' procedural due process rights. This cause of action is basically a reiteration of the first cause of action. Specifically, petitioners argue that the use of SAPA's emergency rule procedures resulted in an unconstitutional denial of their opportunity to be heard.

The proposed amended petition adds a fifth cause of action. Therein, petitioners seek to prevent respondents from failing to comply with SAPA § 202(6)(e). Specifically, they ask the Court to declare that, unless and until SAPA has been complied with, § 2.61 cannot be readopted and no substantially similar emergency regulation may be adopted. Additionally, they seek a permanent injunction enforcing such relief.

Respondents' Partial Motion to Dismiss

Respondents seek dismissal, pursuant to CPLR § 3211, of all portions of the petition seeking relief pursuant to CPLR § 3001 and/or non-Article 78 relief. Petitioners did not meaningfully address the partial motion. The Court has reviewed the petition and finds that it is clearly and wholly a proceeding sounding in mandamus to review. Accordingly, as CPLR Article 78 relief is an available remedy, a declaratory judgment action is duplicative and an improper method to challenge respondents' promulgation and enactment of § 2.61 (*see, Greystone Mgt. Corp. v Conciliation & Appeals Bd. of City of N.Y.*, 62 NY2d 763, 765 [1984]). As such, respondents' partial motion to dismiss must be granted in its entirety.

Standing of Petitioner DiPietro

The Court finds that the petition/amended petition adequately establish that Assembly Member DiPietro has standing to bring this proceeding. Specifically, petitioner DiPietro sufficiently alleged that respondents' promulgation of § 2.61 constituted a usurpation of the Legislature's power (*see, Matter of Silver v Pataki*, 96 NY2d 532, 539-540 [2001]).

First Cause of Action - SAPA Violations

Respondents contend that § 2.61 complies with SAPA's emergency rule making requirements. They point to the Emergency Justification statement and the facts underlying the information therein. Further, they rely upon the enumerated statutory authority cited in § 2.61. Specifically, respondents and § 2.61 cite Public Health Law §§ 225(5), 2800, 2803(2), 3612 and 4010(4) as well as Social Services Law §§ 461 and 461-e. Additionally, respondents point to the following SAPA emergency rule making components that were satisfied by § 2.61: (1) a statement that the notice does not constitute a notice of revised rulemaking for permanent adoption; (2) the findings required by SAPA § 202(6)(a); (3) the effective date upon the filing with the Department of State; (4) the provisions for expiration of § 2.61; (5) the full text of § 2.61; (6) the regulatory impact statement; (7) the requisite flexibility analyses; and (8) the contact information for the appropriate agency representative. Accordingly, respondents argue that they've satisfied SAPA's requirements for emergency rulemaking and that this Court should hold that § 2.61 and its promulgations were not irrational or arbitrary or capricious. As such, they maintain that the first cause of action should be dismissed.

Petitioners argue that § 2.61 lacks any statutory authority and thus fails to comply with SAPA § 202(6)(d)(i). Accordingly, they argue that it is wholly irrelevant whether the necessary SAPA procedures were followed in the emergency rulemaking process. Specifically, petitioners assert that none of the cited statutes mention vaccination requirement for healthcare workers and that none could be interpreted as encompassing such a vaccination requirement. Petitioners also argue that § 2.61 has added an additional job qualification for medical professionals without any statutory authority. They further note that the requirements for entry into these medical professions are already governed by existing laws and regulations as well as agencies other than respondents. Petitioners also stress respondents' prior recognition of its lack of authority to

impose job requirements like the vaccination mandate. As a comparison they cite 10 NYCRR § 2.59 which required health care personnel who were not vaccinated for influenza to wear a surgical or procedural mask at certain times. Petitioners contrast this with § 2.61 which does not provide impacted employees with any option other than being vaccinated. They also stress that if New York wants a vaccination mandate like § 2.61, the Legislature should enact a statute specifically empowering respondents to impose a vaccination requirement. Finally, petitioners discuss the impact that allowing respondents to enact policies like vaccination mandates would have on representative democracy and allowing citizens to determine their representative's positions on policies like this.

The Court finds that the promulgation of § 2.61, the language of § 2.61 and the supporting documentation adequately supports respondents' claim of necessity for the immediate adoption of the rule for the preservation of New York's public health, safety and general welfare (SAPA § 202(6)). The record also reflects that the rule was promulgated during the continuing and significant impact of the Delta variant and only after FDA approval of the Pfizer vaccine. Additionally, § 2.61 was promulgated at a time when the federal government was advising that a condition of participating in Medicare and Medicaid programs would be requiring nursing homes to mandate the COVID-19 vaccination for workers. Further, respondents' expert's affidavits set forth the threats from the Delta variant to the impacted workers and entities as well as the success of the vaccines in combating these threats. Accordingly, the Court finds that respondents satisfied the requirements of SAPA § 202(6) as to the necessity for the immediate adoption of an emergency rule.

Additionally, the Court finds that Public Health Law § 225(5) provides sufficient statutory authority for the promulgation of § 2.61. The remaining cited statutes, to varying degrees, only serve to buttress respondents' compliance with the emergency rule statutory requirements set forth in SAPA § 202(6). Specifically, Public Health Law § 225(5) broadly authorizes respondent Council to deal with any matters affecting the improvement of public health in the state of New York. More specifically, the statute authorizes the Council to establish regulations for the maintenance of hospitals for communicable diseases as well as to establish regulations regarding the methods and precautions to be observed in addressing

premises that have been vacated by persons suffering from a communicable disease. Public Health Law § 2800 specifically authorizes NYSDOH to exercise comprehensive responsibility related to hospitals and related services in terms of the prevention, diagnosis or treatment of human disease. Additionally, respondents have adequately established that Public Health Law §§ 2803, 3612 and 4010 authorizes promulgation of rules and regulations to establish minimum standards for the covered entities as to the care and services provided to patients/residents. In sum, the Court finds that the full statutory scheme embodied in the cited Public Health Law sections provides adequate statutory authority to satisfy SAPA's emergency procedure requirements for § 2.61 (*see, Matter of Hague Corp. v Empire Zone Designation Bd.*, 96 AD3d 1144, 1145-1146 [3rd Dept. 2012]).

Based on all of the foregoing, the Court finds that the first cause of action must be dismissed as petitioners have failed to meet the heightened Article 78 burden of showing the regulation to be irrational and unreasonable, arbitrary or capricious (*see, Matter of Consolation Nursing Home v. Commissioner of New York State Department of Health*, 85, NY 2d 326, 331-332 (1995)).

Second Cause of Action -Separation of Powers

As to the separation of powers cause of action, respondents reiterate their argument that all four *Boreali* factors weigh in their favor. As to the first factor, respondents maintain that § 2.61 is an across the board requirement with no attempts to weigh competing or special interests unrelated to the public health goal. They further maintain that inclusion of a religious exemption would actually represent the carving out of an exception to the vaccine mandate that is unrelated to the policy goal of public health. As to the second factor, respondents maintain that they are regulating in a subject area where they have previously regulated. Further, respondents argue that they are appropriately executing policy decisions in an area where the Legislature has granted them broad authority via a comprehensive statutory scheme. As to the third factor, respondents again point to the absence of any legislative attempts to mandate a vaccine for healthcare workers. They further argue that petitioners are disregarding controlling case law by characterizing the Legislature's inaction as somehow determinative. Finally, respondents contend that the respondent agencies clearly used their special expertise/competence in the

healthcare field to develop § 2.61. Accordingly, and based on petitioners' purported acknowledgment, respondents argue that the fourth *Boreali* factor is not in dispute. As such, respondents maintain that § 2.61 did not violate the separation of powers doctrine and that the second cause of action should be dismissed.

In reply, petitioners question whether *Boreali* is even applicable to the Court's review of the legality of § 2.61. Rather, petitioners maintain that the Court should focus on whether respondents have inappropriately made a critical policy decision and engaged in law-making functions. Petitioners question how § 2.61 could be rationally viewed as anything other than a critical policy decision in light of its impact on the economy, the livelihood of a substantial proportion of New York's healthcare workers and the civil discord generated by vaccine mandates. They ask the Court to go beyond the *Boreali* factors and focus upon whether respondents evaded SAPA's requirements and promulgated a regulation constituting respondents' assessment of what public policy as to vaccination mandates should be. Petitioners again stress the viable alternatives that respondents failed to provide to impacted healthcare workers like: (1) exemptions for natural immunity; (2) testing for COVID-19; and (3) masking with N95 masks.

The Court concludes that all four factors proffered and discussed in *Boreali* support the legality of respondents' promulgation of § 2.61 and finds that the doctrine of separation of powers has not been violated here. As to the first factor, respondents have adequately established that § 2.61 does not represent a balancing of competing interests between, for example, the public health and any particular industry or group (*see, Garcia v New York City Dept. of Health & Mental Hygiene*, 31 NY3d 601, 612-613 [2018]). Rather, the Court finds that respondents adequately balanced the relevant costs, benefits and considerations according to their preexisting obligations set forth by the Legislature in the Public Health Law. As to the second factor, for the reasons cited above in discussing statutory authority, the Court finds that respondents adequately established that they were executing policy decisions already articulated by the Legislature concerning public health, communicable diseases and the covered entities (*see, Matter of Spence v Shah*, 136 AD3d 1242, 1245-1247 [3rd Dept. 2016]). Analysis of the third factor also supports respondents' positions. Respondents have adequately established the absence of any prior

legislative attempt concerning vaccine mandates for healthcare workers. Accordingly, there is insufficient proof that respondents have acted in an area where the Legislature repeatedly, or ever, tried and failed to reach agreement in the face of substantial public debate (Boreali v Axelrod, *supra* at 12-14). Finally, as noted above, the fourth factor is not in dispute. Based on the foregoing, and regardless of the particular weight affixed to any of the four factors, the Court finds that the relevant Boreali analysis adequately supports respondents' promulgation of § 2.61. The Court also finds that consideration of petitioners' separation of powers claim clearly overlaps with the Boreali factors and its consideration of whether a state agency acted beyond its delegated powers (*see*, Greater N.Y. Taxi Assn. v New York City Taxi & Limousine Commn., 25 NY3d 600, 608 [2015]). Based on the Court's analysis of the Boreali factors and the relevant arguments on this issue, the Court finds respondents' promulgation of § 2.61 did not cross into the enactment of outright legislation (*see*, Matter of Spence v Shah, *supra* at 1246).

Based on all of the foregoing, the Court finds that the second cause of action must be dismissed as petitioners have failed to meet their Article 78 burden.

Additionally, as to both the first and second causes of action, respondents have made a sufficient showing as to the rational basis for promulgating § 2.61. While petitioners credibly buttressed their assertions by means of the expert's affidavit submitted in reply, they have not shown by clear and convincing evidence that § 2.61 is arbitrary and capricious (Matter of Consolation Nursing Home v Commissioner of N.Y. State Dept. of Health, 85 NY2d 326, 331-332 [1995]). In particular, the Court finds that respondents have demonstrated their reasoned reliance upon a multitude of documented medical studies and findings in support of the promulgation of § 2.61 (*see*, Id. at 332). Conversely, the competing analysis and credible medical studies offered by petitioners' expert were simply insufficient to demonstrate outright irrationality, arbitrariness or capriciousness in § 2.61 or its promulgation, and petitioners therefore fail to satisfy the high threshold necessary to invalidate the emergency rule under § 2.61 (*see*, Id.).

Third Cause of Action-Substantive Due Process

Assuming, *arguendo*, that petitioners have adequately established protected rights in their employment and pursuit of their medical professions, the Court finds that petitioners have not

met their heavy burden of showing that respondents' promulgation of § 2.61 rises to the level of a substantive due process violation (*see, Cunney v Bd. of Trustees of Vill. of Grand View, N.Y.*, 660 F.3d 612, 626 [2nd Cir. 2011]). While petitioners have provided admissible submissions challenging the correctness and advisability of the vaccine mandate, particularly as to those impacted healthcare workers who've already contracted COVID-19, they have not established that the vaccine mandate and/or the promulgation procedures are "arbitrary, conscience shocking, or oppressive in a constitutional sense" (*see, Id.*). Substantive due process relief is simply not warranted absent such a showing. The protections of substantive due process are not available against government action that is merely incorrect or ill advised (*see, Id.*).

Based on the analysis set forth above and previously by this Court, the Court concludes that respondents have complied with SAPA and made a detailed showing of their rational basis for promulgating § 2.61. Accordingly, the Court finds that the third cause of action must be dismissed as petitioners have not met their Article 78 burden of establishing a substantive due process violation.

As to petitioners' request for alternative relief on this cause of action, the petitioners have not sufficiently demonstrated the legal appropriateness or effective practical implementation of an Order allowing covered entities to accept a form of natural immunity as a valid medical exemption under § 2.61.

Fourth Cause of Action-Procedural Due Process

Assuming, *arguendo*, that petitioners have adequately established protected rights in their employment and pursuit of their medical professions, the Court finds that petitioners have not met their burden of establishing a procedural due process violation. The Court has concluded that respondents have complied with the emergency rulemaking procedures set forth in SAPA. Accordingly, respondents were authorized to dispense with the public notice and comment period requirements. In any event, this very Article 78 proceeding speaks to the existence of the availability of a post-deprivation remedy (*see, Marino v Ameruso*, 837 F.2d 45, 47 [2nd Cir. 1988]). Based on the foregoing and the available post-deprivation remedy, the Court finds no procedural due process violation here, and the fourth cause of action is therefore dismissed.

Petitioners' Cross-Motion/Fifth Cause of Action

The Court has reviewed the proposed amended petition and finds that petitioners' cross-motion must be denied. The proposed new cause of action seeks declaratory relief and a permanent injunction. For the reasons stated above, the Court finds that declaratory relief is unnecessarily duplicative and improper in light of the available remedy of a future action in the form of mandamus to review should petitioners' fears of noncompliance be realized. Further, the preliminary injunctive relief is improper as the injunction seeks to compel respondents to comply with an existing New York State statute with which they must already comply. Under these circumstances, and based on the Court's prior and current findings regarding respondents' compliance with SAPA, the extraordinary relief of a permanent injunction is inappropriate (*see, Matter of Willkie v Delaware County Bd. of Elections*, 55 AD3d 1088, 1092 [3rd Dept. 2008]). As such, petitioners' cross-motion for leave to amend their petition must be denied in its entirety.

Finally, to the extent the claim has been properly raised and not abandoned, the Court concludes that the lack of a religious exemption does not render § 2.61 unconstitutional or in any way illegal. § 2.61 is neutral, has general applicability and respondents have proffered a sufficiently rational basis for its promulgation (*see, F.F. v State*, 194 AD3d 80, 84 [3rd Dept. 2021]).

The parties' remaining arguments and requests for relief³ have been considered and found to be lacking in merit and/or unnecessary to reach in light of the Court's findings.

Based upon the foregoing it is hereby

ORDERED AND ADJUDGED that the respondents' partial motion to dismiss the requested declaratory relief is hereby granted in its entirety; and it is further

³ Petitioners appear to have abandoned their religious exemption argument. To the extent that the argument has not been waived, the Court finds it to be without merit for the reasons stated in the Court's prior Decision and Order.

ORDERED AND ADJUDGED that the petition is hereby dismissed and the relief requested therein is in all respects denied; and it is further

ORDERED AND ADJUDGED that petitioners' cross-motion for leave to amend their petition is hereby denied; and it is further

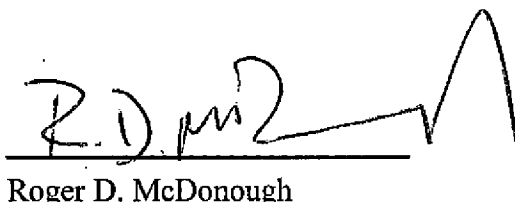
ORDERED AND ADJUDGED that the Court declines to issue any declaratory relief as said causes of action have been dismissed as duplicative and unnecessary.

SO ORDERED AND ADJUDGED.

This shall constitute the Decision, Order and Judgment of the Court. This Decision, Order and Judgment will be forwarded to the Albany County Clerk by the Court. A copy of the Decision, Order and Judgment is being forwarded to counsel for all parties. The signing of this Decision, Order and Judgment and delivery of the same to the County Clerk shall not constitute entry or filing under CPLR 2220. Counsel for the respondents is not relieved from the applicable provisions of that rule with respect to filing, entry, and notice of entry of the Decision and Order. As this is an E-FILED case, there are no original papers considered for the Court to transmit to the County Clerk.

ENTER

Dated: Albany, New York
December 9, 2021


Roger D. McDonough
Acting Supreme Court Justice



12/10/2021

Papers Considered⁴:

1. Petition, dated September 21, 2021, with annexed exhibits;
2. Affidavit of petitioner Gregory Serafin, sworn to September 20, 2021;
3. Affidavit of petitioner Azima Rasiwala, D.O., sworn to September 21, 2021;
4. Affidavit of petitioner Deborah Conrad, sworn to September 21, 2021;
5. Affidavit of petitioner Kathleen McGowan, sworn to September 20, 2021;
6. Affidavit of petitioner Renee Rogers, sworn to September 21, 2021;
7. TRO Notice Affidavit of Todd J. Aldinger, Esq., sworn to September 22, 2021, with annexed exhibit;
8. Petitioners' Verification Pages, sworn to September 27, 2021;⁵
9. Affidavit of Dr. Elizabeth Rausch-Phung, M.D., M.P.H., sworn to September 30, 2021, with annexed exhibits;
10. Respondents' Motion for Partial Dismissal, dated October 21, 2021;
11. Respondents' Answer, dated October 21, 2021;
12. Affidavit of Dr. Emily Lutterloh, M.D., M.P.H., sworn to October 21, 2021, with annexed record/exhibits;
13. Affidavit of Dr. Elizabeth Rausch-Phung, M.D., M.P.H., sworn to October 21, 2021, with annexed record/exhibits;
14. Affidavit of Valerie A. Deetz, sworn to October 20, 2021;
15. Affidavit of Dorothy Persico, sworn to October 21, 2021;
16. Petitioners' Notice of Cross-Motion for Leave to Amend their Complaint, dated October 25, 2021;
17. Affirmation of Todd J. Aldinger, Esq., dated October 25, 2021, with annexed proposed first amended complaint;
18. Affidavit of Dr. Paul Elias Alexander, PHD, sworn to October 25, 2021, with annexed exhibits.

⁴ The parties also submitted memoranda of law in support of their respective positions.

⁵ At oral argument for the preliminary injunction, respondents waived their nullity argument as to the verification of the petition.

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

GEORGE M. BORELLO, NEW YORK SENATOR,
et al.,

Petitioners,

– against –

DECISION AND ORDER
Index No. 908134-21

NEW YORK STATE DEPARTMENT OF HEALTH,
HOWARD A. ZUCKER, in his official capacity
as the Commissioner of Health for the State of New York, and
KATHLEEN COURTNEY HOCHUL, in her official capacity
as the Governor of the State of New York,

Respondents.

APPEARANCES:

COREY HOGAN, ESQ
Attorney for Petitioners
2410 North Forest Road, Suite 301
Amherst, New York 14068

LETITIA JAMES
Attorney General of the State of New York
Attorney for Respondents
Michael McCartin, AAG, Of Counsel
The Capitol
Albany, New York 12224

Ryba, J.,

Petitioners, New York State Senator George Borello, 14th District Legislator John Syracuse, NY Parents to Unmask Children, Inc., St. John Ev. Lutheran Church & School, and five parents individually and on behalf of their minor children, commenced this CPLR Article 78 proceeding by Order to Show Cause against respondents New York State Department of Health (DOH), Howard A. Zucker, in his official capacity as the Commissioner of Health for the State of New York, and Kathleen Hochul, in her official capacity as the Governor of the State of New York, challenging the DOH regulation set forth at 10 NYCRR § 2.60. The challenged regulation, which was promulgated by emergency rule-making procedures effective August 27,

2021 through November 24, 2021, authorized DOH to require the use of face masks in certain public settings, including schools, upon the issuance of a finding that such face covering were a necessity. Pursuant to that authority, on August 27, 2021 DOH issued a determination requiring face coverings for all teachers, staff, students and visitors to Pre-Kindergarten through Twelfth Grade schools who are over the age of two and able to medically tolerate a face covering. The petition alleges, among other things, that: 1) there is no medical emergency that justifies the use of DOH's regulations as it applies to Pre-Kindergarten through Twelfth Grade; 2) the remedy of requiring face-masks for all students, teachers and visitors aged two and up will not accomplish the stated goal; 3) DOH failed to make the requisite factual findings to invoke the emergency rule-making procedure; 4) respondents failed to comply with the State Administrative Procedure Act (SAPA) and 5) the DOH directive to nearly 3 million students, tens of thousands of teachers, staff and visitors is an invalid exercise of his authority and requires legislative action by the full NYS Senate and Assembly.

The issue presented herein, as framed by petitioners' submissions to the Court, is limited to whether petitioners are entitled to a preliminary injunction enjoining respondents from enforcing the school masking mandate during the pendency of this proceeding. Respondents oppose the requested relief, arguing that petitioners have failed to demonstrate the requirements for the issuance of a preliminary injunction. In reply, petitioners once again reiterate that the relief they are requesting herein is limited to a preliminary injunction. The Court heard oral argument on October 14, 2021, at which time the Court granted the requests of both parties to supplement their prior briefings by October 15, 2021. To that end, respondents submitted a transcript of New York State Supreme Court Justice Jeannette Ogden's decision from the bench in Christian Central Academy v Hochul, Erie Co. Sup. Ct. No. (Index No. 812301/2021). In response, petitioners submitted a letter setting forth distinctions between Christian Central

Academy and this matter, as well as distinctions between this matter and the Federal decision L.T., et al. v Zucker, Case No. 1:21-cv-1034 (NDNY 2021). The application for a preliminary injunction is now ripe for determination.

To prevail on a motion for a preliminary injunction, the moving party has the heavy burden to must establish by clear and convincing evidence: (1) the likelihood of success on the merits; (2) irreparable injury absent granting the preliminary injunction; and (3) a balancing of the equities in the movant's favor (see, Doe v Axelrod, 73 NY2d 748 [1988]; Gluck v Hoary, 55 AD3d 668[2008]). A preliminary injunction is drastic relief and should be issued sparingly (see, Rural Cmty. Coal., Inc. v Vill. of Bloomingburg, 118 AD3d 1092, 1095 [2014]; Troy Sand & Gravel Co., Inc. v Town of Nassau, 101 AD3d 1505, 1509 [2012]; Welcher v Sobol, 222 AD2d 1001, 1002 [1995]; Clark v Cuomo, 103 AD2d 244, 246 [1984]). Thus, when one prong of the tripartite test for preliminary injunctive relief is not established, an application for a preliminary injunction will be denied as a matter of law without the need to address the remaining prongs of the test (see, Doe v Axelrod, 73 NY2d at 751 [1988]; McGrath v Town Bd. of Town of N. Greenbush, 254 AD2d 614, 619 [1998]).

Petitioners' application for a preliminary injunction is denied because they have failed to establish that irreparable harm will likely result absent an injunction. Notably, the irreparable harm prong of the preliminary injunction test requires a clear showing that the claimed harm is imminent, rather than remote or speculative (see, Matter of New York State Inspection, Sec. & Law Enforcement Empls. v Cuomo, 64 NY2d 233, 240 [1984]). Here, petitioners argue that enforcing the school masking mandate will result in irreparable harm absent a preliminary injunction because mask wearing has a negative impact on growth and development of children, including their language and communication skills, social development, and speech. In support

of this contention, petitioners have offered three Expert Affirmations/Affidavits: (1) Dr. Michael Kirsch, MD, PhD; (2) Dr. Michael Santa Maria, PhD; and (3) Dr. Paulette Niewczyk, MPH, PhD.¹ Initially, the expert affidavit of Michael P. Santa Maria, Ph.D., asserts that:

[there are] two serious problems for children who wear masks: (1) the mask presents a visual barrier to those who rely on facial communication signals (mouth, lips, teeth, tongue, etc.) and intuitively, this nonverbal aspect of communication is very important for social development, and (2) voices are attenuated and distorted with mask use to the extent that individuals with compromised hearing may perceive speech as unintelligible.

Moreover, Michael Kirsch, Ph D. asserts in his expert affidavit that continuous mask wearing causes the wearer to inhale unacceptably high levels of carbon dioxide, and that breathing higher concentrations of carbon dioxide induces anxiety. However, Kirsch identifies only one study that he relies upon for this assertion, and he concedes that this study has since *been retracted*. Although the third expert, Paulette Niewczyk, MPH PhD, claims in her expert affidavit that “several studies have found negative health effects from wearing face masks”, the scientific studies and articles that she references do not support this contention. Initially, the vast majority of the studies that Niewczyk claims to establish that mask wearing causes harmful health effects *pre-date the COVID-19 pandemic by more than a decade*, and therefore could not even purport to provide a relevant scientific analysis of the issues presented herein. Moreover, none of the scientific studies relied upon by Niewczyk actually involved the measurement of the impact that mask wearing may have on the wearer’s physical or mental health or development. Rather, the scientific studies that were actually performed during the 2020-2021 Covid-19 pandemic all relate to the efficacy of mask wearing on preventing the spread of the Covid-19 virus, not the

¹ Petitioners also offer the expert affidavit of Dr. Clayton J Baker, MD, CM, however he offers no opinion on the issue of irreparable harm.

alleged negative health effects of masks on the wearer. Finally, notably missing from petitioners' expert proof was any reference to findings of the Centers for Disease Control and Prevention (CDC). In the Court's view, the foregoing does not constitute competent, nonspeculative proof to establish petitioners' claim that enforcement of the school masking mandate will have an imminent and irreparable negative impact on the health and development of mask wearers.²

In opposition to petitioners' claims, respondents rely on the affidavit of Johanne E. Morne, Deputy Director for Community Health, NYS DOH which includes numerous timely studies attached that reference scientific research, and the CDC which all conclude that mask wearing has no significant adverse health effects for wearers. Furthermore, Morne's affidavit sets forth that there is no reported change "in oxygen or carbon dioxide levels while wearing a cloth or surgical mask either during rest or physical activity" and "mask use was safe even during exercise" with "no physiologic differences [] identified between periods of rest or exercise while masked or non-masked." Morne additionally avers that surgical and cloth masks do not significantly compromise ventilation and oxygen supplies in healthy individuals, and that "the myth that wearing a cloth face mask will lead to a bacterial or fungal infection has been discredited." Morne also references at least two studies on children using N95 masks that found no significant effect on the ability to breathe. With regard to exceptions to the mask wearing requirement set forth in § 2.60, respondents reference the fact the September 2, 2021 Interim Guidance (issued for P-12 schools for the 2021-2022 academic years) sets forth that people with

²While petitioners argue for the first time in their reply papers that the school masking mandate violates certain constitutional rights, this specific example of irreparable harm was improperly raised for the first time in reply and will therefore not be considered (see, Goldstone v Gracie Terrace Apt. Corp., 110 AD3d 101 [2013]; Brach v Harmony Servs., Inc., 93 AD3d 748 [2012]).

“medical or developmental conditions that prevent them from wearing a mask may be exempted from mask requirement as documented by a medical provider.”

Given the lack of competent proof offered by petitioners to establish their claim that enforcing the school masking mandate will cause imminent and negative health effects on mask wearers, and considering the competing evidence offered by respondents on that issue, the Court concludes that petitioners have failed to make a clear showing of irreparable harm in the absence of a preliminary injunction preventing the enforcement of the school masking mandate. Notably, the likelihood of irreparable harm is further minimized by the fact that the Interim Guidance provides an avenue for individuals with medical or developmental conditions that may be worsened by wearing a mask to seek an exemption from the requirement. Based on petitioners’ failure to meet the irreparable harm prong of the preliminary injunction test, the request for a preliminary injunction is denied without the need to reach the other two prongs of the analysis.

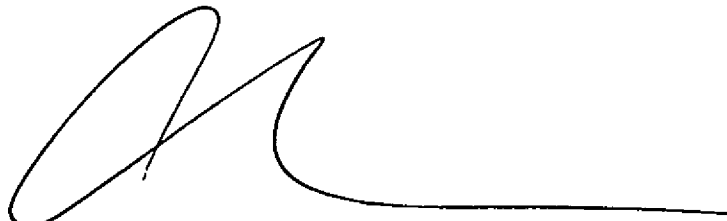
For the foregoing reasons, it is

ORDERED that petitioners’ request for preliminary injunction is denied.

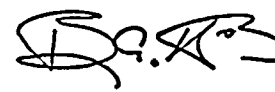
This constitutes the Decision of the Court, the original which is being transmitted to the Albany County Clerk for electronic filing and entry. Upon such entry, counsel for respondents shall promptly serve notice of entry on all other parties (see Uniform Rules for Trial Courts [22 NYCRR § 202.5-b [h][1], [2]).

SO ORDERED.

Dated: November 18, 2021


Christina L. Ryba
Supreme Court Justice

11/19/2021



December 15, 2021

Vol. XLIII

Issue 50

DEPARTMENT OF STATE

Division of Administrative Rules

NEW YORK STATE **REGISTER**

INSIDE THIS ISSUE:

- Prevention of COVID-19 Transmission by Covered Entities
- Investigation of Communicable Disease; Isolation and Quarantine
- Face Coverings for COVID-19 Prevention

Opinions of the Attorney General

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

For notices published in this issue:

- the 60-day period expires on February 13, 2022
- the 45-day period expires on January 29, 2022
- the 30-day period expires on January 14, 2022

**KATHY HOCHUL
GOVERNOR**

**BRENDAN C. HUGHES
ACTING SECRETARY OF STATE**

NEW YORK STATE DEPARTMENT OF STATE

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

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

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

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

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

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INDEX NO. 616124/2021

RECEIVED NYSCEF: 01/20/2022

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

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

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- 2 / Debt Collection by Third-Party Debt Collectors and Debt Buyers (P)

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- 8 / Investigation of Communicable Disease; Isolation and Quarantine (EP)
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NYSCEF DOC. NO. 51

INDEX NO. 616124/2021

RECEIVED NYSCEF: 01/20/2022

RULE MAKING ACTIVITIES

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

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

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

Department of Financial Services

NOTICE OF ADOPTION

Financial Statement Filings and Accounting Practices and Procedures; Risk-Based Capital

I.D. No. DFS-38-21-00003-A

Filing No. 1183

Filing Date: 2021-11-30

Effective Date: 2021-12-15

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

Action taken: Amendment of Part 83 (Regulation 172); addition of Part 77 (Regulation 220) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 301, 307, 308, 1109, 1301, 1302, 1308, 1322, 1324, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327, 6404; Public Health Law, art. 44

Subject: Financial Statement Filings and Accounting Practices and Procedures; Risk-Based Capital.

Purpose: To set forth rules regarding the treatment of exchange-traded funds; adopt the 2021 Accounting Practices and Procedures Manual.

Text or summary was published in the September 22, 2021 issue of the Register, I.D. No. DFS-38-21-00003-CP.

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

Text of rule and any required statements and analyses may be obtained from: Michael Campanelli, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5290, email: Michael.Campanelli@dfs.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2024, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The New York State Department of Financial Services (“DFS”) received comment letters from a trade association representing the life insurance industry (“life trade”), a trade association representing asset managers (“asset management trade”), and five asset management businesses (“asset managers 1 - 5”). The comment letters from the life trade, the asset manager trade, and asset managers 1, 2, and 3 expressed unqualified support for the amendments to Insurance Regulation 172 and new Insurance Regulation 220 and provided no other comments. The comments from asset managers 4 and 5, relating to new Insurance Regulation 220, are discussed below.

Comment: With respect to proposed Section 77.2(a)(2) of Insurance Regulation 220, the asset managers objected to the regulation’s favorable risk-based capital (“RBC”) treatment of shares of qualifying exchange traded funds (“ETF”), applying only to ETFs that track a bond index. The asset managers requested that favorable RBC treatment be extended to actively managed fixed-income ETFs.

Response: Limiting the regulation’s applicability to index-tracking fixed-income ETFs best ensures that the ETF portfolio’s management follows a rules-based approach that approximates a more conservative “buy and hold” type strategy as opposed to active trading. Accordingly, DFS did not make any changes in response to this comment.

Comment: The asset managers requested that the requirement in Section 77.2(a)(2) of Insurance Regulation 220 that ETFs make available a detailed list of their holdings no less frequently than monthly be amended to require that ETFs make a detailed list of their holdings available daily because daily reporting provides greater transparency, which the asset managers claim will allow ETF investors to better predict the ETF’s performance and investment risks.

Response: In setting the criteria for ETFs qualifying for favorable RBC treatment under the regulation, DFS concluded that requiring monthly portfolio reporting is sufficient because monthly disclosure is aligned with the administrative and operational practices of index-tracking fixed-income ETFs, which adjust and true up their portfolios on a monthly basis. Note that the regulation only allows favorable RBC treatment for shares of qualifying ETFs that are registered pursuant to the Investment Company Act of 1940. As such, any ETF that satisfies the criteria set forth in the regulation will be subject to the applicable rules (including regarding disclosure) and oversight of the Securities and Exchange Commission.

In consideration of the above, DFS did not make any changes in response to this comment.

Comment: Asset manager 4 suggested that DFS lower the minimum US \$1 billion in assets under management requirement in Section 77.2(a)(3) of Insurance Regulation 220 to US \$300 million.

Response: DFS determined that the US \$1 billion threshold is generally indicative of a mature and relatively liquid product that helps reduce the concentration risk inherent in smaller ETFs, the stability of which can be adversely affected by the activities of one or more large individual shareholders. Therefore, DFS did not make any changes in response to this comment.

Comment: Asset manager 5 suggested that the requirement in Section 77.2(a)(4) of Insurance Regulation 220 that the ETF be rated by a nationally recognized statistical rating organization (“NRSRO”) be waived if at least 80% of the ETF’s holdings are “U.S. government debt.”

Response: A rating requirement for all ETFs qualifying for favorable RBC treatment under the regulation is warranted for consistency and an NRSRO rating provides a useful third-party review of the risks and quality of an ETF’s portfolio, management, and structure. An exception for “U.S. government debt” is too vague because the exception is open to a wide variety of interpretations, i.e., including U.S. government agency or U.S.

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government-sponsored entity obligations. DFS thus declined to make any changes in response to this comment.

As a final, general response to all comments, DFS will monitor ETF market developments as well as the impact of the regulation and will consider amendments to the regulation if warranted. To that end, the regulation's sunset date of January 1, 2027 ensures that the regulation will be revisited by DFS no later than that date.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Debt Collection by Third-Party Debt Collectors and Debt Buyers

I.D. No. DFS-50-21-00016-P

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

Proposed Action: Amendment of Part 1 of Title 23 NYCRR.

Statutory authority: Financial Services Law, sections 102, 201, 202, 301, 302 and 408

Subject: Debt Collection by Third-Party Debt Collectors and Debt Buyers.

Purpose: To clarify and modify standards for debt collection practices in New York.

Substance of proposed rule (Full text is posted at the following State website: https://www.dfs.ny.gov/industry_guidance/regulations/proposed_fsl): Section 1.1 provides definitions of terms, including new definitions for the terms, "communication," "creditor," and "electronic communication," and modifications to the definitions for the terms, "charge-off," "debt," and "debt collector."

Section 1.2 describes the content of and manner in which debt collectors must make required disclosures to consumers when debt collectors initiate collection. This section describes the validation notice a debt collector must provide to consumers within five days after its initial communication with the consumer unless the initial communication was in writing and contained the required information. In addition to information required by 12 C.F.R. 1006.34(c) the validation notice must include the type of reference date relied upon by the debt collector; the account number or truncated account number associated with the debt; the merchant brand, affinity brand, or facility name, associated with the debt; the date of last payment or partial payment, if any; and the applicable statute of limitations for the debt. This section also requires that the debt collector inform the consumer that the consumer has the right to dispute the validity of the alleged debt and describe how to do so.

Section 1.3 sets forth the form and content of disclosures that must be made by a debt collector to a consumer when the debt collector has determined or has reason to know that the statute of limitations has expired for a debt that the debt collector is pursuing. This section also introduces new limits on debt collectors' telephone and other oral communications with consumers relating to time-barred debt.

Section 1.4 relates to substantiation and consumer disputes of alleged debts. The proposed rule newly requires that any dispute made either orally or in writing shall be treated as a request for substantiation unless the debt collector has already provided substantiation. It also requires that the substantiation be made in hard copy unless the consumer has requested it be made in another form pursuant to applicable law or regulation. This section also requires that the debt collector provide substantiation materials beyond a statement describing complete chain of title when the consumer requests such material. Finally, this section modifies the document retention period for records of a debt for which a consumer has requested substantiation: seven years or until the debt is discharged, sold, or transferred, whichever is longer.

Section 1.5 establishes debt payment procedures. Section 1.5(c) is modified to provide that when a debt collector receives payment satisfying a consumer's debt, the debt collector must include in the written confirmation of the satisfaction of the debt the name of the creditor to which the debt was originally owed unless otherwise stipulated in an agreement filed in court.

Section 1.6 governs communication to consumers by debt collectors. Updates and clarifications establish that a consumer must consent in writing directly to the debt collector for a debt collector to correspond with the consumer in connection with the collection of any debts by more than one telephone call and three attempted telephone calls per seven-day period per account, unless additional communication is required under Part 1 or other federal or state law, or the communication is made in response to the consumer's request to be contacted. The amended Section 1.6 also includes new provisions establishing that debt collectors may correspond with a consumer through electronic modes of communication only with the consent of the consumer and via the particular mode of communication

elected by the consumer, and using contact information provided specified by the consumer. The provisions also mandate that communication must be private, direct to the consumer, and made through a mode and in a form reasonably expected to ensure compliance with 15 U.S.C. § 1692c. Finally, consent to receive electronic communication must be revocable.

Section 1.7 describes the regulation's relationship to other laws, including that it does not preempt any procedure required by law or court administrative rule with respect to debt collection. It also provides that the regulation does not preempt any local law if the local law affords greater protection to consumers than the regulation.

New Section 1.8 is a severability clause.

New Section 1.9 provides that the effective date of the rule shall be 180 days after the Notice of Adoption is published in the State Register.

Text of proposed rule and any required statements and analyses may be obtained from: Meredith Weill, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5279, email: Meredith.Weill@dfs.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.

Summary of Regulatory Impact Statement (Full text is posted at the following State website: https://www.dfs.ny.gov/industry_guidance/regulations/proposed_fsl):

1. Statutory Authority: Financial Services Law (or "FSL") §§ 102, 201, 202, 301, 302, and 408.

FSL § 102 sets forth the purpose and goals of the Financial Services Law including, as relevant, to "establish a modern system of regulation, rule making and adjudication," to "ensure. . . the prudent conduct of the providers of financial products and services, through responsible regulation and supervision," and to "promote the reduction and elimination of fraud, criminal abuse and unethical conduct by, and with respect to, banking, insurance and other financial services institutions and their customers."

FSL § 201 sets forth a declaration of policy for the New York State Department of Financial Services ("Department") and states, as relevant, that the "Superintendent shall take such actions as the Superintendent believes necessary to. . . encourage high standards of honesty, transparency, fair business practices and public responsibility," and "eliminate financial fraud, other criminal abuse and unethical conduct in the industry."

FSL § 202 provides the Superintendent of Financial Services ("Superintendent") with broad "rights, powers, duties in connection with financial services and protection."

FSL § 301 sets forth the powers of the Superintendent under relevant law.

FSL § 302 provides that the Superintendent may prescribe, withdraw or amend rules and regulations involving financial products and services that effectuate and interpret the provisions of the Financial Services Law.

FSL § 408 provides that "the superintendent may, after notice and hearing, levy a civil penalty. . . for. . . any violation of state or federal fair debt collection practices or federal or state fair lending laws."

2. Legislative Objectives: The proposed amendment is intended to help ensure consumers pay only debts they owe and pay them only once, by improving consumers' access to information about alleged debts and mitigating opportunity for predatory debt collection activity through changes that address specific actors and documented harms.

3. Needs and Benefits: When the New York State Legislature created the Department, it granted the agency authority to regulate financial products and services offered or sold to consumers (with some exceptions) for the purposes of eliminating financial fraud, abuse and unethical conduct and to educate and protect users of financial products and services. The Legislature specifically empowered the Department to address violations of State and federal fair debt collection laws, including, but not limited to, the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p ("FDCPA").

As the Department noted when it first promulgated Part 1, debt collection is inextricable from consumer credit. Debt collectors collect on debts from credit cards, mortgages, and consumer loans, among other common transactions. The Department continues to find that debt collectors operating in New York engage in abusive and misleading collection practices, including pursuing consumers for debts they do not owe or for incorrect debt amounts, with broad effects on the population. According to the Urban Institute, approximately 22% of New Yorkers have at least one debt in collection, in a median amount of \$1,734. https://apps.urban.org/features/debt-interactive-map/?type=overall&variable=pct_debt_collections&state=36.

The Department hears regularly from consumer advocates and legal

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service providers about debt collection abuses and is currently investigating multiple cases of abusive practices. Moreover, according to the Federal Trade Commission ("FTC"), which accepts consumer complaints, in 2020, New York was ninth in complaints per capita among states. Debt collection was the seventh-most complained about topic by New Yorkers to the FTC, ahead of auto, credit card, and healthcare. FTC, Consumer Sentinel Network Data Book 2020, 20, 54 (February 2021) (<https://www.ftc.gov/reports/consumer-sentinel-network-data-book-2020>). In 2020, the second-most common topic of complaints from New Yorkers to the Consumer Financial Protection Bureau ("CFPB") was debt collection, after credit reporting. CFPB, Consumer Response Annual Report, January 1–December 31, 2020 ("CFPB 2020 Report"), Table II (March 2021) (https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf).

Communications from debt collectors to consumers are of particular concern. The FTC's Do Not Call Data Book for 2020 noted that for New Yorkers, debt-related calls were the second-most complained about call type, and approximately 7% of the CFPB's 2020 complaints about debt collection were about communication tactics. FTC, Do Not Call Data Book 2020, 42 (October 2020) (<https://www.ftc.gov/reports/national-do-not-call-registry-data-book-fiscal-year-2020>). CFPB 2020 Report at 29. According to a 2018 analysis by the National Consumer Law Center, 56% of debt collection law violations reported by New Yorkers involved collectors calling repeatedly or continuing to call after consumers instructed the collector to stop calling. *Id.* at 32, 86; https://www.nclc.org/images/pdf/debt_collection/fact-sheets/NewYork.pdf. Additionally, as debt collectors adopt methods beyond phone and mail to reach consumers, risk of unlawful third-party disclosure and that the intended consumer will not receive important communications may increase. See National Consumer Law Center et al., Comments to the Consumer Financial Protection Bureau on its Proposed Debt Collection Rule, 71-72, 127 (Sept. 18, 2019) (https://www.nclc.org/images/pdf/debt_collection/comments-debt-collection-sept2019.pdf). Furthermore, the CFPB found increased consumer reports of receiving text messages regarding purported debts in 2020, and that those consumers who contacted the CFPB frequently were concerned that the text message they received was part of a scam. CFPB 2020 Report at 32.

The CFPB's analysis of its 2020 complaints also revealed that complaints about debt collectors pursuing a debt not owed are the most common type, as has been the case since the CFPB began taking complaints in 2013, and complaints of this type increased substantially in 2020. *Id.* at 30. Consumers reported attempts to collect debts they do not recognize, debts of another person, or debts for services or products they did not buy. *Id.*

Also, as the Department noted when it first promulgated Part 1, consumers may have difficulty responding to allegations of debts owed. They typically do not have legal representation and may not understand their rights. Consumers may respond to threats of a lawsuit without knowing that the statute of limitations on the claim has expired, may not understand how to assert a defense, and may not know that responding to an allegation is necessary. This makes consumers especially vulnerable to abusive and deceptive tactics.

The proposed amendment modifies and clarifies current Part 1 to address specific problematic collection tactics and consumer harms, primarily by (1) enhancing disclosure and substantiation requirements so that the consumer can more readily identify a debt or dispute it and to reduce the possibility that debt collectors attempt to collect debts they do not own and debts not owed, (2) reducing the possibility of consumer harassment by limiting the number of phone calls a debt collector may make to a consumer per week, (3) ensuring consumers receive important communications from debt collectors by regulating the use of electronic communication, (4) requiring improved, plain-English explanation of time-barred debt and modifications consistent with the CFPB's recently promulgated changes to Regulation F (12 C.F.R. § 1006.26(b)), see 12 C.F.R. Part 1006 CFPB Final Rule, Official Interpretation, Dec. 18, 2020, 48) (suing or threatening to sue on a time-barred debt is a strict liability violation), and (5) clarifying that fair debt collection practices must be followed when enforcing a judgment.

4. Costs: Costs of compliance will vary depending on a debt collector's business. The Department has proposed disclosure requirements mirroring those of Regulation F, with slight modifications. This should allow debt collectors to rely on the model validation notice provided in 12 C.F.R. Part 1006, Appendix B, with the inclusion of some New York-specific elements, limiting potential expenses associated with modifying documents and updating policies. Debt collectors may incur new costs when collecting supporting documentation and performing internal analysis to validate debts and determine, in certain circumstances, whether the statute of limitations on debts have expired, though the regulation already required debt collectors to "maintain reasonable procedures for determining the statutes of limitations applicable to a debt it is collecting and whether such statute

of limitations has expired." Enhanced disclosure may offer cost savings for debt collectors by mitigating the likelihood of consumer disputes of debts actually owed. Use of alternatives to calling consumers or reducing calls to consumers may produce savings. Implementation or modification of systems to ensure compliance with call limits may have one-time costs. This amendment to Part 1 will not impose additional costs on the Department.

5. Local Government Mandates: The rule imposes no mandates on any county, city, town, village, school district, fire district or other special district. Further, new Section 1.7 of Part 1 states that the regulation does not preempt local laws or local programs to license debt collectors or otherwise provide consumer protections to debtors.

6. Paperwork: Debt collectors may need to modify paperwork they already produce to comply with Part 1 and Regulation F. Revisions to Section 1.2 will require certain disclosures to a consumer at the initiation of the collection of a debt in addition to those mandated by Regulation F, including optional disclosures under Regulation F. Section 1.4 will also require a debt collector to provide documents sufficient to establish the complete chain of title in addition to a statement describing the chain of title, if requested by the consumer.

7. Duplication: This amendment will not cause Part 1 to duplicate any existing State rule.

8. Alternatives: The Department has determined that there are no viable alternatives to this rule.

The Department posted a draft text of this regulation on its website for 10 days to solicit comment from small businesses that might be affected. During the comment period, the Department received comments from 23 entities, including 20 small businesses and three industry associations. After the conclusion of the comment period, the Department received additional comments from three small businesses and one industry association.

Comments specific to the potential impact of the rule on small businesses are addressed in the full RIS posted on the Department's website at https://www.dfs.ny.gov/industry_guidance/regulations/proposed_fsl.

9. Federal Standards: The FDCPA sets minimum debt collection standards and allows for states to expand upon these requirements. The CFPB recently promulgated amendments to its FDCPA regulation, Regulation F, which took effect November 30, 2021.

10. Compliance Schedule: The proposed amendment will become effective 180 days after publication of the Notice of Adoption in the State Register. This should allow for covered businesses to adjust any written materials and make necessary updates to policies, systems, and procedures relating to the form and frequency with which they communicate with consumers.

Regulatory Flexibility Analysis

1. Effect of Rule: State Administrative Procedure Act ("SAPA") § 102(8) defines a small business to mean "any business which is resident in this State, independently owned and operated, and employs one hundred or less individuals." This amendment is expected to affect all debt collectors, including those that are small businesses, equally. The existing Part 1 of 23 NYCRR sets forth standards for debt collection practices in New York, including establishing disclosure, validation, and substantiation requirements, payment procedures, and communication mandates and limitations relating to debt collection. The amendments to Part 1 clarify, modify, and update the provisions of Part 1 to ensure further that consumers who owe debts pay only what they owe and pay it only once, and, moreover, that all consumers alleged to owe debts, regardless of whether those allegations are eventually substantiated, are not subject to abusive or harassing debt collection practices, including being pursued for debts not owed.

All debt collectors operating in New York, whether or not they are small businesses, must already be familiar and compliant with the array of federal and state laws and regulations that apply to their business.

This rule does not affect local governments.

2. Compliance Requirements: The amendment will modify a record retention time period and may require debt collectors to adjust their compliance programs, including the content of their standard notices and methods of validating debts and substantiating allegations to consumers. The amendment also may affect debt collectors' modes and frequency of communication with consumers. Debt collectors may incur some additional costs to comply with the amended provisions of Part 1.

No local government will have to undertake any reporting, recordkeeping, or other affirmative acts to comply with this rule because the rule does not apply to any local government. The new Section 1.7 of Part 1 expressly states that the regulation does not preempt local laws or local programs to license debt collectors or otherwise provide consumer protections to debtors.

3. Professional Services: Debt collectors that are small businesses and are not law firms may see their need for legal services to comply with the requirements of this amendment increase somewhat.

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No local government will need professional services to comply with this rule because the rule does not apply to any local government.

4. Compliance Costs: As noted above, new recordkeeping requirements may impose limited compliance costs on debt collectors if they must modify their standard notices or implement new policies.

No local government will incur any costs to comply with this amendment because the amendment does not apply to any local government.

5. Economic and Technological Feasibility: The rulemaking should not impose technological burdens on small businesses. Debt collectors already must comply with similar requirements. To a large extent, small businesses have already taken action to prepare for compliance with the recently adopted federal Regulation F, which also covers debt collectors. The proposed rule follows but also builds upon Regulation F and therefore may produce some compliance costs.

This rule does not apply to any local government; therefore, no local government should experience any economic or technological impact as a result of the rule.

6. Minimizing Adverse Impact: The Department has taken steps to ensure that debt collectors' preparation for compliance with Regulation F will be applicable to compliance with the proposed rule. No local government should be adversely impacted by this rule because the rule does not apply to any local government.

7. Small Business and Local Government Participation: The Department complied with SAPA § 202-b(6) by posting the proposed rule on its website for informal outreach and notifying trade organizations that represent the interests of small businesses that the proposed rule had been posted. The Department also will comply with SAPA § 202-b(6) by publishing the proposed amendment in the State Register and posting the proposed amendment on its website again.

Rural Area Flexibility Analysis

The Department of Financial Services ("Department") finds that the rule will not have any adverse impact on rural areas or impose new substantial reporting, recordkeeping or other compliance requirements on public or private entities in rural areas in New York State. The rule does not impose any reporting requirements on debt collectors and does not change existing recordkeeping requirements to require the creation and maintenance of new records, though it does change the period of time for which records must be maintained. The rule applies to all debt collectors in the State, whether they operate in rural or non-rural areas and should not impact them differently based on location.

Job Impact Statement

The Department of Financial Services ("Department") does not expect compliance with amended Part 1 to have an adverse effect on jobs or employment opportunities in the debt collection and debt buying industry. The proposed amendment clarifies and modifies the rule that sets forth standards for debt collection practices in New York, including establishing disclosure and recordkeeping requirements with which debt collectors and debt buyers already must comply. Debt collectors and debt buyers currently are also subject to federal laws and regulations of a similar type.

Department of Health

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Prevention of COVID-19 Transmission by Covered Entities**I.D. No.** HLT-50-21-00001-EP**Filing No.** 1176**Filing Date:** 2021-11-24**Effective Date:** 2021-11-24

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

Proposed Action: Addition of section 2.61; amendment of sections 405.3, 415.19, 751.6, 763.13, 766.11, 794.3 and 1001.11 of Title 10 NYCRR; amendment of sections 487.9, 488.9 and 490.9 of Title 18 NYCRR.

Statutory authority: Public Health Law, sections 225, 2800, 2803, 3612, 4010; Social Services Law, sections 461 and 461-e

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

Specific reasons underlying the finding of necessity: The Centers for

Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Since early July, cases have risen 10-fold, and over 99 percent of the sequenced recent positives in New York State were the Delta variant. Recent New York State data show that unvaccinated individuals are approximately 5 times as likely to be diagnosed with COVID-19 compared to vaccinated individuals. Those who are unvaccinated have over 11 times the risk of being hospitalized with COVID-19.

The COVID-19 vaccines are safe and effective. They offer the benefit of helping to reduce the number of COVID-19 infections, including the Delta variant, which is a critical component to protecting public health. Certain settings, such as healthcare facilities and congregate care settings, pose increased challenges and urgency for controlling the spread of this disease because of the vulnerable patient and resident populations that they serve. Unvaccinated personnel in such settings have an unacceptably high risk of both acquiring COVID-19 and transmitting the virus to colleagues and/or vulnerable patients or residents, exacerbating staffing shortages, and causing unacceptably high risk of complications.

In response to this significant public health threat, through this emergency regulation, the Department is requiring covered entities to ensure their personnel are fully vaccinated against COVID-19, and to document evidence thereof in appropriate records. Covered entities are also required to review and make determinations on medical exemption requests, and provide reasonable accommodations therefor to protect the wellbeing of the patients, residents and personnel in such facilities. Documentation and information regarding personnel vaccinations as well as exemption requests granted are required to be provided to the Department immediately upon request.

Based on the foregoing, the Department has determined that these emergency regulations are necessary to control the spread of COVID-19 in the identified regulated facilities or entities. As described above, current circumstances and the risk of spread to vulnerable resident and patient populations by unvaccinated personnel in these settings necessitate immediate action and, pursuant to the State Administrative Procedure Act Section 202(6), a delay in the issuance of these emergency regulations would be contrary to public interest.

Subject: Prevention of COVID-19 Transmission by Covered Entities.

Purpose: To require covered entities to ensure their personnel are fully vaccinated against COVID-19 subject to certain exemptions.

Text of emergency/proposed rule: Part 2 is amended to add a new section 2.61, as follows:

2.61. Prevention of COVID-19 transmission by covered entities.

(a) Definitions.

(1) "Covered entities" for the purposes of this section, shall include:

(i) any facility or institution included in the definition of "hospital" in section 2801 of the Public Health Law, including but not limited to general hospitals, nursing homes, and diagnostic and treatment centers;

(ii) any agency established pursuant to Article 36 of the Public Health Law, including but not limited to certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies;

(iii) hospices as defined in section 4002 of the Public Health Law; and

(iv) adult care facility under the Department's regulatory authority, as set forth in Article 7 of the Social Services Law.

(2) "Personnel," for the purposes of this section, shall mean all persons employed or affiliated with a covered entity, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with COVID-19, they could potentially expose other covered personnel, patients or residents to the disease.

(3) "Fully vaccinated," for the purposes of this section, shall be determined by the Department in accordance with applicable federal guidelines and recommendations. Unless otherwise specified by the Department, documentation of vaccination must include the manufacturer, lot number(s), date(s) of vaccination; and vaccinator or vaccine clinic site, in one of the following formats:

(i) record prepared and signed by the licensed health practitioner who administered the vaccine, which may include a CDC COVID-19 vaccine card;

(ii) an official record from one of the following, which may be accepted as documentation of immunization without a health practitioner's signature: a foreign nation, NYS Countermeasure Data Management System (CDMS), the NYS Immunization Information System (NYIIS), City Immunization Registry (CIR), a Department-recognized immunization registry of another state, or an electronic health record system; or

(iii) any other documentation determined acceptable by the Department.

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(c) Covered entities shall continuously require personnel to be fully vaccinated against COVID-19, absent receipt of an exemption as allowed below. Covered entities shall require all personnel to receive at least their first dose before engaging in activities covered under paragraph (2) of subdivision (a) of this section. Documentation of such vaccination shall be made in personnel records or other appropriate records in accordance with applicable privacy laws, except as set forth in subdivision (d) of this section.

(d) Exemptions. Personnel shall be exempt from the COVID-19 vaccination requirements set forth in subdivision (c) of this section as follows:

(1) Medical exemption. If any licensed physician, physician assistant, or certified nurse practitioner certifies that immunization with COVID-19 vaccine is detrimental to the health of member of a covered entity's personnel, based upon a pre-existing health condition, the requirements of this section relating to COVID-19 immunization shall be inapplicable only until such immunization is found no longer to be detrimental to such personnel member's health. The nature and duration of the medical exemption must be stated in the personnel employment medical record, or other appropriate record, and must be in accordance with generally accepted medical standards, (see, for example, the recommendations of the Advisory Committee on Immunization Practices of the U.S. Department of Health and Human Services), and any reasonable accommodation may be granted and must likewise be documented in such record. Covered entities shall document medical exemptions in personnel records or other appropriate records in accordance with applicable privacy laws by: (i) September 27, 2021 for general hospitals and nursing homes; and (ii) October 7, 2021 for all other covered entities. For all covered entities, documentation must occur continuously, as needed, following the initial dates for compliance specified herein, including documentation of any reasonable accommodation therefor.

(e) Upon the request of the Department, covered entities must report and submit documentation, in a manner and format determined by the Department, for the following:

(1) the number and percentage of personnel that have been vaccinated against COVID-19;

(2) the number and percentage of personnel for which medical exemptions have been granted;

(3) the total number of covered personnel.

(f) Covered entities shall develop and implement a policy and procedure to ensure compliance with the provisions of this section and submit such documents to the Department upon request.

(g) The Department may require all personnel, whether vaccinated or unvaccinated, to wear an appropriate face covering for the setting in which such personnel are working in a covered entity. Covered entities shall supply face coverings required by this section at no cost to personnel.

Subparagraph (vi) of paragraph (10) of subdivision (b) of Section 405.3 of Part 405 is added to read as follows:

(vi) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation immediately available upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (5) of subdivision (a) of Section 415.19 of Part 415 is added to read as follows:

(5) collects documentation of COVID-19 or documentation of a valid medical exemption to such vaccination, for all personnel pursuant to section 2.61 of this title, in accordance with applicable privacy laws, and making such documentation immediately available upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (7) of subdivision (d) of Section 751.6 is added to read as follows:

(7) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (6) of subdivision (c) of Section 763.13 is added to read as follows:

(6) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (7) of subdivision (d) of Section 766.11 is added to read as follows:

(7) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (8) of subdivision (d) of Section 794.3 is added to read as follows:

(8) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (5) of subdivision (q) of Section 1001.11 is added to read as follows:

(5) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of this Title, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (18) of subdivision (a) of Section 487.9 of Title 18 is added to read as follows:

(18) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of Title 10, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (14) of subdivision (a) of Section 488.9 of Title 18 is added to read as follows:

(14) documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of Title 10, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

Paragraph (15) of subdivision (a) of Section 490.9 of Title 18 is added to read as follows:

(15) Operator shall collect documentation of COVID-19 vaccination or a valid medical exemption to such vaccination, pursuant to section 2.61 of Title 10, in accordance with applicable privacy laws, and making such documentation available immediately upon request by the Department, as well as any reasonable accommodation addressing such exemption.

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 February 21, 2022.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in Public Health Law (PHL) Sections 225(5), 2800, 2803(2), 3612 and 4010 (4). PHL 225(5) authorizes the Public Health and Health Planning Council (PHHPC) to issue regulations in the State Sanitary Code pertaining to any matters affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises.

PHL Article 28 (Hospitals), Section 2800 specifies that "hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article."

PHL Section 2803(2) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities. PHL Section 3612 authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies. PHL Section

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4010 (4) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, with respect to hospice organizations.

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

Legislative Objectives:

The legislative objective of PHL Section 225 empowers PHHPC to address any issue affecting the security of life or health or the preservation and improvement of public health in the state of New York, including designation and control of communicable diseases and ensuring infection control at healthcare facilities and any other premises. PHL Article 28 specifically addresses the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. PHL Article 36 addresses the services rendered by certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies. PHL Article 40 declares that hospice is a socially and financially beneficial alternative to conventional curative care for the terminally ill. Lastly, the legislative objective of SSL Section 461 is to promote the health and well-being of residents of ACFs.

Needs and Benefits:

The vaccine mandate for health care workers, which required general hospital and nursing home personnel to receive their first dose of COVID-19 vaccine by September 27, 2021, and required all other covered entities to receive their first dose of COVID-19 vaccine by October 7, 2021, has greatly increased the percentage of health care workers who are vaccinated against COVID-19. COVID cases, hospitalizations, and deaths are decreasing in New York State, and the continuation of these regulations will help ensure that the epidemiology curve continues downward in furtherance of the New York State Department of Health's mission to reduce morbidity and mortality. These regulations are helping New York State reduce sickness and death from COVID-19.

The Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Since early July, cases have risen more than 10-fold, and over 99 percent of the sequenced recent positives in New York State were the Delta variant. Recent New York State data show that unvaccinated individuals are approximately 5 times as likely to be diagnosed with COVID-19 compared to vaccinated individuals. Those who are unvaccinated have over 10 times the risk of being hospitalized with COVID-19.

The COVID-19 vaccines are safe and effective. They offer the benefit of helping to reduce the number of COVID-19 infections, including the Delta variant, which is a critical component to protecting public health. Certain settings, such as healthcare facilities and congregate care settings, pose increased challenges and urgency for controlling the spread of this disease because of the vulnerable patient and resident populations that they serve. Unvaccinated personnel in such settings have an unacceptably high risk of both acquiring COVID-19 and transmitting the virus to colleagues and/or vulnerable patients or residents, exacerbating staffing shortages, and causing unacceptably high risk of complications.

In response to this significant public health threat, through this emergency regulation, the Department is requiring covered entities to ensure their personnel are fully vaccinated against COVID-19, and to document evidence thereof in appropriate records. Covered entities are also required to review and make determinations on medical exemption requests, and provide reasonable accommodations therefor to protect the wellbeing of the patients, residents and personnel in such facilities. Documentation and information regarding personnel vaccinations as well as exemption requests granted are required to be provided to the Department immediately upon request.

Costs:

Covered entities must ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, as well as any reasonable accommodations. This is a modest investment to protect the health and safety of patients, residents, and personnel, especially when compared to both the direct medical costs and indirect costs of personnel absenteeism.

Cost to State and Local Government:

The State operates several healthcare facilities subject to this regulation. Most county health departments are licensed under Article 28 or Article 36 of the PHL and are therefore also subject to regulation. Similarly, certain counties and the City of New York operate facilities licensed under Article 28. These State and local public facilities would be required to ensure that

personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. They must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, along with any reasonable accommodations.

Although the costs to the State or local governments cannot be determined with precision, the Department does not expect these costs to be significant. State facilities should already be ensuring COVID-19 vaccination among their personnel, subject to State directives. Further, these entities are expected to realize savings as a result of the reduction in COVID-19 in personnel and the attendant loss of productivity and available staff.

Cost to the Department of Health:

There are no additional costs to the State or local government, except as noted above. Existing staff will be utilized to conduct surveillance of regulated parties and to monitor compliance with these provisions.

Local Government Mandates:

Covered entities operated by local governments will be subject to the same requirements as any other covered entity subject to this regulation.

Paperwork:

This measure will require covered entities to ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records along with any reasonable accommodations.

Upon the request of the Department, covered entities must report the number and percentage of total covered personnel, as well as the number and percentage that have been vaccinated against COVID-19 and those who have been granted a medical exemption, along with any reasonable accommodations. Facilities and agencies must develop and implement a policy and procedure to ensure compliance with the provisions of this section, making such documents available to the Department upon request.

Duplication:

This regulation will not conflict with any state or federal rules.

Alternatives:

One alternative would be to require covered entities to test all personnel in their facility before each shift worked. This approach is limited in its effect because testing only provides a person's status at the time of the test and testing every person in a healthcare facility every day is impractical and would place an unreasonable resource and financial burden on covered entities if PCR tests couldn't be rapidly turned around before the commencement of the shift. Antigen tests have not proven as reliable for asymptomatic diagnosis to date.

Another alternative to requiring covered entities to mandate vaccination would be to require covered entities to mandate all personnel to wear a fit-tested N95 face covering at all times when in the facility, in order to prevent transmission of the virus. However, acceptable face coverings, which are not fit-tested N95 face coverings have been a long-standing requirement in these covered entities, and, while helpful to reduce transmission it does not prevent transmission and; therefore, masking in addition to vaccination will help reduce the numbers of infections in these settings even further.

Federal Requirements:

There are no minimum standards established by the federal government for the same or similar subject areas.

Compliance Schedule:

These emergency regulations will become effective upon filing with the Department of State and will expire, unless renewed, 90 days from the date of filing. As the COVID-19 pandemic is consistently and rapidly changing, it is not possible to determine the expected duration of need at this point in time. The Department will continuously evaluate the expected duration of these emergency regulations throughout the aforementioned 90-day effective period in making determinations on the need for continuing this regulation on an emergency basis or issuing a notice of proposed rule making for permanent adoption. This notice does not constitute a notice of proposed or revised rule making for permanent adoption.

Regulatory Flexibility Analysis

Effect of Rule:

This regulation will not impact local governments or small businesses unless they operate a covered entity as defined in the emergency regulation. Currently, 5 general hospitals, 79 nursing homes, 75 certified home health agencies (CHHAs), 20 hospices and 1,055 licensed home care service agencies (LHCSAs), and 483 adult care facilities (ACFs) are small businesses (defined as 100 employees or less), independently owned and operated affected by this rule. Local governments operate 19 hospitals, 137 diagnostic and treatment facilities, 21 nursing homes, 12 CHHAs, at least 48 LHCSAs, 1 hospice, and 2 ACFs.

Compliance Requirements:

Covered entities are required to ensure their personnel are fully vac-

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cinated against COVID-19, and to document evidence thereof in appropriate records. Covered entities are also required to review and make determinations on medical exemption requests, along with any reasonable accommodations.

Upon the request of the Department, covered entities must report the number and percentage of total covered personnel, as well as the number and percentage that have been vaccinated against COVID-19 and those who have been granted a medical exemption, along with any reasonable accommodations. Facilities and agencies must develop and implement a policy and procedure to ensure compliance with the provisions of this section, making such documents available to the Department upon request.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

Covered entities must ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, along with any reasonable accommodations. This is a modest investment to protect the health and safety of patients, residents, and personnel, especially when compared to both the direct medical costs and indirect costs of personnel absenteeism.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the Department since March of 2020. Further, the Department currently has an emergency regulation in place, which requires nursing homes and adult care facilities to offer COVID-19 vaccination to personnel and residents, which has helped to facilitated vaccination of personnel. Further, it is the Department's understanding that many facilities across the State have begun to impose mandatory vaccination policies. Lastly, on August 18, 2021, President Biden announced that as a condition of participating in the Medicare and Medicaid programs, the United States Department of Health and Human Services will be developing regulations requiring nursing homes to mandate COVID-19 vaccination for workers.

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small businesses and local governments were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity to provide comments during the notice and comment period.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

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

The following 44 counties have an estimated population of less than 200,000 based upon 2020 United States Census data:

| | | |
|--------------------|-------------------|---------------------|
| 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 do have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon 2019 United States Census population projections:

Albany County

Monroe County

Orange County

Broome County

Niagara County

Saratoga County

Dutchess County

Oneida County

Suffolk County

Erie County

Onondaga County

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

Covered entities are required to ensure their personnel are fully vaccinated against COVID-19, and to document evidence thereof in appropriate records. Covered entities are also required to review and make determinations on medical exemption requests, along with any reasonable accommodations.

Upon the request of the Department, covered entities must report the number and percentage of total covered personnel, as well as the number and percentage that have been vaccinated against COVID-19 and those who have been granted a medical exemption, along with any reasonable accommodations. Facilities and agencies must develop and implement a policy and procedure to ensure compliance with the provisions of this section, making such documents available to the Department upon request.

Compliance Costs:

Covered entities must ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical exemptions, which must also be documented in personnel or other appropriate records, along with any reasonable accommodations. This is a modest investment to protect the health and safety of patients, residents, and personnel, especially when compared to both the direct medical costs and indirect costs of personnel absenteeism.

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the Department since March of 2020. Further, the Department currently has an emergency regulation in place, which requires nursing homes and adult care facilities to offer COVID-19 vaccination to personnel and residents, which has helped to facilitated vaccination of personnel. Further, it is the Department's understanding that many facilities across the State have begun to impose mandatory vaccination policies. Lastly, on August 18, 2021, President Biden announced that as a condition of participating in the Medicare and Medicaid programs, the United States Department of Health and Human Services will be developing regulations requiring nursing homes to mandate COVID-19 vaccination for workers.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity to provide comments during the notice and comment period.

Job Impact Statement

Nature of impact:

Covered entities may terminate personnel who are not fully vaccinated and do not have a valid medical exemption and are unable to otherwise ensure individuals are not engaged in patient/resident care or expose other covered personnel.

Categories and numbers affected:

This rule may impact any individual who falls within the definition of "personnel" who is not fully vaccinated against COVID-19 and does not have a valid medical exemption on file with the covered entity for which they work or are affiliated.

Regions of adverse impact:

The rule would apply uniformly throughout the State and the Department does not anticipate that there will be any regions of the state where the rule would have a disproportionate adverse impact on jobs or employment.

Minimizing adverse impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the Department since March of 2020. Further, the Department currently has an emergency regulation in place, which requires nursing homes and adult care facilities to offer COVID-19 vaccination to personnel and residents, which

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has helped to facilitated vaccination of personnel. Further, it is the Department's understanding that many facilities across the State have begun to impose mandatory vaccination policies. Lastly, on August 18, 2021, President Biden announced that as a condition of participating in the Medicare and Medicaid programs, the United States Department of Health and Human Services will be developing regulations requiring nursing homes to mandate COVID-19 vaccination for workers.

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

Investigation of Communicable Disease; Isolation and Quarantine

I.D. No. HLT-50-21-00002-EP

Filing No. 1177

Filing Date: 2021-11-24

Effective Date: 2021-11-24

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

Proposed Action: Amendment of Part 2 and section 405.3; addition of section 58-1.14 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 225, 576 and 2803

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

Specific reasons underlying the finding of necessity: Where compliance with routine administrative procedures would be contrary to public interest, the State Administrative Procedure Act (SAPA) § 202(6) empowers state agencies to adopt emergency regulations necessary for the preservation of public health, safety, or general welfare. In this case, compliance with SAPA for filing of this 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 the general public.

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

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

New York State first identified cases on March 1, 2020 and thereafter became the national epicenter of the outbreak.

Now, over a year and half after the first cases were identified in the United States, Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Since early July, cases have risen more than 10-fold, and over 99 percent of the sequenced recent positives in New York State were the Delta variant.

Based on the foregoing, the Department has determined that these regulations, while applicable to several diseases, are necessary to promulgate on an emergency basis to control the spread of COVID-19 in New York State. Accordingly, current circumstances necessitate immediate action, and pursuant to the State Administrative Procedure Act Section 206(6), a delay in the issuance of these emergency regulations would be contrary to public interest.

Subject: Investigation of Communicable Disease; Isolation and Quarantine.

Purpose: Control of communicable disease.

Substance of emergency/proposed rule (Full text is posted at the following State website: <https://regs.health.ny.gov/regulations/emergency>): These regulations clarify the authority and duty of the New York State Department of Health ("Department") and local health departments to protect the public in the event of an outbreak of communicable disease,

through appropriate public health orders issued to persons diagnosed with or exposed to a communicable disease. These regulations also require hospitals to report syndromic surveillance data to the Department upon direction from the Commissioner and clarify reporting requirements for clinical laboratories with respect to communicable diseases.

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 February 21, 2022.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for the regulatory amendments to Part 2 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is Section 225 of the Public Health Law (PHL), which authorizes the Public Health and Health Planning Council (PHHPC), subject to the approval of the Commissioner of Health (Commissioner), to establish and amend the State Sanitary Code (SSC) provisions related to any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York. Additionally, Section 2103 of the PHL requires all local health officers to report cases of communicable disease to the New York State Department of Health (Department).

The statutory authority for the proposed new section 58-1.14 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is section 576 of the PHL, which authorizes the Department to adopt regulations prescribing the requirements for the proper operation of a clinical laboratory, including the methods and the manner in which testing or analyses of samples shall be performed and reports submitted.

The statutory authority for the proposed amendments to section 405.3 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is section 2803 of the PHL, which authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objective of PHL § 225 is, in part, to protect the public health by authorizing PHHPC, with the approval of the Commissioner, to amend the SSC to address public health issues related to communicable disease.

The legislative objective of PHL § 576 is, in part, to promote public health by establishing minimum standards for clinical laboratory testing and reporting of test results, including to the Department for purposes of taking prompt action to address outbreaks of disease.

The legislative objective of PHL § 2803 includes among other objectives authorizing PHHPC, with the approval of the Commissioner, to adopt regulations concerning the operation of facilities licensed pursuant to Article 28 of the PHL, including general hospitals.

Needs and Benefits:

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

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

Now, over a year and half after the first cases were identified in the United States, Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Since early July, cases have risen more than

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10-fold, and over 99 percent of the sequenced recent positives in New York State were the Delta variant.

In light of this situation, these regulations update, clarify and strengthen the Department's authority as well as that of local health departments to take specific actions to control the spread of disease, including actions related to investigation and response to a disease outbreak, as well as the issuance of isolation and quarantine orders.

The following is a summary of the amendments to the Department's regulations:

Part 2 Amendments:

- Relocate and update definitions, and add new definitions
- Repeal and replace current section 2.6, related to investigations, to make existing clarify local health department authority.
- Sets forth specific actions that local health departments must take to investigate a case, suspect case, outbreak, or unusual disease.
- Requires individuals and entities subject to a public health investigation to cooperate with the Department and local health departments.
- While the Department works collaboratively with local health departments on a variety of public health issues, including disease control, this regulation clarifies the authority for the Commissioner to lead disease investigation activities under certain circumstances (i.e., where there is potential for statewide impact, multiple jurisdictions impacted, or impact on one or more New York State jurisdictions and another state or states), while working collaboratively with impacted local health departments. In all other situations, local health departments retain the primary authority and responsibility to control communicable disease within their respective jurisdictions, with the Department providing assistance as needed.

(i) Codifies in regulation the requirement that local health departments send reports the Department during an outbreak.

- New section 2.13 added to clarify isolation and quarantine procedures.
- Clarify that the State Department of Health has the authority to issue isolation and quarantine orders, as do local departments of health.
- Clarifies locations where isolation or quarantine may be appropriate.
- Sets forth requirements for the content of isolation and quarantine orders.
- Specifies other procedures that apply when a person is isolated or quarantined.

- Explicitly states that violation of an order constitutes grounds for civil and/or criminal penalties

- Relocates and updates existing regulatory requirements that require the attending physician to report cases and suspected cases to the local health authority, and to requires physicians to provide instructions concerning how to protect others.

Part 58 Amendments

- New section 58-1.14 added clarifying reporting requirements for certain communicable diseases

- Requires the Commissioner to designate those communicable disease that require prompt action, and to make available a list of such disease on the State Department of Health website.

- Requires clinical laboratories to immediately report positive test results for communicable diseases identified as requiring prompt attention, in a manner and format identified by the Commissioner.

- Requires clinical laboratories to report all test result, including negative and indeterminate results, for communicable diseases identified as requiring prompt attention, via the Electronic Clinical Laboratory Reporting System (ECLRS).

Part 405 Amendments

- Mandates hospitals to report syndromic surveillance data during an outbreak of a highly contagious communicable disease.

• Permits the Commissioner to direct hospitals to take patients during an outbreak of a highly contagious communicable disease, which is consistent with the federal Emergency Medical Treatment and Labor Act (EMTALA).

Costs:

Costs to Regulated Parties:

The requirement that hospital submit syndromic surveillance reports when request during an outbreak is not expected to result in any substantial costs. Hospitals are already regularly and voluntarily submitting data to the Department, and nearly all of them submit such reports electronically. With regard to the Commissioner directing general hospitals to accept patients during an outbreak of a highly contagious communicable disease, hospitals are already required to adhere to the federal Emergency Medical Treatment and Labor Act (EMTALA). Accordingly, both of these proposed amendments will not impose any substantial additional cost to hospitals.

Clinical laboratories must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102. The regulation simply clarifies existing requirements and is not anticipated to impose any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

Although there are costs associated with disease investigation and response for any outbreak, these regulations clarify and strengthen the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs beyond what local health departments would incur in the absence of these regulations.

Costs to Local and State Governments:

Although there are costs associated with disease investigation and response for any outbreak, these regulations clarify and strengthen the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs beyond what local health departments would incur in the absence of these regulations. Further, making explicit the Department's authority to lead investigation activities will result in increased coordination of resources, likely resulting in a cost-savings for State and local governments.

Any clinical laboratories operated by a local government must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102. The regulation simply clarifies existing requirements and is not anticipated to impose any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

To the extent that the State Department of Health and local health departments issue isolation and quarantine orders in response to COVID-19, such actions will impose costs upon the state. As the scope of any outbreak is difficult to predict, the cost to the State of issuing such orders cannot be predicted at this time.

Paperwork:

Some hospitals may be required to make additional syndromic surveillance reports that they are not already making. Otherwise, these regulations do not require any additional paperwork.

Local Government Mandates:

Under existing regulation, local health departments already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments clarify these existing authorities and duties.

Duplication:

There is no duplication in existing State or federal law.

Alternatives:

The alternative would be to leave in place the current regulations on disease investigation and isolation and quarantine. However, many of these regulatory provisions have not been updated in fifty years and should be modernized to ensure appropriate response to a disease outbreak, such as COVID-19.

Federal Standards:

States and local governments have primary authority for controlling disease within their respective jurisdictions. Accordingly, there are no federal statutes or regulations that apply to disease control within NYS.

Compliance Schedule:

These emergency regulations will become effective upon filing with the Department of State and will expire, unless renewed, 90 days from the date of filing. As the COVID-19 pandemic is consistently and rapidly changing, it is not possible to determine the expected duration of need at this point in time. The Department will continuously evaluate the expected duration of these emergency regulations throughout the aforementioned 90-day effective period in making determinations on the need for continuing this regulation on an emergency basis or issuing a notice of proposed rulemaking for permanent adoption. This notice does not constitute a notice of proposed or revised rule making for permanent adoption.

Regulatory Flexibility Analysis

Effect of Rule:

Under existing regulation, local health departments already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments clarify these existing authorities and duties.

Compliance Requirements:

Under existing regulation, local health departments already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments clarify these existing authorities and duties. With respect to mandating syndromic surveillance reporting during an outbreak of a highly infectious communicable disease, hospitals are already reporting syndromic surveillance data regularly and voluntarily.

With respect to clinical laboratories, they must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102. The regulation simply clarifies existing requirements and is not anticipated to impose any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

Professional Services:

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

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Compliance Costs:

Although there are costs associated with disease investigation and response for any outbreak, these regulations clarify and strengthen the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs beyond what local health departments would incur in the absence of these regulations.

Further, making explicit the Department's authority to lead investigation activities will result in increased coordination of resources, likely resulting in a cost-savings for State and local governments.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

As the proposed regulations largely clarify existing responsibility and duties among regulated entities and individuals, any adverse impacts are expected to be minimal. The Department, however, will work with regulated entities to ensure they are aware of the new regulations and have the information necessary to comply.

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small business and local governments were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity provided comments during the notice and comment period.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

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

The following 44 counties have a population of less than 200,000 based upon 2020 United States Census data:

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

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

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

As the proposed regulations largely clarify existing responsibilities and duties among regulated entities and individuals, no additional recordkeeping, compliance requirements, or professional services are expected. With respect to mandating syndromic surveillance reporting during an outbreak of a highly infectious communicable disease, hospitals are already reporting syndromic surveillance data regularly and voluntarily. Additionally,

the requirement for local health departments to continually report to the Department during an outbreak is historically a practice that already occurs. With respect to clinical laboratories, they must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102.

Compliance Costs:

As the proposed regulations largely clarify existing responsibility and duties among regulated entities and individuals, no initial or annual capital costs of compliance are expected above and beyond the cost of compliance for the requirements currently in Parts 2, 58 and 405.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

As the proposed regulations largely clarify existing responsibility and duties among regulated entities and individuals, any adverse impacts are expected to be minimal. The Department, however, will work with local health departments to ensure they are aware of the new regulations and have the information necessary to comply.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity provided comments during the notice and comment period.

Job Impact Statement

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

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Face Coverings for COVID-19 Prevention

I.D. No. HLT-50-21-00003-EP

Filing No. 1178

Filing Date: 2021-11-24

Effective Date: 2021-11-24

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

Proposed Action: Repeal of section 2.60 and Subpart 66-3; addition of new section 2.60 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 201, 206 and 225

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

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

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

Now, over a year and half after the first cases were identified in the United States, Centers for Disease Control and Prevention (CDC) and the Department have identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Cases in New York are over 10-fold their levels in late June 2021, and greater than 99 percent of the sequenced recent positives in New York State were the Delta variant.

To that end, these regulations provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread. Based on

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the foregoing, the Department has determined that these emergency regulations are necessary to control the spread of COVID-19, necessitating immediate action. Accordingly, pursuant to the State Administrative Procedure Act Section 202(6), a delay in the issuance of these emergency regulations would be contrary to public interest.

Subject: Face Coverings for COVID-19 Prevention.

Purpose: To control and promote the control of communicable diseases to reduce their spread.

Text of emergency/proposed rule: Subpart 66-3 is hereby repealed.

Section 2.60 is repealed and replaced to read as follows:

2.60. Face Coverings for COVID-19 Prevention

(a) As determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread, any person who is over age two and able to medically tolerate a face-covering may be required to cover their nose and mouth with a mask or face-covering when: (1) in a public place and unable to maintain, or when not maintaining, social distance; or (2) in certain settings as determined by the Commissioner, which may include schools, public transit, homeless shelters, correctional facilities, nursing homes, and health care settings, and which may distinguish between individuals who are vaccinated against COVID-19 and those that are not vaccinated. The Commissioner shall issue findings regarding the necessity of face-covering requirements at the time such requirements are announced.

(b) Businesses must provide, at their expense, face-coverings for their employees required to wear a mask or face-covering pursuant to subdivision (a) of this section.

(c) large-scale indoor event venues with more than five thousand attendees shall require patrons to wear face coverings consistent with subdivision (a) of this section; may require all patrons to wear a face covering irrespective of vaccination status; and may deny admittance to any person who fails to comply. This regulation shall be applied in a manner consistent with the federal American with Disabilities Act, New York State or New York City Human Rights Law, and any other applicable provision of law.

(d) No business owner shall deny employment or services to or discriminate against any person on the basis that such person elects to wear a face-covering that is designed to inhibit the transmission of COVID-19, but that is not designed to otherwise obscure the identity of the individual.

(e) For purposes of this section face-coverings shall include, but are not limited to, cloth masks, surgical masks, and N-95 respirators that are worn to completely cover a person's nose and mouth.

(f) Penalties and enforcement.

(i) A violation of any provision of this Section is subject to all civil and criminal penalties as provided for by law. Individuals or entities that violate this Section are subject to a maximum fine of \$1,000 for each violation. For purposes of civil penalties, each day that an entity operates in a manner inconsistent with the Section shall constitute a separate violation under this Section.

(ii) All local health officers shall take such steps as may be necessary to enforce the provisions of this Section accordance with the Public Health Law and this Title.

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 February 21, 2022.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority for adding a new Section 2.60 is sections 201, 206, and 225 of the Public Health Law.

Legislative Objectives:

The legislative objective of PHL § 201 includes authorizing the New York State Department of Health ("Department") to control and promote the control of communicable diseases to reduce their spread. Likewise, the legislative objective of PHL § 206 includes authorizing the Commissioner of Health to take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law, including control of communicable diseases. The legislative objective of Public Health Law § 225 is, in part, to protect the public health by authorizing

PHHPC, with the approval of the Commissioner, to amend the State Sanitary Code to address public health issues related to communicable disease.

Needs and Benefits:

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

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

Now, over a year and half after the first cases were identified in the United States, Centers for Disease Control and Prevention (CDC) and the Department have identified a concerning national trend of increasing circulation of the SARS-CoV-2 Delta variant. Cases in New York are over 10-fold their levels in late June 2021, and greater than 99 percent of the sequenced recent positives in New York State were the Delta variant.

These regulations provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread.

Costs:

Costs to Regulated Parties:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, this regulation does not impose additional costs to regulated parties.

Costs to Local and State Governments:

State and local government are authorized to enforce civil and criminal penalties related to the violation of these regulations, and there may be some cost of enforcement, however such costs are anticipated to be minimal as these provisions continue existing enforcement requirements.

Paperwork:

This regulation imposes no additional paperwork.

Local Government Mandates:

As part of ongoing efforts to address the COVID-19 pandemic, local governments have been a partner in implementing and enforcing measures to limit the spread and/or mitigate the impact of COVID-19 within their jurisdictions since March of 2020. Further, local governments have separate authority and responsibilities to control disease within their jurisdictions pursuant to PHL sec. 2100 and Part 2 of the State Sanitary Code.

Duplication:

There is no duplication of federal law.

Alternatives:

The alternative would be to not promulgate these emergency regulations. However, this alternative was rejected, as the Department believes this regulation will facilitate the Department's ability to respond to the evolving nature of this serious and ongoing communicable disease outbreak.

Federal Standards:

States and local governments have primary authority for controlling disease within their respective jurisdictions. Accordingly, there are no federal statutes or regulations that apply to disease control within NYS.

Compliance Schedule:

The regulations will become effective upon filing with the Department of State and will expire, unless renewed, 90 days from the date of filing. As the COVID-19 pandemic is consistently and rapidly changing, it is not possible to determine the expected duration of need at this point in time. The Department will continuously evaluate the expected duration of these emergency regulations throughout the aforementioned 90-day effective period in making determinations on the need for continuing this regulation on an emergency basis or issuing a notice of proposed rule-making for permanent adoption. This notice does not constitute a notice of proposed or revised rule making for permanent adoption.

Regulatory Flexibility Analysis

Effect of Rule:

As part of ongoing efforts to address the COVID-19 pandemic, businesses and local government have been a partner in implementing

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measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, this regulation will not have a significant impact on or cost to small business and local government.

Compliance Requirements:

These regulations update previously filed emergency regulations to provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread.

Professional Services:

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

Compliance Costs:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, this regulation will not have a significant impact.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, any adverse impacts are expected to be minimal.

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis**Types and Estimated Numbers of Rural Areas:**

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

The following 44 counties have an estimated population of less than 200,000 based upon the 2019 United States Census county populations projections:

| | | |
|--------------------|--------------------|---------------------|
| 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 population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the 2019 United States Census population projections:

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

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

These regulations update previously filed emergency regulations to provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread.

Compliance Costs:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, this regulation does not impose additional costs to regulated parties.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, adverse impacts are expected to be minimal.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted.

Job Impact Statement

The Department of Health has determined that this regulatory change is necessary to prevent further complete closure of the businesses impacted, and therefore, while there may be lost revenue for many businesses, the public health impacts of continued spread of COVID-19 are much greater.

EMERGENCY/PROPOSED**RULE MAKING****NO HEARING(S) SCHEDULED****Personal Caregiving and Compassionate Caregiving Visitors in Nursing Homes (NH's) and Adult Care Facilities (ACF's)****I.D. No.** HLT-50-21-00004-EP**Filing No.** 1179**Filing Date:** 2021-11-26**Effective Date:** 2021-11-26

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

Proposed Action: Amendment of section 415.3 of Title 10 NYCRR; addition of section 485.18 to Title 18 NYCRR.

Statutory authority: Public Health Law, sections 2801-h, 2803; Social Services Law, sections 461, 461-e and 461-u

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

Specific reasons underlying the finding of necessity: Chapter 108 of the Laws of 2021, which amended Public Health Law (PHL) § 2801-h and Social Services Law (SSL) § 461-u, requires nursing homes and adult care facilities (ACFs) to permit personal and compassionate caregiving visitations. The new law became effective immediately and required that regulations be promulgated within forty-five days after enactment. Thus, the law authorized the promulgation of emergency regulations.

The purpose of the new law is to benefit the health and general well-being of nursing home and ACF residents. This emergency rulemaking is necessary to satisfy the statutory requirement, provide clarity to facility operators and administrators as well as residents and their families regarding the process for implementing personal caregiving requirements under the newly enacted law.

Furthermore, throughout the COVID-19 pandemic, visitation guidance for long-term care facilities has been issued by several authorities, including the Department and federal Centers for Medicare & Medicaid Services (CMS). Facility outreach to the Department and surveillance activities show that many nursing homes and adult care facilities have not appropriately adhered to these guidance documents or have implemented their own form of personal caregiving visitation policies. This emergency rulemaking will assist facilities in understanding their legal obligations with respect to visitation, for the purposes of preparing the facility's visitation policies and procedures in the event of a declared State or local public health emergency, by providing additional information as to who may access a facility during periods of visitation closure, and what, if any, restrictions can be implemented on personal caregiving and compassionate caregiving visitation.

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Subject: Personal Caregiving and Compassionate Caregiving Visitors in Nursing Homes (NH's) and Adult Care Facilities (ACF's).

Purpose: To require NH's and ACF's to establish policies and procedures relating to personal caregiving and compassionate caregiving visitors.

Substance of emergency/proposed rule (Full text is posted at the following State website: <https://regs.health.ny.gov/regulations/emergency>): These regulations are intended to implement section 2801-h of the Public Health Law (PHL) and section 461-u of the Social Services Law (SSL), as enacted by Chapter 108 of the Laws of 2021. These statutory amendments required the Commissioner of Health to promulgate regulations governing personal caregiving visitors in all licensed nursing homes and adult care facilities. According to the statute, a "personal caregiving visitor" means a family member, close friend, or legal guardian of a resident designated by such resident, or such resident's lawful representative, to assist with personal caregiving or compassionate caregiving for the resident. Personal caregiving is defined as care and support of a resident to benefit such resident's mental, physical, or social well-being, and compassionate caregiving is defined as personal caregiving provided in anticipation of the end of the resident's life or in the instance of significant mental, physical or social decline or crisis (see PHL § 2801-h[1][a-c], SSL § 461-u[1][a-c]).

In accordance with the statutory directive, the new regulatory sections amend 10 NYCRR 415.3(d) to add new paragraphs (3), (4), and (5) concerning, respectively, personal caregiving visitation, additional provisions relating to compassionate caregiving, and authority for the Department of Health to review a nursing home's personal caregiving visitation policies and procedures. Likewise, for adult care facilities, the regulation adds a new section 485.18 of 18 NYCRR to address general visitation rights in an adult care facility (section 485.18[b]), personal caregiving visitation (section 485.18[c]), additional provisions relating to compassionate caregiving (section 485.18[d]), and authority for the Department of Health to review an adult care facility's personal caregiving visitation policies and procedures (section 485.18[e]).

More specifically, the regulatory amendments relating to personal caregiving visitation, as contained in the new 10 NYCRR 415.3(d)(3) and 18 NYCRR 485.18(c), provide that such visitation shall be permitted in a nursing home and adult care facility during a public health emergency declared under section twenty-four or section twenty-eight of the Executive Law, notwithstanding general visitation restrictions in the facility, and subject to certain limitations, including the need to limit or temporarily suspend personal caregiving visitation due to an increase in local infection rates, temporary inadequate staff capacity, an acute emergency situation such as loss of an essential service, or because the personal caregiving visitor poses a threat to the safety and well-being of the resident or any resident or personnel in the facility. The regulations governing personal caregiving visitation further: (i) set forth procedures for residents or their lawful representatives to designate and change their designation of personal caregiving visitors; (ii) provide that a resident shall be entitled to designate at least two personal caregiving visitors; (iii) require that all personal caregiving visitors follow infection prevention safety protocols required for nursing home and adult care facility staff, such as communicable disease testing, health screenings, and donning appropriate personal protective equipment; and (iv) set forth standards for a facility to determine the maximum frequency and duration of personal caregiving visits and the total number of personal caregiving visitors allowed to visit the facility at any one time.

The new 10 NYCRR 415.3(d)(4) and 18 NYCRR 485.18(d) establish additional provisions for compassionate caregiving provided by personal caregiving visitors. These sections set forth the situations in which a resident is eligible for a compassionate caregiving visitor and the requirements for screening compassionate caregiving visitors prior to their entry into the facility.

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 February 23, 2022.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

The statutory authority is provided under sections 2801-h and 2803 of the Public Health Law (PHL) and sections 461, 461-e, and 461-u of the Social Services Law (SSL).

PHL § 2801-h and SSL § 461-u specifically authorize the New York State Department of Health (Department) to promulgate regulations relating to personal caregiving visitors and compassionate caregiving visitors in nursing homes and adult care facilities (ACFs).

SSL § 461 requires the Department to promulgate regulations establishing general standards applicable to ACFs. SSL § 461-e authorizes the Department to promulgate regulations to require ACFs to maintain certain records with respect to the facilities' residents and the operation of the facility.

Legislative Objectives:

The legislative objective of PHL § 2801-h and SSL § 461-u is to ensure residents' rights to visitation are respected by allowing residents of nursing homes and ACFs to have access to their designated personal caregiving visitors and compassionate caregiving visitors during a declared State or local public health emergency. Further, the legislative objective of SSL § 461 is to promote the health and well-being of residents of ACFs.

Needs and Benefits:

These regulations are necessary pursuant to the statutory directives in PHL § 2801-h and SSL § 461-u, which direct the Commissioner of Health to promulgate regulations governing personal caregiving visitation and compassionate caregiving visitation in nursing homes and ACFs during a declared State or local public health emergency.

These regulations are beneficial insofar as they will provide clarity to facility operators and administrators, residents, and their family members regarding whether certain visitors are permitted to access a nursing home or ACF during a declared local or State health emergency, notwithstanding any visitation restrictions currently in effect within the facility.

Costs:

Costs to Regulated Parties:

There are no anticipated costs to regulated parties. The regulations require facilities to establish policies and procedures regarding personal caregiving visitation and compassionate caregiving visitation that comply with these regulations and the governing statutes, PHL § 2801-h and SSL § 461-u. Insofar as facilities are obligated to establish policies and procedures for other facility operations, this responsibility should be managed using existing resources.

Costs to Local and State Governments:

There are no anticipated costs to any regulated parties, including nursing homes and ACFs operated by a local or State government.

Costs to the Department of Health:

This regulation will not result in any additional operational costs to the Department of Health. Any increased surveillance and enforcement activities relating to this regulation will be handled with existing resources.

Paperwork:

This regulation requires facilities to develop and maintain visitation policies relating to personal caregiving visitation and compassionate caregiving visitation. However, this requirement is expected to be of minimal burden to facilities, which are currently obligated to develop and maintain other policies and procedures relating to facility operations, and the requirements for such visitation policies and procedures are thoroughly detailed in these regulations and the governing statutes, PHL § 2801-h and SSL § 461-u.

Local Government Mandates:

Nursing homes and ACFs operated by local governments will be affected and will be subject to the same requirements as any other nursing home licensed under PHL Article 28 or ACF licensed under SSL Article 7, Title 2. Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two adult care facilities operated by county governments.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

There are no viable alternatives. The alternative of not issuing these regulations was rejected given the statutory directive to promulgate these regulations, pursuant to PHL § 2801-h and SSL § 461-u.

Federal Standards:

The federal Centers for Medicare & Medicaid Services (CMS) has issued visitation guidance applicable to Medicaid- and Medicare-enrolled nursing homes, titled "Nursing Home Visitation - COVID-19 (REVISED)" (QSO-20-39-NH), revised November 12, 2021. This visitation guidance discusses general visitation in nursing homes including compassionate care visitation. The Department has reviewed this CMS guidance and finds that the proposed regulations are consistent with the CMS guidance insofar as they both relate to compassionate care visitation in nursing homes. No other federal standards apply.

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect of Rule:

This regulation will not impact local governments or small businesses

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unless they operate a nursing home or adult care facility (ACF). Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two ACFs operated by county governments (Chenango and Warren Counties). Additionally, to date, 79 nursing homes in New York qualify as small businesses given that they have 100 or fewer employees. There are also 483 ACFs that have 100 or fewer employees and therefore qualify as small businesses.

Compliance Requirements:

This regulation requires nursing homes and ACFs to develop policies and procedures relating to compassionate caregiver visitation and personal caregiver visitation that are consistent with these regulations and the governing statutes, Public Health Law (PHL) § 2801-h and Social Services Law (SSL) § 461-u.

Professional Services:

No professional services are required by this regulation.

Compliance Costs:

There are no costs associated with this regulation.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

This regulation is consistent with resident right standards and current CMS and Department visitation guidance. Therefore, the Department expects no adverse impact to facilities given that nursing homes and ACFs are currently required to comply with similar standards and are expected to have already developed policies and procedures in accordance with those existing standards. In any event, the Department is required by PHL § 2801-h and SSL § 461-u to promulgate these regulations; as such, any adverse impact on covered facilities cannot be avoided due to the statutory mandate.

Small Business and Local Government Participation:

Facilities were put on notice of the forthcoming promulgation of these regulations upon the enactment of PHL § 2801-h and SSL § 461-u, as enacted by Chapter 108 of the Laws of 2021. Additionally, the Department plans to advise all facilities, including those operated by small businesses and local governments, of the publication of these regulations and the opportunity to submit any questions relating to such regulations to the Department.

Rural Area Flexibility Analysis**Types and Estimated Numbers of Rural Areas:**

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

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

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

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

| | | |
|-----------------|-----------------|-----------------|
| Albany County | Monroe County | Orange County |
| Broome County | Niagara County | Saratoga County |
| Dutchess County | Oneida County | Suffolk County |
| Eric County | Onondaga County | |

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

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

This regulation imposes no additional paperwork.

Compliance Costs:

There are no costs associated with this regulation.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

This regulation is consistent with resident right standards and current CMS and Department visitation guidance. Therefore, the Department expects no adverse impact to facilities given that nursing homes and ACFs are currently required to comply with similar standards and are expected to have already developed policies and procedures in accordance with those existing standards. In any event, the Department is required by PHL § 2801-h and SSL § 461-u to promulgate these regulations; as such, any adverse impact on covered facilities cannot be avoided due to the statutory mandate.

Rural Area Participation:

Facilities were put on notice of the forthcoming promulgation of these regulations upon the enactment of PHL § 2801-h and SSL § 461-u, as enacted by Chapter 108 of the Laws of 2021. Additionally, the Department plans to advise all facilities, including those located in rural areas, of the publication of these regulations and the opportunity to submit any questions relating to such regulations to the Department.

Job Impact Statement

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

Public Service Commission

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-12-21-00008-A

Filing Date: 2021-11-24

Effective Date: 2021-11-24

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

Action taken: On 11/18/21, the PSC adopted an order approving Sherman Terrace Cooperative, Inc.'s (Sherman Terrace) notice of intent to submeter electricity at 1010 Sherman Ave, Bronx, New York.

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

Subject: Submetering of electricity.

Purpose: To approve Sherman Terrace's notice of intent to submeter electricity.

Substance of final rule: The Commission, on November 18, 2021, adopted an order approving Sherman Terrace Cooperative, Inc.'s notice of intent to submeter electricity at 1010 Sherman Ave, Bronx, New York, located in the service territory of Consolidated Edison Company of New York, Inc., 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.

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Rule Making Activities

(21-E-0125SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-21-21-00016-A

Filing Date: 2021-11-24

Effective Date: 2021-11-24

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

Action taken: On 11/18/21, the PSC adopted an order approving Madison 465 W LLC's (Madison 465 W) notice of intent to submeter electricity at 465 Washington Street, New York, New York.

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

Subject: Submetering of electricity.

Purpose: To approve Madison 465 W's notice of intent to submeter electricity.

Substance of final rule: The Commission, on November 18, 2021, adopted an order approving Madison 465 W LLC's notice of intent to submeter electricity at 465 Washington Street, New York, New York., located in the service territory of Consolidated Edison Company of New York, Inc., 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 number 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.

(21-E-0234SA1)

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-21-21-00017-A

Filing Date: 2021-11-24

Effective Date: 2021-11-24

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

Action taken: On 11/18/21, the PSC adopted an order approving DELSHAH-OTL-START 22 JV LLC's (DELSHAH) notice of intent to submeter electricity at 22 Chapel Street, Brooklyn, New York.

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

Subject: Submetering of electricity.

Purpose: To approve DELSHAH's notice of intent to submeter electricity.

Substance of final rule: The Commission, on November 18, 2021, adopted an order approving DELSHAH-OTL-START 22 JV LLC's notice of intent to submeter electricity at 22 Chapel Street, Brooklyn, New York., located in the service territory of Consolidated Edison Company of New York, Inc., 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 number 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.

(21-E-0198SA1)

NOTICE OF ADOPTION

Submetering of Electricity and Waiver Request

I.D. No. PSC-26-21-00007-A

Filing Date: 2021-11-24

Effective Date: 2021-11-24

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

Action taken: On 11/18/21, the PSC adopted an order approving 445 Gerard LLC's (445 Gerard) petition to submeter electricity at 445 Gerard Avenue, Bronx, New York and request for waiver of the energy audit requirements in 16 NYCRR section 96.5(k)(3).

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

Subject: Submetering of electricity and waiver request.

Purpose: To approve 445 Gerard's petition to submeter electricity and waiver request.

Substance of final rule: The Commission, on November 18, 2021, 445 Gerard LLC's petition to submeter electricity at 445 Gerard Avenue, Bronx, New York, located in the service territory of Consolidated Edison Company of New York, Inc. and request for waiver of the energy audit and energy efficiency plan requirements contained in 16 NYCRR § 96.5(k)(3), 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 number 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.

(21-E-0233SA1)

NOTICE OF ADOPTION

Submetering of Electricity and Waiver Request

I.D. No. PSC-30-21-00009-A

Filing Date: 2021-11-24

Effective Date: 2021-11-24

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

Action taken: On 11/18/21, the PSC adopted an order approving 111 Varick, LLC's (111 Varick) notice of intent to submeter electricity at 111 Varick Street, New York, New York and request for waiver of the energy audit requirements in 16 NYCRR section 6.5(k)(3).

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

Subject: Submetering of electricity and waiver request.

Purpose: To approve 111 Varick's notice of intent to submeter electricity and waiver request.

Substance of final rule: The Commission, on November 18, 2021, adopted an order approving 111 Varick, LLC's notice of intent to submeter electricity at 111 Varick Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. and request for waiver of the energy audit and energy efficiency plan requirements contained in 16 NYCRR § 96.5(k)(3), 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 number 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.

(21-E-0039SA1)

Rule Making Activities

NYS Register/December 15, 2021

NOTICE OF ADOPTION

Petition for Waiver of Cable Television Franchise Provisions

I.D. No. PSC-31-21-00009-A

Filing Date: 2021-11-24

Effective Date: 2021-11-24

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

Action taken: On 11/18/21, the PSC adopted an order granting the Village of Woodbury's (Woodbury) petition for waiver of the provisions in 16 NYCRR section 894.1 to 894.4 of the Commission's rules regarding initial cable television franchises.

Statutory authority: Public Service Law, sections 215 and 216

Subject: Petition for waiver of cable television franchise provisions.

Purpose: To grant Woodbury's petition for waiver of cable television franchise provisions.

Substance of final rule: The Commission, on November 18, 2021, adopted an order granting the Village of Woodbury's (Woodbury) petition for waiver of the provisions in 16 NYCRR § 894.1 to 894.4 of the Commission's rules, which require certain actions by a municipality before it may negotiate and grant an initial cable television franchise, 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.

(21-V-0286SA1)

NOTICE OF ADOPTION

Request for CPCN and a Lightened Regulatory Regime

I.D. No. PSC-31-21-00010-A

Filing Date: 2021-11-24

Effective Date: 2021-11-24

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

Action taken: On 11/18/21, the PSC adopted an order granting Morris Ridge Solar Energy Center, LLC's (Morris Ridge Solar) request for a Certificate of Public Convenience and Necessity (CPCN) and a lightened ratemaking regulatory regime.

Statutory authority: Public Service Law, sections 2(12), (13), 5(1)(b), 64-69, 69-a, 70-72, 72-a, 105-114, 114-a, 115, 117, 118, 119-b and 119-c

Subject: Request for CPCN and a lightened regulatory regime.

Purpose: To approve Morris Ridge Solar's request for a CPCN and lightened regulatory regime.

Substance of final rule: The Commission, on November 18, 2021, adopted an order granting Morris Ridge Solar Energy Center, LLC's (Morris Ridge Solar) request for a Certificate of Public Convenience and Necessity (CPCN) and a lightened ratemaking regulatory regime in connection with its approximately 177 MW solar generating facility and up to 83 MW of associated energy storage in the Town of Mount Morris, New York, 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.

(21-E-0345SA1)

NOTICE OF ADOPTION

Motion for Waiver

I.D. No. PSC-35-21-00003-A

Filing Date: 2021-11-24

Effective Date: 2021-11-24

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

Action taken: On 11/18/21, the PSC adopted an order granting Empire Offshore Wind LLC's motion for a waiver of certain Commission regulations related to its application for a Certificate of Environmental Compatibility and Public Need pursuant to Public Service Law article VII.

Statutory authority: Public Service Law, sections 4 and 122

Subject: Motion for waiver.

Purpose: To grant Empire Offshore Wind's motion for waiver.

Substance of final rule: The Commission, on November 18, 2021, adopted an order granting Empire Offshore Wind LLC's motion for a waiver of certain Commission regulations related to its application for a Certificate of Environmental Compatibility and Public Need pursuant to Public Service Law article VII, 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.

(21-T-0366SA1)

NOTICE OF ADOPTION

Transfer of Street Lighting Facilities

I.D. No. PSC-35-21-00005-A

Filing Date: 2021-11-24

Effective Date: 2021-11-24

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

Action taken: On 11/18/21, the PSC adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) petition to transfer street lighting facilities located within the Town of Geddes (Geddes) to Geddes.

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

Subject: Transfer of street lighting facilities.

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

Substance of final rule: The Commission, on November 18, 2021, adopted an order approving Niagara Mohawk Power Corporation d/b/a National Grid's (National Grid) petition to transfer street lighting facilities located within the Town of Geddes (Geddes) to Geddes. The authority is granted for one year from the issuance of the order and shall expire if the transaction does not occur within that time period. National Grid shall file with the Secretary, within sixty days of the final transfer of the street lighting facilities to Geddes, a copy of the actual journal entries, including all related workpapers, recorded to account for the transaction, 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.

(21-E-0416SA1)

NYS Register/December 15, 2021

Rule Making Activities

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity and Request for Waiver

I.D. No. PSC-50-21-00005-P

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

Proposed Action: The Commission is considering the notice of intent of BOP Greenpoint D LLC to submeter electricity at 1 Eagle St., 227 West St. and 27 Eagle St., Brooklyn, NY and request for waiver of the requirement of an energy audit pursuant to 16 NYCRR section 96.5(k)(3).

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

Subject: Notice of intent to submeter electricity and request for waiver.

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

Substance of proposed rule: The Commission is considering the notice of intent filed by BOP Greenpoint D LLC on July 29, 2021, seeking authority to submeter electricity at new market rate and income-based rental buildings at 1 Eagle Street, 227 West Street and 27 Eagle Street, Brooklyn, NY 11222, located in the service territory of Consolidated Edison Company of New York Inc. (Con Edison). Additionally, the petitioner also requests that the Commission waive 16 NYCRR § 96.5(k)(3), which requires an energy audit for buildings where 20 percent or more of the residents receive income-based housing assistance.

In the notice of intent, BOP Greenpoint D LLC requests authorization to take electric service from Con Edison and then distribute and meter that electricity to its tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96.

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

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

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

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

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

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

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

(21-E-0412SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Implementation of the Host Community Benefit Program

I.D. No. PSC-50-21-00006-P

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

Proposed Action: The Commission is considering Niagara Mohawk Power Corporation d/b/a National Grid's Host Community Benefit Program Implementation Plan, filed on September 30, 2021.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Implementation of the Host Community Benefit Program.

Purpose: To consider the proposed administration and implementation related to disbursement of customer bill credits.

Substance of proposed rule: The Public Service Commission (Commission) is considering Niagara Mohawk Power Corporation d/b/a National Grid's (the Company) proposed Host Community Benefit Program Implementation Plan and Tariff leaves, filed on September 30, 2021.

The Accelerated Renewable Energy Growth and Community Benefit Act required the Commission to consider a Host Community Benefit Program to provide benefits to utility customers in Host Communities in which future Major Renewable Energy Facilities are located. In its February 2021 Order Adopting a Host Community Benefit Program, the Commission directed the Companies and other affected utilities to develop and propose individual Host Community Benefit Program implementation plans (Implementation Plans) for Commission review and approval in accordance with guidance in the Order.

The Company's proposed Implementation Plan identifies administrative tasks associated with implementing the Program, and processes to both carry out implementing the Program and disburse associated bill credits, explains how customers will be alerted to the bill credits associated with the Program, and identifies all costs associated with administering the Program. Additionally, the Implementation Plan includes proposed tariff revisions to support implementation of the Program.

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

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

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

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

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

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

(20-E-0249SP4)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-50-21-00007-P

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

Proposed Action: The Commission is considering the notice of intent of 186N6 Owner LLC to submeter electricity at 186 North 6th Street, Brooklyn, New York.

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

Subject: Notice of intent to submeter electricity.

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

Substance of proposed rule: The Commission is considering the notice of intent filed by 186N6 Owner LLC on July 22, 2021, seeking authority to submeter electricity at 186 North 6th Street, Brooklyn, New York, a new market rate rental building located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison).

In the notice of intent, 186N6 Owner LLC requests authorization to take electric service from Con Edison and then distribute and meter that electricity to its tenants. Submetering of electricity to residential tenants and condominium owners is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96.

The full text of the notice of intent 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.

Rule Making Activities

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

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

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

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

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

(21-E-0398SP1)

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

Implementation of the Host Community Benefit Program

I.D. No. PSC-50-21-00008-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 Central Hudson Gas & Electric Corporation's Host Community Benefit Program Implementation Plan, filed on September 30, 2021.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Implementation of the Host Community Benefit Program.

Purpose: To consider the proposed administration and implementation related to disbursement of customer bill credits.

Substance of proposed rule: The Public Service Commission (Commission) is considering Central Hudson Gas & Electric Corporation's (the Company) proposed Host Community Benefit Program Implementation Plan and Tariff leaves, filed on September 30, 2021.

The Accelerated Renewable Energy Growth and Community Benefit Act required the Commission to consider a Host Community Benefit Program to provide benefits to utility customers in Host Communities in which future Major Renewable Energy Facilities are located. In its February 2021 Order Adopting a Host Community Benefit Program, the Commission directed the Company and other affected utilities to develop and propose individual Host Community Benefit Program implementation plans (Implementation Plans) for Commission review and approval in accordance with guidance in the Order.

The Company's proposed Implementation Plan identifies administrative tasks associated with implementing the Program and processes to both carry out implementing the Program and disburse associated bill credits, explains how customers will be alerted to the bill credits associated with the Program, and identifies all costs associated with administering the Program. Additionally, the Implementation Plan includes proposed tariff revisions to support implementation of the Program.

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

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

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

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

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

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

(20-E-0249SP2)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-50-21-00009-P

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

Proposed Action: The Commission is considering the notice of intent of 180 East 88th Street Condominium to submeter electricity at 180 East 88th Street New York, New York.

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

Subject: Notice of intent to submeter electricity.

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

Substance of proposed rule: The Commission is considering the notice of intent filed by 180 East 88th Street Condominium on August 4, 2021, seeking authority to submeter electricity at a new market rate condominium building located at 180 East 88th Street New York, New York, located in the service territory of Consolidated Edison Company of New York Inc. (Con Edison).

In the notice of intent, 180 East 88th Street Condominium requests authorization to take electric service from Con Edison and then distribute and meter that electricity to its residents. Submetering of electricity to residents is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96.

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

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

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

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

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

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

(21-E-0426SP1)

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

New York City's Proposal to Procure Tier 4 Renewable Energy Certificates

I.D. No. PSC-50-21-00010-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 notice filed by the City of New York seeking modification of Clean Energy Standard compliance obligations in recognition of the City's proposal to procure Tier 4 renewable energy certificates from NYSEERDA.

Statutory authority: Public Service Law, sections 4(1), 5(1), (2), 66(2), 66-p; New York Energy Law, section 6-104(5)(b)

Subject: New York City's proposal to procure Tier 4 Renewable Energy Certificates.

Purpose: To modify load serving entity compliance obligations under the Clean Energy Standard.

Substance of proposed rule: The Public Service Commission (Commission) is considering a notice (Notice), filed by the City of New York (City) proposing a procurement process whereby the City would procure renewable energy from sources directly serving New York City, specifically from offshore wind and Tier 4 resources, in a quantity equal to its energy consumption.

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Rule Making Activities

The City intends to purchase Tier 4 Renewable Energy Certificates (RECs) from the New York State Energy Research and Development Authority (NYSERDA). In return, the City suggests that the Commission direct NYSEDA to recalculate the Clean Energy Standard (CES) load serving entity (LSE) commitments related to Tiers 1, 2, 3 (Tier 3 RECs are also referred to as Zero Emission Credits or ZECs), and 4, but not offshore wind RECs, with respect to the City's LSE, the New York Power Authority (NYPA). This recalculation would be done to account for any reduction in NYPA's CES commitments that are made in recognition of the City's voluntary purchase of Tier 4 RECs.

The City asserts that this proposed procurement process would result in cost savings of \$2.1 billion to \$4.3 billion for electricity customers across New York State and will advance the State and City's clean energy goals. The City plans to enter into a 25-year agreement with NYSEDA to procure Tier 4 RECs in an amount that, when combined with its load share-based allocation of offshore wind RECs, will be equivalent to its load. According to the City, entering into a long-term arrangement to purchase a large quantity of Tier 4 RECs will result in the City paying significantly more than it would if it pays only for its load share-based allocation of the costs of the CES Tiers. The City asserts that the savings it will incur related to reallocation of its Tier 1, 2, 3, and 4 contributions to other LSEs will range from \$424 million to \$560 million. On the other hand, the City asserts that the gross investment of the proposal to purchase Tier 4 RECs ranges from \$3.2 billion to \$6.2 billion. The City asserts that by procuring a substantial quantity of the available Tier 4 RECs, it would reduce the number of Tier 4 RECs that must be procured by all other LSEs, thereby reducing the LSEs' Tier 4 compliance costs. The City explains that its acquisition of Tier 4 RECs would result in additional savings for LSEs due to the fact that Tier 4 RECs are expected to be significantly more expensive than Tier 1, 2, and 3 RECs.

According to the City, no other customer in New York would be financially harmed by the City's proposal. To ensure that New Yorkers do not incur any potential risk resulting from this arrangement, the City proposes that any agreement with NYSEDA include a provision that allows NYSEDA to terminate the agreement within 30 days of the Commission making a determination that the arrangement is no longer in the best interest of New York electricity ratepayers.

The full text of the notice 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 other related matters.

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

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

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

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

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

(15-E-0302SP52)

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

Implementation of the Host Community Benefit Program

I.D. No. PSC-50-21-00011-P

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

Proposed Action: The Commission is considering New York State Electric & Gas Corporation's and Rochester Gas and Electric Corporation's Host Community Benefit Program Implementation Plan, filed on September 30, 2021.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Implementation of the Host Community Benefit Program.

Purpose: To consider the proposed administration and implementation related to disbursement of customer bill credits.

Substance of proposed rule: The Public Service Commission (Commission) is considering New York State Electric & Gas Corporation's and

Rochester Gas and Electric Corporation's (the Companies) proposed Host Community Benefit Program Implementation Plan and Tariff leaves, filed on September 30, 2021.

The Accelerated Renewable Energy Growth and Community Benefit Act required the Commission to consider a Host Community Benefit Program to provide benefits to utility customers in Host Communities in which future Major Renewable Energy Facilities are located. In its February 2021 Order Adopting a Host Community Benefit Program, the Commission directed the Companies and other affected utilities to develop and propose individual Host Community Benefit Program implementation plans (Implementation Plans) for Commission review and approval in accordance with guidance in the Order.

The Company's proposed Implementation Plan identifies administrative tasks associated with implementing the Program, and processes to both carry out implementing the Program and disburse associated bill credits, explains how customers will be alerted to the bill credits associated with the Program, and identifies all costs associated with administering the Program. Additionally, the Implementation Plan includes proposes tariff revisions to support implementation of the Program.

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

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

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

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

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

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

(20-E-0249SP5)

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

Implementation of the Host Community Benefit Program

I.D. No. PSC-50-21-00012-P

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

Proposed Action: The Commission is considering Consolidated Edison Company of New York, Inc.'s and Orange and Rockland Utilities, Inc.'s Host Community Benefit Program Implementation Plan, filed on September 30, 2021.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Implementation of the Host Community Benefit Program.

Purpose: To consider the proposed administration and implementation related to disbursement of customer bill credits.

Substance of proposed rule: The Public Service Commission (Commission) is considering Consolidated Edison Company of New York, Inc., and Orange and Rockland Utilities, Inc. (the Companies) proposed Host Community Benefit Program Implementation Plan and Tariff leaves, filed on September 30, 2021.

The Accelerated Renewable Energy Growth and Community Benefit Act required the Commission to consider a Host Community Benefit Program to provide benefits to utility customers in Host Communities in which future Major Renewable Energy Facilities are located. In its February 2021 Order Adopting a Host Community Benefit Program, the Commission directed the Companies and other affected utilities to develop and propose individual Host Community Benefit Program implementation plans (Implementation Plans) for Commission review and approval in accordance with guidance in the Order.

The Companies' proposed Implementation Plan identifies administrative tasks associated with implementing the Program, and processes to both carry out implementing the Program and disburse associated bill credits, explains how customers will be alerted to the bill credits associated with the Program, and identifies all costs associated with administering the Program. Additionally, the Implementation Plan includes proposes tariff revisions to support implementation of the Program.

Rule Making Activities

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

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

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

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

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

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

(20-E-0249SP3)

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

Transfer of Street Lighting Facilities

I.D. No. PSC-50-21-00013-P

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

Proposed Action: The Commission is considering a petition filed by Niagara Mohawk Power Corporation d/b/a National Grid seeking authorization to transfer certain street lighting facilities in the Town of Hamburg to the Town of Hamburg.

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

Subject: Transfer of street lighting facilities.

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

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed on November 15, 2021 by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), requesting authorization to transfer certain street lighting facilities located in the Town of Hamburg (Town) to the Town.

The original cost of the facilities was approximately \$1,906,484 and the net book value of the assets is \$958,926, as of September 30, 2021. National Grid proposes to transfer the street lighting facilities to the Town for approximately \$1,018,944, which includes the net book value of the assets as well as transition and transaction costs. National Grid explains that the agreement between it and the Town provides that the purchase price will be adjusted (up or down) to reflect the actual net book value at the date of the closing.

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

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

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

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

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

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

(21-E-0563SP1)

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

Submetering of Electricity and Waiver Request

I.D. No. PSC-50-21-00014-P

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

Proposed Action: The Commission is considering the notice of intent of 550 Clinton Partners LLC to submeter electricity at 550 Clinton Avenue, Brooklyn, NY, and a waiver request of the requirement of an energy audit pursuant to 16 NYCRR section 96.5(k)(3).

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

Subject: Submetering of electricity and waiver request.

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

Substance of proposed rule: The Commission is considering the notice of intent filed by 550 Clinton Partners LLC on November 5, 2021, to submeter electricity at a new market rate and income-based rental building located at 550 Clinton Avenue, Brooklyn, NY 11238, located in the service territory of Consolidated Edison Company of New York Inc. (Con Edison). Additionally, the petitioner requests waiver of 16 NYCRR § 96.5(k)(3), which requires an energy audit for buildings where at least 20 percent of the residents receive income-based housing assistance.

In the notice of intent, 550 Clinton Partners LLC requests authorization to take electric service from Con Edison and then distribute and meter that electricity to its tenants. Submetering of electricity to residential tenants is permitted so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96. With respect to the request for waiver of the requirement to perform an energy audit pursuant to 16 NYCRR § 96.5(k)(3), the Owner states that, because the building is new construction, it must comply with the current New York State Energy Conservation Construction Code, which provides strict energy conservation requirements for new and renovated buildings, including the design and construction of energy-efficient building envelopes, mechanical, lighting and power systems. Therefore, the Owner contends an energy audit is not appropriate in this case.

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

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

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

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

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

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

(21-E-0556SP1)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-50-21-00015-P

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

Proposed Action: The Commission is considering the notice of intent of BOP Greenpoint H3 LLC to submeter electricity at One Bell Slip, Brooklyn, New York.

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

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Subject: Notice of intent to submeter electricity.

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

Substance of proposed rule: The Commission is considering the notice of intent filed by BOP Greenpoint H3 LLC on September 14, 2021, seeking authority to submeter electricity at a new market rate and income-based rental building located at One Bell Slip, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York Inc. (Con Edison).

In the notice of intent, BOP Greenpoint H3 LLC requests authorization to take electric service from Con Edison and then distribute and meter that electricity to its tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations in 16 NYCRR Part 96.

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

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

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

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

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

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

(21-E-0486SP1)

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HEARINGS SCHEDULED FOR PROPOSED RULE MAKINGS

| Agency I.D. No. | Subject Matter | Location—Date—Time |
|-----------------------------|--|--|
| PSC-44-21-00012-P | Disposition of a New York State Tax Refund | <p>Teleconference—January 4, 2022, 10:00 a.m. (Public Statement Hearing)*</p> <p>*On occasion, there are requests to reschedule or postpone hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Case 21-W-0356.</p> |
| Education Department | | |
| EDU-48-21-00008-P | Special Education Impartial Hearing Officers and the Special Education Due Process System Procedures | <p>Zoom—February 1, 2022, 12:00 p.m.</p> <p>Link: https://zoom.us/j/95291448709?pwd=S1E2a3pvRjYvZlQ0eHZKNFpOaTZ6dz09,MeetingID:95291448709,Passcode:MTbs02</p> <p>Zoom—February 9, 2022, 5:00 p.m.</p> <p>Link: https://zoom.us/j/95132788304?pwd=QmVvaWxwZ2JaRi91bW1pTUxBZ2JHdz09,MeetingID:95132788304,Passcode:8p4dru</p> <p>Zoom—February 17, 2022, 9:00 a.m.</p> <p>Link: https://zoom.us/j/99029637239?pwd=eHcyYEdYRmY3SVFsMnNhdzdpdFZzd09,MeetingID:99029637239,Passcode:8iqjHd</p> |

ACTION PENDING
INDEX

The action pending index is a list of all proposed rules which are currently being considered for adoption. A proposed rule is added to the index when the notice of proposed rule making is first published in the *Register*. A proposed rule is removed from the index when any of the following occur: (1) the proposal is adopted as a permanent rule; (2) the proposal is rejected and withdrawn from consideration; or (3) the proposal's notice expires.

Most notices expire in approximately 12 months if the agency does not adopt or reject the proposal within that time. The expiration date is printed in the second column of the action pending index. Some notices, however, never expire. Those notices are identified by the word "exempt" in the second column. Actions pending for one year or more are preceded by an asterisk(*).

For additional information concerning any of the proposals

listed in the action pending index, use the identification number to locate the text of the original notice of proposed rule making. The identification number contains a code which identifies the agency, the issue of the *Register* in which the notice was printed, the year in which the notice was printed and the notice's serial number. The following diagram shows how to read identification number codes.

| Agency code | Issue number | Year published | Serial number | Action Code |
|-------------|--------------|----------------|---------------|-------------|
| AAM | 01 | 12 | 00001 | P |

Action codes: P — proposed rule making; EP — emergency and proposed rule making (expiration date refers to proposed rule); RP — revised rule making

| Agency I.D. No. | Expires | Subject Matter | Purpose of Action |
|-----------------|---------|----------------|-------------------|
|-----------------|---------|----------------|-------------------|

AGRICULTURE AND MARKETS, DEPARTMENT OF

| | | | |
|-------------------|----------|---|--|
| AAM-23-21-00001-P | 07/07/22 | Regulated commodity labeling, packaging and method of sale requirements | Amend packaging, labeling & method of sale requirements for various commodities to align with industry & federal standards |
| AAM-31-21-00014-P | 09/15/22 | Regulated commodity labeling, packaging and method of sale requirements | Amend packaging, labeling & method of sale requirements for various commodities to align with industry & federal standards |

ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, OFFICE OF

| | | | |
|--------------------|----------|---|---|
| ASA-27-21-00009-P | 07/07/22 | General provisions applicable to all OASAS programs | To identify those provisions that are required of all OASAS certified, funded or otherwise authorized programs |
| ASA-42-21-00008-P | 10/20/22 | Children and Family Treatment Support Services | Identify services and designation process for children and family treatment and support services |
| ASA-42-21-00009-P | 10/20/22 | Incident Reporting in OASAS certified, licensed, funded, or Operated Services | To update and clarify existing language. |
| ASA-42-21-00010-P | 10/20/22 | Provision of problem gambling treatment and recovery services. | Identify the requirements for provision of problem gambling services. |
| ASA-42-21-00012-P | 10/20/22 | Tobacco-Limited Services | The purpose of the rule is to change the requirement from tobacco "free" services to tobacco "limited" services. |
| ASA-43-21-00001-P | 10/27/22 | This part establishes standards for the reimbursement and participation in the Medical Assistance Program | Update language and conform to current State Plan Amendment |
| ASA-47-21-00001-EP | 11/24/22 | Telehealth flexibilities and LGBTQ optional endorsement. | To continue telehealth flexibilities allowed under the COVID-19 disaster emergency to become permanent. |
| ASA-47-21-00002-EP | 11/24/22 | Patient's Rights in OASAS Programs | To set forth minimum requirements for patient rights in OASAS certified, funded or otherwise authorized programs. |

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| Agency I.D. No. | Expires | Subject Matter | Purpose of Action |
|---|----------|---|--|
| ALCOHOLISM AND SUBSTANCE ABUSE SERVICES, OFFICE OF | | | |
| ASA-48-21-00002-EP | 12/01/22 | General Provisions applicable to all OASAS programs | To identify those provisions that are required of ALL OASAS certified, funded, or otherwise authorized programs. |
| CANNABIS MANAGEMENT, OFFICE OF | | | |
| OCM-46-21-00010-P | 11/17/22 | Part 115 - Personal Cultivation of Cannabis | Regulation to authorize the home cultivation of cannabis for certified medical cannabis patients |
| CHILDREN AND FAMILY SERVICES, OFFICE OF | | | |
| *CFS-49-20-00006-EP | 12/09/21 | Maintenance reimbursement for residential CSE programs when a student has been absent from the program for more than 15 days. | Remove an existing regulatory barrier that precludes maintenance reimbursement for residential CSE programs. |
| CFS-36-21-00010-EP | 09/08/22 | Adopt provisions & standards to operationalize compliance with the federal Family First Prevention Services Act | Adopt provisions & standards to operationalize compliance with the federal Family First Prevention Services Act |
| CIVIL SERVICE, DEPARTMENT OF | | | |
| CVS-23-21-00006-P | 06/09/22 | Jurisdictional Classification | To classify positions in the exempt class |
| CVS-23-21-00007-P | 06/09/22 | Jurisdictional Classification | To classify a position in the exempt class |
| CVS-23-21-00008-P | 06/09/22 | Jurisdictional Classification | To delete positions from the exempt class |
| CVS-23-21-00009-P | 06/09/22 | Jurisdictional Classification | To classify a subheading and positions in the exempt class |
| CVS-27-21-00004-P | 07/07/22 | Jurisdictional Classification | To classify positions in the exempt class |
| CVS-27-21-00005-P | 07/07/22 | Jurisdictional Classification | To classify a position in the exempt class |
| CVS-27-21-00006-P | 07/07/22 | Jurisdictional Classification | To delete a position from and classify a position in the exempt class |
| CVS-27-21-00007-P | 07/07/22 | Jurisdictional Classification | To classify positions in the non-competitive class |
| CVS-27-21-00008-P | 07/07/22 | Jurisdictional Classification | To classify positions in the non-competitive class |
| CVS-31-21-00002-P | 08/04/22 | Jurisdictional Classification | To classify positions in the non-competitive class |
| CVS-31-21-00003-P | 08/04/22 | Jurisdictional Classification | To classify positions in the non-competitive class |
| CVS-31-21-00004-P | 08/04/22 | Jurisdictional Classification | To classify a position in the non-competitive class |
| CVS-31-21-00005-P | 08/04/22 | Jurisdictional Classification | To classify a position in the non-competitive class |
| CVS-31-21-00006-P | 08/04/22 | Jurisdictional Classification | To classify positions in the non-competitive class |

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| Agency I.D. No. | Expires | Subject Matter | Purpose of Action |
|-------------------------------------|----------|-------------------------------|--|
| CIVIL SERVICE, DEPARTMENT OF | | | |
| CVS-31-21-00007-P | 08/04/22 | Jurisdictional Classification | To classify positions in the non-competitive class |
| CVS-40-21-00008-P | 10/06/22 | Jurisdictional Classification | To classify a position in the exempt class. |
| CVS-40-21-00009-P | 10/06/22 | Jurisdictional Classification | To delete positions from and classify positions in the exempt class. |
| CVS-40-21-00010-P | 10/06/22 | Jurisdictional Classification | To delete positions from and classify a position in the exempt class and to classify a position in the non-competitive class |
| CVS-40-21-00011-P | 10/06/22 | Jurisdictional Classification | To classify positions in the exempt class. |
| CVS-40-21-00012-P | 10/06/22 | Jurisdictional Classification | To delete positions from and classify positions in the non-competitive class |
| CVS-40-21-00013-P | 10/06/22 | Jurisdictional Classification | To classify positions in the exempt class. |
| CVS-40-21-00014-P | 10/06/22 | Jurisdictional Classification | To classify a position in the non-competitive class |
| CVS-40-21-00015-P | 10/06/22 | Jurisdictional Classification | To classify a position in the non-competitive class |
| CVS-40-21-00016-P | 10/06/22 | Jurisdictional Classification | To delete a position from and classify a position in the non-competitive class |
| CVS-44-21-00003-P | 11/03/22 | Jurisdictional Classification | To delete a position and to classify a position in the exempt class and to classify a position in the non-competitive class |
| CVS-44-21-00004-P | 11/03/22 | Jurisdictional Classification | To classify a position in the exempt class. |
| CVS-44-21-00005-P | 11/03/22 | Jurisdictional Classification | To classify a position in the non-competitive class |
| CVS-44-21-00006-P | 11/03/22 | Jurisdictional Classification | To delete a position in the exempt class. |
| CVS-44-21-00007-P | 11/03/22 | Jurisdictional Classification | To classify a position in the non-competitive class |
| CVS-49-21-00002-P | 12/08/22 | Jurisdictional Classification | To delete a position from and classify positions in the non-competitive class |
| CVS-49-21-00003-P | 12/08/22 | Jurisdictional Classification | To delete positions from the exempt class |
| CVS-49-21-00004-P | 12/08/22 | Jurisdictional Classification | To delete positions from and classify positions in the non-competitive class |
| CVS-49-21-00005-P | 12/08/22 | Jurisdictional Classification | To classify positions in the exempt class. |
| CVS-49-21-00006-P | 12/08/22 | Jurisdictional Classification | To classify positions in the non-competitive class |
| CVS-49-21-00007-P | 12/08/22 | Jurisdictional Classification | To classify a position in the non-competitive class |

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| Agency I.D. No. | Expires | Subject Matter | Purpose of Action |
|---|----------|--|--|
| CORRECTION, STATE COMMISSION OF | | | |
| CMC-34-21-00001-P | 08/25/22 | Jail staffing requirements | To provide county governments and the City of New York an increased role and flexibility in determining officer staffing levels |
| CORRECTIONS AND COMMUNITY SUPERVISION, DEPARTMENT OF | | | |
| CCS-49-21-00001-P | 12/08/22 | Incarcerated Individual Correspondence Program | To further clarify facility mail processing procedures |
| CRIMINAL JUSTICE SERVICES, DIVISION OF | | | |
| CJS-42-21-00004-EP | 10/20/22 | Professional Policing Standards | Implementation of the "New York State Professional Policing Act of 2021" |
| ECONOMIC DEVELOPMENT, DEPARTMENT OF | | | |
| *EDV-48-20-00001-RP | 12/02/21 | Employee Training Incentive Program | To update the administrative processes for the ETIP program |
| EDV-30-21-00002-EP | 07/28/22 | New York City Musical and Theatrical Production Tax Credit program | To create the administrative processes for the New York City Musical and Theatrical Production Tax Credit program |
| EDV-32-21-00004-EP | 08/11/22 | Restaurant Return-to-Work Tax Credit program | To create the administrative processes for the Restaurant Return-to-Work Tax Credit program |
| EDV-36-21-00001-P | 09/08/22 | Excelsior Jobs program | Update regulations to include newly enhanced tax credits for projects including child care services |
| EDV-44-21-00001-P | 11/03/22 | Music and Theatrical Tax Credit program | Update regulations to include a third party verification process for application |
| EDV-45-21-00001-P | 11/10/22 | Commercial Production Credit Program | Update regulations to include a third party verification process for application submissions. |
| EDUCATION DEPARTMENT | | | |
| *EDU-20-20-00008-ERP | 02/14/22 | Addressing the COVID-19 Crisis | To provide flexibility for certain regulatory requirements in response to the COVID-19 crisis |
| EDU-08-21-00002-RP | 02/24/22 | The Definition of the Term "University" | To clarify and broaden the definition of the term "university" |
| EDU-17-21-00011-RP | 04/28/22 | Education Law 310 Appeals to the Commissioner and Initiation Conduct of Proceedings for the Removal of School Officers | To make technical changes and other clarifying amendments to section 310 appeal procedures and requirements |
| EDU-21-21-00009-RP | 05/26/22 | School Counselor Bilingual & Supplementary Bilingual Education Extension & Registration Requirements | To create the bilingual education extension, supplementary bilingual education extension, and registration requirements for programs leading to the bilingual education extension for initial and professional school counselor certificates |
| EDU-39-21-00001-EP | 09/29/22 | Technical amendments relating to the School Safety and Educational Climate (SSEC) reporting system. | To make technical corrections relating to the SSEC reporting system. |

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| Agency I.D. No. | Expires | Subject Matter | Purpose of Action |
|----------------------------------|----------|--|--|
| EDUCATION DEPARTMENT | | | |
| EDU-39-21-00008-EP | 09/29/22 | Flexibility for accountability requirements in response to the COVID-19 crisis. | To provide flexibility for accountability requirements in response to the COVID-19 crisis. |
| EDU-39-21-00009-P | 09/29/22 | General Unprofessional Conduct Provisions for the Design Professions and Continuing Education Requirements for the Profession. | To conform regulations with the requirements of Chapter 160 of the Laws of 2020 and to make technical corrections. |
| EDU-39-21-00010-P | 09/29/22 | Licensure Examination, Licensure by Endorsement and Continuing Education Requirements in the Profession of Pharmacy | To provide flexibility in determining acceptable licensure examinations and to add compounding continuing education requirements |
| EDU-39-21-00011-P | 09/29/22 | Removing References to Regional Accreditation. | To remove references to "regional accreditation" in the Rules of the Board of Regents and Commissioner's regulations. |
| EDU-39-21-00012-P | 09/29/22 | Prohibits schools from filing a law suit against parents or guardians for unpaid meal fees. | To implement and conform Commissioner's Regulations according to Chapter 315 of the Laws of 2021. |
| EDU-44-21-00008-EP | 11/03/22 | Execution by Registered Professional Nurses of Non-Patient Specific Orders to Administer COVID-19 Immunizations | To ensure greater access to immunizations against COVID-19, as permitted by Education Law § 6909. |
| EDU-44-21-00009-P | 11/03/22 | Removing face-to-face instruction requirement for the Dignity For All Students Act (DASA) Training. | To remove the face-to-face instruction requirement for DASA training. |
| EDU-48-21-00008-P | 02/17/23 | Special education impartial hearing officers and the special education due process system procedures. | To address volume of special education due process complaints in the New York City due process system |
| EDU-48-21-00009-P | 12/01/22 | Licensure of Psychologists. | To conform New York State's licensure requirements with national standards and create a pathway for licensure by endorsement. |
| EDU-48-21-00010-P | 12/01/22 | Definition of the term "year of experience" for permanent or professional certification. | To streamline the definition of "year of experience" for permanent or professional certification. |
| EDU-48-21-00011-P | 12/01/22 | School districts' exemption from the establishment of an internal audit function. | To align the student enrollment number for eligibility for such exemption with the applicable statute. |
| EDU-48-21-00012-EP | 12/01/22 | Annual visitation of voluntarily registered nursery schools and kindergartens. | To extend flexibility for the annual visitation of voluntarily registered nursery schools and kindergartens to the 2021-2022 SY. |
| EDU-48-21-00013-P | 12/01/22 | Records retention and disposition schedules | To revise records retention and disposition schedule LGS-1 and to remove superseded disposition schedules. |
| ELECTIONS, STATE BOARD OF | | | |
| SBE-33-21-00010-P | 08/18/22 | Public Campaign Finance Program | Implementation of the Public Campaign Finance Program |
| SBE-39-21-00002-P | 09/29/22 | County Voter Registration Systems Requirements | Requirements County Voter Registration Systems Must Meet in Order to Connect to the Statewide Voter Registration System |

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| Agency I.D. No. | Expires | Subject Matter | Purpose of Action |
|--|----------|---|--|
| ELECTIONS, STATE BOARD OF | | | |
| SBE-39-21-00003-P | 09/29/22 | Required Debates for Statewide Candidates Participating in the Public Campaign Finance Program | Outlines Debate Requirements for Statewide Candidates Participating in the Public Campaign Finance Program |
| SBE-46-21-00001-P | 11/17/22 | Public Campaign Finance Board's Enforcement Procedure | Relates to how the Public Campaign Finance Board will enforce the public campaign finance provisions of the Election Law |
| ENVIRONMENTAL CONSERVATION, DEPARTMENT OF | | | |
| ENV-16-21-00012-P | 04/21/22 | Regulations governing whelk management | To protect immature whelk from harvest and establish gear and reporting rules for marine resource protection and public safety |
| ENV-19-21-00001-P | 07/20/22 | Set monitoring, operational and reporting requirements for the oil and natural gas sector | Reduce emissions of methane and volatile organic compounds from the oil and natural gas sector |
| ENV-22-21-00001-EP | 06/02/22 | Peekamoose Valley Riparian Corridor | Protect public health, safety, general welfare and natural resources on the Peekamoose Valley Riparian Corridor |
| ENV-24-21-00008-P | 08/17/22 | Petroleum Bulk Storage (PBS) | To amend the PBS regulations, 6 NYCRR Part 613 |
| ENV-24-21-00009-P | 08/17/22 | Chemical Bulk Storage (CBS) | To repeal existing 6 NYCRR Parts 596, 598, 599 and replace with new Part 598; and amend existing Part 597; for the CBS program |
| ENV-26-21-00003-P | 09/08/22 | Product Stewardship and Product Labeling | Expand, strengthen and clarify existing regulations to establish consistency with federal and state requirements |
| ENV-33-21-00004-P | 08/18/22 | Amendments to permit requirements for trapping fisher and marten in New York State. | To remove the requirement for a special fisher trapping permit, and to simplify marten trapping requirements. |
| ENV-36-21-00003-P | 11/15/22 | Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Reduction | Implementation of the expanded polystyrene foam container and loose fill packaging ban in ECL Art. 27, Title 30 |
| ENV-36-21-00004-P | 11/09/22 | Medium- and heavy-duty (MHD) zero emission truck annual sales requirements and large entity reporting | Annual zero emission MHD truck sales requirements for model years 2025-2035. Report MHD volumes, operations, and locations |
| ENV-37-21-00004-P | 09/15/22 | Deer Hunting | This rulemaking will allow counties to annually, by county law, "opt-out" of the late bow and/or muzzleloader deer seasons |
| ENV-43-21-00010-P | 10/27/22 | Sunfish and crappie fishing regulations | To revise sunfish and crappie fishing regulations |
| ENV-49-21-00008-EP | 12/08/22 | Sanitary Condition of Shellfish Lands | To reclassify underwater shellfish lands to protect public health |
| ENV-49-21-00009-P | 12/08/22 | Freshwater fishing regulation simplification and clean-up | Eliminate unnecessary regulations, provide consistency and align regulations with actual management intent |

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| FINANCIAL SERVICES, DEPARTMENT OF | | | |
| *DFS-17-16-00003-P | exempt | Plan of Conversion by Commercial Travelers Mutual Insurance Company | To convert a mutual accident and health insurance company to a stock accident and health insurance company |
| *DFS-25-18-00006-P | exempt | Plan of Conversion by Medical Liability Mutual Insurance Company | To convert a mutual property and casualty insurance company to a stock property and casualty insurance company |
| DFS-38-21-00004-P | 09/22/22 | Minimum Standards for Form, Content, and Sale of Health Insurance, Including Standards of Full and Fair Disclosure | To clarify application of Insurance Law Sections 3217-h and 4306-g. |
| DFS-40-21-00001-P | 10/06/22 | Principle-Based Reserving | To update citation to the Valuation Manual to 2021 (instead of 2020) in Footnote 1 to Section 103.3(b) |
| DFS-42-21-00011-P | 10/20/22 | DISCLOSURE REQUIREMENTS FOR CERTAIN PROVIDERS OF COMMERCIAL FINANCING TRANSACTIONS | To provide new disclosure rules for small business financings |
| DFS-44-21-00015-P | 11/03/22 | Compliance With Community Reinvestment Act Requirements | To provide new rules concerning data collection on extension of credit to women-owned and minority-owned businesses. |
| DFS-47-21-00006-P | 11/24/22 | Minimum Standards for the Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure | To hold insurers, plans and HMOs responsible for inaccurate provider directory information and replies to insureds' inquiries. |
| DFS-50-21-00016-P | 12/15/22 | Debt Collection by Third-Party Debt Collectors and Debt Buyers | To clarify and modify standards for debt collection practices in New York |
| GAMING COMMISSION, NEW YORK STATE | | | |
| SGC-37-21-00017-P | 09/15/22 | Discretion to require a Thoroughbred jockey to serve a suspension for a riding violation at track where the violation occurred | To enhance the integrity and safety of thoroughbred horse racing |
| HEALTH, DEPARTMENT OF | | | |
| *HLT-14-94-00006-P | exempt | Payment methodology for HIV/AIDS outpatient services | To expand the current payment to incorporate pricing for services |
| *HLT-46-19-00003-RP | 12/21/21 | Tanning Facilities | To prohibit the use of indoor tanning facilities by individuals less than 18 years of age |
| *HLT-31-20-00012-EP | exempt | Hospital Non-comparable Ambulance Acute Rate Add-on | Prevents duplicate claiming by Article 28 hospitals for the ambulance add-on regarding participation in the program |
| HLT-05-21-00011-P | 02/03/22 | Ingredient Disclosures for Vapor Products and E-Cigarettes | To provide for enhanced public awareness of the chemicals used in vapor products and electronic cigarettes |
| HLT-22-21-00003-P | 06/02/22 | Reducing Biannual Testing of Adult Care Facility Staff | To remove the requirement for biannual testing of adult care workers |
| HLT-22-21-00004-P | 06/02/22 | Hospice Residence Rates | To authorize Medicaid rate of payment to increase the Hospice Residence reimbursement rates by 10 percent |

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| HEALTH, DEPARTMENT OF | | | |
| HLT-22-21-00005-P | 06/02/22 | Stroke Services | Amend transition period for existing stroke centers to allow the Dept. to extend the three year transition period, if necessary |
| HLT-22-21-00009-P | 06/02/22 | Managed Care Organizations (MCOs) | To maintain the contingent reserve requirement at 7.25% through 2022 applied to Medicaid Managed Care, HIV SNP & HARP programs |
| HLT-22-21-00010-P | 06/02/22 | Labeling Requirements Concerning Vent-Free Gas Space Heating Appliances | To adjust the current labeling requirements for unvented gas space heating appliances |
| HLT-28-21-00018-P | 07/14/22 | Public Water Systems | To correct typographic & minor technical errors to obtain primacy for the implementation of federal drinking water regulations |
| HLT-32-21-00001-P | 08/11/22 | Abortion Services | To protect and promote the health of New Yorkers seeking to access abortion services |
| HLT-46-21-00005-P | 11/17/22 | Nursing Home Minimum Direct Resident Care Spending | Every RHCf shall spend a minimum of 70% of revenue on direct resident care and 40% of revenue on resident-facing staffing. |
| HLT-46-21-00006-P | 11/17/22 | Article 28 Nursing Homes; Establishment; Notice and Character and Competence Requirements | To strengthen the establishment application review process for all Article 28 facilities |
| HLT-46-21-00007-P | 11/17/22 | Minimum Staffing Requirements for Nursing Homes | Requiring minimum staffing levels for nursing homes |
| HLT-50-21-00001-EP | 12/15/22 | Prevention of COVID-19 Transmission by Covered Entities | To require covered entities to ensure their personnel are fully vaccinated against COVID-19 subject to certain exemptions. |
| HLT-50-21-00002-EP | 12/15/22 | Investigation of Communicable Disease; Isolation and Quarantine | Control of communicable disease. |
| HLT-50-21-00003-EP | 12/15/22 | Face Coverings for COVID-19 Prevention | To control and promote the control of communicable diseases to reduce their spread. |
| HLT-50-21-00004-EP | 12/15/22 | Personal Caregiving and Compassionate Caregiving Visitors in Nursing Homes (NH's) and Adult Care Facilities (ACF's) | To require NH's & ACF's to establish policies & procedures relating to personal caregiving & compassionate caregiving visitors. |
| HUMAN RIGHTS, DIVISION OF | | | |
| HRT-15-21-00005-P | 04/14/22 | Notice of tenants' rights to reasonable modifications and accommodations for persons with disabilities | To comply with the requirements of Executive Law section 170-d |
| INDUSTRIAL BOARD OF APPEALS | | | |
| IBA-45-21-00003-P | 11/10/22 | Rules of Procedure and Practice for administrative hearings; Freedom of Information Law | To update the Rules of Procedure and Practice for administrative review and to correct address for Freedom of Information Law. |
| LABOR, DEPARTMENT OF | | | |
| *LAB-49-20-00012-P | 12/09/21 | Sick Leave Requirements | To provide definitions and standards for the sick leave requirements contained in Section 196-b of the Labor Law |

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| LABOR, DEPARTMENT OF | | | |
| LAB-05-21-00003-EP | 02/03/22 | Unemployment Insurance (UI) definition of "day of total unemployment" | To prevent an additional financial burden on UI claimants seeking part-time work opportunities and help employers obtain talent |
| LAB-34-21-00002-EP | 11/17/22 | New York Health and Essential Rights Act (NY HERO Act) | Airborne Infectious Disease Exposure Prevention Standard |
| LAB-39-21-00015-P | 09/29/22 | Minimum Wage | To comply with Labor Law 652(6) that increased the minimum wage, and implement wage determined by Labor Law 652(1)(c) |
| LAB-39-21-00016-P | 11/10/22 | Minimum Wage for Farmworkers | To comply with Sections 652 and 673 of the Labor Law, by adopting minimum wage increases for farmworkers |
| LAW, DEPARTMENT OF | | | |
| LAW-48-21-00016-P | 12/01/22 | Contents of annual financial reports required to be filed by charities required to register with the Department of Law | Amend filing requirement held unconstitutional by the United States Supreme Court; conform filing thresholds to law |
| LAW-49-21-00016-P | 12/08/22 | Charities regulatory framework and the use of gendered pronouns therein | Removal of all references to gender pronouns and replacing them with the neutral pronoun, "they" or "their" |
| LIQUOR AUTHORITY, STATE | | | |
| LQR-36-21-00002-P | 11/10/22 | Commencement of administrative disciplinary proceedings via electronic means | To modernize outdated administrative disciplinary procedures to provide for service of pleadings via electronic means |
| LONG ISLAND POWER AUTHORITY | | | |
| *LPA-08-01-00003-P | exempt | Pole attachments and related matters | To approve revisions to the authority's tariff |
| *LPA-41-02-00005-P | exempt | Tariff for electric service | To revise the tariff for electric service |
| *LPA-04-06-00007-P | exempt | Tariff for electric service | To adopt provisions of a ratepayer protection plan |
| *LPA-03-10-00004-P | exempt | Residential late payment charges | To extend the application of late payment charges to residential customers |
| *LPA-15-18-00013-P | exempt | Outdoor area lighting | To add an option and pricing for efficient LED lamps to the Authority's outdoor area lighting |
| *LPA-37-18-00013-P | exempt | The net energy metering provisions of the Authority's Tariff for Electric Service | To implement PSC guidance increasing eligibility for value stack compensation to larger projects |
| *LPA-37-18-00017-P | exempt | The treatment of electric vehicle charging in the Authority's Tariff for Electric Service. | To effectuate the outcome of the Public Service Commission's proceeding on electric vehicle supply equipment. |
| *LPA-37-18-00018-P | exempt | The treatment of energy storage in the Authority's Tariff for Electric Service. | To effectuate the outcome of the Public Service Commission's proceeding on the NY Energy Storage Roadmap. |

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| LONG ISLAND POWER AUTHORITY | | | |
| *LPA-09-20-00010-P | exempt | To update and implement latest requirements for ESCOs proposing to do business within the Authority's service territory. | To strengthen customer protections and be consistent with Public Service Commission orders on retail energy markets. |
| *LPA-28-20-00033-EP | exempt | LIPA's late payment charges, reconnection charges, and low-income customer discount enrollment | To allow waiver of late payment and reconnection charges and extend the grace period for re-enrolling in customer bill discounts |
| *LPA-37-20-00013-EP | exempt | The terms of deferred payment agreements available to LIPA's commercial customers | To expand eligibility for and ease the terms of deferred payment agreements for LIPA's commercial customers |
| LPA-12-21-00011-P | exempt | LIPA's Long Island Choice (retail choice) tariff | To simplify and improve Long Island Choice based on stakeholder collaborative input |
| LPA-38-21-00008-P | exempt | The Authority's annual budget, as reflected in the rates and charges in the Tariff for Electric Service. | To update the Tariff to implement the Authority's annual budget and corresponding rate adjustments. |
| LPA-38-21-00009-P | exempt | Community distributed generation and remote crediting tariffs. | To conform LIPA's community distributed generation and remote crediting tariffs with recent PSC orders. |
| LPA-38-21-00010-P | exempt | A Customer Benefit Contribution (CBC) Charge for new mass market net metering customers. | To ensure adequate contribution to LIPA's customer benefits programs. |
| LPA-38-21-00011-P | exempt | Conform Long Island Choice program rules and requirements with final DPS recommendations from collaborative proceeding. | To conform with Statewide retail choice policy and eliminate program inefficiencies. |
| LPA-38-21-00012-P | exempt | Miscellaneous clean-up of Tariff for Electric Service. | To clarify potential ambiguity and make other minor Tariff updates. |
| LPA-38-21-00013-P | exempt | Daily service charges during prolonged outages. | To conform with statewide policy. |
| LPA-39-21-00014-P | 11/29/22 | Access to records and fees collected under the Freedom of Information Law. | To make necessary technical updates and to conform with FOIL regarding collection of fees. |
| MENTAL HEALTH, OFFICE OF | | | |
| OMH-09-21-00001-EP | 03/03/22 | Redesigning Residential Treatment Facilities (RTF) | To provide clarity and provide uniformity relating to RTF's and to implement Chapter 58 of the Laws of 2020 |
| OMH-20-21-00006-P | 05/19/22 | Establishment of Youth Assertive Community Treatment (ACT) | To include children in the populations eligible to receive ACT and other conforming changes |
| OMH-33-21-00005-P | 08/18/22 | Establishes Crisis Stabilization Centers. | To establish standards for a Crisis Stabilization Center which provides a full range of psychiatric and substance use services. |
| OMH-40-21-00007-EP | 10/06/22 | COVID-19 Masking Program | To implement a COVID-19 mask program |
| OMH-43-21-00002-EP | 10/27/22 | COVID-19 Vaccination Program | To implement a COVID-19 vaccination program in OMH Operated or Licensed Hospitals |
| OMH-48-21-00003-EP | 12/01/22 | Telehealth Expansion. | To establish regulations regarding the expansion of telehealth. |

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| METROPOLITAN TRANSPORTATION AGENCY | | | |
| MTA-16-21-00004-EP | 04/21/22 | Requiring mask wearing when using the facilities and conveyances of the MTA and its operating affiliates and subsidiaries | To safeguard the public health and safety by adding a new all-agency rule requiring the use of masks in facilities and conveyances |
| MOTOR VEHICLES, DEPARTMENT OF | | | |
| MTV-43-21-00004-P | 10/27/22 | Motor Vehicle Accident Prevention Course by Internet or other Technologies (Alternate Delivery Methods) | Conforms regulation with statute |
| MTV-48-21-00014-P | 12/01/22 | Special Requirements For For-Hire Vehicle Motor Carriers | necessary to implement statute (Ch 2, Laws of 2020) |
| MTV-48-21-00015-P | 12/01/22 | Signs for school bus photo violation monitoring system | Conforms regulation with statute |
| NIAGARA FALLS WATER BOARD | | | |
| *NFW-04-13-00004-EP | exempt | Adoption of Rates, Fees and Charges | To pay for the increased costs necessary to operate, maintain and manage the system, and to achieve covenants with bondholders |
| *NFW-13-14-00006-EP | exempt | Adoption of Rates, Fees and Charges | To pay for increased costs necessary to operate, maintain and manage the system and to achieve covenants with the bondholders |
| NFW-49-21-00010-EP | 12/08/22 | Adoption of Rates, Fees, and Charges | To pay for increased costs necessary to operate, maintain, and manage the system, and to meet covenants with the bondholders |
| OGDENSBURG BRIDGE AND PORT AUTHORITY | | | |
| *OBA-33-18-00019-P | exempt | Increase in Bridge Toll Structure | To increase bridge toll revenue in order to become financially self-supporting. Our bridge operations are resulting in deficit. |
| *OBA-07-19-00019-P | exempt | Increase in Bridge Toll Structure | To increase bridge toll revenue in order to become financially self-supporting. Our bridge operations are resulting in deficit |
| PEOPLE WITH DEVELOPMENTAL DISABILITIES, OFFICE FOR | | | |
| PDD-37-21-00001-P | 09/15/22 | Certified Residential Opportunities | To provide equity in opportunities for certified residential opportunities |
| PDD-40-21-00002-EP | 10/06/22 | Mandatory Face Coverings in OPWDD Certified Services | To protect public health |
| PDD-43-21-00003-EP | 10/27/22 | COVID-19 vaccines | To require vaccinations in certain OPWDD settings |
| PDD-46-21-00015-P | 11/17/22 | Community Transition Services | To match federal limitations and use gender neutral terminology |
| POWER AUTHORITY OF THE STATE OF NEW YORK | | | |
| *PAS-01-10-00010-P | exempt | Rates for the sale of power and energy | Update ECSB Programs customers' service tariffs to streamline them/include additional required information |

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| POWER AUTHORITY OF THE STATE OF NEW YORK | | | |
| PAS-44-21-00016-P | exempt | Rates for the Sale of Power and Energy | To align rates and costs |
| PUBLIC SERVICE COMMISSION | | | |
| *PSC-09-99-00012-P | exempt | Transfer of books and records by Citizens Utilities Company | To relocate Ogden Telephone Company's books and records out-of-state |
| *PSC-15-99-00011-P | exempt | Electronic tariff by Woodcliff Park Corp. | To replace the company's current tariff with an electronic tariff |
| *PSC-12-00-00001-P | exempt | Winter bundled sales service election date by Central Hudson Gas & Electric Corporation | To revise the date |
| *PSC-44-01-00005-P | exempt | Annual reconciliation of gas costs by Corning Natural Gas Corporation | To authorize the company to include certain gas costs |
| *PSC-07-02-00032-P | exempt | Uniform business practices | To consider modification |
| *PSC-36-03-00010-P | exempt | Performance assurance plan by Verizon New York | To consider changes |
| *PSC-40-03-00015-P | exempt | Receipt of payment of bills by St. Lawrence Gas Company | To revise the process |
| *PSC-41-03-00010-P | exempt | Annual reconciliation of gas expenses and gas cost recoveries | To consider filings of various LDCs and municipalities |
| *PSC-41-03-00011-P | exempt | Annual reconciliation of gas expenses and gas cost recoveries | To consider filings of various LDCs and municipalities |
| *PSC-44-03-00009-P | exempt | Retail access data between jurisdictional utilities | To accommodate changes in retail access market structure or commission mandates |
| *PSC-02-04-00008-P | exempt | Delivery rates for Con Edison's customers in New York City and Westchester County by the City of New York | To rehear the Nov. 25, 2003 order |
| *PSC-06-04-00009-P | exempt | Transfer of ownership interest by SCS Energy LLC and AE Investors LLC | To transfer interest in Steinway Creek Electric Generating Company LLC to AE Investors LLC |
| *PSC-10-04-00005-P | exempt | Temporary protective order | To consider adopting a protective order |
| *PSC-10-04-00008-P | exempt | Interconnection agreement between Verizon New York Inc. and VIC-RMTS-DC, L.L.C. d/b/a Verizon Avenue | To amend the agreement |
| *PSC-14-04-00008-P | exempt | Submetering of natural gas service to industrial and commercial customers by Hamburg Fairgrounds | To submeter gas service to commercial customers located at the Buffalo Speedway |
| *PSC-15-04-00022-P | exempt | Submetering of electricity by Glenn Gardens Associates, L.P. | To permit submetering at 175 W. 87th St., New York, NY |
| *PSC-21-04-00013-P | exempt | Verizon performance assurance plan by Metropolitan Telecommunications | To clarify the appropriate performance level |
| *PSC-22-04-00010-P | exempt | Approval of new types of electricity meters by Powell Power Electric Company | To permit the use of the PE-1250 electronic meter |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-22-04-00013-P | exempt | Major gas rate increase by Consolidated Edison Company of New York, Inc. | To increase annual gas revenues |
| *PSC-22-04-00016-P | exempt | Master metering of water by South Liberty Corporation | To waive the requirement for installation of separate water meters |
| *PSC-25-04-00012-P | exempt | Interconnection agreement between Frontier Communications of Ausable Valley, Inc., et al. and Sprint Communications Company, L.P. | To amend the agreement |
| *PSC-27-04-00008-P | exempt | Interconnection agreement between Verizon New York Inc. and various Verizon wireless affiliates | To amend the agreement |
| *PSC-27-04-00009-P | exempt | Interconnection agreement between Verizon New York Inc. and various Verizon wireless affiliates | To amend the agreement |
| *PSC-28-04-00006-P | exempt | Approval of loans by Dunkirk & Fredonia Telephone Company and Cassadaga Telephone Corporation | To authorize participation in the parent corporation's line of credit |
| *PSC-31-04-00023-P | exempt | Distributed generation service by Consolidated Edison Company of New York, Inc. | To provide an application form |
| *PSC-34-04-00031-P | exempt | Flat rate residential service by Emerald Green Lake Louise Marie Water Company, Inc. | To set appropriate level of permanent rates |
| *PSC-35-04-00017-P | exempt | Application form for distributed generation by Orange and Rockland Utilities, Inc. | To establish a new supplementary application form for customers |
| *PSC-43-04-00016-P | exempt | Accounts recievable by Rochester Gas and Electric Corporation | To include in its tariff provisions for the purchase of ESCO accounts recievable |
| *PSC-46-04-00012-P | exempt | Service application form by Consolidated Edison Company of New York, Inc. | To revise the form and make housekeeping changes |
| *PSC-46-04-00013-P | exempt | Rules and guidelines governing installation of metering equipment | To establish uniform statewide business practices |
| *PSC-02-05-00006-P | exempt | Violation of the July 22, 2004 order by Dutchess Estates Water Company, Inc. | To consider imposing remedial actions against the company and its owners, officers and directors |
| *PSC-09-05-00009-P | exempt | Submetering of natural gas service by Hamlet on Olde Oyster Bay | To consider submetering of natural gas to a commercial customer |
| *PSC-14-05-00006-P | exempt | Request for deferred accounting authorization by Freeport Electric Inc. | To defer expenses beyond the end of the fiscal year |
| *PSC-18-05-00009-P | exempt | Marketer Assignment Program by Consolidated Edison Company of New York, Inc. | To implement the program |
| *PSC-20-05-00028-P | exempt | Delivery point aggregation fee by Allied Frozen Storage, Inc. | To review the calculation of the fee |
| *PSC-25-05-00011-P | exempt | Metering, balancing and cashout provisions by Central Hudson Gas & Electric Corporation | To establish provisions for gas customers taking service under Service Classification Nos. 8, 9 and 11 |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-27-05-00018-P | exempt | Annual reconciliation of gas costs by New York State Electric & Gas Corporation | To consider the manner in which the gas cost incentive mechanism has been applied |
| *PSC-41-05-00013-P | exempt | Annual reconciliation of gas expenses and gas cost recoveries by local distribution companies and municipalities | To consider the filings |
| *PSC-45-05-00011-P | exempt | Treatment of lost and unaccounted gas costs by Corning Natural Gas Corporation | To defer certain costs |
| *PSC-46-05-00015-P | exempt | Sale of real and personal property by the Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York and Steel Arrow, LLC | To consider the sale |
| *PSC-47-05-00009-P | exempt | Transferral of gas supplies by Corning Natural Gas Corporation | To approve the transfer |
| *PSC-50-05-00008-P | exempt | Long-term debt by Saratoga Glen Hollow Water Supply Corp. | To obtain long-term debt |
| *PSC-04-06-00024-P | exempt | Transfer of ownership interests by Mirant NY-Gen LLC and Orange and Rockland Utilities, Inc. | To approve of the transfer |
| *PSC-06-06-00015-P | exempt | Gas curtailment policies and procedures | To examine the manner and extent to which gas curtailment policies and procedures should be modified and/or established |
| *PSC-07-06-00009-P | exempt | Modification of the current Environmental Disclosure Program | To include an attributes accounting system |
| *PSC-22-06-00019-P | exempt | Hourly pricing by National Grid | To assess the impacts |
| *PSC-22-06-00020-P | exempt | Hourly pricing by New York State Electric & Gas Corporation | To assess the impacts |
| *PSC-22-06-00021-P | exempt | Hourly pricing by Rochester Gas & Electric Corporation | To assess the impacts |
| *PSC-22-06-00022-P | exempt | Hourly pricing by Consolidated Edison Company of New York, Inc. | To assess the impacts |
| *PSC-22-06-00023-P | exempt | Hourly pricing by Orange and Rockland Utilities, Inc. | To assess the impacts |
| *PSC-24-06-00005-EP | exempt | Supplemental home energy assistance benefits | To extend the deadline to Central Hudson's low-income customers |
| *PSC-25-06-00017-P | exempt | Purchased power adjustment by Massena Electric Department | To revise the method of calculating the purchased power adjustment and update the factor of adjustment |
| *PSC-34-06-00009-P | exempt | Inter-carrier telephone service quality standards and metrics by the Carrier Working Group | To incorporate appropriate modifications |
| *PSC-37-06-00015-P | exempt | Procedures for estimation of customer bills by Rochester Gas and Electric Corporation | To consider estimation procedures |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-37-06-00017-P | exempt | Procedures for estimation of customer bills by Rochester Gas and Electric Corporation | To consider estimation procedures |
| *PSC-43-06-00014-P | exempt | Electric delivery services by Strategic Power Management, Inc. | To determine the proper mechanism for the rate-recovery of costs |
| *PSC-04-07-00012-P | exempt | Petition for rehearing by Orange and Rockland Utilities, Inc. | To clarify the order |
| *PSC-06-07-00015-P | exempt | Meter reading and billing practices by Central Hudson Gas & Electric Corporation | To continue current meter reading and billing practices for electric service |
| *PSC-06-07-00020-P | exempt | Meter reading and billing practices by Central Hudson Gas & Electric Corporation | To continue current meter reading and billing practices for gas service |
| *PSC-11-07-00010-P | exempt | Investigation of the electric power outages by the Consolidated Edison Company of New York, Inc. | To implement the recommendations in the staff's investigation |
| *PSC-11-07-00011-P | exempt | Storm-related power outages by Consolidated Edison Company of New York, Inc. | To modify the company's response to power outages, the timing for any such changes and other related matters |
| *PSC-17-07-00008-P | exempt | Interconnection agreement between Verizon New York Inc. and BridgeCom International, Inc. | To amend the agreement |
| *PSC-18-07-00010-P | exempt | Existing electric generating stations by Independent Power Producers of New York, Inc. | To repower and upgrade existing electric generating stations owned by Rochester Gas and Electric Corporation |
| *PSC-20-07-00016-P | exempt | Tariff revisions and making rates permanent by New York State Electric & Gas Corporation | To seek rehearing |
| *PSC-21-07-00007-P | exempt | Natural Gas Supply and Acquisition Plan by Corning Natural Gas Corporation | To revise the rates, charges, rules and regulations for gas service |
| *PSC-22-07-00015-P | exempt | Demand Side Management Program by Consolidated Edison Company of New York, Inc. | To recover incremental program costs and lost revenue |
| *PSC-23-07-00022-P | exempt | Supplier, transportation, balancing and aggregation service by National Fuel Gas Distribution Corporation | To explicitly state in the company's tariff that the threshold level of elective upstream transmission capacity is a maximum of 112,600 Dth/day of marketer-provided upstream capacity |
| *PSC-24-07-00012-P | exempt | Gas Efficiency Program by the City of New York | To consider rehearing a decision establishing a Gas Efficiency Program |
| *PSC-39-07-00017-P | exempt | Gas bill issuance charge by New York State Electric & Gas Corporation | To create a gas bill issuance charge unbundled from delivery rates |
| *PSC-41-07-00009-P | exempt | Submetering of electricity rehearing | To seek reversal |
| *PSC-42-07-00012-P | exempt | Energy efficiency program by Orange and Rockland Utilities, Inc. | To consider any energy efficiency program for Orange and Rockland Utilities, Inc.'s electric service |
| *PSC-42-07-00013-P | exempt | Revenue decoupling by Orange and Rockland Utilities, Inc. | To consider a revenue decoupling mechanism for Orange and Rockland Utilities, Inc. |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-45-07-00005-P | exempt | Customer incentive programs by Orange and Rockland Utilities, Inc. | To establish a tariff provision |
| *PSC-02-08-00006-P | exempt | Additional central office codes in the 315 area code region | To consider options for making additional codes |
| *PSC-03-08-00006-P | exempt | Rehearing of the accounting determinations | To grant or deny a petition for rehearing of the accounting determinations |
| *PSC-04-08-00010-P | exempt | Granting of easement rights on utility property by Central Hudson Gas & Electric Corporation | To grant easement rights to Millennium Pipeline Company, L.L.C. |
| *PSC-04-08-00012-P | exempt | Marketing practices of energy service companies by the Consumer Protection Board and New York City Department of Consumer Affairs | To consider modifying the commission's regulation over marketing practices of energy service companies |
| *PSC-08-08-00016-P | exempt | Transfer of ownership by Entergy Nuclear Fitzpatrick LLC, et al. | To consider the transfer |
| *PSC-12-08-00019-P | exempt | Extend the provisions of the existing electric rate plan by Rochester Gas and Electric Corporation | To consider the request |
| *PSC-12-08-00021-P | exempt | Extend the provisions of the existing gas rate plan by Rochester Gas and Electric Corporation | To consider the request |
| *PSC-13-08-00011-P | exempt | Waiver of commission policy and NYSEG tariff by Turner Engineering, PC | To grant or deny Turner's petition |
| *PSC-13-08-00012-P | exempt | Voltage drops by New York State Electric & Gas Corporation | To grant or deny the petition |
| *PSC-23-08-00008-P | exempt | Petition requesting rehearing and clarification of the commission's April 25, 2008 order denying petition of public utility law project | To consider whether to grant or deny, in whole or in part, the May 7, 2008 Public Utility Law Project (PULP) petition for rehearing and clarification of the commission's April 25, 2008 order denying petition of Public Utility Law Project |
| *PSC-25-08-00007-P | exempt | Policies and procedures regarding the selection of regulatory proposals to meet reliability needs | To establish policies and procedures regarding the selection of regulatory proposals to meet reliability needs |
| *PSC-25-08-00008-P | exempt | Report on Callable Load Opportunities | Rider U report assessing callable load opportunities in New York City and Westchester County during the next 10 years |
| *PSC-28-08-00004-P | exempt | Con Edison's procedure for providing customers access to their account information | To consider Con Edison's implementation plan and timetable for providing customers access to their account information |
| *PSC-31-08-00025-P | exempt | Recovery of reasonable DRS costs from the cost mitigation reserve (CMR) | To authorize recovery of the DRS costs from the CMR |
| *PSC-32-08-00009-P | exempt | The ESCO referral program for KEDNY to be implemented by October 1, 2008 | To approve, reject or modify, in whole or in part, KEDNY's recommended ESCO referral program |
| *PSC-33-08-00008-P | exempt | Noble Allegany's request for lightened regulation | To consider Noble Allegany's request for lightened regulation as an electric corporation |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-36-08-00019-P | exempt | Land Transfer in the Borough of Manhattan, New York | To consider petition for transfer of real property to NYPH |
| *PSC-39-08-00010-P | exempt | RG&E's economic development plan and tariffs | Consideration of the approval of RG&E's economic development plan and tariffs |
| *PSC-40-08-00010-P | exempt | Loans from regulated company to its parent | To determine if the cash management program resulting in loans to the parent should be approved |
| *PSC-41-08-00009-P | exempt | Transfer of control of cable TV franchise | To determine if the transfer of control of Margaretville's cable TV subsidiary should be approved |
| *PSC-43-08-00014-P | exempt | Annual Reconciliation of Gas Expenses and Gas Cost Recoveries | The filings of various LDCs and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries |
| *PSC-46-08-00008-P | exempt | Property transfer in the Village of Avon, New York | To consider a petition for the transfer of street lighting and attached equipment to the Village of Avon, New York |
| *PSC-46-08-00010-P | exempt | A transfer of indirect ownership interests in nuclear generation facilities | Consideration of approval of a transfer of indirect ownership interests in nuclear generation facilities |
| *PSC-46-08-00014-P | exempt | The attachment of cellular antennae to an electric transmission tower | To approve, reject or modify the request for permission to attach cellular antennae to an electric transmission tower |
| *PSC-48-08-00005-P | exempt | A National Grid high efficiency gas heating equipment rebate program | To expand eligibility to customers converting from oil to natural gas |
| *PSC-48-08-00008-P | exempt | Petition for the master metering and submetering of electricity | To consider the request of Bay City Metering, to master meter & submeter electricity at 345 E. 81st St., New York, New York |
| *PSC-48-08-00009-P | exempt | Petition for the submetering of electricity | To consider the request of PCV/ST to submeter electricity at Peter Cooper Village & Stuyvesant Town, New York, New York |
| *PSC-50-08-00018-P | exempt | Market Supply Charge | A study on the implementation of a revised Market Supply Charge |
| *PSC-51-08-00006-P | exempt | Commission's October 27, 2008 Order on Future of Retail Access Programs in Case 07-M-0458 | To consider a Petition for rehearing of the Commission's October 27, 2008 Order in Case 07-M-0458 |
| *PSC-51-08-00007-P | exempt | Commission's October 27, 2008 Order in Cases 98-M-1343, 07-M-1514 and 08-G-0078 | To consider Petitions for rehearing of the Commission's October 27, 2008 Order in Cases 98-M-1343, 07-M-1514 and 08-G-0078 |
| *PSC-53-08-00011-P | exempt | Use of deferred Rural Telephone Bank funds | To determine if the purchase of a softswitch by Hancock is an appropriate use of deferred Rural Telephone Bank funds |
| *PSC-53-08-00012-P | exempt | Transfer of permanent and temporary easements at 549-555 North Little Tor Road, New City, NY | Transfer of permanent and temporary easements at 549-555 North Little Tor Road, New City, NY |
| *PSC-53-08-00013-P | exempt | To transfer common stock and ownership | To consider transfer of common stock and ownership |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-01-09-00015-P | exempt | FCC decision to redefine service area of Citizens/Frontier | Review and consider FCC proposed redefinition of Citizens/Frontier service area |
| *PSC-02-09-00010-P | exempt | Competitive classification of independent local exchange company, and regulatory relief appropriate thereto | To determine if Chazy & Westport Telephone Corporation more appropriately belongs in scenario 1 rather than scenario 2 |
| *PSC-05-09-00008-P | exempt | Revenue allocation, rate design, performance metrics, and other non-revenue requirement issues | To consider any remaining non-revenue requirement issues related to the Company's May 9, 2008 tariff filing |
| *PSC-05-09-00009-P | exempt | Numerous decisions involving the steam system including cost allocation, energy efficiency and capital projects | To consider the long term impacts on steam rates and on public policy of various options concerning the steam system |
| *PSC-06-09-00007-P | exempt | Interconnection of the networks between Frontier Comm. and WVT Communications for local exchange service and exchange access | To review the terms and conditions of the negotiated agreement between Frontier Comm. and WVT Comm. |
| *PSC-07-09-00015-P | exempt | Transfer certain utility assets located in the Town of Montgomery from plant held for future use to non-utility property | To consider the request to transfer certain utility assets located in the Town of Montgomery to non-utility assets |
| *PSC-07-09-00017-P | exempt | Request for authorization to defer the incremental costs incurred in the restoration work resulting from the ice storm | To allow the company to defer the incremental costs incurred in the restoration work resulting from the ice storm |
| *PSC-07-09-00018-P | exempt | Whether to permit the submetering of natural gas service to an industrial and commercial customer at Cooper Union, New York, NY | To consider the request of Cooper Union, to submeter natural gas at 41 Cooper Square, New York, New York |
| *PSC-12-09-00010-P | exempt | Charges for commodity | To charge customers for commodity costs |
| *PSC-12-09-00012-P | exempt | Charges for commodity | To charge customers for commodity costs |
| *PSC-13-09-00008-P | exempt | Options for making additional central office codes available in the 718/347 numbering plan area | To consider options for making additional central office codes available in the 718/347 numbering plan area |
| *PSC-14-09-00014-P | exempt | The regulation of revenue requirements for municipal utilities by the Public Service Commission | To determine whether the regulation of revenue requirements for municipal utilities should be modified |
| *PSC-16-09-00010-P | exempt | Petition for the submetering of electricity | To consider the request of AMPS on behalf of Park Imperial to submeter electricity at 230 W. 56th Street, in New York, New York |
| *PSC-16-09-00020-P | exempt | Whether SUNY's core accounts should be exempt from the mandatory assignment of local distribution company (LDC) capacity | Whether SUNY's core accounts should be exempt from the mandatory assignment of local distribution company (LDC) capacity |
| *PSC-17-09-00010-P | exempt | Whether to permit the use of Elster REX2 solid state electric meter for use in residential and commercial accounts | To permit electric utilities in New York State to use the Elster REX2 |
| *PSC-17-09-00011-P | exempt | Whether Brooklyn Navy Yard Cogeneration Partners, L.P. should be reimbursed by Con Edison for past and future use taxes | Whether Brooklyn Navy Yard Cogeneration Partners, L.P. should be reimbursed by Con Edison for past and future use taxes |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-17-09-00012-P | exempt | Petition for the submetering of gas at commercial property | To consider the request of Turner Construction, to submeter natural gas at 550 Short Ave., & 10 South St., Governors Island, NY |
| *PSC-17-09-00014-P | exempt | Benefit-cost framework for evaluating AMI programs prepared by the DPS Staff | To consider a benefit-cost framework for evaluating AMI programs prepared by the DPS Staff |
| *PSC-17-09-00015-P | exempt | The construction of a tower for wireless antennas on land owned by National Grid | To approve, reject or modify the petition to build a tower for wireless antennas in the Town of Onondaga |
| *PSC-18-09-00012-P | exempt | Petition for rehearing of Order approving the submetering of electricity | To consider the request of Frank Signore to rehear petition to submeter electricity at One City Place in White Plains, New York |
| *PSC-18-09-00013-P | exempt | Petition for the submetering of electricity | To consider the request of Living Opportunities of DePaul to submeter electricity at E. Main St. located in Batavia, New York |
| *PSC-18-09-00017-P | exempt | Approval of an arrangement for attachment of wireless antennas to the utility's transmission facilities in the City of Yonkers | To approve, reject or modify the petition for the existing wireless antenna attachment to the utility's transmission tower |
| *PSC-20-09-00016-P | exempt | The recovery of, and accounting for, costs associated with the Companies' advanced metering infrastructure (AMI) pilots etc | To consider a filing of the Companies as to the recovery of, and accounting for, costs associated with it's AMI pilots etc |
| *PSC-20-09-00017-P | exempt | The recovery of, and accounting for, costs associated with CHG&E's AMI pilot program | To consider a filing of CHG&E as to the recovery of, and accounting for, costs associated with it's AMI pilot program |
| *PSC-22-09-00011-P | exempt | Cost allocation for Consolidated Edison's East River Repowering Project | To determine whether any changes are warranted in the cost allocation of Consolidated Edison's East River Repowering Project |
| *PSC-25-09-00005-P | exempt | Whether to grant, deny, or modify, in whole or in part, the petition | Whether to grant, deny, or modify, in whole or in part, the petition |
| *PSC-25-09-00006-P | exempt | Electric utility implementation plans for proposed web based SIR application process and project status database | To determine if the proposed web based SIR systems are adequate and meet requirements needed for implementation |
| *PSC-25-09-00007-P | exempt | Electric rates for Consolidated Edison Company of New York, Inc | Consider a Petition for Rehearing filed by Consolidated Edison Company of New York, Inc |
| *PSC-27-09-00011-P | exempt | Interconnection of the networks between Vernon and tw telecom of new york l.p. for local exchange service and exchange access. | To review the terms and conditions of the negotiated agreement between Vernon and tw telecom of new york l.p. |
| *PSC-27-09-00014-P | exempt | Billing and payment for energy efficiency measures through utility bill | To promote energy conservation |
| *PSC-27-09-00015-P | exempt | Interconnection of the networks between Oriskany and tw telecom of new york l.p. for local exchange service and exchange access | To review the terms and conditions of the negotiated agreement between Oriskany and tw telecom of new york l.p. |
| *PSC-29-09-00011-P | exempt | Consideration of utility compliance filings | Consideration of utility compliance filings |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-32-09-00009-P | exempt | Cost allocation for Consolidated Edison's East River Repowering Project | To determine whether any changes are warranted in the cost allocation of Consolidated Edison's East River Repowering Project |
| *PSC-34-09-00016-P | exempt | Recommendations made in the Management Audit Final Report | To consider whether to take action or recommendations contained in the Management Audit Final Report |
| *PSC-34-09-00017-P | exempt | To consider the transfer of control of Plattsburgh Cablevision, Inc. d/b/a Charter Communications to CH Communications, LLC | To allow the Plattsburgh Cablevision, Inc. to distribute its equity interest in CH Communications, LLC |
| *PSC-36-09-00008-P | exempt | The increase in the non-bypassable charge implemented by RG&E on June 1, 2009 | Considering exemptions from the increase in the non-bypassable charge implemented by RG&E on June 1, 2009 |
| *PSC-37-09-00015-P | exempt | Sale of customer-generated steam to the Con Edison steam system | To establish a mechanism for sale of customer-generated steam to the Con Edison steam system |
| *PSC-37-09-00016-P | exempt | Applicability of electronic signatures to Deferred Payment Agreements | To determine whether electronic signatures can be accepted for Deferred Payment Agreements |
| *PSC-39-09-00015-P | exempt | Modifications to the \$5 Bill Credit Program | Consideration of petition of National Grid to modify the Low Income \$5 Bill Credit Program |
| *PSC-39-09-00018-P | exempt | The offset of deferral balances with Positive Benefit Adjustments | To consider a petition to offset deferral balances with Positive Benefit Adjustments |
| *PSC-40-09-00013-P | exempt | Uniform System of Accounts - request for deferral and amortization of costs | To consider a petition to defer and amortize costs |
| *PSC-51-09-00029-P | exempt | Rules and guidelines for the exchange of retail access data between jurisdictional utilities and eligible ESCOs | To revise the uniform Electronic Data Interchange Standards and business practices to incorporate a contest period |
| *PSC-51-09-00030-P | exempt | Waiver or modification of Capital Expenditure condition of merger | To allow the companies to expend less funds for capital improvement than required by the merger |
| *PSC-52-09-00006-P | exempt | ACE's petition for rehearing for an order regarding generator-specific energy deliverability study methodology | To consider whether to change the Order Prescribing Study Methodology |
| *PSC-52-09-00008-P | exempt | Approval for the New York Independent System Operator, Inc. to incur indebtedness and borrow up to \$50,000,000 | To finance the renovation and construction of the New York Independent System Operator, Inc.'s power control center facilities |
| *PSC-05-10-00008-P | exempt | Petition for the submetering of electricity | To consider the request of University Residences - Rochester, LLC to submeter electricity at 220 John Street, Henrietta, NY |
| *PSC-05-10-00015-P | exempt | Petition for the submetering of electricity | To consider the request of 243 West End Avenue Owners Corp. to submeter electricity at 243 West End Avenue, New York, NY |
| *PSC-06-10-00022-P | exempt | The Commission's Order of December 17, 2009 related to redevelopment of Consolidated Edison's Hudson Avenue generating facility | To reconsider the Commission's Order of December 17, 2009 related to redevelopment of the Hudson Avenue generating facility |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-07-10-00009-P | exempt | Petition to revise the Uniform Business Practices | To consider the RESA petition to allow rescission of a customer request to return to full utility service |
| *PSC-08-10-00007-P | exempt | Whether to grant, deny, or modify , in whole or in part, the rehearing petition filed in Case 06-E-0847 | Whether to grant, deny, or modify , in whole or in part, the rehearing petition filed in Case 06-E-0847 |
| *PSC-08-10-00009-P | exempt | Consolidated Edison of New York, Inc. energy efficiency programs | To modify approved energy efficiency programs |
| *PSC-12-10-00015-P | exempt | Recommendations made by Staff intended to enhance the safety of Con Edison's gas operations | To require that Con Edison implement the Staff recommendations intended to enhance the safety of Con Edison's gas operations |
| *PSC-14-10-00010-P | exempt | Petition for the submetering of electricity | To consider the request of 61 Jane Street Owners Corporation to submeter Electricity at 61 Jane Street, Manhattan, NY |
| *PSC-16-10-00005-P | exempt | To consider adopting and expanding mobile stray voltage testing requirements | Adopt additional mobile stray voltage testing requirements |
| *PSC-16-10-00007-P | exempt | Interconnection of the networks between TDS Telecom and PAETEC Communications for local exchange service and exchange access | To review the terms and conditions of the negotiated agreement between TDS Telecom and PAETEC Communications |
| *PSC-16-10-00015-P | exempt | Interconnection of the networks between Frontier and Choice One Communications for local exchange service and exchange access | To review the terms and conditions of the negotiated agreement between Frontier and Choice One Communications |
| *PSC-18-10-00009-P | exempt | Electric utility transmission right-of-way management practices | To consider electric utility transmission right-of-way management practices |
| *PSC-19-10-00022-P | exempt | Whether National Grid should be permitted to transfer a parcel of property located at 1 Eddy Street, Fort Edward, New York | To decide whether to approve National Grid's request to transfer a parcel of vacant property in Fort Edward, New York |
| *PSC-22-10-00006-P | exempt | Requirement that Noble demonstrate that its affiliated electric corporations operating in New York are providing safe service | Consider requiring that Noble demonstrate that its affiliated electric corporations in New York are providing safe service |
| *PSC-22-10-00008-P | exempt | Petition for the submetering of electricity | To consider the request of 48-52 Franklin Street to submeter electricity at 50 Franklin Street, New York, New York |
| *PSC-24-10-00009-P | exempt | Verizon New York Inc. tariff regulations relating to voice messaging service | To remove tariff regulations relating to retail voice messaging service from Verizon New York Inc.'s tariff |
| *PSC-25-10-00012-P | exempt | Reassignment of the 2-1-1 abbreviated dialing code | Consideration of petition to reassign the 2-1-1 abbreviated dialing code |
| *PSC-27-10-00016-P | exempt | Petition for the submetering of electricity | To consider the request of 9271 Group, LLC to submeter electricity at 960 Busti Avenue, Buffalo, New York |
| *PSC-34-10-00003-P | exempt | The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program | The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-34-10-00005-P | exempt | Approval of a contract for \$250,000 in tank repairs that may be a financing | To decide whether to approve a contract between the parties that may be a financing of \$250,000 for tank repairs |
| *PSC-34-10-00006-P | exempt | The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program | The modification of Central Hudson Gas & Electric Corporation's Enhanced Powerful Opportunities Program |
| *PSC-36-10-00010-P | exempt | Central Hudson's procedures, terms and conditions for an economic development plan | Consideration of Central Hudson's procedures, terms and conditions for an economic development plan |
| *PSC-40-10-00014-P | exempt | Disposition of a state sales tax refund | To determine how much of a state sales tax refund should be retained by National Grid |
| *PSC-40-10-00021-P | exempt | Whether to permit the submetering of natural gas service to a commercial customer at Quaker Crossing Mall | To permit the submetering of natural gas service to a commercial customer at Quaker Crossing Mall |
| *PSC-41-10-00018-P | exempt | Amount of hourly interval data provided to Hourly Pricing customers who have not installed a phone line to read meter | Allow Central Hudson to provide less than a years worth of interval data and charge for manual meter reading for some customers |
| *PSC-41-10-00022-P | exempt | Request for waiver of the individual living unit metering requirements at 5742 Route 5, Vernon, NY | Request for waiver of the individual living unit metering requirements at 5742 Route 5, Vernon, NY |
| *PSC-42-10-00011-P | exempt | Petition for the submetering of electricity | To consider the request of 4858 Group, LLC to submeter electricity at 456 Main Street, Buffalo, New York |
| *PSC-43-10-00016-P | exempt | Utility Access to Ducts, Conduit Facilities and Utility Poles | To review the complaint from Optical Communications Group |
| *PSC-44-10-00003-P | exempt | Third and fourth stage gas rate increase by Corning Natural Gas Corporation | To consider Corning Natural Gas Corporation's request for a third and fourth stage gas rate increase |
| *PSC-51-10-00018-P | exempt | Commission proceeding concerning three-phase electric service by all major electric utilities | Investigate the consistency of the tariff provisions for three-phase electric service for all major electric utilities |
| *PSC-11-11-00003-P | exempt | The proposed transfer of 55.42 acres of land and \$1.4 million of revenues derived from the rendition of public service | The proposed transfer of 55.42 acres of land and \$1.4 million of revenues derived from the rendition of public service |
| *PSC-13-11-00005-P | exempt | Exclude the minimum monthly bill component from the earnings test calculation | Exclude the minimum monthly bill component from the earnings test calculation |
| *PSC-14-11-00009-P | exempt | Petition for the submetering of electricity | To consider the request of 83-30 118th Street to submeter electricity at 83-30 118th Street, Kew Gardens, New York |
| *PSC-19-11-00007-P | exempt | Utility price reporting requirements related to the Commission's "Power to Choose" website | Modify the Commission's utility electric commodity price reporting requirements related to the "Power to Choose" website |
| *PSC-20-11-00012-P | exempt | Petition for the submetering of electricity | To consider the request of KMW Group LLC to submeter electricity at 122 West Street, Brooklyn, New York |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-20-11-00013-P | exempt | Determining the reasonableness of Niagara Mohawk Power Corporation d/b/a National Grid 's make ready charges | To determine if the make ready charges of Niagara Mohawk Power Corporation d/b/a National Grid are reasonable |
| *PSC-22-11-00004-P | exempt | Whether to permit the use of the Sensus accWAVE for use in residential gas meter applications | To permit gas utilities in New York State to use the Sensus accWAVE diaphragm gas meter |
| *PSC-26-11-00007-P | exempt | Water rates and charges | To approve an increase in annual revenues by about \$25,266 or 50% |
| *PSC-26-11-00009-P | exempt | Petition for the submetering of electricity at commercial property | To consider the request of by Hoosick River Hardwoods, LLC to submeter electricity at 28 Taylor Avenue, in Berlin, New York |
| *PSC-26-11-00012-P | exempt | Waiver of generation retirement notice requirements | Consideration of waiver of generation retirement notice requirements |
| *PSC-29-11-00011-P | exempt | Petition requesting the Commission reconsider its May 19, 2011 Order and conduct a hearing, and petition to stay said Order. | To consider whether to grant or deny, in whole or in part, Windstream New York's Petition For Reconsideration and Rehearing. |
| *PSC-35-11-00011-P | exempt | Whether to permit Consolidated Edison a waiver to commission regulations Part 226.8 | Permit Consolidated Edison to conduct a inspection program in lieu of testing the accuracy of Category C meters |
| *PSC-36-11-00006-P | exempt | To consider expanding mobile stray voltage testing requirements | Adopt additional mobile stray voltage testing requirements |
| *PSC-38-11-00002-P | exempt | Operation and maintenance procedures pertaining to steam trap caps | Adopt modified steam operation and maintenance procedures |
| *PSC-38-11-00003-P | exempt | Waiver of certain provisions of the electric service tariffs of Con Edison | Consideration of waiver of certain provisions of the electric service tariffs of Con Edison |
| *PSC-40-11-00010-P | exempt | Participation of regulated local exchange carriers in the New York Data Exchange, Inc. (NYDE) | Whether to partially modify its order requiring regulated local exchange carriers' participation NYDE |
| *PSC-40-11-00012-P | exempt | Granting of transfer of plant in-service to a regulatory asset | To approve transfer and recovery of unamortized plant investment |
| *PSC-42-11-00018-P | exempt | Availability of telecommunications services in New York State at just and reasonable rates | Providing funding support to help ensure availability of affordable telecommunications service throughout New York |
| *PSC-43-11-00012-P | exempt | Transfer of outstanding shares of stock | Transfer the issued outstanding shares of stock of The Meadows at Hyde Park Water-Works Corporation to HPWS, LLC |
| *PSC-47-11-00007-P | exempt | Remedying miscalculations of delivered gas as between two customer classes | Consideration of Con Edison's proposal to address inter-class delivery imbalances resulting from past Company miscalculations |
| *PSC-48-11-00007-P | exempt | Transfer of controlling interests in generation facilities from Dynegy to PSEG | Consideration of the transfer of controlling interests in electric generation facilities from Dynegy to PSEG |
| *PSC-48-11-00008-P | exempt | Petition for the submetering of electricity | To consider the request of To Better Days, LLC to submeter electricity at 37 East 4th Street, New York, New York |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-01-12-00007-P | exempt | The New York State Reliability Council's revisions to its rules and measurements | To adopt revisions to various rules and measurements of the New York State Reliability Council |
| *PSC-01-12-00008-P | exempt | Transfer of real property and easements from NMPNS to NMP3 | Consideration of the transfer of real property and easements from NMPNS to NMP3 |
| *PSC-01-12-00009-P | exempt | Recovery of expenses related to the expansion of Con Edison's ESCO referral program, PowerMove | To determine how and to what extent expenses related to the Expansion of Con Edison's ESCO referral program should be recovered |
| *PSC-11-12-00002-P | exempt | Whether to grant, deny or modify, in whole or part, Hegeman's petition for a waiver of Commission policy and Con Edison tariff | Whether to grant, deny or modify, in whole or part, Hegeman's petition for a waiver of Commission policy and Con Edison tariff |
| *PSC-11-12-00005-P | exempt | Transfer of land and water supply assets | Transfer the land and associated water supply assets of Groman Shores, LLC to Robert Groman |
| *PSC-13-12-00005-P | exempt | Authorization to transfer certain real property | To decide whether to approve the transfer of certain real property |
| *PSC-19-12-00023-P | exempt | Petition for approval pursuant to Section 70 for the sale of goods with an original cost of less than \$100,000 | To consider whether to grant, deny or modify, in whole or in part, the petition filed by Orange and Rockland Utilities, Inc. |
| *PSC-21-12-00006-P | exempt | Tariff filing requirements and refunds | To determine if certain agreements should be filed pursuant to the Public Service Law and if refunds are warranted |
| *PSC-21-12-00011-P | exempt | Whether to grant, deny or modify, in whole or part, the petition for waiver of tariff Rules 8.6 and 47 | Whether to grant, deny or modify, in whole or part, the petition for waiver of tariff Rules 8.6 and 47 |
| *PSC-23-12-00007-P | exempt | The approval of a financing upon a transfer to Alliance of upstream ownership interests in a generation facility | To consider the approval of a financing upon a transfer to Alliance of upstream ownership interests in a generation facility |
| *PSC-23-12-00009-P | exempt | Over earnings sharing between rate payers and shareholders | To establish an Earnings Sharing Mechanism to be applied following the conclusion of Corning's rate plan |
| *PSC-27-12-00012-P | exempt | Implementation of recommendations made in a Management Audit Report | To consider implementation of recommendations made in a Management Audit Report |
| *PSC-28-12-00013-P | exempt | Exemption of reliability reporting statistics for the purpose of the 2012 Reliability Performance Mechanism | Consideration of Orange and Rockland Utilities request for exemption of the 2012 reliability reporting statistics |
| *PSC-29-12-00019-P | exempt | Waiver of 16 NYCRR 894.1 through 894.4 | To allow the Town of Hamden to waive certain preliminary franchising procedures to expedite the franchising process. |
| *PSC-30-12-00010-P | exempt | Waiver of 16 NYCRR 894.1 through 894.4 | To allow the Town of Andes to waive certain preliminary franchising procedures to expedite the franchising process |
| *PSC-33-12-00009-P | exempt | Telecommunications companies ability to attach to utility company poles | Consideration of Tech Valley's ability to attach to Central Hudson poles |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-37-12-00009-P | exempt | Proposed modification by Con Edison of its procedures to calculate estimated bills to its customers | Proposed modification by Con Edison of its procedures to calculate estimated bills to its customers |
| *PSC-42-12-00009-P | exempt | Regulation of Gipsy Trail Club, Inc.'s long-term financing agreements | To exempt Gipsy Trail Club, Inc. from Commission regulation of its financing agreements |
| *PSC-45-12-00008-P | exempt | Whether to grant, deny or modify, in whole or part, ESHG's petition for a waiver of Commission policy and RG&E tariff | Whether to grant, deny or modify, in whole or part, ESHG's petition for a waiver of Commission policy and RG&E tariff |
| *PSC-45-12-00010-P | exempt | Whether to grant, deny or modify, in whole or in part the petition of Con Edison to grant easements to Millwood Fire District | Whether to grant, deny or modify, in whole or in part the petition of Con Edison to grant easements to Millwood Fire District |
| *PSC-50-12-00003-P | exempt | Affiliate standards for Corning Natural Gas Corporation | To resolve issues raised by Corning Natural Gas Corporation in its petition for rehearing |
| *PSC-04-13-00006-P | exempt | Expansion of mandatory day ahead hourly pricing for customers of Orange and Rockland Utilities with demands above 100 kW | To consider the expansion of mandatory day ahead hourly pricing for customers with demands above 100 kW |
| *PSC-04-13-00007-P | exempt | Authorization to transfer certain real property. | To decide whether to approve the transfer of certain real property. |
| *PSC-06-13-00008-P | exempt | Verizon New York Inc.'s retail service quality | To investigate Verizon New York Inc.'s retail service quality |
| *PSC-08-13-00012-P | exempt | Filing requirements for certain Article VII electric facilities | To ensure that applications for certain electric transmission facilities contain pertinent information |
| *PSC-08-13-00014-P | exempt | Uniform System of Accounts - Request for Accounting Authorization | To allow the company to defer an item of expense or capital beyond the end of the year in which it was incurred |
| *PSC-12-13-00007-P | exempt | Protecting company water mains | To allow the company to require certain customers to make changes to the electrical grounding system at their homes |
| *PSC-13-13-00008-P | exempt | The potential waiver of 16 NYCRR 255.9221(d) completion of integrity assessments for certain gas transmission lines. | To determine whether a waiver of the timely completion of certain gas transmission line integrity assessments should be granted. |
| *PSC-18-13-00007-P | exempt | Whether Demand Energy Networks energy storage systems should be designated technologies for standby rate eligibility purposes | Whether Demand Energy Networks energy storage systems should be designated technologies for standby rate eligibility purposes |
| *PSC-21-13-00003-P | exempt | To consider policies that may impact consumer acceptance and use of electric vehicles | To consider and further develop policies that may impact consumer acceptance and use of electric vehicles |
| *PSC-21-13-00005-P | exempt | To implement an abandonment of Windover's water system | To approve the implementation of abandonment of Windover's water system |
| *PSC-21-13-00008-P | exempt | Rates of National Fuel Gas Distribution Corporation | To make the rates of National Fuel Gas Distribution Corporation temporary, subject to refund, if they are found to be excessive |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-21-13-00009-P | exempt | Reporting requirements for natural gas local distribution companies | To help ensure efficient and economic expansion of the natural gas system as appropriate |
| *PSC-22-13-00009-P | exempt | On remand from New York State court litigation, determine the recovery of certain deferred amounts owed NFG by ratepayers | On remand, to determine the recovery of certain deferral amounts owed NFG from ratepayers |
| *PSC-23-13-00005-P | exempt | Waiver of partial payment, directory database distribution, service quality reporting, and service termination regulations | Equalize regulatory treatment based on level of competition and practical considerations |
| *PSC-25-13-00008-P | exempt | To deny, grant or modify, in whole or in part, Central Hudson's rehearing request. | To deny, grant or modify, in whole or in part, Central Hudson's rehearing request. |
| *PSC-25-13-00009-P | exempt | Provision by utilities of natural gas main and service lines. | To help ensure efficient and economic expansion of the natural gas system as appropriate. |
| *PSC-25-13-00012-P | exempt | To deny, grant or modify, in whole or in part, Central Hudson's rehearing request. | To deny, grant or modify, in whole or in part, Central Hudson's rehearing request. |
| *PSC-27-13-00014-P | exempt | Columbia Gas Transmission Corporation Cost Refund | For approval for temporary waiver of tariff provisions regarding its Columbia Gas Transmission Corporation cost refund. |
| *PSC-28-13-00014-P | exempt | Provision for the recovery and allocation of costs of transmission projects that reduce congestion on certain interfaces | To consider the recovery and allocation of costs of transmission projects that reduce congestion on certain interfaces |
| *PSC-28-13-00016-P | exempt | The request of NGT for lightened regulation as a gas corporation. | To consider whether to approve, reject, or modify the request of Niagara gas transport of Lockport, NY LLC. |
| *PSC-28-13-00017-P | exempt | The request by TE for waiver of regulations requiring that natural gas be odorized in certain gathering line segments | Consider the request by TE for waiver of regulations that gas be odorized in certain lines |
| *PSC-32-13-00009-P | exempt | To consider the definition of "misleading or deceptive conduct" in the Commission's Uniform Business Practices | To consider the definition of "misleading or deceptive conduct" in the Commission's Uniform Business Practices |
| *PSC-32-13-00012-P | exempt | To consider whether NYSEG should be required to undertake actions to protect its name and to minimize customer confusion | To consider whether NYSEG should be required to undertake actions to protect its name and to minimize customer confusion |
| *PSC-33-13-00027-P | exempt | Waive underground facility requirements for new construction in residential subdivisions to allow for overhead electric lines. | Determine whether Chapin Lumberland, LLC subdivision will be allowed overhead electric distribution and service lines. |
| *PSC-33-13-00029-P | exempt | Deferral of incremental costs associated with the restoration of steam service following Superstorm Sandy. | To consider a petition by Con Edison to defer certain incremental steam system restoration costs relating to Superstorm Sandy. |
| *PSC-34-13-00004-P | exempt | Escrow account and surcharge to fund extraordinary repairs | To approve the establishment of an escrow account and surcharge |
| *PSC-42-13-00013-P | exempt | Failure to Provide Escrow Information | The closure of the Escrow Account |
| *PSC-42-13-00015-P | exempt | Failure to Provide Escrow Information | The closure of the Escrow Account |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-43-13-00015-P | exempt | Petition for submetering of electricity | To consider the request of 2701 Kingsbridge Terrace L.P. to submeter electricity at 2701 Kingsbridge Terrace, Bronx, N.Y. |
| *PSC-45-13-00021-P | exempt | Investigation into effect of bifurcation of gas and electric utility service on Long Island. | To consider a Petition for an investigation into effect of bifurcation of gas and electric utility service on Long Island. |
| *PSC-45-13-00022-P | exempt | Waiver of PSC regulations, 16 NYCRR section 88.4(a)(4) | To consider a waiver of certain regulations relating to the content of an application for transmission line siting |
| *PSC-45-13-00023-P | exempt | Waiver of PSC regulations, 16 NYCRR section 88.4(a)(4). | To consider a waiver of certain regulations relating to the content of an application for transmission line siting |
| *PSC-45-13-00024-P | exempt | Waiver of PSC regulations, 16 NYCRR section 88.4(a)(4); waiver of filing deadlines. | To consider a waiver of certain regulations relating to the content of an application for transmission line siting |
| *PSC-45-13-00025-P | exempt | Waiver of PSC regulations, 16 NYCRR section 88.4(a)(4). | To consider a waiver of certain regulations relating to the content of an application for transmission line siting |
| *PSC-47-13-00009-P | exempt | Petition for submetering of electricity. | To consider the request of Hegeman Avenue Housing L.P. to submeter electricity at 39 Hegeman Avenue, Brooklyn, N.Y. |
| *PSC-47-13-00012-P | exempt | Conditioning, restricting or prohibiting the purchase of services by NYSEG and RG&E from certain affiliates. | Consideration of conditioning, restricting or prohibiting the purchase of services by NYSEG and RG&E from certain affiliates. |
| *PSC-49-13-00008-P | exempt | Authorization to transfer all of Crystal Water Supply Company, Inc. stocks to Essel Infra West Inc. | To allow Crystal Water Supply Company, Inc to transfer all of its issued and outstanding stocks to Essel Infra West Inc. |
| *PSC-51-13-00009-P | exempt | Consolidated Edison proposing to use data from a test period ending September 30, 2013 to support its next rate filing. | To ensure there is a reasonable basis for data submitted in support of a request for a change in rates. |
| *PSC-51-13-00010-P | exempt | Consolidated Edison proposing to use data from a test period ending September 30, 2013 to support its next rate filing. | To ensure there is a reasonable basis for data submitted in support of a request for a change in rates. |
| *PSC-51-13-00011-P | exempt | Consolidated Edison proposing to use data from a test period ending September 30, 2013 to support its next rate filing. | To ensure there is a reasonable basis for data submitted in support of a request for a change in rates. |
| *PSC-52-13-00012-P | exempt | The development of reliability contingency plan(s) to address the potential retirement of Indian Point Energy Center (IPEC). | To address the petition for rehearing and reconsideration/motion for clarification of the IPEC reliability contingency plan(s). |
| *PSC-52-13-00015-P | exempt | To enter into a loan agreement with the banks for up to an amount of \$94,000. | To consider allowing Knolls Water Company to enter into a long-term loan agreement. |
| *PSC-05-14-00010-P | exempt | The New York State Reliability Council's revisions to its rules and measurements | To adopt revisions to various rules and measurements of the New York State Reliability Council |
| *PSC-07-14-00008-P | exempt | Petition for submetering of electricity | To consider the request of Greater Centennial Homes HDFC, Inc. to submeter electricity at 102, 103 and 106 W 5th Street, et al. |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-07-14-00012-P | exempt | Water rates and charges | Implementation of Long-Term Water Supply Surcharge to recover costs associated with the Haverstraw Water Supply Project |
| *PSC-08-14-00015-P | exempt | Verizon New York Inc.'s service quality and Customer Trouble Report Rate (CTRR) levels at certain central office entities | To improve Verizon New York Inc.'s service quality and the Customer Trouble Report Rate levels at certain central office entities |
| *PSC-10-14-00006-P | exempt | Actions to facilitate the availability of ESCO value-added offerings, ESCO eligibility and ESCO compliance | To facilitate ESCO value-added offerings and to make changes to ESCO eligibility and to ensure ESCO compliance |
| *PSC-11-14-00003-P | exempt | Provision for the recovery and allocation of costs of transmission projects that reduce congestion on certain interfaces | To consider the recovery and allocation of costs of transmission projects that reduce congestion on certain interfaces |
| *PSC-16-14-00014-P | exempt | Whether to order NYSEG to provide gas service to customers when an expanded CPCN is approved and impose PSL 25-a penalties. | To order gas service to customers in the Town of Plattsburgh after approval of a town wide CPCN and to impose penalties. |
| *PSC-16-14-00015-P | exempt | Whether Central Hudson should be permitted to defer obligations of the Order issued on October 18, 2013 in Case 13-G-0336. | Consideration of the petition by Central Hudson to defer reporting obligations of the October 18, 2013 Order in Case 13-G-0336 |
| *PSC-17-14-00003-P | exempt | Con Edison's Report on its 2013 performance under the Electric Service Reliability Performance Mechanism | Con Edison's Report on its 2013 performance under the Electric Service Reliability Performance Mechanism |
| *PSC-17-14-00004-P | exempt | To consider certain portions of petitions for rehearing, reconsideration and/or clarification | To consider certain portions of petitions for rehearing, reconsideration and/or clarification |
| *PSC-17-14-00007-P | exempt | To consider petitions for rehearing, reconsideration and/or clarification | To consider petitions for rehearing, reconsideration and/or clarification |
| *PSC-17-14-00008-P | exempt | To consider certain portions of petitions for rehearing, reconsideration and/or clarification | To consider certain portions of petitions for rehearing, reconsideration and/or clarification |
| *PSC-19-14-00014-P | exempt | Market Supply Charge | To make tariff revisions to the Market Supply Charge for capacity related costs |
| *PSC-19-14-00015-P | exempt | Whether to permit the use of the Sensus accuWAVE for use in residential and commercial gas meter applications | To permit gas utilities in New York State to use the Sensus accuWAVE 415TC gas meter |
| *PSC-22-14-00013-P | exempt | Petition to transfer and merge systems, franchises and assets. | To consider the Comcast and Time Warner Cable merger and transfer of systems, franchises and assets. |
| *PSC-23-14-00010-P | exempt | Whether to permit the use of the GE Dresser Series B3-HPC 11M-1480 rotary gas meter for use in industrial gas meter applications | To permit gas utilities in New York State to use the GE Dresser Series B3-HPC 11M-1480 rotary gas meter |
| *PSC-23-14-00014-P | exempt | Waiver of the negative revenue adjustment associated with KEDLI's 2013 Customer Satisfaction Performance Metric | Consideration of KEDLI's waiver request pertaining to its 2013 performance under its Customer Satisfaction Metric |
| *PSC-24-14-00005-P | exempt | To examine LDC's performance and performance measures. | To improve gas safety performance. |
| *PSC-26-14-00013-P | exempt | Waiver of RG&E's tariffed definition of emergency generator. | To consider waiver of RG&E's tariffed definition of emergency generator. |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-26-14-00020-P | exempt | New electric utility backup service tariffs and standards for interconnection may be adopted. | To encourage development of microgrids that enhance the efficiency, safety, reliability and resiliency of the electric grid. |
| *PSC-26-14-00021-P | exempt | Consumer protections, standards and protocols pertaining to access to customer data may be established. | To balance the need for the information necessary to support a robust market with customer privacy concerns. |
| *PSC-28-14-00014-P | exempt | Petition to transfer systems, franchises and assets. | To consider the Comcast and Charter transfer of systems, franchise and assets. |
| *PSC-30-14-00023-P | exempt | Whether to permit the use of the Sensus iPERL Fire Flow Meter. | Pursuant to 16 NYCRR Part 500.3 , it is necessary to permit the use of the Sensus iPERL Fire Flow Meter. |
| *PSC-30-14-00026-P | exempt | Petition for a waiver to master meter electricity. | Considering the request of Renaissance Corporation of to master meter electricity at 100 Union Drive, Albany, NY. |
| *PSC-31-14-00004-P | exempt | To transfer 100% of the issued and outstanding stock from Vincent Cross to Bonnie and Michael Cross | To transfer 100% of the issued and outstanding stock from Vincent Cross to Bonnie and Michael Cross |
| *PSC-32-14-00012-P | exempt | Whether to grant or deny, in whole or in part, the Connect New York Coalition's petition | To consider the Connect New York Coalition's petition seeking a formal investigation and hearings |
| *PSC-35-14-00004-P | exempt | Regulation of a proposed electricity generation facility located in the Town of Brookhaven, NY | To consider regulation of a proposed electricity generation facility located in the Town of Brookhaven, NY |
| *PSC-35-14-00005-P | exempt | Whether to permit the use of the Sensus iConA electric meter | Pursuant to 16 NYCRR Parts 92 and 93, Commission approval is necessary to permit the use of the Sensus iConA electric meter |
| *PSC-36-14-00009-P | exempt | Modification to the Commission's Electric Safety Standards. | To consider revisions to the Commission's Electric Safety Standards. |
| *PSC-38-14-00003-P | exempt | Whether to approve, reject or modify, in whole or in part a time-sensitive rate pilot program. | Whether to approve, reject or modify, in whole or in part a time-sensitive rate pilot program. |
| *PSC-38-14-00004-P | exempt | The study and petition of Con Edison regarding use, accounting and ratemaking treatment for 11-23 and 2-28 Hudson Ave. Brooklyn. | The study and petition of Con Edison regarding use, accounting and ratemaking treatment for 11-23 and 2-28 Hudson Ave. Brooklyn. |
| *PSC-38-14-00005-P | exempt | Action on the report and petition of Con Edison regarding the Storm Hardening and Resiliency Collaborative, Phase 2. | Action on the report and petition of Con Edison regarding the Storm Hardening and Resiliency Collaborative, Phase 2. |
| *PSC-38-14-00007-P | exempt | Whether to expand Con Edison's low income program to include Medicaid recipients. | Whether to expand Con Edison's low income program to include Medicaid recipients. |
| *PSC-38-14-00008-P | exempt | The study and petition of Con Edison regarding use, accounting and ratemaking treatment for 11-23 and 2-28 Hudson Ave. Brooklyn. | The study and petition of Con Edison regarding use, accounting and ratemaking treatment for 11-23 and 2-28 Hudson Ave. Brooklyn. |
| *PSC-38-14-00010-P | exempt | Inter-carrier telephone service quality standard and metrics and administrative changes. | To review recommendations from the Carrier Working Group and incorporate appropriate modifications to the existing Guidelines. |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-38-14-00012-P | exempt | Action on the report and petition of Con Edison regarding the Storm Hardening and Resiliency Collaborative, Phase 2. | Action on the report and petition of Con Edison regarding the Storm Hardening and Resiliency Collaborative, Phase 2. |
| *PSC-39-14-00020-P | exempt | Whether to permit the use of the Mueller Systems 400 Series and 500 Series of water meters | Pursuant to 16 NYCRR section 500.3, whether to permit the use of the Mueller Systems 400, and 500 Series of water meters |
| *PSC-40-14-00008-P | exempt | To consider granting authorization for Buy Energy Direct to resume marketing to residential customers. | To consider granting authorization for Buy Energy Direct to resume marketing to residential customers. |
| *PSC-40-14-00009-P | exempt | Whether to permit the use of the Itron Open Way Centron Meter with Hardware 3.1 for AMR and AMI functionality. | Pursuant to 16 NYCRR Parts 93, is necessary to permit the use of the Itron Open Way Centron Meter with Hardware 3.1. |
| *PSC-40-14-00011-P | exempt | Late Payment Charge. | To modify Section 7.6 - Late Payment Charge to designate a specific time for when a late payment charge is due. |
| *PSC-40-14-00013-P | exempt | Regulation of a proposed natural gas pipeline and related facilities located in the Town of Ticonderoga, NY. | To consider regulation of a proposed natural gas pipeline and related facilities located in the Town of Ticonderoga, NY. |
| *PSC-40-14-00014-P | exempt | Waiver of 16 NYCRR Sections 894.1 through 894.4(b)(2) | To allow the Town of Goshen, NY, to waive certain preliminary franchising procedures to expedite the franchising process. |
| *PSC-40-14-00015-P | exempt | Late Payment Charge. | To modify Section 6.6 - Late Payment Charge to designate a specific time for when a late payment charge is due. |
| *PSC-42-14-00003-P | exempt | Annual Reconciliation of Gas Expenses and Gas Cost Recoveries | The filings of various LDCs and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries |
| *PSC-42-14-00004-P | exempt | Winter Bundled Sales Service Option | To modify SC-11 to remove language relating to fixed storage charges in the determination of the Winter Bundled Sales charge |
| *PSC-48-14-00014-P | exempt | Considering the recommendations contained in Staff's electric outage investigation report for MNRR, New Haven Line. | To consider the recommendations contained in Staff's electric outage investigation report for MNRR, New Haven Line. |
| *PSC-52-14-00019-P | exempt | Petition for a waiver to master meter electricity. | Considering the request of 614 South Crouse Avenue, LLC to master meter electricity at 614 South Crouse Avenue, Syracuse, NY.. |
| *PSC-01-15-00014-P | exempt | State Universal Service Fund Disbursements | To consider Edwards Telephone Company's request for State Universal Service Fund disbursements |
| *PSC-08-15-00010-P | exempt | Request pertaining to the lawfulness of National Grid USA continuing its summary billing program. | To grant, deny, or modify URAC Rate Consultants' request that National Grid cease its summary billing program. |
| *PSC-10-15-00007-P | exempt | Notification concerning tax refunds | To consider Verizon New York Inc.'s partial rehearing or reconsideration request regarding retention of property tax refunds |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-10-15-00008-P | exempt | Whether to waive Policy on Test Periods in Major Rate Proceedings and provide authority to file tariff changes | Whether to waive Policy on Test Periods in Major Rate Proceedings and provide authority to file tariff changes |
| *PSC-13-15-00024-P | exempt | Whether Leatherstocking should be permitted to recover a shortfall in earnings | To decide whether to approve Leatherstocking's request to recover a shortfall in earnings |
| *PSC-13-15-00026-P | exempt | Whether to permit the use of the Sensus Smart Point Gas AMR/AMI product | To permit the use of the Sensus Smart Point Gas AMR/AMI product |
| *PSC-13-15-00027-P | exempt | Whether to permit the use of the Measurlogic DTS 310 electric submeter | To permit the use of the Measurlogic DTS 310 submeter |
| *PSC-13-15-00028-P | exempt | Whether to permit the use of the SATEC EM920 electric meter | To permit necessary to permit the use of the SATEC EM920 electric meter |
| *PSC-13-15-00029-P | exempt | Whether to permit the use the Triacta Power Technologies 6103, 6112, 6303, and 6312 electric submeters | To permit the use of the Triacta submeters |
| *PSC-17-15-00007-P | exempt | To consider the petition of Leatherstocking Gas Company, LLC seeking authority to issue long-term debt of \$2.75 million | To consider the petition of Leatherstocking Gas Company, LLC seeking authority to issue long-term debt of \$2.75 million |
| *PSC-18-15-00005-P | exempt | Con Edison's Report on its 2014 performance under the Electric Service Reliability Performance Mechanism | Con Edison's Report on its 2014 performance under the Electric Service Reliability Performance Mechanism |
| *PSC-19-15-00011-P | exempt | Gas Safety Performance Measures and associated negative revenue adjustments | To update the performance measures applicable to KeySpan Gas East Corporation d/b/a National Grid |
| *PSC-22-15-00015-P | exempt | To consider the request for waiver of the individual residential unit meter requirements and 16 NYCRR 96.1(a) | To consider the request for waiver of the individual residential unit meter requirements and 16 NYCRR 96.1(a) |
| *PSC-23-15-00005-P | exempt | The modification of New York American Water's current rate plan | Whether to adopt the terms of the Joint Proposal submitted by NYAW and DPS Staff |
| *PSC-23-15-00006-P | exempt | The modification of New York American Water's current rate plan | Whether to adopt the terms of the Joint Proposal submitted by NYAW and DPS Staff |
| *PSC-25-15-00008-P | exempt | Notice of Intent to Submeter electricity. | To consider the request of 165 E 66 Residences, LLC to submeter electricity at 165 East 66th Street, New York, New York. |
| *PSC-29-15-00025-P | exempt | Joint Petition for authority to transfer real property located at 624 West 132nd Street, New York, NY | Whether to authorize the proposed transfer of real property located at 624 West 132nd Street, New York, NY |
| *PSC-32-15-00006-P | exempt | Development of a Community Solar Demonstration Project. | To approve the development of a Community Solar Demonstration Project. |
| *PSC-33-15-00009-P | exempt | Remote net metering of a demonstration community net metering program. | To consider approval of remote net metering of a demonstration community net metering program. |
| *PSC-33-15-00012-P | exempt | Remote net metering of a Community Solar Demonstration Project. | To consider approval of remote net metering of a Community Solar Demonstration Project. |

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| *PSC-34-15-00021-P | exempt | Petition by NYCOM requesting assistance with obtaining information on CLECs and ESCOs | To consider the petition by NYCOM requesting assistance with obtaining information on CLECs and ESCOs |
| *PSC-35-15-00014-P | exempt | Consideration of consequences against Light Power & Gas, LLC for violations of the UBP | To consider consequences against Light Power & Gas, LLC for violations of the UBP |
| *PSC-37-15-00007-P | exempt | Submetered electricity | To consider the request of 89 Murray Street Ass. LLC, for clarification of the submetering order issued December 20, 2007 |
| *PSC-40-15-00014-P | exempt | Whether to permit the use of the Open Way 3.5 with cellular communications | To consider the use of the Open Way 3.5 electric meter, pursuant to 16 NYCRR Parts 92 and 93 |
| *PSC-42-15-00006-P | exempt | Deferral of incremental expenses associated with NERC's new Bulk Electric System (BES) compliance requirements approved by FERC. | Consideration of Central Hudson's request to defer incremental expenses associated with new BES compliance requirements. |
| *PSC-44-15-00028-P | exempt | Deferral of incremental expenses associated with new compliance requirements | Consideration of Central Hudson's request to defer incremental expenses associated with new compliance requirements |
| *PSC-47-15-00013-P | exempt | Whitepaper on Implementing Lightened Ratemaking Regulation. | Consider Whitepaper on Implementing Lightened Ratemaking Regulation. |
| *PSC-48-15-00011-P | exempt | Proposal to retire Huntley Units 67 and 68 on March 1, 2016. | Consider the proposed retirement of Huntley Units 67 and 68. |
| *PSC-50-15-00006-P | exempt | The reduction of rates. | To consider the reduction of rates charged by Independent Water Works, Inc. |
| *PSC-50-15-00009-P | exempt | Notice of Intent to submeter electricity. | To consider the request to submeter electricity at 31-33 Lincoln Road and 510 Flatbush Avenue, Brooklyn, New York. |
| *PSC-51-15-00010-P | exempt | Modification of the EDP | To consider modifying the EDP |
| *PSC-01-16-00005-P | exempt | Proposed amendment to Section 5, Attachment 1.A of the Uniform Business Practices | To consider amendment to Section 5, Attachment 1.A of the Uniform Business Practices |
| *PSC-04-16-00007-P | exempt | Whether Hamilton Municipal Utilities should be permitted to construct and operate a municipal gas distribution facility. | Consideration of the petition by Hamilton Municipal Utilities to construct and operate a municipal gas distribution facility. |
| *PSC-04-16-00012-P | exempt | Proposal to mothball three gas turbines located at the Astoria Gas Turbine Generating Station. | Consider the proposed mothball of three gas turbines located at the Astoria Gas Turbine Generating Station. |
| *PSC-04-16-00013-P | exempt | Proposal to find that three gas turbines located at the Astoria Gas Turbine Generating Station are uneconomic. | Consider whether three gas turbines located at the Astoria Gas Turbine Generating Station are uneconomic. |
| *PSC-06-16-00013-P | exempt | Continued deferral of approximately \$16,000,000 in site investigation and remediation costs. | To consider the continued deferral of approximately \$16,000,000 in site investigation and remediation costs. |
| *PSC-06-16-00014-P | exempt | MEGA's proposed demonstration CCA program. | To consider MEGA's proposed demonstration CCA program. |

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| *PSC-14-16-00008-P | exempt | Resetting retail markets for ESCO mass market customers. | To ensure consumer protections with respect to residential and small non-residential ESCO customers. |
| *PSC-18-16-00013-P | exempt | Amendments to the Uniform Business Practices of ESCOs. | To ensure consumer protection for ESCO customers. |
| *PSC-18-16-00014-P | exempt | Amendments to the Uniform Business Practices of ESCOs. | To ensure consumer protection for ESCO customers. |
| *PSC-18-16-00015-P | exempt | Petitions for rehearing of the Order Resetting Retail Energy Markets and Establishing Further Process. | To ensure consumer protections for ESCO customers. |
| *PSC-18-16-00016-P | exempt | Amendments to the Uniform Business Practices of ESCOs. | To ensure consumer protection for ESCO customers. |
| *PSC-18-16-00018-P | exempt | Amendments to the Uniform Business Practices of ESCOs. | To ensure consumer protection for ESCO customers. |
| *PSC-20-16-00008-P | exempt | Consideration of consequences against Global Energy Group, LLC for violations of the Uniform Business Practices (UBP). | To consider consequences against Global Energy Group, LLC for violations of the Uniform Business Practices (UBP). |
| *PSC-20-16-00010-P | exempt | Deferral and recovery of incremental expense. | To consider deferring costs of conducting leak survey and repairs for subsequent recovery. |
| *PSC-20-16-00011-P | exempt | Enetics LD-1120 Non-Intrusive Load Monitoring Device in the Statewide Residential Appliance Metering Study. | To consider the use of the Enetics LD-1120 Non-Intrusive Load Monitoring Device. |
| *PSC-24-16-00009-P | exempt | Petition to submeter gas service. | To consider the Petition of New York City Economic Development Corp. to submeter gas at Pier 17, 89 South Street, New York, NY. |
| *PSC-25-16-00009-P | exempt | To delay Companies' third-party assessments of customer personally identifiable information until 2018. | To extend the time period between the Companies' third-party assessments of customer personally identifiable information. |
| *PSC-25-16-00025-P | exempt | Acquisition of all water supply assets of Woodbury Heights Estates Water Co., Inc. by the Village of Kiryas Joel. | To consider acquisition of all water supply assets of Woodbury Heights Estates Water Co., Inc. by the Village of Kiryas Joel. |
| *PSC-25-16-00026-P | exempt | Use of the Badger E Series Ultrasonic Cold Water Stainless Steel Meter, in residential fire service applications. | To consider the use of the Badger E Series Ultrasonic Cold Water Stainless Steel Meter in fire service applications. |
| *PSC-28-16-00017-P | exempt | A petition for rehearing of the Order Adopting a Ratemaking and Utility Revenue Model Policy Framework. | To determine appropriate rules for and calculation of the distributed generation reliability credit. |
| *PSC-29-16-00024-P | exempt | Participation of NYPA customers in surcharge-funded clean energy programs. | To consider participation of NYPA customers in surcharge-funded clean energy programs. |
| *PSC-32-16-00012-P | exempt | Benefit-Cost Analysis Handbooks. | To evaluate proposed methodologies of benefit-cost evaluation. |
| *PSC-33-16-00001-EP | exempt | Use of escrow funds for repairs. | To authorize the use of escrow account funds for repairs. |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-33-16-00005-P | exempt | Exemption from certain charges for delivery of electricity to its Niagara Falls, New York facility. | Application of System Benefits Charges, Renewable Portfolio Standard charges and Clean Energy Fund surcharges. |
| *PSC-35-16-00015-P | exempt | NYSRC's revisions to its rules and measurements | To consider revisions to various rules and measurements of the NYSRC |
| *PSC-36-16-00004-P | exempt | Recovery of costs for installation of electric service. | To consider the recovery of costs for installation of electric service. |
| *PSC-40-16-00025-P | exempt | Consequences pursuant to the Commission's Uniform Business Practices (UBP). | To consider whether to impose consequences on Smart One for its apparent non-compliance with Commission requirements. |
| *PSC-47-16-00009-P | exempt | Petition to use commercial electric meters | To consider the petition of Itron, Inc. to use the Itron CP2SO and CP2SOA in commercial electric meter applications |
| *PSC-47-16-00010-P | exempt | Standby Service rate design | To consider the report filed and the recommendations therein |
| *PSC-47-16-00013-P | exempt | Standby Service rate design | To consider the report filed and the recommendations therein |
| *PSC-47-16-00014-P | exempt | Standby Service rate design | To consider the report filed and the recommendations therein |
| *PSC-47-16-00016-P | exempt | Standby Service rate design | To consider the report filed and the recommendations therein |
| *PSC-02-17-00010-P | exempt | Implementation of the four EAMs. | To consider the implementation of EAMs for RG&E. |
| *PSC-02-17-00012-P | exempt | Implementation of the four EAMs. | To consider the implementation of EAMs for NYSEG. |
| *PSC-18-17-00024-P | exempt | A petition for rehearing or reconsideration of the Order Addressing Public Policy Transmission Need for AC Transmission Upgrades | To determine whether Public Policy Transmission Need/Public Policy Requirements continue to exist. |
| *PSC-18-17-00026-P | exempt | Revisions to the Dynamic Load Management surcharge. | To consider revisions to the Dynamic Load Management surcharge. |
| *PSC-19-17-00004-P | exempt | NYAW's request to defer and amortize, for future rate recognition, pension settlement payout losses incurred in 2016. | Consideration of NYAW's petition to defer and amortize, for future rate recognition, pension payout losses incurred in 2016. |
| *PSC-20-17-00008-P | exempt | Compressed natural gas as a motor fuel for diesel fueled vehicles. | To consider a report filed by National Grid NY regarding the potential for adoption of compressed natural gas as a motor fuel. |
| *PSC-20-17-00010-P | exempt | Compressed natural gas as a motor fuel for diesel fueled vehicles. | To consider a report filed by National Grid regarding the potential for adoption of compressed natural gas as a motor fuel. |
| *PSC-21-17-00013-P | exempt | The establishment and implementation of Earnings Adjustment Mechanisms. | To consider the establishment and implementation of Earnings Adjustment Mechanisms. |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-21-17-00018-P | exempt | Proposed agreement for the provision of water service by Saratoga Water Services, Inc. | To consider a waiver and approval of terms of a service agreement. |
| *PSC-22-17-00004-P | exempt | Financial incentives to create customer savings and develop market-enabling tools, with a focus on outcomes and incentives | To consider the proposed Interconnection Survey Process and Earnings Adjustment Mechanisms |
| *PSC-24-17-00006-P | exempt | Development of the Utility Energy Registry. | Improved data access. |
| *PSC-26-17-00005-P | exempt | Notice of Intent to submeter electricity. | To consider the Notice of Intent to submeter electricity at 125 Waverly Street, Yonkers, New York. |
| *PSC-34-17-00011-P | exempt | Waiver to permit Energy Cooperative of America to serve low-income customers | To consider the petition for a waiver |
| *PSC-37-17-00005-P | exempt | Financial incentives to create customer savings and develop market-enabling tools, with a focus on outcomes and incentives. | To consider the revised Interconnection Survey Process and Earnings Adjustment Mechanisms. |
| *PSC-39-17-00011-P | exempt | Whether to direct New York State Electric & Gas to complete electric facility upgrades at no charge to Hanehan. | To determine financial responsibility between NYSEG and Hanehan for the electric service upgrades to Hanehan. |
| *PSC-42-17-00010-P | exempt | Petition for rehearing of negative revenue adjustment and contents of annual Performance Report. | To consider NFGD's petition for rehearing. |
| *PSC-48-17-00015-P | exempt | Low Income customer options for affordable water bills. | To consider the Low Income Bill Discount and/or Energy Efficiency Rebate Programs. |
| *PSC-50-17-00017-P | exempt | New Wave Energy Corp.'s petition for rehearing. | To consider the petition for rehearing filed by New Wave Energy Corp. |
| *PSC-50-17-00018-P | exempt | Application of the Public Service Law to DER suppliers. | To determine the appropriate regulatory framework for DER suppliers. |
| *PSC-50-17-00019-P | exempt | Transfer of utility property. | To consider the transfer of utility property. |
| *PSC-50-17-00021-P | exempt | Disposition of tax refunds and other related matters. | To consider the disposition of tax refunds and other related matters. |
| *PSC-51-17-00011-P | exempt | Petition for recovery of certain costs related to the implementation of a Non-Wires Alternative Project. | To consider Con Edison's petition for the recovery of costs for implementing the JFK Project. |
| *PSC-04-18-00005-P | exempt | Notice of intent to submeter electricity. | To consider the notice of intent of Montante/Morgan Gates Circle LLC to submeter electricity. |
| *PSC-05-18-00004-P | exempt | Lexington Power's ZEC compliance obligation. | To promote and maintain renewable and zero-emission electric energy resources. |
| *PSC-06-18-00012-P | exempt | To consider further proposed amendments to the original criteria to grandfathering established in the Transition Plan | To modify grandfathering criteria |
| *PSC-06-18-00017-P | exempt | Merger of NYAW and Whitlock Farms Water Corp. | To consider the merger of NYAW and Whitlock Farms Water Company into a single corporate entity |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-07-18-00015-P | exempt | The accuracy and reasonableness of National Grid's billing for certain interconnection upgrades. | To consider AEC's petition requesting resolution of their billing dispute with National Grid. |
| *PSC-11-18-00004-P | exempt | New York State Lifeline Program. | To consider TracFone's petition seeking approval to participate in Lifeline. |
| *PSC-13-18-00015-P | exempt | Eligibility of an ESCO to market to and enroll residential customers. | To consider whether Astral should be allowed to market to and enroll residential customers following a suspension. |
| *PSC-13-18-00023-P | exempt | Reconciliation of property taxes. | To consider NYAW's request to reconcile property taxes. |
| *PSC-14-18-00006-P | exempt | Petition for abandonment | To consider the abandonment of Willsboro Bay Water Company's water system |
| *PSC-17-18-00010-P | exempt | Petition for use of gas metering equipment. | To ensure that consumer bills are based on accurate measurements of gas usage. |
| *PSC-18-18-00009-P | exempt | Transfer of control of Keene Valley Video Inc. | To ensure performance in accordance with applicable cable laws, regulations and standards and the public interest |
| *PSC-23-18-00006-P | exempt | Whether to impose consequences on Aspiry for its non-compliance with Commission requirements. | To ensure the provision of safe and adequate energy service at just and reasonable rates. |
| *PSC-24-18-00013-P | exempt | Implementation of program rules for Renewable Energy Standard and ZEC requirements. | To promote and maintain renewable and zero-emission electric energy resources. |
| *PSC-28-18-00011-P | exempt | Storm Hardening Collaborative Report. | To ensure safe and adequate gas service. |
| *PSC-29-18-00008-P | exempt | Participation in Targeted Accessibility Fund | To encourage enhanced services for low-income consumers |
| *PSC-29-18-00009-P | exempt | Overvaluing real property tax expense recovery in water rates | To prevent unjust and unreasonable water rates |
| *PSC-34-18-00015-P | exempt | Petition to submeter electricity. | To ensure adequate submetering equipment and energy efficiency protections are in place. |
| *PSC-34-18-00016-P | exempt | Deferral of pre-staging and mobilization storm costs. | To ensure just and reasonable rates for ratepayers and utility recovery of unexpected, prudently incurred costs. |
| *PSC-35-18-00003-P | exempt | Con Edison's 2018 DSIP and BCA Handbook Update. | To continue Con Edison's transition to a modern utility serving as a Distributed System Platform Provider. |
| *PSC-35-18-00005-P | exempt | NYSEG and RG&E's 2018 DSIP and BCA Handbook Update. | To continue NYSEG and RG&E's transition to modern utilities acting as Distributed System Platform Providers. |
| *PSC-35-18-00006-P | exempt | National Grid's 2018 DSIP and BCA Handbook Update. | To continue National Grid's transition to a modern utility serving as a Distributed System Platform Provider. |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-35-18-00008-P | exempt | Central Hudson's 2018 DSIP and BCA Handbook Update. | To continue Central Hudson's transition to a modern utility serving as a Distributed System Platform Provider. |
| *PSC-35-18-00010-P | exempt | O&R's 2018 DSIP and BCA Handbook Update. | To continue O&R's transition to a modern utility acting as a Distributed System Platform Provider. |
| *PSC-39-18-00005-P | exempt | Participation in New York State Lifeline Program. | To encourage enhanced services for low-income customers. |
| *PSC-40-18-00014-P | exempt | Annual Reconciliation of Gas Expenses and Gas Cost Recoveries. | To review the gas utilities' reconciliation of Gas Expenses and Gas Cost Recoveries for 2018. |
| *PSC-42-18-00011-P | exempt | Voluntary residential beneficial electrification rate design. | To provide efficient rate design for beneficial technologies in New York State that is equitable for all residential customers. |
| *PSC-42-18-00013-P | exempt | Petition for clarification and rehearing of the Smart Solutions Program Order. | To address the increased demand for natural gas in the Con Edison's service territory and the limited pipeline capacity. |
| *PSC-44-18-00016-P | exempt | Petition for approval of gas metering equipment. | To ensure that customer bills are based on accurate measurements of gas usage. |
| *PSC-45-18-00005-P | exempt | Notice of intent to submeter electricity and waiver of energy audit | To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place |
| *PSC-01-19-00013-P | exempt | Order of the Commission related to caller ID unblocking. | To require telephone companies to unblock caller ID on calls placed to the 311 municipal call center in Suffolk County. |
| *PSC-03-19-00002-P | exempt | DPS Staff White Paper for who must be trained in 16 NYCRR Part 753 requirements and how the Commission will approve trainings. | To reduce damage to underground utility facilities by requiring certain training and approving training curricula. |
| *PSC-04-19-00004-P | exempt | Con Edison's petition for the Gas Innovation Program and associated budget. | To pursue programs that continue service reliability and meet customer energy needs while aiding greenhouse gas reduction goals. |
| *PSC-04-19-00011-P | exempt | Update of revenue targets. | To ensure NYAW's rates are just and reasonable and accurately reflect the needed revenues. |
| *PSC-06-19-00005-P | exempt | Consideration of the Joint Utilities' proposed BDP Program. | To to expand opportunities for low-income households to participate in Community Distributed Generation (CDG) projects. |
| *PSC-07-19-00009-P | exempt | Whether to impose consequences on AAA for its non-compliance with Commission requirements. | To insure the provision of safe and adequate energy service at just and reasonable rates. |
| *PSC-07-19-00016-P | exempt | Participation in New York State Lifeline Program. | To encourage enhanced services for low-income customers. |
| *PSC-09-19-00010-P | exempt | Non-pipeline alternatives report recommendations. | To consider the terms and conditions applicable to gas service. |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-12-19-00004-P | exempt | To test innovative pricing proposals on an opt-out basis. | To provide pricing structures that deliver benefits to customers and promote beneficial electrification technologies. |
| *PSC-13-19-00010-P | exempt | New Commission requirements for gas company operator qualification programs. | To make pipelines safer with improved training of workers who perform construction and repairs on natural gas facilities. |
| *PSC-19-19-00013-P | exempt | Proposed merger of three water utilities into one corporation. | To determine if the proposed merger is in the public interest. |
| *PSC-20-19-00008-P | exempt | Reporting on energy sources | To ensure accurate reporting and encourage clean energy purchases |
| *PSC-20-19-00010-P | exempt | Compensation policies for certain CHP projects | To consider appropriate rules for compensation of certain CHP resources |
| *PSC-31-19-00013-P | exempt | Implementation of Statewide Energy Benchmarking. | To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences. |
| *PSC-32-19-00012-P | exempt | Standby Service Rates and Buyback Service Rates | To ensure just and reasonable rates, including compensation, for distributed energy resources |
| *PSC-38-19-00002-P | exempt | Petition to submeter electricity | To ensure adequate submetering equipment and consumer protections are in place |
| *PSC-39-19-00018-P | exempt | Petition to submeter electricity. | To ensure adequate submetering equipment and consumer protections are in place. |
| *PSC-41-19-00003-P | exempt | A voluntary residential three-part rate that would include fixed, usage and demand charges. | To provide qualifying residential customers with an optional three-part rate. |
| *PSC-44-19-00003-P | exempt | Proposed revisions to Standby Service Rates and Buyback Service Rates. | To ensure just and reasonable rates, including compensation, for distributed energy resources. |
| *PSC-44-19-00005-P | exempt | Proposed revisions to Standby Service Rates and Buyback Service Rates. | To ensure just and reasonable rates, including compensation, for distributed energy resources. |
| *PSC-44-19-00006-P | exempt | Proposed revisions to Standby Service Rates and Buyback Service Rates. | To ensure just and reasonable rates, including compensation, for distributed energy resources. |
| *PSC-44-19-00007-P | exempt | Proposed revisions to Standby Service Rates and Buyback Service Rates. | To ensure just and reasonable rates, including compensation, for distributed energy resources. |
| *PSC-44-19-00009-P | exempt | Proposed revisions to Standby Service Rates and Buyback Service Rates. | To ensure just and reasonable rates, including compensation, for distributed energy resources. |
| *PSC-46-19-00008-P | exempt | Wappingers Falls Hydroelectric LLC's facility located in Wappingers Falls, New York. | To promote and maintain renewable electric energy resources. |
| *PSC-46-19-00010-P | exempt | To test innovative rate designs on an opt-out basis. | To implement alternative innovative rate designs intended to assess customer behaviors in response to price signals |
| *PSC-52-19-00006-P | exempt | Authorization to defer pension settlement losses. | To address the ratemaking related to the pension settlement losses. |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-08-20-00003-P | exempt | PSC regulation 16 NYCRR § 86.3(a)(2) and 86.3(b)(2). | To consider a waiver of certain regulations relating to the content of an application for transmission line siting. |
| *PSC-10-20-00003-P | exempt | The Commission's statewide low-income discount policy. | To consider modifications to certain conditions regarding utility low-income discount programs. |
| *PSC-12-20-00008-P | exempt | Delivery rates of Corning Natural Gas Corporation. | Whether to postpone the implementation of a change in rates that would otherwise become effective on June 1, 2020. |
| *PSC-15-20-00011-P | exempt | To modify the terms and conditions under which gas utilities provide service to electric generators. | To provide clarity and uniformity to the provision of gas service to electric generators. |
| *PSC-15-20-00013-P | exempt | Ownership of New York American Water Company, Inc. | To consider whether a proposed transfer of ownership of New York American Water Company, Inc. is in the public interest. |
| *PSC-16-20-00004-P | exempt | Disposition of a state sales tax refund. | To determine how much of a state sales tax refund should be retained by Central Hudson. |
| *PSC-18-20-00012-P | exempt | The purchase price of electric energy and capacity from customers with qualifying on-site generation facilities. | To revise the price to be paid by the Company under Service Classification No. 10. for qualifying purchases of unforced capacity |
| *PSC-18-20-00015-P | exempt | Participation of Eligible Telecommunications Carriers (ETCs) in New York State Lifeline Program. | Commission will consider each petition filed by an ETCs seeking approval to participate in the NYS Lifeline program. |
| *PSC-19-20-00004-P | exempt | Clarification of the Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process. | To consider whether energy service companies should be permitted to bank RECs to satisfy their renewable energy requirements. |
| *PSC-19-20-00005-P | exempt | Cost recovery associated with Day-Ahead-DLM and Auto-DLM programs, and elimination of double compensation. | To provide cost recovery for new DLM programs and prevent double compensation to participating customers. |
| *PSC-19-20-00009-P | exempt | Cost recovery associated with Day-Ahead-DLM and Auto-DLM programs, and elimination of double compensation. | To consider revisions to P.S.C. No. 10 - Electricity, and P.S.C. No. 12 - Electricity. |
| *PSC-25-20-00010-P | exempt | Whitepaper regarding energy service company financial assurance requirements. | To consider the form and amount of financial assurances to be included in the eligibility criteria for energy service companies. |
| *PSC-25-20-00016-P | exempt | Modifications to the Low-Income Affordability program. | To address the economic impacts of the COVID-19 pandemic. |
| *PSC-27-20-00003-P | exempt | To make the uniform statewide customer satisfaction survey permanent. | To encourage consumer protections and safe and adequate service. |
| *PSC-28-20-00022-P | exempt | Compensation of distributed energy resources. | To ensure just and reasonable rates, including compensation, for distributed energy resources. |
| *PSC-28-20-00034-P | exempt | Petition to implement Section 7(5) of the Accelerated Renewable Energy Growth and Community Benefit Act | To develop the bulk transmission investments necessary to achieve the Climate Leadership and Community Protection Act goals |
| *PSC-34-20-00005-P | exempt | Petition to provide a renewable, carbon-free energy option to residential and small commercial full-service customers. | To increase customer access to renewable energy in the Consolidated Edison Company of New York, Inc. service territory. |

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| PUBLIC SERVICE COMMISSION | | | |
| *PSC-38-20-00004-P | exempt | The annual Reconciliation of Gas Expenses and Gas Cost Recoveries. | To consider filings of LDCs and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries. |
| *PSC-40-20-00004-P | exempt | Minor rate filing. | To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences. |
| *PSC-42-20-00006-P | exempt | Proposed major rate increase in National Grid's delivery revenues of approximately \$41.8 million (or 9.8% in total revenues). | To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences. |
| *PSC-42-20-00008-P | exempt | Availability of gas leak information to the public safety officials. | Facilitate availability of gas leak information to public safety officials by gas corporations. |
| *PSC-42-20-00009-P | exempt | Proposed major rate increase in National Grid's delivery revenues of approximately \$100.4 million (or 3.2% in total revenues). | To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences. |
| *PSC-43-20-00003-P | exempt | The use of \$50 million to support residential and commercial customers experiencing financial hardship | To consider whether the proposed support of ratepayers is in the public interest |
| *PSC-45-20-00003-P | exempt | Petition to submeter electricity | To ensure adequate submetering equipment and consumer protections are in place |
| *PSC-46-20-00005-P | exempt | The recommendations of the DPS Staff report to improve Hudson Valley Water's service. | To determine if approving the DPS Staff's recommendations is in the public interest. |
| *PSC-48-20-00005-P | exempt | Partial waiver of the Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process. | To consider whether Chief Energy Power, LLC should be permitted to offer green gas products to mass market customers. |
| *PSC-48-20-00007-P | exempt | Tariff modifications to change National Fuel Gas Distribution Corporation's Monthly Gas Supply Charge provisions. | To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences. |
| PSC-51-20-00007-P | exempt | Whitepaper on the ACOS method used by utilities in developing Standby and Buyback Service rates. | To standardize the utility ACOS methods and resulting rates, and to enable stand-alone energy storage systems. |
| PSC-51-20-00009-P | exempt | Partial waiver of the Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process. | To consider whether petitioner should be permitted to offer its "Energy Savings Program" to mass market customers. |
| PSC-51-20-00014-P | exempt | Electric system needs and compensation for distributed energy resources. | To ensure safe and adequate service and just and reasonable rates, including compensation, for distributed energy resources. |
| PSC-01-21-00004-P | exempt | Partial waiver of the Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process. | To consider whether petitioner should be permitted to offer its Home Warranty product to mass market customers. |
| PSC-01-21-00006-P | exempt | A debt financing arrangement with respect to an electric transmission line under development. | To review the proposed financing and consider whether it is within the public interest. |
| PSC-02-21-00006-P | exempt | Disposition of a sales tax refund received by New York American Water, Inc. | To determine the disposition of tax refunds and other related matters. |

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| PUBLIC SERVICE COMMISSION | | | |
| PSC-03-21-00006-P | exempt | Comprehensive study to identify distribution and transmission investments in accordance with the AREGCB Act. | To support distribution and local transmission investments necessary to achieve the State's climate goals. |
| PSC-04-21-00016-P | exempt | Request for a waiver. | To consider whether good cause exists to support a waiver of the Commission's Test Period Policy Statement. |
| PSC-05-21-00005-P | exempt | The applicable regulatory regime under the Public Service Law for the owner of a merchant electric generating facility. | Consideration of a lightened regulatory regime for the owner of an approximately 100 MW electric generating facility. |
| PSC-06-21-00009-P | exempt | Disposition of a property tax refund received by New York American Water, Inc. | To determine the disposition of tax refunds and other related matters. |
| PSC-09-21-00002-P | exempt | Gas moratorium procedures | To consider procedures and criteria to minimize customer hardships in the unlikely event of a future gas moratorium |
| PSC-09-21-00005-P | exempt | Utility capital expenditure proposal. | To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences. |
| PSC-09-21-00006-P | exempt | Long-term gas system planning. | To consider a process to review gas distribution utilities' long-term system planning. |
| PSC-12-21-00009-P | exempt | Transfer of ownership interests and facilities associated with three nuclear generating units, funds, and storage facilities. | To ensure appropriate regulatory review, oversight, and action concerning the proposed transfer to serve the public interest. |
| PSC-13-21-00016-P | exempt | Revised distribution strategies and reallocation of remaining funding. | To ensure the appropriate use of funding reserved for gas safety programs. |
| PSC-13-21-00023-P | exempt | Petition for the use of steam metering equipment. | To ensure that consumer bills are based on accurate measurements of steam usage. |
| PSC-14-21-00003-RP | 04/07/22 | More specific requirements for Operator Qualification to work on pipelines. Allows applications for "special permits." | To make the provision of natural gas service safer in New York State with better qualified pipeline workers. |
| PSC-15-21-00007-P | exempt | The applicable regulatory regime under the Public Service Law for the owner of a merchant electric generating facility. | Consideration of a lightened regulatory regime. |
| PSC-16-21-00006-P | exempt | The appropriate level of community credit capacity for distributed energy generation projects in the territory. | Consideration of an increase in the community credit capacity for distributed generation projects in the territory. |
| PSC-16-21-00007-P | exempt | Accounting-related rules for utilities implementing the Integrated Energy Data Resource. | To consider cost recovery of capital expenditures and budget allocations of costs between affiliated companies. |
| PSC-17-21-00005-P | exempt | Submetering equipment. | To consider use of submetering equipment and if it is in the public interest. |
| PSC-17-21-00006-P | exempt | Community Choice Aggregation and Community Distributed Generation. | To consider permitting opt-out Community Distributed Generation to be offered as the sole product in an aggregation. |
| PSC-17-21-00007-P | exempt | Utility studies of climate change vulnerabilities. | To assess the need for utilities to conduct distinct studies of their climate change vulnerabilities. |

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| PUBLIC SERVICE COMMISSION | | | |
| PSC-18-21-00004-P | exempt | Community Choice Aggregation programs. | To modify and improve Community Choice Aggregation programs in New York State. |
| PSC-18-21-00005-P | exempt | Proposed transfer of the Company's capital stock to the Purchaser. | To determine if transfer of the Company's capital stock to the Purchaser is in the public interest. |
| PSC-18-21-00006-P | exempt | Community Choice Aggregation renewable products. | To consider waiving the locational and delivery requirements for RECs purchased to support renewable CCA products. |
| PSC-18-21-00008-P | exempt | RG&E's Economic Development Programs and exemption from funding limits. | To consider RG&E to grant up to \$5.25 million in ED funding to Project Block to the benefit of ratepayers. |
| PSC-19-21-00008-P | exempt | Community Choice Aggregation (CCA) and Community Distributed Generation (CDG). | To consider permitting Upstate Power, LLC to serve as a CCA administrator offering an opt-out CDG focused program. |
| PSC-19-21-00009-P | exempt | Major electric rate filing. | To consider an increase in O&R's electric delivery revenues. |
| PSC-19-21-00012-P | exempt | Major gas rate filing. | To consider an increase in O&R's gas delivery revenues. |
| PSC-20-21-00004-P | exempt | Regulatory approvals in connection with a 437 MW electric generating facility. | To ensure appropriate regulatory review, oversight, and action, consistent with the public interest. |
| PSC-21-21-00012-P | exempt | Petition for the use of gas metering equipment. | To ensure that consumer bills are based on accurate measurements of gas usage. |
| PSC-21-21-00015-P | exempt | Notice of intent to submeter electricity. | To ensure adequate submetering equipment and consumer protections are in place. |
| PSC-21-21-00019-P | exempt | Utility capital expenditure proposal. | To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences. |
| PSC-22-21-00006-P | exempt | Notice of intent to submeter electricity. | To ensure adequate submetering equipment and consumer protections are in place. |
| PSC-22-21-00007-P | exempt | The applicable regulatory regime under the Public Service Law for the owner of a merchant electric generating facility. | Consideration of a lightened regulatory regime for the owner of an approximately 7.6 mile, 13 kV AC electric cable. |
| PSC-22-21-00008-P | exempt | Cost allocation for project(s) to meet a Public Policy Transmission Need/Public Policy Requirement. | To address the cost allocation methodology for use by the New York Independent System Operator, Inc. (NYISO). |
| PSC-25-21-00005-P | exempt | Transfer of Penelec assets and franchise rights. | To consider the transfer of utility assets and franchise to be in Waverly ratepayer and public interest. |
| PSC-25-21-00008-P | exempt | NYSERDA and National Grid's proposed Expanded Solar For All Program for low-income customers. | To consider the authorization and appropriate design of an opt-out community solar program for low-income customers. |
| PSC-25-21-00013-P | exempt | Negative revenue adjustments for gas main replacements targets in 2020. | To promote and ensure safety and reliability enhancements for utility infrastructure replacement. |

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| Agency I.D. No. | Expires | Subject Matter | Purpose of Action |
|----------------------------------|--------------|--|---|
| PUBLIC SERVICE COMMISSION | | | |
| PSC-26-21-00010-P | exempt | Proposed acquisition of all shares of common stock of Corning Natural Gas Holding Corporation by ACP Crotona Corp. | To consider whether the acquisition of all shares of common stock of CNGH by ACP Crotona Corp. is in the public interest. |
| PSC-26-21-00011-P | exempt | Notice of intent to submeter electricity. | To ensure adequate submetering equipment and consumer protections are in place. |
| PSC-28-21-00012-P | exempt | Transfer of ownership interests in a 55 megawatt natural gas-fired cogeneration facility located in North Tonawanda, NY. | To address the proposed transfer and any matters within the public interest. |
| PSC-28-21-00013-P | exempt | Elimination of internal audits of wholesale performance metrics. | To consider Verizon New York Inc.'s petition to eliminate requirements for certain internal audits. |
| PSC-28-21-00015-P | exempt | Proposals for active and passive managed charging programs for mass market EV customers. | To shift EV charging to moderate grid impacts and customer costs. |
| PSC-28-21-00016-P | exempt | Transfer of Suez Water New York Inc.'s parent company to Veolia Environment S.A. | To determine if the proposed transfer is the public interest. |
| PSC-29-21-00004-P | exempt | Exemptions from utility standby rates for efficient combined heat and power projects. | To determine whether utility standby rate exemptions should be continued. |
| PSC-29-21-00009-P | exempt | Proposed pilot program to use AMI to disconnect electric service to customers during gas system emergencies. | To study the efficacy of using AMI to disconnect electric service during gas system emergencies. |
| PSC-30-21-00006-P | exempt | NYSERDA proposal regarding Clean Energy Standard backstop collection processes. | To ensure that NYSERDA has sufficient funds to make timely payments to generators pursuant to the Clean Energy Standard. |
| PSC-30-21-00007-P | exempt | Submetering of electricity and waiver requests. | To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place. |
| PSC-31-21-00011-P | exempt | Establishment of the regulatory regime applicable to a solar electric generating facility. | To ensure appropriate regulation of a new electric corporation. |
| PSC-32-21-00002-P | exempt | The prohibition on ESCO service to low-income customers. | To consider whether Icon Energy, LLC d/b/a Source Power Company should be granted a waiver to serve low-income customers. |
| PSC-32-21-00003-P | exempt | Exemptions from utility standby rates for certain designated or environmentally advantageous technologies. | To harmonize standby rate exemptions statewide. |
| PSC-33-21-00006-P | exempt | Proposed rate increase. | To ensure safe and adequate service at just and reasonable rates. |
| PSC-33-21-00007-P | exempt | Acquisition of cable television facilities and franchises of two municipalities. | To ensure performance in accordance with applicable cable laws, regulations and standards and the public interest. |
| PSC-33-21-00008-P | exempt | Establishment of a Tapping and Connection Fee. | To consider whether the proposed fees are in the public interest. |
| PSC-33-21-00009-P | exempt | Banking of credits and switching between Community Distributed Generation and Remote Crediting projects. | To ensure just and reasonable rates charged to customers. |

Action Pending Index**NYS Register/December 15, 2021**

| Agency I.D. No. | Expires | Subject Matter | Purpose of Action |
|----------------------------------|--------------|--|--|
| PUBLIC SERVICE COMMISSION | | | |
| PSC-34-21-00004-P | exempt | CDG subscriber eligibility requirements. | To consider modifications to the CDG program eligibility requirements for certain Standby Service customers. |
| PSC-34-21-00005-P | exempt | Notice of intent to submeter electricity and request for waiver. | To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place. |
| PSC-34-21-00006-P | exempt | Staff recommendations to address the financial impacts of the COVID-19 pandemic. | To consider measures to provide relief to those financially impacted by the COVID-19 pandemic. |
| PSC-34-21-00007-P | exempt | Authorization to extend the maturity date of certain short-term indebtedness and total debt. | To consider the request for authorization to enter into indebtedness. |
| PSC-34-21-00010-P | exempt | Clean Energy Standard Programs. | Continued implementation of the Clean Energy Standard and the Zero Energy Credit Requirements Programs. |
| PSC-35-21-00002-P | exempt | Notice of intent to submeter electricity. | To ensure adequate submetering equipment and consumer protections are in place. |
| PSC-35-21-00004-P | exempt | Major gas rate filing. | To consider a proposed increase in Conring's gas delivery revenues of approximately \$5.8 million (20.4% in total revenues). |
| PSC-35-21-00006-P | exempt | Proposed rate increase. | To ensure safe and adequate service at just and reasonable rates. |
| PSC-35-21-00007-P | exempt | Notice of intent to submeter electricity. | To ensure adequate submetering equipment and consumer protections are in place. |
| PSC-35-21-00009-P | exempt | To modify the terms and conditions under which gas utilities provide service to electric generators. | To provide clarity and uniformity to the provision of gas service to electric generators in New York State. |
| PSC-36-21-00005-P | exempt | Transfer of real property. | To determine whether to authorize the transfer of real property and the proper accounting for the transaction. |
| PSC-36-21-00006-P | exempt | The Westchester Power Program. | To consider integration of Opt-out Community Distributed Generation into the Westchester Power program. |
| PSC-36-21-00007-P | exempt | Pension settlement payout losses incurred in 2020. | Consideration of NYAW's petition to defer and amortize, for future rate recognition, pension payout losses incurred in 2020. |
| PSC-36-21-00008-P | exempt | Transfer of real property. | To determine whether to authorize the transfer of real property and the proper accounting for the transaction. |
| PSC-36-21-00009-P | exempt | Notice of intent to submeter electricity. | To ensure adequate submetering equipment and consumer protections are in place. |
| PSC-37-21-00007-P | exempt | Waiver of tariff rules and a related Commission regulation. | To consider whether a waiver of tariff rules and a Commission regulation are just and reasonable and in the public interest. |

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| Agency I.D. No. | Expires | Subject Matter | Purpose of Action |
|----------------------------------|--------------|---|--|
| PUBLIC SERVICE COMMISSION | | | |
| PSC-37-21-00008-P | exempt | Transfer of street lighting facilities. | To determine whether to authorize the transfer street of lighting facilities and the proper accounting for the transaction. |
| PSC-37-21-00009-P | exempt | Procedures necessary to implement Tax Law Section 187-q. | To establish procedures by which eligible utility-taxpayers can have the amounts of certain waived customer arrears certified. |
| PSC-37-21-00010-P | exempt | Zero emitting electric generating facilities that are not renewable energy systems. | To consider modifications to the Clean Energy Standard. |
| PSC-37-21-00011-P | exempt | Green Button Connect implementation. | To consider the proposed Green Button Connect User Agreement and Green Button Connect Onboarding Process document. |
| PSC-37-21-00012-P | exempt | Partial waiver of the Order Adopting Changes to the Retail Access Energy Market and Establishing Further Process. | To consider whether Catalyst should be permitted to offer its Community Distributed Generation product to mass market customers. |
| PSC-37-21-00014-P | exempt | Consideration of Time Warner Cable Information Services (New York)'s Revised Implementation Plan and audit recommendations. | To ensure that recommendations issued in a management and operations audit are appropriately addressed and implemented. |
| PSC-37-21-00015-P | exempt | Rehearing and/or reconsideration of the Commission's determination related to ITIA's non-pipe alternative project. | To determine whether the Commission made an error of fact related to ITIA's non-pipe alternative project. |
| PSC-38-21-00006-P | exempt | Annual Reconciliation of Gas Expenses and Gas Cost Recoveries. | To consider filings of LDCs and municipalities regarding their Annual Reconciliation of Gas Expenses and Gas Cost Recoveries. |
| PSC-38-21-00007-P | exempt | Electric metering equipment. | To consider use of electric submeter and ensure that consumer bills will be based on accurate measurements of electric usage. |
| PSC-39-21-00005-P | exempt | Establishment of the regulatory regime applicable to a electric transmission facility. | To ensure appropriate regulation of a new electric corporation. |
| PSC-39-21-00006-P | exempt | Minor electric rate filing to increase annual electric revenues. | To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences. |
| PSC-39-21-00007-P | exempt | The proposed alternative method of account identification. | To facilitate secure customer data exchanges between the utility or provider and energy service entities. |
| PSC-40-21-00017-P | exempt | The Commission's Order Adopting Utility Energy Registry Modifications | To determine if the Commission committed errors of law or fact in its Order, or if new facts warrant a different result. |
| PSC-40-21-00018-P | exempt | Notice of intent to submeter electricity and request for waiver. | To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place. |
| PSC-40-21-00020-P | exempt | Notice of intent to submeter electricity. | To ensure adequate submetering equipment and consumer protections are in place. |
| PSC-40-21-00021-P | exempt | Notice of intent to submeter electricity. | To ensure adequate submetering equipment and consumer protections are in place. |

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| Agency I.D. No. | Expires | Subject Matter | Purpose of Action |
|----------------------------------|--------------|---|---|
| PUBLIC SERVICE COMMISSION | | | |
| PSC-41-21-00005-P | exempt | Area code overlay as relief of the exhausting 516 area code (Long Island). | To ensure performance in accordance with applicable telecommunications laws, regulations and standards and the public interest. |
| PSC-41-21-00006-P | exempt | The proposed transfer of ownership interests and debt financing arrangement related to an electric generating facility. | To determine whether the proposed transfer of ownership interests and financing arrangement are in the public interest. |
| PSC-41-21-00007-P | exempt | Waiver of certain Commission requirements related to the distribution of telephone directories. | To ensure performance in accordance with applicable telecommunications laws, regulations and standards and the public interest. |
| PSC-41-21-00008-P | exempt | Waiver of the prohibition on service to low-income customers by ESCOs. | To consider the petition for an extension of the waiver of the prohibition on service to low-income customers by ESCOs. |
| PSC-41-21-00009-P | exempt | Waiver of the prohibition on service to low-income customers by ESCOs. | To consider the petition for an extension of the waiver of the prohibition on service to low-income customers by ESCOs. |
| PSC-41-21-00010-P | exempt | Waiver of the prohibition on service to low-income customers by ESCOs. | To consider the petition for an extension of the waiver of the prohibition on service to low-income customers by ESCOs. |
| PSC-41-21-00011-P | exempt | Notice of intent to submeter electricity and request for waiver of 16 NYCRR § 96.5(k)(3). | To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place. |
| PSC-42-21-00005-P | exempt | Electric metering equipment. | To ensure that consumer bills are based on accurate measurements of electric usage. |
| PSC-42-21-00006-P | exempt | Waiver of tariff rules and a related Commission regulation. | To consider whether a waiver of tariff rules and a Commission regulation are just and reasonable and in the public interest. |
| PSC-42-21-00007-P | exempt | Waiver of tariff rules and a related Commission regulation. | To consider whether a waiver of tariff rules and a Commission regulation are just and reasonable and in the public interest. |
| PSC-43-21-00007-P | exempt | Minor rate filing. | To ensure safe and adequate service at just and reasonable rates. |
| PSC-43-21-00008-P | exempt | Incremental demand side management programs. | To consider proposed demand side management programs and cost recovery. |
| PSC-44-21-00010-P | exempt | Petition to enter a long term loan agreement and to institute a surcharge for recovery. | To determine if the issuance of long term debt and a surcharge mechanism for recovery is in the public interest. |
| PSC-44-21-00011-P | exempt | The amount electric, gas, and steam corporations can charge for security deposits, and the acceptable forms of payment. | To establish security deposit requirements. |
| PSC-44-21-00012-P | exempt | Disposition of a New York State tax refund. | To determine the disposition of a tax refund obtained by New York American Water Company, Inc. |
| PSC-44-21-00013-P | exempt | Transfer of street lighting facilities. | To determine whether to authorize the transfer of street lighting facilities and the proper accounting for the transaction. |

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| Agency I.D. No. | Expires | Subject Matter | Purpose of Action |
|----------------------------------|--------------|---|--|
| PUBLIC SERVICE COMMISSION | | | |
| PSC-44-21-00014-P | exempt | Development of distribution and local transmission in accordance with the AREGCB Act. | To support distribution and local transmission investments necessary to achieve the the State's climate goals. |
| PSC-45-21-00004-P | exempt | The SIR and Application Process for New DG and ESS 5 MW or Less Connected in Parallel with Utility Distribution Systems. | To accommodate federal government agencies that wish to install distributed generation or energy storage systems 5 MW or Less. |
| PSC-46-21-00011-P | exempt | Transfer of street lighting facilities. | To determine whether to authorize the transfer street of lighting facilities and the proper accounting for the transaction. |
| PSC-46-21-00012-P | exempt | Transfer of street lighting facilities. | To determine whether to authorize the transfer street of lighting facilities and the proper accounting for the transaction. |
| PSC-46-21-00013-P | exempt | ESCO Eligibility | To consider whether Astral should be allowed to market to and enroll residential customers following a suspension. |
| PSC-46-21-00014-P | exempt | Waiver of tariff rules and a related Commission regulation. | To consider whether a waiver of tariff rules and a Commission regulation are just and reasonable and in the public interest. |
| PSC-47-21-00003-P | exempt | Utility processes for customers to consent to sharing data with third parties and how consent options will be communicated. | To develop standardized consent requirements that will increase customer familiarity with appropriate data sharing and access. |
| PSC-47-21-00004-P | exempt | Proposed modifications to CDRP. | To consider revisions to CDRP, as well as conforming tariff revisions. |
| PSC-47-21-00005-P | exempt | Utility processes for customers to consent to sharing data with third parties and how consent options will be communicated. | To develop standardized consent requirements that will increase customer familiarity with appropriate data sharing and access. |
| PSC-48-21-00004-P | exempt | Proposed filings to modify Riders AB and J - Smart Home Rate. | To ensure safe and adequate service at just and reasonable rates charged to customers without undue preferences. |
| PSC-48-21-00005-P | exempt | Transfer of street light facilities. | To consider the transfer of street lighting facilities to the Town of Hamburg. |
| PSC-48-21-00006-P | exempt | Electric metering equipment. | To consider use of electric metering equipment and ensure consumer bills are based on accurate measurements of electric usage. |
| PSC-48-21-00007-P | exempt | Verizon's Performance Assurance Plan. | To consider whether to retire the Performance Assurance Plan. |
| PSC-49-21-00011-P | exempt | Amendments to the SIR. | To more effectively interconnect distributed generation and energy storage systems 5 MW or less to the distribution system. |
| PSC-49-21-00012-P | exempt | Hosting capacity maps at investor-owned electric utilities. | To provide more useful information about the distribution system's hosting capacity. |
| PSC-49-21-00013-P | exempt | Amendments to the SIR and funding mechanisms. | To more equitably share costs among distributed generation and energy storage projects that require capital upgrades. |
| PSC-49-21-00014-P | exempt | A Tier 4 renewable energy certificate contract. | To increase renewable generation in New York city. |

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| Agency I.D. No. | Expires | Subject Matter | Purpose of Action |
|----------------------------------|--------------|---|---|
| PUBLIC SERVICE COMMISSION | | | |
| PSC-49-21-00015-P | exempt | A Tier 4 renewable energy certificate contract. | To increase renewable generation in New York city. |
| PSC-50-21-00005-P | exempt | Notice of intent to submeter electricity and request for waiver. | To ensure adequate submetering equipment, consumer protections and energy efficiency protections are in place. |
| PSC-50-21-00006-P | exempt | Implementation of the Host Community Benefit Program. | To consider the proposed administration and implementation related to disbursement of customer bill credits. |
| PSC-50-21-00007-P | exempt | Notice of intent to submeter electricity. | To ensure adequate submetering equipment and consumer protections are in place. |
| PSC-50-21-00008-P | exempt | Implementation of the Host Community Benefit Program. | To consider the proposed administration and implementation related to disbursement of customer bill credits. |
| PSC-50-21-00009-P | exempt | Notice of intent to submeter electricity. | To ensure adequate submetering equipment and consumer protections are in place. |
| PSC-50-21-00010-P | exempt | New York City's proposal to procure Tier 4 Renewable Energy Certificates. | To modify load serving entity compliance obligations under the Clean Energy Standard. |
| PSC-50-21-00011-P | exempt | Implementation of the Host Community Benefit Program. | To consider the proposed administration and implementation related to disbursement of customer bill credits. |
| PSC-50-21-00012-P | exempt | Implementation of the Host Community Benefit Program. | To consider the proposed administration and implementation related to disbursement of customer bill credits. |
| PSC-50-21-00013-P | exempt | Transfer of street lighting facilities. | To determine whether to authorize the transfer street of lighting facilities and the proper accounting for the transaction. |
| PSC-50-21-00014-P | exempt | Submetering of electricity and waiver request. | To ensure adequate submetering equipment, consumer protections and energy efficiency measures are in place. |
| PSC-50-21-00015-P | exempt | Notice of intent to submeter electricity. | To ensure adequate submetering equipment and consumer protections are in place. |

STATE, DEPARTMENT OF

| | | | |
|--------------------|----------------|--|--|
| DOS-19-21-00014-P | 07/15/22 | Minimum standards for administration and enforcement of the Uniform Code and Energy Code | To revise the minimum standards applicable to a program for administration and enforcement of the Uniform Code and Energy Code |
| DOS-39-21-00013-P | 09/29/22 | Procedures to help avoid abandonment of cemeteries and determine when a cemetery has become abandoned. | To provide procedures to help avoid abandonment of cemeteries and determine when a cemetery has become abandoned. |
| DOS-42-21-00003-EP | 10/20/22 | Ventilation Requirements | To provide an additional 6 months for appearance enhancement businesses to comply with existing ventilation standards |

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| Agency I.D. No. | Expires | Subject Matter | Purpose of Action |
|-------------------------------------|----------|--------------------------|--|
| STATE UNIVERSITY OF NEW YORK | | | |
| SUN-24-21-00002-EP | 06/16/22 | Gender Neutral Bathrooms | To conform with legislation requiring SUNY state-operated campuses to designate all single occupancy bathrooms as gender neutral |

TAXATION AND FINANCE, DEPARTMENT OF

| | | | |
|--------------------|----------|---|--|
| *TAF-46-20-00003-P | exempt | Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith | To set the sales tax component and the composite rate per gallon for the period January 1, 2021 through March 31, 2021 |
| TAF-41-21-00003-P | 10/13/22 | New York State and City of Yonkers withholding tables and other methods. | To provide current New York State and City of Yonkers withholding tables and other methods. |
| TAF-46-21-00009-P | exempt | Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith | To set the sales tax component and the composite rate per gallon for the period January 1, 2022 through March 31, 2021 |

TEMPORARY AND DISABILITY ASSISTANCE, OFFICE OF

| | | | |
|--------------------|----------|--|---|
| TDA-39-21-00004-EP | 09/29/22 | Standard Utility Allowances (SUAs) for the Supplemental Nutrition Assistance Program (SNAP) | These regulatory amendments set forth the federally-approved SUAs as of 10/1/21 |
| TDA-43-21-00006-EP | 10/27/22 | Public Assistance (PA) eligibility interviews by phone or other digital means at PA applicant's or recipient's request | See attached addendum |

URBAN DEVELOPMENT CORPORATION

| | | | |
|--------------------|----------|---|--|
| UDC-38-21-00001-EP | 09/22/22 | Biodefense Commercialization Fund program | To create the administrative processes for the Biodefense Commercialization Fund program |
|--------------------|----------|---|--|

WORKERS' COMPENSATION BOARD

| | | | |
|-------------------|----------|---|---|
| WCB-28-21-00008-P | 07/14/22 | DME Fee Schedule | To correct codes and update DME fee schedule |
| WCB-28-21-00009-P | 07/14/22 | Telehealth | Provides the option for telehealth visits in some circumstances |
| WCB-37-21-00018-P | 09/15/22 | NY Workers' Compensation Drug Formulary | Update the Formulary (technical and clarifying changes) |
| WCB-41-21-00012-P | 10/13/22 | Medical Treatment Guidelines | To add Eye Disorders, Traumatic Brain Injury, and Complex Regional Pain Syndrome MTGs |

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NYSCEF DOC. NO. 51

INDEX NO. 616124/2021

RECEIVED NYSCEF: 01/20/2022

SECURITIES OFFERINGS

STATE NOTICES

Published pursuant to provisions of General Business Law
[Art. 23-A, § 359-e(2)]

DEALERS; BROKERS

286 Lenox Partners LLC
330 5th Ave., 8th Fl., New York, NY 10001
State or country in which incorporated — Delaware

Augusta North Houston, LLC
2929 W. Wapoot St., Meridian, ID 83646
State or country in which incorporated — Texas

Cantor Fitzgerald Income Trust, Inc.
110 E. 59th St., New York, NY 10022
State or country in which incorporated — Maryland

CAP X Accredited Investors Fund, LLC
601 California St., Suite 1150, San Francisco, CA 94108
State or country in which incorporated — California limited liability company

CAP X Institutional Investors Fund, LLC
601 California St., Suite 1150, San Francisco, CA 94108
State or country in which incorporated — California limited liability company

CAP X Qualified Investors Fund, LLC
601 California St., Suite 1150, San Francisco, CA 94108
State or country in which incorporated — California limited liability company

Cor3 (Sydney Park) Ventures, LLC
16150 SW Upper Boones Ferry Rd., Portland, OR 97224
State or country in which incorporated — Delaware

DNA Brands, Inc.
275 E. Commercial Blvd., Suite 200, Lauderdale-By-The-Sea, FL 33308
State or country in which incorporated — Colorado

Douglas Scott Securities, Inc.
1700 Alma Dr., Suite 110A, Plano, TX 75075
State or country in which incorporated — Texas

Hume AI Inc.
115 E. 23rd St., Bond Collective 3rd Fl., New York, NY 10010
State or country in which incorporated — Delaware

Investment Managers Series Trust II
235 W. Galena St., Milwaukee, WI 53212
State or country in which incorporated — Delaware

Ness Employee Vehicle L.P.
300 Frank W. Bun Blvd., Teaneck, NJ 07666
State or country in which incorporated — Delaware

Prana Growth Fund I, L.P.
75 Broadway, Suite 230, San Francisco, CA 94111
Partnership — Prana Fund Manager, LLC

Standard Broadcast LLC
950 S. Cherry St., Suite 503, Denver, CO 80246
State or country in which incorporated — Wyoming

Vivo Living Wilmington LLC
16150 SW Upper Boones Ferry Rd., Portland, OR 97224
State or country in which incorporated — Delaware

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NYSCEF DOC. NO. 51

INDEX NO. 616124/2021

RECEIVED NYSCEF: 01/20/2022

ADVERTISEMENTS FOR BIDDERS/CONTRACTORS

SEALED BIDS

REPAIR/REPLACE SWITCHGEAR

Sing Sing Correctional Facility
Ossining, Westchester County

Sealed bids for Project No. M3140-E, comprising a contract for Electrical Work, Repair/Replace Switchgear, Heating Plant, Sing Sing Correctional Facility, 354 Hunter Street, Ossining (Westchester County), NY will be received by the Office of General Services (OGS), Design & Construction Group (D&C), Division of Contract Management, 35th Fl., Corning Tower, Empire State Plaza, Albany, NY 12242, on behalf of the Office of Correctional Services, until 2:00 p.m. on Wednesday, December 22, 2021 when they will be publicly opened and read. Each bid must be prepared and submitted in accordance with the Instructions to Bidders and must be accompanied by a bid security (i.e. certified check, bank check, or bid bond in the amount of \$10,000 for E).

All successful bidders will be required to furnish a Performance Bond and a Labor and Material Bond pursuant to Sections 136 and 137 of the State Finance Law, each for 100% of the amount of the Contract estimated to be between \$100,000 and \$250,000 for E.

Pursuant to State Finance Law §§ 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OGS D&C and a bidder during the procurement process. A bidder is restricted from making contacts from the earliest posting on the OGS website, in a newspaper of general circulation, or in the Contract Reporter, of written notice, advertisement or solicitation of offers, through final award and approval of the contract by OGS D&C and the Office of the State Comptroller ("Restricted Period") to other than designated staff, unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff are John Pupons, Jessica Hoffman, and Pierre Alric in the Division of Contract Management, telephone (518) 474-0203, fax (518) 473-7862. OGS D&C employees are also required to obtain certain information when contacted during the restricted period and to make a determination of the responsibility of the bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the bidder is debarred from obtaining governmental Procurement Contracts. Bidders responding to this Advertisement must familiarize themselves with the State Finance Law requirements and will be expected to affirm that they understand and agree to comply on the bid form. Further information about these requirements can be found within the project manual or at: <https://ogs.ny.gov/ACPL/>

Pursuant to Public Buildings Law § 8(6), effective January 11, 2020, for any projects where the project design commenced on or after January 1, 2020 and for any contracts over \$5,000 for the work of construction, reconstruction, alteration, repair, or improvement of any State building, a responsible and reliable NYS-certified Minority or Women-Owned Business Enterprise that submits a bid within ten percent of the lowest bid will be deemed the apparent low bidder provided that the bid is \$1,400,000 or less, as adjusted annually for inflation beginning January 1, 2020. If more than one responsible and reliable MWBE firm meets these requirements, the MWBE firm with the lowest bid will be deemed the apparent low bidder.

_____ Project commenced design before January 1, 2020. Not subject to provision.

X Project commenced design on or after January 1, 2020. Subject to provision.

The substantial completion date for this project is 199 days after the Agreement is approved by the Comptroller.

No pre-bid site visits have been scheduled for this project and prospective bidders are not allowed to visit the project site or facility buildings and grounds to take measurements or examine existing conditions.

Pursuant to New York State Executive Law Article 15-A and the rules and regulations promulgated thereunder, OGS is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of OGS contracts. All bidders are expected to cooperate in implementing this policy. OGS hereby establishes an overall goal of 14% for MWBE participation, 7% for Minority-Owned Business Enterprises ("MBE") participation and 7% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The total contract goal can be obtained by utilizing any combination of MBE and/or WBE participation for subcontracting and supplies acquired under this Contract. Trades with 0% goals are encouraged to make "good faith efforts" to promote and assist in the participation of MWBEs on the Contract for the provision of services and materials.

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"). Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles. OGS hereby establishes overall goals for SDVOBs' participation under this contract as follows: 6% for the E trade contractor, based on the current availability of qualified SDVOBs. Trades with 0% goals are encouraged to make "good faith efforts" to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials.

The Office of General Services reserves the right to reject any or all bids.

The Bidding and Contract Documents for this Project are available for viewing and downloading from OGS Design & Construction's plan room hosting service, Bid Express. Vendors wishing to view and/or download bid documents must complete a one-time registration for the Bid Express service. There is no cost to register for Bid Express. Registration along with viewing and downloading of documents can be accessed at the following link: <http://www.bidexpress.com>

For questions about downloading of bid documents, please send an e-mail to support@bidexpress.com, or call the Bid Express toll-free number at (888) 352-2439.

For all other questions, please send an email to DCPlans@ogs.ny.gov, or call (518) 474-0203.

Advertisements for Bidders/Contractors

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For additional information on this project, please use the link below and then click on the project number: <https://online.ogs.ny.gov/dnc/contractorConsultant/esb/ESBPlansAvailableIndex.asp>

By OGS - Design & Construction Group

PROVIDE

FACILITY-WIDE CCTV/AUDIO MONITORING SYSTEM Sullivan Correctional Facility Fallsburg, Sullivan County

Sealed bids for Project Nos. 46230-E and 46230-H, comprising separate contracts for Electrical Work, and HVAC Work, Provide Facility-Wide CCTV/Audio Monitoring System, Sullivan Correctional Facility, 325 Riverside Drive, Fallsburg (Sullivan County), NY will be received by the Office of General Services (OGS), Design & Construction Group (D&C), Division of Contract Management, 35th Fl., Corning Tower, Empire State Plaza, Albany, NY 12242, on behalf of the Department of Correctional Services, until 2:00 p.m. on Wednesday, January 5, 2022 when they will be publicly opened and read. Each bid must be prepared and submitted in accordance with the Instructions to Bidders and must be accompanied by a bid security (i.e. certified check, bank check, or bid bond in the amount of \$228,800 for E, and \$2,600 for H).

All successful bidders will be required to furnish a Performance Bond and a Labor and Material Bond pursuant to Sections 136 and 137 of the State Finance Law, each for 100% of the amount of the Contract estimated to be between \$9,000,000 and \$10,000,000 for E, and between \$25,000 and \$50,000 for H.

Pursuant to State Finance Law §§ 139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OGS D&C and a bidder during the procurement process. A bidder is restricted from making contacts from the earliest posting on the OGS website, in a newspaper of general circulation, or in the Contract Reporter, of written notice, advertisement or solicitation of offers, through final award and approval of the contract by OGS D&C and the Office of the State Comptroller ("Restricted Period") to other than designated staff, unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff are John Pupons, Jessica Hoffman, and Pierre Alric in the Division of Contract Management, telephone (518) 474-0203, fax (518) 473-7862. OGS D&C employees are also required to obtain certain information when contacted during the restricted period and to make a determination of the responsibility of the bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period, the bidder is debarred from obtaining governmental Procurement Contracts. Bidders responding to this Advertisement must familiarize themselves with the State Finance Law requirements and will be expected to affirm that they understand and agree to comply on the bid form. Further information about these requirements can be found within the project manual or at: <https://ogs.ny.gov/ACPL/>

Pursuant to Public Buildings Law § 8(6), effective January 11, 2020, for any projects where the project design commenced on or after January 1, 2020 and for any contracts over \$5,000 for the work of construction, reconstruction, alteration, repair, or improvement of any State building, a responsible and reliable NYS-certified Minority or Women-Owned Business Enterprise that submits a bid within ten percent of the lowest bid will be deemed the apparent low bidder provided that the bid is \$1,400,000 or less, as adjusted annually for inflation beginning January 1, 2020. If more than one responsible and reliable MWBE firm meets these requirements, the MWBE firm with the lowest bid will be deemed the apparent low bidder.

☒ Project commenced design before January 1, 2020. Not subject to provision.

☐ Project commenced design on or after January 1, 2020. Subject to provision.

The substantial completion date for this project is 1,053 days after the Agreement is approved by the Comptroller.

The only time prospective bidders will be allowed to visit the job site to take field measurements and examine existing conditions of the project area will be on December 13, 2021 at 8:00 a.m., 10:00 a.m. and 1:00 p.m. at OGS Field Office located at 325 Riverside Drive, Fallsburg, NY. Prospective bidders are urged, but not mandated, to visit the site at this time. Prospective bidders or their representatives attending the pre-bid site visit will not be admitted on facility grounds without proper photo identification. Note that parking restrictions and security provisions will apply, and all vehicles will be subject to search. Refer to Document 002218 for any additional requirements for attendance at the pre-bid site visit.

Phone the office of Karen Flood (845-434-0214) a minimum of 72 hours in advance of the date to provide the names of those who will attend the pre-bid site visit. Only contractors that schedule a visit at least 72 hours in advance will be allowed to participate in the pre-bid site visit.

Pursuant to New York State Executive Law Article 15-A and the rules and regulations promulgated thereunder, OGS is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of OGS contracts. All bidders are expected to cooperate in implementing this policy. OGS hereby establishes an overall goal of 10% for MWBE participation, 5% for Minority-Owned Business Enterprises ("MBE") participation and 5% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs) for Electrical Work and an overall goal of 0% for MWBE participation, 0% for Minority-Owned Business Enterprises ("MBE") participation and 0% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs) for HVAC Work. The total contract goal can be obtained by utilizing any combination of MBE and/or WBE participation for subcontracting and supplies acquired under this Contract. Trades with 0% goals are encouraged to make "good faith efforts" to promote and assist in the participation of MWBEs on the Contract for the provision of services and materials.

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"). Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles. OGS hereby establishes overall goals for SDVOBs' participation under this contract as follows: 6% for the E trade contractor, and 0% for the H trade contractor, based on the current availability of qualified SDVOBs. Trades with 0% goals are encouraged to make "good faith efforts" to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials.

The Office of General Services reserves the right to reject any or all bids.

The Bidding and Contract Documents for this Project are available for viewing and downloading from OGS Design & Construction's plan room hosting service, Bid Express. Vendors wishing to view and/or download bid documents must complete a one-time registration for the Bid Express service. There is no cost to register for Bid Express. Registration along with viewing and downloading of documents can be accessed at the following link: <http://www.bidexpress.com>

For questions about downloading of bid documents, please send an e-mail to support@bidexpress.com, or call the Bid Express toll-free number at (888) 352-2439.

For all other questions, please send an email to DCPlans@ogs.ny.gov, or call (518) 474-0203.

NYS Register/December 15, 2021**Advertisements for Bidders/Contractors**

For additional information on this project, please use the link below
and then click on the project number: [https://online.ogs.ny.gov/dnc/
contractorConsultant/esb/ESBPlansAvailableIndex.asp](https://online.ogs.ny.gov/dnc/contractorConsultant/esb/ESBPlansAvailableIndex.asp)

By OGS - Design & Construction Group

FILED: NASSAU COUNTY CLERK 01/20/2022 08:58 PM

NYSCEF DOC. NO. 51

INDEX NO. 616124/2021

RECEIVED NYSCEF: 01/20/2022

MISCELLANEOUS NOTICES/HEARINGS

Notice of Abandoned Property Received by the State Comptroller

Pursuant to provisions of the Abandoned Property Law and related laws, the Office of the State Comptroller receives unclaimed monies and other property deemed abandoned. A list of the names and last known addresses of the entitled owners of this abandoned property is maintained by the office in accordance with Section 1401 of the Abandoned Property Law. Interested parties may inquire if they appear on the Abandoned Property Listing by contacting the Office of Unclaimed Funds, Monday through Friday from 8:00 a.m. to 4:30 p.m., at:

1-800-221-9311
or visit our web site at:
www.osc.state.ny.us

Claims for abandoned property must be filed with the New York State Comptroller's Office of Unclaimed Funds as provided in Section 1406 of the Abandoned Property Law. For further information contact: Office of the State Comptroller, Office of Unclaimed Funds, 110 State St., Albany, NY 12236.

PUBLIC NOTICE

Department of State
F-2021-0882

Date of Issuance – December 15, 2021

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program.

In F-2021-0882, Brad Burns, is proposing to construct a pile (7") supported 8' x 80' main dock, an 8' x 12' and an 8' x 40' dock. The main dock and additional docks would surround, on three sides, a 12' x 32' pile supported boat hoist with a 14' x 34' roof. The roof would be sloped with the peak extending 13' feet above the proposed dock. In addition, install four (4) floating personal watercraft hoist, each being 6' x 15'. The proposal also includes the removal of a 9' x 10' x 12' crib and the placement of two steel piles to support an existing 10' x 42' dock which the applicant is proposing to maintain. The proposal also includes maintaining an existing 10' x 10' swim platform. Previous versions of the proposal included installing a 10' x 25' "Turtle Ramp area" raising the height of the existing breakwall by 2' and removing the existing 10' x 42' crib supported dock.

The proposal is for the applicant's property on Sodus Bay located at 7261 Dogwood Lane LeRoy Island in the town of Huron, Wayne County.

The stated purpose of the proposed action is Erosion Control Management, Water Access, Boat Storage, Docking for Water Crafts and New Jet ski Hoists attached to Dock.

The applicant's consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2021/12/f-2021-0882publicnotice.pdf> or at <https://dos.ny.gov/public-notices>

Original copies of public information and data submitted by the applicant are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice, or January 14, 2022.

Comments should be addressed to: Consistency Review Unit, Department of State, Office of Planning, Development and Community Infrastructure, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6000, Fax (518) 473-2464. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of State
F-2021-0820

Date of Issuance – December 15, 2021

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program.

In F-2021-0901, Suhrob Kadirov-Construct 4' x 60' open pile pier with one 1.5' x 4' access platform to lift, 14' x 14' 4-pile boat lift and four mooring piles and two 2' x 10' safety ladders at 99 Clocks, Massapequa.

Town of Oyster Bay, Nassau County, South Oyster Bay

The stated purpose of the proposed action is to provide water access and mooring for residents.

The applicant's consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2021/12/f-2021-0901consistcert.pdf> or at <https://dos.ny.gov/public-notices>

Original copies of public information and data submitted by the applicant are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice, or January 14, 2022.

Comments should be addressed to: Consistency Review Unit, Department of State, Office of Planning, Development and Community Infrastructure, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6000, Fax (518) 473-2464. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

Miscellaneous Notices/Hearings

NYS Register/December 15, 2021

PUBLIC NOTICE

Department of State

F-2021-0935

Date of Issuance – December 15, 2021

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program.

In F-2021-0935, Rich Marine Sales Inc, is proposing to stabilize up to 450 linear feet of shoreline. Shoreline stabilization would include the removal of up to 900cy of loose debris from the existing bank with the material being retained on-site away from the water, the placement of 1,350cy of granular fill (1,200 blow the plane or Ordinary High Water (OHW), placement of 400cy of 3-4" quarry run gravel base (350cy below the plane or OHW), the placement of 1,184cy of 18-24" rip rap (1,000cy below the plane of OHW).

In addition, 10" diameter piles would be placed every 20' along 450 linear feet of shoreline a minimum of 15' east of the maintained channel. The piles would be filled with concrete, capped and fitted to allow mooring of vessels. 8' wide floating dock segments would be placed inside the piles along the 450 linear feet (440 linear feet of dock) of the Black Rock Canal Shoreline. The docks would be access by up to five new 8' x 20' ramps.

At the southwestern side of the entrance to the existing maintenance slip additional 10" concrete filled piles would be placed 8- to 10-foot center to center spacings (up to 20 new piles). The interior face of the inner piles would support a new 16' long retaining wall structure. The retaining wall would be backed filled with 3-4 in quarry run gravel. Additionally, up to 960sf (six 8' x 20') of floating dock would be supported by the piles and retaining wall.

At the gas dock (north entrance to the maintenance slip) an additional ten 10" concrete filled piles will be place to support the existing bulkhead.

The proposal is for the Rich Marine Sales Inc property located on the Black Rock Canal at 23 Austin Street in the City of Buffalo, Erie County.

The stated purpose of the proposed action is "to stabilize the shoreline, add support to the gas dock, and to replace the docks and moorings lost when the previous bulkhead was undermined. The replacement of the bulkhead ... will reestablish erosion control and bank protection along the Marina and Black Rock Canal. The slope protection created using the sloped fill will extend 450 feet along the bank of the canal. The previously existing bulkhead had protected the shoreline from erosion for nearly 100 years and failed after the U.S. Army Corps of Engineering dredge project in 2015..."

The applicant's consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2021/12/f-2021-0935publicnotice.pdf> or at <https://dos.ny.gov/public-notices>

Original copies of public information and data submitted by the applicant are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice, or January 14, 2022.

Comments should be addressed to: Consistency Review Unit, Department of State, Office of Planning, Development and Community Infrastructure, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6000, Fax (518) 473-2464. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of State

F-2021-1046

Date of Issuance – December 15, 2021

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program.

In F-2021-1046, the NYC Economic Development Corporation is proposing a project composed of three sections. The first section is comprised of a proposed 6.8-acre waterfront park, providing bike and pedestrian pathways, plantings, bulkhead railings, lighting, and utilities, as well as bulkhead repair and/or reconstruction. The remaining two sections will connect to the existing East River Esplanade to the south and Harlem River Park to the north. The project runs from 125th to 145th Streets and 155th Street to Swindler's Cove/Dyckman Street, Manhattan, New York County, Harlem River.

The stated purpose of the proposed action is to complete a missing link of the Greenway on Manhattan's eastside and activate an undeveloped waterfront area in East Harlem, building on a long history of planning and advocacy efforts.

The applicant's consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2021/12/f-2021-1046harlemrivergreenway> or at <https://dos.ny.gov/public-notices>

Original copies of public information and data submitted by the applicant are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice, or January 14, 2022.

Comments should be addressed to: Consistency Review Unit, Department of State, Office of Planning, Development and Community Infrastructure, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6000, Fax (518) 473-2464. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of State

F-2021-1050 (DA)

Date of Issuance – December 15, 2021

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The NOAA's Northeast Multispecies Fishery Management Plan has determined that the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the New York State Coastal Management Program. The applicant's consistency determination and accompanying supporting information and data are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue in Albany, New York.

The proposed Amendment 23 to the Northeast Multispecies Fishery Management Plan (FMP) was developed to improve the reliability and accountability of catch reporting in the commercial groundfish fishery to ensure there is a precise and accurate representation of catch (landings and discards). The purpose of this action is to adjust the existing industry-funded monitoring program to improve accounting and accuracy of collected catch data. Accurate catch data are neces-

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Miscellaneous Notices/Hearings

sary to ensure that catch limits are set at levels that prevent overfishing and to determine when catch limits are exceeded.

The applicant's consistency certification and supporting information are available for review at: [https://dos.ny.gov/system/files/documents/2021/12/f-2021-1050\(da\)amendment23.pdf](https://dos.ny.gov/system/files/documents/2021/12/f-2021-1050(da)amendment23.pdf)

Any interested parties and/or agencies desiring to express their views concerning the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 from the date of publication of this notice, or January 14, 2022.

Comments should be addressed to: Department of State, Office of Coastal, Local Government and Community Sustainability, One Commerce Plaza, 99 Washington Ave., Suite, 1010, Albany, NY 12231, (518) 474-6000, Fax (518) 474-6572.

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of State
Notice of Program Change
Town of Bethlehem

Local Waterfront Revitalization Program

PURSUANT to 15 CFR 923, the New York State Department of State (DOS) has submitted a program change to the federal Office of Coastal Management (OCM). The change to the New York State Coastal Management Program (CMP) covered by this request is the incorporation of the Town of Bethlehem Local Waterfront Revitalization Program (LWRP) into the State's CMP. The program change is the LWRP as approved by the state. The LWRP includes enforceable policies that will be used for Coastal Zone Management Act review purposes.

A major component of the State's CMP is the provision that local governments be allowed to prepare Local Waterfront Revitalization Programs, which further detail and make geographically specific the State's coastal policies. Each LWRP is reviewed for consistency with the State's CMP and approved if it meets the guidelines established in the State CMP and Article 42 of the NYS Executive Law.

The Town of Bethlehem LWRP was prepared in partnership with the New York State Department of State and serves as a long-term management program for the waterfront resources of the Town. The Town of Bethlehem LWRP expands the State Coastal boundary to plan for, manage and protect waterfront resources more effectively. The proposed Bethlehem Waterfront Revitalization Area along the Hudson River encompasses approximately 6,365 acres (9.9 sq miles) that incorporate larger portions of the Hudson River tributaries, such as the entire Binnen Kill and a significant portion of the Vloman Kill and its FEMA-designated regulatory flood zone, more agricultural lands of the State-certified Albany County Agricultural District #3, palustrine and riverine Federal and State-regulated freshwater wetlands located throughout the WRA and along the western bank of the Hudson River; and include more land uses that impact the coastal area and the achievement of coastal policies.

The LWRP provides a detailed inventory and analysis of the Town of Bethlehem Waterfront Revitalization Area (WRA), including natural resources, historic and cultural resources, existing land and water uses, harbor management, and important economic activities, as well as issues and opportunities for future development. The State coastal policies and accompanying explanations are comprehensive and determine the appropriate balance between economic development and preservation that will permit beneficial use of, and prevent adverse effects on, the waterfront resources of the Town. The LWRP also describes the proposed land uses and controls in the Town of Bethlehem to be accommodated in the waterfront revitalization area under the Town of Bethlehem Zoning Law. To implement the policies and purposes of the LWRP, the Town adopted an LWRP Consistency Review Law that establishes a clear management structure to assure that local actions are reviewed for consistency with the provisions of the LWRP.

To advance the waterfront revitalization goals of the Town, the LWRP identifies 25 projects to protect water quality, address nonpoint

source pollution, educate residents and visitors about invasive species, improve public access to the waterfront resources, improve coordination with all levels of government and organizations to enhance riverfront development and preservation efforts, promote tourism opportunities and economic revitalization, provide for improved public access to waterfront recreational opportunities and explore open space conservation, and, collectively, help the community become more resilient to climate risks.

The draft LWRP was circulated by the New York State Department of State to potentially affected State, federal, and regional agencies from June 17, 2020 to August 17, 2020. A public notice was published on June 17, 2020 in the New York State Register announcing these review periods. Revisions addressing the comments received during the 60-day review were subsequently made to the LWRP, as necessary. The Town of Bethlehem LWRP was adopted by resolution by the Town of Bethlehem Town Board on March 24, 2021 and approved by the New York State Secretary of State on August 17, 2021 pursuant to the New York State Waterfront Revitalization of Coastal Areas and Inland Waterways Act (Executive Law, article 42).

The Town of Bethlehem Local Waterfront Revitalization Program and this public notice are available on the NOAA Coastal Zone Management Program Change website under File Number NY-2021-3 at: <https://coast.noaa.gov/czmprogramchange/#/public/home>

The Town of Bethlehem Local Waterfront Revitalization Program and this public notice are also available on the New York State Department of State's website at: <https://dos.ny.gov/location/town-bethlehem-local-waterfront-revitalization-program>

and <https://dos.ny.gov/public-notices>

Any comments on this program change to the State's approved Coastal Management Program should be submitted directly to the NOAA Office of Coastal Management on NOAA's Program Change website under File Number NY-2021-3 at: <https://coast.noaa.gov/czmprogramchange/#/public/home>

Written hard copy comments may be submitted to Joelle Gore, Office for Coastal Management, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Silver Spring, MD 20910.

Comments will be accepted by OCM for three weeks (21 days) following the date of the publication of this notice on December 15, 2021.

Further information on this program change may be obtained from: Barbara Kendall, Office of Planning and Development, Department of State, 99 Washington Ave., Suite 1010, Albany, NY 12231-0001; barbara.kendall@dos.ny.gov

PUBLIC NOTICE

Department of State
Uniform Code Variance/Appeal Petitions

Pursuant to 19 NYCRR Part 1205, the variance and appeal petitions below have been received by the Department of State. Unless otherwise indicated, they involve requests for relief from provisions of the New York State Uniform Fire Prevention and Building Code. Persons wishing to review any petitions, provide comments, or receive actual notices of any subsequent proceeding may contact Brian Tollisen or Neil Collier, Building Standards and Codes, Department of State, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-4073 to make appropriate arrangements.

Matter of David Barbuti, 150 White Plains Rd., Suite 103, Tarrytown, NY 10591, for a variance concerning safety requirements, including ceiling height.

2021-0573 Matter of Visweswaren Nageswaren, 20 Villard Avenue, Scarsdale, NY 10583, for a variance concerning safety requirements, including ceiling height.

2021-0564 Matter of Tom Pappagallo, 11 Leonard Ave, Newburgh, NY 12550, for a variance concerning safety requirements, including ceiling height.

2021-0574 Matter of Timothy Lerner, 57 Wheeler Avenue, Pleasantville, NY 10514, for a variance concerning safety requirements, including ceiling height.

2021-0575 Matter of William Simeoforides, Two Somerstown

Miscellaneous Notices/Hearings**NYS Register/December 15, 2021**

Road, Ossining, NY 10562, for a variance concerning safety requirements, including ceiling height.

2021-0576 Matter of Sheridan Campiglia, 33 Havell Street, Ossining, NY 10562, for a variance concerning safety requirements, including stair width.

2021-0473 Matter of Kara And Paul Iaconis, Two Woodland Drive, Mount Pleasant, NY 10595, for a variance concerning safety requirements, including emergency openings.

2021-0572 Matter of Visweswaren Nageswaren, 20 Villard Avenue, Scarsdale, NY 10583, for a variance concerning safety requirements, including ceiling height.

OPINIONS OF THE ATTORNEY GENERAL

The full text of an informal or formal opinion of the Attorney General may be obtained by writing to the Office of Legal Records, Department of Law, State Capitol, Albany, NY 12224. Please include the identification number, the date, the section(s) of law considered and the subject of the opinion.

**INFORMAL
OPINIONS**

No. 2021-2

Village Law §§ 3-301(4) and 3-312(5); Election Law §§ 9-112(3), (4), (6) and 6-122

A ballot that contains two votes for the same person for incompatible offices, one printed and one written in, should be counted as a blank vote for both of those offices.

FILED: NASSAU COUNTY CLERK 01/20/2022 08:58 PM

NYSCEF DOC. NO. 51

INDEX NO. 616124/2021

RECEIVED NYSCEF: 01/20/2022

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
MICHAEL DEMETRIOU as p/n/g of C.D. and on behalf of himself
and all other persons similarly situated, ADRIANNA ALBRITTON
as p/n/g of C.M., BRENDAN CURLEY as p/n/g of M.C., KAREN
FERRARO as p/n/g of H.L., CATHERINE GRIMES as p/n/g of
C.G., CHRISTINE BOCHAT-SMITH as p/n/g of G.S.,
CHRISTINE ENGLISH as p/n/g of R.E., DANIELLE SHIPANO as
p/n/g of J.S., ELIZABETH CUTLER as p/n/g of C.S.C., JENNIFER
SAIA as p/n/g of V.S., KRISTEN DOUKAS as p/n/g of D.D.,
MARIA VASSEL as p/n/g of N.P., MYSTIE MCNEIL as p/n/g of
A.B., KATHY TELEC as p/n/g of L.T., all on behalf of persons
similarly situated,

Hon. Thomas Rademaker

Index No. 616124/2021

Return Date: Jan. 21, 2022

**AFFIRMATION OF
JASON RIEGERT**

Petitioners,

-against-

NEW YORK STATE DEPARTMENT OF HEALTH, PUBLIC
HEALTH AND HEALTH PLANNING COUNCIL, MARY T.
BASSETT in her official capacity as the Commissioner of Health
for the State of New York, KATHLEEN C. HOCHUL, in her
official capacity as the Governor of the State of New York,

Respondents.

-----X
JASON RIEGERT, an attorney duly admitted to practice in the Courts of the State of
New York, affirms the following statements to be true under penalties of perjury:

1. I am the Deputy Director of the Bureau of Program Counsel, located within
the Department's Division of Legal Affairs at the New York State Department of Health ("DOH"
or the "Department"). Before assuming my current position on December 9, 2021, I was the
Acting Deputy Director within the Bureau of Program Counsel, a position I held since July
2021. I have been employed by the Department as an attorney since October 2014. In my
position, I provide daily support and legal assistance to a wide variety of programmatic areas

within the Department. My responsibilities as they relate to COVID-19 include assisting in the drafting and legal interpretation of Department regulations, guidance documents and Commissioner of Health determinations.

2. I am familiar with the facts set forth herein based upon personal knowledge, discussions with Department staff, and Department records.

3. I make this Affidavit in support of Respondents' Verified Answer and in opposition to the Verified Petition and Motion for Preliminary Injunction.

**The Department's Masking
Regulations**

4. On June 23, 2021, the Department amended Part 66 of the NYS Regulations by adding a new Subpart 66-3 through an Emergency Regulation, by filing a Notice of Emergency Adoption titled "Enforcement of Social Distancing Measures" with the Secretary of State. (10 NYCRR § 66-3). This Emergency Regulation was promulgated solely by the Department under the authority vested in the Department's Commissioner by PHL Sections 201, 206, 225, and the State Disaster Emergency Declaration issued pursuant to Executive Order 202. It was repealed on August 27, 2021. A copy of the Emergency Regulation, Enforcement of Social Distancing Measures, is attached hereto as **Exhibit A**.

5. 10 NYCRR § 66-3, among other things, states that individuals shall be required to wear a mask if not fully vaccinated and unable to maintain social distance, and, in certain settings, such as in schools, shall be required to wear masks regardless of whether or not they are fully vaccinated. **Id.**

6. On August 27, 2021 the Department of Health issued a new Emergency Regulation pertaining to the wearing of face coverings/masks after it was considered, voted on,

and approved by the Public Health and Health Planning Council ("PHHPC"). This regulation was promulgated pursuant to the authority vested in the PHHPC and the Commissioner of Health by Public Health Law Sections 201, 206, and 225. This regulation appears in Title 10 Department of Health, Chapter I. State Sanitary Code, Part 2. Communicable Diseases, 2.60, entitled "Face Coverings for COVID-19 Prevention" (10 NYCRR § 2.60). 10 NYCRR § 2.60 expressly repealed 10 NYCRR § 66-3. A copy of the Emergency Regulation, Face Coverings for COVID-19 Prevention, is attached hereto as **Exhibit B**.

7. 10 NYCRR § 2.60 is substantially different from 10 NYCRR § 66-3. It allows the Commissioner to require face-coverings in certain situations and settings "[a]s determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread" pursuant to issued "findings regarding the necessity of face-covering requirements." Id. Pursuant to this, on August 27, 2021, the Commissioner issued a Determination on Indoor Masking Pursuant to 10 NYCRR § 2.60 ("August 27th Determination"). The August 27th Determination was limited to healthcare settings, adult care facilities, P-12 school settings, correctional facilities and detention centers, homeless shelters, and public transportation conveyances and hubs. Further, the requirements in the August 27th Determination were "regardless of vaccination status." A copy of the August 27th Determination is attached hereto as **Exhibit C**.

8. On November 24, 2021, a new Notice of Emergency Adoption for 10 NYCRR § 2.60 was filed with the Department of State. **Exhibits D and E**. While the actual text of the regulation remains the same as the August 27th version, changes to the supporting

documents were made. For example, the Emergency Justification section was clarified to provide an update on the spread of the Delta variant. The November 24th Emergency Regulation is attached hereto as **Exhibit F**.

9. On the same day, a Notice of Proposed Rulemaking to move the Emergency Regulation to be permanently adopted was filed with the Department of State. It was published in the State Register on December 15, 2021, with the public comment period set to expire on February 14, 2022. A copy of the Notice of Proposed Rulemaking is attached hereto as **Exhibit G**.

10. On December 10, 2021, the Commissioner issued a new Determination on Indoor Masking Pursuant to 10 NYCRR § 2.60 ("December 10th Determination"). This December 10th Determination leaves the masking requirements from the August 27th Determination unchanged but adds a requirement for masking in all other indoor public places, regardless of vaccination status, unless the indoor public place requires proof of vaccination as a condition of entry. This provision was temporarily in place until January 15, 2022, given the winter surge of the Delta variant and Omicron, the new variant of concern, during the holiday season. A copy of the December 10th Determination is attached hereto as **Exhibit H**.

11. On January 13, 2022, the Commissioner extended the December 10th Masking Determination requiring masking in all indoor public places (unless the business requires proof of vaccination) for an additional two weeks until February 1, 2022 (“January 13th Masking Determination”). A copy of the January 13, 2022 Masking Determination is attached hereto as **Exhibit I.**

Dated: January 20, 2022



JASON RIEGERT

EXHIBIT E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
MICHAEL DEMETRIOU as p/n/g of C.D. and on behalf of himself and all other persons similarly situated, ADRIANNA ALBRITTON as p/n/g of C.M., BRENDAN CURLEY as p/n/g of M.C., KAREN FERRARO as p/n/g of H.L., CATHERINE GRIMES as p/n/g of C.G., CHRISTINE BOCHAT-SMITH as p/n/g of G.S., CHRISTINE ENGLISH as p/n/g of R.E., DANIELLE SHIPANO as p/n/g of J.S., ELIZABETH CUTLER as p/n/g of C.S.C., JENNIFER SAIA as p/n/g of V.S., KRISTEN DOUKAS as p/n/g of D.D., MARIA VASSEL as p/n/g of N.P., MYSTIE MCNEIL as p/n/g of A.B., KATHY TELEC as p/n/g of L.T., all on behalf of persons similarly situated,

Hon. Thomas Rademaker

Index No. 616124/2021

Return Date: Jan. 21, 2022

Petitioners,

**AFFIDAVIT OF
JOHANNE MORNE**

-against-

NEW YORK STATE DEPARTMENT OF HEALTH, PUBLIC HEALTH AND HEALTH PLANNING COUNCIL, MARY T. BASSETT in her official capacity as the Commissioner of Health for the State of New York, KATHLEEN C. HOCHUL, in her official capacity as the Governor of the State of New York,

Respondents.

-----X
STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

JOHANNE E. MORNE, being duly sworn, deposes and says:

1. I am the Deputy Director for Community Health, New York State Department of Health ("Department" or "DOH") Office of Public Health. In this role, I serve as the Director for both the AIDS Institute and the Center for Community Health. As such, I am responsible for directing state programs, services and activities relating to HIV/AIDS, sexually transmitted diseases ("STDs"), hepatitis C, drug user health, and LGBT health. Additionally, I oversee chronic disease prevention, epidemiology, nutrition, and family health services. I have been the Deputy

Director since July 2021 and was previously the Director of the AIDS Institute beginning in 2016 and the Director of Office Planning and Policy at the AIDS Institute beginning in 2010.

2. I have a Master of Science in Education and Counseling as well as a Bachelor of Arts in both Psychology and Social Work from the College of St. Rose in Albany, New York.

3. During the COVID response, I have served as Acting Deputy Director for the Office of Public Health. I responded initially to the pandemic when Glen Island, New York was declared a containment area to establish policies and set up testing infrastructure. I have overseen the teams that conducted antibody testing, cluster response, and school reopening. Additionally, I have overseen the Department's role in the mass vaccination sites across the state.

4. I am familiar with the facts set forth herein based upon personal knowledge, discussions with Department staff, and Department records. I have also reviewed guidance from the Centers for Disease Control & Prevention ("CDC") and the State, executive orders issued by the Governor, as well as studies and publications related to COVID-19.

5. I make this Affidavit in support of Respondents' Verified Answer and in opposition to the Verified Petition and Motion for Preliminary Injunction.

The Emergency Rule on Masking

6. The Department and the Commissioner of Health ("Commissioner") are charged with the overarching responsibility to protect the public health pursuant to Public Health Law ("PHL") §§ 201 and 206. Specifically, pursuant to PHL § 201(1)(m), the Department "shall ... supervise and regulate the sanitary aspects ... businesses and activities affecting public health." Pursuant to PHL § 206, the Commissioner "shall ... take cognizance of the interests of health and

life of the people of the state, and of all matters pertaining thereto.” These statutes obligate the Department and the Commissioner to take action when the public health is put at risk by an unprecedented and unpredictable global pandemic, and the rapid outbreak of severe and fatal respiratory illnesses associated therewith.

7. The New York State Administrative Procedure Act (“SAPA”) § 202(6)(a) provides: “Notice of emergency adoption. (a) Notwithstanding any other provision of law, if an agency finds that the immediate adoption of a rule is necessary for the preservation of the public health, safety or general welfare and that compliance with the requirements of subdivision one of this section would be contrary to the public interest, the agency may dispense with all or part of such requirements and adopt the rule on an emergency basis” (emphasis added).

8. The broad standard under SAPA recognizes that emergencies can take innumerable forms, most of which cannot be predicted.

9. The Department and the Public Health and Health Planning Council (“PHHPC”) have utilized their authority under SAPA in recent years to promulgate emergency regulations. Examples include:

- a) Lead testing in school drinking water (NY Reg, Sept. 21, 2016 at 14-17; 10 NYCRR Subpart 67-4) that aimed to prevent children from being exposed to lead;
- b) Requiring standards for operation of “cooling towers” that can harbor legionella bacteria and spread disease (NY Reg, Sept. 2, 2015 at 14-17; 10 NYCRR Part 4);

- c) Creating civil penalties for possession of “bath salts” and synthetic marijuana (NY Reg, Aug. 26, 2015 at 8-11; 10 NYCRR Subpart 9-1);
- d) Requiring local health departments to develop action plans to address the potential spread of the Zika virus (NY Reg, Apr. 6, 2016 at 23-24; 10 NYCRR § 40-2.24);
- e) Facilitating the prescribing and dispensing of controlled substances, administering treatment for narcotics addiction, and creating an opioid overdose program (NY Reg, Aug. 27, 2014 at 11-13, and Oct. 18, 2017 at 16-17; 10 NYCRR §§ 80.136 and 80.138).

10. The Emergency Rule at issue in the present matter, which provides the Commissioner with discretion to issue mask or face-covering requirements in certain settings through a Commissioner’s Determination, was adopted by PHHPC on July 29, 2021. Due to new, pertinent information related to the prevalence of the predominant COVID-19 variant in New York, minor modifications were made to the regulatory section and emergency justification after it was adopted by PHHPC. These changes were presented to PHHPC on August 26, 2021 and approved by the Commissioner and filed with the Secretary of State on August 27, 2021. A copy of the Emergency Rule is attached hereto as **Exhibit A**.

11. In accordance with SAPA § 202(6)(b), the Emergency Rule went into effect immediately upon filing. In accordance with SAPA § 202, emergency regulations are effective for 90 days.

12. The Emergency Rule was promulgated pursuant to the authority vested in PHHPC and the Commissioner by PHL § 225. PHHPC is authorized by § 225 to establish, amend, and

repeal sanitary regulations to be known as the State Sanitary Code (“SSC”), subject to the approval of the Commissioner.

13. PHL § 225(5)(a) provides that the SSC may deal with any matter affecting the security of life and health of the people of the State of New York. PHL § 225(4) authorizes PHHPC, in conjunction with the Commissioner, to protect public health and safety by amending the SSC to address issues that affect life and health, or the preservation or improvement of public health.

14. This Emergency Rule was adopted based on rational determinations by the Department and PHHPC that it was necessary to immediately address an ongoing and rapidly worsening public health crisis. The Department has accumulated, compiled, and analyzed data and research regarding the nature and progression of COVID-19, its communicable nature, and particularly the emergence of the highly contagious Delta variant. These considerations provided a rational basis for the promulgation of the regulation in question on an emergency basis and the Department complied with SAPA in doing so.

15. Namely, despite the ending of the state disaster emergency on June 25, 2021, data available as of the time of the adoption of the Emergency Rule showed that “[w]ith the emergence of the Delta variant, a strain twice as transmissible as the SARS-CoV-2 strain, this does not mean that COVID-19 is gone. Cases have risen 10-fold since early July, with the Delta variant accounting for 95% of recent sequenced positives in New York State.” See **Exhibit A**.

16. “These regulations update previously filed emergency regulations to provide that masking may be required under certain circumstances, as determined by the Commissioner based

on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread.” Id.

17. On August 27, 2021, this emergency regulation was filed with the Secretary of State, see supra ¶ 10, and the Commissioner simultaneously issued a determination on indoor masking. A copy of the August 27, 2021 Commissioner’s Determination on Indoor Masking Pursuant to 10 NYCRR § 2.60 is attached hereto as **Exhibit B**.

18. A new Notice of Emergency Adoption for 10 NYCRR § 2.60 was filed with the Department of State on November 24, 2021.¹ While the actual text of the regulation remains the same as the August 27th version, changes to the supporting documents were made.

19. On December 10, 2021, the Commissioner issued a new Determination on Indoor Masking Pursuant to 10 NYCRR § 2.60 (“December 10th Masking Determination”). This December 10th Determination leaves the masking requirements from the prior August 27th Masking Determination under the same regulation unchanged but adds a requirement for masking in all other indoor public places, regardless of vaccination status, unless the indoor public place requires proof of vaccination as a condition of entry. This provision was temporarily in place until January 15, 2022, given the winter surge of the variants during the holiday season. A copy of the December 10th Determination is attached hereto as **Exhibit C**.

20. On January 13, 2022, the Department extended the December 10th Masking Determination requiring masking in all indoor public places (unless the business requires proof of vaccination) for an additional two weeks until February 1, 2022 (“January 13th Masking

¹https://regs.health.ny.gov/sites/default/files/pdf/emergency_regulations/Face%20Coverings%20for%20COVID-19%20Prevention.pdf

Determination”). A copy of the January 13th Masking Determination is attached hereto as **Exhibit**

D.

21. Prior to the December 10th Masking Determination, the statewide seven-day average case rate had increased by 43% since Thanksgiving, and hospitalizations had increased by 29%. Simultaneously, although vaccination rates had increased, the increase was not enough to prevent the surge of the virus, particularly in communities with low vaccination coverage. **Exhibit**

C.

22. The December 10th Masking Determination and the January 13th Masking Determinations are vital given the winter holiday season as individuals engaged in more indoor activities in public such as shopping, holiday parties, and visiting holiday themed venues. Given the concerning Delta and Omicron spread, the December 10th Masking Determination and the January 13th Masking Determination are necessary to ensure that individuals are adequately protected in all indoor public settings through *either* vaccination status or mask-wearing.

Routes of COVID-19 Transmission

23. Transmission of SARS-CoV-2 occurs mainly “between people when an infected person is in close contact with another person.” It can spread “from an infected person’s mouth or nose in small liquid particles when the person coughs, sneezes, sings, breathes heavily or talks.” A copy of the WHO Scientific Brief: *Mask Use in the Context of COVID-19* is attached hereto as **Exhibit E.**

24. The WHO has found that “[a]erosol transmission can occur in specific situations in which procedures that generate aerosols are performed” and whether aerosol transmission can

occur in the absence of such generating procedures is still a matter under active research in the scientific community. Id. These liquid particles are different sizes, ranging from larger ‘respiratory droplets’ to smaller ‘aerosols.’” Id. However, “aerosol transmission can occur in specific settings and circumstances, particularly in indoor, crowded and inadequately ventilated spaces, where infected persons spend long periods of time with others” such as “restaurants, choir practices, fitness classes, nightclubs, offices and places of worship.” Id. Aerosols “can remain suspended in the air or travel farther than conversational distance,” known as “long-range aerosol or long range airborne transmission.” Id.

25. Additionally, the WHO has found that people may also become infected when touching their eyes, nose or mouth after touching surfaces or objects that have been contaminated by the virus. A copy of the WHO’s Question and Answer Page regarding *Coronavirus Disease (COVID-19): How is it Transmitted?* is attached hereto as **Exhibit F**.

26. The CDC confirms this, summarizing that infection from SARS-CoV-2 occur in three principal ways from exposure to respiratory fluids, including: 1) inhalation of air carrying droplets and aerosol particles, the risk of which is greatest within three to six feet of an infectious sources; 2) deposition of the virus onto “exposed mucous membranes,” such as from being coughed on; and 3) touching “mucous membranes with hands soiled by exhaled respiratory fluids containing virus or from touching inanimate surfaces contaminated with virus.” A copy of the CDC Scientific Brief: *SARS-CoV-2 Transmission* is attached hereto as **Exhibit G**. The CDC also notes that the “risk for infection decreases with increasing distance from the source and increasing time after exhalation.” Finally, the CDC states that infections can occur through inhalation greater

than six feet from the infectious source, and this “phenomenon” typically involves being in the presence of someone in an enclosed indoor space for an extended period of time. Id.

27. COVID-19 has an incubation period of up to fourteen days. A copy of the CDC’s Overview of Testing for SARS-CoV-2 (COVID-19) is attached hereto as **Exhibit H**. However, the time from exposure to symptom onset is on average 5-6 days. See Exhibit E. Both pre-symptomatic transmission of COVID-19 (from people who are infected but have not developed symptoms) and asymptomatic transmission (from people who are infected but never develop symptoms) can occur. See Exhibit H.

28. On January 13, 2022, Johns Hopkins reported that globally, 319,964,960 individuals to date had tested positive for COVID-19, and a total of 5,520,460 confirmed COVID-19 deaths worldwide.² In addition, 64,061,015 individuals in the United States had tested positive for COVID-19 to date, and 846,459 had died of COVID-19.³

29. On June 13, 2021, a low of 0.35% positivity rate occurred in New York State.⁴ Since then, cases have again begun steadily increasing due to the Delta and Omicron variants. For example, on January 1, 2022, 275,563 individuals were tested for COVID-19, with a total of 62,526 testing positive.⁵ This is a total positivity rate of 22.69%.

² See COVID-19 Dashboard, John Hopkins University of Medicine, found at <https://coronavirus.jhu.edu/map.html> (last viewed January 13, 2022).

³ Id.

⁴ See Positive Tests Over Time, by Region and County, found at <https://coronavirus.health.ny.gov/positive-tests-over-time-region-and-county> (last viewed January 13, 2022.)

⁵ See NYSDOH COVID-19 Tracker, Daily Totals: Persons Tested and Persons Tested Positive, found at <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-DailyTracker?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n> (last viewed January 13, 2022).

30. Since the December 10th Masking Determination and as the holidays have passed, on January 10, 2021, the positivity rate had dropped slightly to 18.61%, with 48,686 testing positive out of 261,620 total tested.⁶

31. From December 2020 to the present, hospitalization and ICU admissions also steadily increased. For example, on December 9, 2020, there were 511 new COVID-19 Hospital Admissions (2.61 per 100k). On January 7, 2021, this number reached 2,144 (10.97 per 100k, with a 9.58 7-day average). Since January 7, 2021, this number has started to decline. On December 9, 2021, there were 3,546 total COVID-19 patients hospitalized, 680 total COVID-19 patients in the ICU. As of January 10, 2022, there were 12,540 total COVID-19 patients hospitalized, with 1,597 COVID-19 patients in the ICU.⁷

32. Governor Hochul acknowledged that data showing a drop in new infections offered a “glimmer of hope” that the State’s discipline was paying off. However, she stressed that vaccination and masking in indoor public spaces was still necessary. A copy of *Governor Hochul Updates New Yorkers on State’s Progress Combating COVID-19* is attached hereto as **Exhibit I**.

33. The statewide trends will continue to be monitored to ensure the State is proportionately addressing the public health risks of the current variants based on the current science. It is critical that any restrictions put in place are ultimately lifted after evaluating the relevant data.

⁶ See Positive Tests Over Time, by Region and County, found at <https://coronavirus.health.ny.gov/positive-tests-over-time-region-and-county> (last viewed January 13, 2022).

⁷ NYS Department of Health, Daily Hospitalization Summary, <https://coronavirus.health.ny.gov/daily-hospitalization-summary> (last viewed January 13, 2022).

34. New York State will continue to take all necessary efforts to mitigate risk to the public and reduce the opportunity for the virus to spread.

Layers of Mitigation and the Importance of Masking

35. The Department follows the CDC guidance, which currently recommends that all people over the age of two, should wear a mask in indoor public spaces if they are not 1) fully vaccinated; 2) fully vaccinated and in an area with substantial or high transmission; or 3) fully vaccinated but with a weakened immune system. In general, while people should consider wearing a mask in crowded outdoor settings and in scenarios when people are in close contact, it is not currently necessary. A copy of the CDC's *Use Masks to Slow the Spread of COVID-19* is attached hereto as **Exhibit J**.

36. The CDC has emphasized the importance of mask wearing in the face of both the Delta and the Omicron COVID-19 variants.

37. On July 27, 2021, the CDC released updated guidance to recommend that everyone in areas of substantial or high transmission (both unvaccinated and vaccinated) wear a mask due to a significant increase in new COVID-19 cases and hospitalizations. At this time, new data regarding the infectious nature of the Delta variant emerged, noting that it was 2x as contagious as previous variants and could cause more severe illness than previous variant in unvaccinated individuals. The CDC emphasized that until vaccination coverage increased, multilayered prevention strategies, including masking, could help reduce community transmission. A copy of the *Guidance for Implementing COVID-19 Prevention Strategies in the Context of Varying Community Transmission Levels and Vaccination Coverage* is attached hereto as **Exhibit K**.

38. In the face of the highly transmissible Omicron variant, the CDC continues to recommend wearing a mask in all indoor public settings in areas of substantial or high community transmission, regardless of vaccination status. A copy of the CDC's *Omicron Variant: What You Need to Know* is attached hereto as **Exhibit L**.

39. On January 14, 2022, the CDC updated their masking guidance to clarify that some types of masks or respirators provide more protection than others, and people may choose respirators such as N95s and KN95s. The update emphasized that people should "wear the most protective mask you can that fits well and that you will wear consistently." A copy of the CDC's *Types of Masks and Respirators* is attached hereto as **Exhibit M**.

40. However, the CDC Director emphasized that their opinion is unchanged that "any mask is better than no mask" at all. A copy of CDC's January 14th Media Statement is attached hereto as **Exhibit N**.

41. Masks are an important means to prevent COVID-19 transmission. A copy of the Proceedings of the National Academy of Sciences' ("PNAS") *Identifying Airborne Transmission as the Dominant Route for the Spread of COVID-19* is attached hereto as **Exhibit O**.

42. While "mask mandates have generated controversy" and "opponents of mask mandates have even sued state governments to block them," "numerous scientific studies confirm that the simple act of wearing masks in public can significantly slow its spread." A copy of The Hill article, *Mask Mandates are Constitutionally Permissible*, dated July 31, 2020, is attached hereto as **Exhibit P**.

43. There have been several studies that have demonstrated a significant beneficial effect from masking in reducing COVID-19 case numbers.

44. An article published January 2021 in the PNAS entitled *An Evidence Review of Face Masks Against COVID-19* acknowledges that there are many practical limitations on studying the effectiveness of masking with regard to COVID-19 transmission. First, one cannot expect there to be direct epidemiological evidence from controlled trials during a pandemic, due to logistical and ethical reasons. However, this article took stock of all of the studies conducted to date on face masks and COVID-19 transmission and concluded that “population-level compliance with public mask wearing of 70% combined with contact tracking would be critical to halt epidemic growth. Population-level uptake of an intervention to benefit the whole population is similar to vaccinations.” Laws mandating as such are “effective at increasing compliance and slowing the spread of COVID-19.” A copy of Howard *et al.*’s *An Evidence Review of Face Masks against COVID-19* is attached hereto as **Exhibit Q**.

45. The CDC has noted that masks are intended to reduce the admission of “virus-laden droplets” by the wearer as a matter of source control, which is especially important for pre-symptomatic or asymptomatic wearers that may be unaware that they can transmit the virus to others. Masks also help reduce inhalation of droplets by the wearer. The community benefit of masking for SARS-CoV-2 control is due to a combination of these two effects. A copy of the CDC’s Science Brief: *Community Use of Masks to Control the Spread of SARS-CoV-2* is attached hereto as **Exhibit R**.

46. A study conducted in Bangladesh in late 2020 found that in villages receiving mask interventions, symptomatic SARS-CoV-2 seroprevalence was reduced by approximately 9.5% as related to comparison villages. The effects were even greater when surgical masks were distributed, reducing symptomatic seroprevalence to 11% overall. The study emphasized that the

results should not be taken to imply that mask wearing can only prevent on average 10% of COVID-19 cases; to the contrary, since the study induced only 42% of people wearing masks in total, near-universal masking may be much larger. Ultimately, the study found that “[w]here achievable, universal mask adoption is likely to have still larger impacts.” A copy of Abaluck’s *Impact of Community Masking on COVID-19: A Cluster-Randomized Trial in Bangladesh* is attached hereto as **Exhibit S**.

47. Another study published in June 2020 after an outbreak on the USS Theodore Roosevelt, with congregate living quarters and close working environments. The study found that among an outbreak with widespread transmission, service members who reporting wearing a face covering, had a 70% lower infection rate than those who did not. A copy of the CDC’s Morbidity and Mortality Weekly Report *SARS-CoV-2 Infections and Serologic Responses from a Sample of U.S. Navy Service Members – USS Theodore Roosevelt, April 2020*, is attached hereto as **Exhibit T**.

48. A study of COVID-19 transmission rates in 98% of K-12 public non-charter schools in Maricopa and Pima Counties (which account for more than 75% of Arizona’s population) evaluated school districts that had implemented mask requirements at the start of 2021-22 academic year, after in-person learning had resumed. The study found that “the odds of a school-associated COVID-19 outbreak in schools without a mask requirement were 3.5 times higher than those in schools with” as mask requirement implemented when school started. A copy of the CDC’s Morbidity and Mortality Weekly Report *Association Between K-12 School Mask Policies and School-Associated COVID-19 Outbreaks – Maricopa and Pima Counties, Arizona, July-August 2021* is attached hereto as **Exhibit U**.

Face Coverings are Safe

49. The CDC has noted that research supports that “under most circumstances, mask wearing has no significant adverse health effects for wearers.” Studies conducted of “healthy hospital workers, older adults, and adults with chronic obstructive pulmonary disease (COPD) reported no to minimal changes in oxygen or carbon dioxide levels while wearing a cloth or surgical mask either during rest or moderate physical activity.” It is also confirmed as safe during low to moderate levels of exercise. See Exhibit R.

50. For example, a study conducted by researchers at the University Hospitals of Cleveland examined carbon dioxide and oxygen levels in blood for 50 individuals both with and without masks after 10 minutes of both sitting and walking briskly. The study found that there were no “statistically significant differences in” oxygen or carbon dioxide levels in the mask wearer versus those without a mask. This finding was not dependent on whether the wearer was wearing a cloth or surgical mask. A copy of *The Effects of Wearing Facemasks on Oxygenation and Ventilation at Rest and During Physical Activity* is attached hereto as **Exhibit V**.

51. According to several scientific studies, face coverings are safe for children to wear. A copy of a South Carolina Department of Health and Environmental Control article published in August 2021, *The Science on Mask Use in K-12 Schools*, is attached hereto as **Exhibit W**.

52. A review of at least two studies on children using N95 masks found no significant effect on the ability to breathe. A copy of Eberhart, M., Orthaber, S., and Kerbl, R. (2021) *The impact of face masks on children – A mini review* is attached hereto as **Exhibit X**. A review on these studies found that “[t]he few existing studies suggested that surgical and cloth masks did not

significantly compromise ventilation and oxygen supplies in healthy individuals and may, therefore, be considered as not harmful.” Id.

53. Another study published in March 2021 found that “use of surgical masks among children was not associated with episodes of oxygen desaturation or the development of clinical signs of respiratory distress during a walking test.” A copy of Lubrano *et al.*’s *Assessment of Respiratory Function in Infants and Young Children Wearing Face Masks During the COVID-19 Pandemic* is attached hereto as **Exhibit Y**.

54. However, even given the lack of adverse health effects in most wearers, in accordance with the Commissioner’s December 10th Masking Determination issued pursuant to 10 NYCRR 2.60, only people able to “medically tolerate a face covering/mask” are subject to the requirement. See Exhibit C.

55. The CDC has noted people with certain disabilities may not be able to wear a mask because of a disability, such as those defined by the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* However, the CDC also noted that while certain groups of people may find it difficult to wear a mask, including those with underlying medical conditions, most people with underlying medical conditions (including asthma) can and should wear masks. A copy of the CDC’s *Your Guide to Masks* is attached hereto as **Exhibit Z**.

56. Clear masks are also not prohibited by the regulation. In fact, according to the CDC, clear masks or cloth masks with a clear panel should be considered, especially with those who are deaf or hard of hearing. Id.

57. The CDC has emphasized that while vaccination remains the most effective means to control the spread of the pandemic, “no one strategy is sufficient to prevent transmission, and

multiple interventions should be used concurrently to reduce the spread of the disease” beyond vaccination, including, but not limited to, the use of masks consistently and correctly. See Exhibit K.

COVID-19 Continues to Present a Grave Threat to Health and Safety

58. Despite the gains that New York has made, the pandemic is not over, as infection numbers have continued to increase. The COVID-19 variants discovered in New York and around the world create an increased risk for transmission.

59. The CDC conducts surveillance on SARS-CoV-2 strains to create a library of the various specimens and sequences to better assist in the public health response.⁸

60. The first surge of COVID-19 in New York was March-April-May 2020 and a resurgence of the COVID-19 pandemic swept through New York in November-December-January 2020-2021, with previous variants. Now we are in the midst of another resurgence, presently with the highly transmissible Delta and Omicron variants.

61. According to the CDC, the Delta variant is more than two times more contagious than previous variants and may cause more severe illness than previous variants in unvaccinated people. A copy of the CDC’s *Delta Variant: What We Know About the Science* is attached hereto as **Exhibit AA**.

62. Additionally, the Delta variant has been characterized by the CDC as a variant of concern. A “variant of concern” is one “for which there is evidence of an increase in

⁸ On May 31, 2021, The World Health Organization (“WHO”) announced new naming labels for the variants of interest and concern. See Tracking SARS-CoV-2 Variants, World Health Organization, found at <https://www.who.int/en/activities/tracking-SARS-CoV-2-variants/> (last viewed January 3, 2022).

transmissibility, more severe disease (e.g., increase hospitalizations or deaths), significant reduction in neutralization by antibodies generated during previous infection or vaccination, reduced effectiveness of treatments or vaccines, or diagnostic detection failures.” A copy of the CDC’s *SARS-CoV-2 Variant Classifications and Definitions* is attached hereto as **Exhibit BB**.

63. In addition to the Delta variant, a new variant, Omicron, which was first detected in South Africa in November 2021, has been rapidly spreading across the world. A copy of the CDC’s *Omicron Variant: What You Need to Know* is attached hereto as **Exhibit CC**. It was first discovered in the United States on December 1, 2021 and as of December 11, 2021 was known to have infected at least 43 persons across 22 States, including at least 20 persons in New York. See the CDC’s *First Confirmed Case of Omicron Variant Detected in the United States* attached hereto as **Exhibit DD**; the CDC’s Morbidity and Mortality Weekly Report *CoV-2 B.1.1.529 (Omicron) Variant – United States, December 1-8, 2021* attached hereto as **Exhibit EE**; CBS New York’s *New York Has 20 Confirmed Omicron Cases And Counting; New Policies Coming Friday, Gov. Hochul Says* attached hereto as **Exhibit FF**.

64. According to the CDC, data as of the week ending January 8, 2022, suggest that Omicron is now the predominant variant in the United States, accounting for 98.3% of COVID-19 cases, with the Delta variant now accounting for 1.7% of cases.^{9,10} Omicron is also likely the

⁹ See CDC, *COVID Data Tracker*, at <https://covid.cdc.gov/covid-data-tracker/#variant-proportions> (last visited January 13, 2022).

¹⁰ These estimates use Nowcast, a model that estimates more recent proportions of circulating variants and enables timely public health action. Variant proportion estimates lag because it often takes weeks after an infection to complete the sequencing and reporting.

predominant variant in the New Jersey, New York, Puerto Rico and the Virgin Islands Region, accounting for 99.3% of cases, with the Delta variant accounting for only 0.7%.¹¹

65. Omicron is spreading rapidly. The CDC notes that current vaccines are expected to protect against severe illness, hospitalizations, and deaths due to Omicron-related infection and vaccination remains the best public health measure to protect individuals from COVID-19. See Exhibit CC.

66. The existence of this new variant, which is reported to be more contagious than the Delta variant, has made implementation of the layered mitigation strategies of masking, testing, and vaccination even more urgent. Id; see also the Cleveland Clinic's *What to Know about the Omicron Variant* attached hereto as **Exhibit GG**; Bloomberg's *Omicron Four Times More Transmissible Than Delta in New Study* attached hereto as **Exhibit HH**.

COVID-19 Impact on Schools and Related Guidance

67. Several studies, specific to school environments, demonstrated the importance of universal masking as source control to stop the spread of COVID-19 in school settings and minimize disruptions to in-person education, see supra ¶ 48, 51-53.

68. Another study released by the CDC evaluated the differences in pediatric COVID-19 case rates in schools with and without school mask requirements from July 1- September 4, 2021. "Counties without school mask requirements experienced larger increases in pediatric COVID-19 case rates after the start of school compared with counties that had school mask

¹¹ These estimates use Nowcast, a model that estimates more recent proportions of circulating variants and enables timely public health action. Variant proportion estimates lag because it often takes weeks after an infection to complete the sequencing and reporting.

requirements.” A copy of the CDC’s Morbidity and Mortality Weekly Report *Pediatric COVID-19 Cases in Counties With and Without School Mask Requirements – United States, July 1-September 4, 2021* is attached hereto as **Exhibit II**.

69. On a March 19, 2021, published as part of the CDC’s Morbidity and Mortality Weekly Report, a study of a grade 9-12 boarding school in New Jersey showed that a “comprehensive mitigation strategy” that included “universal masking [by faculty, staff, and students], testing, upgraded air-handling equipment to improve ventilation, physical distancing . . . contact tracing, and quarantine and isolation protocols” was effective in controlling transmission of SARS-CoV-2 among students, faculty and staff members. After approximately a three-month school period, testing showed that only 0.18% of faculty and staff and .06% of students had a positive COVID-19 test result (representing 4% of faculty and staff and 1% of all students). The case investigations showed that the likely source of infection for 93% of these positive cases were off-campus contacts. A copy of the *Minimal SARS-CoV-2 Transmission After Implementation of a Comprehensive Mitigation Strategy at a School – New Jersey, August 20 – November 27, 2020* is attached hereto as **Exhibit JJ**.

70. The ABC Science Collaborative, which is funded through the National Institutes of Health (“NIH”), found that “[p]roper masking is the most effective mitigation strategy to prevent COVID-19 transmission in schools when vaccination is unavailable or there are insufficient levels of vaccination among students and staff.” A copy of the ABC Science Collaborative’s *The ABCs of North Carolina’s Plan A* is attached hereto as **Exhibit KK**. “With masking in place, Plan A – full, in-person instruction – is appropriate for all grades and all schools.” Id.

71. These findings were based on a study of over one million students. Id. Further, additional studies support these findings, determining that schools with universal masking policies had extremely low within-school transmission during the 2020-2021 school year. See Exhibits LL – SS.¹²

72. The ABC Science Collaborative recently published another article in January 2022 in the Pediatrics journal that analyzed COVID-19 data provided by 20 school districts in North Carolina during the early weeks of the Delta variant surge. The study found that that even with the rising community rates associated with the Delta variant, universal masking in schools resulted in low within-school secondary transmission. A copy of School Safety, Masking, and the Delta Variant is attached hereto as **Exhibit TT**.

73. With regard to COVID-19 prevention strategies in schools, the CDC “emphasizes implementing layered prevention strategies (using multiple prevention strategies together) to protect students, teachers, staff, and other members of their households, and to support in-person learning. This guidance considers current scientific evidence and lessons learned from schools implementing COVID-19 prevention strategies.” A copy of the CDC’s Guidance for COVID-19 Prevention in K-12 Schools is attached hereto as **Exhibit UU**.

74. The CDC has found that “when prevention strategies are not implemented or are not followed, “[s]ignificant secondary transmission of SRS-CoV-2 infection has occurred in school settings.” Id. For example, in Israel, a school was closed shortly after reopening after two symptomatic students attended school in person, leading to an outbreak among 153 students and

¹² Two of the additional studies also took place in North Carolina, see Exhibits LL and MM, and one additional study each took place in Utah, Missouri, Georgia, Wisconsin, Virginia, and California. See Exhibits NN - SS, respectively.

25 staff members. Overall, over 260 people were ultimately infected. Notably, the study found that masking strategies were not adhered to. The mask requirement was lifted due to a heat wave, along with lack of social distancing and poor ventilation. A copy of Stein Zamir et al.'s *A Large COVID-19 Outbreak in a High School 10 days after Schools' reopening, Israel, May 2020* is attached hereto as **Exhibit VV**.

75. Studies conducted early in the COVID-19 pandemic suggested that children and adolescents had a lower "incidence rate" of COVID-19 than adults. The CDC suggests that this may be attributed to the fact that children generally, as compared to adults, have fewer opportunities for exposure and aren't tested as much. The CDC has found that "[s]tudies that have systematically tested children and adolescents, irrespective of symptoms . . . have found their rates of infection can be comparable, and in some settings, higher, than in adults." A copy of CDC's *Scientific Brief: Transmission of SARS-CoV-2 in K-12 Schools* is attached hereto as **Exhibit WW**. The CDC states that "[c]hildren and adolescents can be infected with SARS-CoV-2, can get sick with COVID-19, and can spread the virus to others," especially within the same household. Id.

76. While children are less likely to develop severe illness or die as a result of COVID-19 than adults, as of July 7, 2021, "271 COVID-19 deaths among persons ages 5-17 years and 120 deaths among those 0-4 years have been reported to the National Center for Health Statistics." Id. Further, the long-term consequences of COVID-19 in children is still unknown. Id.

77. As of January 13, 2022, the American Academy of Pediatrics ("AAP") reported almost 9.5 million children have tested positive for COVID-19 since the onset of the pandemic. COVID cases among children are extremely high. Over 981,000 pediatric cases were added the past week, an increase of 69% over the cases added in the week ending January 6, 2022, and triple

the number of cases from two weeks ago. For the 23rd week in a row, pediatric COVID-19 cases are above 100,000. Since the first week of September, there have been over 4.4 million additional pediatric cases. Children represented 17.8% of all cases. A copy of the AAP's *Children and COVID-19: State-Level Data Report* dated January 13, 2022, is attached hereto as **Exhibit XX**.

78. On December 24, 2021, the Department issued a Health Advisory warning about an upward trend in pediatric hospitalizations associated with COVID-19.¹³ The Department has continued to monitor this trend and issue updates regularly. The most recent report shows that hospital admissions for COVID-19 among children and teens (<18 years old) increased more than 7-fold statewide from the week of December 5, 2021 to the week of January 2, 2022; this increase in hospital admissions is now greater for children than for the population overall.¹⁴ In response to this, the Department continues to recommend not only vaccination for eligible children ages 5 and up but also other appropriate mitigation measures including masking, testing, and social distancing

79. Additionally, in the January 14, 2022 Morbidity and Mortality Weekly Report, the CDC released data indicating that previous SARS-CoV-2 infection in children and teens (<18 years old) is associated with an increased risk of receiving a new diagnosis of both type 1 and type 2 diabetes. A copy of the CDC's *Risk for Newly Diagnosed Diabetes >30 Days After SARS-CoV-2 Infection Among Persons Aged <18 Years – United States, March 1, 2020 – June 28, 2021* is attached hereto as **Exhibit YY**.

80. The Department is also well aware of concerns of mental health issues during the pandemic, and previous guidance provided that schools must have “[a]vailable resources and

¹³ https://health.ny.gov/press/releases/2021/docs/2021-12-24_health_advisory.pdf

¹⁴ https://health.ny.gov/press/releases/2022/docs/pediatric_covid-19_hospitalization_report_2021-01-14.pdf

referrals to address mental health, behavioral, and emotional needs of students, faculty, and staff when school reopens for in-person instruction (e.g., how they will identify and support students having difficulty with transitioning back into the school setting, especially given the changed school environment). Any training for faculty and staff on how to talk with, and support, students during and after the ongoing COVID-19 public health emergency, as well as information on developing coping and resilience skills for students, faculty, and staff[.]” A copy of the June 7, 2021 Interim Guidance for In-Person Instruction at Pre-K to Grade 12 Schools During the COVID-19 Public Health Emergency is attached hereto as **Exhibit ZZ**.

81. The ultimate priority is to minimize risk of COVID-19 transmission to safely allow for in-person instruction for children and to prevent further outbreaks that might necessitate school closures. UNICEF has stated that “no effort should be spared to keep schools open or prioritize them in reopening plans.” A copy of UNICEF’s Report: *COVID-19 and School Closures: One Year of Education Disruption* is attached hereto as **Exhibit AAA**. It is now understood that school closures are extremely disruptive to children’s education and well-being. *Id.* UNICEF and the WHO recommend the “use of masks in the school setting” in order to keep schools open. A copy of UNICEF and the WHO’s *Considerations for school-related public health measures in the context of COVID-19* is attached hereto as **Exhibit BBB**. Additionally, in light of the infectious nature of the Omicron variant, UNICEF reaffirmed this understanding, stating that “[w]e know that mitigation measures in schools are effective. We must use this knowledge to do everything we can to keep schools open.” A copy of UNICEF’s Press Release, *Even as Omicron Variant Takes Hold, School Closures Must Be a Measure of Last Resort* is attached hereto as **Exhibit CCC**.

82. The AAP also “strongly advocate[s] that all policy considerations for school plans start with the goal of in-person learning” and utilize strategies that “will keep students and staff safe and physically present in school.” Accordingly, the AAP recommends universal masking, as it is “the best and most effective strategy to create consistent messages, expectations, enforcement, and compliance without the added burden of needing to monitor vaccination status” for students who are eligible. A copy of the AAP’s *COVID-19 Guidance for Safe Schools and Promotion of In-Person Learning* is attached hereto as **Exhibit DDD**.

83. Reopening schools and the instructional model used by each school district (in-person learning, remote, hybrid) has always ultimately been a local decision. While the State set the general parameters for schools reopening and recommended the prioritization of in-person learning, local school districts made the determination as to whether to reopen to in-person instruction within these parameters. Department guidance from August 2020 spoke to these parameters, such as social distancing of six feet in all directions **or** the use of appropriate physical barriers, among other things. A copy of the August 26, 2020 Reopening New York, *Guidelines for In-Person Instruction at Pre-K to Grade 12 Schools* is attached hereto as **Exhibit EEE**.

84. Initially, the Department issued extensive and detailed guidance, checklists, and toolkits for “all types of public and private (both secular and non-secular) elementary (including pre-kindergarten), middle, and high schools authorized to provide in-person instruction.” See **Exhibit ZZ**. The guidance served as a roadmap for school districts to establish their own reopening plans in accordance with the Department’s Master Guidance. Id.

85. On July 9, 2021, the CDC replaced its K-12 operational strategy with a new guidance because “with COVID-19 cases increasing nationally since mid-June 2021, driven by the

[Delta variant], protection against exposure remains essential in school settings.” See **Exhibit UU**. The new guidance was updated to add information related to promoting COVID-19 vaccination, align with guidance for fully vaccinated people, and emphasize the COVID-19 prevention strategies most important for in-person learning, among other things. Id. The CDC has continued to periodically update the guidance as new variants emerge and more data is released. The most recent update, on January 13, 2022, continues to recommend universal indoor masking for all students, teachers, staff, and visitors to K-12 schools, regardless of vaccination status. Id.

86. As adult vaccinations increased and COVID-19 hospitalizations decreased in June 2021, Governor Cuomo began lifting many restrictions. A copy of the June 15, 2021 Press Release, “Governor Cuomo Announces COVID-19 Restrictions Lifted as 70% of Adult New Yorkers Have Received First Dose of COVID-19 Vaccine” is attached hereto as **Exhibit FFF**. However, he maintained the mask requirements and “health guidelines [that] continue to be in effect for large-scale indoor event venues, pre-K to grade 12 schools, public transit, homeless shelters, correctional facilities, nursing homes, and health care settings, per [current] CDC guidelines.” Id.

87. Although Governor Cuomo ended the state disaster emergency to fight COVID-19 on June 25, 2021,¹⁵ the Delta variant began to emerge that summer. With the continuing need to control its spread, Commissioner Zucker “recommend[ed] following guidance from the CDC and local health departments,” which included universal indoor masking at K-12 schools. A copy of the August 5, 2021 Press Release “Statement from New York State Department of Health Commissioner Dr. Howard Zucker” is attached hereto as **Exhibit GGG**.

¹⁵<https://www.governor.ny.gov/news/governor-cuomo-announces-new-york-ending-covid-19-state-disaster-emergency-june-24>

88. Additionally, the New York State Education Department issued a Health and Safety Guide for the 2021-2022 School Year on August 12, 2021. A copy of the August 12, 2021 Press Release “State Education Department Issues Health and Safety Guide to Reopen New York State Schools” is attached hereto as **Exhibit HHH**. The guide notes that “due to emerging evidence that demonstrates that the Delta variant of COVID-19, currently the predominant strain in the United States, is more infectious and has led to increased transmissibility when compared to other variants” both “**the CDC and the American Academy of Pediatrics [“AAP”] recommend universal indoor masking for all teachers, staff, students, and visitors to K-12 schools, regardless of vaccination status and community transmission levels.**” (emphasis in original). A copy of the Health and Safety Guide for the 2021-2022 School Year is attached hereto as **Exhibit III**.

89. On August 24, 2021, Governor Hochul announced a change to the mask requirement for schools due to the rising COVID-19 cases caused by the Delta variant. The Governor “directed the New York State Department of Health to institute a universal mask requirement in all schools, public and private, as determined necessary at the discretion of the Commissioner.” This was to be accomplished “through regulatory action established by [PHHPC].” See *supra* ¶ 10. A copy of the August 24, 2021 Press Release “On First Day in Office, Governor Hochul Announces Comprehensive Plan to Help Ensure a Safe, Productive Return to Schools This Fall” is attached hereto as **Exhibit JJJ**.

90. Commissioner Zucker stated that “[s]ince early July, COVID-19 cases in New York have risen 10-fold and 95 percent of sequenced positive cases were confirmed to be Delta variant. Based on incidence and prevalence, our findings demonstrate the necessity of layered prevention

strategies, including this mask requirement. While a simple measure of prevention, requiring masks now is crucial for protecting the health of our children and ensuring we can get our students back in their schools this fall.” Id.

91. On August 27, 2021, this emergency regulation was filed with the Secretary of State and the Commissioner simultaneously issued the first determination on indoor masking, see supra ¶ 10, 17. See also Exhibit B. The determination noted that “certain settings and areas [including schools] pose increased challenges and urgency for controlling the spread of this disease because of the vulnerable populations served, the disproportionate percentage of individuals (e.g., children) who are not yet eligible for the COVID-19 vaccination, and/or the substantial to high levels of community transmission.” Id.

92. The determination further noted that “as reported by the CDC, research supports that there are no significant health effects or changes in oxygen or carbon dioxide levels from mask wear” and “adopt[ed] [CDC recommendations for face coverings/masks in school settings], imposing them as requirements.” Id.

93. On September 2, 2021, the Department issued Interim Guidance for P-12 schools for the 2021-2022 academic year. The Interim Guidance “addresses the minimum expectations for classroom instruction in P-12 schools” and “provides an operational framework for schools to fulfill their primary purpose of educating children during the COVID-19 pandemic” while also “align[ing] with international and national experts” in “adhering to multiple mitigation strategies,” such as vaccination and appropriate masking. A copy of the September 2, 2021 Interim NYSDOH Guidance for Classroom Instruction in P-12 Schools During the 2021-2022 Academic Year is attached hereto as **Exhibit KKK**.

94. Children eligible for vaccination include those aged 12-15, who became eligible to receive the Pfizer-BioNTech COVID-19 vaccine for emergency use on May 12, 2021, and children ages 5-11, who became eligible on October 29, 2021. A copy of the October 29, 2021 FDA News Release is attached hereto as **Exhibit LLL**. As of January 3, 2022, the FDA expanded authorization for the emergency use of the Pfizer-BioNTech COVID-19 vaccine to include a single dose booster for children ages 12-15. A copy of the January 3, 2022 FDA News Release is attached hereto as **Exhibit MMM**.

95. The Commissioner's Determinations related to 10 NYCRR § 2.60 requiring universal indoor masking in P-12 schools remain consistent with international and national expert recommendations, particularly given the increased infectiousness of the Delta and Omicron variants and the current trend of increased pediatric hospitalizations for COVID-19.

Johanne E. Morne

JOHANNE E. MORNE

Sworn to before me this
20th day of January, 2022

Jessica Hall
NOTARY PUBLIC

JESSICA HALL
Notary Public, State of New York
Reg. No. 02HA6108048
Qualified in Rensselaer County
Commission Expires April 12, 2024