

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 Agriculture and Markets

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Agriculture and Markets publishes a new notice of proposed rule making in the *NYS Register*.

Ash Trees, Nursery Stock, Logs, Green Lumber, Firewood, Stumps, Roots, Branches and Debris of a Half Inch or More

I.D. No.	Proposed	Expiration Date
AAM-16-10-00033-P	April 21, 2010	June 17, 2011

Department of Civil Service

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Civil Service publishes a new notice of proposed rule making in the *NYS Register*.

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-24-10-00006-P	June 16, 2010	June 16, 2011

Education Department

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

School Facility Report Cards

I.D. No. EDU-27-11-00009-EP

Filing No. 561

Filing Date: 2011-06-21

Effective Date: 2011-06-21

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

Proposed Action: Repeal of section 155.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), (20), 409-d(1-3) and 409-e(1-4)

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

Specific reasons underlying the finding of necessity: The proposed amendment will reduce costs and provide mandate relief to school districts and boards of cooperative educational services (BOCES), by repealing section 155.6 of the Commissioner's Regulations to eliminate a requirement that school districts and BOCES prepare a school facility report card for each occupied school building.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendments could be adopted, pursuant to the requirements of the State Administrative Procedure Act, is the September 12-13, 2011 Regents meeting, and the earliest an adoption at such meeting could be made effective would be October 5, 2011.

The national recession and the expiration of the federal stimulus funds has forced many districts to dip into their fund balance and reduce staffing and other resources for students. It is critical that districts receive relief from mandates that have not been demonstrated to justify their cost in order that districts can maintain critical services to students. The proposed amendment is being adopted as an emergency measure upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to provide immediate mandate relief to school districts and allow them to preserve critical programs, by repealing unnecessary requirements relating to school facility report cards, so that school districts may immediately make applicable changes in their 2011-12 budgets and timely prepare and issue their tax levies in July 2011.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their September 12-13, 2011 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: School facility report cards.

Purpose: To repeal the requirement that school districts and BOCES prepare school facility report cards.

Text of emergency/proposed rule: Section 155.6 of the Regulations of the Commissioner of Education is repealed, effective June 21, 2011.

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 September 18, 2011.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-8869, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Valerie Grey, State Education Department, Office for P-12 Education, State Education Building, Room 125, 89 Washington Ave., Albany, NY 12234, (518) 473-8381, email: NYSEDP12@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 empowers the Board of Regents and the Commissioner to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the Department by law.

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State education system, with general supervision over schools and institutions subject to the provisions of education law, and responsibility for executing Regents policies. Section 305(20) authorizes the Commissioner with such powers and duties as are charged by the Regents.

Education Law sections 409-d and 409-e, as added by Chapters 56 and 58 of the Laws of 1998 (Rebuilding Schools to Uphold Education - RESCUE), direct the Commissioner of Education to establish, develop and monitor a Comprehensive Public School Safety Program which includes a uniform code providing for school building inspections, the establishment of a safety rating system for school buildings and the establishment of a monitoring system to ensure that school buildings are safe and maintained in a state of good repair.

2. LEGISLATIVE OBJECTIVES:

The proposed repeal is consistent with the above statutory authority of the Commissioner to establish, develop and monitor a Comprehensive Public School Safety Program.

3. NEEDS AND BENEFITS:

The proposed repeal will reduce costs and provide mandate relief to school districts and boards of cooperative educational services (BOCES), by repealing section 155.6 of the Commissioner's Regulations to eliminate a requirement that school districts and BOCES prepare a school facility report card for each occupied school building. While the intent of the report card was to summarize all facilities activities, projects, investigations, and tests performed throughout the year, the report card data may be obtained from other required data available in the district and represents a duplicative and unnecessary administrative burden.

The national recession and the expiration of the federal stimulus funds has forced many districts to dip into their fund balance and reduce staffing and other resources for students. It is critical that districts receive relief from mandates that have not been demonstrated to justify their cost in order that districts can maintain critical services to students.

4. COSTS:

(a) Cost to state government: None.

(b) Cost to local government: None. The proposed repeal will reduce costs to school districts and BOCES and provide mandate relief by repealing a requirement that school districts and BOCES prepare school facility report cards. Experience shows that it takes approximately one day to develop and manage the school facilities report card per building. It was also required to be discussed annually at a board of education meeting. Therefore one Full time Equivalent (FTE) multiplied by one day multiplied by 5,500 occupied facilities is 5500 days divided by 250 days per year or a total statewide impact of 22 FTE, multiplied by an average salary and fringe of \$82,000 results in a total statewide savings to school districts of approximately \$1.8 million.

(c) Cost to private regulated parties: Not applicable. The regulation applies to school districts and BOCES.

(d) Cost to regulatory agency for implementation and continued administration of this rule: None. The school facilities report card was designed as a local tool to inform the taxpaying public about the condition of their district schools. It was not required to be submitted to the State Education Department, and the Department did not review the information contained in them. The Department did develop a format for the report and provided that to the districts. There are no costs or cost savings to the Department as it had insignificant involvement after the distribution of the report card format.

5. LOCAL GOVERNMENT MANDATES:

The proposed repeal does not impose any additional program, service, duty or responsibility upon local governments, and will instead provide mandate relief to school districts without a commensurate risk to school safety, by repealing an existing requirement that school districts and BOCES prepare school facilities report cards. While the intent of the report card was to summarize all facilities activities, projects, investigations, and tests performed throughout the year, the report card data may be obtained from other required data available in the district and represents a duplicative and unnecessary administrative burden.

6. PAPERWORK:

The proposed repeal does not impose any additional reporting or other paperwork requirements. The elimination of the School Facilities Report Card will reduce the paperwork burden to school district. The report card format developed by the State Education Department merely refers readers to other available documentation.

7. DUPLICATION:

The proposed repeal does not duplicate, overlap or conflict with any other State or federal statute or regulation.

8. ALTERNATIVES:

There are no significant alternatives and none were considered. The proposed amendment is intended to provide mandate relief to school districts by repealing a duplicative and unnecessary requirement.

9. FEDERAL STANDARDS:

There are no applicable federal standards for the School Facilities Report Card. Federal laws governing the triennial inspection required pursuant to the Asbestos Hazard Emergency Response Act, as referenced in Education law section 3641(4)(d) is not impacted.

10. COMPLIANCE SCHEDULE:

As this measure repeals an existing requirement for purposes of affording mandate relief, school districts and BOCES will not require additional time to comply with the requirements of the proposed amendment.

Regulatory Flexibility Analysis

Small Businesses:

The proposed repeal relates to school facilities report cards prepared by school districts and boards of cooperative educational services (BOCES). It does not impose any adverse impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendments that small businesses will not be affected, no further measures are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed repeal applies to each school district and BOCES in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed repeal does not impose any additional compliance requirements on school districts or BOCES, and will provide mandate relief by repealing a requirement that school districts and BOCES prepare school facilities report cards.

3. PROFESSIONAL SERVICES:

The proposed repeal does not impose any professional services requirements on school districts or BOCES.

4. COMPLIANCE COSTS:

The proposed repeal will reduce costs to school districts and BOCES and provide mandate relief by repealing a requirement that school districts and BOCES prepare school facility report cards. Experience shows that it takes approximately one day to develop and manage the school facilities report card per building. It was also required to be discussed annually at a board of education meeting. Therefore one Full time Equivalent (FTE) multiplied by one day multiplied by 5,500 occupied facilities is 5500 days divided by 250 days per year or a total statewide impact of 22 FTE, multiplied by an average salary and fringe of \$82,000 results in a total statewide savings to school districts of approximately \$1.8 million.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed repeal will not require any new technological requirements. Economic feasibility is addressed above under compliance costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed repeal will reduce compliance requirements and costs for school districts and BOCES in that it will provide them with mandate relief by repealing a requirement that school districts and BOCES prepare school facilities report cards. While the intent of the report card was to summarize all facilities activities, projects, investigations, and tests performed throughout the year, the report card data may be obtained from other required data available in the district and represents a duplicative and unnecessary administrative burden.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed repeal have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed repeal would apply to all school districts and boards of cooperative educational services (BOCES) in the State, including those located in 44 rural counties with fewer than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed repeal does not impose any additional reporting, record-keeping and other compliance requirements on school districts or BOCES in rural areas, and will provide mandate relief by repealing a requirement that school districts and BOCES prepare school facilities report cards.

3. COMPLIANCE COSTS:

The proposed repeal will reduce costs to school districts and BOCES and provide mandate relief by repealing a requirement that school districts and BOCES prepare school facility report cards. Experience shows that it takes approximately one day to develop and manage the school facilities report card per building. It was also required to be discussed annually at a board of education meeting. Therefore one Full time Equivalent (FTE) multiplied by one day multiplied by 5,500 occupied facilities is 5500 days divided by 250 days per year or a total statewide impact of 22 FTE, multiplied by an average salary and fringe of \$82,000 results in a total statewide savings to school districts of approximately \$1.8 million.

4. MINIMIZING ADVERSE IMPACT:

The proposed repeal will reduce compliance requirements and costs for school districts and BOCES in that it will provide them with mandate relief by repealing a requirement that school districts and BOCES prepare school facilities report cards. While the intent of the report card was to summarize all facilities activities, projects, investigations, and tests performed throughout the year, the report card data may be obtained from other required data available in the district and represents a duplicative and unnecessary administrative burden.

5. RURAL AREA PARTICIPATION:

Copies of the proposed repeal were provided to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

Job Impact Statement

The proposed repeal relates to school facilities report cards prepared by school districts and boards of cooperative educational services (BOCES), and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the repeal that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

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

School Bus Driver Training and School Bus Idling Monitoring and Reporting

I.D. No. EDU-27-11-00010-EP

Filing No. 562

Filing Date: 2011-06-21

Effective Date: 2011-06-21

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

Proposed Action: Amendment of section 156.3(b) and (h) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), (20), 3624(not subdivided) and 3637(1), (2) and (3)

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

Specific reasons underlying the finding of necessity: The proposed amendment will reduce costs and provide mandate relief to school districts.

The proposed amendment of section 156.3(b)(5)(iii) will provide mandate relief to school districts and afford greater flexibility to school bus drivers to complete required semi-annual school bus driver safety training, by allowing the training to be scheduled coincidental with other professional development days scheduled during the year.

In addition, the proposed amendment to section 156.3(h)(5) will provide mandate relief to school districts by repealing requirements that each school district monitor compliance with school bus idling restrictions at least twice a year, and prepare, retain and submit written reports of such reviews. The proposed amendment ensures student safety in that it will still require each school district to periodically monitor compliance with school bus idling restrictions.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendments could be adopted, pursuant to the requirements of the State Administrative Procedure Act, is the September 12-13, 2011

Regents meeting, and the earliest an adoption at such meeting could be made effective would be October 5, 2011.

The proposed amendment is being adopted as an emergency measure upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to provide immediate mandate relief to school districts and allow them to preserve critical programs, by permitting increased flexibility in the scheduling of school bus driver safety training and eliminating unnecessary monitoring and reporting requirements, so that school districts may immediately make changes in their 2011-2012 budgets and timely prepare and issue their tax levies in July 2011.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at their September 12-13, 2011 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act.

Subject: School bus driver training and school bus idling monitoring and reporting.

Purpose: Provide mandate relief through increased scheduling flexibility and by repealing certain monitoring/reporting requirements.

Text of emergency/proposed rule: 1. Subparagraph (iii) of paragraph (5) of subdivision (b) of section 156.3 of the Regulations of the Commissioner of Education is amended, effective June 21, 2011, as follows:

(iii) All school bus drivers shall receive a minimum of two hours of refresher instruction in school bus safety at least two times a year, at sessions conducted between July 1st and [the first day of school] *October 31* and between December 1st and [March] *May* 1st of each school year. Refresher courses for drivers of vehicles transporting pupils with disabilities exclusively shall also include instruction relating to the special needs of a pupil with a disability.

2. Paragraph (5) of subdivision (h) of section 156.3 is amended, effective June 21, 2011, as follows:

(5) Monitoring and reports. Each school district shall periodically [but at least semi-annually] monitor compliance with the provisions of this subdivision by school bus drivers and drivers of vehicles owned, leased or contracted for by such school district. [Each school district shall prepare a written report of such review, which shall describe the actions taken to review compliance and the degree of adherence found with the provisions of this subdivision. Copies of the report shall be retained in the school district's files for a period of six years and made available upon request. The commissioner may also require specific school districts to provide additional information as necessary to address health concerns related to their compliance with the provisions of this subdivision.]

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 September 18, 2011.

Text of rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Valerie Grey, State Education Department, Office of P-12 Education, State Education Building, Room 125, 89 Washington Ave., Albany, NY 12234, (518) 473-8381, email: NYSEDP12@mail.nysed.gov

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

Regulatory Impact Statement**1. STATUTORY AUTHORITY:**

Education Law section 207 empowers the Regents and Commissioner of Education to adopt rules and regulations to carry out State education laws and functions and duties conferred on the Education Department by law.

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State education system, with general supervision over schools and institutions subject to the provisions of education law, and responsibility for executing Regents policies. Section 305(20) authorizes the Commissioner with such powers and duties as are charged by the Regents.

Education Law section 3624 authorizes the Commissioner of Education to establish and define qualifications of school bus drivers and to make rules and regulations governing the operation of transportation facilities used by pupils. Such rules and regulations shall include acts or conduct which would affect the safe operation of such transportation facilities.

Education Law section 3637 directs the Commissioner to promulgate regulations requiring school districts to minimize, to the extent practicable, the idling of the engine of any school bus and other vehicles owned or leased by the school district while such bus or vehicle is parked or standing on school grounds, or in front of any school.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative objectives in the aforementioned statutes to prescribe qualifications for school bus drivers and ensure the health and safety of students and pupil transportation.

3. NEEDS AND BENEFITS:

The proposed amendment of section 156.3(b)(5)(iii) will provide mandate relief to school districts and afford greater flexibility to school bus drivers to complete required semi-annual school bus driver safety training, by allowing the training to be scheduled coincidental with other professional development days scheduled during the year. The proposed amendment is in response to comments from school districts and vendor School Bus Driver Instructors (SBDIs) and Master Instructors (MIs) that that the training schedule needs to allow for cost effective and timely semi-annual training for school bus drivers.

In addition, the proposed amendment to section 156.3(h)(5) will provide mandate relief to school districts by repealing requirements that each school district monitor compliance with school bus idling restrictions at least twice a year, and prepare, retain and submit written reports of such reviews. The proposed amendment ensures student safety in that it will still require each school district to periodically monitor compliance with school bus idling restrictions. The proposed amendment is in response to comments to provide more flexibility to school districts to monitor and report compliance with the rule's provisions.

4. COSTS:

- a. Costs to State government: None.
- b. Costs to local governments: None.
- c. Costs to regulated parties: None.
- d. Costs to the State Education Department: None.

The proposed amendment will reduce costs and provide mandate relief to school districts by allowing school bus driver safety training to be scheduled coincidental with other professional development days and thus relieve school districts of the additional expense in requiring bus drivers to attend mandatory trainings on days when they are not otherwise required to be at work. The proposed amendment will also provide mandate relief and cost savings to school districts by repealing the requirement that they perform semi-annual monitoring of compliance with school bus idling restrictions and prepare, retain and submit reports of such reviews.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment provides mandate relief by providing greater flexibility in the scheduling of school bus driver safety training, and repealing requirements for semi-annual monitoring of compliance with school bus idling restrictions and the preparation, retention and submission of reports of such reviews.

6. PAPERWORK:

The proposed amendment does not impose any additional reporting or other paperwork requirements. The proposed amendment will reduce paperwork requirements to school districts in that it will provide them with mandate relief by removing the requirement to submit to the State Education Department semi-annual reports on compliance with school bus idling restrictions.

7. DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with any other State or federal statute or regulation.

8. ALTERNATIVES:

There are no significant alternatives and none were considered. The proposed amendment is intended to provide cost saving measures and mandate relief to school districts by amending semi-annual safety training for school bus drivers to coordinate with school calendars and by amending unnecessary monitoring and reporting requirements.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum federal standards.

10. COMPLIANCE SCHEDULE:

We do not anticipate any difficulty for school districts to comply with the proposed rule by its effective date. The proposed amendment is intended to provide cost saving measures and mandate relief to school districts by amending semi-annual safety training for school bus drivers to coordinate with school calendars and by amending unnecessary monitoring and reporting requirements.

Regulatory Flexibility Analysis**Small Businesses:**

The proposed amendment provides mandate relief to school districts, with respect to school bus driver safety instruction and monitoring of school bus idling restrictions, and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a

regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:**1. EFFECT OF RULE:**

The proposed amendment applies to all public school districts in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on school districts. The proposed amendment of section 156.3(b)(5)(iii) will provide mandate relief to school districts and afford greater flexibility to school bus drivers to complete required semi-annual school bus driver safety training, by allowing the training to be scheduled coincidental with other professional development days scheduled during the year.

In addition, the proposed amendment to section 156.3(h)(5) will provide mandate relief to school districts by repealing requirements that each school district monitor compliance with school bus idling restrictions at least twice a year, and prepare, retain and submit written reports of such reviews. The proposed amendment ensures student safety in that it will still require each school district to periodically monitor compliance with school bus idling restrictions.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on school districts.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any compliance costs, and will reduce costs and provide mandate relief to school districts by allowing school bus driver safety training to be scheduled coincidental with other professional development days and thus relieve school districts of the additional expense in requiring bus drivers to attend mandatory trainings on days when they are not otherwise required to be at work. The proposed amendment will also provide mandate relief and cost savings to school districts by repealing the requirement that they perform semi-annual monitoring of compliance with school bus idling restrictions and prepare, retain and submit reports of such reviews.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs, and will reduce costs and provide mandate relief to school districts by allowing school bus driver safety training to be scheduled coincidental with other professional development days and thus relieve school districts of the additional expense in requiring bus drivers to attend mandatory trainings on days when they are not otherwise required to be at work. The proposed amendment will also provide mandate relief and cost savings to school districts by repealing the requirement that they perform semi-annual monitoring of compliance with school bus idling restrictions and prepare, retain and submit reports of such reviews.

The proposed amendment to section 156.3(b)(5)(iii) is in response to comments from school districts and vendor School Bus Driver Instructors (SBDIs) and Master Instructors (MIs) that that the training schedule needs to allow for cost effective and timely semi-annual training for school bus drivers. The proposed amendment to section 156.3(h) is in response to comments to provide more flexibility to school districts to monitor and report compliance with the rule's provisions.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents for distribution to school districts within their supervisory districts for review and comment.

Rural Area Flexibility Analysis**1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:**

The proposed amendment will apply to all public school districts, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional compliance requirements on rural areas. The proposed amendment of section 156.3(b)(5)(iii) will provide mandate relief to school districts and afford greater flexibility to school bus drivers to complete required semi-annual school bus driver safety training, by allowing the training to be scheduled coincidental with other professional development days scheduled during the year.

In addition, the proposed amendment to section 156.3(h)(5) will provide mandate relief to school districts by repealing requirements that each school district monitor compliance with school bus idling restrictions at least twice a year, and prepare, retain and submit written reports of such

reviews. The proposed amendment ensures student safety in that it will still require each school district to periodically monitor compliance with school bus idling restrictions.

The proposed amendment does not impose any additional professional service requirements on rural areas.

3. COSTS:

The proposed amendment does not impose any compliance costs, and will reduce costs and provide mandate relief to school districts by allowing school bus driver safety training to be scheduled coincidental with other professional development days and thus relieve school districts of the additional expense in requiring bus drivers to attend mandatory trainings on days when they are not otherwise required to be at work. The proposed amendment will also provide mandate relief and cost savings to school districts by repealing the requirement that they perform semi-annual monitoring of compliance with school bus idling restrictions and prepare, retain and submit reports of such reviews.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs, and will reduce costs and provide mandate relief to school districts in rural areas by allowing school bus driver safety training to be scheduled coincidental with other professional development days and thus relieve school districts of the additional expense in requiring bus drivers to attend mandatory trainings on days when they are not otherwise required to be at work. The proposed amendment will also provide mandate relief and cost savings to school districts by repealing the requirement that they perform semi-annual monitoring of compliance with school bus idling restrictions and prepare, retain and submit reports of such reviews.

The proposed amendment to section 156.3(b)(5)(iii) is in response to comments from school districts and vendor School Bus Driver Instructors (SBDIs) and Master Instructors (MIs) that that the training schedule needs to allow for cost effective and timely semi-annual training for school bus drivers. The proposed amendment to section 156.3(h) is in response to comments to provide more flexibility to school districts to monitor and report compliance with the rule's provisions.

5. RURAL AREA PARTICIPATION:

Copies of the proposed amendment were provided to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

Job Impact Statement

The proposed amendment provides mandate relief to school districts, with respect to school bus driver safety instruction and monitoring of school bus idling restrictions, and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

School Health Services

I.D. No. EDU-27-11-00001-P

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

Proposed Action: Amendment of section 136.3(e) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), 905(1) and (4)

Subject: School health services.

Purpose: To repeal requirement that school district provide hyperopia vision screenings to all newly entering students.

Text of proposed rule: Subparagraph (ii) of paragraph (1) of subdivision (e) of section 136.3 of the Regulations of the Commissioner of Education is amended, effective October 5, 2011, as follows:

(ii) vision screening to all students who enroll in a school of this state including at a minimum color perception, distance acuity, near vision [and hyperopia] within six months of admission to the school; in addition, all students shall be screened for distance acuity in grades Kindergarten, 1, 2, 3, 5, 7 and 10 and at any other time deemed necessary; the results of all such vision screening examinations shall be in writing and shall be provided to the pupil's parent or person in parental relation and to any teacher of the pupil within the school while the pupil is enrolled in the school, and shall be kept in a permanent file of the school for at least as long as the minimum retention period for such records, as prescribed by

the commissioner pursuant to article 57-A of the Arts and Cultural Affairs Law;

Text of proposed rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: John B. King, Jr., Acting Deputy Comm. for P-12 Education, State Education Department, Office of P-12 Education, State Education Building, Room 125, 89 Washington Ave., Albany, NY 12234, (518) 474-3862, email: NYSEDP12@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 empowers the Regents and Commissioner of Education to adopt rules and regulations to carry out State education laws and functions and duties conferred on the Education Department by law.

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State education system, with general supervision over schools and institutions subject to the provisions of education law, and responsibility for executing Regents policies. Section 305(2) authorizes the Commissioner with such powers and duties as are charged by the Regents.

Education Law section 905 establishes the vision screening requirements for students in NYS public schools.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority of the Board of Regents to establish vision screening requirements for students in the public schools.

3. NEEDS AND BENEFITS:

The proposed amendment will provide mandate relief to school districts by repealing the requirement that school districts provide vision screening for hyperopia to all new entrants. Hyperopia (farsightedness) screening is not required by Education Law section 905, but was inadvertently included in a previous amendment to section 136.3 in 2005 (EDU-28-05-00008-A; NYS Register/September 28, 2005). Section 136.3(e) presently requires new entrants to be screened for vision abnormalities in; color perception, near vision, distance acuity, and hyperopia. Subsequent vision screenings are required for distance acuity only in grades K, 1, 2, 3, 5, 7 and 10. Eliminating the hyperopia screening requirement is appropriate because it goes beyond what is required by law and the remaining requirements in section 136.3(e) are sufficient to ensure adequate visual screening of students.

4. COSTS:

a. Costs to State government: None.

b. Costs to local governments: None.

c. Costs to regulated parties: None.

d. Costs to the State Education Department of implementation and continuing compliance: None.

The proposed amendment will reduce costs to school districts and provide mandate relief by repealing a requirement that school districts provide vision screening for hyperopia to all newly entering students.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment provides mandate relief by repealing a requirement that school districts provide vision screening for hyperopia to all newly entering students.

6. PAPERWORK:

The proposed amendment does not impose any additional reporting or other paperwork requirements on school districts. The proposed amendment will reduce paperwork requirements to school districts in that it will provide them with mandate relief by repealing the hyperopia vision screening requirement to screen for new entrants.

7. DUPLICATION:

The proposed amendment does not duplicate, overlap or conflict with any other State or federal statute or regulation.

8. ALTERNATIVES:

There are no significant alternatives and none were considered. The proposed amendment is intended to provide mandate relief to school districts by repealing a hyperopia vision screening provision that is unnecessary in that it is not required by Education Law section 905, and the remaining vision screening requirements in the regulation are sufficient to provide adequate screening of public school students.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed repeal relates to vision screening requirements for students in the public schools, and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed repeal applies to each school district in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed repeal does not impose any additional compliance requirements on school districts, and will provide mandate relief to school districts by repealing a requirement that school districts provide vision screening for hyperopia to all newly entering students.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on school districts. The proposed amendment will provide mandate relief by repealing a requirement that school districts provide visual screening for hyperopia to all new entrants.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs to school districts. The proposed amendment will provide mandate relief by repealing a requirement that school districts provide visual screening for hyperopia to all new entrants.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment will reduce compliance requirements and costs for school districts in that it will provide them with mandate relief by repealing a requirement that school districts provide vision screening for hyperopia to all newly entering students.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment will apply to all public school districts, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional compliance requirements on rural areas. The proposed amendment will provide mandate relief to school districts in rural areas by repealing a requirement to provide vision screening for hyperopia to all newly entering students. The amendments do not impose any additional professional service requirements on rural areas.

3. COSTS:

The proposed amendment does not impose any additional costs to school districts. The proposed amendment will provide mandate relief by repealing a requirement that school districts provide visual screening for hyperopia to all new entrants.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on rural areas. The proposed amendment will reduce compliance requirements and costs for school districts in that it will provide them with mandate relief by repealing a requirement that school districts provide vision screening for hyperopia to all newly entering students.

5. RURAL AREA PARTICIPATION:

Copies of the proposed amendment were provided to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

Job Impact Statement

The proposed amendment relates to vision screening requirements for students in the public schools, and will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the amendment that it will not affect job and employment opportunities,

no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Due Process Procedures for Criminal History Checks of Prospective School Employees and Certification Applicants

I.D. No. EDU-27-11-00002-P

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

Proposed Action: Amendment of section 87.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), (30) and 3035(3)

Subject: Due process procedures for criminal history checks of prospective school employees and certification applicants.

Purpose: To conform to recent change in Department's Office of Teaching Initiatives.

Text of proposed rule: 1. Subparagraph (vii) of paragraph (4) of subdivision (a) of section 87.5 of the Regulations of the Commissioner of Education is amended, effective October 5, 2011, as follows:

(vii) Where the prospective school employee does not submit a response within the timeframe prescribed in subparagraph (vi) of this paragraph, the department shall make a determination denying clearance for employment and notification of such denial, along with the basis for such determination, shall be transmitted to the prospective school employee by certified mail, return receipt requested. In the case of a prospective school employee requesting conditional clearance for employment, such determination shall also deny the conditional clearance for employment. In the case of a prospective school employee who has already been granted conditional clearance for employment, such determination shall also terminate the conditional clearance for employment. Such notification shall state that the prospective school employee may appeal the determination to [the executive director of the Office of Teaching Initiatives of the State Education Department] *a designee of the Commissioner of Education*, at the address specified in the notification, in accordance with paragraph (5) of this subdivision, and shall include instructions for such an appeal. Notification of the denial of clearance for employment and denial or termination of conditional clearance for employment shall also be given to the covered school.

2. Subparagraph (viii) of paragraph (4) of subdivision (a) of section 87.5 of the Regulations of the Commissioner of Education is amended, effective October 5, 2011, as follows:

(viii) Where the prospective school employee submits a response within the timeframe prescribed in subparagraph (vi) of this paragraph, the department shall, upon review of the prospective school employee's criminal history record, related information obtained by the department pursuant to the review of such criminal history record, and information and written argument provided by the prospective school employee in his or response, make a determination on whether clearance for employment shall be granted or denied. In such review, the department shall apply the standards for the granting or denial of a license or employment application set forth in Correction Law, section 752 and shall consider the factors specified in Correction Law, section 753. Such review shall be conducted in accordance with the requirements of section 296(16) of the Executive Law. Where the department's determination is that clearance for employment is denied, the decision shall include the basis for such determination, and shall state that the prospective employee may appeal the department's determination to [the assistant commissioner of the Office of Teaching Initiatives of the State Education Department] *a designee of the Commissioner of Education*, at the address specified in the determination, in accordance with paragraph (5) of this subdivision, and shall include instructions for such an appeal. A copy of the determination that clearance for employment is denied, or notice that such clearance is granted, as the case may be, shall be transmitted to the prospective school employee. Where clearance for employment is denied, such determination shall be sent to the prospective school employee by certified mail, return receipt requested. Where clearance for employment is granted, such determination shall be sent to the prospective school employee by regular first class mail. Where clearance for employment is denied and the prospective school employee also requested conditional clearance for employment, such determination shall also deny the conditional clearance for employment. Where clearance for employment is denied and the prospective school employee has already been granted conditional clearance for employment, such determination shall also terminate the conditional clearance for employment. In

addition, the covered school shall be notified of the denial or granting of clearance.

3. Paragraph (5) of subdivision (a) of section 87.5 of the Regulations of the Commissioner of Education is amended, effective October 5, 2011, as follows:

(5) Appeal of department's determination.

(i) A prospective school employee who was denied clearance for employment by a determination of the department pursuant to paragraph (4) of this subdivision, may appeal that determination to [the assistant commissioner of the Office of Teaching Initiatives of the State Education Department] *a designee of the Commissioner of Education who did not participate in the department's determination*, provided that such appeal is mailed by regular first class mail or certified mail or is hand delivered to the address specified in the department's determination within 25 calendar days of the mailing of such determination denying clearance. [Such appeal shall be heard by the assistant commissioner of the Office of Teaching Initiatives or a State review officer designated by the assistant commissioner who did not participate in the department's determination].

(ii) . . .

(iii) Such appeal papers, submitted within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph, may include any affidavits or other relevant written information and written argument which the prospective school employee wishes the [assistant commissioner, or a State review officer designated by the assistant commissioner,] *Commissioner's designee* to consider in support of the position that clearance for employment should be granted, including, where applicable, information in regard to his or her good conduct and rehabilitation. The prospective school employee may request oral argument and must do so in the appeal papers submitted within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph. Such oral argument shall be conducted in accordance with the requirements of subparagraph (iv) of this paragraph.

(iv) A prospective school employee may request oral argument as part of the appeal of the department's determination denying clearance for employment. The department shall notify the prospective school employee of the time and location of such oral argument. Such argument shall be heard before the [assistant commissioner, or a State review officer designated by the assistant commissioner] *Commissioner's designee*. At the oral argument, the prospective school employee may present additional affidavits or other relevant written information and written argument which the prospective school employee wishes [the assistant commissioner, or the State review officer designated by the assistant commissioner,] *the Commissioner's designee* to consider in support of the position that clearance for employment should be granted, including, where applicable, written information in regard to his or her good conduct and rehabilitation. No testimony shall be taken at the oral argument and no transcript of oral argument shall be made. The prospective school employee may make an audio tape recording of the oral argument. However, such audio tape recording or transcript thereof shall not be part of the record upon which the [assistant commissioner or a State review officer designated by the assistant commissioner] *Commissioner's designee* makes the determination on whether clearance for employment shall be granted or denied.

(v) Where a timely request for an appeal is received, upon review of the prospective school employee's criminal history record, related written information obtained by the department pursuant to the review of such criminal history record, written information and written argument submitted by the prospective school employee in this appeal within the timeframes prescribed in subparagraph (i) or (ii) of this paragraph, and written information provided at oral argument if requested by the prospective school employee, the [assistant commissioner of the Office of Teaching Initiatives or a State review officer designated by the assistant commissioner who did not participate in the department's determination,] *Commissioner's designee* shall make a determination of whether clearance for employment shall be granted or denied. In such appeal, the [assistant commissioner or his or her designee] *Commissioner's designee* shall apply the standards for the granting or denial of a license or employment application set forth in Correction Law, section 752 and shall consider the factors specified in Correction Law, section 753. Such appeal shall be conducted in accordance with the requirements of section 296(16) of the Executive Law. Where the determination of the [assistant commissioner, or his or her designee,] *Commissioner's designee* is that clearance for employment is denied, his or her decision shall include the findings of facts and conclusions of law upon which the determination is based. A copy of the determination that clearance for employment is denied, or notice that such clearance is granted, as the case may be, shall be transmitted to the prospective school employee by regular first class mail. In addition, the covered school shall be notified of the denial or granting of clearance.

4. Subdivision (b) of section 87.5 of the Regulations of the Commissioner is amended, effective October 5, 2011, as follows:

(b) Procedures for clearance for certification. Where the criminal his-

tory record reveals conviction of a crime, or an arrest for a crime, the department shall transmit the criminal history record and related information to the department's [assistant commissioner of the] Office of Teaching Initiatives for a determination of good moral character pursuant to Part 83 of this Title, which procedure shall determine the clearance for certification.

Text of proposed rule and any required statements and analyses may be obtained from: Chris Moore, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 473-8296, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, New York State Education Department, Room 977 EBA, 89 Washington Ave., Albany, NY 12234, (518) 408-1189, email: privers@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Paragraph (a) of subdivision (30) of section 305 of the Education Law authorizes the Commissioner of Education to promulgate regulations to authorize the fingerprinting of prospective employees of nonpublic and private elementary and secondary schools, and for the use of information derived from searches of the records of the Division of Criminal Justice Services ("DCJS") and the Federal Bureau of Investigation ("FBI") based on the use of such fingerprints.

Paragraph (a) of subdivision (3) of section 3035 of the Education Law requires the Commissioner of Education to promptly notify the nonpublic or private elementary or secondary school when the prospective school employee is cleared for employment based on his or criminal history and provides a prospective school employee who is denied clearance the right to be heard and offer proof in opposition to such determination in accordance with the Regulations of the Commissioner of Education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the objectives of the above-referenced statutes by establishing requirements and procedures necessary to implement the statutory requirements prescribed in Chapter 630 of the Laws of 2006. That statute authorizes nonpublic and private schools to require their prospective school employees to be fingerprinted, to undergo a criminal history check, and be cleared for employment by the State Education Department.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to changes in the internal organization of the State Education Department. Under the current Commissioner's Regulation [8 NYCRR section 87.5(a)(5)], Department determinations denying clearance for employment to prospective school employees and certification applicants may be appealed to the Assistant Commissioner of the Office of Teaching Initiatives (or, in one instance, to the executive director of such Office). The proposed amendment will replace references to the specific staff titles with the terms "designee of the Commissioner" or "Commissioner's designee." The amendment will thereby provide flexibility in responding to future changes in the internal organization of the Department, and avoid the necessity of amending the regulation each time such changes occur. It is anticipated that, as a result of the retirement of the current Assistant Commissioner, effective June 23, 2011, the responsibility for determining such appeals will be assumed by a designee of the Commissioner of Education for such purpose.

4. COSTS:

- (a) Costs to State government: none.
- (b) Costs to local government: none.
- (c) Costs to private regulated parties: none.
- (d) Costs to the regulatory agency: none.

The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and

avoiding the necessity of amending the regulation each time such changes occur.

6. PAPERWORK:

The proposed amendment does not impose any additional reporting or other paperwork requirements. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

7. DUPLICATION:

The proposed amendment does not duplicate other requirements of the State and Federal government.

8. ALTERNATIVES:

There are no significant alternatives to the proposed amendment, and none were considered. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

9. FEDERAL STANDARDS:

There are no Federal requirements relating to the subject matter of the proposed amendment.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

The proposed amendment relates to appeals brought by prospective school employees of Department determinations denying clearance for employment on the basis of criminal record checks, and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no affirmative steps are needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to each public school district in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on school districts. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional service requirements on school districts.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs to school districts. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any compliance requirements or costs on school districts. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents for distribution to school districts within their supervisory districts for review and comment.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to all public and nonpublic schools in the State and their prospective employees, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS AND PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional compliance requirements, or professional services requirements, on rural areas. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

3. COSTS:

The proposed amendment does not impose any additional costs to school districts. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on rural areas. The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

5. RURAL AREA PARTICIPATION:

Copies of the proposed amendment were provided to the Department's Rural Education Advisory Committee, which includes representatives of schools in rural areas.

Job Impact Statement

The proposed amendment relates to due process procedures for the fingerprinting and the criminal history record check of prospective nonpublic and private school employees, in order to implement the requirements set forth in sections 305 and 3035 of the Education Law. Because the proposed amendment simply implements the statutory requirements, it will not have any impact on jobs and employment opportunities beyond the impact of the statute.

The proposed amendment merely replaces references in section 87.5(a)(5) to "assistant commissioner" and "executive director" of the Office of Teaching Initiatives with the terms "designee of the Commissioner" or "Commissioner's designee," in order to provide flexibility to the Department in responding to future changes in the internal organization of the Department, and avoiding the necessity of amending the regulation each time such changes occur.

Because it is evident from the nature of the proposed amendment that it will not have a substantial adverse impact on jobs and employment opportunities, no further steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement was not required and one was not prepared.

Department of Environmental Conservation

NOTICE OF ADOPTION

Variations to Effluent Limitations

I.D. No. ENV-42-10-00006-A

Filing No. 557

Filing Date: 2011-06-20

Effective Date: 2011-07-06

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

Action taken: Amendment of section 702.17 of Title 6 NYCRR.
Statutory authority: Environmental Conservation Law, sections 3-0301, 15-0313, 17-0301, 17-0303 and 17-0809
Subject: Variances to effluent limitations.
Purpose: To correct an inaccurate reference in section 702.17.
Text or summary was published in the October 20, 2010 issue of the Register, I.D. No. ENV-42-10-00006-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Robert Simson, New York State Department of Environmental Conservation, 625 Broadway, 4th Floor, Albany, NY 12233-3500, (518) 402-8271, email: rjsimson@gw.dec.state.ny.us
Assessment of Public Comment
 The agency received no public comment.

Gonorrhea*
 Syphilis*
 Non-gonococcal Urethritis (NGU)*
 Non-gonococcal (mucopurulent) Cervicitis*
 Trichomoniasis*
 Genital Herpes Simplex*
 PID Gonococcal/Non-gonococcal
 Lymphogranuloma Venereum*
 Chancroid*
 Ano-genital warts
 Granuloma Inguinale*
 Yeast Vaginitis
 Gardnerella Vaginitis
 Pediculosis Pubis
 Scabies
 Treatment facilities referred to in section 23.2 of this part must provide diagnosis and treatment for those STD designated by.]

Department of Health

NOTICE OF ADOPTION

Sexually Transmitted Disease (STD) Reporting and Treatment Requirements

I.D. No. HLT-14-10-00006-A

Filing No. 565

Filing Date: 2011-06-21

Effective Date: 2011-07-06

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

Action taken: Amendment of section 2.10 and Part 23 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 206(1), 225 and 2311

Subject: Sexually Transmitted Disease (STD) Reporting and Treatment Requirements.

Purpose: Reporting of cases or suspected cases or outbreaks of communicable disease by physicians, list and reporting of STDs.

Text of final rule: Section 2.10 is amended as follows:

Section 2.10 Reporting cases or suspected cases or outbreaks of communicable disease by physicians.

It shall be the duty of every physician to report to the city, county or district health officer, within whose jurisdiction such patient [is] resides, the full name, age and address of every person with a suspected or confirmed case of a communicable disease, any outbreak of communicable disease, any unusual disease or unusual disease outbreak and as otherwise authorized in section 2.1 of this Part, together with the name of the disease if known, and any additional information requested by the health officer in the course of an investigation pursuant to this Part, within 24 hours from the time the case is first seen by him, and such report shall be by telephone, facsimile transmission or other electronic communication if indicated, and shall also be made in writing, except that the written notice may be omitted with the approval of the State Commissioner of Health. [(a) Cases in State institutions and facilities licensed under article 28 of the Public Health Law.] When a case which is required to be reported under section 2.1 of this Part occurs in a State institution or a facility licensed under Article 28 of the Public Health Law, the person in charge of the institution or facility shall report the case to the State Department of Health and to the city, county or district health officer, in whose jurisdiction such institution is located.

[(b) Cases of sexually transmitted diseases. Provided further that cases of gonorrhea, chlamydia trachomatis infection and syphilis shall be reported in writing, and that the patient's initials may be given in lieu of the patient's name. The physician shall keep a record of each case reported by initials and the corresponding name of the patient together with his address. The name and address of the patient shall be reported to the local or State health official to whom the attending physician is required to report such case, upon the special request of such official.]

Section 23.1 is amended as follows:

Section 23.1 List of sexually transmissible diseases.

The following [is a list] are groups of sexually transmissible diseases [(STD)] (STDs) and shall constitute the definition of sexually transmissible diseases for the purposes of this Part and Section 2311 of the Public Health Law:

[Chlamydia trachomatis infection*

Group A
 Treatment facilities referred to in section 23.2 of this part must provide diagnosis and treatment free of charge as provided in subdivision (c) of section 23.2 of this Part for the following STDs:

Chlamydia trachomatis infection
 Gonorrhea
 Syphilis
 Non-gonococcal Urethritis (NGU)
 Non-gonococcal (mucopurulent) Cervicitis
 Trichomoniasis
 Lymphogranuloma Venereum
 Chancroid
 Granuloma Inguinale

Group B

Treatment facilities referred to in section 23.2 of this Part must provide diagnosis free of charge and must provide treatment as provided in subdivision (d) of section 23.2 of this Part for the following STDs:

Ano-genital warts
 Human Papilloma Virus (HPV)
 Genital Herpes Simplex

Group C

Treatment facilities referred to in section 23.2 of this Part must provide diagnosis free of charge and must provide treatment as provided in subdivision (e) of section 23.2 of this Part for the following STD:

Pelvic Inflammatory Disease (PID) Gonococcal/Non-gonococcal

Group D

Treatment facilities referred to in section 23.2 of this Part must provide diagnosis free of charge and must provide treatment as provided in subdivision (f) of section 23.2 of this Part for the following STDs:

Yeast (Candida) Vaginitis
 Bacterial Vaginosis
 Pediculosis Pubis
 Scabies

Section 23.2 is amended as follows:
 23.2 Treatment facilities.

Each health district shall provide adequate facilities[, without charge.] for the diagnosis and treatment of persons living within its jurisdiction who are infected or are suspected of being infected with STD as specified in section 23.1.

(a) Such persons shall be examined and shall have appropriate laboratory specimens taken and laboratory tests performed for those diseases designated in this Part as [sexually transmissible diseases] STDs for which such person exhibits symptoms or is otherwise suspected of being infected.

(b) The examinations and laboratory tests shall be conducted in accordance with accepted medical procedures as described in the most recent STD clinical guidelines and laboratory guidelines distributed by the New York State Department of Health.

(c) Any persons diagnosed as having [syphilis or gonorrhea, or those who have been exposed to syphilis or gonorrhea.] any of the STDs in Group A in section 23.1 of this Part shall be treated with appropriate medication in accordance with accepted medical procedures as described in the most recent treatment [schedule] guidelines distributed by the department [of health].

[(d) Because antiviral therapy is rapidly evolving, the choice of therapy for persons having herpes (hominis) infection shall be in accordance with established medical procedure as described in the STD clinical guidelines distributed by the New York State Department of Health.

(e) Any person diagnosed as having the other sexually transmissible diseases (Non-gonococcal Urethritis, Non-gonococcal (mucopurulent) Cervicitis, Trichomoniasis, Lymphogranuloma Venereum, Chancroid, and Granuloma Inguinale) designated for the purposes of this section shall be treated by means of a written prescription issued in accordance with accepted medical procedure as described in the STD clinic guidelines distributed by the New York State Department of Health.]

(d) Any persons diagnosed as having any of the STDs in Group B in section 23.1 of this Part must be provided treatment either directly in the treatment facility referred to in this section or through a written or electronic prescription or referral. If treatment is provided directly, it must be provided free of charge.

(e) Any person diagnosed as having the STD in Group C in section 23.1 of this Part may be managed by immediate referral. If outpatient treatment is appropriate as indicated by accepted clinical guidelines and is provided directly in the treatment facility referred to in this section, it must be provided free of charge.

(f) Any person diagnosed as having any of the STDs in Group D in section 23.1 of this Part may be provided treatment directly within the treatment facility referred to in this section or through a written or electronic prescription. If treatment is provided directly, it must be provided free of charge.

Section 23.3 is deleted:

[23.3 STD reporting.

(a) The reporting obligations of this section shall not affect the obligation to report individual cases of syphilis and gonorrhea imposed by section 2.10(b) of this Chapter.

(b) Cases of STD diagnosed in public health clinics operated by, and for, a health district must be reported by mail to the New York State Department of Health, Empire State Plaza, Tower Building, Albany, N.Y. 12237, by the 15th of the month following the month in which the case is diagnosed. Such reports shall be made on a standard form provided by the Department of Health.

(c) Cases of STD diagnosed by health providers other than those specified in subdivision (b) of this section may be tabulated and reported as described in that subdivision.]

Section 23.4 is renumbered as section 23.3, and a new Section 23.3 is added as follows:

[23.4] 23.3 Cases treated by other providers.

(a) Every physician, licensed midwife or nurse practitioner providing (as authorized by their scope of practice) gynecological, obstetrical, genito-urological, contraceptive, sterilization, or termination of pregnancy services or treatment, shall offer to administer to every patient treated by such physician, licensed midwife[,] or nurse practitioner, appropriate examinations or tests for STD as defined in this Part.

(b) The administrative officer or other person in charge of a clinic or other facility providing gynecological, obstetrical, genito-urological, contraceptive, sterilization or termination of pregnancy services or treatment shall require the staff of such clinic or facility to offer to administer to every resident of the State of New York coming to such clinic or facility for such services or treatment, appropriate examinations or tests for the detection of sexually transmissible diseases.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 23.1 and 23.2.

Revised rule making(s) were previously published in the State Register on April 6, 2011.

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

Revised Regulatory Impact Statement

Statutory Authority:

Sections 225(4) and 225(5)(a), (h), and (i) of the Public Health Law (PHL) authorize the Public Health and Health Planning Council to establish and amend State Sanitary Code provisions relating to the designation of communicable diseases dangerous to public health, and the nature of information required to be furnished by physicians in each case of communicable disease. PHL Section 206(1)(d) authorizes the commissioner to “investigate the causes of disease, epidemics, the sources of mortality, and the effect of localities, employments and other conditions, upon the public health.” PHL Section 206(1)(e) permits the commissioner to “obtain, collect and preserve such information relating to marriage, birth, mortality, disease and health as may be useful in the discharge of his duties or may contribute to the promotion of health or the security of life in the state. . . .”

Article 23 of the PHL provides the authority for the control of sexually transmissible diseases (STDs) by local health officers. Section 2304 outlines the responsibility of each board of health of a health district “to provide adequate facilities for the free diagnosis and treatment of persons living within its jurisdiction who are suspected of being infected or are infected with” an STD; that the health officer “shall administer these facilities and shall promptly examine or arrange for the examination of persons suspected of being infected. . . .”; and that these facilities “shall comply with the requirements of the commissioner” of the New York State Department of Health (NYSDOH).

Section 2.10 of the State Sanitary Code codified in Title 10 (Health) of

the Codes, Rules, and Regulations of the State of New York requires the reporting of cases or suspected cases or outbreaks of communicable disease, including chancroid, chlamydia, gonorrhea, lymphogranuloma venereum, hepatitis B virus and syphilis, as outlined in Section 2.1, by physicians.

The part of the State Sanitary Code codified in Sections 23.1 through 23.4 of Title 10 outlines the list of STDs, the rules for the examination by the health department of persons infected or suspected of being infected with STD; the reporting obligations for STD, and the requirement that either physicians or clinics providing gynecological, obstetrical, genito-urinary, contraceptive, sterilization, or termination of pregnancy shall offer every patient appropriate examination or tests for STD.

Legislative Objectives:

The following are proposed changes to Sections 2.10, 23.1, 23.2, 23.3 and 23.4 that deal with the reporting of cases or suspected cases or outbreaks of communicable disease by physicians, list of sexually transmitted diseases, treatment facilities, and STD reporting. These regulations meet the legislative objective of protecting the public health by removing archaic language, which requires the filing of written reports. In addition, language allowing reporting using patient’s initials is equally archaic and is being removed. HIPAA regulations (45 CFR Parts 160 and 164) as well as other confidentiality protections currently make reporting by initials unnecessary. Further, the proposed legislation updates the list and the terminology used for conditions in Section 23.1 designated as requiring free diagnosis and treatment in Section 23.2(c): specifically chlamydia, gonorrhea, syphilis, non-gonococcal urethritis, mucopurulent cervicitis, trichomoniasis, lymphogranuloma venereum, chancroid and granuloma Inguinale.

The syndromal condition, pelvic inflammatory disease (PID) is being added to the list of STDs requiring free diagnosis, but free on-site treatment is not required for PID. The NYSDOH will promulgate diagnostic criteria for PID. Outpatient treatment may be offered by local health department STD clinics or a managed referral to another health care provider should take place. Local health departments should be able to confirm the follow-up of PID patients if requested by the NYSDOH. Confirmation includes facilitating the referral to another medical provider, ensuring that the patient attended the referral appointment, and verifying that treatment was provided. Facilities described in Section 23.2 (local health department clinics) must provide treatment for genital herpes simplex, ano-genital warts, and human papilloma virus on-site or by means of a written or electronic prescription or by referral to another provider. Yeast (candida) vaginitis, bacterial vaginosis, pediculosis pubis and scabies may be treated on site by the Section 23.2 facility or by means of a written or electronic prescription.

The proposed changes are consistent with the current guidance from the Centers for Disease Control and Prevention (CDC) as to what conditions constitute sexually transmitted diseases. The changes also clarify disease reporting requirements for medical providers and medical management requirements for local health departments.

Needs and Benefits:

A. Background

Proposed changes to Section 23.1 clarify and update the official list of STDs in NYS including NYC based on current medical technology and understanding. Proposed changes to Sections 23.1 and 23.2 also clarify and simplify local health department service responsibilities relating to STD control.

The CDC’s Program Operations Guidelines for STD Prevention states “Medical services at the public STD clinic should be low or no cost, confidential, and convenient to avoid creation of barriers between the patient and the accessibility of services.” Recommendations regarding the range of services include at a minimum that clinics should have the capacity to: accurately diagnose and treat bacterial STDs and to distribute medications for diseases diagnosed in the clinic. Medications “must be available for locally prevalent STDs, with prescriptions available for diagnosed diseases not prevalent in the community.” The proposed regulations are consistent with these federal guidelines.

Modification of the treatment requirements for pelvic inflammatory disease in Section 23.2(e) will permit the local health department to either treat the patient on site free of charge OR immediately refer the individual for out-patient management to another medical facility.

The list of conditions in Sections 23.2(d) and 23.2(f) designated as requiring free diagnosis, permits the local health department to either treat the patient on site free of charge OR to treat with either prescription or referral. This list includes: genital herpes, ano-genital warts, human papilloma virus, yeast (candida) vaginitis, bacterial vaginosis, pediculosis pubis, and scabies. For genital herpes, free diagnosis would not include a requirement for providing antibody serologic testing as this is not considered a diagnostic test for acute or recurrent infection, but rather a screening test for past exposure that is useful for counseling purposes. Language relating to therapy for herpes infection is being updated since

the preferred therapy is now firmly established. Section 23.2 facilities will have a choice of providing on-site treatment for herpes or providing a prescription.

If the local health department selects to treat with either prescription or referral for conditions listed in 23.2(d) or (f), or chooses the referral option for conditions listed in 23.2(e), they are absolved of the cost for treatment and will not be responsible for any residual costs of treatment that are not covered by the patient or insurance carriers.

In addition, for the purpose of these regulations, the cervical Papanicolaou (Pap) test, while an indirect indicator of human papilloma virus infection, is a screening test for cervical cancer rather than an STD. Thus, local health departments would not be required to offer cervical Pap tests free of charge. These changes are recommended based on the positive fiscal impact they will have on the local health department's provision of STD clinical services.

Section 23.3 has been eliminated since it is inconsistent with the reporting requirements of communicable diseases as written in Section 2.10. In addition, laboratories currently report test results electronically to the health departments. The counties are required to complete a case investigation and report morbidity to the state using the Communicable Disease Electronic Surveillance System (CDESS) or an alternative reporting mechanism approved by the State Commissioner of Health.

COSTS:

Costs to Regulated Parties:

The deletion of Sections 2.10(b) and 23.3 updates the Sanitary Code to reflect accepted practice, reporting by name only. There will be no increased costs to physicians as a result of this change.

Costs to Local and State Governments:

There would be no increased costs incurred from the changes to Part 23 to local health department facilities. Changes in the official list of STDs will have minimal cost impact on local health departments as most have already adopted the updated STD nomenclature. Clearly identifying those STDs that must be diagnosed and treated on site at local health departments, diseases diagnosed and referred for treatment, and diseases treated by prescription, will clarify vagaries of the regulations as currently written. These clarifications have been requested by local health department officials.

Local health departments are already required to provide free diagnosis of all the listed STD conditions. In fact, the proposed changes would actually serve to lessen the burden of costs to local health departments associated with the treatment of some selected conditions by permitting either referral or use of a written or electronic prescription. In addition, the local health departments may realize some increased revenues by having the ability to bill third parties for selected screening services which are considered "non-diagnostic" tests for the purposes of this section (i.e., herpes simplex antibody serology), a practice which is currently permitted for HIV antibody serologic testing.

Increased costs for services under Public Health Law section 602(3)(b) - disease control and 10 NYCRR sections 40-2.80 and 2.81 are expected to be negligible, in the \$25,000 - \$50,000 annual range statewide, as county health departments already have the diagnostic capability required in the proposed changes. Treatment costs are expected to remain stable since the medications recommended are inexpensive and more conditions can now be treated through prescription. In addition, clarifying which STDs can be treated by prescription or by referral may reduce overall costs thereby potentially lessening Article 6 costs to the state.

Costs to the Department of Health:

There would be no increased costs to the Department of Health as a result of these regulatory changes. The infrastructure of the state DOH to manage the proposed changes is in place. Medicaid costs for STDs are typically associated with care for complications of untreated disease. The proposed changes should decrease Medicaid costs by encouraging patients to visit local health departments for free diagnosis and treatment, thereby reducing complications which would normally require hospitalization. The Department of Health will maintain its commitment to assist counties with disease intervention activities including interviewing patients and partner notification.

Paperwork:

There will be no new paperwork associated with these changes. The proposed changes will result in decreased paperwork since written reporting is no longer required.

Local Government Mandates:

There are no new mandates associated with these regulatory changes. Current mandates are clarified, simplified, and worded in such a way as to eliminate additional financial burden on local governments.

Duplication:

There is no duplication of these regulatory changes in existing State or federal law.

Alternatives:

The Department considered no action to update these regulations, but determined that the proposed revisions would be more prudent.

The deletion of Section 2.10(b) and Section 23.3 removes archaic language in order to make the regulations consistent with current reporting practices.

The proposed changes to Part 23 clarify existing responsibilities of the local health department in providing diagnostic and treatment services for STD. Variations in the nomenclature of STDs and the diagnosis and treatment requirements reflect the most recent Program Operations Guidelines promulgated by CDC. For the most part, these changes are in place in local health departments and clarify vague language that has previously existed.

Federal Standards:

The proposed regulations are consistent with federal guidelines. The regulatory changes recommended are consistent with federal standards as promulgated in the CDC Program Operations Guidelines.

Compliance Schedule:

Compliance with these revisions of the Sanitary Code will be mandated upon filing of a Notice of Adoption of this regulation in the New York State Register.

Revised Regulatory Flexibility Analysis

Effect on Small Business and Local Government:

The regulatory changes apply to reporting of STD by health care providers and to the responsibilities of local health departments in providing clinical services for the diagnosis and treatment of persons with STD or suspected STD infection within their jurisdiction. There will be no effect on small businesses since the reporting language changes are designed to reflect what is currently existing practice. Local governments with health departments that directly provide or contract for the provision of STD clinical services have always been required to provide free diagnosis and treatment of STDs. The proposed revisions clarify what constitutes a sexually transmitted disease and when alternatives to treatment such as referral and prescription can be used. This may result in a decrease of treatment costs for several STDs. These recommended changes will affect local health departments.

Compliance Requirements:

There are no new compliance requirements associated with these proposed changes.

Professional Services:

No additional professional services will be required. The local health departments are currently reporting using the Communicable Disease Electronic Surveillance System (CDESS) or an alternative reporting mechanism approved by the State Commissioner of Health. Any additional needed training (i.e. CDESS updates) will be offered by the New York State Department of Health.

Compliance Costs:

No additional costs will be incurred as a result of these revisions to the Sanitary Code. Due to rising costs and decreased revenues, local health departments are struggling to maintain services as required by the Public Health Law and Sanitary Code. These proposed revisions should actually lessen the burden of costs associated with treatment for some conditions by allowing the use of prescriptions to meet the "treatment" requirement.

Minimizing Adverse Impact:

There will be no adverse impacts on reporting or clinical services as a result of these changes. The changes will likely enhance screening and have the potential for actually enhancing the scope of services for county residents who receive STD care through local health departments.

Feasibility Assessment:

There will be no increased workload associated with these revisions.

Small Business and Local Government Participation:

Local governments have been consulted in the process through communication with local health departments and the New York State Association of County Health Officers. Individually and collectively, local health departments support all of these changes and many have provided letters to the Department attesting to their support.

Revised Rural Area Flexibility Analysis and Job Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published RAFA and JIS.

Assessment of Public Comment

The New York State Department of Health (DOH) received comments from the New York City Department of Health and Mental Hygiene on the proposed amendments to Part 23 of Title 10 of the New York Code, Rules and Regulations. A summary of each comment is provided followed by the DOH response.

Comment #1:

The regulation states that local health facility clinics may refer patients with the STDs in Groups B and D to another provider for treatment; such facilities may also treat those patients with STDs in Group C by prescription. We are seeking clarification on the local health department facility's responsibility for paying for treatment under these circumstances, as the regulation does not clearly identify such responsibility.

Response:

The Needs and Benefits section of the Regulatory Impact Statement specifically states "If the local health department selects to treat with either prescription or referral for conditions listed in 23.2(d) or (f), or chooses the referral option for conditions listed in 23.2(e), they are absolved of the cost for treatment and will not be responsible for residual costs of treatment that are not covered by the patient or insurance carriers."

Comment #2:

The regulation states in Section 23.2(d), (e) and (f), "If treatment is provided directly, it must be provided free of charge." We recommend that the regulation be clarified to specify that "a local health department clinic" is responsible for providing free treatment.

Response:

DOH agrees and proposes to amend the language in Section 23.2(d), (e), and (f) to read "in the treatment facility referred to in this section" in order to specifically assign such responsibility to the treatment facilities defined in Section 23.2.

Comment #3:

The proposed changes to section 23.1 are intended to clarify and update the official reportable STDs in New York State, including New York City. The title of this section is list of sexually transmitted diseases. Public Health Law Section 2311 provides that the Commissioner of DOH shall promulgate a list of sexually transmitted diseases for the purposes of Article 23 of the Public Health Law. We recommend that the opening sentence of this section be amended to also reference PHL § 2311 as follows "The following are groups of sexually transmitted diseases (STDs) and shall constitute the definition of sexually transmitted diseases for the purposes of this Part and § 2311 of the Public Health Law."

Response:

DOH agrees with the proposed amendment and has revised the language in § 23.1 as suggested by the commenter.

Comment #4:

The references to Part 23.2 should be amended to 'Section 23.2' throughout the document.

Response:

The language has been updated to accurately reflect the titling of the subparts.

Comment #5:

The regulatory language in § 23.2(e) and the regulatory impact statement are in conflict with respect to requirements for managed referral of patients diagnosed with pelvic inflammatory disease and should be reconciled. The regulatory impact statement mandates follow up by local health department facilities of persons with PID who have been referred to another provider for care when the language in § 23.2(e) promotes but does not require such managed referral by health departments. The regulatory impact statement cannot impose requirements when such language is not included in the regulation itself.

Response:

DOH proposes to amend the language in the Legislative Objectives of the Regulatory Impact Statement to encourage rather than require health department STD clinics to follow patients diagnosed with PID by replacing 'must' with 'should'. Federal recommendations stress early administration of appropriate therapy for PID in order to prevent long-term sequelae. Consequently, health departments are still strongly encouraged to ensure that patients who are referred for care and treatment maintain follow up appointment(s) with the referral provider as a best practice.

Comment #6:

The Needs and Benefits section of the Regulatory Impact Statement states that the counties are required to complete a case investigation and report morbidity to the State using the Communicable Disease Electronic Surveillance System (CDESS). In addition, the Regulatory Flexibility Analysis states that one hundred percent of local health departments are currently using CDESS. It should be noted that New York City does not use CDESS for reporting but has established an alternative system for providing the State with line-listed STD morbidity. The language in these sections needs to be reconciled to reflect this difference.

Response:

DOH proposes to amend the appropriate references in both the Needs and Benefits section of the Regulatory Impact Statement as well as the Professional Services section of the Regulatory Flexibility Analysis section to clarify that local health departments use CDESS "or an alternative reporting mechanism approved by the State Health Commissioner."

Comment #7:

The Regulatory Impact Statement indicates that local health departments may realize some increased revenues by having the ability to bill third parties for selected screening services which are non-diagnostic including Pap smears. The Department seeks clarification as to how this proposal impacting Pap smears relates to DOH regulations regarding Ambulatory Payment Groups (APGs) in 10 NYCRR Subpart 86-8.

Specifically, Pap smears would be ineligible for reimbursement under the APG regulation when they are the only reason for a visit as a Pap smear is not a carve-out under APG. We believe the proposed regulatory amendment should be reconciled to permit reimbursement for Pap smears on a fee-for-service basis when provided by the health department.

Response:

Separate regulations have been established for APGs and amendments to those regulations, or associated policy, would be necessary to achieve an APG carve out for Pap smears rather than changes to Part 23.

DOH proposes to revise the Costs to Local and State Governments section of the Regulatory Impact Statement to remove Pap smears as an example of a non-diagnostic test for which local health departments may obtain reimbursement.

Comment #8:

It is recommended that the statement in the Legislative Objectives section of the Regulatory Impact Statement, which reads "but free treatment is not required for PID" should be changed to "but direct on-site treatment is not required for PID" to align with the regulatory language in § 23.2(e).

Response:

DOH agrees and proposes to modify the language in the Legislative Objectives section to reflect the proposed revision.

NOTICE OF ADOPTION

Children's Camps, Swimming Pools, Bathing Beaches

I.D. No. HLT-13-11-00004-A

Filing No. 564

Filing Date: 2011-06-21

Effective Date: 2011-07-06

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

Action taken: Amendment of Subparts 6-1, 6-2 and 7-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

Subject: Children's Camps, Swimming Pools, Bathing Beaches.

Purpose: The amendments incorporate PHLs, including a new day camp definition, and amend standards for swimming and camp cabins.

Substance of final rule: The proposed code amendments contain the following major provisions:

The summer day camp definition and fee for a children's camp permit have been revised to be consistent with Public Health Law (PHL);

A definition for nonpassive recreational activities with significant risk for injury has been added, as mandated by Chapter 439 of the Laws of 2009;

The list of operations exempt from regulation has been expanded to include "pre-college," school, and certain classroom based educational programs;

Course curriculum standards for first aid and cardiopulmonary resuscitation (CPR) certifications have been added and references to American Red Cross (ARC) courses removed;

The first aid course accepted for day camps with minimal physical activity was eliminated;

Camp Aquatic Directors minimum experience, certification, and training requirements have been clarified and improved;

The percent of on-duty 16-year-old lifeguards allowed to supervise the camp's aquatic activities has been increased from 20 percent to 50 percent;

An alternative to the requirement for camps to provide a lifeguard during camp trip swimming activities to lifeguarded facilities has been added;

The number of staff certified in CPR that are required for wilderness swimming activities has been clarified;

Public Health Law (PHL) requirements are incorporated for the use of the State Sex Offender Registry to determine if staff are listed (Article 13-B PHL) and providing meningococcal meningitis information to parents of children at certain overnight camps (PHL Section 2167);

Reflective triangles have been added as an acceptable alternative to flares in camp vehicles used to transport campers and staff;

Certain types of summer camp cabins have been exempted from the Uniform Fire Prevention and Building Code (Uniform Code) requirements for fire extinguishing sprinkler systems and minimum occupant floor area requirements;

Public Health Law reference defining the term "officers" has been corrected;

Course curriculum standards for "Lifeguard Supervision and Management" have been added to Subpart 6-1 and Subpart 6-2 of the SSC.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 7-2.2(1).

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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

In response to the March 30, 2011 notice in the State Register, a total of 41 written comments were received during the comment period. Written comments were received from one town, two counties, NYCDOHMH, two legislators, four camp associations and from over 30 private individuals. Many comments addressed multiple topics.

The following reflects the concerns expressed by those who commented and the Department's response:

Summer Day Camp Definition and Activities:

Comments:

The majority of comments received did not relate to the proposed regulations, but guidance that the Department (also referred to herein as "DOH") had withdrawn. Those comments largely pertained to a misconception that the guidance restricted or prohibited certain activities at day camps and other children's recreation programs/playgrounds. Some commenters questioned the appropriateness of categorizing certain activities as "having a significant risk for injury" in an associated guidance document and others said that there should be no new regulations and/or a reduction in regulations pertaining to indoor and outdoor camps.

Two comments questioned the legal authority for the Department to promulgate the proposed regulations. Other commenters indicated the definition of nonpassive recreation activity with a significant risk of injury (NPRASRI) was too vague, difficult to assess, or inflexible. One commenter indicated that additional DOH guidance to implement the day camp definition was necessary to clarify the types of activities considered to be NPRASRI and expressed concern that the Department had rescinded guidance. Also, the commenter suggested that local health departments have flexibility to determine the types of activities that are NPRASRI instead of limiting the authority to the Department.

Another commenter expressed concern that the proposed exemption for classroom based educational programs does not specifically exclude traveling as part of the program.

A commenter expressed concern that few new camps will actually be subject to DOH oversight given the exemption for single-purpose activities and activities not categorized as NPRASRI.

DOH Response:

The majority of the comments did not relate to the proposed regulations, but guidance that has been withdrawn by the Department. Proposed amendments to the regulation do not restrict, limit, or mandate activities that a camp or other children's programs can or cannot conduct. The amendments also do not remove current exemptions for activities at unscheduled or drop-in neighborhood-center settings, or single purpose athletic events or programs.

The proposed summer day camp definition is consistent with the Public Health Law ("PHL"), and the Department has made some minor clarifying edits to the definition. The ability to determine the types of activities that are NPRASRI is intentionally limited to the Department to ensure consistent implementation throughout New York State.

It is unnecessary to include a travel prohibition from the proposed exemption for classroom based education programs. Travel for the purpose of recreation is neither prohibited, nor considered part of the classroom portion of the program. Educational programs with travel and recess beyond the specified parameters do not qualify for the exemption.

We note that the inclusion of indoor camps, which meet certain criteria, in the definition of a summer day camp is mandated by PHL.

Permit Fee:

Comment:

Five comments were received which addressed permit fees and suggested that the regulation was intended to enhance revenue.

DOH response:

No change is proposed. The fee associated with a permit is established by the PHL. The Department of Health estimates that the cost to regulate a day camp is significantly more than what the amount that the permit fee generates. The proposed amendments do not alter the current exemption from the permit fees for municipal, charitable, philanthropic, and religious camps.

Exemption for Municipal Program:

Comment:

Others expressed concern that the regulations were burdensome and could result in the elimination of municipal recreational programs. The

commenters suggested that the Department should consider an exemption for municipalities from the regulations. Two also requested a year delay for municipal programs and one that municipal programs be provided more flexibility.

DOH Response:

No change is proposed. The proposed amendment to the day camp definition is mandated by PHL to provide the same level of protection to children participating in recreational activities indoors as would be provided when these activities are conducted outdoors. The amendments do not broaden regulatory oversight to new outdoor programs or remove current exemptions for activities at unscheduled or drop-in neighborhood-center settings, or single purpose athletic events and programs.

Department of Health's analysis of past incidents at municipal recreation programs has demonstrated the benefit and need to continue to regulate municipal programs that meet the criteria for a day camp. The children's camp regulations have applied to municipally-operated outdoor day camps since 1984. Prior to 1984, municipally-operated summer camps were exempt from the requirements of the PHL and State Sanitary Code. Chapter 314 of the Laws of 1984 eliminated the exemption.

Costs to Local Health Departments to Implement the Day Camp Definition:

Comment:

One county department of health questioned whether the amendments to the summer day camp definition would result in an estimated 284 new summer day camps coming under the regulations. The commenter estimated that the regulations would capture an additional 150-260 summer day camps in just one county alone and create an inadequate staffing situation with respect to overseeing summer camp program functions.

DOH Response:

The estimated increase in the number of new summer day camps was based on a 2010 survey of local health departments. The regulations implement the PHL change, which is to apply the same level of regulatory oversight to indoor summer programs as outdoor programs. The Department does not believe that excessive numbers of new camps will suddenly require oversight.

Camp Aquatic Director

Comments:

One letter of comment pertained to the Camp Aquatic Director (CAD) qualifications, e.g. experience, recruitment, etc.

DOH Response:

No change is proposed to the current amendment. CADs are responsible for establishing and overseeing swimming programs at children's camps and not boating or other aquatic programs. The Department's investigation of drowning incidents that occurred at camps during a swimming activity identified that in all but one of the incidents since 1987 the CADs lacked a thorough understanding of lifeguarding management practices, aquatic injury prevention, and/or DOH regulations to adequately oversee the camps swimming program and staff. The proposed amendments were established with water safety experts and the camping industry to ensure that CADs will have the necessary knowledge to establish safe swimming programs. Training or experience as a progressive swimming instructor or in boating does not provide the necessary knowledge.

The current regulation is already protective for boating and other aquatic activities in that a competent activity leader must oversee each activity being conducted. A CAD may oversee boating and other activities in which he/she is competent. Applicants with out-of-state experience can qualify for a variance as a CAD if they demonstrate an equivalent level of experience as a NYS CAD.

Camp Cabin Comment:

Comment:

One comment expressed concern that the minimum floor area for altered or renovated sleeping quarters that do not qualify as a camp cabin is being increased to 50 square feet per occupant. The comment also recommended that porches and exterior hallways should be included in the calculation of the minimum floor area.

DOH Response:

No change is proposed to the current amendment. Department of State Uniform Fire Prevention and Building Construction Code (Uniform Code) establishes criteria for renovation and alteration and includes the minimum square footage standards for sleeping quarters that do not qualify as camp cabins. The proposed amendments make the children's camp regulations consistent with the Uniform Code.

Guidance used as regulation:

Comment:

One letter noted that agencies should avoid using guidelines unless absolutely necessary.

DOH Response:

The PHL defines a camp to include nonpassive activities with a significant risk for injury (NPASRI) and required the Department to define the term in the regulation. The regulation defines NPASRI and includes

criteria that activities must meet to be considered NPRASI. Any guidance that will be provided will not re-define the law or regulation. It will provide information to assist programs and to otherwise answer frequently asked questions.

Dental Mouth Guard:

Comment:

One commenter, a dentist, proposed adding an additional requirement for mouth guards to be worn for all softball activities.

DOH Response:

No change is proposed to the current amendment. At this time, children's camps regulations do not specify safety equipment standards for sports; however, the regulation requires camp operators themselves to develop and implement a written safety plan that must address safety requirements for all activities at the camp, including required safety equipment.

Comment:

One comment recommended that the Department add pertussis to the list of immunization records that must be kept on file for each camper.

DOH Response:

The Department intends to add pertussis to required immunization records the next time the regulation is amended.

Office for People with Developmental Disabilities

NOTICE OF ADOPTION

Changes to Prescribed Uses of Health Care Adjustment/Health Care Enhancement Funds

I.D. No. PDD-18-11-00018-A

Filing No. 563

Filing Date: 2011-06-21

Effective Date: 2011-07-06

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

Action taken: Amendment of sections 635-10.5, 671.7, 679.6, 680.12, 681.14, 686.13 and 690.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) and 43.02

Subject: Changes to prescribed uses of Health Care Adjustment/Health Care Enhancement funds.

Purpose: To allow providers to exercise broader discretion in the allocation of these funds.

Substance of final rule: Beginning in 2006, OPWDD developed a series of six initiatives to support provider agencies in addressing the health care needs of their staff and promulgated regulations to effectuate the initiatives. These initiatives were known as Health Care Enhancements (HCE) or Health Care Adjustments (HCA).

The regulations stipulated that providers which received the HCE/HCA funds based on approved applications had to agree to conform to specific requirements for the use of funds. In fee-based services, regulatory language suggested that the funds be used for specified purposes.

Services which were required to conform to specific requirements for the use of the funds included Residential Habilitation, Day Habilitation, Prevocational Services, Respite, Community Residences, ICF/DDs, and Day Treatment. For these services, these regulations modify the original stipulations regarding the use of the funds attributable to the various HCA/HCE initiatives. They give non-benchmark providers broader discretion to determine how best to allocate these funds. Non-benchmark providers shall use these funds for purposes currently described in regulation and/or for any other options that continue and/or enhance existing health care benefits and/or improve the recruitment and/or retention of the provider's lower paid employees. Moreover, providers may establish which priorities serve the needs of such employees in the selection of the funding allocations. For fee-based programs (Plan of Care Support Services, Family Education and Training, Supported Employment, At Home Residential Habilitation, and "Article 16" Clinics), the regulatory language that suggested that the funds be used for specific purposes is removed by these regulations.

The regulations apply to non-benchmark providers and the revenue derived from the initiatives attributable to reimbursement of services delivered on or after July 6, 2011. For revenues derived from the initia-

tives received on or July 6, 2011 in payment for earlier billing periods, the original requirements remain in force.

The regulations also specify that HCA/HCE funding shall be included in the reimbursable cost category of fringe benefits in the prices and rates of the specific services.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 635-10.5(n), (o), 671.7(f), (g), 681.14(m), (n), 686.13(o), (p) and 690.7(d).

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, Albany, New York 12229, (518) 474-1830, email: barbara.brundage@opwdd.ny.gov

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

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

Language was updated to replace references to "the effective date of this amendment" with the actual effective (calendar) date. Also, in one instance, a word was omitted in repeating the existing text and it was inserted to conform to the existing text.

These changes do not necessitate revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Business and Local Governments, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Prior Notice of Any Transaction Which Would Impair the Financial Strength of New York Affiliates

I.D. No. PSC-41-10-00008-A

Filing Date: 2011-06-17

Effective Date: 2011-06-17

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

Action taken: On 6/16/11, the PSC adopted an order addressing Entergy Corporation's transaction notice requirements.

Statutory authority: Public Service Law, sections 2(13), 5(1)(b), 11, 19, 66, 67, 68, 69, 69-a, 70, 72, 72-a, 75, 76, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118 and 119

Subject: Prior notice of any transaction which would impair the financial strength of New York affiliates.

Purpose: To approve an order addressing Entergy Corporation's transaction notice requirements.

Substance of final rule: The Commission, on June 16, 2011 adopted an order directing Entergy Corporation, Entergy Nuclear Indian Point 2, LLC, Nuclear Indian Point 3, LLC, Entergy Nuclear Fitzpatrick, LLC, and Entergy Nuclear Operations, Inc., and any predecessor or direct or indirect owner thereof, to provide supplemental notice to the Secretary as described in the order, and that Entergy file a Statement of Supplemental Disclosure incorporating all such notice requirements, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0402SA1)

NOTICE OF ADOPTION

Major Electric Rate Filing**I.D. No.** PSC-05-11-00006-A**Filing Date:** 2011-06-17**Effective Date:** 2011-06-17

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

Action taken: On 6/16/11, the PSC adopted an order approving, with modifications, the Orange and Rockland Utilities, Inc.'s amendments to PSC No. 2—Electricity, effective July 1, 2011.

Statutory authority: Public Service Law, section 66(12)

Subject: Major Electric Rate Filing.

Purpose: To approve amendments to PSC No. 2—Electricity, effective July 1, 2011.

Substance of final rule: The Commission, on June 16, 2011 adopted an order Establishing Rates for Electric Service for Orange and Rockland Utilities, 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: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(10-E-0362SA1)

NOTICE OF ADOPTION

Gas Tariff Amendments Implementing the Commission's Order of March 21, 2011**I.D. No.** PSC-12-11-00005-A**Filing Date:** 2011-06-20**Effective Date:** 2011-06-20

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

Action taken: On 6/16/11, the PSC adopted an order directing Consolidated Edison Company of New York, Inc. (Con Edison) to file tariff amendments implementing the Commission's order of March 21, 2011, without the changes proposed by Con Edison.

Statutory authority: Public Service Law, section 66(12)

Subject: Gas tariff amendments implementing the Commission's order of March 21, 2011.

Purpose: To approve gas tariff amendments implementing the Commission's order of March 21, 2011.

Substance of final rule: The Commission, on June 16, 2011 adopted an order directing Consolidated Edison Company of New York, Inc. (Con Edison) to file tariff amendments for the provisions of its gas interruptible Service Classifications Nos. 9 and 12 for implementing the Commission's order of March 21, 2011, without the changes proposed by Con Edison, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(11-G-0054SA1)

NOTICE OF ADOPTION

Mandatory Hourly Pricing**I.D. No.** PSC-13-11-00008-A**Filing Date:** 2011-06-21**Effective Date:** 2011-06-21

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

Action taken: On 6/16/11, the PSC adopted an order approving Niagara Mohawk Power Corporation's Plan to expand Mandatory Hourly Pricing to customers with demand greater than 250 kW for six consecutive months in the twelve months ended December 2010.

Statutory authority: Public Service Law, section 66(12)

Subject: Mandatory Hourly Pricing.

Purpose: To approve Niagara Mohawk Power Corporation's Plan to expand Mandatory Hourly Pricing.

Substance of final rule: The Commission, on June 16, 2011 adopted an order approving Niagara Mohawk Power Corporation's Plan to expand Mandatory Hourly Pricing to customers with demand greater than 250 kW for six consecutive months in the twelve months ended December 2010, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-E-0050SA2)

NOTICE OF ADOPTION

Pole Attachment Rates**I.D. No.** PSC-15-11-00011-A**Filing Date:** 2011-06-16**Effective Date:** 2011-06-16

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

Action taken: On 6/16/11, the PSC adopted an order approving the Central Hudson Gas & Electric's amendments to PSC No. 15—Electricity, effective July 1, 2011, to increase its annual pole attachment charge from \$14.36 to \$18.29.

Statutory authority: Public Service Law, section 66(12)

Subject: Pole Attachment Rates.

Purpose: To approve Central Hudson Gas & Electric's amendments to PSC No. 15—Electricity, effective 7/1/11.

Substance of final rule: The Commission, on June 16, 2011 adopted an order approving the Central Hudson Gas & Electric's amendments to PSC No. 15—Electricity, effective July 1, 2011, to increase its annual pole attachment charge from \$14.36 to \$18.29.

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

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

Assessment of Public Comment

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

(11-E-0111SA1)

NOTICE OF ADOPTION

Provisions for Reactive Demand

I.D. No. PSC-15-11-00019-A

Filing Date: 2011-06-16

Effective Date: 2011-06-16

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

Action taken: On 6/16/11, the PSC adopted an order approving the Central Hudson Gas & Electric's amendments to PSC No. 15—Electricity, effective July 1, 2011, proposing to clarify the provisions for reactive demand applicable to customers operating on-site induction.

Statutory authority: Public Service Law, section 66(12)

Subject: Provisions for Reactive Demand.

Purpose: To approve Central Hudson Gas & Electric's amendments to PSC No. 15—Electricity, effective 7/1/11.

Substance of final rule: The Commission, on June 16, 2011 adopted an order approving the Central Hudson Gas & Electric's amendments to PSC No. 15—Electricity, effective July 1, 2011, proposing to clarify the provisions for reactive demand applicable to customers operating on-site induction generators to more explicitly state how the reactive demand is calculated.

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

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

Assessment of Public Comment

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

(11-E-0109SA1)

NOTICE OF ADOPTION

Rehearing of the Approval of the Transfer of Ownership of the Seneca Lake Gas Storage Facility

I.D. No. PSC-16-11-00006-A

Filing Date: 2011-06-17

Effective Date: 2011-06-17

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

Action taken: On 6/16/11, the PSC adopted an order granting in part and denying in part the petition for rehearing from New York State Electric & Gas Corporation for the transfer of ownership of Seneca Lake Gas Storage Facility.

Statutory authority: Public Service Law, section 70

Subject: Rehearing of the approval of the transfer of ownership of the Seneca Lake Gas Storage Facility.

Purpose: To grant in part and deny in part the petition for rehearing from New York State Electric & Gas Corporation.

Substance of final rule: The Commission, on June 16, 2011, adopted an order granting, in part, the petition for rehearing of New York State Electric & Gas Corporation of the Commission's March 4, 2011 order approving transfers upon modifications and conditions and providing for lightened regulation, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(10-M-0143SA2)

NOTICE OF ADOPTION

Approving Modifications to the Energy Efficiency Portfolio Standard (EEPS) Program

I.D. No. PSC-16-11-00009-A

Filing Date: 2011-06-20

Effective Date: 2011-06-20

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

Action taken: On 6/16/11, the PSC adopted an order approving modifications to the EEPS program to streamline certain processes and to provide appropriate added flexibility in the administration of approved EEPS programs by the utilities and NYSERDA.

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

Subject: Approving modifications to the Energy Efficiency Portfolio Standard (EEPS) program.

Purpose: To approve modifications to the Energy Efficiency Portfolio Standard (EEPS) program.

Substance of final rule: The Commission, on June 16, 2011 adopted an order approving modifications to the Energy Efficiency Portfolio Standard (EEPS) program to streamline certain processes and to provide appropriate added flexibility in the administration of approved EEPS programs by the utilities and NYSERDA, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

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

(07-M-0548SA34)

NOTICE OF ADOPTION

Con Edison's Report on 2010 Performance Under Electric Service Reliability Performance Mechanism

I.D. No. PSC-17-11-00018-A

Filing Date: 2011-06-20

Effective Date: 2011-06-20

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

Action taken: On 6/16/11, the PSC adopted an order accepting the exclusions and extraordinary circumstances contained in Consolidated Edison Company of New York, Inc.'s Report on its 2010 Performance Under Electric Service Reliability Performance Mechanism.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Con Edison's Report on 2010 Performance Under Electric Service Reliability Performance Mechanism.

Purpose: To accept Con Edison's Report on 2010 Performance Under Electric Service Reliability Performance mechanism.

Substance of final rule: The Commission, on June 16, 2011 adopted an order accepting the exclusions and extraordinary circumstances contained in Consolidated Edison Company of New York, Inc.'s (Company) Report on its 2010 Performance Under Electric Service Reliability Performance Mechanism, resulting in the Company's compliance with the applicable operating performance standards, subject to the terms and conditions set forth in the order.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(09-E-0428SA3)

NOTICE OF ADOPTION**Individual Service Agreements**

I.D. No. PSC-17-11-00019-A

Filing Date: 2011-06-16

Effective Date: 2011-06-16

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

Action taken: On 6/16/11, the PSC adopted an order approving the Village of Iliion's amendments to PSC No. 3—Electricity, eff. 6/18/11, to update the name of Iliion Board of Light Commissioners to Village of Iliion, Light Department and to establish SC 8.

Statutory authority: Public Service Law, section 66(12)

Subject: Individual Service Agreements.

Purpose: To approve amendments to PSC No. 3—Electricity, effective 6/18/11 to establish SC 8—Individual Service Agreements.

Substance of final rule: The Commission, on June 16, 2011 adopted an order approving the Village of Iliion's amendments to PSC No. 3—Electricity, effective June 18, 2011, to update the current name of Iliion Board of Light Commissioners to Village of Iliion, Light Department and to establish Service Classification (SC) No. 8—Individual Service Agreements.

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

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

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(11-E-0141SA1)

NOTICE OF ADOPTION**Private Outdoor Lighting**

I.D. No. PSC-17-11-00023-A

Filing Date: 2011-06-16

Effective Date: 2011-06-16

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

Action taken: On 6/16/11, the PSC adopted an order approving the Village of Springville's amendments to PSC No. 1—Electricity, effective July 1, 2011, to add 70 and 150 Watt Metal Halide fixtures to its Service Classification No. 6—Private Outdoor Lighting.

Statutory authority: Public Service Law, section 66(12)

Subject: Private Outdoor Lighting.

Purpose: To approve amendments to PSC No. 1—Electricity, effective July 1, 2011 to add 70 and 150 Watt Metal Halide fixtures.

Substance of final rule: The Commission, on June 16, 2011 adopted an order approving the Village of Springville's amendments to PSC No. 1—Electricity, effective July 1, 2011, to add 70 and 150 Watt Metal Halide fixtures to its Service Classification No. 6—Private Outdoor Lighting. The existing 175 and 400 Watt Mercury Vapor fixtures will be phased out and replaced by either of the two new fixtures.

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

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

Assessment of Public Comment

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

(11-E-0126SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Ensure That Investigation and Remediation of Manufactured Gas Plants and Similar Utility Sites are Equitable and Cost-Effective**

I.D. No. PSC-27-11-00003-P

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

Proposed Action: To review and evaluate on a statewide, generic basis, policies concerning the treatment of the State's regulated utilities' Site Investigation and Remediation (SIR) costs.

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

Subject: Ensure that investigation and remediation of manufactured gas plants and similar utility sites are equitable and cost-effective.

Purpose: Examine funding mechanisms for utility Site Investigation and Remediation and adoption of statewide policy concerning expenses.

Substance of proposed rule: The Commission instituted a proceeding - Case 11-M-0034 - to conduct a comprehensive examination of the manufactured gas plant and other site investigation and remediation (SIR) undertaken by New York's investor-owned utilities. The objective of the proceeding is to ensure that remediation efforts are done in a reasonable and cost-effective manner.

The majority of these SIR expenses arise from obsolete manufactured gas plants, where utilities have been identified as potentially responsible parties pursuant to consent orders of the United States Environmental Protection Agency or the New York State Department of Environmental Conservation. Utilities have been asked to assist in developing the record by providing information on the current and future scope of the utility SIR program in the state; the current cost controls utilized by the utilities, and opportunities to improve such controls; the appropriate allocation of costs; and methods to recover costs determined to be appropriately borne by ratepayers while minimizing their impact.

Based on this examination, the Commission will, as necessary, address the policy concerning funding mechanisms to be used to support utility site investigation and remediation expenditures to ensure they are equitable, reasonable, and cost-effective.

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

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

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

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

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

(11-M-0034SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Commission Review of and Action on the Plan to Shift Responsibility for One-Call Oversight to a Third-Party Contractor**

I.D. No. PSC-27-11-00004-P

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

Proposed Action: The Commission is considering whether to grant, deny or modify in whole or in part the petition of Local 101 seeking Commission review of and action on a National Grid plan to shift responsibility for One-Call oversight to a third-party contractor.

Statutory authority: Public Service Law, sections 2(10), (11), 4(1), 5(1),

64, 65(1), 66(1), (2), (5), (8), 119-b(1), (2), (4), (6), (7) and (8); General Business Law, sections 760, 763(1), (2) and (3)

Subject: Commission review of and action on the plan to shift responsibility for One-Call oversight to a third-party contractor.

Purpose: Commission review of and action on the plan to shift responsibility for One-Call oversight to a third-party contractor.

Substance of proposed rule: The Public Service Commission is considering whether to grant or deny, in whole or in part, the petition of the Local 101, Utility Division, Transport Workers Union of America, AFL-CIO dated May 13, 2011, seeking Commission review of and action on a National Grid plan to shift responsibility for One-call oversight for its gas facilities in its service territory located in Brooklyn and Queens Counties to a third-party contractor.

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

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

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

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

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

(11-M-0237SP1)

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

Reauthorization and Modification of Energy Efficiency Programs and Related Customer Surcharges

I.D. No. PSC-27-11-00005-P

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

Proposed Action: The Public Service Commission is considering the reauthorization of programs and surcharges related to the Energy Efficiency Portfolio Standard that was adopted in Case 07-M-0548 in orders dated June 23, 2008, May 19, 2009, and numerous subsequent orders.

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

Subject: Reauthorization and modification of energy efficiency programs and related customer surcharges.

Purpose: To continue the PSC's portion of statewide efforts to reduce energy consumption.

Substance of proposed rule: The current authorization for most Energy Efficiency Portfolio Standard (EEPS) programs and surcharges expires December 31, 2011. Department Staff have prepared a White Paper discussing the issues surrounding reauthorization. The White Paper recommends that most programs and surcharges should be reauthorized with modification through 2015, and programs should be subject to continuous reevaluation and improvement. The White Paper also contains discussion and recommendations on numerous issues concerning the EEPS program, including the termination or consolidation of specified programs. The Commission may take action on the issues raised in the White Paper or related issues, in its consideration of reauthorization of EEPS programs and surcharges.

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

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

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

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

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

(07-M-0548SP41)

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

Water Rates and Charges

I.D. No. PSC-27-11-00006-P

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

Proposed Action: The Public Service Commission is considering a filing by Woodbury Heights Estates Water Co., Inc.'s requesting approval to increase its annual revenues by \$43,103 or 43%.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1) and (10)

Subject: Water rates and charges.

Purpose: To approve an increase in annual revenues by \$43,103 or 43%.

Text of proposed rule: On June 15, 2011, Woodbury Heights Estates Water Co., Inc. (Woodbury Heights or the company) filed Leaf No. 12 Revision 2 as an amendment to its electronic tariff schedule, P.S.C No. 1- Water to become effective on October 1, 2011. The company proposes to increase its current annual revenue by \$43,103 or 43%. The company's current rates have been in effect since October 31, 2000. Woodbury Heights provides metered water service to 67 residential customers located in a real estate subdivision known as County Crossing in the Town of Woodbury, Dutchess County. The company proposes to increase its quarterly service charge from \$133.00 to \$256.00 (no water allowance) and its usage rate from \$3.93 to \$6.00 per thousand gallons. Details of the company's filing are available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) located under Commission Documents - Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's rates.

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

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

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

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

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

(11-W-0333SP1)

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

NYSEG's Procedures, Terms and Conditions of its Targeted Financial Assistance Program

I.D. No. PSC-27-11-00007-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 a petition from New York State Electric and Gas Corporation (NYSEG) for a waiver or modification of provisions of its Targeted Financial Assistance Program.

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

Subject: NYSEG's procedures, terms and conditions of its Targeted Financial Assistance Program.

Purpose: Consideration of NYSEG's procedures, terms and conditions for its Targeted Financial Assistance Program.

Substance of proposed rule: The Commission is considering a filing dated June 13, 2011 from New York State Electric & Gas Corporation (NYSEG or Company) in which NYSEG is requesting a waiver for the provisions of its Targeted Financial Assistance Program which would allow the Company to provide a grant, from its accumulated economic development reserve fund, to a uniquely situated fast growing customer. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

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

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

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

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

(11-E-0312SP1)

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

Petition for the Submetering of Electricity

I.D. No. PSC-27-11-00008-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 92 Equities LLC to submeter electricity at 201 West 92nd and 200 West 93rd Streets, 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: Petition for the submetering of electricity.

Purpose: To consider the request of 92 Equities LLC to submeter electricity at 201 West 92nd and 200 West 93rd Streets, New York, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 92 Equities LLC to submeter electricity at 201 West 92nd Street and 200 West 93rd Street, New York, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(11-E-0316SP1)

State University of New York

NOTICE OF ADOPTION

Amendment to the Regulations of the Board of Trustees Relating to the Public Access to Records

I.D. No. SUN-15-11-00001-A

Filing No. 559

Filing Date: 2011-06-20

Effective Date: 2011-07-06

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

Action taken: Amendment of Part 311 of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

Subject: Amendment to the regulations of the Board of Trustees relating to the Public Access to Records.

Purpose: To conform the University's regulations with changes made to article 6 of New York Public Officers Law.

Text of final rule: PART 311

**PUBLIC ACCESS TO RECORDS OF STATE UNIVERSITY
OF NEW YORK**

* * * * *

§ 311.1 Designation of records access officer.

(a) The chancellor for [the central] system administration of the university and the chief administrative officer of each State-operated institution are responsible for insuring compliance with the regulations herein. For the purposes of [central] system administration of the university, the [Vice Chancellor and] Secretary of the University, or designee, State University Plaza, Albany, NY 12246, FOIL@suny.edu, shall serve as records access officer. A records access officer shall be designated by the chief administrative officer of each campus. For State-operated institutions, the name, title, business address and email address of the records access officer may be obtained from the office of the chief administrative officer of each campus.

(b) Records access officers are responsible for insuring appropriate agency response to public requests for access to records. The designation of records access officers shall not be construed to prohibit officials who have in the past been authorized to make records or information available to the public from continuing to do so. Records access officers shall insure that personnel:

- (1) maintain an up-to-date subject matter list;
- (2) assist the requester in identifying requested records, if necessary;
- (3) [upon locating the records, take one of the following actions:

(i) make records available for inspection; or

(ii) deny access to the records in whole or in part and explain in writing the reasons therefore] *contact persons seeking records when a request is voluminous or when locating the records involves substantial effort, so that personnel may ascertain the nature of records of primary interest and attempt to reasonably reduce the volume of records requested;*

(4) [upon request for copies of records, make a copy available upon payment of 25 cents per page] *upon locating the records, take one of the following actions:*

(i) make records available for inspection; or

(ii) deny access to the records in whole or in part and explain in writing the reasons therefore;

(5) [upon request, certify that a record is a true copy] *upon request for copies of records, make a copy available upon payment of established fees, if any, in accordance with Section 311.8.*

(6) [upon failure to locate records, certify that:

(i) the university or campus is not the custodian for such records;

or

(ii) the records of which the university or campus is a custodian cannot be found after diligent search.] *upon request, certify that a record is a true copy; and*

(7) *upon failure to locate records, certify that:*

(i) the university or campus is not the custodian for such records;

or

(ii) the records of which the university or campus is a custodian cannot be found after diligent search.

§ 311.2 Location.

Records shall be available for public inspection and copying at the records access office or at the location at which they are maintained.

§ 311.3 Hours for public inspection.

Requests for public access to records shall be accepted and records produced during all regular business hours.

§ 311.4 Requests for public access to records.

(a) A written request may be required, but oral requests may be accepted [when records are readily available] *in the discretion of the records access officer.*

(b) [A response shall be given, regarding any request reasonably describing the records or records sought, within five business days of receipt of the request.] *The records access officer shall accept requests for records submitted in the form of electronic mail and shall respond to such requests by electronic mail, provided that the written requests do not seek a response in some other form.*

(c) A request shall reasonably describe the record or records sought. Whenever possible, a person requesting records should supply informa-

tion regarding dates, file designations or other information that may help to describe the records sought.

(d) [Within five business days of the receipt of a written request for a record reasonably described, the records access officer shall make such record available to the person requesting it, deny such request in writing or furnish a written acknowledgment of the receipt of such request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when such request will be granted or denied. If the records access officer determines to grant a request in whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within 20 business days from the date of the acknowledgment of the receipt of the request, the records access officer shall state, in writing, both the reason for the inability to grant the request within 20 business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part.] *If agency records are maintained on the internet, the requester shall be informed that the records are accessible via the internet and in printed form either on paper or other information storage medium.*

(e) [The records access officer shall accept requests for records submitted in the form of electronic mail and shall respond to such requests by electronic mail, provided that the written requests do not seek a response in some other form.] *A response shall be given within five business days of receipt of a request by:*

(1) *informing the requester that the request or portion of the request does not reasonably describe the records sought, including direction, to the extent possible, that would enable the requester to request records reasonably described;*

(2) *granting or denying access to records in whole or in part;*

(3) *acknowledging the receipt of a request in writing, including an approximate date when the request will be granted or denied in whole or in part, which shall be reasonable under the circumstances of the request and shall not be more than twenty business days after the date of the acknowledgment, or if it is known that circumstances prevent disclosure within twenty business days from the date of such acknowledgment, providing a statement in writing indicating the reason for inability to grant the request within that time and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part; or*

(4) *if the receipt of request was acknowledged in writing and included an approximate date when the request would be granted in whole or in part within twenty business days of such acknowledgment, but circumstances prevent disclosure within that time, providing a statement in writing within twenty business days of such acknowledgment specifying the reason for the inability to do so and a date certain, within a reasonable period under the circumstances of the request, when the request will be granted in whole or in part.*

(f) *In determining a reasonable time for granting or denying a request under the circumstances of a request, records access officers shall consider the volume of a request, the ease or difficulty in locating, retrieving or generating records, the complexity of the request, the need to review records to determine the extent to which they must be disclosed, the number of requests received by the campus or system administration, and similar factors that bear on the ability to grant access to records promptly and within a reasonable time.*

(g) [(f)] Failure by the records access officer to comply with the time limitations described herein shall constitute a denial of access.

§ 311.5 Subject matter list.

(a) Each records access officer shall maintain a reasonably detailed current list, by subject matter, of all records in his or her possession, whether or not records are available pursuant to subdivision 2 of section 87 of the Public Officers Law (Freedom of Information Law).

(b) The subject matter list shall be sufficiently detailed to permit identification of the category of the record sought.

(c) The subject matter list shall be updated [not less than twice per year.] *annually.* The date of the most recent update shall appear on the first page of the subject matter list.

§ 311.6 Records containing trade secrets.

(a) Any person who submits records to the university may at the time of submission request that the university except such records or parts of such records from disclosure as trade secrets pursuant to sections 87(2)(d) and 89(5) of the Public Officers Law. The request for an exception shall be made in writing to the records access officer at the campus where the records have been submitted and shall state the reasons why the records should be excepted from disclosure. Such records shall be excepted from disclosure and maintained apart from all other records until 15 days after the entitlement to such exception has been finally determined or such fur-

ther time as ordered by a court of competent jurisdiction. Where the request for exception itself contains information which if disclosed would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure.

(b) The records access officer shall, at any time, or upon receipt of a request for access to such records, determine whether the request for exception will be granted, continued, terminated or denied. Before [doing so] *making such determination*, the records access officer shall:

(1) notify the person who requested the exception that a determination is to be made whether such exception should be granted or continued; and

(2) permit the person who requested the exception, within [10] *ten* business days of receipt of such notification, to submit a written statement of the necessity for granting or continuing such exception.

(c) Within seven business days of receipt of such statement or *within seven business days* of the expiration of the period prescribed for submission of such statement, the records access officer shall issue a written determination granting, continuing, terminating or denying the exception and stating the reasons therefor. Copies of such determination shall be transmitted to the person, if any, requesting the records, the person who requested the exception and the Committee on Open Government.

(d) A denial of an exception from disclosure may be appealed by the person submitting the records and a denial of access to the records may be appealed by the person requesting the records. The following person shall [hear] *determine* such appeals:

Chief Operating Officer [Vice Chancellor for Governmental and University Relations], or Designee
State University of New York
State University Plaza
Albany, NY 12246
Telephone: (518) [443-5148] 320-1400

The appeal shall be in writing and shall be made within seven business days of receipt of a denial. The appeal shall be determined within [10] *ten* business days of receipt of the appeal. Written notice of the determination and a statement of reasons for the determination shall be served upon the person, if any, requesting the records, the person who requested the exception and the Committee on Open Government.

(e) *A proceeding to review a denial of an exemption from disclosure or a denial of access to the records may be brought under Article 78 of the New York Civil Practice Law and Rules by the person submitting the records or the person requesting the records, within 15 days of service of the denial.*

(f) [(e)] Records or parts of records identified as trade secrets shall be maintained in a safe and secure manner and shall be charged to the custody of the head of the department or office in which the records are filed. That individual shall specify which persons subject to his or her supervision may inspect such records. The records access officer, the *Secretary of the University* [Executive Director, Central Administration Services], or designee, and the *Chief Operating Officer* [Vice Chancellor for Governmental and University Relations], or designee, shall have the right to inspect such records.

§ 311.7 Denial of access to records.

(a) This section shall not apply to records or parts of records alleged to contain trade secrets.

(b) Denial of access to records shall be in writing, stating the reason therefor and advising the requester of the right to appeal to the [individual or body established to hear appeals.] FOIL Appeals Officer, *who shall be identified by name, title, business address and business telephone number.*

(c) If requested records are not provided promptly, as required in Section 311.4 [of this Part], such failure shall also be deemed a denial of access.

(d) The following person shall [hear] *determine* appeals for denial of access to records under the Freedom of Information Law:

Chief Operating Officer [Vice Chancellor for Governmental and University Relations], or Designee
State University of New York
State University Plaza
Albany, NY 12246
Telephone: (518) [443-5148] 320-1400

(e) *Any person denied access to records may appeal within thirty days of a denial.*

(f) [(e)] The time for deciding an appeal by the individual designated to [hear] *determine* appeals shall commence upon receipt of a written appeal identifying:

(1) [the date of the appeal] *the date and the location of the requests for records;*

(2) [the date and location of the requests for records] *a description, to the extent possible, of the records to which the requester was denied access; and*

(3) [the records to which the requester was denied access] *the name and return address of the person denied access.*

[(4) whether the denial of access was in writing or due to failure to provide records promptly as required by section 311.4(d) of this Part; and

(5) the name and return address of the requester.]

(g) *A failure to determine an appeal within ten business days of its receipt by granting access to the records sought or fully explaining the reasons for further denial in writing shall constitute a denial of the appeal.*

[(f) The individual or body designated to hear appeals shall inform the requester of its decision in writing within 10 business days of receipt of an appeal.]

(h) [(g)] The person or body designated to [hear] *determine* appeals shall transmit to the Committee on Open Government copies of all appeals upon receipt of appeals. Such copies shall be addressed to:

Committee on Open Government
Department of State
One Commerce Plaza, Suite 650
99 [162] Washington Avenue
Albany, NY 12231

(i) [(h)] The person or body designated to [hear] *determine* appeals shall inform the appellant and the Committee on Open Government of its determination in writing within [seven] *ten* business days of receipt of an appeal. The determination shall be transmitted to the Committee on Open Government in the same manner as set forth in subdivision [(f)] (h) of this section.

§ 311.8 Fees.

(a) There shall be no fee charged for:

(1) inspection of records for which no redaction is permitted;

(2) search for, *the administrative costs of, or employee time to prepare photocopies of records; or*

(3) *review of the content of requested records to determine the extent to which records must be disclosed or may be withheld; or*

(4) [(3)] any certification pursuant to this Part.

(b) [Copies of records shall be provided upon payment of 25 cents per page.] *Fees for photocopies of records may be charged, provided that:*

(1) *the fee shall not exceed 25 cents per page for photocopies not larger than 9 by 14 inches; and*

(2) *the fee for photocopies of records in excess of 9 by 14 inches shall not exceed the actual cost of reproduction.*

(c) *Fees for other records may be charged based on the actual cost of reproduction of a record, which may include only the following:*

(1) *an amount equal to the hourly salary attributed to the lowest paid employee who has the requisite skill to prepare a copy of the requested record, but only when more than two hours of the employee's time is necessary to do so; and;*

(2) *the actual cost of the storage devices or media provided to the requester in complying with the request; or*

(3) *the actual cost to engage an outside professional service to prepare a copy of a record, but only when system administration or campus is unable, due to technological limitations, to prepare a copy of the record and if such service is used to prepare the copy;*

(d) *When system administration or the campus has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, or when doing so requires less employee time than engaging in manual retrieval or redactions from non-electronic records, the retrieval or extraction of such record or data must be accomplished electronically. In such case, a fee may be charged in accordance with paragraph (c)(1) and (2) above.*

(e) *The requester shall be informed of the estimated cost of preparing a copy of a record if more than two hours of an employee's time is needed, or if it is necessary to retain an outside professional service to prepare a copy of the record.*

(f) *System administration or the campus may require that the fee for copying or reproducing a record be paid in advance of the preparation of such copy.*

§ 311.9 Public notice.

A notice containing the title or name and business address of the records access officer and appeals person or body and the location where records can be seen or copied shall be posted in a conspicuous location wherever records are kept.

§ 311.10 Severability.

If any provision of this Part or the application thereof to any person or

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

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 311.1(a) and 311.6(f).

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, University Plaza, S-325, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Revised Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Amendment to the Regulations of the Board of Trustees Relating to the State University of New York University Officers

I.D. No. SUN-15-11-00002-A

Filing No. 558

Filing Date: 2011-06-20

Effective Date: 2011-07-06

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

Action taken: Amendment of Part 328 of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

Subject: Amendment to the regulations of the Board of Trustees relating to the State University of New York University Officers.

Purpose: To delete references to outdated titles and descriptions; change appointment authority of Board and/or Chancellor.

Text or summary was published in the April 13, 2011 issue of the Register, I.D. No. SUN-15-11-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, University Plaza, S-325, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Amendment to the Regulations of the Board of Trustees Relating to the State University of New York Student Assembly

I.D. No. SUN-15-11-00003-A

Filing No. 560

Filing Date: 2011-06-20

Effective Date: 2011-07-06

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

Action taken: Amendment of sections 341.4 and 341.18 of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

Subject: Amendment to the regulations of the Board of Trustees relating to the State University of New York Student Assembly.

Purpose: To grant representation and the ability to vote to additional graduate student governments and to update terminology used.

Text or summary was published in the April 13, 2011 issue of the Register, I.D. No. SUN-15-11-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, University Plaza, S-325, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Assessment of Public Comment

The agency received no public comment.