

# 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.

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## Department of Agriculture and Markets

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### NOTICE OF ADOPTION

#### Licensing of Hops Processors and Cideries

**I.D. No.** AAM-22-14-00003-A

**Filing No.** 698

**Filing Date:** 2014-08-05

**Effective Date:** 2014-08-20

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

**Action taken:** Amendment of section 276.4 of Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 16, 18, 214-b, 251-z-4 and 251-z-9

**Subject:** Licensing of hops processors and cideries.

**Purpose:** To exempt small hops processors and cideries from having to pay a license fee or be licensed, respectively.

**Text of final rule:** Subdivisions (e) and (f) of section 276.4 of 1 NYCRR are relettered to be subdivisions (g) and (h), respectively.

Section 276.4 of 1 NYCRR is amended by adding thereto a new subdivision (e), to read as follows:

(e) *Processing of hops.*

(1) *Definitions. As used in this subdivision:*

(i) *hops means the seed cones of the hop plant, *humulus lupulus*,*

(ii) *person means a natural person, partnership, corporation, association, limited liability company or other legal entity.*

(iii) *processing means that term as defined in Agriculture and Markets Law section 251-z-2(4) except processing, as used in this subdivision, shall not mean non-mechanical drying.*

(2) *Any person who processes hops in a volume that does not exceed 100,000 lbs. annually shall be exempt from the license fee requirement of Agriculture and Markets Law section 251-z-3, provided that:*

(i) *such establishment is maintained in a sanitary condition and follows the current good manufacturing practices set forth in Part 261 of this Title; and*

(ii) *no other food processing operations for which licensing under article 20-C of the Agriculture and Markets Law is required are being conducted at the establishment.*

Section 276.4 of 1 NYCRR is amended by adding thereto a new subdivision (f) to read as follows:

(f) *Cideries.*

(1) *Definitions. As used in this subdivision:*

(i) *cider means a food processing establishment that manufactures hard cider.*

(ii) *hard cider means the partially or fully fermented juice of fresh, whole apples or other pome fruits, containing more than three and two-tenths per centum but not more than eight and one-half per centum alcohol by volume: (a) to which nothing has been added to increase the alcoholic content produced by natural fermentation; and (b) with the usual cellar treatments and necessary additions to correct defects due to climate, saccharine levels and seasonal conditions. Nothing contained in this subparagraph shall be deemed to preclude the use of such methods or materials as may be necessary to encourage a normal alcoholic fermentation and to make a product that is free of microbiological activity at the time of sale. Hard cider may be sweetened or flavored after fermentation with fruit juice, fruit juice concentrate, sugar, maple syrup, honey, spices or other agricultural products, separately or in combination. Hard Cider may contain retained or added carbon dioxide.*

(iii) *person means a natural person, partnership, corporation, association, limited liability company or other legal entity*

(2) *Any person who maintains or operates a cidery shall be exempt from the licensing requirements of article 20-C of the Agriculture and Markets Law, provided that:*

(i) *such establishment is maintained in a sanitary condition and follows the current good manufacturing practices set forth in Part 261 of this Title; and*

(ii) *no other food processing operations for which licensing under article 20-C of the Agriculture and Markets Law is required are being conducted at the establishment.*

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 276.4(f)(1)(ii).

**Text of rule and any required statements and analyses may be obtained from:** Stephen D. Stich, NYS Dept. of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-4492, email: Stephen.Stich@agriculture.ny.gov

#### Revised Job Impact Statement

The proposed rule will not have an adverse impact upon employment opportunities.

The proposed rule will exempt hops processors who process 100,000 lbs. of hops or less annually from having to pay the otherwise required food processing establishment license fee, and will exempt cideries from having to obtain such a license entirely. The proposed rule will, by removing a regulatory burden upon such businesses, therefore have no adverse impact upon jobs.

#### Assessment of Public Comment

Assemblymen William Magee, Robin Schimminger, and Kenneth P. Zebrowski submitted a letter to the Department in which they suggested that the definition of “hard cider”, set forth in proposed 1 NYCRR section 276.4(f)(1)(ii), should be amended so that it is consistent with the definition of “cider”, set forth in Alcoholic Beverage Control Law (ABCL) section 3(7-b). The Assemblymen suggested that the definition of hard cider set forth in the proposed rule be amended so that it is as expansive as the definition in the ABCL, thereby allowing more cideries to avoid having to

be licensed as food processors which, in turn, would allow them to better compete in the marketplace, to the benefit of the State's agricultural industry. The Assemblymen said in their letter that such an amendment "would not represent a substantial revision, as the changes would merely clarify the text to reflect current legal parameters".

Based upon the Assemblymen's suggestion, proposed 1 NYCRR section 276.4(f)(1)(ii) was amended as requested.

## State Board of Elections

### EMERGENCY RULE MAKING

#### Independent Expenditure Disclosure

**I.D. No.** SBE-33-14-00002-E

**Filing No.** 696

**Filing Date:** 2014-08-04

**Effective Date:** 2014-08-04

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

**Action taken:** Repeal of section 6200.10; and addition of new section 6200.10 to Title 9 NYCRR.

**Statutory authority:** L. 2014, ch. 55

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

**Specific reasons underlying the finding of necessity:** The Commissioners determined that it is necessary for the preservation of the general welfare that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Department of State. This amendment is adopted as an emergency measure because time is of the essence and to adopt the regulation in the normal course of business would be contrary to the public interest as a necessary change in the agency's regulations would not be effective for the June 1, 2014 effective date.

The General Government Budget Bill (Chapter 55 of the laws of 2014) created the new independent expenditure disclosure requirements.

**Subject:** Independent Expenditure Disclosure.

**Purpose:** The purpose of this law is to set forth requirements for Independent Expenditure Committees to disclose financial activity.

**Text of emergency rule:** Subtitle V of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended by repealing Part 6200.10, and replacing it in whole with a new Part 6200.10 to read as follows:

#### § 6200.10 Disclosure of Independent Expenditures

##### (a) Purpose and Overview

The purpose of this Regulation is to set forth the requirements under the New York State Election Law regarding compliance with the Independent Expenditure disclosure.

The New York State Election Law mandates how financial activity, including independent expenditures, is to be disclosed. Article 14 of the Election Law ("EL") sets forth the requirement that independent expenditures be disclosed through the filing of campaign financial disclosure reports.

##### (b) Definitions

###### (1) "Independent Expenditure" means:

(a) an expenditure made by a Person conveyed to five hundred (500) or more members of a General Public Audience in the form of (i) an audio or video communication via broadcast, cable or satellite, (ii) a written communication via advertisements, pamphlets, circulars, flyers, brochures, letterheads or (iii) other published statements which:

(i) irrespective of when such communication is made, contains words such as "vote," "oppose," "support," "elect," "defeat," or "reject," which call for the election or defeat of the Clearly Identified Candidate, or

(ii) refers to and Advocates For or Against a Clearly Identified Candidate or ballot proposal on or after January first of the year of the election in which such candidate is seeking office or such proposal shall appear on the ballot. (EL 14-107(1)(A)).

For purposes of this regulation "Advocates for or Against" means – in the absence of explicit words of advocacy for or against a candidate or ballot proposal, through the use of images, photos, or language which promotes, supports, attacks, or opposes for or against the Clearly Identified Candidate or ballot proposal.

For purposes of determining whether or not a communication is advocating for or against a candidate or ballot proposal, the following factors shall be considered, but shall not be limited to:

- Whether it identifies a particular candidate by name or other means such as party affiliation or distinctive features of a candidate's platform or biography;
- Whether it expresses approval or disapproval for said candidate's positions or actions;
- Whether it is part of an ongoing series by the group on the same issue and the series is not timed to an election;
- Has the issue raised in the communication been raised as a distinguishing characteristic amongst the candidates; and
- Whether its timing and the identification of the candidate are related to a non-electoral event (e.g., a vote on legislation or a position on legislation by an officeholder who is also a candidate).

However, even if some of the above factors are found, the communication must still be considered in context before arriving at any conclusion.

(b) an Independent Expenditure shall not include communications where such candidate, the candidate's political committee or its agents, or a political committee formed to promote the success or defeat of a ballot proposal or its agents, did authorize, request, suggest, foster or cooperate in such communication. (EL 14-107(1)(A)).

(c) Independent Expenditures do not include expenditures in connection with:

(i) a written news story, commentary, or editorial or a news story, commentary, or editorial distributed through the facilities of any broadcasting station, cable or satellite unless such publication or facilities are owned or controlled by any political party, political committee or candidate; or

(ii) a communication that constitutes a candidate debate or forum; or  
(iii) internal communication by members to other members of a Membership Organization of not more than five hundred (500) members, for the purpose of supporting or opposing a candidate or candidates for elective office, provided such expenditures are not used for the costs of campaign material or communications used in connection with broadcasting, telecasting, newspapers, magazines, or other periodical publication, billboards, or similar types of general public communications; or

(iv) a communication published on the internet, unless the communication is a paid advertisement. (EL 14-107(1)(B))

###### (2) "Clearly Identified Candidate" means that:

(a) the name of the candidate involved appears;

(b) a photograph or drawing of the candidate appears; or

(c) the identity of the candidate is apparent by unambiguous reference. (EL 14-100(12))

(3) "General Public Audience" means an audience composed of members of the public, including a targeted subgroup of members of the public; provided, however, it does not mean an audience solely comprised of members, retirees and staff of a labor organization or members of their households or an audience solely comprised of employees of a corporation, unincorporated business entity or members of a business, trade or professional association or organization. (EL 14-100(13))

(4) "Labor Organization" means any organization of any kind which exists for the purpose, in whole or in part, of representing employees employed within the State of New York in dealing with employers or employer organizations or with a state government, or any political or civil subdivision or other agency thereof, concerning terms and conditions of employment, grievances, labor disputes, or other matters incidental to the employment relationship. For the purposes of this regulation, each local, parent national or parent international organization of a statewide labor organization, and each statewide federation receiving dues from subsidiary labor organizations, shall be considered a separate labor organization. (EL 14-100(14)).

(5) "Membership Organization" means a group that has a recognized organizational structure and maintains a list of its members, such as a professional, fraternal, patriotic, or social association or organization, a cooperative, a corporation without capital stock, and is not organized primarily for the purpose of influencing the nomination for election, or election, of any candidate for office covered by Article 14 of the Election Law of the State of New York, or any ballot proposal covered therein.

Factors that shall be examined when determining whether or not a group shall be considered a "Membership Organization" for this purpose shall include, but not be limited to the following:

a) Whether or not the organization is composed of members, some or all of whom are vested with the power or authority to administer the organization pursuant to membership by-laws, constitution or other formal organizational documents;

b) Expressly states the qualifications for membership, including special membership status such as "retired" or "lifetime" member;

c) Expressly solicits persons to become members;

d) Expressly acknowledges the acceptance of membership, such as by issuing a membership card or sending confirming correspondence;

e) Distributes newsletters or other informational messages to its members;

f) Has a mission statement that is available for the members and the public to see;

g) Is not organized for the purpose of influencing the nomination for election, or election, of any candidate for office or any ballot proposal covered by Article 14 of the Election Law.

(6) "Person" means for purposes of this section, a person, group of persons, corporation, unincorporated business entity, labor organization or business, trade or professional association or organization, or political committee. (EL 14-107(1)(C)).

(c) Registration

(1) Before any person makes an independent expenditure, they shall first register with the New York State Board of Elections ("the Board") as a political committee in conformance with Article 14 of the Election Law, and shall comply with all disclosure obligations required for political committees by law. (EL14-107(3)(A))

a. On forms prescribed by the Board, the person seeking to register an independent expenditure committee, formed to support or oppose unauthorized candidates, shall fully complete, sign and submit the Committee Registration Treasurer and Bank Information Form (CF-02) and the Committee Authorization Status Form (CF-03) to the Board.

i. Independent Expenditure Committees formed to support or oppose candidates shall submit a fully completed and signed Committee Registration Treasurer and Bank Information Form(CF-02), declaring itself as an "Independent Expenditure – type 8" Committee in the section B field for "Committee Type" to the Board.

ii. On the Committee Authorization Status Form (CF-03), each independent expenditure committee must complete part B, listing unauthorized candidates.

b. Independent Expenditure Committees formed to support or oppose a ballot proposal shall submit a fully completed and signed, Committee Registration Treasurer and Bank Information Form(CF-02), declaring itself as a "Ballot Issue Committee – type 9B" in the section B field for "Committee Type" to the Board.

(2) Before such a political committee may receive any receipt or contribution, or make any expenditure or incur any liability, the treasurer of such political committee must first register with the State Board, pursuant to the procedures set forth by the State Board. Registration forms are available from the State Board. (EL14-118)

(d) Filing Financial Disclosure Statements

(1) Committees making independent expenditures are obligated, as are all political committees, to file campaign financial disclosure statements pursuant to and in the manner set forth in EL 14-102. For each election in which they support or oppose candidates or ballot proposals, the committee must submit election reports (3 primary, and 3 general and/or special, as applicable), as well as campaign financial disclosure periodic reports, due on January 15 and July 15 of each year in accordance with EL 14-108, NYCRR 6200.2. (EL 14-107(3)(A)).

a. All independent expenditure committees are required to file applicable election reports for each election unless the independent expenditure committee submits a fully completed Notice of Non-Participation in Election(s) (CF-20), electronically or by mail, as prescribed by the Board.

(2) Weekly Disclosure regarding Independent Expenditures: any person who has registered with the State Board pursuant to paragraph (A) of EL 14-107(3) as a political committee for the purposes of disclosing Independent Expenditures, shall disclose to the State Board electronically, once a week on the Friday following the receipt of any contribution to such person over one thousand dollars (\$1,000) or expenditures made by such person over five thousand dollars (\$5,000) made at any time during the year except during the 24-hour notice disclosure period before an election (EL 14-107(3)(B)). All contributions, loans or expenditures that are required to be disclosed via a weekly disclosure must also be disclosed on the next applicable financial disclosure statement.

(3) Independent Expenditures Committee 24 Hour Disclosure: any person who has registered with the State Board pursuant to paragraph (A) of EL 14-107(3) as a political committee for the purposes of disclosing Independent Expenditures, shall disclose to the State Board electronically, within twenty-four (24) hours of receipt, any contribution or loan to such person over one thousand dollars (\$1,000) or expenditure by such person over five thousand dollars (\$5,000) made within thirty (30) days before any primary, general, or special election. (EL14-107(3)(C)). All contributions, loans or expenditures that are required to be disclosed via the Independent Expenditure 24-hour notice must also be disclosed on the 11 day pre-election financial disclosure statement or on the post-election financial disclosure statement, as applicable.

(4) Every statement shall be filed electronically with the State Board. (EL 14-107(6)).

(e) Additional Information Required Regarding Independent Expenditures

(1) The Weekly and 24 Hour Disclosures required by subdivision (3)(B) and (C) of EL 14-107, as set out in (d) (2) and (3) above, shall include, in addition to any other information required by law:

(a) the name, address, occupation and employer of the person making the statement;

(b) the name, address, occupation and employer of the person making the Independent Expenditure;

(c) the name, address, occupation and employer of any person providing a contribution, gift, loan, advance or deposit of one thousand dollars (\$1,000) or more for the Independent Expenditure, or the provision of services for the same, and the date it was given;

(d) the dollar amount paid for each independent expenditure, the name and address of the person or entity receiving the payment, the date the payment was made and a description of the Independent Expenditure; and

(e) the election to which the Independent Expenditure pertains and the name of the clearly identified candidate or the ballot proposal referenced. (EL 14-107(4)).

(2) The provisions of this regulation are in no way intended to effect the application or validity of Election Law 14-120.

(f) Disclosure of Political Communications / "Campaign Materials"

(1) All political committees whose activity requires the filing of primary, general and/or special election reports, must at the same time the applicable post-election campaign financial disclosure report is due and made, submit copies of all the filer's political communications, also known as campaign materials, associated with that election. Copies shall include a copy of all broadcast, cable or satellite schedules and scripts, internet, print and other types of advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter purchased or produced, and reproductions of statements or information published to five hundred or more members of a general public audience by computer or other electronic device including but not limited to electronic mail or text message, purchased in connection with such election by or under the authority of the person filing the statement or the committee or the person on whose behalf it is filed, as the case may be. Such copies, schedules and scripts shall be preserved by the officer with whom or the board with which it is required to be filed for a period of one year from the date of filing thereof. (EL14-106)

(2) In addition to the requirements of subparagraph 1 herein, for statements filed in conjunction with (d)(2) and (3) above, a copy of all political communications paid for by the independent expenditure, including but not limited to broadcast, cable or satellite schedules and scripts, advertisements, pamphlets, circulars, flyers, brochures, letterheads and other printed matter and statements or information conveyed to one thousand or more members of a general public audience by computer or other electronic devices shall be filed with the State Board with the statements required by (d)(2) and (3). (EL 14-107(5)).

(g) Attributions and Identification of Independent Expenditures

(1) Whenever any person makes an Independent Expenditure that costs more than one thousand dollars (\$1,000) in the aggregate, such communication shall clearly state the name of the person who paid for or otherwise published or distributed the communication and state, with respect to communications regarding candidates, that the communication was not expressly authorized or requested by any candidate, or by any candidate's political committee or any of its agents. (EL 14-107(2)).

(h) Non-compliance

(1) Any person who falsely identifies or knowingly fails to identify any Independent Expenditure as required by subdivision 2 of section 14-107, as outlined in (g)(1), "Attributions and Identification of Independent Expenditures" above, shall be subject to a civil penalty up to one thousand dollars (\$1,000) or up to the cost of the communication, whichever is greater, in a special proceeding or civil action brought by the State Board Chief Enforcement Counsel or imposed directly by the State Board. For purposes of this subdivision, the term "person" shall mean a person, group of persons, corporation, unincorporated business entity, labor organization or business, trade or professional association or organization or political committee. (EL 14-126(3)).

(2) In addition to any other penalty that may otherwise pertain, a knowing and willful violation of the provisions of subdivision (3) of EL 14-107 shall subject the person to a civil penalty equal to five thousand dollars (\$5,000) or the cost of the communication, whichever is greater, in a special proceeding or civil action brought by the Board or imposed directly by the Board. (EL 14-107(3)(D)).

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires November 1, 2014.

**Text of rule and any required statements and analyses may be obtained from:** Cheryl Couser, New York State Board of Elections, 40 N. Pearl Street--Suite 5, Albany, New York 12207, (518) 474-2063, email: Cheryl.Couser@Elections.ny.gov

**Regulatory Impact Statement**

1. Statutory authority: Chapter 55 of the Laws of 2014.
2. Legislative objectives: The SFY 2014-2015 New York State Budget set forth new requirements for the increased disclosure of Independent Expenditures.
3. Needs and benefits: The New York State Election Law mandates how financial activity, including independent expenditures, is to be disclosed. Article 14 of the Election law sets forth the requirement that independent expenditures be disclosed through the filing of campaign financial disclosure reports.
- Chapter 55 of the Laws of 2014 set forth definitions on what an independent expenditure is and how they are to be disclosed in order to promote public transparency of political activity. The effective date of this law was June 1, 2014.
4. Costs: Regulated parties should incur minimal costs for additional compliance requirements. Those entities that engage in certain independent expenditure activities have been required to register and report with the New York State Board of Elections. Chapter 55 of the Laws of 2014 requires an increased level of record keeping and reporting.
5. Local government mandates: There are no additional responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or other special district.
6. Paperwork: This rule requires Committees to make additional electronic disclosures for any contribution received over \$1,000 or any expenditure made over \$5,000 within certain set time frames, which could include 24 hour disclosures of activity or weekly disclosure of such activity. In addition, for any Independent Expenditure communication which cost more than \$1,000 in the aggregate are required to include attribution on the communication. Such attribution would include the name of the person who paid for the Independent Expenditure and a statement that the communication was not expressly authorized or requested by any candidate or by any candidate's political committee or its agents.
- Lastly, a copy of all political communications paid for by an Independent Expenditure Committee must be submitted to the NYSBOE.
7. Duplication: The Federal Elections Commission and the New York City Campaign Finance Board have other legal requirements that may duplicate, overlap or conflict with the rule. At the time of publication, the Board has not undertaken efforts to resolve or minimize the impact of any duplication, overlap or conflict on regulated persons, including but not limited to seeking waivers or amendments of or exemptions from such other rules or legal requirements, or entering into a memorandum of understanding or other agreement regarding same.
8. Alternatives: As the provisions of this law were enacted as part of the SFY 2014-15 budget, the Board did not consider alternative proposals. However, the Board did request public comment on the proposed rule on its website in April 2014. Public comment is still being accepted.
9. Federal standards: Not applicable.
10. Compliance schedule: This provision of law was effective June 1, 2014. NYSBOE provided several webinars in May and provided guidance materials via our website to enable regulated persons to achieve compliance with the rule.

**Regulatory Flexibility Analysis**

1. Effect of rule: There is no impact on local governments due to this rule. This rule will have a minimal impact on small businesses. Should a small business engage in independent expenditures, they would already be required to register and report activity to the Board.
2. Compliance requirements: If a small business were to engage in independent expenditures, they would have to register with the NYSBOE. In addition, they would have to maintain books of related financial activity and make required disclosures to the Board of such activity. This rule does not impact local government.
3. Professional services: A small business that engages in independent expenditures may acquire accounting services to maintain and report activity to comply with this rule.
4. Compliance costs: It is unclear as to the initial capital costs that will be incurred by a regulated business or industry to comply with the rule. A regulated business may hire a staff accountant or services to comply.
5. Economic and technological feasibility: Our assessment of the economic and technological feasibility of compliance with such rule by small businesses and local governments would be that a computer is necessary to make require disclosures.
6. Minimizing adverse impact: The rule was not designed to minimize any adverse economic impact the rule may have on small businesses. There is no impact on local governments.
7. Small business and local government participation: Although this is an emergency rule, the NYSBOE has solicited and will contain to receive and consider public comment. This would include comments that may suggest alternatives to minimize the impact on small businesses.
8. (IF APPLICABLE) For rules that either establish or modify a violation or penalties associated with a violation: The rule text does not include

a cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement, as the underlying statute, Chapter 55 of the Laws of 2014, did not authorize such a cure period.

9. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: Not applicable.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: This rule has a statewide impact. Any entity which engages in independent expenditure activity, over a \$1,000 threshold, will have to register and report to the NYSBOE. This rule does not impact local government.
2. Reporting, recordkeeping and other compliance requirements; and professional services: Entities that engage in independent expenditures activity will have to open and maintain a bank account, maintain books for a period of five years, and make a variety of disclosure reports depending on their activity. Disclosure reports range from 24 hour disclosures, weekly disclosures, periodic and election cycle disclosure reports, as applicable. Accounting services may be needed to comply although many entities will absorb this function in house. A computer is need to comply with disclosure requirements of this rule.
3. Costs: Undetermined.
4. Minimizing adverse impact: This rule was not designed to minimize any adverse impact on rural areas, however, only entities that engage in such activity are captured.
5. Rural area participation: NYSBOE has solicited and is accepting public comment on for impacted entities to participate in the rule making process to minimize cost or complexity.
6. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: Not Applicable.

**Job Impact Statement**

1. Nature of impact: This rule should have a minimal impact on jobs as it amends existing disclosure requirements for independent expenditures by political committees. Prior to this rule, Committees have had to register and disclose independent expenditure activity with the Board.
2. Categories and numbers affected: This rule will impact Committees which engage in independent expenditure activity. It may create employment opportunities due to increased recording keeping and reporting requirements. Approximate numbers of employment opportunities have not been determined.
3. Regions of adverse impact: This rule has a statewide impact but would not have an adverse impact on jobs or employment opportunities.
4. Minimizing adverse impact: The Board has not taken any measures to minimize adverse impacts on existing jobs or to promote the development of new employment opportunities. The Board has not determined that this rule would have an adverse impact on jobs.
5. (IF APPLICABLE) Self-employment opportunities: Not applicable.
6. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: Not applicable.

**Assessment of Public Comment**

The New York State Board of Elections has received public comment from the following:

- Citizen's Union
- Family Planning Advocates of New York State
- League of Women Voters
- Anonymous Individual

## EMERGENCY RULE MAKING

**Public Financing of the NYS Comptrollers Race**

**I.D. No.** SBE-33-14-00003-E

**Filing No.** 697

**Filing Date:** 2014-08-04

**Effective Date:** 2014-08-04

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

**Action taken:** Addition of section 6200.11 to Title 9 NYCRR.

**Statutory authority:** L. 2014, ch. 55

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

**Specific reasons underlying the finding of necessity:** The Commissioners determined that it is necessary for the preservation of the general welfare that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Department of State. This amendment is adopted as an emergency measure because time is of the essence and to

adopt the regulation in the normal course of business would be contrary to the public interest as a necessary change in the agency's regulations would not be effective for the upcoming Primary and General Elections.

The General Government Budget Bill (Chapter 55 of the laws of 2014) created this Public Financing Pilot Program and required its development and viability for the upcoming Primary and General Election for the Office of NYS Comptroller.

**Subject:** Public Financing of the NYS Comptrollers race.

**Purpose:** Set forth the procedures a candidate would have to follow to apply for and receive public funds in his/her race for NYS Comptroller.

**Substance of emergency rule:** Chapter 55 of the Laws of 2014 created the Public Financing Pilot Program. The purpose of this regulation is to set forth the requirements for candidates to qualify for and participate in a pilot program for matching financing for the election to the Office of the State Comptroller under Title 2 of Article 14 of the Election Law.

**This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires November 1, 2014.

**Text of rule and any required statements and analyses may be obtained from:** Kimberly A. Galvin, New York State Board of Elections, 40 N. Pearl Street, Suite 5, Albany, New York 12207, (518) 474-8061, email: Kimberly.Galvin@Elections.ny.gov

**Summary of Regulatory Impact Statement**

1. Statutory Authority:

Election Law Section 3-102(1) provides for the State Board to promulgate rules and regulations relating to the administration of the election process.

2. Legislative Objectives:

The General Government Budget Bill for 2014 (Chapter 55 of the Laws of 2014), enacted the General Government portion of the Budget. Within that bill there was created a Public Financing Pilot Program for the 2014 New York State Comptrollers race. This program sunsets at the end of 2014.

3. Needs and Benefits:

The Commissioners further determined that it is necessary for the preservation of the general welfare that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Department of State. This amendment is adopted as an emergency measure because time is of the essence. The Agency is required to create and implement a public financing program to be available for this year's elections. The five major political parties have already nominated the candidates for Comptroller. A candidate for this office could opt in to the program at any time. Because this potentially involves the release of public funds to a political candidate a great deal of preparation and inter agency cooperation is required to ensure the program's success.

4. Costs:

There will be minimal costs to the State Board of Elections to establish uniform policies, procedures and forms, the development and implementation of training for participants that opt in to the program, designated staff members, and to provide ongoing compliance supervision until the end of 2014 when this program expires.

5. Local Government Mandates:

The new emergency regulation does not contain any mandates that would affect local governments.

6. Paperwork:

The emergency regulation will not alter the paperwork burden upon the counties.

7. Duplication:

This regulatory change does not duplicate or overlap with any other federal or state regulations.

8. Alternatives:

No real alternatives were considered as the legislation was quite specific with regard to how the program needed to be set up and the timeframes that needed to be set.

9. Federal Standards:

There are no mandatory federal standards that this would be in conflict with.

10. Compliance Schedules:

Compliance can be achieved in advance of the upcoming 2014 Primary and General Elections as is required by the enacting legislation.

**Regulatory Flexibility Analysis**

1. Effect of Rule:

This effects only those committees or individuals that are participating in the Public Financing Pilot Project for the Office of NYS Comptroller. This program sunsets by law in December of 2014. This does not have any effect on small businesses.

2. Compliance Requirements:

The very small number of candidates that affirmatively opt in to this

pilot program would be required to comply with the provisions of both the law and the regulations set forth herein. These regulations do not have any impact on small businesses.

3. Professional Services:

Not applicable.

4. Compliance Costs:

There will no cost to the State Board of Elections to implement and administer this program other than routine staff and technology costs. There are no costs to the user of the system or those required to comply with this regulation or to any other person/entity.

5. Economic and Technological Feasibility:

It is anticipated that no new or advanced technology is required for compliance with this regulation. As such, the regulation will not be cost prohibitive.

6. Minimizing Adverse Impact:

The Commissioners further determined that it is necessary for the preservation of the general welfare that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Department of State. This amendment is adopted as an emergency measure because time is of the essence. The enacting legislation was only passed and became effective in April of 2014. The agency was under a very tight time constraint that requires that the Pilot Program be up and running for those candidates choosing to participate in the program for this upcoming Primary and General Election. Candidates have already been nominated by the major political parties for this office and a candidate could be certified as a participant at any time.

7. Small Business and Local Government Participation:

Neither this Pilot Program or the resultant regulations would be applicable to any small business or local government. The only pool of potential participants would be a very discreet number of political candidates running for the office of NYS Comptroller.

**Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas:

There are 44 counties which meet the definition of 'rural areas' as defined in the Executive Law § 481(7). This regulation has NO effect on any of them.

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

There will be no required record keeping or other required compliance by any rural area.

3. Costs:

There will be minimal costs to the State Board of Elections to establish uniform policies, procedures and forms, the development and implementation of training. There will not be any cost to any other person or entity for compliance.

4. Minimizing adverse impact:

There is no adverse impact to minimize. The program is entirely voluntarily and only applies to those political candidates running for the office of NYS Comptroller that voluntarily opt in to the program. The program sunsets at the end of 2014.

5. Rural area participation:

Not applicable. Although many supporters of public financing believe that a program such as this will increase participation in the political process and give the individual a greater voice in the process. Presumably, many of these individuals will be from rural areas.

**Job Impact Statement**

It is evident from the nature and purpose of the rule that this regulation amendment neither creates nor eliminates employment positions and/or opportunities, and therefore, has no adverse impact on employment opportunities in New York State.

**Assessment of Public Comment**

The agency received no public comment since publication of the last assessment of public comment.

## Office of General Services

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

#### Service-Disabled Veteran-Owned Business Enterprises

**I.D. No.** GNS-33-14-00004-EP

**Filing No.** 693

**Filing Date:** 2014-07-31

**Effective Date:** 2014-07-31

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

**Proposed Action:** Addition of Part 252 to Title 9 NYCRR.

**Statutory authority:** Executive Law, sections 200 and 369-i(5)

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

**Specific reasons underlying the finding of necessity:** By enacting Article 17-B of the New York State Executive Law, the Governor has prioritized and emphasized the importance of assisting service-disabled veterans in the New York State contracting process. These are citizens who have risked their lives for their country and are now looking to readjust to civilian life. It is incumbent upon the State to assist them in reintegrating back into the economy as quickly as possible. New York State has determined that these veterans could benefit from assistance in the State contracting process and the Office of General Services (“OGS”) has determined that adoption of this rulemaking is necessary for the preservation of the general welfare of the citizens of New York State. When there are more businesses participating in the economy, all New York State citizens benefit.

The NYS public procurement program that spends billions of dollars to provide government services to its citizens, State businesses, the educational community and not-for-profits will benefit from the diversification of the vendors who meet State needs for goods and services. The service-disabled veteran-owned businesses and the State will benefit from their mutual contributions to strengthening the State economy through the expedited addition of this program in OGS.

The granting by the Governor and the Legislature of these opportunities to service-disabled veteran-owned businesses will build on synergies associated with their contract awards in the public sector, ensuring that their broader participation in the State and national economy is enhanced and further formation of such small businesses will be encouraged to benefit of our veterans.

While a proposed rulemaking is also being filed concurrently with this Emergency Rulemaking, in an effort to make the regulations effective as soon as possible and thereby affording service-disabled veteran-owned businesses the opportunity to increase their participation in the State contracting process, OGS has determined that compliance with the requirements of the proposal process would be contrary to the public interest.

**Subject:** Service-Disabled Veteran-Owned Business Enterprises.

**Purpose:** To establish standards, procedures and criteria with respect to the Service-Disabled Veteran-Owned Business Enterprise program.

**Substance of emergency/proposed rule (Full text is posted at the following State website: [ogs.ny.gov/About/Regs/Statutes.asp](http://ogs.ny.gov/About/Regs/Statutes.asp)):** The proposed regulation makes extensive changes to the existing regulations governing the award process of state procurement contracts by facilitating and promoting Service-Disabled Veteran-Owned Business Enterprise (“SDVOBE”, as defined herein) participation in state procurement. This process includes state certification of SDVOBEs, the promulgation of measures and procedures to ensure these certified businesses are afforded meaningful participation in state procurement, and the monitoring and reporting of state agency compliance with the statewide goal for participation on state contracts by SDVOBEs.

Parts 252.1-252.3 define terms unique to the scope and implementation of the SDVOBE Development program, outline state agency responsibilities in terms of program purpose, scope, and applicability, as well as provide for implementation of a statewide certification program.

(1) Pursuant to Part 252.1, in order for a SDVOBE to benefit from this program, the business must be certified by the Office of General Services Division of Service-Disabled Veteran Owned Business Development (DSDVBD). This certification process is to ensure that the appropriate businesses, for which this regulation has been drafted, receive maximum

benefits from the program. A certified SDVOBE means a business enterprise that is independently owned and operated and is authorized to do business in New York State. The business must be at least 51% owned by one or more service-disabled veterans in such a way that ownership is real, substantial, and continuous and the service-disabled veteran must exercise independent control over day-to-day business.

(2) The SDVOBE must be a small business, meaning that the business has a significant business presence in the state, but is not dominant in its field and employs, based on industry, a certain number of persons as determined by the director, but not to exceed three hundred, taking into account various other factors. (252.1(v)).

(3) Pursuant to Part 252.1(s) and (z), to be considered a service-disabled veteran, one must have received an honorable or general discharge from, the United States army, navy, marines, air force, coast guard, and/or reserves thereof, and/or in the army national guard, air national guard, New York guard and/or the New York naval militia. In addition, (a) in the case of the United States army, navy, air force, marines, coast guard, army national guard or air national guard and/or reserves thereof, a veteran must have received a compensation rating of ten percent or greater from the United States department of veterans affairs or from the United States department of defense because of a service-connected disability incurred in the line of duty and (b) in the case of the New York guard or the New York naval militia and/or reserves thereof, a veteran must be certified by the New York State Division of Veterans’ Affairs pursuant to the appropriate provisions contained within the code of federal regulations, as having an injury equivalent to a compensation rating of ten percent or greater from the United States department of veterans affairs or from the United States department of defense because of a service-connected disability incurred in the line of duty.

(4) Pursuant to Parts 252.1(f) and 252.2, in order for a certified SDVOBE to benefit from a state procurement contract governed by this regulation, the SDVOBE must perform a commercially useful function by actually performing, managing, and supervising the work for which he/she is responsible. Additionally, where applicable, the SDVOBE must also be responsible, with respect to materials and supplies used on the contract, for ordering and negotiating price, determining quality and quantity and installation. The SDVOBE must add substantive value to the contract to be considered a commercially useful function. Various other factors may be applied to make a final determination.

(5) This program may be implemented using a “set aside”. A set aside means the reservation in whole or in part of certain procurements by state agencies bidding where more than one certified SDVOBE can provide the services and/or commodities necessary to the state procurement contract. (252.1(t)). The Commissioner of the Office of General Services, in consultation with state agencies shall develop and provide written guidance on the appropriate use of set asides to state agencies. (252.2(10)).

(6) Pursuant to Part 252.2(1), in order to maximize the effectiveness of this program, where it is practical, feasible and appropriate, state agencies will seek to meet a six percent goal of participation by SDVOBEs on all state contracts. Where it is not practical, feasible or appropriate for a State agency to seek the statewide goal of six percent, the agency may request a waiver. Individual State Agencies may adopt agency-specific goals as long as those goals are reflected in the State agency’s master goal plan submitted to the DSDVBD, and that the agency-specific goals are justified based on the following factors: (1) statewide availability of SDVBs for construction, construction services, non-construction services, technology, commodities, or products; (2) statewide availability of SDVOBEs for the state agency’s State contracts found in the Directory of Service-Disabled Veteran Owned Businesses maintained by Office of General Services; (3) the geographic location of the performance of the State contract; (4) the extent to which the geographical location of performance of the State contract hinders the ability of SDVOBEs to perform; and (5) other relevant factors.

(7) Pursuant to Part 252.2(2)-(4), each state agency must have a master goal plan on file with the DSDVBD which must include any agency-specific goals, justifications thereof, descriptions of implementation strategies, practices, and procedures, as well as a list of personnel responsible for implementation. Each State agency’s master goal plan is subject to review by the Director of the DSDVBD to ensure reasonableness of goals, as well as to judge the prospective effectiveness of the plan with regards to the program’s overall goal of promoting SDVOBEs.

(8) Pursuant to Part 252.2(5), each state agency must submit a report to the Office of General Services annually, and the report must include the relevant information necessary to assess the success of implementation of the master goal plan, including, but not limited to, the number of contracts entered into pursuant to this program’s objectives and the amount of successful certification applications.

(9) Pursuant to Part 252.2(6), each state agency must demonstrate a good faith effort to meet to state agency’s goal adopted pursuant to this program. Whether or not a good faith effort has been made is determined

by Director of the DSDVBD using the following factors: (1) the availability of SDVOBEs capable of participating in the relevant state contracts; (2) State agency strategy to unbundle State contracts and solicit bids from SDVOBEs; (3) whether there were available SDVOBEs outside the region that could have performed; (4) whether joint ventures or other similar arrangements in order to include SDVOBEs were encouraged; (5) the number of opportunities the state agency could have made discretionary purchases from SDVOBEs, versus the number of times the state agency actually did so; (6) the amount paid to certified SDVOBEs as a result of state agency's discretionary purchasing; (7) whether the state agency utilized set asides; (8) whether the state agency had the appropriate processes and procedures in place to ensure compliance with the goals, utilization plans, utilization reports, and waivers of this program; (9) whether the state agency submitted the appropriate reports; (10) any other relevant information or factors; and (11) any other information submitted by the state agency or other criteria that the Director of the DSDVBD deems relevant.

(10) Pursuant to Part 252.2(7), any State agency that fails to meet its goals must review its master goal plan and identify the necessary steps to be taken in order to meet its goals. The State agency may confer with the Director of DSDVBD to discuss performance improvements.

(11) Contractors shall be notified of the goal in the appropriate bid documents, and will also be provided with the current electronic list of certified Service-Disabled Veteran-Owned Businesses. Contractors will then be required by State agencies to submit utilization plans which identify how the contractor plans to meet the contract's goals for SDVOBE participation. The Contractor's utilization plan is subject to approval based on the contract's goals. If not approved, the Contractor may attempt to remedy any deficiencies and re-submit within seven days. If the contractor fails to comply he/she may be disqualified. Once a State contract is executed, and the Contractor's utilization plan has been approved, or appropriately waived, the plan will be posted on the State agency's website. Contractors must report directly to the state agency on utilization plan compliance. (252.2(17)). Subsequent to being awarded a State contract, the contractor may file a complaint with the State after becoming deficient with the implementation of the utilization plan in order to request a full or partial waiver. (252.2(18)).

(12) Similar to the scrutiny imposed on State agency compliance, contractors must be able to demonstrate a good faith effort to comply with their utilization plans by using certified SDVOBEs in a commercially useful function for the appropriate predetermined percentage value. Where the State has determined that a contractor has failed to comply and demonstrate a good faith effort to comply, after having given notice of deficiency, the state agency may proceed with the next ranked bidder if the state agency has not received a request to review its determination. Any contractor who willfully and intentionally fails to comply with the SDVOBE participation requirements shall be liable for damages, and shall provide for other appropriate remedies. (252.2(19)).

(13) State agencies are responsible for determining contractor compliance with goals established in State contracts. (252.2(16)).

(14) Pursuant to Part 252.3, in order to effectively and efficiently implement the objectives of the DSDVBD, the SDVOBEs must be properly certified. Applications can be obtained and returned to the DSDVBD. Applicants must be able to demonstrate that the SDVOBE meets the appropriate definitions of "small business," "veteran," and "service-disabled," where the service-disabled veteran exercises the requisite control and ownership over the business. As part of the application process, the place of business may be subject to inspection. Applicants will receive a status notification of the application, including any deficiencies that must be addressed, within thirty days of the date stamped on the application. Any deficiency must be cured within twenty days of notification or else the applicant will receive notification that the application has been rejected. An application may be withdrawn by an applicant without prejudice. Upon rejection of an application, an applicant must wait ninety days before re-applying. A written determination approving or denying an application must be provided in writing within sixty days of mailing the notice of application completion. Certification may be held for five years, unless certification is revoked, under the appropriate revocation procedures, due to a change in circumstances resulting in an applicant no longer being entitled to certification. Applicants already holding federal certification do not have to submit a New York State application and may instead submit a supplemental application.

**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 October 28, 2014.

**Text of rule and any required statements and analyses may be obtained from:** Paula B. Hanlon, Esq., New York State Office of General Services, 41st Floor, Corning Tower, Empire State Plaza, Albany, New York 12242, (518) 474-5607, email: RegsReceipt@ogs.ny.gov

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

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

#### **Regulatory Impact Statement**

1. Statutory authority: Chapter 22 of the Laws of 2014 amended the Executive Law by creating a new Article 17-B, which establishes a program to increase participation of "Service-Disabled Veteran-Owned Business Enterprises", ("SDVOBE" as defined in the Text) in State contracting. Additionally, it required the Commissioner of the Office of General Services ("OGS") to promulgate regulations, within 90 days of the effective date of the new Article (May 12, 2014) to implement the new program created by law.

2. Legislative objectives: By enacting Chapter 22 of the Laws of 2014, the Legislature sought to increase Service-Disabled Veterans', ("SDV" as defined in the Text) participation in the economy. The Legislature sought to provide additional assistance and support to better equip disabled veterans to form and expand small businesses. Chapter 22 provides that the Director of the Division of Service-Disabled Veterans' Business Development ("Director") or Commissioner of General Services promulgate regulations that contain specific provisions that (a) provide measures and procedures to ensure that SDVOBEs are afforded the opportunity for meaningful participation in the performance of state contracts and to assist in state agencies' identification of those state contracts for which SDVOBEs may best perform; (b) provide for measures and procedures that assist state agencies in the identification of state contracts where service-disabled veteran contract goals are practical, feasible and appropriate for the purpose of increasing the utilization of SDVOBE participation on state contracts; (c) achieve a statewide goal for participation on state contracts by SDVOBEs of six percent; (d) provide for procedures relating to submission and receipt of applications by SDVOBEs for certification; (e) provide for the monitoring and compliance of state contracts by state agencies with respect to the provisions of this article; (f) provide for the requirement that state agencies submit regular reports, as determined by the director, with respect to their SDVOBE program activity, including but not limited to, utilization reporting and state contract monitoring and compliance; (g) notwithstanding any provision of the State Finance Law, the Public Buildings Law, the Highway law, the Transportation Law or the Public Authorities Law to the contrary, provide for the reservation or set-aside of certain procurements by state agencies in order to achieve the objectives of Article 17-B of the Executive Law; provided, however, that such procurements shall remain subject to (i) priority of preferred sources pursuant to Sections one hundred sixty-two and one hundred sixty-three of the State Finance Law; (ii) the approval of the Comptroller of the State of New York pursuant to Section one hundred twelve and Section one hundred sixty-three of the State Finance Law and Section twenty-eight hundred seventy-nine-a of the Public Authorities Law; and (iii) the procurement record requirements pursuant to Paragraph g of Subdivision nine of Section one hundred sixty-three of the State Finance Law; and (h) provide for any other purposes to effectuate the new Article 17-B.

3. Needs and benefits: In order to enable Service-Disabled Veteran-Owned Businesses to grow and thrive by conducting business with the State of New York, Chapter 22 of the Laws of 2014 specifically mandates that regulations be promulgated to effectuate the Service-Disabled Veteran-Owned Business Enterprise program. The addition of a new 9 NYCRR 252 is necessary to comply with that mandate and will assist state agencies in maximizing their opportunities.

Among other things, the regulations establish a statewide certification program that provides standards and criteria for the Division of Service-Disabled Veterans' Business Development ("Division") to consider when determining whether to approve, deny or revoke an applicant's SDVOBE certification. Having a set list of criteria and an established process to follow helps to ensure that all applications will be evaluated in a consistent manner. Without these regulations, there is a risk that applicants could be evaluated using different criteria, resulting in inconsistent determinations. Establishing the criteria in regulation creates transparency and ensures the integrity of the program.

These regulations will also assist Service-Disabled Veterans by clarifying the criteria they need to meet in order to submit an application. Providing this information in regulation helps to ensure that any SDVOBE wishing to become certified, will know what is expected of them during the application process. Without providing a detailed process to follow, applications could be incomplete upon submission or misdirected to an incorrect location. The regulations provide a clear and single resource for applicants to go to for direction.

Additionally, new Part 252 establishes standards, criteria and procedures for state agencies to follow when setting annual goals for participation. They also establish a process by which state agencies submit their master goal plans. The regulations are necessary to maintain consistency across the agencies. They provide what information needs to be

reported, as well as the procedures state agencies need to follow when submitting their plans. Finally, the regulations provide consequences for those state agencies failing to meet their goals. In order for the program to be successful, there must be a documented process in place for state agencies that do not comply.

4. Costs:

a. Costs to state agencies and Authorities. OGS expects that costs to state agencies and Authorities associated with the proposed regulations would be minimal, if any and would be associated with the administrative responsibilities associated with the proposed regulations, such as the creation of the goal plans required by legislation.

b. Costs to local governments. The regulations do not apply to local governments and therefore do not impose any costs on local governments.

c. Costs to private regulated parties. OGS expects that there would be minimal, if any costs associated with the proposed regulations. The transmittal of applications and supporting documentation (if mailed) would have minimal costs associated, but are not anticipated to be significant or greater than normal business opportunity costs.

d. Costs to the Division. OGS expects that there will only be minimal, if any additional costs associated with the proposed regulations. The creation of a Director position is directed by the legislation. Any costs related to the proposed regulations would be associated with the administrative processing of certification applications submitted by applicants and plans and reports submitted by state agencies and Authorities.

5. Local government mandates: The subject regulations do not impose any program, service duty or responsibility upon any local governments, school districts, fire districts, or other special districts.

6. Paperwork: The regulations will have minimal paperwork implications. The Division will need to create an application form that SDVOBEs may use to apply for certification, but the application is expected to be available on-line as well as in paper form. Additionally, state agencies and Authorities are required to prepare goal plans and the Division is required to submit annual reports, but those requirements are directed by the legislation rather than by the proposed regulations. It is expected that the overall addition of paperwork to comply with the proposed regulations will be minimal.

7. Duplication: The subject regulations do not duplicate other existing Federal or State requirements.

8. Alternatives: Although the option of taking no regulatory action was considered, this alternative was rejected since Chapter 22 of the Laws of 2014 requires that Director of the Division of Service-Disabled Veterans' Business Development, or the Commissioner of the Office of General Services promulgate rules and regulations for the specific purposes provided above in the "legislative objectives" section of this statement.

OGS has drafted these regulations streamlining the certification process and operations of the SDVOBE program to ensure that the benefits of the program are quickly provided to these businesses and diversify State procurements.

9. Federal standards: The regulations do not exceed any Federal standards for similar SDVOBE programs.

10. Compliance schedule: The regulations will be effective immediately upon adoption of the regulations.

**Regulatory Flexibility Analysis**

Application to the Service-Disabled Veteran-Owned Business Enterprise program is entirely at the discretion of each eligible business enterprise. Neither Executive Law Article 17-B nor the proposed regulations impose an obligation on any local government or business entity to participate in the program. The proposed regulations apply to State Agencies and Authorities as defined by Article 17-B. The proposed regulations do not impose any adverse economic impact, reporting, recordkeeping, or other compliance requirements on small businesses and/or local governments. In fact, the proposed regulations may have a positive economic impact on small businesses as the changes created in the proposed regulations may increase the number of certified small businesses that are able to access contracting opportunities throughout New York State. An argument could be made that the proposed regulations may negatively affect non-service-disabled veteran-owned businesses wishing to contract with the State, as preference/set-aside will now be given to certified service-disabled veteran-owned businesses. However, it is impossible to determine with any precision if this outcome will occur. The changes are anticipated to produce a positive impact by increasing competition between small businesses seeking to contract with the State, thus enabling contracting agencies to obtain a better value, while at the same time increasing the number of service-disabled veterans who have access to contracting opportunities.

The regulations do not apply to local governments and therefore, they will have no substantive impact on them. Additionally, it is evident from the nature of the regulations that they will have no substantive negative impact on small businesses. In fact, the regulations could have a positive impact, and therefore no further affirmative steps were needed to ascertain

that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

**Rural Area Flexibility Analysis**

The Service-Disabled Veteran-Owned Business Enterprise program is a statewide program. While there are eligible businesses located in rural areas of New York State, participation in the program is entirely voluntary. Additionally, any requirements imposed by the regulations, such as the submission of applications and reports, are the same for any business choosing to participate from rural or urban areas.

This action will not impose any adverse impact, reporting, record keeping or other compliance requirements on public or private entities in rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

**Job Impact Statement**

The Office of General Services projects no substantial adverse impact on jobs or employment opportunities in the State of New York as a result of the amendment of this rule. The amendment simply adds a new 9 NYCRR 252 to implement provisions of the Service-Disabled Veteran-Owned Business Enterprise program, established pursuant to Chapter 22 of the Laws of 2014. Nothing in the proposed regulations will substantially increase or decrease the number of jobs in New York State, have an adverse impact on specific regions in New York State or negatively impact jobs in New York State.

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## Higher Education Services Corporation

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### EMERGENCY RULE MAKING

**New York State Science, Technology, Engineering and Mathematics Incentive Program**

**I.D. No.** ESC-33-14-00001-E

**Filing No.** 690

**Filing Date:** 2014-07-30

**Effective Date:** 2014-07-30

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

**Action taken:** Addition of section 2201.13 to Title 8 NYCRR.

**Statutory authority:** Education Law, sections 653, 655 and 669-e

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

**Specific reasons underlying the finding of necessity:** This statement is being submitted pursuant to subdivision (6) of section 202 of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This regulation implements a statutory student financial aid program providing for awards to be made to students beginning with the fall 2014 term. Emergency adoption is necessary to avoid an adverse impact on the processing of awards to eligible scholarship applicants. The statute provides for tuition benefits to college-going students who, beginning August 2014, pursue an undergraduate program of study in science, technology, engineering, or mathematics at a New York State public institution of higher education. High school students entering college in August must inform the institution of their intent to enroll no later than May 1. Therefore, it is critical that the terms of the program as provided in the regulation be available immediately in order for HESC to process scholarship applications so that students can make informed choices. To accomplish this mandate, the statute further provides for HESC to promulgate emergency regulations to implement the program. For these reasons, compliance with section 202(1) of the State Administrative Procedure Act would be contrary to the public interest.

**Subject:** New York State Science, Technology, Engineering and Mathematics Incentive Program.

**Purpose:** To implement the New York State Science, Technology, Engineering and Mathematics Incentive Program.

**Text of emergency rule:** PART 2201. GENERAL ELIGIBILITY CRITERIA

New section 2201.13 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.13 *New York State Science, Technology, Engineering and Mathematics Incentive Program*.

(a) Definitions. The following definitions apply to this section:

(1) "Award" shall mean a New York State Science, Technology, Engineering and Mathematics Incentive Program award pursuant to section 669-e of the New York State education law.

(2) "Employment" shall mean continuous employment for at least thirty-five hours per week in the science, technology, engineering or mathematics field, as published on the corporation's website, for a public or private entity located in New York State for five years after the completion of the undergraduate degree program and, if applicable, a higher degree program or professional licensure degree program and a grace period as authorized by section 669-e(4) of the education law.

(3) "Grace period" shall mean a six month period following a recipient's date of graduation from a public institution of higher education and, if applicable, a higher degree program or professional licensure degree program as authorized by section 669-e(4) of the education law.

(4) "High school class" shall mean the total number of students eligible to graduate from a high school in the applicable school year.

(5) "Interruption in undergraduate study or employment" shall mean a temporary period of leave for a definitive length of time due to circumstances as determined by the corporation, including, but not limited to, maternity/paternity leave, death of a family member, or military duty.

(6) "Program" shall mean the New York State Science, Technology, Engineering and Mathematics Incentive Program codified in section 669-e of the education law.

(7) "Public institution of higher education" shall mean the state university of New York, as defined in subdivision 3 of section 352 of the education law, a community college as defined in subdivision 2 of section 6301 of the education law, or the city university of New York as defined in subdivision 2 of section 6202 of the education law.

(8) "School year" shall mean the period commencing on the first day of July in each year and ending on the thirtieth day of June next following.

(9) "Science, technology, engineering and mathematics" programs shall mean those undergraduate degree programs designated by the corporation on an annual basis and published on the corporation's website.

(10) "Successful completion of a term" shall mean that at the end of any academic term, the recipient: (i) met the eligibility requirements for the award pursuant to sections 661 and 669-e of the education law; (ii) completed at least 12 credit hours or its equivalent in a course of study leading to an approved undergraduate degree in the field of science, technology, engineering, or mathematics; and (iii) possessed a cumulative grade point average (GPA) of 2.5 as of the date of the certification by the institution. Notwithstanding, the GPA requirement is preliminarily waived for the first academic term for programs whose terms are organized in semesters, and for the first two academic terms for programs whose terms are organized on a trimester basis. In the event the recipient's cumulative GPA is less than a 2.5 at the end of his or her first academic year, the recipient will not be eligible for an award for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. In such case, the award received for the first academic term for programs whose terms are organized in semesters and for the first two academic terms for programs whose terms are organized on a trimester basis must be returned to the corporation and the institution may reconcile the student's account, making allowances for any other federal, state, or institutional aid the student is eligible to receive for such terms unless: (A) the recipient's GPA in his or her first academic term for programs whose terms are organized in semesters was a 2.5 or above, or (B) the recipient's GPA in his or her first two academic terms for programs whose terms are organized on a trimester basis was a 2.5 or above, in which case the institution may retain the award received and only reconcile the student's account for the second academic term for programs whose terms are organized in semesters or for the third academic term for programs whose terms are organized on a trimester basis. The corporation shall issue a guidance document, which will be published on its website.

(b) Eligibility. An applicant for an award under this program pursuant to section 669-e of the education law must also satisfy the general eligibility requirements provided in section 661 of the education law.

(c) Class rank or placement. As a condition of an applicant's eligibility, the applicant's high school shall provide the corporation:

(1) official documentation from the high school either (i) showing the applicant's class rank together with the total number of students in such applicant's high school class or (ii) certifying that the applicant is in the top 10 percent of such applicant's high school class; and

(2) the applicant's most current high school transcript; and

(3) an explanation of how the size of the high school class, as defined

in subdivision (a), was determined and the total number of students in such class using such methodology. If the high school does not rank the students in such high school class, the high school shall also provide the corporation with an explanation of the method used to calculate the top 10 percent of students in the high school class, and the number of students in the top 10 percent, as calculated. Each methodology must comply with the terms of this program as well as be rational and reasonable. In the event the corporation determines that the methodology used by the high school fails to comply with the term of the program, or is irrational or unreasonable, the applicant will be denied the award for failure to satisfy the eligibility requirements; and

(4) any additional information the corporation deems necessary to determine that the applicant has graduated within the top 10 percent of his or her high school class.

(d) Administration.

(1) Applicants for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility; and

(ii) postmark or electronically transmit applications for program eligibility to the corporation on or before the date prescribed by the corporation for the applicable academic year. Notwithstanding any other rule or regulation to the contrary, such applications shall be received by the corporation no later than August 15th of the applicant's year of graduation from high school.

(2) Recipients of an award shall:

(i) execute a service contract prescribed by the corporation;

(ii) apply for payment annually on forms specified by the corporation;

(iii) confirm annually their enrollment in an approved undergraduate program in science, technology, engineering, or mathematics;

(iv) receive such awards for not more than four academic years of full-time undergraduate study or five academic years if the program of study normally requires five years, as defined by the commissioner pursuant to article thirteen of the education law, excluding any allowable interruption of study; and

(v) respond to the corporation's requests for a letter from their employer attesting to the employee's job title, the employee's number of hours per work week, and any other information necessary for the corporation to determine compliance with the program's employment requirements.

(e) Amounts.

(1) The amount of the award shall be determined in accordance with section 669-e of the education law.

(2) Disbursements shall be made each term to institutions, on behalf of recipients, within a reasonable time upon successful completion of the term subject to the verification and certification by the institution of the recipient's GPA and other eligibility requirements.

(3) Awards shall be reduced by the value of other educational grants and scholarships limited to tuition, as authorized by section 669-e of the education law.

(f) Failure to comply.

(1) All award monies received shall be converted to a 10-year student loan plus interest for recipients who fail to meet the statutory, regulatory, contractual, administrative or other requirement of this program.

(2) The interest rate for the loan shall be fixed and equal to that published annually by the U.S. Department of Education for undergraduate unsubsidized Stafford loans at the time the recipient signed the service contract with the corporation.

(3) Interest shall begin to accrue on the day each award payment is disbursed to the institution.

(4) Interest shall be capitalized on the day the award recipient violates any term of the service contract or the date the corporation deems the recipient was no longer able or willing to perform the terms of the service contract. Interest on this amount shall be calculated using simple interest.

(5) Where a recipient has demonstrated extreme hardship as a result of a total and permanent disability, labor market conditions, or other such circumstances, the corporation may, in its discretion, postpone converting the award to a student loan, temporarily suspend repayment of the amount owed, prorate the amount owed commensurate with service completed, discharge the amount owed, or such other appropriate action. Where a recipient has demonstrated in-school status, the corporation shall temporarily suspend repayment of the amount owed for the period of in-school status.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire October 27, 2014.

**Text of rule and any required statements and analyses may be obtained from:** Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov

**Regulatory Impact Statement****Statutory authority:**

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Science, Technology, Engineering and Mathematics Incentive Program ("Program") is codified within Article 14 of the Education Law. In particular, Part G of Chapter 56 of the Laws of 2014 created the Program by adding a new section 669-e to the Education Law. Subdivision 5 of section 669-e of the Education Law authorizes HESC to promulgate emergency regulations for the purpose of administering this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs, the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of state student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

**Legislative objectives:**

The Education Law was amended to add a new section 669-e to create the "New York State Science, Technology, Engineering and Mathematics Incentive Program" (Program). This Program is aimed at increasing the number of individuals working in the fields of science, technology, engineering and mathematics (STEM) in New York State to meet the increasingly critical need for those skills in the State's economy.

**Needs and benefits:**

According to a February 2012 report by President Obama's Council of Advisors on Science and Technology, there is a need to add to the American workforce over the next decade approximately one million more science, technology, engineering and mathematics (STEM) professionals than the United States will produce at current rates in order for the country to stay competitive. To meet this goal, the United States will need to increase the number of students who receive undergraduate STEM degrees by about 34% annually over current rates. The report also stated that fewer than 40% of students who enter college intending to major in a STEM field complete a STEM degree. Further, a recent Wall Street Journal article reported that New York state suffers from a shortage of graduates in STEM fields to fill the influx of high-tech jobs that occurred five years ago. At a plant in Malta, about half the jobs were filled by people brought in from outside New York and 11 percent were foreigners. According to the article, Bayer Corp. is due to release a report showing that half of the recruiters from large U.S. companies surveyed couldn't find enough job candidates with four-year STEM degrees in a timely manner; some said that had led to more recruitment of foreigners. About two-thirds of the recruiters surveyed said that their companies were creating more STEM positions than other types of jobs. There are also many jobs requiring a two-year degree. In an effort to deal with this shortage, companies are using more internships, grants and scholarships.

The Program is aimed at increasing the number New York graduates with two and four year degrees in STEM who will be working in STEM fields across New York state. Eligible recipients may receive annual awards for not more than four academic years of undergraduate full-time study (or five years if enrolled in a five-year program) while matriculated in an approved program leading to a career in STEM.

The maximum amount of the award is equal to the annual tuition charged to New York State resident students attending an undergraduate program at the State University of New York (SUNY), including state operated institutions, or City University of New York (CUNY). The current maximum annual award for the 2014-15 academic year is \$6,170. Payments will be made directly to schools on behalf of students upon certification of their successful completion of the academic term.

Students receiving a New York State Science, Technology, Engineering and Mathematics Incentive Program award must sign a service agreement and agree to work in New York state for five years in a STEM field and reside in the State during those five years. Recipients who do not fulfill their service obligation will have the value of their awards converted to a student loan and be responsible for interest.

**Costs:**

a. It is anticipated that there will be no costs to the agency for the implementation of, or continuing compliance with this rule.

b. The maximum cost of the program to the State is \$8 million in the first year based upon budget estimates.

c. It is anticipated that there will be no costs to Local Governments for the implementation of, or continuing compliance with, this rule.

d. The source of the cost data in (b) above is derived from the New York State Division of the Budget.

**Local government mandates:**

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

**Paperwork:**

This proposal will require applicants to file an electronic application for each year they wish to receive an award up to and including five years of eligibility. Recipients are required to sign a contract for services in exchange for an award. Recipients must submit annual status reports until a final disposition is reached in accordance with the written contract.

**Duplication:**

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

**Alternatives:**

The proposed regulation is the result of HESC's outreach efforts to financial aid professionals with regard to this Program. Several alternatives were considered in the drafting of this regulation. For example, several alternatives were considered in defining terms/phrases used in the regulation as well as the academic progress requirement. Given the statutory language as set forth in section 669-e of the Education Law, a "no action" alternative was not an option.

**Federal standards:**

This proposal does not exceed any minimum standards of the Federal Government, and efforts were made to align it with similar federal subject areas as evidenced by the adoption of the federal unsubsidized Stafford loan rate in the event that the award is converted into a student loan.

**Compliance schedule:**

The agency will be able to comply with the regulation immediately upon its adoption.

**Regulatory Flexibility Analysis**

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's ("HESC") Emergency Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse economic impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will provide an economic benefit to the State's small businesses and local governments as well.

**Rural Area Flexibility Analysis**

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Emergency Rule Making, seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not impose an adverse impact on rural areas. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at a New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit rural areas around the State as well.

This agency finds that this rule will not impose any reporting, record-keeping or other compliance requirements on public or private entities in rural areas.

**Job Impact Statement**

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of New York State Higher Education Services Corporation's Emergency Rule Making seeking to add a new section 2201.13 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have any negative impact on jobs or employment opportunities. Rather, it has potential positive impacts inasmuch as it implements a statutory student financial aid program that provides tuition benefits to college students who pursue their undergraduate studies in the fields of science, technology, engineering, or mathematics at New York State public institution of higher education. Students will be rewarded for remaining and working in New York, which will benefit the State as well.

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## Department of Law

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

#### Contents of Annual Financial Reports Filed with the Attorney General by Certain Nonprofits

**I.D. No.** LAW-33-14-00005-EP

**Filing No.** 694

**Filing Date:** 2014-07-31

**Effective Date:** 2014-07-31

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

**Proposed Action:** Repeal of section 91.6 of Title 13 NYCRR.

**Statutory authority:** Executive Law, section 177(1); and Estates, Powers and Trust Law, section 8-1.4(h)

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

**Specific reasons underlying the finding of necessity:** The specific reasons underlying the finding of necessity, above, are as follows. On June 1, 2014, section 14-107 of the Election Law and applicable rules promulgated by the New York State Board of Elections (“BOE”) became effective. These provisions have made the requirements of 13 N.Y.C.R.R. section 91.6 (hereinafter “section 91.6”) largely redundant, and in some cases contradictory, and place an unnecessary burden on covered organizations. Section 14-107 of the Election Law and the applicable rules require any person or corporation that makes an election related expenditure (defined as an “independent expenditure”) above certain thresholds to disclose information about such expenditures and related contributions to the BOE. Accordingly, covered organizations that are required to make election related disclosures pursuant to section 91.6 are currently required to make similar election related disclosures to the BOE. The differences in the required disclosures between section 91.6 and section 14-107 of the Election Law are not significant enough to justify requiring covered organizations to incur the expense of complying with both regulatory regimes. Having determined that section 91.6 currently imposes a redundant, contradictory, and unnecessary reporting requirement on not-for-profits, the Department of Law has further determined that it is necessary to promote the general welfare to immediately repeal section 91.6, and that it is against the public interest to delay eliminating the unnecessary burden.

**Subject:** Contents of annual financial reports filed with the Attorney General by certain nonprofits.

**Purpose:** To repeal rule requiring that nonprofits disclose information about election advocacy to the Attorney General.

**Text of emergency/proposed rule:** 13 N.Y.C.R.R. Section 91.6 is hereby repealed.

**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 October 28, 2014.

**Text of rule and any required statements and analyses may be obtained from:** Gregory Krakower, Department of Law, 120 Broadway, New York, NY 10271, (212) 416-8030, email: gregory.krakower@ag.ny.gov

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

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

#### Regulatory Impact Statement

1. Statutory Authority. Article 7-A of the Executive Law (hereinafter “Article 7-A”) and Article 8 of the Estates, Powers & Trusts Law (hereinafter “EPTL”) require certain organizations and trusts to file annual financial reports and other disclosures with the Attorney General, and

require the Attorney General to establish and maintain a register of such disclosures. Section 177(1) of the Executive Law and section 8-1.4(h) of the EPTL empower the Attorney General to make rules and regulations necessary for the administration of these provisions.

2. Legislative Objectives. The rule would repeal 13 N.Y.C.R.R. section 91.6 (hereinafter “section 91.6”). Section 91.6 requires certain not-for-profit organizations and trusts that are registered with the Attorney General and that may participate or intervene in political campaigns (hereinafter “covered organizations”) to disclose certain election related expenditures and election related donations in annual financial reports that are submitted to the Attorney General.

3. Needs and Benefits. The Department of Law believes that section 91.6 should be repealed. On June 1, 2014, section 14-107 of the Election Law and applicable rules promulgated by the New York State Board of Elections (“BOE”) became effective. These provisions make the requirements of section 91.6 largely redundant, and in some cases contradictory, and place an unnecessary burden on covered organizations. Section 14-107 of the Election Law and the applicable rules require any person or corporation that makes an election related expenditure (defined as an “independent expenditure”) above certain thresholds to disclose information about such expenditures and related contributions to the BOE. Accordingly, covered organizations that are required to make election related disclosures pursuant to section 91.6 are now required to make similar election related disclosures to the BOE. The differences in the required disclosures between section 91.6 and section 14-107 of the Election Law (e.g. different threshold amounts, the definitions of certain forms of election advocacy, membership exemptions, waiver provisions, etc.) are not significant enough to justify requiring covered organizations to incur the expense of complying with both regulatory regimes. Furthermore, while section 91.6, in accordance with the limitations of Article 7-A and the EPTL, only requires covered organizations to make election related disclosures to the Attorney General on an annual basis, section 14-107 of the Election Law and the applicable rules require such organizations to report disclosures more frequently, and nearly in “real time” as elections approach. Thus, section 14-107 adequately fulfills the policy and regulatory objectives of section 91.6.

4. Costs. This rule will save covered organizations the costs of having to track and disclose information on their election related activity to the Attorney General. In light of the new Election Law and applicable rules, requiring covered organizations to incur such costs is no longer necessary to effectuate the central purposes of section 91.6. The proposed repeal of section 91.6 will also result in the Department of Law not having to incur costs associated with processing filings of the new disclosure schedule by covered organizations, and with reviewing and making determinations concerning any applications for exemption from disclosure.

5. Paperwork. The repeal of section 91.6 will ensure that covered organizations will not have to make duplicative or unnecessary filings with the Attorney General pursuant to section 91.6, given the disclosure requirements of section 14-107 of the Election Law and applicable rules.

6. Local Government Mandates. None.

7. Duplications. The repeal of section 91.6 will ensure that covered organizations will not have to make duplicative or unnecessary filings with the Attorney General pursuant to section 91.6, given the disclosure requirements of section 14-107 of the Election Law and applicable rules.

8. Alternatives. As an alternative to repealing section 91.6, the Department of Law contemplated amending the rule to grant an exemption to any covered organization that complies with section 14-107 of the Election Law. However, this alternative was rejected as not adequately reducing unnecessary burdens on covered organizations in light of section 14-107 of the Election Law and applicable rules.

9. Federal Standards. There are no federal standards implicated by the repeal of section 91.6.

10. Compliance Schedule. Covered organizations will not have to make any additional disclosures in their annual report immediately upon the proposed repeal becoming effective.

#### Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not required. The repeal of 13 N.Y.C.R.R. § 91.6 will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. 13 N.Y.C.R.R. § 91.6 requires nonprofit organizations that are registered with the Attorney General and that are legally allowed to engage in election-related advocacy to include in their annual financial report a calculation of the percentage of total expenses spent on such election advocacy. That section also requires nonprofit organizations that spend over \$10,000 in any fiscal year to influence state or local elections in New York to include an additional schedule in their annual report filed with the Attorney General that itemizes specific information regarding expenditures and donations related to such election advocacy, unless the information is reported to another public agency and

made available to the public. 13 N.Y.C.R.R. § 91.6 thus imposes minor recordkeeping and compliance costs on such nonprofit corporations. The repeal of this section will eliminate these costs and will not result in the imposition of any recordkeeping or compliance costs on small businesses or local governments.

#### **Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not required. The repeal of 13 N.Y.C.R.R. § 91.6 will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. 13 N.Y.C.R.R. § 91.6 requires nonprofit organizations that are registered with the Attorney General and that are legally allowed to engage in election-related advocacy to include in their annual financial report a calculation of the percentage of total expenses spent on such election advocacy. That section also requires nonprofit organizations that spend over \$10,000 in any fiscal year to influence state or local elections in New York to include an additional schedule in their annual report filed with the Attorney General that itemizes specific information regarding expenditures and donations related to such election advocacy, unless the information is reported to another public agency and made available to the public. 13 N.Y.C.R.R. § 91.6 thus imposes minor recordkeeping and compliance costs on such nonprofit corporations. The repeal of this section will eliminate these costs and will not result in the imposition of any recordkeeping or compliance costs on nonprofits in rural areas.

- (ii) *Benefits and financial management;*
- (iii) *Community living exploration;*
- (iv) *Information and education regarding self help; and*
- (v) *Wellness self management.*

(4) *If two or three of the identified CRS services are delivered off site to individuals in the target population in a calendar month, programs will be reimbursed at the base rate plus \$135 (upstate) or \$150 (downstate). If four or more of the identified CRS services are delivered off site to individuals in the target population in a calendar month, programs will be reimbursed at the base rate plus \$270 (upstate) or \$300 (downstate).*

**Text of proposed rule and any required statements and analyses may be obtained from:** Sue Watson, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Sue.Watson@omh.ny.gov

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

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

#### **Regulatory Impact Statement**

1. Statutory authority: Subdivision (b) of Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health (OMH) the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Subdivision (a) of Section 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the rendition of services for persons with mental illness.

Subdivision (a) of Section 43.02 of the Mental Hygiene Law provides that payments under the Medical Assistance Program for services approved by OMH shall be at rates certified by the Commissioner of Mental Health and approved by the Director of the Budget. Subdivision (b) of Section 43.02 of the Mental Hygiene Law gives the Commissioner authority to request from operators of facilities licensed by OMH such financial, statistical and program information as the Commissioner may determine to be necessary. Subdivision (c) of Section 43.02 of the Mental Hygiene Law gives the Commissioner authority to adopt rules and regulations relating to methodologies used in establishment of schedules of rates for services.

Sections 364(3) and 364-a(1) of the Social Services Law give OMH responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

2. Legislative objectives: Articles 7, 31 and 43 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs and establish rates of payments for services under the Medical Assistance program. Sections 364 and 364-a of the Social Services Law reflect the role of OMH regarding Medicaid reimbursement programs. The rule making furthers the Legislative intent under Article 7 by ensuring that the OMH fulfills its responsibility to assure the development of comprehensive plans, programs and services in the care, treatment, rehabilitation and training of persons with mental illness.

3. Needs and benefits: Personalized Recovery-Oriented Services (PROS) is a comprehensive rehabilitation program that offers a range of services used to achieve a desired life role and overcome identified mental health barriers. Recently, the Centers for Medicare and Medicaid Services awarded New York State a "State Balancing Incentive Payment Program Grant" under Section 10202 of the Affordable Care Act. The Balancing Incentive Program (BIP) provides a financial incentive to stimulate greater access to non-institutionally based long-term services and supports. Under this proposal, during the grant period OMH would use BIP funding to provide the financial support needed to help transition individuals identified in the proposed regulation as members of the target population to live in more integrated and independent settings in the community. These individuals, who have received long-term supports and services for at least six months while living in an adult home, nursing home, or State psychiatric center, have been identified by the State as priority populations for integration into community settings.

The PROS model allows unlimited pre-admission services to enable prospective participants to make an informed decision to enroll in the program. Currently, PROS programs receive one rate for pre-admission services in a given month regardless of the number of contacts and use of staff resources. It is anticipated that more staff resources will be required when dealing with individuals from the target population as compared to other prospective PROS participants. This proposed rule increases the current pre-admission rate by 25 percent for the target population.

Existing regulations allow PROS programs to bill a maximum of two consecutive months for the pre-admission rate. This proposal increases the maximum to four consecutive months for pre-admission for the target population since target population members may require more engagement and education efforts in order to make an informed decision to enroll in PROS.

## Office of Mental Health

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

#### **Personalized Recovery Oriented Services (PROS)**

**I.D. No.** OMH-33-14-00006-P

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

**Proposed Action:** Amendment of Part 512 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09, 31.04 and 43.02; Social Services Law, sections 364(3) and 364-a(1)

**Subject:** Personalized Recovery Oriented Services (PROS).

**Purpose:** Provide enhancements to individuals transitioning to more independent community living; reimburse providers for enhanced services.

**Text of proposed rule:** 1. A new subdivision (an) is added to section 512.4 of Title 14 NYCRR to read as follows:

(an) *Target population member means an individual who has received long-term supports and services for at least six (6) months while living in an adult home, nursing home, or as an inpatient in a State psychiatric center, and is currently living in a more independent, integrated community setting. An individual shall be a member of the target population for the purposes of this Part for no longer than 12 consecutive calendar months following discharge from one of the identified settings.*

2. A new section 512.20 is added to Title 14 NYCRR to read as follows:  
§ 512.20 *Target population.*

(a) *Individuals who are members of the target population as defined in Section 512.4 must meet the standard eligibility criteria for enrollment in PROS as defined in Section 512.7 of this Part.*

(b) *In addition to the other provisions of this Part, effective April 1, 2014, the following provisions shall apply to PROS providers that are providing services to members of the target population.*

(1) *Reimbursement for individuals in the target population who are in continuous pre-admission status is limited to four consecutive months, whether or not the individual is ultimately admitted to the program. Programs will be reimbursed for pre-admission services for the target population at the existing pre-admission rate plus 25 percent.*

(2) *Medicaid may reimburse the Intensive Rehabilitation component add-on for up to 50 percent of a provider's total number of monthly base rate bills submitted annually. IR services provided to the target population shall not count toward the 50 percent limitation for Medicaid reimbursement.*

(3) *The following CRS services will offer an enhanced reimbursement when delivered off site, on separate days, to individuals in the target population:*

- (i) *Basic skills living training;*

The Intensive Rehabilitation (IR) component of PROS is designed to help an individual pursue, attain and maintain a desired life role goal, and basic skill development is available through the Community Rehabilitation & Support (CRS) component. The target population, having resided in the identified settings for some time, may need intensive skill development in order to function at a healthy and optimal level. Skill development is most effective in natural settings that allow teaching and practice of specific skills.

Although almost all PROS services are allowed to be provided off-site in the community, current reimbursement rates do not support the additional expense of certain services to be delivered in the community. This proposed rule allows programs to receive higher reimbursement for delivering one or more of the following Community Rehabilitation and Support (CRS) services to the target population in the community: Basic Living Skills, Benefits and Financial Management, Community Living Exploration, Information and Education Regarding Self Help and Wellness Self- Management. Lastly, the proposed rule includes Medicaid fee changes paid to PROS providers of services effective April 1, 2014.

#### 4. Costs:

(a) Cost to State government: BIP funds are 100 percent federal dollars and will be used to support increases in the pre-admission rate and enhanced, off site CRS payment. BIP funds are projected to be available through September, 2015. OMH has committed to continue to financially support serving the target population in PROS beyond the BIP end date, but does not anticipate that a significant percentage of the target population will transition from the identified settings after this period.

(b) Cost to local government: These regulatory amendments are not expected to result in any additional costs to local government.

(c) Cost to regulated parties: These regulatory amendments are not expected to result in any additional costs to regulated parties.

5. Local government mandates: The regulation will not mandate any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule making should not result in an increase in paperwork requirements.

7. Duplication: The regulatory amendment does not duplicate existing State or federal requirements.

8. Alternatives: The only alternative would have been to continue with the current PROS regulations in place. As the amendments serve to provide enhancements to assist individuals in their transition to more independent community living following an extended period in an adult home, nursing home, or State psychiatric center, and serve to reimburse PROS providers for these enhanced services, that alternative was necessarily rejected.

9. Federal standards: The regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule: The regulatory amendment will become effective upon adoption.

#### **Regulatory Flexibility Analysis**

The amendments to 14 NYCRR Part 512 serve to provide the financial support needed to help transition individuals to more integrated and independent settings in the community following an extended period in an adult home, nursing home, or State psychiatric center. As there will be no adverse economic impact on small businesses or local governments as a result of these amendments, a regulatory flexibility analysis is not submitted with this notice.

#### **Rural Area Flexibility Analysis**

The amendments to 14 NYCRR Part 512 serve to provide the financial support needed to help transition individuals to more integrated and independent settings in the community following an extended period in an adult home, nursing home, or State psychiatric center. The proposed rule will not impose any adverse economic impact on rural areas; therefore, a Rural Area Flexibility Analysis is not submitted with this notice.

#### **Job Impact Statement**

A Job Impact Statement is not submitted with this notice because it is evident from the subject matter that there will be no adverse impact on jobs and employment opportunities as a result of these amendments. The amendments to 14 NYCRR Part 512 serve to provide the financial support needed to help transition individuals to more integrated and independent settings in the community following an extended period in an adult home, nursing home, or State psychiatric center.

## Public Service Commission

### NOTICE OF ADOPTION

#### **Approval of Petition of Rego Residential, LLC to Submeter Electricity at 61-35 Junction Boulevard, Rego Park, NY**

**I.D. No.** PSC-17-14-00010-A

**Filing Date:** 2014-07-30

**Effective Date:** 2014-07-30

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

**Action taken:** On 7/24/14, the PSC adopted an order approving the petition by Rego Residential, LLC to submeter electricity at 61-35 Junction Boulevard, Rego Park, NY located in the territory of Consolidated Edison Company of New York, Inc.

**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:** Approval of petition of Rego Residential, LLC to submeter electricity at 61-35 Junction Boulevard, Rego Park, NY.

**Purpose:** To approve the petition of Rego Residential, LLC to submeter electricity at 61-35 Junction Boulevard, Rego Park, NY.

**Substance of final rule:** The Commission, on July 24, 2014, adopted an order approving the petition of Alexander's of Rego Residential, LLC to submeter electricity at 61-35 Junction Boulevard, Rego Park, New York, located in the territory of Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

**Text of rule may be obtained from:** Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: [deborah.swatling@dps.ny.gov](mailto:deborah.swatling@dps.ny.gov) An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

#### **Assessment of Public Comment**

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

(14-E-0098SA1)

### NOTICE OF ADOPTION

#### **Approving the Use of the Sensus AccuWAVE for Use in Residential Gas Meter Applications**

**I.D. No.** PSC-17-14-00011-A

**Filing Date:** 2014-07-30

**Effective Date:** 2014-07-30

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

**Action taken:** On 7/24/14, the PSC adopted an order approving a petition of Niagara Mohawk Power Corporation d/b/a National Grid, allowing the use of the Sensus accuWAVE R275TC diaphragm residential meter.

**Statutory authority:** Public Service Law, section 67(1)

**Subject:** Approving the use of the Sensus accuWAVE for use in residential gas meter applications.

**Purpose:** To approve the use of the Sensus accuWAVE for use in residential gas meter applications.

**Substance of final rule:** The Commission, on July 24, 2014, adopted an order approving a petition of Niagara Mohawk Power Corporation d/b/a National Grid, approving the use of the Sensus accuWAVE R275TC diaphragm residential meter for residential customer billing applications in New York State, 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:** Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: [deborah.swatling@dps.ny.gov](mailto:deborah.swatling@dps.ny.gov) An IRS employer ID no. or social security no. is required from firms or persons to be billed 25

cents per page. Please use tracking number found on last line of notice in requests.

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act. (14-G-0125SA1)

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

**Modification of the Deferral Recovery Provisions of Corning Natural Gas Corporation's Three-year Gas Rates Plan**

**I.D. No.** PSC-33-14-00007-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 whether to grant, deny or modify in whole or part, a petition filed by Corning Natural Gas Corporation to recover under-collections of Property Taxes and Large Customer Revenues through the DRA.

**Statutory authority:** Public Service Law, sections 4, 5, 65 and 66

**Subject:** Modification of the deferral recovery provisions of Corning Natural Gas Corporation's three-year gas rates plan.

**Purpose:** To approve or deny the modification of the deferral recovery provisions of the three-year gas rates plan.

**Substance of proposed rule:** The Commission is considering whether to grant, deny or modify, in whole or part, a petition filed by Corning Natural Gas Corporation to recover under-collections of Property Taxes and Large Customer Revenues through the Delivery Rate Adjustment mechanism. Under the Gas Rates Joint Proposal, the Company is allowed to defer the difference between the actual and the target amounts until the conclusion of the three year term. The amounts of the two deferrals at the end of the second rate year of the rates plan are substantial. The Company proposes to recover 100% of the Property Tax deferral and 100% of the Large Customer Revenue deferral from rate year two beginning on January 1, 2015. The Commission may consider other related issues.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

**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.

(13-G-0465SP2)

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

**To Modify the Retail Access Program Under SC No. 19—Seller Transportation Aggregation Service**

**I.D. No.** PSC-33-14-00008-P

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

**Proposed Action:** The Commission is considering a proposal filed by The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY) to make various changes to the rates, charges, rules and regulations contained in its Schedule for Gas Service P.S.C. No. 12.

**Statutory authority:** Public Service Law, sections 65 and 66

**Subject:** To modify the retail access program under SC No. 19—Seller Transportation Aggregation Service.

**Purpose:** To modify the retail access program to phase-in the implementation of new transportation services for core customers.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by The Brooklyn Union Gas Company d/b/a National Grid NY (KEDNY or the Company) to modify the retail access program under Service Classification No. 19 – Seller Transportation Aggregation Service (SC No. 19) to phase-in the implementation of new transportation services for core customers. The Company proposes to change the balancing provisions of its retail access program to allow the Energy Service Companies (ESCOs) that serve core customers to vary the amount of supply they deliver each day to match their customers' forecasted daily consumption. KEDNY also proposes to eliminate the swing service and associated monthly demand charges for ESCOs that serve core customers. In addition, the Company proposes to eliminate its bundled winter supply service, to increase the amount of pipeline transportation capacity released to the ESCOs, to restructure its retail access storage service, and to offer ESCOs a peaking service. The amendments have an effective date of November 1, 2014.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

**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.

(14-G-0331SP1)

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

**To Modify the Retail Access Program Under SC No. 8—Seller Services**

**I.D. No.** PSC-33-14-00009-P

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

**Proposed Action:** The Commission is considering a proposal filed by KeySpan Gas East Corp. dba Brooklyn Union of L.I. to make various changes to the rates, charges, rules and regulations contained in its Schedule for Gas Services P.S.C. No. 1—Gas.

**Statutory authority:** Public Service Law, sections 65 and 66

**Subject:** To modify the retail access program under SC No. 8—Seller Services.

**Purpose:** To modify the retail access program to phase-in the implementation of the new transportation services for core customers.

**Substance of proposed rule:** The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by KeySpan Gas East Corp. dba Brooklyn Union of L.I. (KEDLI or the Company) to modify the retail access program under Service Classification No. 8 – Seller Service (SC No. 8) to phase-in the implementation of new transportation services for core customers. The Company proposes to change the balancing provisions of its retail access program to allow the Energy Service Companies (ESCOs) that serve core customers to vary the amount of supply they deliver each day to match their customers' forecasted daily consumption. KEDLI also proposes to eliminate the swing service and associated monthly demand charges for ESCOs that serve core customers. In addition, the Company proposes to eliminate its bundled winter supply service, to increase the amount of pipeline transportation capacity released to the ESCOs, to restructure its retail access storage service, and to offer ESCOs a peaking service. The amendments have an effective date of November 1, 2014.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

**Data, views or arguments may be submitted to:** Kathleen H. Burgess,

Secretary, Public Service Commission, 3 Empire State Plaza, Albany,  
New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

**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.

(14-G-0330SP1)